REFUGEE STATUS APPEALS AUTHORITY
NEW ZEALAND

REFUGEE APPEAL NO. 2071/93

HB
(AT 2071)

AT AUCKLAND

Before:	A R Mackey (Chairperson)
Counsel for Appellant:	Mr R McKee
Representative for NZIS:	No Appearance
Date of Hearing:	10 March 1995 & 16 March 1995
Date of Decision:	14 July 1995

DECISION

This is an appeal against the decision of the Refugee Status Section of the New Zealand Immigration Service (RSS) declining the grant of refugee status to the appellant, an Iranian national of the Muslim faith.

The appellant arrived in New Zealand on 20 August 1993 without a passport. He was interviewed at the airport and subsequent to that, lodged an application for refugee status in this country. The application was declined by the RSS in a letter dated 2 December 1993. He then appealed to this Authority.

BACKGROUND

As a background to the manner in which refugee claims by Iranians are treated by the Authority, the statement in respect of "Refugee claims" set out in Refugee Appeal No. 1331/94 Re NK (May 1995) 2-4, is adopted by the Authority in this case.

THE APPELLANT'S CASE

The appellant is from the city of S in Iran. He comes from a family of seven. His parents are alive and he has three brothers and one sister. All of his family live in S.

The appellant is a 34 year-old single man. After leaving school, he worked for approximately one year in a mechanic's shop owned by a relative. He then had to undertake military service. It appears the appellant signed up for five years with the Komiteh as a pasdar, as he thought, in late 1983 at the time of joining, this was a better option than going in to the army and possibly being sent to the Iran/Iraq war.

In his opening address, the appellant's counsel stated that the appellant admitted to being a member (pasdar) of the Komiteh, but he would state that he had not been involved in any human rights abuses for which the Komiteh were notorious. At this time, the "Exclusion Clause" of the Convention on Refugees set out at Article 1F was shown to the appellant by the Authority, and translated to him so that the appellant understood the terms of it.

The appellant explained to the Authority that he had been called up at the beginning of January 1984 and had been able to complete his service with the Komiteh, after a period of some two and a half years, which was much earlier than he had contracted to undertake. He produced two cards showing his photograph which, when translated, showed that they were evidence of his completion of service in the Komiteh. One stated a period of service had been from 5 January 1984 until 5 June 1985, and the other showed a service date from 4 January 1985 until 5 July 1985. His unit is stated as "Komiteh (Islamic Revolution)". He also provided a picture of himself in full Komiteh uniform, at the end of his hearing. The appellant explained that the cards were required for identification, particularly

during the time of the Iran/Iraq war and it was not possible to get a passport without producing evidence of having completed military service.

The appellant said that he had also carried a "warrant" as a form of identification when he was in the Komiteh. That warrant was held in the car and if a defendant or a person they were apprehending asked, they would show it to them. Usually however, they were recognised by their uniform.

The appellant explained that he had three choices when he was called up. These were to either join the Komiteh, the Sepah or to go into the army. The appellant said he had no major or specific reasons for joining the Komiteh, but thought that the salary and expenses would be better in the Komiteh than in the army. He explained that the Komiteh has been set up as a speciality service by the Islamic government to operate in the cities and the Sepah was in charge of the borders. At the time he had joined the Komiteh, the lines of authority between the Sepah and the Komiteh were not clearly separated. He said that the Komiteh was set up as a group of "young helpers of the revolution" and that the Komiteh force was led by a religious judge who was a senior Mullah and the leader of Friday prayers.

The appellant said that he was not a strong supporter of the revolution and had just joined the Komiteh because he had to do his service. He said he was not expressing any specific ideals in joining and it was not an intentional political or religious act by him. He explained that not many of his friends joined with him although he had made friends while he was in the Komiteh.

He was given basic training and considered the Komiteh, at that stage, in his city of S, were not well-organised. For example, he said he was given a gun on his first day but was not told how to use it. It was explained to him that he would learn. He soon realised that it was a very poorly organised group and that he himself was not capable of carrying out the job he was supposed to do. When asked what his job was meant to be, he explained that, apart from the initial training, he was given no detailed course of instruction and that there was no garrison available to them at the time and they had to borrow a garrison from the army. Only at the end of his time of service did they have their own garrison.

His day-to-day job in 1984 had been to go on security checks, patrolling in a car and keeping guard over buildings such as television and radio stations against counter-revolutionaries. He served 24-hour shifts and then was able to spend 24

hours at home. Other activities carried out by his patrol were to watch people's clothes to see if they were appropriate and to ensure there were no gatherings of more than four or five people. If there were, these were to be broken up as they were considered to be potentially anti-government groups.

