REFUGEE STATUS APPEALS AUTHORITY
NEW ZEALAND

REFUGEE APPEAL NO. 70975/98

AT AUCKLAND

Before:	E M Aitken (Chairperson) D J Plunkett (Member)
Counsel for Appellant:	R Goldsbury
Date of Hearing:	7 & 16 October 1998
Date of Decision:	3 December 1998

DECISION BY D J PLUNKETT

This is an appeal against the decision of the Refugee Status Branch (RSB) of the New Zealand Immigration Service declining the grant of refugee status to the appellant, a national of the Islamic Republic of Iran.

INTRODUCTION

The appellant is a 34 year-old married man with two children. His wife and children remain in Iran. He arrived in New Zealand on 8 October 1996 and made his application for refugee status immediately at Auckland Airport. Following an interview with the RSB on 15 January 1998, the appellant's solicitors were notified of the decline of his application by letter from the RSB dated 29 May 1998. This prompted the appellant's appeal to this Authority.

Immediately prior to the commencement of the hearing, the appellant's counsel wrote to the Authority advising that the appellant had trouble understanding the interpreter used at the RSB interview and requesting that another interpreter be used at the hearing. The Authority responded by advising counsel that the appellant would have to provide clear and convincing evidence that the interpreter was not competent. It was also pointed out that counsel had not raised any objection to the interpreter when an adjournment had earlier been sought and

granted.

Counsel confirmed the appellant's objections at the commencement of the hearing. He said that the appellant had difficulty understanding the interpreter, though confirmed that their law firm had used this particular interpreter many times themselves and had no problems with him. Counsel was unable to identify precisely what his client's concerns were. The Authority accordingly examined the appellant as to his precise concerns. He said that at the RSB interview, his solicitor, who is fluent in Farsi, had to correct the interpreter on two or three occasions. When questioned further, the appellant could only recall one particular incident when one word ("placard") was mistranslated. He could not recall any of the other words which he said had been a problem. The Authority observed that this issue had only been raised for the first time immediately before the Authority's hearing. Despite the appellant being represented by a Farsi speaking solicitor, neither the appellant nor his solicitor had raised this concern at the RSB interview, nor had it been referred to by his solicitor in his detailed written response to the RSB interview report which had been sent to him for comment. The Authority also noted that this particular interpreter, who is well experienced in refugee claims and had been used by the Authority on numerous occasions, had been the subject of a spate of spurious objections in other appeals in the previous month. The appellant denied that he had been advised by the Iranian community in Auckland to raise objections to him.

The Authority takes the opportunity to set out the circumstances in which it considers that a valid objection to an interpreter may be raised. A full exposition of the relevant principles is set out in the decision of the Supreme Court of Canada in R v Tran [1994] 2 SCR 951 (Lamer CJ). The right of a defendant in a criminal case to understand what is going on in court and to be understood when giving evidence is not a separate right, nor a language right, but an aspect of the right to a fair trial *(ibid* p 963). Adequate interpretation requires continuity, precision (accuracy), impartiality, competence (interpreter' qualifications and experience) and contemporaneousness (*ibid* pp986-990). As to precision, the court had this to say:

> "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. As Steele explains, at p.242:
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> > Even the best interpretation is not "perfect", in that the interpreter can never convey the evidence with a sense and nuance identical to the

> original speech. For that reason, the courts have cautioned that interpreted evidence should not be examined microscopically for inconsistencies. The benefit of a doubt should be given to the witness.
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> In this respect, it may be helpful to note the conceptual distinction that exists between "interpretation", which is primarily concerned with the spoken word, and "translation", which is primarily concerned with the written word. In light of the fact that interpretation involves a process of mediation between two people which must occur on the spot with little opportunity for reflection, it follows that the standard for interpretation will tend to be lower than it might be for translation, where the source is a written test, where reaction time is usually greater and where conceptual differences which sometimes exist between languages can be more fully accommodated and account for."

