

REFUGEE STATUS APPEALS AUTHORITY
NEW ZEALAND

REFUGEE APPEAL NO 74911

AT AUCKLAND

Before: V J Shaw (Chairperson)
A Molloy (Member)

Counsel for the Appellant: D Mansouri-Rad

Appearing for the NZIS: No Appearance

Date of Hearing: 25 & 26 November 2003

Date of Decision: 1 September 2004

DECISION

[1] This is an appeal against a decision of a refugee status officer of the Refugee Status Branch (RSB) of the New Zealand Immigration Service (NZIS) declining the grant of refugee status to the appellant, *[deleted]*.

INTRODUCTION

[2] The appellant arrived in New Zealand on 2 July 2003 and immediately requested the grant of refugee status. He was interviewed by the refugee status officer on 6 August 2003 and was advised that his claim had been declined in a decision dated 9 October 2003.

THE APPELLANT'S CASE

[3] *[deleted]*

[4] *[deleted]*

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[5] [deleted]

[6] [deleted]

[7] [deleted]

[8] [deleted]

[9] In response to the Authority's question as to whether his family had ever encountered problems with the Iranian authorities, the appellant mentioned that his father had sometimes been warned by the *Ettela'at* about having to close a relationship with a neighbouring family, two of whose children had been executed during the 1980s for *Mojahedin* activities. Despite the warnings, no serious repercussions resulted for the appellant's family

[10] [deleted]

[11] The appellant made the decision to leave Iran because the family's non-resident status "left us in limbo" with no clear future.

[12] Further, the appellant had been active in the student demonstrations that had erupted in July 1999 following the closure of the *Salam* newspaper. The representatives of the student organisation *Daftar Takeem-e Vahdat* had visited the appellant's high school and talked to the students seeking their support. The appellant and his classmates had joined student protests in their city during the evenings which were marked by violent conflict caused by the *Basiji* and *Ansar-in Hezbollah*. The appellant carried a club to defend himself from attack and was careful to avoid arrest – usually by "running for my life".

[13] During the period following the demonstrations, the appellant was not approached by the authorities despite his having heard that they had filmed the demonstrations so as to aid identification of those participating. The appellant did however notice the heightened presence of plainclothes secret police in the neighbourhood – such persons being readily identifiable from their appearance.

[14] On two occasions the appellant was questioned by officials while travelling on buses, including by an interior ministry official who overheard the appellant talking on the bus about a school friend who was given poor marks because he had not participated in an anti-Israel demonstration. No difficulties resulted.

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[15] Another political activity undertaken by the appellant was the support he gave to reformist candidates at election time. He and other students would distribute propaganda material for a local reformist candidate who successfully contested a parliamentary seat.

[16] In June 2003, student demonstrations again broke out including in the appellant's home city. According to the appellant, the demonstrations were triggered by the introduction of student fees (or more correctly by proposals to privatise universities) but in his view, the people were just waiting for an excuse to protest against religious dictatorship and in support of freedom. The appellant attended on two consecutive nights. Violence broke out and riot police were employed against the demonstrators. The appellant was armed and he and other students made sure they remained in a close group for protection. He was not amongst those arrested nor is he aware of any attempts by the authorities to locate him immediately following the demonstrations or in the period leading up to his departure from Iran at the end of June 2003.

[17] The appellant departed Iran through Tehran airport travelling on a *[deleted]* passport in a false name obtained earlier in the year through relatives living in *[deleted]*. Earlier in the month he had visited the British embassy in Tehran and unsuccessfully applied for a UK visitor's visa. He then made the decision to travel to Malaysia en route to New Zealand, arriving in this country on 2 July 2003.

[18] The appellant explained that despite not having been arrested during or after the June 2003 demonstrations, he had still felt insecure. He had a friend who had been in the *Mojahedin* during 1979. All the friend's associates, including his wife, had been executed. Even so no action had been taken against the friend until five years ago when he had suddenly been kidnapped. This suggested to the appellant that even after much time had lapsed, the Iranian authorities had not necessarily forgotten about you.

[19] After the 1999 demonstrations the appellant did not leave Iran because at that time he was still studying and he did not consider the risk to himself to be as serious as it later became. The appellant acknowledged though that since leaving Iran, he has received no indication from his parents that the authorities had made any enquiries of him concerning his whereabouts. He speaks to his parents on the telephone around once a week and they have never mentioned anything that might be relevant to his refugee claim.

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[20] Since being in New Zealand, the appellant has been attending a church however, his religious interests are eclectic. He is interested in several faiths particularly Baha'ism, Buddhism and Christianity. He describes himself as "multi-religious".

[21] The appellant's interest in religions other than Islam was awakened when he was a young boy. He felt drawn to Judaism and Christianity so that if he met people belonging to either of these religions he would try to befriend them. His grandfather had been a Jew and although his father did not practise Judaism, he did sometimes participate in local Jewish community activities.

[22] As the appellant matured, he took the opportunity to find out as much as he could from people of non-Islamic faiths. He encountered Armenian Christians and Baha'is. His father had a number of Baha'i friends and on occasions they would socialise with Baha'i families such as on picnics. The appellant and his family were impressed by the positive qualities they saw in their Baha'i friends; they were well-mannered, kind, peaceful and well-educated people. Although they felt sympathetic and would have liked to attend a Baha'i religious service, the appellant and his father did not do so because of the extreme danger. Even their discussions on religious topics had to be conducted at a very discreet level because of the risks involved.

[23] The situation was not quite so constrained in respect of Christians although some caution was still called for. The appellant had once tried to enter a famous church in his home city but had been refused entry by a *pasdar* who had been guarding the door.

[24] In August 2003, the appellant was baptised at an Anglican church near where he was living at the time but he now attends an evangelical church close to his new residence. He has also met several Jehovah's Witnesses who visit the hostel where he stays and, for a period, he attended their bible study home groups.

[25] When asked to describe the significance of his baptism, the appellant referred to his having been "born again" and that he is now separated or cleansed of his sins and reconciled to Christ. When he attends a church he feels peaceful. He sees himself as an evangelist for Christianity in accordance with Christ's teaching that once having entered the light, one was obliged to take the light to

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others.