The appellant was asked whether he had made any personal arrests. He explained that he had tried not to be involved in direct confrontations with people who they apprehended. He said many times he acted as the driver and thus avoided direct confrontation. He also said that he often had arguments with other Komiteh people about the poor way they treated people. There were four in his group and the group arrested people on many occasions and delivered them to headquarters for interrogation. Once people had been delivered to headquarters, they were usually held for one day or more and then released. The decision on whether they were released was made by the leader of his group. He was able to choose the patrol he was in, and therefore chose a group who were like-minded to him. He said his group did not carry out activities such as forcing people to cut their hair or take their shoes off.

In early 1985, he was chosen for some special intelligence work by the intelligence commanding officer. The officer called at his centre in S, and chosen five people at random, out of more than 100, serving in the S branch of the Komiteh. When asked why he and the four others had been chosen, the appellant said he was not sure and did not know whether it was a form of promotion or demotion, or whether he had been picked out for a specific reason. He said there were no tests and no questions put to him and the other four, and he did not think he had been recommended by his immediate superior. After being chosen, they were told that they were to study intelligence work and were taken off to a confiscated house where they were kept for one month.

During that month, he was only given a short period of leave and the person in charge explained that their personalities would be assessed over the time they were on the "course". In fact, the period spent in the house was very boring and much time was spent watching television and reading. It took some time before actual instructions took place, and finally, they were given some training on how to identify people for intelligence purposes. They then had to shave and look like other members of the public. They did not wear uniforms, and drove around in unidentified cars. Their job was to look for suspicious people and to take them in and question them about their jobs, their thoughts and their background.

He felt that they did not really know what they were doing as they were not psychologists but they were made to act in this manner. The result of their activities was that it made the general public more unhappy and against the government. On arrest, people were taken for questioning and put before a supervisor who asked most of the questions. The aim of their intelligence activities was to put the people in fear of the Komiteh. When asked what happened if people were not co-operative, the appellant said that they had to co-operate and the people were scared and they had to talk. In general, people were very frightened of his group and their special patrol cars.

When asked whether he had been involved in the beating, lashing or torture of people that he had arrested, the appellant said that:

> "I never arrested anyone. People were interrogated and if they did not like these people, they were sent to the prosecution office for flogging and other treatment to get information from them. Those who were flogged and ill-treated had this done to them for anti-government activities".

He said that these activities were carried out in another section of the Komiteh. He also said that he often dealt with informers who passed information to the Komiteh and were paid for this.

When asked again whether he, personally, had carried out the maltreatment or torture of people, whether he had ever been requested to, or carried it out under orders from his superiors, the appellant stated that one of their jobs was to do this work but that he was not interested and managed to get out of it. He said that he knew another person who would do this type of activity for him, and usually got this other person to carry out these activities for the senior officer who was in charge of the interrogation.

He went on to explain that most of the arrests he made were for very small offences such as wearing "bad clothes" or having bad behaviour or for hassling women.

As the activities of the Komiteh became more serious and oppressive, they became more concerning to him. He then tried to transfer out of the intelligence unit into another section. He became annoyed and distressed at his role and asked to leave. For example, he said, one person had been arrested because he had been exercising in his shorts. The appellant said that his colleague in the

Komiteh had wanted to arrest the man and the appellant objected. This man's exercise had taken place at 11pm and the appellant thought that it was unnecessary to report it. Eventually, the appellant managed to let the jogger off with a warning, but his colleague reported him and this caused some difficulty for the appellant.

He went on to state that he had never been requested specifically to carry out any torture as he was not high enough up in the Komiteh. But he agreed that he had been a witness to episodes of torture.

When asked whether he got into trouble for not carrying out orders or episodes of torture, the appellant replied that he would try and get someone else to do it and managed to avoid carrying out torture or persecution.

When asked how long he had been in the intelligence unit, he replied that he had been there for one year and had then tried to move. Ultimately he was able to obtain a transfer to the warehouse of the Komiteh where parts for cars were held. He then remained in the parts warehouse for some six to seven months. He stated that he had not mentioned transferring to the parts warehouse to the RSS because there were a number of other units he had worked in for short periods of time, of approximately 20 days and therefore he did not consider the transfer from intelligence to the warehouse was a major item.

The appellant said that he wished to get out of the Komiteh after being in it for only a short time. Ultimately, he had made a request to the central headquarters in Teheran. This finally resulted in an interview with the head of the Komiteh in Teheran. It took five or six trips to Teheran before he was able to see the secretary to the senior officials and meet with the heads of the Komiteh. He explained that he could not get out of the Komiteh openly and he had to make up an excuse for his reason to leave. His excuse was that he had family problems and, because he was the eldest son and there were problems, he was needed to stay at home for longer periods. The senior officers told him that he had gone through his training and therefore it was difficult to allow him to leave and beyond this, he had no evidence that he could provide to the Komiteh officers relating to his family.

Eventually, after several weeks, he said he was able to obtain a release and once a letter came from the central office in Teheran, there was no problem in leaving.

