

REFUGEE STATUS APPEALS AUTHORITY
NEW ZEALAND

REFUGEE APPEAL NO. 70283/96

K J & F S

AT AUCKLAND

Before: J M Priestley QC (Chairman)
P Millar (Member)

Counsel for Appellant: Ms K Allison

Representative for NZIS: No Appearance

Date of Hearing: 22 January 1997

Date of Decision: 10 April 1997

DECISION

BACKGROUND

The appellants are husband (KJ) and wife (FS). They are Iranian nationals aged 29 and 26 respectively. By agreement, their respective applications for refugee status are being determined together.

The couple were married in Iran in September 1992. They have no children.

The husband, KJ, fled from Iran in circumstances to be described shortly, on 8 April 1995 for Malaysia. The wife, FS, left Iran for Malaysia approximately a fortnight later. The couple lodged a claim for refugee status with UNHCR in Kuala

Lumpur. Their claim was, however, rejected by UNHCR, after a final review on 26 June 1995.

Two days later, FS arrived in New Zealand on a photo-substituted passport and claimed refugee status at Auckland International Airport. On 17 August 1995, KJ arrived at Auckland International Airport, again using a false passport, and claimed refugee status on arrival.

The couple were duly interviewed by the Refugee Status Branch (RSB) of the New Zealand Immigration Service. By letter dated 3 October 1996, refugee status was declined. From that decision, both KJ and SF have appealed.

RELIGIOUS CONVERSION

The appellants claim the protection of the Refugee Convention on the ground that there is a well-founded fear that they will be persecuted if they were to return to Iran on the ground of their religious belief.

KJ converted to Christianity and was baptised whilst he was in Japan in March 1991, some four years before he fled from Iran. FS did not convert to Christianity until her arrival in New Zealand. She did, however, support and participate in her husband's religious activities in Iran after her marriage.

Although it is not possible to lay down specific rules to be applied inflexibly in all cases, as a general rule the Refugee Status Appeals Authority is disinclined to grant refugee status to Iranians who commit apostasy after their departure from Iran, particularly when such conversion to Christianity takes place whilst a refugee application is pending. The religious belief of an individual is ultimately a deeply personal matter, inextricably linked with faith. For millions of people too, one's religion is very much an accident of birth, determined by the prevailing religious climate of the country in which one is born and raised.

Some countries, and Iran is a notorious example, incorporate religious beliefs and institutions into the structure of the state. Adherence to Islam and its doctrines is, to a large extent, obligatory for Iranian citizens with the Iranian state being akin to a theocracy. A similar situation was to be found in European nations at the time of the Reformation and shortly thereafter, both the maxim of *cuius regio eius religio* and the Inquisition being manifestations.

Some interpretations of Koranic law and, in particular, the prevailing climate in Iran, suggest that apostasy will be met by death. Hence the appeal of apostasy to Iranian refugee claimants. Some cynicism is justified. The prevailing secularism of western countries, coupled with political freedom and the absence of the multitude of restrictions and controls which confront Iranian citizens, are understandably attractive to many of Iranian citizens. It does not follow, however, that those attractions inevitably kindle in Iranians a desire to convert to Christianity. The Christian religion, in its current state of evolution, is not central to the secular life of western countries.

It thus follows that claims by Iranian asylum-seekers of conversion to Christianity are likely to be subjected to close scrutiny, particularly as to the reasons for such conversion. In that regard, the Authority is mindful of the recent approach (January 1996) of the Swedish Aliens Appeal Board, which stated in a press release that the Full Board had declined applications for refugee status in five cases regarding Iranian converts. The Board stated:

“Conversion from Islam to Christianity is, according to Iranian authorities, not possible, and a conversion abroad is considered by the authorities as a “technical” act, in the purposes of obtaining asylum, which therefore does not mean that the person in question risks any serious harassment upon return. The concept of “taqieh”, which is widely accepted in Iran, makes it legitimate to lie in order to achieve certain purposes. This means that there is a high level of acceptance in Iran of the lie as a means to obtain a purpose, such as seeking asylum in the West. Iranian nationals who have converted from Islam to another religion, and who keep the conversion as a personal matter, do not attract the attention of the authorities.

