

REFUGEE STATUS APPEALS AUTHORITY
NEW ZEALAND

REFUGEE APPEAL NO. 75008

REFUGEE APPEAL NO. 75009

AT AUCKLAND

<u>Before:</u>	C M Treadwell (Chairperson) J Baddeley (Member)
<u>Counsel for Appellant:</u>	C Curtis
<u>Appearing for NZIS:</u>	No Appearance
<u>Date of Hearing:</u>	8, 9, 10, 11 and 12 March 2004 and 10 May 2004
<u>Date of Decision:</u>	13 May 2004

DECISION

[1] These are appeals against decisions 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 each of the appellants, both nationals of the Islamic Republic of Iran.

INTRODUCTION

[2] The appellants are uncle (*Refugee Appeal No 75008*) and nephew (*Refugee Appeal No 75009*). They are referred to herein as “the appellant” (that is, the uncle) and “the appellant’s nephew”. No discourtesy is intended to the nephew. It is simply, that the claims are inter-dependent, with the uncle being the chief protagonist. Collectively, they will be referred to as “the appellants”.

[3] The appellant is a 40 year old married man, of Azeri ethnicity. He arrived in New Zealand on 7 October 2003 and sought refugee status on arrival. He was

interviewed by the Refugee Status Branch on 12 November 2003 and his application was declined on 23 December 2003.

[4] In the interim, the appellant's nephew arrived in New Zealand on 6 November 2003 (they had left Iran together but had parted company in Thailand). He too sought refugee status on arrival here. He was interviewed by the Refugee Status Branch on 27 November 2003 and his application was declined at the same time as that of the appellant, on 23 December 2003.

[5] The appellants were both detained in custody at the Immigration Service's Mangere Reception Centre on their respective arrivals. Recently, they have been 'released on condition'.

[6] The appeals are the subject of a consolidated hearing on appeal. Each consents to the evidence of the other being taken into account in respect of his own appeal. Before turning to the claims, however, it is necessary to address:

- (a) the role of an observer; and
- (b) the mental health of appellant.

The role of an observer

[7] At the commencement of the hearing, counsel sought leave to have present an Arabic-speaking assistant, one Hamira Madani. Ms Madani is, we were advised, a professional interpreter whose services have been used by the Refugee Status Branch in the past. The grounds of counsel's application were:

- (a) The appellant speaks an "Azeri dialect" of Farsi and had found difficulties with a standard Farsi interpreter at his Refugee Status Branch interview. In the event that further difficulties arose during the appeal hearing, Ms Madani would be able to inform counsel;
- (b) The appellant was in a depressed state and the presence of Ms Madani, who had been an active friend to the appellant, would assist him to give evidence;

- (c) Ms Madani would be able to assist with communications between counsel and the appellants during intervals.

[8] As to the interpretation concerns, we agree with the decision of the Supreme Court of Canada in *R v Tran* [1994] 2 SCR 951 (criminal proceedings, but the findings are applicable here), which noted that adequate interpretation requires continuity, precision, impartiality, competence and contemporaneousness (*ibid* pp986-990), but qualified the expectation of precision by stating:

“However, it is important to keep in mind that interpretation is an inherently human endeavour which often takes place in less than ideal circumstances. Therefore, it would not be realistic or sensible to require even a constitutionally guaranteed standard of interpretation to be one of perfection.”

[9] We accept however that, in refugee cases, only the highest standards of fairness suffice since questions of life, personal safety and liberty can be at stake. See *Khalon v Attorney-General* [1996] 1 NZLR 458, 463. Furthermore, incompetent interpretation which prejudices an applicant, such that the case is not understood, is a reviewable breach of the rules of natural justice. See *B v Refugee Status Appeals Authority & Anor* (unreported, M1600/96 & HC 146/96, High Court, Auckland, 23 July 1997 per Giles J) at pp29-30, which also recognised that a degree of realism has to be accepted, given that interpreting is not a precise science.

[10] Other factors which were weighed were:

- (a) the Authority provides free-of-charge in every case (unless the appellant speaks competent English) a professional, independent interpreter, usually qualified as such; and
- (b) compliance with section 129T of the Immigration Act 1987 (the duty to keep an appellant’s claim confidential) is enhanced by limiting as far as is possible those privy to the hearing; and
- (c) fluent interpreting requires confidence and concentration. These are difficult to maintain in the presence of a third party who is there to scrutinise the quality of interpretation.

