

**071448750 [2007] RRTA 310 (18 October 2007)**

**DECISION RECORD**

**RRT CASE NUMBER:** 071448750

**COUNTRY OF REFERENCE:** Iran

**TRIBUNAL MEMBER:** Genevieve Hamilton

**DATE DECISION SIGNED:** 18 October 2007

**PLACE OF DECISION:** Melbourne

**DECISION:** The Tribunal remits the matter for reconsideration with the direction that the applicant satisfies s.36(2)(a) of the Migration Act, being a person to whom Australia has protection obligations under the Refugees Convention.

## **BACKGROUND**

This is an application for review of a decision made by a delegate of the Minister for Immigration and Citizenship to refuse to grant the applicant a Protection (Class XA) visa under s.65 of the *Migration Act 1958* (the Act).

The applicant arrived in Australia in the early 2000s and applied to the Department of Immigration and Citizenship for a Protection (Class XA) visa. The delegate decided not to grant the visa. The applicant applied to the Tribunal for review of the delegate's decision.

The Tribunal finds that the delegate's decision is an RRT-reviewable decision under s.411(1)(c) of the Act. The Tribunal finds that the applicant has made a valid application for review under s.412 of the Act.

## **RELEVANT LAW**

Under s.65(1) a visa may be granted only if the decision maker is satisfied that the prescribed criteria for the visa have been satisfied. In general, the relevant criteria for the grant of a protection visa are those in force when the visa application was lodged although some statutory qualifications enacted since then may also be relevant.

Section 36(2)(a) of the Act provides that a criterion for a protection visa is that the applicant for the visa is a non-citizen in Australia to whom the Minister is satisfied Australia has protection obligations under 1951 Convention Relating to the Status of Refugees as amended by the 1967 Protocol Relating to the Status of Refugees (together, the Refugees Convention, or the Convention).

Further criteria for the grant of a Protection (Class XA) visa are set out in Parts 785 and 866 of Schedule 2 to the Migration Regulations 1994.

### **Definition of 'refugee'**

Australia is a party to the Refugees Convention and generally speaking, has protection obligations to people who are refugees as defined in Article 1 of the Convention. Article 1A(2) relevantly defines a refugee as any 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, is unable or, owing to such fear, is unwilling to return to it.

The High Court has considered this definition in a number of cases, notably *Chan Yee Kin v MIEA* (1989) 169 CLR 379, *Applicant A v MIEA* (1997) 190 CLR 225, *MIEA v Guo* (1997) 191 CLR 559, *Chen Shi Hai v MIMA* (2000) 201 CLR 293, *MIMA v Haji Ibrahim* (2000) 204 CLR 1, *MIMA v Khawar* (2002) 210 CLR 1, *MIMA v Respondents S152/2003* (2004) 222 CLR 1 and *Applicant S v MIMA* (2004) 217 CLR 387.

Sections 91R and 91S of the Act qualify some aspects of Article 1A(2) for the purposes of the application of the Act and the regulations to a particular person.

There are four key elements to the Convention definition. First, an applicant must be outside his or her country.

Second, an applicant must fear persecution. Under s.91R(1) of the Act persecution must involve “serious harm” to the applicant (s.91R(1)(b)), and systematic and discriminatory conduct (s.91R(1)(c)). The expression “serious harm” includes, for example, a threat to life or liberty, significant physical harassment or ill-treatment, or significant economic hardship or denial of access to basic services or denial of capacity to earn a livelihood, where such hardship or denial threatens the applicant’s capacity to subsist: s.91R(2) of the Act. The High Court has explained that persecution may be directed against a person as an individual or as a member of a group. The persecution must have an official quality, in the sense that it is official, or officially tolerated or uncontrollable by the authorities of the country of nationality. However, the threat of harm need not be the product of government policy; it may be enough that the government has failed or is unable to protect the applicant from persecution.

Further, persecution implies an element of motivation on the part of those who persecute for the infliction of harm. People are persecuted for something perceived about them or attributed to them by their persecutors. However the motivation need not be one of enmity, malignity or other antipathy towards the victim on the part of the persecutor.