While that case was in the context of a criminal proceeding and a statutory right under the Canadian Charter of Rights and Freedoms to the assistance of an interpreter, the right to a fair hearing, from which the relevant principles emerge, is equally applicable to the hearing of a claim for asylum. It has been said that in refugee cases only the highest standards of fairness suffice since questions of life, personal safety and liberty can be at stake; Khalon v Attorney-General [1996] 1 NZLR 458, 463 (Fisher J). It has also been accepted in New Zealand that a poor and inadequate translation prejudicing an applicant to the extent that the case is not understood amounts to a reviewable violation of the rules of natural justice; B v Refugee Status Appeals Authority & Anor M1600/96 & HC 146/96 (23 July 1997) at pp29-30 (Giles J). The court there, however, also recognised that a degree of realism has to be accepted as interpreting from one language to another is not a precise science (*ibid* p30). In B's case, the court concluded that "taking an overall view of the hearing, the level of interpretation was more than adequate". The judge said that the correct approach required a qualitative evaluation to be made over the entire hearing, and not just in respect of selected passages.

Returning to the present case, counsel confirmed that no objection was being raised on the ground of bias and that he could not assist further in relation to the ground of incompetence (or precision) beyond what the appellant had said. The Authority determined that the evidence supporting the allegation of inaccuracy, being a vague assertion of deficiency concerning two or three words or phrases, of which only one could be recalled, was wholly inadequate and that the hearing would proceed with the appointed interpreter.

The appellant confirmed, at the end of the first day of the hearing, that he felt as though he and the interpreter had understood each other and that he had no problem with the interpreter.

THE APPELLANT'S CASE

The appellant grew up in X, a city on the Iran - Iraq border, with his parents and two sisters. His father was a school teacher and while he was not involved in political activities himself, he did not object to his childrens' interest in human rights, freedom and democracy. These topics were frequently discussed at family meetings. In X, the appellant was involved with the Mojahedin and his sisters supported the Iranian People's Militant Organisation (*SAZMAN - E - CHEREKHAY - E - FADAEI - E - KLAGH - E - IRAN*) ("CFK"), a Marxist-Leninist organisation.

His older sister was a branch leader.

The appellant became involved with the Mojahedin in late 1978, at the time of the start of the revolution which saw the overthrow of the Shah and the creation of the current Islamic Republic. While the appellant did not hold any formal position in the organisation, he was in charge of pamphlet distribution in his suburb, supervising up to 10 others in this task. In the early days, the pamphlets were distributed quite openly during the day in the local area but by the time the appellant left the organisation two years later, they were distributing the pamphlets secretly at night. The appellant and his team distributed them on numerous occasions. The pamphlets discussed current political issues and promoted the ideas of the Mojahedin. For instance, they pointed out that many of the officials in the Shah's secret police were "simple workers" and that their execution was wrong. They promoted fair trials for such people and said that the emotions of the revolution should not be an excuse to violate people's rights. The pamphlets also criticised a mock trial of those the regime claimed were responsible for the burning of a cinema which resulted in many deaths. They said that two of the three on trial were not involved in the incident. While the pamphlets were critical of the government, the appellant would not describe them as anti-regime. The pamphlets also promoted the principles of freedom of speech and democracy and criticised a government edict for writers to "break their pens".

The appellant also attended public meetings at a "drop-in centre" of a local university to discuss topical issues. He also produced a drama in 1979/1980, in the early days of the revolution, which was a critical commentary on the new regime. The appellant says that in those days the atmosphere in the country was quite relaxed and criticism was tolerated.

The appellant got into minor trouble with the authorities on about five occasions in about 1980. Once he was caught by the local Islamic Association in possession of pamphlets and was taken to a mosque where he was punched and kicked while being held for a few hours. On another occasion, while he was out distributing pamphlets, he was chased by some people from one of the houses but he escaped and was not caught. On three occasions, patrols stopped him in the street and confiscated his pamphlets. While he was beaten on those occasions, he was not detained.

In about September 1980, the war with Iraq commenced and the appellant's family was required to moved from X, which became a target for Iraqi bombing, to Y. The appellant ceased activities for the Mojahedin when he left X because he did not have any Mojahedin contact he felt he could trust in Y. He also felt he should concentrate on studying and financially supporting the family. The appellant resumed his schooling in Y. His sisters continued with their activities for the CFK though.