[26] Should he return to Iran the appellant anticipates that he would accomplish this task by talking to others about the miracles of Christianity at dinner parties and such gatherings. He would speak to anyone regardless of their religion, although not to persons who were uninterested or unwilling to talk about Christianity. By way of illustration the appellant explained that he spoke only about Buddhism with a Buddhist man living in the same hostel as this man had become angry when a woman had tried to discuss Christianity with him. The hostel manager had asked the appellant to prevent missionaries coming to the hostel and he had agreed to do so because their evangelising had led to arguments. He felt that it was important to respect other people's views and if they did not want to talk about religion that "should be the end of the matter".

[27] Another Christian activity the appellant anticipated becoming involved in once back in Iran was the holding of scripture classes similar to the home groups he attends in this country. He would also attend a church irrespective of the risks entailed. He "did not have anything" so that if killed he "had nothing to lose but would gain heaven instead".

[28] In answer to a question from his counsel about his views on Islam, the appellant said that he had not attended a mosque since aged 14 or 15 years when he had been thrown out of a mosque for talking about political matters. He disliked Islam because of its association with holy wars and killing as well as lying and cheating. By contrast, Christianity did not emphasise war or killing but favoured love, kindness and prayers for others.

[29] When the Authority reconvened the hearing in June 2004 to obtain an update on the appellant's situation, the appellant confirmed that he was still attending the same church. Besides the regular Sunday service, he was a member of a weekly study group. Although he maintains his earlier interest in Baha'ism, he affirmed that Christianity had "captured his heart".

[30] The Authority also heard from one of the pastors at the appellant's church. The appellant was described as a warm and friendly person who related well to children and their families and who had readily fitted into the wider church family. His church attendance record was good. While offering no guarantees that the appellant would remain with the church, it was the pastor's view that the appellant

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was sincere and the church would continue to support him in his Christian growth. The pastor expressed some concerns that the appellant's simple, open, friendly nature might place him at greater risk in his home country than other staunch Iranian Christians whom he had encountered.

[31] The Authority has considered various medical reports covering the appellant's mental state and his medication.

[32] The appellant fears that he will be at risk of serious harm should he return to Iran because of his past participation in student protests and his conversion to Christianity which is regarded by the Islamic regime as apostasy deserving of severe punishment.

[33] Counsel provided written submissions and a range of country material on the treatment of Christians in Iran. Subsequent to the hearing, the Authority on two occasions referred additional material to counsel for comment. Counsel's various submissions and the extensive country material have been taken into account.

THE ISSUES

[34] The Inclusion Clause in Article 1A(2) of the Refugee Convention relevantly provides that a refugee is a person who:

"... owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence, as a result of such events, is unable or, owing to such fear, is unwilling to return to it."

[35] In terms of *Refugee Appeal No 70074/96* (17 September 1996), the principal issues are:

- (a) Objectively, on the facts as found, is there a real chance of the appellant being persecuted if returned to the country of nationality?
- (b) If the answer is yes, is there a Convention reason for that persecution?

ASSESSMENT OF THE APPELLANT'S CASE

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[36] Before addressing the framed issues the Authority must first make a finding as to the appellant's credibility.

CREDIBILITY

[37] The appellant's answers to our questions were lucid and to the point. We noticed no obvious impediment to his cognitive functioning despite his counsel's advice that in preparing for the hearing he had found it difficult to get a coherent statement from the appellant who had complained to him that his mind was "all over the place" and that he was experiencing intrusive thoughts.

[38] *[deleted]*

[39] The appellant's remaining evidence was by and large consistent. With respect to his claims concerning his political activities centring on his participation in student demonstrations during 1999 and 2003 these have been consistent and seemingly free of embellishment. The appellant could easily have exaggerated the nature of official interest in him as a result of his activities. Although he maintained that he harboured fears that the authorities, even after a period of delay, might take punitive action against him, he readily confirmed that he had not been arrested, questioned or even approached by the authorities after the 1999 or 2003 demonstrations, that the odd occasions when he had been questioned by officials had been random unrelated incidents with no further consequences and that he had learned nothing during his regular telephone calls to his family that might suggest a current official interest in him. His evidence in these matters has been commendably frank and accordingly it is accepted.

[40] As for the appellant's claims concerning his religious interest and beliefs it is relevant to note that when he was interviewed on arrival at Auckland airport, he stated that he had four religions "Zoroastrian, Baha'i, Christian and Jewish". Before us the appellant confirmed that when in Iran, his relationship to Baha'ism was in the nature of an interest only – an interest shared and fostered by his father and the fact that the family had Baha'i friends with whom they often socialised. These gatherings with Baha'i friends were not, however, in the nature of formal Baha'i religious services which the appellant confirmed he and his father had not attended because it was too dangerous to do so. We accept that in Iran the appellant was interested in Baha'ism but that he did not adopt or practice it in any formal sense.

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[41] This brings us to the issue of the appellant's Christianity. After having observed and talked to him, we accept that he has a genuine interest in religions which, since he has been in this country, has crystallised around the Christian faith in particular. He has been a regular church goer – initially at an Anglican church, then at an evangelical church – and regularly attends a bible study home group. He has also been baptised, although it seems his current church will require a second baptism according to its own rites.

[42] Acknowledging that the appellant enjoyed only limited opportunities in the past to experience or study non-Islamic religions, we suspect his earlier professed interest in and knowledge of various religions was relatively superficial and incoherent. However, these reservations do not detract from the appellant's seemingly genuine interest in religions and the satisfaction he apparently has found in church attendance and Christian doctrine. He is accepted within his church as someone who has made a commitment to the Christian faith. We are unable to dismiss his professed adherence to Christianity as an insincere ploy adopted solely for the purpose of constructing a refugee claim. To the extent necessary we extend the appellant the benefit of any doubts we may have.

STATELESSNESS

[43] *[deleted]*

[44] *[deleted]*

[45] *[deleted]*

[46] *[deleted]*

[47] *[deleted]*

[48] The Authority turns therefore to consider whether the appellant has a well-founded fear of persecution should he be returned to Iran.

PARTICIPATION IN DEMONSTRATIONS

[49] The appellant's fears stemming from his past political activities can be quickly disposed of. During the July 1999 student demonstrations in which the appellant participated, he successfully avoided being arrested. Nor was there any

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indication in the period following that he had been identified or was being sought by the authorities. On a number of occasions during the years following, he was spoken to by officials. These were random incidents unconnected to the appellant's involvement in the 1999 demonstrations and, most importantly, resulted in no problems for him.