Third, the persecution which the applicant fears must be for one or more of the reasons enumerated in the Convention definition - race, religion, nationality, membership of a particular social group or political opinion. The phrase “for reasons of” serves to identify the motivation for the infliction of the persecution. The persecution feared need not be *solely* attributable to a Convention reason. However, persecution for multiple motivations will not satisfy the relevant test unless a Convention reason or reasons constitute at least the essential and significant motivation for the persecution feared: s.91R(1)(a) of the Act.

Fourth, an applicant’s fear of persecution for a Convention reason must be a “well-founded” fear. This adds an objective requirement to the requirement that an applicant must in fact hold such a fear. A person has a “well-founded fear” of persecution under the Convention if they have genuine fear founded upon a “real chance” of persecution for a Convention stipulated reason. A fear is well-founded where there is a real substantial basis for it but not if it is merely assumed or based on mere speculation. A “real chance” is one that is not remote or insubstantial or a far-fetched possibility. A person can have a well-founded fear of persecution even though the possibility of the persecution occurring is well below 50 per cent.

In addition, an applicant must be unable, or unwilling because of his or her fear, to avail himself or herself of the protection of his or her country or countries of nationality or, if stateless, unable, or unwilling because of his or her fear, to return to his or her country of former habitual residence.

Whether an applicant is a person to whom Australia has protection obligations is to be assessed upon the facts as they exist when the decision is made and requires a consideration of the matter in relation to the reasonably foreseeable future.

## **CLAIMS AND EVIDENCE**

The Tribunal has before it the Department’s file relating to the applicant.

The applicant was born in City A. He speaks, reads and writes Persian and, to a limited extent, English. He is Muslim. He is married. He is an Iranian citizen and came to Australia on an Iranian passport. He has worked in the transportation industry in a number of different positions. He obtained his security clearance for his passport by bribing someone in the passport office. He left Iran legally. He had been detained for some months a few years prior to leaving Iran. He was issued with court papers thereafter. He may have pending charges. His parents and Siblings live in Australia, his wife and children are in Iran.

In a statutory declaration the applicant said he was born into a free-thinking family that chafed under the revolutionary regime. Sibling 8 was in the MED and was sentenced to years of imprisonment in the early 1980s. Sibling 9 renounced Islam: the applicant had Sibling 9 smuggled to Country Y where Sibling 9 was recognised as a refugee by the UN, and later migrated to Australia. The applicant's parent was questioned in Prison. The applicant was dismissed from his job, and moved to a region where his wife was from. There he joined a political group. He had found out about this group from Sibling 8. He attended their meetings and distributed material.

Sibling 8 was released after a few years into the applicant's custody and he provided bail by surrendering the certificate of title to his property. Sibling 8 rejoined the MEK, and their Sibling 11 joined too. In the early 1990s the applicant decided they needed to leave Iran, so he took them to the border. As Sibling 8 had breached the bail conditions, the applicant and his parents and another Sibling were taken in for questioning. The applicant was held for a number of months. He was tortured. Afterwards he lost his property. He took his family back to City A and worked at casual and temporary positions.

Sibling 10 was with the Nehzat Azadi movement. Sibling 10 left Iran with a partner and children in the late 1990s, again with the applicant's help. His parents were sponsored to come to Australia.

The applicant finally obtained a permanent position in transportation. He joined a workers' organisation. In the early 2000s there was a big demonstration against bad working conditions. They were attacked by the security forces and some members injured. The union head was badly injured and had to be hospitalised. He was later transferred to Prison. Another demonstration was held several months later. Their leader was released several weeks later. There followed more demonstrations until the leader was arrested again later that year. A few days later hundreds of workers were arrested from their homes, including the applicant. While some were released after a few days, the applicant was held for a few months, and was tortured. He was released in the early 2000s, and dismissed from his employment. He was required to report to the authorities regularly. A meeting of the dismissed workers was held at a private house. It was raided, and the applicant decided to go into hiding. Later a summons was issued and his house was raided. Relative I advised him to leave the country. The applicant managed to obtain a passport, and airport security was taken care of by Relative I.

The statutory declaration was covered by a submission from the adviser setting out the legal bases of the applicant's claims and referring to a number of relevant reports about the human rights situation in Iran (including the demonstrations), where were included as attachments.

