

REFUGEE STATUS APPEALS AUTHORITY
NEW ZEALAND

REFUGEE APPEAL NO 76401

AT AUCKLAND

<u>Before:</u>	B L Burson (Member)
<u>Counsel for the Appellant:</u>	R Smail
<u>Appearing for the Department of Labour:</u>	No Appearance
<u>Dates of Hearing:</u>	13 & 14 October, 10 & 11 November 2009
<u>Date of Decision:</u>	23 February 2010

DECISION

[1] This is an appeal against the decision of a refugee status officer of the Refugee Status Branch (RSB) of the Department of Labour (DOL) declining the grant of refugee status to the appellant, a national of the Islamic Republic of Iran.

[2] This is the second time the appellant has lodged a claim to refugee status in New Zealand.

INTRODUCTION

[3] The appellant claims to have a well-founded fear of being persecuted in Iran by reason of his conversion to Christianity and the subsequent discovery by the Iranian authorities of his role in converting his sister to Christianity. The principal issue to be addressed in this case is the credibility of the appellant's claim.

PROCEDURAL HISTORY

[4] This appeal before the Authority has a lengthy procedural history. The appellant originally arrived in New Zealand on 7 April 2005 and claimed refugee status on 11 April 2005.

[5] He was interviewed by the RSB in respect of his first claim on 2 and 6 May and 16 June 2005. By decision dated 18 August 2005 the RSB declined the appellant's claim. The appellant duly lodged an appeal to the Authority against this decision. In a hearing lasting two days on 21 and 22 November 2005, the Authority (differently constituted) heard the appellant's appeal ("the first appeal"). By decision dated 29 March 2006 the Authority dismissed the first appeal.

[6] On or about 1 May 2006 the appellant filed proceedings in the High Court for a judicial review of the Authority's decision in respect of the first appeal. By consent, the decision of the Authority in respect of the first appeal was quashed and, in accordance with the order of Winkelmann J dated 17 June 2006, the appellant's appeal was remitted for hearing before a differently constituted panel of the Authority ("the second appeal hearing").

[7] The second appeal hearing in respect of the first claim took place on 3 and 4 October 2006. By decision dated 14 November 2006 a differently constituted Authority panel dismissed the appellant's appeal ("the second appeal decision"). Once again, proceedings by way of judicial review were instituted by the appellant on 14 December 2006. The substantive hearing of the claim did not take place until nearly 18 months had elapsed, taking place on 2 April 2008. By judgment dated 28 May 2008, Harrison J dismissed the appellant's second application for judicial review.

[8] On 9 April 2009, the appellant lodged his second claim for refugee status. He was interviewed by the RSB in respect of the second claim on 5 June 2009. By decision dated 14 August 2009 the RSB declined the second claim. The appellant duly lodged a further appeal to the Authority.

[9] Because this is the appellant's second claim to refugee status, the appellant must first established that the Authority has jurisdiction to hear the appeal.

JURISDICTION OF THE AUTHORITY TO HEAR THE APPEAL

[10] The Immigration Act 1987 ("the Act") imposes jurisdictional limitations on second or subsequent refugee claims. Section 129O(1) of the Act outlines the limits within which appeals to the Authority may be considered. It provides that:

"A person whose claim or subsequent claim has been declined by a refugee status officer, or whose subsequent claim has been refused to be considered by an officer on the grounds that the circumstances in the claimant's home country have not changed to such an extent that the subsequent claim is based on significantly

different grounds to a previous claim, may appeal to the Refugee Status Appeals Authority against the officer's decision."

[11] To address this issue, the Authority must compare the appellant's original claim and his second claim. Unless the appellant's second claim is based upon significantly different grounds, the Authority will not have jurisdiction to consider the second appeal: see *Refugee Appeal No 75139* (18 November 2004).

[12] Where jurisdiction to hear and determine the subsequent claim is established, the Authority must consider the merits of the subsequent claim in order to determine whether the appellant is a refugee within the meaning of Article 1A(2) of the Refugee Convention. This hearing may be restricted by the findings of credibility or fact made by the Authority in relation to the previous claim. That is because s129P(9) of the Act prohibits any challenge to a finding of fact or credibility made by the Authority in relation to a previous claim and the Authority has a discretion as to whether to rely on any such finding.

The first claim

[13] The appellant's first claim for refugee status, maintained before the RSB and before the first and second Authority panels, was that he had departed Iran for South Korea in mid-2000 using a genuine Iranian passport. He remained in South Korea until 2005 at which time he came to New Zealand.

[14] The appellant claimed that, in 2002, he began attending a particular church in South Korea and had, by mid-2002, decided that Christianity was the right spiritual path for him to follow. Considering himself to be a Christian from that time on, he continued with his learning of the Christian faith to the point where he became baptised in August 2003.

[15] The appellant's Iranian passport expired in 2003. He attended the Iranian Embassy in South Korea on a number of occasions but was informed by an embassy official that the embassy had become aware of his religious activities and, as a Christian convert, he was not worthy of an Iranian passport. Indeed, the embassy staff referred to the fact that it was, in the official view, permissible for his blood to be shed for his apostasy. The appellant claimed that the Iranian Embassy failed to renew his passport and retained his old one. This forced him into obtaining a false passport with which he travelled to New Zealand.

[16] In dismissing the first appeal (for the second time), the second Authority panel disbelieved the appellant's evidence of his problems with the Iranian Embassy in South Korea. It accepted that he had converted to Christianity but, as a low-level Christian who was, by his nature, unlikely to engage in open proselytising, he faced no well-founded fear of being persecuted.

The second claim

[17] The appellant makes a number of allegations in relation to his second claim. For present purposes the significant features of the second claim are:

- (a) In early 2009, he was informed by his family that his sister, with whom he had been conversing about Christianity, to encourage her to convert, had been arrested, detained and tortured. Under torture, or at least duress, she divulged that she had converted to Christianity and that the appellant had played an instrumental role in her conversion.
- (b) He took part in a demonstration in Auckland in mid-June 2009, protesting against the declaration that Mahmoud Ahmadinejad had won a second term in the 2009 presidential election. His participation was recorded on a video which has been posted to the website "YouTube". As a consequence of this he believes the Iranian authorities will be aware of his involvement in this demonstration and this will place him in further danger.