[50] The appellant again participated in student demonstrations in June 2003. Again he successfully avoided being arrested. There is no evidence that points to an official interest in him since June 2003. There were no official visits to his home in the period immediately following the demonstrations, nor have his parents reported any enquiries during the one year since the appellant departed Iran. This lack of any official follow up since the June 2003 demonstrations is strong evidence that the appellant's participation in the demonstrations is not known to or of interest to the authorities. The situation is no different to that following the 1999 demonstrations.

[51] The fact that the appellant knows of someone with a past involvement in the *Mojahedin*, who was arrested years after he ceased such activities, does not assist the Authority in assessing the real chance of fear for the present appellant. The two cases are very different and we cannot speculate about the reasons behind the timing of the actions taken against this former *Mojahedin* member.

[52] The Authority concludes that there is no basis for any finding that the appellant is at real risk of serious harm because of his past participation in student demonstrations. His fears of persecution on this account are not well-founded.

[53] The next matter for consideration is the real chance of harm stemming from the appellant's conversion to Christianity.

CHRISTIANITY

[54] The thrust of counsel's submissions is that the small Iranian Christian community suffers from officially-sanctioned discrimination that effectively renders them second class citizens. Additionally, converts to non-official, Protestant religions are at risk of persecution. Mr Mansouri-Rad points to various reports such as those from the UN Special Representative of the Commission on Human Rights and the most recent United States Department of State *International Religious Freedom Report* in respect of Iran to substantiate his submission that Muslim converts who join evangelical Christian churches risk harassment and

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intimidation to discourage their attending those few churches that have not been closed and actual repression should they publicly display their faith, particularly by proselytising.

[55] Further, counsel submits that the ill-treatment of Christian converts must be considered against the fact that the Islamic regime regards conversion from Islam as apostasy and punishable by death. Freedom of religion is a fundamental human right and the appellant should not be required to practise his religion in private for fear of incurring such a penalty.

[56] According to the United States Department of State *International Religious Freedom Report 2003: Iran* (18 December 2003), Iranian Christians are estimated to number up to 300,000 (or less than 1%) out of a total population of approximately 68 million. The Christian community though is estimated to be losing some 15,000-20,000 members annually due to emigration.

[57] A recent report prepared by Nazila Ghanea-Hercock for the UN Commission on Human Rights *Ethnic and Religious Groups in the Islamic Republic of Iran: Policy suggestions for the integration of minorities through participation in public life*, 5 May 2003, notes that Article 13 of the Iranian Constitution recognises “Zoroastrian, Jewish and Christian Iranians are the only recognised religious minorities”. These groups are permitted “within the limits of the law” to “perform their religious rites and ceremonies and to act according to their own canon in matters of personal affairs and religious education”.

[58] With respect to the position of the Armenians and Assyro-Chaldean Christian communities, Ghanea-Hercock comments that although they have three representatives in the Iranian parliament and are able to run their own schools, churches and clubs and produce some publications, “like other religious minority communities, they have been coerced into adopting a posture of low social visibility ... going to great lengths to avoid any conflict or competition with Muslims that may be used against them” (*ibid* p19). Like all religious minorities, they complain of varying degrees of discrimination in employment and serious economic hardship which in turn has prompted high levels of migration.

[59] Because the Armenian and Assyro-Chaldean orthodox churches are also cultural and ethnic associations, they have long resisted or forbidden conversion into the faith from outside the community, giving some protection from repression.

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Their situation, Ghanea-Hercock notes, has been described in the past by the UN Special Rapporteur on religious intolerance as generally satisfactory, while the groups themselves have sought a low profile at the international level. In general these Christian communities, with their small and dwindling populations, are not seen as constituting any political threat to the Islamic Republic and, according to Ghanea-Hercock, the controlled concessions and representation provided as part of the government system have served to largely co-opt them into the larger governmental machinery.

[60] In contrast, the position of the non-official, Protestant evangelical churches is more precarious and at times they have met with actual repression. Ghanea-Hercock attributes the singling out of both the Protestants and Baha'is for particularly harsh treatment to "the perceived attraction of their message to disenchanting Muslims and their links with co-religionists overseas" (*ibid* p20).

[61] Human Rights Watch, in its September 1997 report, *Iran Religious and Ethnic Minorities: Discrimination in Law and Practice*, at pp15-19, records that from the time of the revolution, Protestant evangelical churches were targeted by the Islamic regime. The largest Protestant denomination, the Episcopalians, was forced to cease operating altogether. During the 1990s, persecution of evangelical Christians intensified; churches were closed, pastors imprisoned and executed, sermons in Persian restricted and Muslim converts pressured to recant.

[62] Official intolerance of apostasy was underlined by the execution in December 1990 of an evangelical pastor, Reverend Hossein Soodmand, who had converted from Islam and the sentencing to death in December 1993 of another pastor, Reverend Mehdi Dibha, from the Church of the Assembly of God, for apostasy and insulting Islam. Under international pressure, he was released in January 1994 only to be abducted and murdered later that year. Two other church leaders, Bishop Haik Hovespian Mehr, Secretary General of the Assembly of God, and Reverend Tateos Mikaelian from the St John Armenian Evangelical Church, were similarly abducted and murdered during 1994. Many remain sceptical of the regime's attribution of the murders to members of the *Mujahedin-e-Khalk*. A further suspicious murder of an evangelical pastor, Mohammed Ravanbakhsh, from the Assembly of God, occurred during 1996. The repression and killings had an intimidatory effect on the activities of the Protestant churches.

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[63] The 9 February 1996 report from the UN Special Rapporteur on the question of religious intolerance (E/CN.4/1996/95/Add.2) covered much the same material. The Special Rapporteur recorded the restrictions to which Protestants were subjected, such as church closures, prohibition on the sale of Bibles and the pressurising and surveillance of Muslim converts. He drew attention to the traumatising effect that the killings of pastors had had on Protestant communities.