Also with the submission were a number of photocopies documents and their certified translations including the following:

- A summons to the Court, requiring the applicant to attend. The matter is not described. The applicant's occupation is described as a transport worker.
- Court Notice requiring the applicant to attend on a particular date "for some explanation" The applicant's occupation is described as a transport worker.
- A letter from his employer in Iran dated (according to its translation) in the mid-1980s dismissing the applicant from his employment for failing to observe the disciplinary codes.

Some months after his arrival in Australia the Department received a doctor's report stating that the applicant had injuries on two parts of his body consistent with his claims of torture.

In response to issues raised at his interview with the Delegate the applicant submitted a further statutory declaration covered by a submission from his adviser addressing the circumstances of his previous travels (to Asia in the early 1990s where he worked in a manufacturing factory and to Country W in the mid-1990s in another factory) and providing more detail about how he managed to escape get out of Iran.

In support of his review application the Tribunal received statutory declarations of the applicant's Siblings supporting his claims, expressing concern about his emotional and psychological anxiety, and tackling aspects of the Delegate's reasoning.

### **The hearing**

The applicant said he was born and raised in City A. He did his military service in City B in the late 1970s. He came from a free-thinking family that respected religious freedom. Sibling 8 joined the MKO and participated in a rally in the early 1980s. Sibling 8 was arrested and sentenced to years of imprisonment. Sibling 8 was at Prison 1 first, and was later transferred to Prison 2. A year after Sibling 8's release Sibling 8 started political activities again. Sibling 8 came to Australia in the early 1990s. When Sibling 8 stopped reporting as required to the authorities, he and his family were questioned. The applicant was Sibling 8's assurer so he was detained longer than the others. He had moved by this stage to where Relative III lived but was doing some work in City A at the time. He was held at an office of a government agency, and then taken to Prison where he was convicted, then to Prison 2. He had no documents about this – if there were any documents they were retained by the authorities. After this the applicant spent over a decade trying to get work – he could not get approval from the government agency to do any work.

In early 2000s the applicant was working as a casual then a permanent transport worker. The Tribunal asked the applicant if he had any documents demonstrating that he was working as a transport worker. The applicant said the authorities took everything when they imprisoned him. He looked in his wallet to see if he still had his union card but it was not there. The authorities found pamphlets at the applicant's house concerning political Prisoners. He had been distributing material for a political group. He remained a member of that organisation until recently. The Tribunal observed that it had not been able to find an reference to this organisation (which the applicant said was small) on the internet.

The Tribunal observed that the documents the applicant had submitted were copies and it was therefore difficult to be satisfied that they are genuine which affected the weight they could

be given. The applicant said he was only given copies. He said the court documents were sent to him by his wife. Only one of them had been issued before he left.

The applicant confirmed he had another Sibling who was in Nehzat-Azadi – the Sibling joined in around late 1980s/early 1990s and he did not know the full extent of activities or the particulars of any encounters with the authorities.

The Tribunal requested a follow-up submission on the other family members. With it was a letter from the applicant stating that because he is afraid to contact his wife and ask her for documents concerning his employment because he is afraid that this will implicate her. With the submission also were the following:

- A statement from Sibling 9 stating that in the late 1970s Sibling 9 began reading the Koran in Persian and found aspects of it distasteful, so that by the end of the early 1980s Sibling 9 had ceased practising Islam and had begun to openly criticise it. The Revolutionary Guard and basijis at the school monitored Sibling 9's behaviour, and Sibling 9 was questioned as to whether Sibling 9 was a sympathiser of the MKO or any communist group. By the mid 1980s Sibling 9 had decided that Sibling 9 could no longer live in Iran. Sibling 9 crossed the border to Country X and got a false passport with the intention of going to Country Z to seek asylum. Sibling 9 was detained in City C though, where eventually the UNHCR approved Sibling 9's refugee status, and in the late 1980s Sibling 9 was resettled in Australia.
- A statement from Relative II who approached the UNHCR in Country X in the early 2000s. Relative II's association with nationalist religious groups began in the late 1970s. Relative II became a member of Nehzat-Azadi. After many years Relative II was arrested, tortured and sentenced to a few years imprisonment, and permanently dismissed from the public service. Relative II is a member of an extended family which is active against the regime. Relative II was under strict surveillance. In early 2000s when Relative II was summoned to report to the security authorities, Relative II and Relative II's family fled to Country X with the help of the applicant. A few years later their application to migrate to Australia on humanitarian grounds was successful.
- Documents of Sibling 11 who was a refugee in Country W, later resettled in Australia.
- A statement of Sibling 8 who left Iran with Sibling 11. Sibling 8 joined the MKO in the late 1970s and was arrested in the early 1980s. Sibling 8 was beaten, kicked in the head and the back, and given numerous lashes. Sibling 8 served half of their sentence. Sibling 8 and several others were released in the mid 1980s due to international pressure. The applicant bailed Sibling 8 by surrendering the title to his property, and became responsible for Sibling 8's actions from then on. Sibling 8 had to report to a government agency every week. Sibling 8 recommenced their activities with the MKO, joined by Sibling 11. In the early 1990s they came to the attention of the authorities for reporting the military group's illegal activity. The applicant took them to Country W's border. Sibling 8 and Sibling 11 disguised themselves. They reported to the UNHCR as soon as they arrived in Country W. In the early 1990s they were resettled in Australia.

## Country information

### Exit Procedures

In its 1996 Country Profile of Iran, DFAT says:

#### 1.7.1 Passports

1.7.1.1 Almost every Iranian over the age of 18 is theoretically eligible to apply for an individual passport. Women under 18 years of age cannot normally obtain an individual passport nor can males until they complete military service for which the minimum age is 18 years. An application is lodged with the Passport office together with photographs, birth certificate and/or other proof of identity and, in the case of males over 18 years old, a military discharge certificate.

1.7.1.2 A fee of R55,000 (approx. US\$16) is required. Passport issue usually takes one to three days and passports are valid initially for three years with a three year extension possible. In the case of Bahais - considered apostates by the Islamic government - and those who have formerly been imprisoned for "political" crimes, passport issue may take much longer. It should also be noted that holding a passport does not confer automatically the right to travel out of the country. When issuing a passport, the Passport Office will enter a green, blue or red exit stamp. Most Iranians receive a green stamp, which indicates permission for multiple exits. The blue stamp indicates permission for one exit and the red stamp also for one exit, but with the caveat that travel details must be provided to the authorities ahead of the journey.

It also said that when Iranians wish to travel abroad, their names are checked against a computerised black list held at all airports and border exit points. People are placed on the black-list for a variety of reasons, most commonly when they are involved in court cases, criminal investigations or are in dispute with the taxation office. Names are added and removed almost on a daily basis. People on the black-list who apply for a passport will have their application refused. It was noted that it is difficult, but still possible, to pay to have one's name temporarily removed from the list to allow unimpeded exit, if one is in the non-political category. The black-list also contains names of those associated closely with the previous regime, most of whom are residing abroad. Also on the list are those who have a history of active political opposition to the regime and have probably served time in Prison or are fugitives from justice. Grumbling about the Government, arguing with the police and revolutionary authorities, or being placed in the "morals" police (former Komiteh) lockup for a couple of days would not lead to inclusion on the black-list, unless there were more serious "political offences" committed (eg. printing and/or distributing anti-Government, pro-opposition literature) or a continuing criminal investigation involved. Travel in and out of Iran through legal exit/entry points is a reliable indication that a person is of no particular adverse political or security interest. Such a person would warrant neither inclusion on the black list nor arrest.

The DFAT report noted at 1.7.3.1, that, at the airport, travel documents are checked by representatives of several Government agencies, Passport Office, Customs, Information Ministry and Revolutionary Guard Corps at different points of the check-in procedure. It stated that, with so many different checks, it would be impossible for anyone to bribe their way through an airport to effect departure.

A DFAT cable CIR NO 327/99 of 18 March 1999 (CX37500) confirmed that comments in that 1996 report remained fully current, except that there was a slight change in the authority

which was responsible for passport checking. It confirmed that there had been no changes in relation to procedures and checks associated with passport issue and airport departures. It further noted that

it would appear virtually impossible for Iranians on the 'blacklist' to use bribery to have their names removed to enable legal departure. One of our interlocutors described this option as "almost impossible" while another interlocutor claimed it would be "impossible", especially for anyone of adverse political interest to the Iranian authorities.