ASSESSMENT OF JURISDICTION

[18] Although the appellant made a number of other allegations in support of his second refugee claim, about which more will be said in due course, the *allegation* by the appellant that, in 2009, the authorities became aware of not only his conversion but also his role in converting his sister satisfies the jurisdictional threshold. His participation in the June 2009 demonstration also meets the threshold. These events all plainly occurred after the determination of the first claim by the decision of the second Authority panel in November 2006 and amounts to a significant change in circumstances. The Authority therefore finds that it has jurisdiction to hear the appeal.

[19] It must be stressed, however, that although the Authority has jurisdiction to determine the second appeal, this does not mean that the Authority has accepted the credibility of the appellant's account. Indeed, on the morning of 14 October 2009, the Authority gave formal notice to the appellant that it did not consider itself bound by the finding made by the panel hearing the first appeal that the appellant was a genuine Christian and that this matter was an issue in the context of the present appeal. In response, the appellant called a number of witnesses.

[20] In brief, evidence was given by the appellant, three Christian teachers (Dr Hanne, Mr Ford and Ms Houghton), a pastor (Mr Yi) and a friend of the appellant (Mr Johnson). What follows is a summary of the evidence given in support of the second claim. An assessment follows thereafter.

The appellant's evidence

[21] The appellant was born in a city in Iran where he lived all his life prior to travelling to South Korea and New Zealand. His mother and father continue to occupy the same family home in which they were living prior to his departure for South Korea in 2000. A sister, AA, lives with his parents on the second floor of the family home. A brother, BB, lives with his wife and family on the ground floor of the building. Two other brothers reside away from the family home.

[22] The appellant explained that, prior to his departure for Korea in 2000, he had been under extreme pressure. He had been bankrupted and had had to give up his studies. He owed his creditors a considerable amount of money and went to South Korea to relieve some of the stress he was in and to earn sufficient money to pay off his creditors and start afresh. He spent the next three years working towards this goal. He sent money back to Iran to his father who purchased land on behalf of the appellant, albeit in his (the father's) name.

[23] The appellant told the Authority that, following his conversion and baptism in South Korea in 2003, he had occasional conversations of a general nature with AA about his life, in which he sometimes mentioned that he planned to visit a church with some Christian friends. Within that context he talked about aspects of the Christian faith compared to Islam from a general perspective, but did not tell her that he had been baptised.

[24] Although the appellant knew it was difficult for religious minorities in Iran, he was tired of living an expatriate life. He decided to return to Iran to see if he could

make a life there again. He renewed his passport in South Korea in late August 2003 and had his South Korean work permit endorsed in the new passport. He left South Korea in mid-November 2003 and travelled back to Iran. On his arrival in Iran he was required to fill out an arrival form in which, amongst other things, he had to declare where he had been, what he had been doing and whether he had been involved in any political or religious activity. In relation to the last question he answered that he had not.

[25] The appellant remained in Iran for some two or three weeks, visiting his family and other relatives. His parents introduced him to families of prospective wives. He could not attend church in his home town because there was none there. However, while he was at home he made time to pray regularly. During discussions he had with his family about his life in South Korea he mentioned that he had been to a church but still did not inform his family that he had done so because he had converted to Christianity.

[26] In the two to three weeks the appellant was in Iran he saw enough about how Iranian society was functioning to convince him that he could not live there as a Christian. People had no freedom, there was rampant corruption and people did not generally have security for their general well-being, their business or their future.

[27] The appellant returned to South Korea and resumed work. He also resumed attendance at the same church and resumed the church-based outreach activities such as attending a hospital that he had begun undertaking in mid-2002. He was aware from his time in South Korea however that, no matter how long he remained there, he would never gain permanent residence and that if he wanted a more secure future he would need to seek residency in a third country.

[28] The appellant decided that he would travel from South Korea to Canada and seek asylum. He was aware that he would not be able to enter Canada easily with an Iranian passport and therefore, via an agent, obtained a false Australian passport. In mid-2004, he attempted to leave South Korea for Canada on it but was detained during departure. His original passport was seized and a deportation stamp placed in it. He was deported back to Iran. On the plane, he struck up a conversation with a South Korean man who was a director of a company engaged in a venture with an Iranian company. As the appellant could by now speak almost fluent Korean, the South Korean executive engaged him as a translator.

[29] On arrival at the airport in Iran, the appellant was taken into custody and held for two days and questioned about what he had been doing in South Korea. However, as his Iranian passport had a genuine South Korean work permit endorsed in it, the checks with the South Korean immigration service verified his claim to have simply been engaged in employment in South Korea. He was asked again whether he had been involved in any political or religious activity, to which he replied "no". The appellant was fined 50,000 *tomans* and released from detention.

[30] The appellant went to the family home in his home city. After about four or five weeks he was contacted by the South Korean executive and travelled to Tehran where he remained for a few weeks. In Tehran there were meetings between the South Korean executive and executives of the Iranian company which he understood was part of an umbrella of companies controlled by the Iranian Revolutionary Guard Corp (*Sepah*). A dispute had arisen between the two companies. It transpired that the dispute arose due to the actions of employees of the Iranian company. After travelling to another part of Iran to assist with the investigation as to what had happened, the appellant was asked to write a report on behalf of the South Korean company, which he did.

[31] Over the course of the next few months the appellant was called to Tehran on an occasional basis to translate during further negotiations to resolve the dispute. During these negotiations he came under pressure from executives of the Iranian company to adopt the view that the problem lay with the South Korean side and not the Iranian side. He was told by the Iranian company executives that he had to be faithful to the Iranian company because he himself was Iranian. The appellant reported this overture to the South Korean executive which made the latter very angry. Eventually the Iranian company had to accept responsibility. At the end of the negotiations, one executive of the Iranian company told the appellant that he should be more careful of his behaviour or they could give him "a good lesson". This person said that they could make the appellant's "head disappear".