[11] On balance, and on the particular facts of this appeal (notably the appellant's mental health and counsel's claim from the bar that the appellant's "Azeri dialect" had previously proved difficult for a Farsi interpreter), we allowed Ms Madani to remain.

[12] We are not disposed to allow "back-up" interpreters at appeal hearings where the effect would be to unnerve the interpreter or otherwise disrupt the process. Every appeal hearing is recorded and can be reviewed at a later date if, in fact, there are justifiable concerns about the standard of interpreting. Appellants should not expect, as a matter of course, to be allowed to bring their own interpreter to an appeal hearing where an independent professional interpreter has already been provided by the Authority and no good reason exists.

[13] As to Ms Madani, certain conditions were imposed:

- (a) Ms Madani was to adopt the role of 'supporter' and was not to interrupt or participate in the appeal hearing in any way whatsoever. For this purpose, she was to (and did) sign a standard 'observer's confidentiality form'.
- (b) Ms Madani was not to discuss the appellant's evidence with him at any stage during the hearing (though she was not prohibited from acting as an interpreter between counsel and the appellant during breaks).

[14] Regrettably, on the second day of the hearing, it was necessary to censure Ms Madani. At a point in the appellant's evidence at which he had given inconsistent dates for certain events, Ms Madani was seen to look at the appellant, attempting to catch his eye and shaking her head vigorously, to alert him to his error.

[15] This was a serious breach of Ms Madani's responsibilities as an observer and her knowledge of her culpability was evident in her demeanour when spoken to by us.

[16] After giving the matter some reflection, we allowed Ms Madani to remain in the hearing but required her to sit at the back of the room, where it was not possible for her to be seen by the appellant.

[17] We have recorded this matter at length because of the seriousness of the breach by Ms Madani and our concern to ensure that it is not repeated. In future,

observers who breach the strict obligation on them to refrain from interrupting an appeal hearing or prompting a witness should expect to be ejected without further warning. Appellants and counsel who seek to have an observer present should understand that a breach of that obligation by the observer may affect the weight which is able to be given to the appellant's evidence.

The mental health of the appellant

[18] The appellant is suffering depression and is traumatised. He takes both anti-depressants and sleeping tablets. A report dated 2 March 2004 by Dr L B concludes:

“In my professional opinion, [the appellant] is suffering from a severe and ongoing stress disorder with an associated mood disorder and severe anxiety and continues to have significant symptoms and impairment in spite of medication. He has huge issues about the safety of his wife and family and (I believe) huge guilt that he had to leave them behind, destitute in Iran. He is emotionally labile and cries frequently. He has difficulty remembering things and has serious problems with his ability to concentrate.”

[19] On the first day of the appeal hearing, the appellant was lethargic and flat. It emerged through counsel that he had been taking an excessive number of anti-depressant tablets (she had to intervene to prevent him taking three at once in the luncheon adjournment) and he had taken a sleeping tablet at 5am that morning.

[20] On the second day of the hearing, the appellant – less medicated – was more alert but became prone to breaking down.

[21] On the third morning, with the appellant's evidence almost completed, he suffered a breakdown during the morning adjournment and was taken away by ambulance for medical treatment. He was unable to return and the Authority granted leave for the taking of the balance of his evidence to be deferred. In the interim, the evidence of the appellant's nephew was taken.

[22] The appellant returned to complete his evidence on 10 May 2004. Even on that date, however, we were advised by counsel that the appellant had again taken three antidepressant tablets that morning (prescribed at one tablet, twice a day). Although the balance of his evidence was able to be taken, the appellant continued to break down from time to time. A further psychiatric report, dated 5 May 2004, from Dr S S, records that the appellant is suffering from two mental disorders – a post traumatic stress disorder and a Major Depressive Episode – and advising that the appellant's misuse of both alcohol and prescription drugs are

contributing to his inability to concentrate and to his poor attention. From our own observations, we agree with that finding.

THE APPELLANTS' CASE

[23] The account which follows is a summary of the evidence given by the two appellants. It is assessed later.

[24] While the key events are said to have occurred in Tehran, the families of both the appellant and his nephew come from a village near the Azerbaijan border. The appellant was born there, moving to Tehran when he was young. The appellant's nephew's family had already moved to Tehran before he was born. Before turning to the events in Tehran, we record some brief background in respect of each appellant

[25] As to the appellant, his father was Azeri and his mother Iranian. His father died a few months after the appellant was born. As a lease-hold farmer, he had become embroiled in a protest against landlords in their district. He was lured to an ambush by local land-owners and was killed.