In CX54224 (CIR No.186/01 25.06.01), DFAT, having been asked "is it likely that an Iranian citizen could depart Iran on an international flight and using their own passport if authorities were seeking to arrest that person?", answered

This is unlikely. Computerised police checks are standard procedure upon departure from Iran and outstanding warrants are listed.

## MKO

In the Country Profile on Iran, Australia's Department of Foreign Affairs and Trade (DFAT) says the MKO is seen as the chief opponent of the Iranian regime. DFAT says

### 2.6.8 Mujahideen-e-Khalq (MKO)

2.6.8.1 The MKO (also abbreviated as MEK and PMOI) is Iran's largest opposition group. Exiled from Iran in 1981, the MKO is currently headquartered in Baghdad. It has offices and members throughout the world, but, apart from Iraq, its membership is concentrated in cities with sizeable Iranian expatriate populations (Paris, London, Los Angeles, Washington, etc.). The MKO was formed as an intellectual discussion group in the early 1960s by former members of the late Mehdi Bazargan's liberation movement. Comprised mostly of college-educated children of lower middle-class merchants, the group for most of the decade devoted itself largely to studying Marxism and contemporary Iranian history. The MKO's ideology blended Islam and Marxism and opposed what the group perceived as the extensive Western influence in the Shah's regime.

2.6.8.2 Towards the end of the 1960s, the MKO began to expand its horizons and prepare to undertake armed opposition activity. The MKO established contacts with the Palestinian Liberation organisation (PLO) and sent select members of the group's leadership cadre abroad to PLO camps for training. The MKO commenced terrorist activities against the Shah's interests in the 1970s eventually joining with other Iranian opposition groups to help overthrow the Shah in 1979. The MKO was also closely involved in dispensing summary justice to those associated with the Shah's regime as well as the murders of expatriates residing in Iran. The MKO opposed the release of the U.S. Embassy hostages in 1981.

2.6.8.3 However, relations with the new clerical regime soon soured. In early 1980, Ayatollah Khomeini effectively banned MKO head, Masood Rajavi from the Presidential election by declaring as ineligible candidates who had not ratified the Constitution which the MKO had not. The MKO also failed to win any seats in the spring 1980 Majlis elections, although they sponsored 127 candidates for the legislature's 270 positions. The rift between the clerical regime and the MKO grew wider in 1981 when the group supported then President Abol-Hasan Bani-Sadr, in policy disputes with Ayatollah Khomeini. By June of that year, clashes between the MKO and the regime's security forces had reached unprecedented levels. The MKO was forced underground, where they renewed their campaign of anti-regime



terrorism, this time against the clerics and their supporters. In July 1981, Rajavi and Bani-Sadr were forced to flee to France, to continue their opposition in exile. There they formed their National Council of Resistance (NCR) comprising 12 dissident groups but dominated by the MKO. Under pressure from Tehran, Paris expelled Rajavi and the MKO Headquarters in 1986. Since no other European country would offer them asylum, the group's leadership relocated to Baghdad

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2.6.8.8 The MKO is still regarded as a major threat to security and stability by Tehran. The Government has a tendency to blame the MKO for just about every security incident that occurs. Such incidents tend to reactivate official harassment of those with Mujahideen connections and trigger security sweeps.

2.6.8.9 The MKO operates a radio station called the "Voice of the Mujahideen" broadcast from Iraq (In the latter part of the Iran-Iraq War, the Iraqi authorities had also allowed the MKO to use the second Iraqi TV channel to broadcast programs for half an hour each day, directed to Iran). By and large, the MKO is not currently very active in Iran. Their current leader in exile in Paris is Maryam Rajavi, wife of Masood Rajavi. The MKO operate out of both Iraq and France. The MKO has declined in importance in recent years, retaining a limited but not much used capacity. The MKO continues to draw the bulk of its support from the Iranian exile community. There is not much support among the population for the MKO, and hatred for it in some quarters. The MKO is viewed by most ordinary Iranians as a worse alternative than the incumbent regime. Even those who receive unsolicited literature by post from the MKO can face problems with the authorities, who would suspect them of holding MKO sympathies.