The letter, however, stated that he had to pay back all his earnings from the Komiteh. Once this money had been handed over to the accounts office in S, he sent the receipt to Teheran and then obtained his final release. The process from the time of his interview with the senior officers in Teheran until his ultimate release, took approximately one and a half months. He explained that, at the time, he had not been criticised for leaving but had only been asked why he wanted to leave.

After obtaining his release, the appellant started a television/radio sales shop. Approximately one year later, he decided to take an overseas trip to China. This trip was basically a pleasure trip as he did not have enough money to go into business as a wholesaler in the television and radio business.

At that time he was unaware that he was under any type of surveillance although fellow-shopkeepers near his shop said to him that the Komiteh had come and asked questions about him. On hearing this, the appellant said that he spoke to some of the Komiteh people that he knew but they were not friendly to him and ignored him. He was not sure how the surveillance of his shop had taken place and he was never arrested or held by the Komiteh during the period that he held his television and radio shop.

Approximately one year later, in 1988, the appellant decided to sub-let the shop because he became afraid that the Komiteh were watching him. He then moved out of the city where he lived, and tried to start a carpet-weaving factory. He was able to build a factory building using an inheritance that he obtained from his grandfather. The land for the factory he purchased from a foundation set up for supporters of people who had lost relatives in the Iran/Iraq war. Buying from this foundation helped him get the building underway but he encountered problems when he tried to put machinery into the factory. Then he found he could not get a loan or a licence to buy the necessary equipment for his proposed knitting factory. After making lengthy enquiries, he was informed that only those people who had lost relatives in the war or war veterans would get licences. The only others were those who were prepared to pay bribes. After fighting this frustration for some time, the appellant decided not to proceed with the establishment of his factory although he had spent a considerable amount of time and money researching it and establishing the building.

Over the period from 1988 to 1992, the appellant said he had no specific problems with the Komiteh but, because of the difficulties he had encountered in trying to obtain the licence to establish his knitting and carpet-making factory, he began criticising the government amongst his friends and acquaintances when he met them at private functions and in their homes.

In March 1992, the appellant, one of his brothers and an uncle were stopped by the Komiteh while they were driving in the appellant's car. At the time of being stopped, he was accused of nothing but asked about where he was going and what he was doing. He was then taken into detention by the Komiteh who took his car and drove the three of them to the Komiteh headquarters. He was sure that the officers were from the intelligence unit. Upon arrival at the Komiteh headquarters, his uncle was released but he and his brother were held. At the Komiteh headquarters, he said he was hit and kicked and slapped over a period of two days approximately every two hours. He was accused of speaking against the regime and criticising the government about his factory.

During the period of detention, the Komiteh produced a tape-recording of his voice where he was being critical of the government and its activities in relation to his factory. The appellant said he was unaware of where, or who had taped him, but thought it had taken place when he had been with a group of family and friends. The tape was played back to him in the revolutionary prosecutor's office which was an office run in conjunction with both the Komiteh and the Sepah.

The appellant thought that the tape was a valid one and tried to remember where it had been taped and who had taped him but he could not recollect. He told the Authority that he had definitely said many of the things that were recorded on the tape to his friends and family. He had, however, not spoken in such terms to his ex-colleagues from the Komiteh as he knew that it was dangerous.

Eventually, he was released when his uncle arranged with his father and some friends to pay a considerable bribe to a senior person in the revolutionary prosecution office. A bribe of some five million toman was paid in two stages by his father.

When asked the detail of what he had said on the tape, the appellant replied he had been criticising some of the government's acts and the way that it was violent in its disrespect of people's rights. He said this reflected on his own experience

while he was in the Komiteh and he knew that human rights were abused. Because of the emotional pressure he was under in relation to trying to start the factory, he had begun talking in a dangerous manner over a period of about one year and carried on this type of activity when he was with friends he thought he could trust. He said his anger with the authorities grew more and more over time when he saw people being persecuted. This anger had grown from the time when he had been in the Komiteh. He felt that it had taken him a long time to reach the conclusion that the activities of the state in Iran were wrong, but once he had, he became quite critical of them.

On his release from the two-day detention in 1992, the appellant said the officer had told him to report once a week and said that his file could be re-opened at any time. His brother was also released but had not been persecuted. He thought his own position was worse than his brother's because of the tape-recording and the evidence they had against him.

After his release, he was taken home and, because of the beatings he had suffered, his mother nursed him. It took approximately one month before he was fully recovered. He said he had no permanent damage because he suffered mainly bruising and there were no scars. He was taken each week to the intelligence office by his family, but was unsure if it was the same place where he had been detained because he had been blindfolded when he had been taken into the Komiteh.
He kept up his weekly reporting the whole time he remained in Iran. Even if he had to go to another city for his work, he had to ensure that he returned back to his home town before the reporting time. He said that he was not working full-time, but would take goods from the port of B to S and this allowed him some earnings from trading as well as the rent from his old shop. There were no further problems during 1992 and 1993, although he considered that suspicious people were watching him and following him on a few occasions.