[32] While in Iran, the appellant found the environment oppressive for him as a Christian. There was no church in his home city. He had spoken with the interpreter for the Iranian company about Christianity who said he knew of an Armenian church in Tehran. The appellant subsequently went to this church but was told he could not enter the church without being introduced by another

member of the congregation. He therefore maintained his faith largely through private worship.

[33] Declaring one's religion was a requirement of many facets of everyday life, such as registering a car. The appellant tried to register the land his father purchased on his behalf with the money he earned in South Korea but encountered much bureaucratic difficulty. The registration form required him to declare his religion and he could not bring himself to falsely state he was a Muslim in order to avoid harassment. His family again made some inquiries about him marrying and on two or three occasions he attended meetings with prospective spouses and their families. However, even these moderate Muslim families shared a fundamentally different ideology from him as a Christian, which added to his sense of disenchantment with life in Iran.

[34] Feeling he could never have any piece of mind in Iran and concerned about the threats made by the person working for the Iranian company, the appellant decided to leave Iran and seek asylum either in Canada or New Zealand. He left Iran in early 2005 using his genuine Iranian passport. He encountered no problems leaving. He travelled to Thailand where he remained for one month. There he obtained a false French passport and returned to South Korea. He visited his former church and obtained from the Church a certificate confirming his attendance and baptism. From South Korea he travelled to New Zealand, arriving approximately three weeks after he had left Iran.

[35] Since his arrival in New Zealand, the appellant has been regularly attending the Auckland International Church on Sundays. In addition, he has been attending a Bible study class on Sunday afternoons and he has become the leader of this group. This group is multi-national and the appellant leads the group and answers questions they have about scripture. He hosts and interprets for a group of Iranian converts on Thursday nights. He has attended various other Bible study groups and has been involved with various outreach activities.

[36] Since he has been in New Zealand the appellant has remained in regular contact with his family, speaking two to three times per month by telephone. The family inform him about what is going on with their lives in Iran and he tells them of his life here in New Zealand. They also communicate occasionally by email.

[37] While the appellant had told his mother about his conversion in 2004, she had not discussed this with his other family members. It was only in 2006 that he

informed his father, AA and BB. Initially they were worried for him. However, over time, they discussed the issue further and a point came when he also began encouraging his family, particularly BB and AA, to convert to Christianity. Initially, both BB and AA were sceptical about Christianity. They could not understand how Jesus could be the son of God. However, the appellant persisted. He was aware that his family had a satellite receiver at home and he encouraged them to watch Christian programmes on channels broadcast from America. From conversations with AA and BB, he became aware that the family did this from time to time but that mainly AA would do so. He encouraged his family to listen carefully to the words of the priests and the pastors as a means to encouraging them all to adopt the Christian faith.

[38] The appellant noticed that, over time, the questions AA was asking him about Christianity evidenced a growing degree of understanding about the Christian faith. The appellant was "joyed" to learn from his sister in late 2008 that she now considered that Jesus was in her heart and that she would consider herself to be a Christian from that time onwards.

[39] The appellant told the Authority that in early March 2009 he received a telephone call from BB. BB told him that two days previously AA had been released from what had been a ten-day detention. He learnt that, on the evening of her detention, *Ettela'at* officials searched the family home taking away a picture of Jesus which they found hanging on the wall of the family's guest room on the second floor, a satellite dish and a modem. The officials also searched the ground floor where BB lived with his family and removed from there his computer and some CDs.

[40] It became clear to the appellant's family that AA must have been detained and they therefore rang a relative who was a member of *Sepah* and asked him to do what he could to find out about AA's situation. Eventually, this relative managed to find out that she had been detained by *Ettela'at* and, using his connections, informed the family that for a payment of a bribe to an *Ettela'at* official he could secure her release. The appellant was told by BB that when the family went to the *Ettela'at* offices to arrange her release they too were questioned although he did not give any details about the questions they were asked. AA was released on signing an undertaking to abandon Christianity and to promise never to have anything to do with Christianity again.

[41] The appellant was informed that AA had been detained by plain-clothed officials outside the family home and taken blindfolded, in a car, to an unknown detention centre. She had been kept blindfolded in solitary confinement. On the second or third day of her detention, she had been interrogated about her conversion to Christianity and forced to tell that it was the appellant who had assisted her to convert to Christianity. She was slapped during her interrogation and had been threatened with rape. The *Ettela'at* officials also played recordings of persons screaming with pain to place further emotional pressure on her. Since her release, AA had been badly affected by her experience in detention. According to BB, AA was withdrawn and prone to bouts of intense crying. She was having difficulty sleeping.

[42] The appellant told the Authority that his family suspected AA's ex-fiancé as being the source of her problems. AA had been engaged to this person for some 13 to 15 months, for an arranged marriage. Over the course of the relationship problems arose between the couple because her ex-fiancé was a "fanatical Islamic" and they had different views about gender relations. The ex-fiancé expected AA to have her hair covered at all times and not let her hands show beneath her *hijab*.

[43] The appellant is concerned that if he were to try and lead his Christian life in Iran he will face very serious harm. Over time, his faith has deepened and he has assumed a leadership role within the church, assisting with the teaching of scripture to fellow Iranians and other foreign nationals here in New Zealand. The authorities now are aware of the role he has played in helping his sister to convert from Islam to Christianity.

[44] In addition, the appellant has taken part in demonstrations in June 2009 in Auckland protesting over the disputed presidential election. His attendance at one of the demonstrations has been posted onto the Internet and appears on YouTube. This activity will only add to the anti-regime reputation he gained as a result of the problems he had with the *Sepah*-controlled Iranian company and increase the risk of him being subjected to serious harm.