[In summary] an Iranian national who converts from Islam to another religion, normally does not risk the kind of prosecution prescribed in the Shari’ law, whether the conversion takes place in the home country or abroad. There is also no significant chance that he or she would be the target of any actions from the authorities or of any serious harassment.”

The above comments are totally consistent with the Authority’s previous jurisprudence in this area. Not only are the bona fides of a conversion relevant, but so too is the overall relevance of religious belief to a claimant’s personality and possible conduct on return.

The above comments are intended as a guide to future appellants and their advisors and intended to discourage religious conversions of dubious merit being called in to aid refugee claims. There may well be occasional cases where conversion to Christianity after flight from Iran may lead to a grant of refugee status. Such cases, however, are likely to be the exception rather than the rule.

THE APPELLANT'S CASE

The appellants' case is one such case. The conversion to Christianity of KJ, although occurring outside Iran, took place some years before his eventual flight from Iran. The conversion of FS took place (so far as her formal baptism was concerned) after her arrival in New Zealand. However, in respect of both appellants, the risk of persecution on the grounds of religious belief arose before their departure from Iran.

The appellant, KJ, is the son of a date farmer. His mother is a devout Muslim. The appellant was born and educated in the city of B, where his parents still live. The appellant's arrival at secondary school coincided with the Revolution. These were not pleasant years for the appellant, being permeated with an atmosphere of fear and the culture of informants. One of the appellant's cousins was, from the outset, a member of the Mojahedin. This cousin was arrested in approximately 1980, following the official crack-down of the Khomeini regime on the Mojahedin. This family connection resulted in the entire family being regarded by the authorities with some suspicion.

In 1985, KJ, as a result of various family connections, was able to secure admission to S University. Deficient eye-sight had exempted him from military service. Again, the atmosphere at university was permeated with fear and religious doctrine. Some years into his study, the appellant and a large group of other students were expelled from S University. The reason for their expulsion was the group's participation in protest activities. The protests had two targets. The first was the diversion of a considerable portion of the University's budget to the erection of a mosque, when there was an adequate mosque nearby. The second target was the University's policy to give good grades and general preference to veterans of the war against Iraq, regardless of the performance of those students.

Two or three years prior to his expulsion from S University, KJ accompanied his mother on a religious pilgrimage to Damascus. In 1987, the family learned that the cousin who had been a Mojahedin member had been executed.

Thoroughly disillusioned with his life in Iran, the appellant left Iran (legally) in November 1990 for Japan. There he worked for approximately two years for a

construction company as a labourer. A considerable proportion of the workforce were Peruvian. These Peruvians were friendly with a visiting American who lectured at a Baptist church. His fellow workmates introduced the appellant to this Baptist Christian church in Shinjuko, near Tokyo, where the appellant began to worship. He appears to have attended church regularly and to have become a believer in Christ's teachings.

Shortly prior to his departure for Japan, KJ had met FS in Tehran. KJ's twin sister had effected the introduction. FS was studying veterinary science in Tehran. The meeting took place approximately seven or eight months before KJ's departure for Japan. There was no contact between the couple during the two years KJ was in Japan. Approximately one month after KJ's return Japan, however, the couple were married. KJ had informed his fiancée shortly before their marriage that he had converted to Christianity. FS was accepting of the position.

Between 1992 and 1995, the appellant, FS, worked as a veterinary technician in Tehran. KJ, for his part, had two jobs, first as a mechanic in a workshop in Tehran, and secondly as a partner in a cardboard manufacturing concern. The appellant's partner in this business was EB. EB and the appellant, KJ, had first met in Japan. They shared accommodation. KJ had confided to EB in Japan that he had converted to Christianity. At that time, this information was of little consequence so far as EB was concerned.

KJ's practice of Christianity between 1992 and 1995 in Iran was clandestine. Shortly after this marriage, KJ took his new wife to a Christian church in Tehran. He explained his position to the priest and asked if his wife could be converted. The priest advised them that this was too risky. From time to time, the couple took the opportunity to attend Sunday services at the church, but hid their religious activity from their family and colleagues.

FS, for her part, was born and educated in K, where her family still live. Her family are practising and devout Muslims. A cousin of FS's mother is both a member of the Komiteh and a body-guard of the chief Mullah of the mosque at K. As it happens, EB (the business partner of KJ) also came from the K region and during the years after their marriage, the couple befriended EB who became aware of FS's family and their position. The Komiteh member who was a cousin of FS's mother was apparently well-known for his fanaticism. He had the reputation of having summarily executed various people, and had also, on one occasion, been

witnessed assaulting his own sister in front of guests because she was wearing a small quantity of lipstick.