[26] Following the death of his father, the appellant's mother struggled to make ends meet and, in the mid-1960s, sent the appellant's two older brothers to Tehran to find work. The balance of the family joined them there in 1969. The appellant describes his childhood as one of misery and poverty. He recalls eating fruit he would find in the gutter.

[27] The appellant's nephew's father was a high-ranking officer in the former Shah's army, who was seriously affected by chemical poisoning in the Iran/Iraq war in the mid 1980s. Following his eventual death in the early 1990s, the family did not initially receive a pension from the Martyrs Foundation, and it took several years to establish their entitlement. They were given the bare monthly payment, however, without the other financial assistance normally given. When the appellant's nephew tried to complain, the Martyrs Foundation would suspend the monthly payments on specious grounds, as a threat to him.

[28] Throughout his youth, the appellant's nephew came to look upon the appellant as a father-figure and mentor. Through him, he was introduced to 'western' literature and political theories.

[29] The appellant himself had become a supporter of the communist Tudeh Party following the 1979 revolution in Iran. By that point, he was living in Tehran and was in his late teens. Other students at school were also attracted to the Tudeh Party, including a particular friend, M. The appellant and M, and others, read Tudeh literature and engaged in frequent debates and discussions about politics.

[30] His interest in politics and the Tudeh Party led the appellant to become interested in literature generally and he read widely. He enjoyed foreign, as well as Iranian, literature and read Tolstoy, Maxim Gorki, Victor Hugo, Balzac and Ivan Turgenev.

[31] As the Tudeh party began to be repressed by the authorities in the early 1980s, the appellant came to regard himself as an opponent of the regime. Still at school, he encountered regular difficulties with the local *basij* for his clean shaven appearance, his clothing and his failure to sign up for the war with Iraq.

[32] As part of his contribution to the family income, the appellant would spend time with M, after school, selling second-hand books by the road-side. They concentrated on tracts that they felt would encourage people to become more open-minded. One day in 1982, however, the appellant was caught at school with three books which he intended to sell. One was Tolstoy's *War and Peace*. He recalls the other as *Dust* by Turgenev (possibly Turgenev's *Smoke*). He does not now recall the third.

[33] None of the books was formally banned but all were considered inappropriate. The appellant and another student were taken by *basij* students to the principal's office, where the appellant was beaten and accused of being a communist. He was detained for an hour before *Komiteh* officials arrived to take him away.

[34] The appellant was taken to a *Komiteh* office where he was slapped in the face so violently that he fell against a window-frame, injuring his face. He was

kicked in the side and locked in a steel shipping container which had been converted into a holding cell in the courtyard. He could hear his mother and sister (who had traced him from the school) pleading with the head of the *Komiteh* to release him.

[35] After three days, the appellant was released, following intervention by one of his brothers, who knew someone in the *Komiteh*. The appellant was made to sign an acknowledgement that any further arrest would see him detained indefinitely and his family were forced to pay 20,000 *tomans* to the *Komiteh* to ensure that his file was closed.

[36] The appellant was expelled from school, missing out on his final exam by a month. He became depressed and was treated by a doctor with antidepressants for some months.

[37] Unable to go to university, the appellant continued, with M, to sell second-hand books. They rented a kiosk in a street in Tehran famous for its many booksellers.

[38] From 1982 to 1986, the appellant and M continued to sell books from the kiosk. The appellant experienced a number of conflicts with the authorities during this period, including being detained overnight and beaten on three occasions – once for wearing a western-style shirt, once for listening to western music and once for riding a motorcycle near a mosque.

[39] The appellant undertook his military service from 1986 to 1988, serving at the front in the war against Iran. He witnessed numerous horrific events, which he considers have left him mentally scarred.

[40] Following his military service, the appellant found work in a factory. He and M continued to sell books from the kiosk after work, with the appellant buying them from shops, deceased estates and elsewhere. The books sold from the kiosk itself were legitimate but they also had a small clientele to whom they discreetly sold banned books. Such literature was generally delivered personally to the clients.

[41] The appellant married in 1991. The following year, his mother fell seriously ill – aggravated by a stroke while doctors failed to treat her promptly until they

were paid. As a result, she was left paralysed and the appellant and his wife (who had to abandon her university studies) devoted the next 10 years to caring for her until she died in 2001.

[42] The appellant and M continued to operate the book kiosk without difficulties until 1999. They would be joined later, in 2001, by the appellant's nephew, who would work for them part-time, making deliveries and minding the kiosk. The three men continued their covert commerce in banned books.