The evidence of Dr Hanne

[45] Dr Hanne told the Authority that he has been operating a Christian teaching institution of an inter-denominational nature for 43 years. Over this time this institution has taught over 3,000 students from 75 different countries. The purpose

of the training is not academic in nature but focussed on development of Christian character and leadership.

[46] Dr Hanne told the Authority that the appellant had been involved in his Christian institute for somewhere between two and three years. He had been a regular attendee at Dr Hanne's lectures in which he had been an enthusiastic participant. Dr Hanne stated that he had also seen the appellant on a regular basis on social occasions. As a result of his dealings with the appellant he has absolutely no doubt that the appellant is a Christian. He has displayed Christian character and has a "real Christian faith." Dr Hanne accepts that people in the appellant's position may well have mixed motives for wanting to learn about Christianity and this may have been true in the appellant's case. However, he does not believe as a result of his dealings with the appellant that he is wearing a 'cloak' of Christianity simply to gain refugee status.

[47] Dr Hanne stated that in his dealings with the appellant, the appellant had been straightforward. He emphasised that he has come across examples of people who were "fakes" in their protestations of Christian faith but has no doubt the appellant is not one of them. When informed by the Authority that the appellant had now admitted telling lies in the context of his refugee claim, Dr Hanne said that it did not surprise him because when people, Christians included, are under pressure they often take "an easy way out". That they do so does not mean that they are not Christian. The Christian faith recognises this and has forgiveness as a central component of its belief structure.

The evidence of Mr Ford

[48] Mr Ford holds a teaching position at the Auckland International Church, a Christian educational institute which the appellant has been attending since approximately 2005. Since that time, Mr Ford has met the appellant at least weekly at Sunday morning church services and afterwards at a shared lunch in which he has regular conversations with the appellant. As a result of these discussions he has no doubt that the appellant is a deeply committed Christian.

[49] So impressed were the church members with the appellant that, some time ago, they asked the appellant to take the lead in a Bible study group for non-English speaking members of the Christian fellowship held on Sunday afternoons. The leaders of the church recognised in the appellant not only a strong understanding of scripture but also a good grasp of the English language and an

ability to communicate in clear and precise language. From time to time the appellant discusses with Mr Ford the issues he intends to cover in the Bible study class and seeks clarification from him about points demonstrating that he is genuinely interested in teaching. Mr Ford has also been made aware from other members in the fellowship and in particular, Pastor Daniel Yi, that the appellant has been involved in outdoor outreach services in Manukau, which are held approximately four or five times a year.

[50] Mr Ford told the Authority that he has been made aware by the appellant on two occasions that he had not been honest with the authorities here in New Zealand about his past. The appellant told him that he had lied to assist a friend with the friend's own refugee claim and this had caused him to lie in his own claim. Mr Ford recalled that the appellant had told him he had visited Iran for approximately two or three weeks to visit his family and may have mentioned a further visit to Iran but could not be sure.

[51] Mr Ford explained that the fact that the appellant had admitted he told lies did not mean that he had come to doubt the appellant's Christian beliefs. Mr Ford explained that, in his view, the appellant has simply failed the test set for him by God and that the important thing from a Christian's standpoint is that the appellant has come to a position where he has acknowledged his wrongdoing and now told the truth. This evidences that the spirit of God is alive in him although it does not preclude the possibility that he may lie again in the future because humans are fallible.

The evidence of Daniel Yi

[52] Daniel Yi is the president of Auckland Edinburgh College and is also the senior pastor of the Auckland International Church. The school is situated in the same building as the church. He first met the appellant in 2005 when the appellant began attending the school. While the appellant studied, he also attended services at the church and since that time the appellant has been heavily involved in the church.

[53] The appellant always attends an English language service held every Sunday at 10.30am. After the service there is a separate Bible study group split into three separate groups – Korean, Chinese and English. The "English group" comprises foreign students from other than South Korea and China who wish to study the Bible. The appellant has, for the last few years, been the English service

leader. In this role, he has been involved in teaching the Bible to the English group every Sunday. He has also been involved in outreach services held in the Manukau City Centre every few months or so.

[54] Pastor Yi is “very sure” that the appellant is a genuine Christian. He believes that the appellant really wishes to serve God and is keen to learn more about the Bible. He has had numerous discussions with the appellant about his faith and understands from him that he has a strong mind to work as a missionary or a pastor for Muslim people.

[55] Pastor Yi told the Authority that he had been made aware, approximately one or two weeks prior to the hearing, that the appellant had not told the immigration authorities about his return to Iran. The appellant told him he did not want to lie but he was scared about his future. Pastor Yi told the Authority that the appellant is aware that he has done wrong but he understands that he is human and that he will make mistakes. Weighing this against everything he has observed in the appellant over the last five years, Pastor Yi has no doubt that the appellant is a good person and a generally truthful man. He is a committed Christian.

The evidence of Ms Houghton

[56] Ms Houghton told the Authority she met the appellant in approximately mid-2005 at the Mangere Accommodation Centre. Subsequently, the appellant came to an English language class she teaches at Auckland Edinburgh College. Ms Houghton has mainly been involved with the appellant in Bible study classes at her church (different from the Auckland International Church) on Thursdays. Most of the literature provided by her church is in English and the appellant translates this into Farsi and explains it. He has become so competent at fulfilling this role that Ms Houghton considers him in many ways to be her assistant teacher because he does more than merely translate. She has seen him explain Christian teachings to others in a way which evidences a real and deep-seated understanding of and commitment to the teaching of Christianity.

[57] Occasionally, Ms Houghton has seen the appellant in other settings. In particular, she has seen him at a number of missionary meetings at which overseas missionaries report to the church on their activities and experience overseas.

[58] Ms Houghton told the Authority that, a couple of weeks prior to the hearing, she had been told by the appellant that he had not shared all of the details with the immigration authorities in New Zealand about what he had been doing. While Ms Houghton was disappointed with what he had said, she was impressed that he had told her and it did not shake her belief that he was a genuinely committed Christian. She has seen him weekly at Bible study for many years now and nothing she has seen or observed in him makes her have any doubt that he is in fact genuine in his Christian faith. He has displayed kindness, honesty and faithfulness on a regular basis.