In the back of KJ's mind was a concern that the religious beliefs of him and his wife might one day be discovered. The appellant already had a valid Iranian passport. Steps were taken to issue the wife with a passport in 1994. The couple both obtained a Thai visa so that there was some country in which they could possibly take refuge in a hurry, should the need arise. The passports were secured in a safe in KJ's office, together with a certain amount of currency. FS was aware of these arrangements.

The Authority is satisfied that these precautions were taken for the reasons stated by the appellants. The appellants, particularly KJ, were closely examined as to any circumstances which might suggest that they were economic refugees. Both had secure jobs. They lived comfortably in Tehran and had no financial difficulties or problems. They were, for all intents and purposes, a well-educated and happy young couple.

Problems began to arise in 1994, when EB asked for money by way of a loan from KJ. Further loans were demanded but no repayments were ever made. When the question of repayment was raised by KJ, EB reminded him that he knew about KJ's conversion to Christianity in Japan. It was suggested by EB that if KJ did not want his wife's family to know about his religious practices, it would be best if repayment of the loan was not sought. EB persisted in demands for further loans. KJ resisted. Eventually EB played what he saw as his trump card, travelled to K and informed FS's family about the Christian beliefs of their son-in-law.

In early April 1995, KJ returned home from work to find the house full of his wife's relatives in a state of anger. The family had already searched the house and had discovered some articles about Christianity and a Bible. FS was supportive of her husband, but her family simply refused to believe that she could espouse or support an apostate. They considered that she had been tricked. The family's solution was to imprison FS and drive her back to their home in K, some 11 hours away. KJ, in the meantime, was able to flee from his wife's relatives.

There follows a remarkable tale of risk and, on the part of FS, considerable bravery. The couple had had little time to confer about the situation. All they knew was that they had a contingency plan of fleeing to Malaysia if possible. (Iranians

do not require visas to visit Malaysia. The Thai visas were secured as a back-up.) Within two days, KJ had uplifted both money and his passport from the safe in his office and had left the country for Kuala Lumpur. FS, in the meantime, was imprisoned by her family in their home in K. After a few days, she was able to lull her family into a sense of false security by pretending that she had indeed been deceived by her husband and wanted to be rid of him. Their guard was lowered. One day, whilst the family were out shopping, FS escaped from the house, made her way to the bus station and journeyed by bus back to Tehran. Once there, she was able to make her way to her husband's place of work and obtained the balance of the money and her own passport from a fellow mechanic of KJ.

Uncertain even whether her husband had succeeded in escaping to Malaysia, and certainly not knowing whereabouts in Malaysia he might be, the appellant made her way to the airport in Tehran and took a flight to Kuala Lumpur. This was approximately two weeks after her husband's departure. KJ for his part, hoping that his wife would be able to escape, had been waiting in the arrivals hall at the terminal of Kuala Lumpur airport, deliberately meeting those Iranian Airline flights flying to Kuala Lumpur from Tehran.

The couple promptly applied for refugee status at the UNHCR office in Kuala Lumpur. Refugee status was declined. The UNHCR staff had doubts about whether KJ had been converted to Christianity since he had no proof of where he was baptised in Japan and was unable to remember the name and the address of the church. The interviewing officer also had serious concerns about the apparently well-planned manner in which the couple had departed from Iran and their acquisition of visas for Thailand.

Within two or three days of UNHCR's rejection of the refugee claim, the couple whose funds were limited, arranged for FS to travel from Malaysia to New Zealand. She arrived in Auckland on 28 June 1995. Over two months were to elapse before KJ left Malaysia for New Zealand. He, through some contacts, and against the security of monies which were still owing to him in Tehran, was able to raise the necessary money.

Since arriving in New Zealand FS, perhaps unsurprisingly given the circumstances of her escape from her parents' home, has had no contact with her family at all and has not endeavoured to communicate with them. The position of KJ,

however, is different. There is evidence which suggests that the authorities in Tehran have been seeking the appellant.