[43] In 1999, the appellant, M and four other friends began to meet regularly to socialise and discuss literature, music, culture and the issues of the day. They would meet weekly, at alternate houses.

[44] In about August 2000, the appellant and M travelled to the city of X to inspect some expensive hand-made books which were for sale. On their return, they discovered that their four friends had been detained for 24 hours by the *Entezami*, who had seized banned books and photographs from them. The father of one of the four had paid a substantial bribe to secure their release.

[45] As a result of this incident, the appellant and M both feared that their names would be known to the authorities. They decided to take steps to avoid attention. M shifted to the city of Y in the south of the country. The appellant, however, felt it would be sufficient to move to an outlying suburb of Tehran. He also purchased on the black market what he understood to be a valid passport on which he could travel. It cost him US\$800 and was issued by "The World Service Authority". He was told this was a United Nations agency. When the appellant attempted to acquire a US visa, however, he was told that the document was not a valid travel document.

[46] For some six to eight months, the appellant and M arranged for a third party to run the bookstore. In about March 2001, M deemed it safe to return from the city of Y and he and the appellant resumed their business in person.

[47] Between 2001 and 2003, the appellant and his wife suffered random instances of harassment. On one occasion, when they were questioned in the street by *basij* officials, one of them grabbed the appellant's hand and broke his

little finger. On another occasion, the appellant's wife was sworn at and abused by officials who came to remove their satellite dish.

[48] One day in July 2003, the appellant travelled into Tehran to meet with M at the kiosk. On the way, he stopped at the bank at which his nephew worked and picked him up. At about 8pm, while the three men were standing around the kiosk, they heard an approaching commotion. Aware that there had been student demonstrations in the area over the preceding days, they reacted quickly when they heard cries to the effect of "escape, officials are coming".

[49] The appellants both ran down the street in the opposite direction from the commotion. M lingered to pull down the shutters on the kiosk. As the appellants reached the end of the street, they looked back to see M on the ground, surrounded by a group of people in official-style clothing.

[50] The appellants differ over what they saw. The appellant had the impression that M had been struck on the back of the neck or head. His nephew thought that M had been shot (having heard shots in the distance). Whatever the cause, they both saw M prone on the ground.

[51] The appellants ran down a side alley and were stopped by a young man with a motorcycle, who urged them to get on. With all three on board, he drove them to ABC Square, where they took a taxi to the house of one P, a friend of the appellant's nephew. There, they used the telephone to call M's wife. She told them that officials had already been to the house and had seized papers, books, photographs and M's computer. The appellant also called his sister and asked her to let his wife (pregnant at the time) know what had happened.

[52] The appellant also telephoned an old family friend, H, who worked in the administration of the Court. He asked H to find out what had happened to M. When the appellant later called H again, H asked to meet him in person, at which time he told the appellant that M had been taken to an *Etaalat* detention centre. H told the appellant he would do what he could but he feared M was beyond reach of his influence. There has never been any further news of M's fate.

[53] The appellants remained at P's house for several weeks. H had no news of M. Nor, however, was there any word of the authorities visiting the appellant's

house. Eventually, the appellants decided that they had to leave Tehran and the appellant determined to make one last visit to see his wife before they went.

[54] The appellants arrived at the house in the evening. After checking that no cars were in the street, the two men went in and spoke with the appellant's wife. As they did so, the appellant saw two men climbing over the back fence. The appellants ran up stairs, to try to escape over the roof, but the door was locked. Though they could hear the appellant's wife screaming, they were forced to return downstairs, where they were confronted by four men. The appellant's wife was bleeding from the nose and mouth, having been struck with a rifle butt.

[55] The appellants were seized and beaten, before being handcuffed and blindfolded. They were taken outside and put in a vehicle with their heads between their knees. They were driven in this fashion to a building where they were taken from the car and beaten again, before being led inside and put in a cell, where their blindfolds were removed.

[56] The following day, the appellants were blindfolded again and taken to another location, an hour's drive away. There, they were stripped to their underwear and put in separate cells. After an hour, two men entered the appellant's cell and beat him again.

[57] The appellants were detained for a month. They were regularly interrogated, during which they were beaten and asked questions about the books they sold. They were accused of distributing anti-regime pamphlets and other literature. The appellant tried to maintain that his nephew was simply a bank employee, with no connection to the kiosk, but he was not believed.