[59] Ms Houghton told the Authority that she has known people who are asylum seekers in New Zealand and who come to the church but, as soon as their case is decided, the church never sees them again. This is not the appellant. She advised the Authority that it was during Bible study classes that the appellant "really shines." He explains in English and Farsi and she does not believe one could fake the deep understanding of faith that he has.

The evidence of Mr Johnson

[60] Mr Johnson told the Authority that he first met the appellant at a refugee hostel some years ago and, since then, has been in regular contact with the appellant on social occasions. Over the course of their dealings the appellant has confided in Mr Johnson about his problems. In these discussions he told Mr Johnson that he had been involved in a business venture between a South Korean and an Iranian company which had turned sour and that he had been threatened by one of the executives of the Iranian company. Towards the end of this conversation he was informed by the appellant that his sister had lost a marriage opportunity because of her strong interest in Christianity.

[61] Mr Johnson also told the Authority that the appellant had told him he was gravely fearful about what would happen should he be returned to Iran. The appellant had been following the case of another person who had been removed to Iran after unsuccessfully claiming refugee status on the basis of a conversion to Christianity. The appellant told him that he had caused enough trouble for his family and did not wish to cause any more.

[62] Mr Johnson also told the Authority that, following the decision on his first refugee claim, the appellant asked him to help him obtain an Iranian passport in New Zealand to help him leave the country. He was aware that Mr Johnson had

helped facilitate the obtaining of a passport from the Iranian Embassy in New Zealand for another failed Iranian asylum seeker and asked that he did the same for him. Mr Johnson understands from his contacts that this failed asylum seeker was detained in an unofficial detention centre in Iran in August 2008 before being transferred to Evin Prison in February 2009. It has been reported to Mr Johnson that someone who visited this failed asylum seeker observed he had facial injuries.

Documents and submissions

[63] On 29 September 2009, the Authority received from counsel a written memorandum of submissions of the same date. Attached to those submissions were written statements dated 23 September 2009 from Dr Hanne and a statement dated September 2009 from Mr Ford. On 30 September 2009, the Authority received from counsel a statement dated 28 September 2009 by Mr Johnson.

[64] On 8 October 2009, the Authority received a letter dated 5 October 2009 from counsel, enclosing nine items of country information. On 13 October 2009, counsel submitted a DVD entitled "A cry from Iran", together with a copy of *Frontline Face*, dated May/June 2009 and a report from *Compass Direct* "Authorities tighten grip on Christians amid unrest" (11 August 2009).

[65] On 11 November 2009, the Authority served on counsel a translation of the pages appearing on the website of the Embassy of Iran in Wellington regarding the obtaining and renewal of passports.

[66] On 18 November 2009, the Authority received a letter of the same date from counsel regarding the appellant's involvement in a protest held in Auckland in June 2009. Attached were two items of country information relating to the arrest and detention of protesters in Iran following the disputed presidential election and the establishment of a "web crime" unit. Also attached was a file note prepared by counsel following a discussion she had with the appellant regarding the completion of his refugee application.

[67] On 21 December 2009, the Authority received a letter dated 18 December 2009 from counsel, regarding the appellant's application for a new Iranian passport from the embassy in Wellington, together with further items of country information relating to the post-election protests and violence. On 9 February 2010, the Authority received from counsel a letter dated 8 February 2010 together

with a report from *Compass Direct* 'Iran Detains Christians without Legal Counsel' (28 January 2010).

[68] At the conclusion of the hearing, counsel made oral submissions.

THE ISSUES

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

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

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

- (a) Objectively, on the facts as found, does the appellant have a well-founded fear of being persecuted?
- (b) If the answer is yes, is there a Convention reason for that persecution?

ASSESSMENT OF THE APPELLANT'S CASE

CREDIBILITY

[71] For the reasons that follow, the Authority finds the appellant only a partially credible witness. In summary, the Authority concludes that the appellant is genuinely a Christian and that the nature of his Christian practice has evolved over the many years he has been in New Zealand. It does not accept, however, that his sister has been detained because of her conversion to Christianity as he claims.

General credibility concerns

Present claim is the 'antidote' to the findings of the second panel's decision on the first appeal

[72] This claim by the appellant is the antidote to the decision of the second panel on his first claim. The second panel, while believing him to be a genuine Christian, found that the appellant was at that time (November 2006) no more than an ordinary convert who would not overtly seek to proselytise and convert other Muslims or take a leadership role in a church or Christian community in Iran. In his second claim, the appellant asserts that he has done just that – assumed a leadership role and actively converted his sister, a Muslim, to Christianity. While this is not an impossible development, the fact that these assertions do represent an antidote to the findings of the second panel is something which the Authority must of necessity be conscious when assessing the evidence in this case, particularly when viewed against the matters discussed below.

Persistent deceit and manipulation of New Zealand's immigration system

[73] The appellant has admitted telling lies to the New Zealand immigration authorities since he arrived in April 2005. The Authority has already set out above the lengthy procedural history which has taken place in respect of this matter. In each and every stage until he presented his second claim, the appellant had always maintained that his passport had been seized by officials at the Iranian Embassy in South Korea in 2003 and that he had remained in South Korea until he travelled to New Zealand in 2005. He gave this evidence to the RSB in his original claim. He repeated it to the Authority on two separate occasions, each time giving evidence under oath. He also repeated it on a further occasion to the Authority, in support of the appeal of another Iranian national who had claimed refugee status in New Zealand. Two separate High Court proceedings were initiated by the appellant during which he failed to disclose that the factual basis upon which he was presenting his first claim for refugee status was false.

[74] In fact, it was not until the appellant filed a further statement in support of his second refugee application in May 2009 that he admitted for the first time that, contrary to the statement he had given on multiple occasions in the past, his passport was in fact renewed in August 2003 by the Iranian Embassy in South Korea and that he had voluntarily used it to return to Iran. He further admits now that he had also been deported back to Iran in mid-2004 where he remained for a further 10 months.