The first major incident of conflict the appellant and his family faced with the authorities occurred in April or May 1982. Pasdars surrounded the housing estate where they lived and arrested 15 people, including the appellant and his two sisters. The appellant was then 17 years old his sisters were 20 and 16 respectively. They had a list of people suspected of involvement with the CFK. The three of them were blindfolded and taken to prison. He was held in a cell on his own, with his sisters next to him. He described the treatment as brutal. He was himself beaten but worse, he had to endure hearing the torture of his sisters. He could hear their cries and one was beaten until she was unconscious. The appellant said he battered himself against the wall while his sisters were suffering this mistreatment. He described his feeling of helplessness at being unable to assist them. The appellant was interrogated about the activities of the organisation but as he was not involved with it he was not able to provide any information. The appellant was released after four days because, he believes, the authorities wanted to follow him to see which of his sister’s contacts in the CFK approached him. His sisters were, however, detained for two years because of their involvement with the organisation and were only released after his father paid a bribe and gave an undertaking. The appellant is not sure of the nature of the undertaking his father gave.

His sisters returned home but soon after went to stay in Teheran where the family

considered they would be safer. A few years later, his older sister went to Turkey, ostensibly on a religious pilgrimage, but from there went to Sweden to join her husband who was granted refugee status there. She still lives there. The appellant's younger sister is married and remains in Iran.

The appellant returned to school after his release and passed his high school certificate examinations, though he had to sit some of them twice.

The appellant then decided that he should perform his compulsory military service and accordingly applied at the military office in Y. He was referred to Z City office and told to apply there. He went twice but was refused entry into the military. He was told verbally that he could not serve because of his “political problems”. He asked for details but was not told anything more. He believes that one of the main reasons was that his sisters were then in jail. Relatives in the military advised him not to pursue the matter.

The significance of this refusal, and his inability to obtain a certificate of exemption from military service, was that he could not go to university, could not officially work, could not open a business, or obtain official documents such as a birth certificate or passport.

The appellant therefore decided that his only option was to sit the state exams enabling people to study overseas. His ambition was to study medicine in Germany. He did well in the examinations but failed to secure a place because, he believes, he did not pass the local Islamic investigation. The appellant and his family were not considered sufficiently Islamic and so the appellant was refused a place. He was never officially told why he failed.

The appellant accordingly worked on the black market for friends in a workshop or painting. In 1985/1986, he married. He had to pay a bribe of 80,000 Tomans to obtain a birth certificate for the marriage because he had not completed his military service nor did he have an exemption. It was about this time that his father retired and bought a farm where they looked after sheep and other animals. The appellant and his wife went to live on the farm and he worked for his father. The appellant says that he effectively hid on the farm and did not go into the town many times. He pretended that he was a visitor to the farm. In the late 1980s, when the war ended, the appellant's father sold the farm and moved back to their home city in X where his father obtained the rights to distribute a particular

beverage. The appellant had to move with his parents because he could not officially work and he could not run the farming business on his own. He worked with his father doing the accounts for his beverage distribution business.

In 1994, the government announced that men born between 1959 and 1968 could pay a “fine” to obtain a military exemption card. The appellant accordingly paid 500,000 Tomans and was issued with the card. He produced to the Authority a bank receipt for this payment. He says he had no problems obtaining this exemption because he was born between the relevant dates. He was therefore able to officially obtain employment and applied to the local employment service for a job. At the time, there was a great deal of rebuilding work in X on the refineries and in late 1994, the appellant was able to secure a job repairing machinery at one of the state refineries.

In May 1995, about five months after joining the refinery, the appellant came into conflict with the authorities again. His daughter came home from school one day and said that the religious teacher had instructed her to report to him about the personal lives of the family, including their attitude to Islam. The appellant confronted the teacher the next day because he objected to the use of his children to spy on him at home. In an argument lasting two to three hours, the appellant said that the child should not be instructed to spy and that if he wanted any information, he could ask the appellant directly. The teacher responded that the children’s mind should be made ready for Islamic matters. The teacher warned him that he spoke, knowing he had “full power” and he used the word “tazkieh” meaning that the appellant would have to change his manner of living from being un-Islamic to Islamic. He told the appellant that he had not been “tazkieh” yet and that that should be done, perhaps by way of a punishment.