[58] The appellant's nephew was also interrogated and beaten. He was told that they knew he was from a martyr's family and that he had been dealing in banned books. They wanted the names of the people with whom he had been associating. He denied any knowledge.

[59] In their cells, each of the men was given nothing to eat except for bread and water in a plastic bag. The appellant recalls that he had no covering for warmth, except for a bloodstained blanket. At first, he did not want to touch it but the cells were freezing and he had no choice. He was forced to drink a noxious liquid,

smelling of detergent, which caused him to vomit and induced bloody diarrhoea – a malady which continues to trouble him in New Zealand.

[60] After a month in custody, being interrogated and beaten several times, the appellants were blindfolded again and taken by vehicle to a place where they were made to get out of the car. They each assumed that they were being taken to be killed and the appellant could hear his nephew pleading for mercy. Instead, their handcuffs were loosened and they were told to wait a few minutes before removing their blindfolds. They were told that they should go into hiding because, if they were caught again, they would be killed.

[61] When the car had driven off, the appellants removed their blindfolds and found themselves under a bridge in the countryside, late at night. They were both emotionally overwhelmed briefly, but then climbed up to the bridge, where they caught a lift into Tehran. There, they found a public telephone and called the appellant's wife, before making their way to P's house.

[62] From the appellant's wife, they learned that the appellant's family friend H had been able to secure their release by payment of a bribe of four million *tomans*. Their release, however, had had to be engineered as an apparent escape. The money to pay the bribe was organised by the appellant's wife and sister.

[63] At P's house, the appellant telephoned a friend in the Netherlands who had left the country illegally some time before. He told the appellant how to contact the agent he had used, a man called R, living in the city of M.

[64] The appellant telephoned R and arranged to meet him in M. The appellants travelled there two days later and were taken by car across the border into Turkey. The cost of their travel was arranged by the appellant's father-in-law, who sold the appellant's nephew's apartment for the purpose.

[65] In Istanbul, the appellants were handed over to a second agent, O. A week later, O arranged for the appellants to fly to Dubai and, from there, to Thailand. In the interim, the appellant's wife moved to the appellant's old village near the Azerbaijan border, where she has been cared for by the appellant's aunt.

[66] In Thailand, the appellants parted company. The appellant wanted to travel on to New Zealand but his nephew preferred to go to Canada. After the appellant had left, however, the agent found that it was too difficult to get the appellant's nephew to Canada and the plans were revised to send him too to New Zealand.

[67] The appellant has received one telephone call from P since he arrived here, having given his mobile number to a friend to pass on to P. When P telephoned, the appellant asked him to pass on the number to his wife. The appellant then received a call from his wife, speaking from a public telephone. She informed him that she was in good health and that her pregnancy was going smoothly, though conditions in the village are spartan. He has since heard from his father-in-law that his wife has had her child. They have no money and the appellant has had to borrow money in New Zealand to send to them.

[68] The appellant's nephew has also spoken with his family in Iran. They have told him that their pension from the Martyrs Foundation has been stopped.

[69] With the assistance of the appellant's father-in-law in Iran, the appellants have been able to provide a number of documents establishing their identities, including their Iranian driver's licences, the appellant's marriage certificate, birth certificates, a copy of the appellant's bogus "World Service Authority" passport and photographs of the appellant's family life.

[70] Counsel has made both written and oral submissions, which are taken into account herein.

THE ISSUES

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

"... owing to a 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."

[72] In terms of *Refugee Appeal No. 70074/96* (17 September 1996), and in respect of each of the appellants, the principal issues are:

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

ASSESSMENT OF THE APPELLANT'S CASE

[73] The accounts of both appellants are accepted.

Objectively, on the facts as found, is there a real chance of either or both of the appellants being persecuted if returned to Iran?

[74] In respect of both appellants, this issue must be answered in the affirmative.

[75] The appellant is unable to recall the titles of the pamphlets and books which were seized from M's house, but does recall that they were anti-regime in nature. From the nature of his interrogation, he believes that it is on account of those publications that the two men are of interest to the authorities.

[76] As to the current human rights record of Iran, the most recent edition of the United States Department of State *Country Reports on Human Rights Practises* (published March 2004) succinctly concludes:

"The [Iranian] Government's poor human rights record worsened, and it continued to commit numerous, serious abuses. The right of citizens to change their government was restricted significantly. Continuing serious abuses included: summary executions; disappearances; torture and other degrading treatment, reportedly including severe punishments such as beheading and flogging; poor prison conditions; arbitrary arrest and detention; lack of habeas corpus or access to counsel and prolonged and incommunicado detention. Citizens often did not receive due process or fair trials. The Government infringed on citizens' privacy rights, and restricted freedom of speech, press, assembly, association and religion."