[75] This history evidences a man who has bitterly contested the finding of untruthfulness of assertions he now concedes to be lies when it did not suit his purpose. His explanation for doing so, namely that he had committed himself to

helping a friend, rings hollow given the appellant's evidence that he had only met this person and hatched the joint enterprise of deceit a week before they entered New Zealand.

[76] While the fact the appellant has told lies does not automatically mean that he is telling lies about the genuineness of his Christian faith or the detention of his sister, his actions betray a degree of protracted cynicism with the purpose of undermining the integrity of New Zealand's immigration process which necessarily results in his evidence being treated with some degree of caution and scepticism.

Credibility concerns relating to the detention of AA

[77] The appellant has consistently maintained in his second claim that his sister has been detained for converting to Christianity and that his role in her conversion is known to the Iranian authorities. Indeed, a brief statement dated 7 May 2009 purporting to be from his sister confirming this was filed with the RSB in support of his second claim. This notwithstanding, the Authority is satisfied this aspect of his evidence is a lie told by the appellant to address the findings made by the second panel.

[78] In his evidence, the appellant painted a picture of a family that was very open-minded and tolerant in matters of religion and faith. He described his family as being people who were only nominally Muslim and that they did not observe the rituals of the Islamic faith. This went as far as his asserting that his family, from time to time, openly watched Christian broadcasts via satellite together. Both parents were aware of his conversations with his brother and sister during which he would discuss Christianity and encourage them towards a Christian perspective.

[79] Yet, at the same time, the appellant claims that his father arranged for his sister to be married to a man who was, in the appellant's description "a fanatical Muslim". This is implausible. The appellant agreed the customary practice in Iran is for investigations about the prospective bridegroom to be made by the father of the bride to ascertain their nature, character and reputation. The appellant attempted to explain this surprising match-up by claiming that these investigations did not reveal this man's religious views and attitudes as regards gender relations, which came as a complete surprise.

[80] This is rejected. The appellant's evidence was that, when he was in Iran, his family took steps to ensure that the brides they proposed for him came from moderate Muslim families. It defies belief that his father would not have ensured the same for his other children. The Authority has no doubt that issues surrounding a prospective marriage partner's views on religion and gender relations would be ascertained well before any marriage arrangement is entered into. The appellant could offer no explanation as to why, if the appellant's father was as open-minded on religion as he claims, he would not have found a moderate Muslim for his daughter to marry, just as he had sought to introduce his son to women of similar religious backgrounds.

[81] The significance of this is that the claimed fanaticism of the fiancé is the conduit through which the Iranian authorities are alleged to have come to know that AA had converted to Christianity and, by extension, of the appellant's role in that conversion. While documents have been filed to show that the marriage between the appellant's sister and the fiancé was dissolved by order of the court in 2009 on the basis of "mutual disharmony", the appellant's attempts to paint this disharmony as the source of his problems is unconvincing. When this is viewed against his history of protracted deception, the Authority has no doubt that his evidence regarding the arrest of AA is not true.

Credibility findings regarding the appellant's claim to be a Christian

[82] The above matters weigh heavily against the appellant's overall credibility. Dr Hanne, Mr Ford, Pastor Yi and Ms Houghton, when asked by the Authority, each listed truthfulness as a primary Christian virtue. His continued propensity to tell lies to maximise an immigration advantage casts a long shadow over his character and his claim to be a genuine Christian at all.

[83] Yet, after hearing from the appellant and his witnesses, the Authority finds it is left with a deep sense of unease about this appellant. He has consistently maintained an account of converting to Christianity in 2002 while in South Korea and being baptised there. Pastor Yi told the Authority that he made contact with the pastors named by the appellant as leading his South Koran church and they confirmed to him that he had been baptised in South Korea as he claimed.

[84] It is clear from the large amount of written evidence on the file and from the oral evidence given before the three different panels of the Authority who have heard evidence in relation to this matter, that the appellant has been consistently

engaged with Christian activity in New Zealand including attending church sessions, leading Bible study groups and involvement in various outreach activities over a number of years. While these activities could be cynically manufactured attempts to portray an untrue attachment to Christianity, he has produced a number of witnesses who have all testified that they have no doubt that the appellant is, in fact, a genuine Christian. One witness, Dr Hanne, has four decades' experience in dealing with international students who profess an interest in Christianity. Other witnesses such as Ms Houghton and Mr Ford, with less, but still lengthy, associations with Christian converts, have seen the appellant on a weekly basis for over four years. All of these people remain firmly of the view that this man is a Christian, albeit an imperfect one given that he has now admitted to them that he has told lies to the New Zealand immigration officials.

[85] Importantly, the Authority notes that Mr Ford stated in his evidence that it was the church members who asked the appellant to take on the leadership role in teaching to the non-English speaking group, not just because of his language ability, but because of apparent Christian virtues and strong knowledge of scripture. Ms Houghton also regards the appellant as her assistant scripture teacher. Clearly, these are not circumstances designed to bolster this second claim. It is most unlikely that two *separate* church groups would have agreed to him taking on a teaching/leadership role in the first place and continuing to do so if his underlying Christian beliefs were 'suspect' or that he was not genuinely committed to teaching scripture to others.

[86] Moreover, Ms Houghton told the Authority that she had, from time to time and including recently, seen the appellant at lectures given by missionaries who were explaining their experiences overseas. Ms Houghton stated that she had been 'surprised' to see him there. If the appellant were truly attending these events out of a desire to manipulate his leadership/teaching credentials, it seems unusual he would not inform Ms Houghton, with whom he is close and who had agreed to act as his witness, of his intention to go to these events.