2.6.8.10 The MKO is beginning to resemble more the scores of other resistance/opposition groups which conduct busy but largely rhetorical and impotent counter-revolutionary activities in major Iranian emigre cities. The only advantage that the MKO has traditionally enjoyed is its solid political connections in Washington. However, a highly critical U.S. State Department report on the MKO released in October 1994 has damaged the MKO's credibility with U.S. legislators, who may previously have considered them a viable alternative to the Islamic regime. The MKO has since intensified its public relations campaign.

#### 2.6.9 Treatment of MKO Sympathisers/Activists

2.6.9.1 The treatment handed out to people regarded as MKO supporters is varied. Much will depend on the circumstances of the case and the background security situation. A supporter may get away lightly if nothing can be proven. Greater punishment would follow for someone regarded as an active supporter, for example, caught distributing pamphlets or writing slogans. The detention period would vary according to the degree of tension evident at the time and place, and on the assumed importance of the person in security terms. Bribery, contacts and promises of cooperation may assist release. At one end of the spectrum a detainee may be summarily executed, at the other end he/she might be released after a short time. In between there is an infinite variation in treatment. Everything will depend on the circumstances, prevailing security mood, recent/local MKO activity, some recent event, accuracy or extent of intelligence reports etc. There are persistent reports that the authorities have used drug trafficking offences as a cover to get rid of political opposition elements, including MKO operatives.

2.6.9.2 A released suspect has a reasonable prospect of obtaining or continuing work (Government and private). Overseas travel and study are not undertaken "freely" by any Iranian passport holder with an exit visa. Serious miscreants will face greater difficulties on release and may well find employment/study opportunities closed to them at least in the short/medium term.

In a cable dated 7 OCT 1999 (CX37962 Mujahadeen-e-Khalq (MKO): Treatment of supporters and members' families) DFAT said:

the Iranian authorities would likely be "very interested" in the activities of anyone who supported the MKO wherever they were [Tribunal emphasis] and regardless of whether or not they had a "high profile".

In CX59293 CIR No.282/01 dated 24/10/01, DFAT reaffirmed this advice and reported as follows:

Activities of the Mujaheddin-e-Khalq (MKO/MEK) are well publicised in the Iranian media and the frequency of these attacks can be ascertained through open source media reporting. The MKO attacks (often including mortar attacks on government buildings) are regular, particularly in Tehran. It is however often hard to distinguish between MKO attacks and disturbances caused by other groups. The Iranian government is keen to publicise MKO attacks in order to attract support and international attention to its fight against MKO terrorists. It is possible that other disturbances which are unrelated to the MKO are also attributed to the MKO by the government in order to further this goal. The MKO too appear happy to claim responsibility for any number of disturbances in Iran which support its aim of broadening the base of popular resentment of the Iranian government. A good example of an incident which the MKO tried to turn to its advantage was when it announced that a scuffle following a football match in 12 October 2000 was pro-MKO in nature.

As mentioned in our reftel, our access to information about the MKO and their treatment at the hands of Iranian security officials is limited and this extends to the treatment of MKO family members. We have no reason, however, to change the assessment made in CX37962 regarding treatment of Relatives of MKO members/sympathisers. It is credible that the applicant could face a difficult situation in Iran even if he had nothing to do with the MKO and was only connected to the organisation by virtue of his relationship to his brothers. As outlined in CX37962, family members could well come under undue pressure or be "questioned" if they were to return to Iran and could face a broad range of discriminatory actions. This applicant could face fairly harsh treatment given that his application for protection in Australia is based upon his MKO sympathies/affiliation. His application for protection would likely be considered tantamount to an admission of guilt by the Iranian authorities.

Further, the current global concern with terrorism may provide Iranian officials with greater impetus to deal with the terrorist threat from the MKO (an organisation listed by the US state department as a terrorist organisation).