[77] Of particular relevance to the appellants' claims is the continuing repression and control of publications. After citing numerous instances of newspapers being

closed, journalists being jailed, whipped and otherwise punished, tele-communications being monitored and internet websites being blocked - and after noting the common theme of perceived criticism of the regime underpinning such repression - the Department of State records:

“The Ministry of Islamic Culture and Guidance was in charge of screening books prior to publication to ensure that they did not contain offensive material. However, some books and pamphlets critical of the Government were published without reprisal. The Ministry inspected foreign printed materials prior to their release on the market. In August, author of "Iran's women Musicians," Toka Maleki, its publisher Jaafar Homai, and cultural critic Banafsheh Samgis received prison terms for publishing and publicly commenting on the book, which was deemed to contain "lies" about Islamic history. Translator of the book, "Women behind Veil and Well-Dressed Men," Maliheh Moghazei and Ministry of Culture and the Islamic Guidance Director General Majid Sayyad also received prison terms in connection with the book's publication.”

[78] Dealing in banned literature, even literature innocuous to western minds, must be seen in this context, as must the extent of the appellants' mistreatment while in prison. In that regard, the report of the Country Information and Policy Unit of the United Kingdom Home Office, *Iran Country Report* (October 2003), notes:

“Arbitrary arrest and detention has been and remains a feature within Iranian society. In 1997 large numbers of people arrested for suspected espionage or other political activity remained in detention without charge or trial, said to have been denied access to a lawyer of their choice or any other legal counsel. ...

Prison conditions are harsh. Some prisoners are held in solitary confinement or denied adequate food or medical care in order to force confessions. Female prisoners reportedly have been raped or otherwise tortured while in detention. Prison guards reportedly intimidate family members of detainees and torture detainees in the presence of family members.”

[79] In similar vein, the Department of State reports:

“The Constitution forbids the use of torture; however, there were numerous credible reports that security forces and prison personnel continued to torture detainees and prisoners. Some prison facilities, including Tehran's Evin prison, were notorious for the cruel and prolonged acts of torture inflicted upon political opponents of the Government. Common methods included suspension for long periods in contorted positions, burning with cigarettes, sleep deprivation, and most frequently, severe and repeated beatings with cables or other instruments on the back and on the soles of the feet. Prisoners also reported beatings about the ears, inducing partial or complete deafness, and punching in the eyes, leading to partial or complete blindness.

In August, the Council of Guardians rejected a bill on accession to the U.N. Convention against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment. The Majlis amended the bill in late December, reportedly addressing Council of Guardians concerns over the monetary costs of joining the convention.

The Council of Guardians also rejected in mid-2002 a bill passed by the Majlis to end torture and forced confessions.”

[80] It is not overlooked that the appellants were released from detention. Their release, however, will be viewed as an escape and we cannot conclude that no further harm would be visited upon them. It is not surprising, perhaps, that their liberator advised them at the time not to be caught again.

[81] We also take into account:

- (a) the appellant’s long-time business partner, M, has not been seen or heard from since July 2003, when the appellants fled from the kiosk and saw him being set upon by officials;
- (b) The Martyrs Foundation has stopped paying the pension to the appellant’s nephew’s family since his ‘escape’ from custody – suggesting that there is ongoing interest in his whereabouts;
- (c) The appellant’s wife has remained with his aunt in the village, notwithstanding the harsh conditions and the fact that she has had to have her child there. It is reasonable to assume that she views it as unsafe for her to return to Tehran.

[82] We are satisfied, on the basis of the appellants’ past mistreatment, the absence of any independent judicial process or safeguards in Iran, the well-documented human rights violations by the Iranian authorities and the fact that the appellants’ release will have been recorded as their escape from custody, that there is a real chance of each of them being persecuted if he returns to Iran.

[83] The fear of each of the appellants is well-founded.

Is there a Convention reason for that persecution?

[84] In respect of each of the appellants, we are satisfied that the persecution of which each is at risk would be for reasons of imputed political opinion. We are reinforced in that view by the nature of the accusations made to each appellant while in custody.

CONCLUSION

[85] For the foregoing reasons, we are satisfied that each of the appellants is a refugee within the meaning of Article 1A(2) of the Convention. Refugee status is granted. Each appeal is allowed.

.....
C M Treadwell
Chair