That afternoon, Pasdars arrested the appellant while he was working at his father’s warehouse and detained him for 10 days. He was not interrogated and was not mistreated. They did not tell him why he was detained. They would not answer his request to be told why. His father was able to secure his release by talking to the city’s Governor who was concerned that, in the middle of summer, the city had a shortage of his father’s beverage which his father said could not be supplied because his son was being detained. The appellant was required to give an undertaking to report to officials whenever they required him to do so but he was never subsequently called upon to report.

The appellant said he did not immediately return to work as he did not “feel well mentally”. Instead, he worked for his father.

Some time later, in the period May/June 1996, the appellant returned to his old job at the refinery but two months later he was summonsed by the security section of the oil refinery. He thought that they were going to inform him that he could work there permanently but after initially treating him very well, their attitude suddenly changed and it became clear to him that they knew about his past life, including the detention of his sisters, his inability to perform military service and his conflict with the religious teacher. They asked him whether he had had any involvement in any recent Mojahedin activities, including bombings. He denied any involvement with the Mojahedin. The appellant was held for two weeks at the security section’s detention centre and was beaten and lashed on a daily basis, sometimes up to four times. As he did not confess to any involvement with the Mojahedin, he was released temporarily until summonsed and was ordered not to leave X. He did not have any physical injuries but suffered psychologically because of this incident.

The appellant and his family decided that he should leave Iran. One of his uncles was able to make the necessary arrangements and some 10 to 15 days after his release from detention, the appellant was smuggled across the Iran - Pakistan border without passing through border control. He did not have a passport (the appellant had applied for one sometime earlier but had been refused). He went from Pakistan to Malaysia on a Pakistani passport and then on to New Zealand on a false Dutch passport which he was given by an agent in Malaysia.

The appellant has maintained infrequent contact with his wife in Iran since he came to New Zealand. He is concerned that if he has more frequent contact, the security officials in Iran might find out and this would cause more problems for his family. His wife and children have left his parents’ house in X in mid-1993 and went to stay with her parents in Teheran because of harassment from officials from the security section of the oil company who keep going to the house looking for him. He does not know how often they went or continue to go. His family give him only the vaguest details of their troubles because they are concerned about his psychological condition and are aware he is being treated. His father told him that the company security officials had been twice but he does not know whether they have been more than this because his family are hiding the truth from him.

Counsel produced a letter from a New Zealand psychiatrist dated 15 April 1998. It

records that the appellant had been a patient since July 1997 and that he has a Major Depressive Disorder which had persisted despite anti-depressant therapy. The appellant told the Authority that from the time of his detention in 1982 with his sisters, he has not been well “mentally”. He continually had nightmares and insomnia. He started seeing a psychiatrist and was prescribed medication to help him sleep and to make him relax. The problem flared up again following his 10 day detention in May 1995. He had seen two psychiatrists in Iran before coming to New Zealand.

The Authority acknowledges receipt of counsel’s memorandum dated 27 August 1998 and the enclosed country materials.

THE ISSUES

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, is unable or, owing to such fear, is unwilling to return to it."

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

1. Objectively, on the facts as found, is there a real chance of the appellant being persecuted if returned to the country of nationality?

2. If the answer is yes, is there a Convention reason for that persecution?

Because the issue of relocation arises in this case, the decision of this Authority in Refugee Appeal No 523/92 (17 March 1995) requires two additional issues to be addressed:

(a) Can the appellant genuinely access domestic protection which is meaningful?

(b) Is it reasonable, in all the circumstances, to expect the appellant to relocate

elsewhere in the country of nationality?