The Iranian regime's attitude to the MKO has not altered despite the MKO having been damaged by the fall of Saddam Hussein's regime in Iraq. Recent reports indicate that the Iranian authorities have imposed and carried out death sentences on MKO members. These report date from February 2006, when news that Hojjat Zamani, a condemned MKO member, had been executed. Zamani was "forcibly returned to Iran from Turkey in 2003 and sentenced to death in 2004" for his "involvement in a bomb explosion in Tehran in 1988 which killed 3

people". Death decrees were later announced on other MKO members, including Valiollah Feiz-Mahdavi; Valiollah's sentence was later commuted to life imprisonment. Human Rights Watch refers to Valiollah as an MKO "sympathizer". In September it was reported that he "went on a hunger strike to protest his prison conditions" ('Iran: Worrying trend in use of death penalty' 2006, Amnesty International website, 27 February <http://web.amnesty.org/library/index/engmde130202006> - Accessed 4 September 2006; Iran: Political Prisoner at risk of execution' 2006, Human Rights Watch website, 16 March [http://hrw.org/english/docs/2006/03/15/iran12998\\_txt.htm](http://hrw.org/english/docs/2006/03/15/iran12998_txt.htm) - Accessed 4 September 2006; 'The price of freedom: human rights abuse in Iran intensifies' 2006, Global Politician, 23 May - Iran: New wave of executions raises concerns' 2006, *Radio Free Europe/Radio Liberty* website, 2 March [http://www.rferl.org/features/features\\_Article.aspx?m=03&y=2006&id=F1D0955C-C340-42E2-9F49-CC5929665055](http://www.rferl.org/features/features_Article.aspx?m=03&y=2006&id=F1D0955C-C340-42E2-9F49-CC5929665055) - Accessed 25 August 2006; 'Execution of Iranian opposition figure reported' 2006, *Radio Free Europe/Radio Liberty* website, 17 February [http://www.rferl.org/features/features\\_Article.aspx?m=02&y=2006&id=F0B9FBAF-C756-4464-B70C-CEAE546841B3](http://www.rferl.org/features/features_Article.aspx?m=02&y=2006&id=F0B9FBAF-C756-4464-B70C-CEAE546841B3) - Accessed 25 August 2006; Esfandiari, G. 'Iran: Growing concern over fate of political prisoner', *Radio Free Europe/Radio Liberty* website, 4 September <http://www.rferl.org/featuresarticle/2006/09/9D005607-B8A4-4530-A65C-E65577762C87.html> - Accessed 5 September 2000.)

Nehzat Azadi

The Nehzat Azadi Party (Freedom Movement) is one of the most prominent parties in pre- and post-Revolutionary Iran. Its founder and leader, Dr. Mehdi Bazargan was appointed prime minister following the 1979 revolution by the Ayatollah Khomeini. The following year he resigned in protest after the occupation of the US Embassy in Tehran by Islamic extremists loyal to Khomeini. Since that time Bazargan and, following Bazargan's death in 1995, his successor Dr Ibrahim Yazdi, have been outspoken critics of the excesses of the extremists within Iran (Banks, A.S. and Muller, T.C., (eds), 2000, *Political Handbook of the World: 1999*, CSA Publications, New York, p. 459).

Following Bazargan's resignation the Ayatollah Khomeini's extremist Hezbollahi 'subsequently imposed a ban on the movement's newspaper, arrested many of its members and confiscated its property' (Country Information Report, 1998, CX30285, *Human Rights, arrest and subsequent release of Ibrahim Yazdi*, CIR 11/98, 26 June - attachment 6). However, by the mid 1980's the Nehzat Azadi Party was deemed a 'loyal opposition', "believing in the revolution but unable to agree with the direction and methods of the dominant fundamentalist Hezbollahi faction which drew on Khomeini's authority (DFAT/RIA, 1996, *Country Profile: Islamic Republic of Iran*, March, Sect. 2.6.7).