[87] While the Authority has no doubt the appellant had mixed motives in agreeing to assume the leadership role (indeed, Dr Hanne acknowledged the possibility), his witnesses were all clear that teaching others to come to and better understand Christianity *now* forms a genuinely core component of his Christian belief structure. The Authority spent many hours with the appellant questioning him. It has closely observed his demeanour on this issue which was, on the whole, positive. After careful reflection, the Authority finds itself left in a position of

doubt about the credibility of this aspect of his account. In accordance with usual principles in this jurisdiction, the appellant is entitled to the benefit of that doubt.

Credibility – summary

[88] The Authority therefore accepts the appellant's account to have assumed a leadership role in the church as an integral aspect of his genuine Christian belief. It accepts that part of this involves the teaching of scripture to others who have less understanding than he. The Authority also accepts that he has participated in a demonstration in Auckland in June 2009 protesting against the officially declared results of the 2009 election. It does not accept, however, that his sister has been detained as he has claimed.

Objectively, on the facts as found, does the appellant have a well-founded fear of being persecuted?

[89] "Being persecuted" comprises two elements – serious harm and the failure of state protection – see *Refugee Appeal No 71427/99* (16 August 2000) at [67]. Further, the appropriate standard for persecution is a sustained or systemic violation of core human rights. See in this regard J C Hathaway *The Law of Refugee Status* (Butterworths, Toronto, 1993) at p108 and *Refugee Appeal No 2039/93* (12 February 1996).

[90] The Authority has considered the position of Iranian Christian converts on a number of occasions in recent years. That review of country information has found that those who are ordinary converts and not church leaders and who do not seek to proselytise have no well-founded fear of being persecuted – see for example, *Refugee Appeal No 74911* (1 September 2004); *Refugee Appeal Nos 75368-71* (12 July 2005); *Refugee Appeal No 75376* (11 September 2006); *Refugee Appeal Nos 76083, 76084 and 76085* (27 June 2008); *Refugee Appeal 76204* (16 February 2009); *Refugee Appeal No 75637* (5 October 2009).

[91] It is not intended to embark on a lengthy traverse of country information relating to the position of Christians in Iran. In general terms, it must be remembered that Iran remains a state with a poor human rights record in which persons are often arbitrarily detained, held in incommunicado detention and subjected to beatings and other forms of mistreatment during short periods of detention – see generally United States Department of State *Country Reports on Human Rights Practices for 2008: Iran* (25 February 2009) at section 1a.

[92] A general overview of religious freedom in Iran can be found in the United States Bureau of Democracy, Human Rights, and Labour *International religious Freedom Report 2009* (26 October 2009) which states:

“The Constitution states that Islam is the official state religion, and the doctrine followed is that of Ja’afari (Twelver) Shi’ism. The Constitution provides that “other Islamic denominations are to be accorded full respect,” while the country’s pre-Islamic religious groups--Zoroastrians, Christians, and Jews--are recognized as “protected” religious minorities. However, Article 4 of the Constitution states that all laws and regulations must be based on Islamic criteria. In practice, the Government severely restricted freedom of religion.

During the reporting period, respect for religious freedom in the country continued to deteriorate. Government rhetoric and actions created a threatening atmosphere for nearly all non-Shi’a religious groups, most notably for Baha’is, as well as Sufi Muslims, evangelical Christians, and members of the Jewish community. Reports of government imprisonment, harassment, intimidation, and discrimination based on religious beliefs continued during the reporting period. Baha’i religious groups reported arbitrary arrest and prolonged detention, expulsions from universities, and confiscation of property. Government-controlled broadcast and print media intensified negative campaigns against religious minorities, particularly the Baha’is, during the reporting period. All non-Shi’a religious minorities suffered varying degrees of officially sanctioned discrimination, particularly in the areas of employment, education, and housing.

Although the Constitution gives Christians, Jews, and Zoroastrians the status of “protected” religious minorities, in practice non-Shi’a Muslims faced substantial societal discrimination, and government actions continued to support elements of society who created a threatening atmosphere for some religious minorities.”

[93] In relation to evangelising Christians, the report notes:

“Christians, particularly evangelicals, continued to be subject to harassment and close surveillance. During the reporting period, the Government vigilantly enforced its prohibition on proselytizing by closely monitoring the activities of evangelical Christians, discouraging Muslims from entering church premises, closing churches, and arresting Christian converts. Members of evangelical congregations were required to carry membership cards, photocopies of which must be provided to the authorities. Worshipers were subject to identity checks by authorities posted outside congregation centers. The Government restricted meetings for evangelical services to Sundays, and church officials were ordered to inform the Ministry of Information and Islamic Guidance before admitting new members.”

[94] The report then lists instances where individual Christians have been arrested, Christian material seized and churches closed.

[95] The report Christian Solidarity Worldwide, *Iran – Religious Freedom Profile* (September 2009) describes the position of apostates in greater detail. After reporting various instances where Christians have been arrested, detained, interrogated and brought before the courts, the report concludes, at p7:

“Muslim converts to Christianity are still the most vulnerable among the Christian community in Iran. However, the death penalty is not applied and there are vibrant house and public churches that are mostly formed by converts. Even though converts are able to continue their faith and meet with others, **converts who are in leadership positions and lead Christian ministries face serious risk of**

detention, intimidation, imprisonment and extra-judicial physical harm.”
(emphasis added)

[96] The report continues, at p12:

“Evangelical and Pentecostal churches are distrusted and their members are persecuted in Iran. In addition to state-based persecution, church leaders or proselytizing Christians have been attacked, kidnapped and killed by mobs or state agents. One of the main reasons for such intense persecution has been the high number of apostates from Islam in Evangelical and Pentecostal churches. Unlike ethnic Christians of the Armenian and Assyrian communities, Protestant churches actively proselytise. The fact that most of these groups meet on private property also fuels suspicion and reaction from local authorities. The government has requested that church leaders provide a full list of their members to the Ministry of Information and Islamic Guidance and do not allow any Muslims to attend their churches or change their religion. Many church leaders continue to ignore these orders. In 2009, an Assyrian church in Tehran which allowed Christians from a Muslim background to attend its services and to be members of the church was shut down by authorities.