[64] A US-based group, Iranian Christians International (ICI), has published various updates of its report *The Continued Escalation of Persecution of Evangelical Christians in the Islamic Republic of Iran*, the most recent available being June 2001. This, like the earlier versions, details instances of harassment and persecution of evangelical pastors and Christians, including Muslim converts to Christianity, in the period since 1990. As well as the targeting of pastors, ICI has documented widespread harassment of ordinary Muslim converts and other evangelical Christians, including instances of arrest, torture and detention. In consequence, many pastors and Christians have reportedly fled the country.

[65] ICI identified some 24 evangelical churches which, since the revolution, had been forced to either close or go underground (*ibid* 2001, p28). Many of the Assyrian and Armenian evangelical churches, while allowed to stay open, were reportedly only able to do so, on condition that they did not evangelise Muslims and conducted services only in the Armenian or Assyrian languages. The Assembly of God Church attracted particular hostility.

[66] ICI has stated (*ibid* p6) that it has confirmed eight deaths during the 10 years since 1988 and between 15 and 22 disappearances in 1997 and 1998. Few details have been provided of the disappearances which ICI believes are most likely the result of murder. This claim will be further discussed below.

[67] According to ICI, in the period since the election of President Khatami in May 1997, the Islamic authorities have concentrated on destroying and closing the underground home churches and reports were received of arrests of groups of Christians numbering between 20 to 40 people.

[68] It is apparent that the United States Department of State has utilised information received from ICI in preparation of its various International Religious Freedom Reports in respect of Iran.

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[69] Recent attempts by the Nicholson Library to contact the ICI for updated comment on the situation of Iranian Christians since the 2001 report have proved fruitless.

[70] Looking at other more recent material from 2000 onwards, the UN Special Representative, in his report of 16 January 2002 to the Commission on Human Rights, included the following commentary on the position of Christians:

“79. It is difficult to obtain a reliable estimate of the number of Christians in Iran. A major complication is the mixing of ethnicity with religious affiliation. Estimates of the non-ethnic Christians, that is, leaving aside the Armenians and Assyrians, vary from several thousand to as high as 15,000. The Armenians and Assyrians are recognised as official religious minorities, that is, as Christians. It is a status that assigns them, along with the Jews and the Zoroastrians, second-class citizenship.

80. However, their lot is considerably better than that of the unrecognised, that is, the non-ethnic Christians. These are those groups of Christians who are for the most part ethnic Persians. Evangelical Christians such as members of the Assemblies of God have been harshly persecuted over the years, apparently on the grounds that they have been or might be proselytising. Some of them are said to have been convicted of apostasy. Some have been sentenced to death and a few have been executed. The Special Representative has been informed that only three small Persian-speaking churches may remain in operation and that they have had to agree not to evangelise Muslims. The printing of Christian literature is prohibited and Christian bookstores are banned. A number of Christian activists have reportedly fled the country.

81. In the Special Representative’s opinion, the situation of the Christians, particularly the non-ethnic Christians, does not seem to have improved since the 1996 report of the Special Rapporteur on religious intolerance on his visit to Iran (E/CN.4/1996/95/Add.2). The Special Representative again calls on the Government to implement the recommendations of the Special Rapporteur on religious intolerance.”

[71] The US State Department, besides its annual reports on human rights practices in Iran, has produced annual reports on International Religious Freedom. With respect to Iran, these have remained largely unchanged since 2000. It must be noted that the US has no embassy in Iran and the reports are said to draw heavily on non-US government sources.

[72] The latest report, released on 18 December 2003, states there has been no change in the respect shown for religious freedom and that members of religious minorities reported imprisonment, harassment, intimidation and discrimination based on their religious beliefs. “Also noted is the continuing legal discrimination against religious minorities in such areas as eligibility for public office, employment, access to education, entitlement to compensation for injury,

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inheritance and criminal punishments. Referring specifically to the position of Christians, the report states:

“The Government vigilantly enforces its prohibition on proselytising activities by evangelical Christians by closing evangelical churches and arresting converts. Members of evangelical congregations have been required to carry membership cards, photocopies of which must be provided to the authorities, Worshippers are subject to identity checks by authorities posted outside congregation centres. The Government has restricted meetings for evangelical services to Sundays, and church officials have been ordered to inform the Ministry of Information and Islamic Guidance before admitting new members to their congregations.

Conversion of Muslim to a non-Muslim religion is considered apostasy under Shari’a law as enforced in the country, and non-Muslims may not proselytise Muslims without putting their own lives at risk. Evangelical church leaders are subject to pressure from authorities to sign pledges that they would not evangelise Muslims or allow Muslims to attend church services.

Mistreatment of evangelical Christians continued during the period covered by this report. Christian groups have reported instances of government harassment of churchgoers in Tehran, in particular against worshippers at the Assembly of God congregation in the capital. Harassment has included conspicuous monitoring outside Christian premises by Revolutionary Guards to discourage Muslims or converts from entering church premises and demands for the presentation of the identity papers of worshippers inside.”

[73] The Authority has sighted two reports from foreign immigration services following fact-finding missions to Iran. The earliest, from the Danish Immigration Service *Report on fact-finding mission to Iran*, 9-17 September 2000, refers at p23 to the steadily declining number of Christians – estimated at 150,000, down from 350,000 at the time of the revolution – due to large-scale emigration. A western embassy source reportedly described the situation for religious minorities as having improved since the period immediately following the revolution, albeit Christians continued to be regarded as second class citizens. One improvement identified was that, since 2000, church schools were for the first time allowed to appoint Christian principals, it previously having been mandatory for the principals of such schools to be Muslims. Armenian Christians were described as not being in conflict with the authorities and in consequence had nothing to fear.

[74] Concerning the position of converts from Islam, the report, at pp25-26, includes the following:

“Conversion from Islam to another religion is forbidden under Iranian law and can lead to the death penalty.

In that connection, a Western embassy said that there had been no reports of persons being executed on the grounds of conversion from Islam since 1994. In the source’s opinion, although a convert may still be sentenced to a term of imprisonment if the authorities hear about his conversion, it is very rare nowadays

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for a criminal case to be brought against a convert. The source stressed that converts often remain Muslims for official purposes.

The source thought that converts who are known to the Iranian authorities are summoned to an interview at the Ministry of Information in order to be reprimanded. They are then allowed to go after being warned not to talk about what has taken place at the Ministry. If a criminal case is brought against them, they will be accused of something other than conversion.