However, a general edict of 1989 compelling all political parties to register, following a rigorous vetting, led to the outlawing of all opposition political parties in Iran including the Nehzat Azadi Party by 1991. Indeed, according to the UK Home Office:

All opposition groups in Iran have hitherto been proscribed. Of the following, only the Nehzat-Azadi and the Solidarity Party of Islamic Iran are tolerated. Until the Solidarity Party of Islamic Iran was registered in 1998, none of the groups were registered under the Political Parties Act 1981. (UK Home Office, Country Information and Policy Unit, 2000, *Country Assessment - Iran, Appendix C, October 2000*, <http://www.ind.homeoffice.gov.uk/default.asp?pageid=528>)

The Nehzat Azadi is most commonly referred to by creditable sources as 'tolerated' and in 1999 a Human Rights Watch representative, Elaheh Sharifpur, said of Nehzat-e Azadi that, "despite being illegal, the group is free to hold press conferences and to criticize the government. Moreover,..., the group's statements get coverage in the Iranian press" (Reuters Business briefing, 1999, CX34233, *Human Rights Watch Representative Comments on Her Observations in Iran*, 6 March).

Nevertheless, there is still some reports of harrassment towards the Nehzat Azadi, especially its leader Ibrahim Yazdi who was arrested and held in Evin Prison for a week in 1997 and who was rejected as candidate for parliamentary elections in 2000 (Country Information Report, 1998, CX30285, *Human Rights, arrest and subsequent release of Ibrahim Yazdi*, CIR 11/98, 26 June - attachment 6 and Reuters Business Briefing, 2000, CX39367, *Iran Politics - Reformers hopeful despite election ban. Country Briefing*, 11 January).

## **FINDINGS AND REASONS**

Based on the information on his file the Tribunal finds that the applicant is an Iranian national.

The Tribunal is not satisfied that the applicant was working in transportation, based on the evidence. It ought to have been possible for the applicant to provide documentation of some kind, other than the purported court documents, verifying his occupation. But he did not do so. The Tribunal therefore it is not satisfied that he was involved in a transportation demonstration and therefore is not satisfied that, in connection with this, he was detained without trial for a few months and later summonsed. The Tribunal has taken into account the applicant's court documents but gives them little weight as they are not originals and therefore their authenticity cannot be established.

The Tribunal does not find the applicant's account of how he left Iran credible. If the applicant was detained without trial for participating in a strike, and was the subject of a summons which he had failed to attend in the early 2000s, it is almost inconceivable that he would be issued with a passport later and be able to leave Iran via the airport several months later, no matter how great a bribe was able to be paid. Too many officials would be risking their own security.

The country information establishes beyond doubt that the fact that a person is issued with a passport and able to leave the country via the airport is a reliable indication that they are of no adverse information to the authorities.

The applicant left Iran and returned twice during the 1990s. While in Country W he had the opportunity to seek asylum from the UNHCR as his Siblings had done, but did not. The applicant stated that this was because he did not want to leave his wife and children in Iran. That would certainly have been a consideration, however this state of affairs does indicate that he had no pressing fear of further persecution at that stage.

The Tribunal is not satisfied that the applicant was a member of a certain group. As explained to him during the hearing, the Tribunal was unable to find any information corroborating the existence of such a group. No further evidence was provided by the applicant.

On the other hand the Tribunal accepts the applicant's account of Sibling 8 having been imprisoned for membership of the MKO and later fleeing Iran with his help. It also accepts that another Sibling 10 was connected with the Nehzat Azadi via Sibling 10's marriage, and fled Iran with the applicant's help. There is country information indicating that Iranians who go abroad are sometimes questioned in depth on their return, as to who they have seen and what their purpose abroad was. If this were to involve a check on the applicant's family background, and it were noted that he had visited a former MKO member abroad, given what the Iranian regime thinks about the MKO, it is a possibility (if a minor one, still a real one) that the applicant could be harshly treated on his return from Australia, to a degree amounting to persecution.

The Tribunal is satisfied that the applicant has a well-founded fear of persecution within the meaning of the Convention.

### **CONCLUSIONS**

The Tribunal is satisfied that the applicant is a person to whom Australia has protection obligations under the Refugees Convention. Therefore the applicant satisfies the criterion set out in s.36(2) for a protection visa.

### **DECISION**

The Tribunal remits the matter for reconsideration with the direction that the applicant satisfies s.36(2)(a) of the Migration Act, being a person to whom Australia has protection obligations under the Refugees Convention.

I certify that this decision contains no information which might identify the applicant or any relative or dependent of the applicant or that is the subject of a direction pursuant to section 440 of the Migration Act 1958.

Sealing Officer's I.D. cmartone