The publication of any religious material in Persian is forbidden. This directly affects Christians with a Persian background, rather than ethnic minorities who use their own languages, such as Armenian, in religious practices.” (emphasis added)

[97] The Norwegian Country of Origin Information Centre (“the LandInfo Report”): *Christians and Converts in Iran* (10 June 2009) notes, at p7, para 2.2:

“There are no reliable figures for how many converts live in Iran. Based on available information, there are probably no more than between one and two thousand. Most of them are said to live in Tehran, where church leaders state that the three churches in question have a combined membership of between 680 and 730 (LandInfo 2006). Approximately 150 converts are said to be affiliated to a church in Shiraz. In addition, there are a few congregations affiliated to the same churches in other towns. Some of them have church buildings and are registered religious communities, but most of them are said to be organised in ‘home churches’. This means that they are not registered and approved by the Iranian authorities, which is a requirement for engaging in lawful religious activity.

The Iranian authorities’ interest in ‘home churches’ is generated by their quest for information. The authorities want information about the ‘enterprise’ itself, of who is in charge and of members, participants or adherents. Those who do get arrested and who are released on bail after interrogation will not be charged with apostasy but with other/alternative offences which do not lead to the death penalty (Iranian lawyer, interview in Tehran January 2009).

According to a 2009 report by the Danish immigration authorities, ‘home churches’ appear to be organised as individual churches (or congregations) as opposed to being part of church networks. The total number of such ‘home churches’ is unknown. According to the same report, an international organisation in Turkey estimates that there are approximately a thousand ‘home churches’ in Iran, while a Western embassy in Tehran states that it is difficult to know the actual number of ‘home churches’ in the country (Danish Refugee Council & Danish Immigration Service 2009, page 33).”

[98] Again, the LandInfo report notes, at p11, that it is those who occupy leadership positions or seek to evangelise who face problems with the authorities:

“Problems with the authorities primarily arise in relation to outgoing and evangelical activity aimed at Muslims. All Christians (whether born Christians or converts) who

evangelise in relation to Muslims and, for example, hand out Christian literature risk problems in the workplace and in the local community. If the matter is reported, the person in question risks being tried on serious charges.

In practice, Iranian Muslims who convert to Christianity largely live in the same way as those who are born to Christian parents. However, it is a precondition for avoiding problems that converts behave discreetly, allow religious practice to take place within the confines of the religious community and otherwise treat their faith as a private matter, which most of them do.

According to church leaders, it is only rarely that ordinary members have experienced problems obtaining a job, gaining admission to university or obtaining a passport. Experience shows that it is primarily the leadership of the evangelical churches that are in the authorities' spotlight and that the tolerance of the authorities ends with instances of open evangelising and – in some case – the ordination of priests.”

[99] Counsel submits that the appellant's activities in New Zealand easily meet this threshold of exposure to risk of serious harm. Before dealing with this submission, however, two other points arising from the country information need mentioning.

[100] First, in relation to the proposed mandatory death penalty being imposed for apostasy, until recently reported to be a provision of a draft Penal Code before the Iranian parliament, country information filed by counsel shows that this provision has been dropped – see “Parliamentary Committee scraps death penalty for apostasy and stoning”, *Christian Solidarity Worldwide* (26 June 2009). Counsel nevertheless submits that it is not safe to rely on this information given that the source of the information is only one member of the Iranian parliament, the timing of the announcement relative to the Presidential election in June 2009, and the fact the legislative process has not been completed. However, no country information has been submitted to challenge the accuracy of this development. In any event, the issue is something of a red herring in that, as recognised in *Refugee Appeal No 76204* at [147], the power to impose the death penalty for apostasy already exists under *Sharia* law which judges can apply in cases where no relevant codified law exists. Nor does it alter the fact that there have been no reported cases of the death penalty being implemented for apostasy under *Sharia* law inside Iran since 1994.

[101] Second, counsel submits that the appellant's Christian activities must be seen in the context of the disputed presidential election in 2009. Country information submitted by counsel shows that Christians continue to be arrested – see, for example, *Iran tightens Grip on Christians as unrest Rolls* Compass Direct News (11 August 2009). The more recent Compass Direct report ‘Iran Detains Christians without Legal Counsel’ (28 January 2010) indicates that arrests of

Christians are continuing and that the duration of detention can vary. However, as noted in *Refugee Appeal No 75637* at [76], “it is difficult to say whether these arrests are part of a wider campaign by the conservative establishment to blame ‘foreign interference’ for the civil unrest or are unrelated”. Given the conclusions which follow, it is unnecessary to resolve this issue in the context of this appeal.

Conclusion on well-foundedness

[102] The Authority accepts that since the determination of his last refugee claim in 2006, the appellant’s faith has grown to the point where the religious teaching of others, in the way he has done at his two churches, has become a central part of his manifestation of his Christian belief. It is accepted that, for this man, such activity is at the core of his religious belief and is thus relevant to his right to freedom of religion under Article 18 *International Covenant on Civil and Political Rights* 1966. As the decisions of the Authority referred to in paragraph [90] make clear, he could not manifest his religious belief by assuming such a position or role in Iran without exposing himself to the risk of serious harm. It is no answer to his predicament to require him to be discreet – see *Refugee Appeal 74665* (7 July 2003) at [113]-[115].

[103] The country information discloses that Christian converts who proselytise in Iran face the risk of being persecuted by the authorities, or by agents acting with their consent, in the form of arbitrary detention, physical mistreatment and severe discrimination. The requirements of both serious harm and the absence of state protection are satisfied and the level of risk is that of a real chance.

[104] For these reasons the Authority accepts that the appellant has a well-founded fear of being persecuted. The first principal issue is answered in the affirmative.

Convention ground and nexus

[105] The appellant’s predicament is plainly contributed to by his religion. The second principal issue is also answered in the affirmative.

CONCLUSION

[106] For the reasons mentioned above, 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.

"B L Burson"

B L Burson
Member