... In Iran, conversion is a lengthy process. A person who contacts a Christian church is told that the church is open to him, and that he must become conversant with the Christian scriptures and take part in church activities. After a few years, the candidate may be baptised.

According to the source, the churches with which he was acquainted are cautious about accepting converts. A person may be baptised after careful consideration, and the baptism ceremony will take place in strict secrecy. According to the Western source, the Armenian, Assyrian and Chaldean churches do not accept converts, whereas the Protestant churches and the "Assembly of God" church do. According to another Western source, those churches also actively proselytise."

[75] Mention is also made of the fact that many individuals try to convert with a view to emigrating and enhancing the opportunities for gaining asylum in the west and that 80-90% of letters of recommendation presented in the west, purportedly by the Armenian Church, are found to be false.

[76] The second report is from the Belgian Office of the Commissioner General for Refugees and Stateless Persons (CEDOCA) *Report on the Mission to Iran; 16 May to 6 July 2002*. Chapter 4 is concerned with the position of Christians. Ten churches, said to be active in Iran, are named, along with the addresses of their headquarters in Tehran. As well as the Armenian Gregorian and Catholic Churches and the Assyrian Chaldean Catholic Church, there are Armenian and Assyrian Pentecostal Churches (Assembly of God), along with the Association of Seventh Day Adventists, the Roman Catholic Church and the Episcopal Church of Iran (Anglican). Later in the chapter there is also reference to the Russian Orthodox Church with around 100 members.

[77] Commenting on the situation generally, the report states:

"The situation of the Christians has improved over the last few years, and especially since President Khatami came to power. Generally speaking, there is no longer any repression or persecution. On the whole, it can be said that the Christians from the different churches are able to practise their religion undisturbed within their community of faith but that, like all other Iranians, they have to cope with the economic crisis. This is one of the main reasons, moreover, why many people who belong to these churches have left the country. Coupled with the fact that since the 1979 revolution many of their co-religionists have gone abroad, many see no more future in Iran and decide to leave. The leaders of the different churches in Iran are unhappy about this situation and are trying to stem the flow and thus ensure the continued existence of their church in Iran."

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[78] Various initiatives to reduce discrimination in such areas as inheritance law and to recognise the jurisdiction of Armenian courts in personal and family law are noted:

“Observers attribute this more flexible attitude on the part of the authorities to the fact that certain [factions] with the government have become more sensitive to Iran’s international image. The repression of this Christian religious minority, which has in total fewer than 200,000 members throughout Iran, would attract only negative attention. Furthermore, given the small number of Christians numerically they do not constitute a threat to the Islamic majority.” (*ibid* p21)

[79] The report confirms that few of the churches in Iran are involved in proselytising:

“Few of the churches in Iran are involved in any proselytising. The most active are the two ‘Assemblies of God’ churches and the Episcopal Church of Iran (‘Anglican Church’). These churches do engage in active proselytising. Other churches admit new members only when the person concerned is married to a member. The Armenian Gregorian Church, the Armenian Catholic Church, the Roman Catholic Church and the Assyrian Church (‘The Holy Apostolic Catholic Assyrian Church of the East’) never admit converts.

Religious conversion is a long process in Iran. Interested persons who apply to join a church are first – as far as possible – vetted to make sure they are sincere (to avoid admitting government ‘spies’). They are then required to follow a course in Christian doctrine which normally lasts 1 to 3 years. They should also take an active part in the activities of the church. This is to prevent people from applying for religious conversion for no other reason than to be able subsequently to request asylum in another country. The baptism ceremony is then carried out, in most cases with the greatest discretion.

Various churches issue baptism certificates to converts who request asylum abroad. However, the Assyrian ‘Assembly of God’ Church never issues such documents. Many of the documents submitted to the CGVS, when checked by the churches concerned, are found to be fake.

Conversion from Islam to another religion is forbidden according to Iranian law and is in theory punishable by the death penalty. However, the sources consulted had no knowledge of any sentences handed down to persons because they converted or because of their proselytising. They certainly had no knowledge of any executions in the last six years on the grounds of conversion or apostasy.

The authorities are often aware of conversions but do not do anything to oppose them. As long as the religion is practised privately and the person concerned is not too obtrusive, in principle there is no problem. It is only if the person practises his religion publicly and actively attempts to convert others that he could be in trouble. However, this applies more to small towns, where it appears that members are sometimes questioned, than to Tehran, where things are somewhat easier given the anonymity of this big city. One of the sources related that one of its members was currently in detention for distributing Bibles and because of open proselytising. None of the other sources we consulted had any knowledge of such cases.

Muslims regularly attend services in the different churches. In most cases this is known to the authorities, but they do not make any problems.” (*ibid* p22)

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[80] Annexures to the report contain detailed information in respect of six churches obtained through conversations with church officials. Representatives of both the Armenian Gregorian Church and the Assyrian Chaldean Church expressed concern at the continued exodus of Christians attributed essentially to economic reasons. They reported that members of neither church experienced problems with the authorities. The Armenian Gregorian Church was most emphatic that it never allowed Muslims to convert or to be part of their community of faith. The bishop condemned the practice of certain evangelical churches of converting Muslims and Armenian Christians.

[81] The head of the Holy Apostolic Catholic Assyrian Church, whose members comprise 70% of the Assyrian Church's 17,000 members, advised that the church does not allow conversions and has indeed not made any since the 12th century. The church door, though, is always open and Muslims regularly visit the church without problem. The entire liturgy is in Assyrian and Muslims may not receive communion or give confession.

[82] The assistant superintendent of the Armenian Assembly of God in Tehran reported that the church had three churches in Tehran besides its headquarters and several others throughout the country. One of the Tehran churches conducted a service in Farsi. In Shiraz, the church was forced to close after the pastor was deported but meetings took place in private homes. The church was still one of the officially recognised religions and, as a result, was accepted although it could not build new churches. Of the 800 members attending the church at the headquarters, 80% were converted Muslims and 70% converted Armenian or Assyrian Christians. Some 500 had been baptised.

[83] The assistant superintendent advised that, on the whole, the situation of members was "good" or "tolerably good" and was certainly better than six to seven years ago. Nowadays, members were rarely picked up and, at the time of the interview, only one member of the church was in detention because of distributing Bibles. Members in smaller towns were more likely to experience problems, usually in the form of minor forms of intimidation such as being held for questioning for several hours and even up to a few days. Usually, the detainee would be asked to sign an undertaking not to proselytise, in spite of which most simply continued to do so without problems. Converted Muslims, if they came to the notice of the authorities, risked losing their employment.