ASSESSMENT OF THE APPELLANT'S CASE

The first issue for the Authority, prior to addressing the framed questions, is an assessment of the appellant's credibility. The Authority found the appellant to be a credible witness. He was largely consistent in relating his story. While there were some inconsistencies between his statement submitted in support of his refugee claim, the record of his interview with the RSB and his evidence before the Authority, the Authority is satisfied with his explanations. There were a number of occasions where the appellant had the opportunity to embellish his evidence but did not do so. The Authority was impressed with the appellant's demeanour and found him to be a spontaneous and compelling witness. His displays of emotion and his agitation at recounting aspects of his story were palpably genuine and moving. The Authority also notes the psychiatric evidence submitted that the appellant is currently being treated for a Major Depressive Disorder. His psychiatrist suspects that he may have a Post Traumatic Stress Disorder as a result of his experiences in Iran. This psychiatric evidence is bolstered by the appellant's own evidence as to the treatment he received from psychiatrists in Iran from the time of his first detention with his sisters and our own observations of his demeanour and mental state. This medical evidence corroborates, to some extent, the appellant's story as to his experiences in Iran.

The appellant has suffered persecution in Iran. He was detained three times and while the detentions were relatively short, he was severely mistreated on two of the three occasions. The last occasion was only two weeks before he fled Iran. He has been denied a birth certificate and the opportunity of studying overseas. For many years, he was denied the right to work. Even after obtaining the military exemption certificate, he was refused a passport. Even if the appellant was able to slip back into Iran unnoticed, despite his illegal departure, his past would eventually catch up with him as it did at the time of his final detention. At some stage, he will have to come into contact with the authorities. This is particularly so given that he was told, when released for the last time, that he would be summonsed and also given that security officers from his state employer have visited his family causing his wife to leave his parents' house and go to live in Teheran. Furthermore, the appellant is resolutely anti-regime. This will cause him to bring himself into conflict with the authorities again. This happened before when the appellant confronted his daughter's religious teacher.

The present Iranian regime is intolerant of political dissent and those considered unIslamic. It has a poor human rights record (see United States Department of State Country Reports on Human Rights Practices for 1997, March 1998, pp 1440 - 1449). There are some signs of improvement but the government remains oppressive and deals harshly with those suspected of opposition, including members of the Mojahedin (Department of Foreign Affairs and Trade, Canberra, Islamic Republic of Iran, March 1996, paragraphs 2.6.8, 2.6.9).

While the appellant's own political activities were relatively minor and are remote in time, he and his family are considered unIslamic and anti-regime, largely, it would seem, as a consequence of his sisters' activities. He suffered persecution over a period of many years. The Authority accordingly finds that there is a real chance of this appellant being subject to persecution should he return to X.

The next issue to address is whether the appellant could relocate to safety outside his home city of X. The Authority finds that he could not safely relocate elsewhere in Iran. His detention in Y, and the activities of his sisters there, caught up with him in X. While most harassment cases are locally based and the departure of an individual from the problem area will resolve their difficulties, the security agencies do have the ability to locate and monitor people in whom they have a substantial and current interest (*ibid* paragraph 1.7.9). The appellant also has a wife and two children to provide for and accordingly must obtain employment which is likely to bring him into contact with the authorities eventually.

Furthermore, even if he could safely relocate to Tehran or elsewhere in Iran, the Authority finds that it would be unreasonable to require him to do so. While the mistreatment of the appellant himself may not amount to what can be described as torture, it is clear that the mistreatment he did suffer and more particularly that inflicted on his sisters, which he was aware of, has had a profoundly disturbing effect on him. He was only 17 years old at the time. He has had psychiatric problems, on and off, since that incident in 1982. The mistreatment on the third occasion was very recent, only two weeks before he left Iran. The detentions and mistreatment were by state organs. In terms of the factors set out in Refugee Appeal No. 135/92 (18 June 1993), we have no doubt that it would be unreasonable to require him to relocate within Iran.

The Authority concludes that there is a real chance of this appellant being

subjected to persecution should he return to Iran. His fear of persecution is well-founded. There is a relevant Convention reason, namely his political opinion, actual or imputed. The first two framed issues are answered in the affirmative and those concerning relocation are both answered in the negative.

CONCLUSION

For the above reasons, the Authority finds the appellant is a refugee within the meaning of Article 1A(2) of the Refugee Convention. Refugee status is granted.

The appeal is allowed.

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(Member)