The first evidence is a recent letter from KJ's sister. This letter contains a number of passages suggesting that the writer hopes that KJ is well and expressing regret that they may never meet again. The letter goes on:

"Thank God you are OK and in good health. Sepah is the only trouble. I ask you not to make phone calls as we have some problems with telephone calls and because of this it would be better if I telephone from Iran. About father. He has been taken to Sepah for interrogation three times. No idea what is happening. We may have troubles caused by the authorities. I can't tell about this here. God help us."

The appellant, KJ, gave evidence that he had made telephone contact with his work colleague, A, at the mechanical workshop. A informed KJ that he (A) had been taken away and interrogated by the Sepah. This telephone call between A and KJ took place approximately seven weeks after the appellant's arrival in New Zealand. Additionally, the appellant, KJ, had been told, during the course of a telephone call with his sister, that his father had been taken away for interrogation.

KJ told the Authority that, if he were to return to Iran, he would find it extremely difficult to change his personality and he would continue to practise his religion. FS was much stronger in her reaction to a return to Iran. She informed the Authority that she could not stand it and would find it almost impossible to suppress her beliefs in the face of so many wrongs which she would see.

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 Re ELLM (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?

DECISION

The Authority is satisfied that the appellants have told a true and correct story. We believe that the appellant, KJ, was indeed converted to Christianity in Japan in 1991; that he continued to practise his religion covertly after his return to Tehran; and that he shared his religious beliefs with his new wife and worshipped occasionally with her.

We are also satisfied that the appellant, FS, is a strong-willed resourceful and brave person who has indeed defied her family and who was able to escape from their clutches and rejoin her husband in the manner which she has described.

In reaching this conclusion, the Authority has given careful consideration first to the apparent rejection of the appellants' refugee claim by UNHCR in Kuala Lumpur and secondly to obvious concerns raised by the ability of this couple, not once but twice, to journey alone and to have left Iran in the organised and prepared way they have described.

We note that UNHCR did not have the benefit of KJ's baptismal certificate in Japan, which was produced to us as evidence, nor it appears was UNHCR given the full details of the strong reaction of FS's family.

We are satisfied that the appellants have told a truthful story which has not been fabricated for the purposes of becoming economic refugees. Other than the execution of KJ's cousin, and the frustration of KJ's university career, the appellants encountered no significant problems with their life in Iran. The appellants' tale is fraught with personal risks and, on FS's part, considerable bravery. Their story is consistent with their personalities as the Authority observed them. If fabrication was the goal of the appellants, it is probable that a different tale would have been spun.

The key to the appellants' claim is the outraged hostility of FS's family to the discovery of the Christianity of their son-in-law. The fact that the cousin of FS's mother is a member of the Komiteh and a highly placed official in K, is really the

key to the appellants' case. It is that aspect which sets this case apart from those of Iranians who have converted to Christianity after their departure.

The Authority notes that the arrival of FS's family to Tehran after the betrayal of EB was rapid. Their anger was high. The family threatened KJ with death. They abducted and imprisoned FS. The Komiteh official who is related to FS would undoubtedly have it in his power to organise the interrogation of A (KJ's fellow employee) and also to arrange for the interrogation of KJ's family. This is clearly a case where the highly placed official, who is a member of FS's family, has been able to organise Sepah investigation which could well be on-going. FS's family undoubtedly are outraged that their intelligent, qualified daughter has not only married a Christian but appears to have been "hood-winked" by him. In the eyes of their own friends and associates in K, this would involve considerable loss of face and would justify a harsh reaction. The Authority thus does not consider that the threats made against the couple by FS's family were idle threats. In addition, the perception of FS's family that FS's conversion to Christianity was the result of KJ's proselytisation increases the risk of KJ being the target of persecution.

For all these reasons therefore, the Authority is satisfied that, if KJ were to return to Iran, there is a real chance that he would be persecuted on the ground of his religious belief. We are further satisfied that, given the strength of her personality, her attitude, and her deliberate defiance of her family, there is also a real chance that FS would be persecuted for the same reason.

We are further satisfied that because the Komiteh have been alerted to the apostasy of KJ, there is a real chance of the appellants being detected and persecuted anywhere in Iran. Relocation in the circumstances of this particular case is thus not a safe option.

The appellants have a well-founded fear of persecution on the ground of their religious belief. The criteria of the Convention are satisfied. The appellants are both entitled to refugee status. The appeal is allowed.

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Chairman