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[84] Despite the tolerably good situation, the superintendent acknowledged that:

“Among the believers there is a general atmosphere of fear, so much so that they tend to restrict themselves in their proselytising activities. Also, members regularly stay away from the church to divert the somewhat negative attention of the authorities.”

[85] An official request made some years prior that the church stop its Friday service and provide the identity of worshippers, was reportedly ignored without problems, although it was accepted that the authorities were informed of the church’s activities and probably had spies among the congregation.

[86] The Armenian Assembly of God is open to new, non-Armenian converts and, to this end, members undertake, albeit limited, steps such as selling Bibles on the street. Those interested have to follow a training course that lasts three years. Up until that time, people were not considered by law to be converts.

[87] The head of the Assyrian Assembly of God reported that the community had only one church in Tehran but that elsewhere in the city, private meetings of small groups of believers took place. There were two services that took place on Sunday, one in Assyrian and, since 2002 and one in Farsi. A further Friday service in Farsi had just commenced. The total community in Tehran comprised around only 200 persons, most of whom were converted Assyrian Christians. Over the years, many of the church members had fled. The church had one priest in Urumiye, but priests in Hamadan and Kermanshaw had either left the country or become inactive because of problems with the authorities. The church was recognised as a Christian Assyrian church, although was not registered as such. The head of the church reported government spies within the church and constant government surveillance.

[88] As for admitting new members to the Assyrian Assembly of God, those who expressed an interest receive instruction in Farsi for at least 18 months, after which they may be baptised. Because the church had not been active in this field for very long, it had not encountered any problems because of its proselytising activities. With odd exceptions, as long as converts kept a low profile and were not obtrusive about their new beliefs, in principle they had no problems. Converts, however, would encounter problems when it came to registering their marriage and they could not have a conventional Christian marriage ceremony.

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[89] Like the head of the Armenian Assembly of God, the head of the Assyrian church was clear that the situation had been much worse some seven years previously when members had regularly been summonsed for questioning and sometimes detained for several days. The situation was said to have generally improved since Khatami came to power and the death penalty for conversion had not been applied for some years.

[90] The church used to print 5,000 copies of the New Testament clandestinely every month. However, after the *Ettela'at* discovered this and confiscated the Bibles, the head of the church complained to the Interior Minister but no further legal proceedings were instituted against him. He was advised to keep his head down. He expressed the view to the CEDOCA interviewer that he was not really afraid of being arrested as this would not be a good move in terms of Iran's international reputation.

[91] The only other church mentioned in detail in the CEDOCA report is the small Russian Orthodox Church. It has only one priest in Iran who noted that the period 1990 to 1995 had been particularly problematic for Christians in Iran. After the killing of the church's priest in 1995, the church had been without a priest until 1998. Apparently, many Muslims ask to be baptised but this is always refused. A few Muslims regularly attend Mass which has not been problematic.

[92] Mr Mansouri-Rad urges the Authority to disregard the CEDOCA report on the basis that its findings are not corroborated in other country material, in particular the International Religious Freedom reports of the US State Department. The Authority does not accept that the report can be so easily dismissed. It was based on interviews with a number of Iran church leaders. It is always possible that such leaders may understate their problems to outsiders as a protection against official retribution. However there was a broad consensus of opinion that the situation had definitely improved over the repression of the early – mid-1990s and it is hard to see why leaders of the Armenian Assembly of God for instance would so deliberately mislead and/or risk such dangerous admissions concerning that church's ministering to non-Armenian Muslim converts.

[93] It is acknowledged that the US State Department reports reflect little, if any, change over the years. Indeed the comments on the treatment of Evangelical Christians, apart from the occasional word change and omission, have remained the same since 2000. The material relies heavily on ICI reports especially of

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events up to 1998. This is not to dismiss their value but it might explain their unchanging content and reliance on broad generalisations.

[94] The UK Home Office Country Report (April 2004) as Mr Mansouri-Rad points out, incorporates material from the US State Department but it also incorporates material from other sources. Overall the picture is not too divergent from that presented in the CEDOCA, namely that at present the government is not pursuing an active and systematic policy of investigation and prosecution of cases of apostasy and it is possible for converts to practice their faith, excluding active public displays of faith and proselytising.

“6.71. The source thought that converts who are known to the Iranian authorities are summoned to an interview at the Ministry of Information in order to be reprimanded. They are then allowed to go after being warned not to talk about what has taken place at the Ministry. If a criminal case is brought against them, they will be accused of something other than conversion. Many individuals try to convert with a view to emigrating, considering that the opportunities for obtaining asylum in the West are thereby greater. The Christian churches send letters of recommendation to converts and other persons belonging to the church on request. It would appear, however, that at present the Government is not pursuing an active and systematic policy of investigation and prosecution of cases of apostasy.

6.72. In practice, Muslim converts to Christianity may face obstacles such as not being admitted to university or not being issued a passport. Even Muslim converts, however, in reality appear able to practise their new faith up to a point. This means, for instance, that weekly church attendance is a possibility. On the other hand, those who actively display their new faith in public, in particular by proselytising, can expect to face severe repression, even if their conversion goes back decades.”
United Kingdom Home Office *Country Report: Iran Country* (April 2004)

[95] Besides the above reports, the Authority has also considered the May 2003 and July 2004 *Iran Country Report* from International Christian Concern, a US group which monitors persecution of Christians. The 2003 report (<http://persecution.org/Country/Iran.html>) refers to various instances of Iranian Christians being arrested. However, the most recent example given was from March 2001. This refers to a Muslim convert being detained for three weeks and tortured by *Basiji*. Few details are provided. All other examples are from the period 1996-1999 and, like the March 2001 report, primarily sourced from ICI.

[96] The 2004 report includes no instances of persecution, although the website reproduces various reports from Compass Direct, another Christian group which monitors persecution of Christians, concerning the arrest of an Assembly of God pastor, Khosroo Yusefi, in Chalous, northern Iran, along with members of his underground congregation.

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[97] Mr Mansouri-Rad has also provided the Authority with several reports from the website of Compass Direct on the topic, including one from 7 July 2004, reporting the release of pastor Yusefi after a six-week detention. Several dozen evangelical Christians were reportedly arrested throughout May 2004 in the province of Mazandaran. Most, including members of the pastor's family, had been released after up to a week in prison. Many had reported being beaten and threatened. The arrests were described as part of a recent crackdown in northern Iran, targeting the region's spreading house church movement.

[98] Summarising the above country material, as far as the position of the evangelical Protestant churches is concerned, the available information is unambiguous: these churches have been targeted in one form or another by the Islamic regime since the time of the revolution. During the 1980s, many churches were forced to close. The early 1990s saw a renewed attempt to rein in these churches, while the suspicious murder of a number of Protestant pastors, particularly associated with the Assembly of God, underlined the regime's intolerance of apostasy and Christian proselytising. Pastors and individual Christians, particularly Muslim converts, have experienced harassment, and even persecution in the form of torture and detention.

[99] In recent years, there has been some relaxation. Investigations such as that undertaken by the representatives of the Belgian CEDOCA record that, at least as far as the Armenian and Assyrian Assemblies of God are concerned, official pressure has diminished, allowing both churches to minister to their congregations of predominantly converted Muslims, including even conducting some services in Farsi.

[100] Oversight and restrictions remain, no doubt aimed at curtailing organised proselytising and overt growth. As the reports of recent arrests of underground church members in Mazandaran province suggest, there are limits to the Islamic regime's tolerance of unofficial, proselytising, house churches. Further, despite some improvements, the legacy of the repression of the 1990s has left many Protestants with a continuing sense of insecurity.

WELL-FOUNDEDNESS OF APPELLANT'S FEAR

[101] The Authority turns now to consider the position of the appellant against this background.

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[102] The appellant's adoption of Christianity has occurred only since his arrival in this country. He therefore has no particular religious profile with the Iranian authorities, indeed it is our finding above that he has no profile whatsoever with the authorities.

[103] There would appear to be no impediment to the appellant's pursuit of Christianity in the private sphere, namely prayer, contemplation, reading the Bible and so forth. Such activities are an important aspect of religious practice while their essentially private character means that they are most unlikely to attract official interest or censure.

[104] Further the appellant's family's liberalism in religious matters removes any need for the appellant to conceal his Christian beliefs from his family members for fear of hostility or rejection. It was apparent from his evidence that the appellant's parents include amongst their friends and acquaintances Baha'is, Christians and Jews. His father, whose own father was Jewish, in particular, encouraged the appellant's interest in religions other than Islam. The appellant will hardly be living in an immediate environment unsympathetic to his own religious outlook.

[105] This background is also likely to provide the appellant with ready opportunities for sharing his Christian beliefs with others as he had indicated he wished to be able to do.

[106] The pastor from the appellant's church described the appellant as a warm, relatively open and unsophisticated person – in other words, likely to be incautious in his approach to others. We can well imagine the appellant readily engaging in conversation with relative strangers. However in his evidence he also revealed a politeness and respect for the feelings of others. For instance he mentioned that he did not attempt to discuss Christianity with a Buddhist man living in the same hostel as he had observed that the man had been upset when a Christian woman had done so. He had also, at the request of the hostel manager, asked the Christian evangelists not to visit the hostel because their activities had led to arguments.

[107] The Authority has no reason to doubt the appellant when he stated that he would only discuss Christianity with those who indicated a desire to do so. We consider that, much as in this country, he would choose to share his religious beliefs primarily amongst receptive friends and acquaintances either individually

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or, as he indicated on such social occasions as dinner parties and other such gatherings. Proselytising at this level would be unlikely to bring the appellant to the attention of the authorities or result in any real danger to him.

[108] This brings us to the issue of church attendance, an important part of Christian religious practice. The country material clearly indicates that membership of one of the official Armenian or Assyro-Chaldean orthodox churches, which make up the vast majority of Iranian churches, would be precluded. Such churches, by reason of their ethnic identity and desire to protect their standing with the authorities, do not accept non-ethnic Muslim converts.

[109] The appellant, in all probability, would wish to attend one of the Protestant evangelical churches similar to the church he is presently attending in this country. Because of past repression such churches are now few in number. It is doubtful that such a church is even to be found, at least operating openly, in Shiraz, the appellant's home city. The Authority has noted references in the ICI reports to the Anglican Church of St Simon the Zealot in Shiraz (two Muslim converts who were members of the congregation reportedly left Iran in June 1998 after several years of harassment (*ibid* 2001 p13)) but has no information about its present situation.

[110] The CEDOCA Report makes no mention of either the Armenian or Assyrian Assemblies of God having a church in Shiraz. The Armenian Assembly of God reported that its church in Shiraz had ceased to function after the pastor had been deported. Meetings of the church are now held in private homes.

[111] The UN Special Representative, who was denied permission to visit Iran, states in his report of 16 January 2002 (see [70] above) that he had been informed that only three small Persian-speaking churches may remain in operation. He was probably referring to the evangelical churches other than the Armenian and Assyrian Assemblies of God which according to the CEDOCA report conduct some services in Farsi. The Armenian Church in particular, with four churches in Tehran and seven in other cities, caters for congregations made up predominantly of Muslim converts. It is possible that these churches enjoy a certain latitude because of their still being considered part of the recognised Armenian and Assyrian religions even though they are denied registration and are thereby subjected to restrictions on the building of new churches and interference from the church officials.

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[112] Quite possibly the Special Representative's information came from ICI which has claimed in its various reports since at least April 1998 that "there are only three Persian speaking Evangelical churches open in all of Iran today" (2001 p29). However this claim should be read in context. ICI earlier referred to there being two Persian speaking Assemblies of God churches allowed to remain open, the Rasht Assembly of God and Tehran Central Assembly of God. Then noted were three other Evangelical churches, all in Tehran, which also remained open but the effectiveness of which, because of small congregations and restrictions on proselytising, according to ICI, should be regarded as "equivalent to one fully opened church". In other words the correct number of open churches was five. Even this figure though is misleading in that it does not include the Armenian and Assyrian Assemblies of God which CEDOCA reported in 2002 conducted a range of services in Farsi.

[113] It would seem from ICI's reports that there are probably other Evangelical churches operating in Tehran, and possibly other cities, besides the Armenian and Assyrian Assemblies of God. It is probable that other Evangelical churches will also have benefited from the improved climate noted by these two churches.

[114] The CEDOCA report suggests that in Iran, non-ethnic Muslim convert members of such Protestant evangelical churches as the Armenian and Assyrian Assemblies of God are able to practise their Christianity, including attending church services in Farsi, without suffering persecution. This is not to say that members of such churches do not still experience a level of surveillance and official harassment. However, the report suggests that most Muslim converts belonging to these churches are able to practise their religion relatively undisturbed. The authorities remain sensitive about overt proselytising and displays of religiosity but converts who practise their religion in an unobtrusive fashion are able to avoid serious problems.

[115] There is no evidence that the laws against conversion from Islam are currently routinely being applied against ordinary Muslim converts let alone the death penalty. ICI in its November 2000 report identifies only a few instances where converts have been charged with or convicted of apostasy. At page 10 there is reference to a convert who was arrested and charged with apostasy in Tehran during July 1998. He was sentenced to a fine or six months imprisonment. This was his second such conviction, the first being in 1991 when the same penalty was imposed. In two other examples mentioned dating from 1990 and

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1992 the charges were dropped and in a case from 1995 the outcome of the apostasy charge was not recorded. In ICI's June 2001 report at page 7 there is reference to one further case during February 2000. The male convert was severely beaten so as to require hospitalisation and fled Iran after being bailed.

[116] These relatively few examples of apostasy charges being brought against ordinary Muslim converts to Christianity between 1990 – 2000, recorded by a Christian organisation dedicated to exposing such abuses, even acknowledging under reporting, suggest that the formal laying of apostasy charges is heavily circumscribed. The protection of Iran's international reputation may well be a factor, as suggested by counsel. However apart from illustrating the efficacy of such pressure, this does not alter the fact of the apostasy law's limited application.

[117] It is quite possible, that alternative criminal charges are used to punish Christian converts as for instance in the case reported by ICI (*ibid* 2001, p16) from 1966 of a convert being charged with espionage and adultery though subsequently acquitted by a Tehran military court. In most other cases reported by ICI where converts have been arrested and/or tortured or detained for varying periods no formal charges of any kind are reported. Overall, evidence of the laying of alternative criminal charges is sparse.

[118] ICI, as noted in [66] above, has referred to at least eight confirmed deaths in the 10 years since 1988 and some 15-22 disappearances recorded in 1997 and 1998, the presumption being that all or most have been murdered. Presumably the eight confirmed deaths are, for the most part, the well publicised murders of pastors in the period 1990 – 1996. The statistic for disappearances, without accompanying details, was quoted in the US Department of State International Religious Freedom reports up until 2001. No details of the 15-22 disappearances have yet emerged. The ICI November 2000 updated report mentioned no further disappearances during 1999 – 2000 while the June 2001 report notes at page 8 the arrest of three converts whose whereabouts remained unknown. The suggestion that the 15-17 disappearances in 1998 – 1999 have all been murdered seems most unlikely given the absence of any details or confirmation in any other sources and the far fewer number of confirmed deaths during the previous 10 years or the years since 1999.

[119] The reports of the recent arrests of the pastor and members of unofficial house churches in Mazanderan Province in Northern Iran suggest that there are

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limits to official tolerance. The fact that the house churches were said to be fast growing in the province, thereby suggesting active proselytising, may provide a clue to the actions of the authorities.

[120] Despite continuing restrictions on the functioning of non-ethnic and Evangelical churches in Iran it cannot be said that it would be impossible for the appellant to attend such a church should he desire to do so. It may well be that he could not do so in Shiraz though there is clearly the possibility of his doing so without risk of serious harm in Tehran and a number of other cities.

[121] It cannot therefore be said that the appellant would be denied the right to practice his religion in community with others through church attendance. He would not be without some support in his Christian practice and development should he be returned to Iran and approach such a church as the Armenian Assembly of God based in Tehran.

[122] Should his conversion come to the attention of the authorities through routine monitoring of churches he is likely to be summoned for questioning and subjected to reprimand and probable attempts to dissuade him from his Christian faith. Such harassment, although unpleasant and a clear breach of the appellant's Article 18 ICCPR right to freedom of religion, does not rise to the level of persecution.

[123] Finally, counsel has submitted that religion is a fundamental right and, in keeping with *Refugee Appeal No 74665* (7 July 2004), a person ought not to be expected to practise his or her religion in private and act discreetly to avoid persecution.

[124] Article 18 ICCPR states:

“1. Everyone shall have the right to freedom of thought, conscience and religion. This right shall include freedom to have or to adopt a religion or belief of his choice, and freedom, either individually or in community with others and in public or private, to manifest his religion or believe in worship, observance, practice and teaching.

2. No one shall be subject to coercion which would impair his freedom to have or to adopt a religion or belief of his choice.

3. Freedom to manifest one's religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others.

4. The States parties to the present Covenant undertake to have respect of the liberty of parents and, when applicable, legal guardians to ensure the religious and moral education of their children in conformity with their own convictions.”

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[125] This Islamic regime's numerous breaches of the Article 18 right to freedom of religion is well-documented in the country material discussed above. However, as stated in *Refugee Appeal No 74665* at [90], the focus of a refugee determination is

"... whether the anticipated denial of human rights in the country of origin meets the "being persecuted" standard, not on mechanically identifying breaches of human rights standards. For the purpose of refugee determination the focus must be on the minimum core entitlement conferred by the relevant right."

[126] In the present case, it is our finding that the appellant will be able to manifest his faith through activities he wishes to undertake such as sharing his faith with receptive friends and acquaintances and church attendance and that this will not result in a real chance of his being persecuted. The appellant is not being required to confine his religious practice solely to the private realm.

[127] The Authority concludes that, in the event of the appellant returning to Iran, there is no real chance that he will suffer serious harm amounting to persecution because of his religious faith. Nor does the real chance of being persecuted alter when the appellant's religious faith is considered cumulatively [*deleted*] and his prior political activities in student demonstrations.

[128] The appellant's fears of being persecuted are not well-founded.

CONCLUSION

[129] For the above reasons the Authority finds that the appellant is not a refugee within the meaning of Article 1(A)2 of the Refugee Convention. Refugee status is declined. The appeal is dismissed.

.....
V J Shaw
Chairperson

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