The major matter which caused him concern, he stated, was that, soon after his release, while he was resting at home, the prosecutor to whom they had paid the bribe, showed the family a copy of the Komiteh report which was made about the appellant. That confidential report noted the contents of the tape and the interrogation that took place, and had recommended to the court that he should have been "imprisoned". When asked why, in his statement presented to the RSS, he had said that the report revealed that he would be "executed", the

appellant said he could not remember exactly what it had said and had to stay out of Iran because of his situation. He could not return to Iran for even one day. He said that his offence would now be more seriously viewed if he returned, not because of an illegal departure, which he considered would not be a problem, but because of the situation relating to the tape - "in my case it is obvious I would be given to the Komiteh intelligence. People like me then have a problem".

The appellant explained that his old passport had been used when he went to China and when he went to get a new passport completed, he was told that he could not leave Iran. The Foreign Affairs Department in S kept his old passport in the office and stated to him that he was on a black list and knew why he could not get another passport.

The appellant said that he then took steps to leave Iran by using the services of a friend in BL on the Persian Gulf. That friend arranged for him to take a trip to Dubai after paying 50,000 toman. He said the boat trip took place at night and that they landed at a port close to Dubai and from there he was given an address where he met up with an Iranian. After paying him $US2,500, he was able to travel to India using a false passport. Although he had further problems in India, when his original false passport was not accepted, an Indian agent was able to secure him a false Austrian passport and, using that, he was able to travel to Singapore and on to New Zealand.

Since being in New Zealand, he said that he had had some phone calls to his home and the last one had been approximately one and a half months before the hearing. Beyond that, he had had three or four letters from home, but was having difficulty in making contact with his family.

The appellant was then asked by his counsel how he knew that people were following him and he explained that after obtaining two months' training in the Komiteh in how to follow people, he knew when he himself was being followed. Mr McKee submitted that the treatment given by the authorities to the appellant constituted a sustained interference with his human rights and therefore amounted to persecution. The only offence the appellant had committed was criticism of the government and therefore, the Iranian government must have imputed an opinion to him. The appellant stated that he had not had much contact with his family since he had been in New Zealand although he had tried to contact them by writing letters to a friend in Dubai so that he could pass on messages to his family.

The only contact that he had with his family resulted in discussions about family matters and the appellant thought that their phone could be bugged.

He explained that the money he had used to come to New Zealand and to obtain his release from custody, had come from his grandfather's estate and was the money that he had earlier set aside to start up his factory.

THE RSS DECISION

After the appellant's interview with the RSS, the interviewing officer considered that there were some major discrepancies between the interview held with the RSS, the appellant's original interview at the airport, and a statement made in support of his original application. Those discrepancies related to:

a) No mention of the tape-recording of him, held by the Komiteh, was made during his airport interview, and nor was any threat of execution made against him.

b) In his airport interview, he had stated that during the two days he was held in custody, he was ill-treated but was not lashed. However, in his RSS interview, he stated that he had received a lashing every couple of hours to make him talk.

c) In his airport interview, the appellant stated that he had been released from custody after two days because "they never had good reason to keep me more than two days". However, at the RSS interview, the appellant said he had been released after his family had paid 5,000,000 Toman (US$30,000) by way of bribe, and it was only because of this bribe that a recommendation for his execution was taken no further.

Those discrepancies were put by the RSS to the appellant and his consultant, and explanations were provided in a letter to the RSS dated 26 October 1993. The thrust of the explanation was that he was originally interviewed after a lengthy flight and was tired and apprehensive and was unsure that he could trust the people who were interviewing him. Also, as a former member of the Komiteh, he was afraid of the reactions of immigration officials and that he could be considered as a spy. An explanation was also given as to a confusion in the use of the word "lashes".

In the reassessment of the application, the RSS officer accepted the explanations for the discrepancies and decided that the appellant had a genuine, subjective fear of persecution. The officer then went on to conclude that the appellant had been discriminated against while in Iran after he had left the Komiteh, by being denied access to university and refused a licence to operate his own spinning factory. The officer considered that because the appellant had been released after two days in custody in 1992, and, for a period of one year after that, had remained in Iran without being arrested or imprisoned again, that the authorities in Iran no longer considered him to be a serious threat to the regime. She concluded that his only problem was that he had illegally departed Iran and because the most likely sentence for this offence was a fine, the appellant could not be stated to be in fear of persecution. Unfortunately, the officer did not address the question of the possible re-opening of the appellant's file in respect of the tape-recording or the fact that he had not reported on a weekly basis to the Komiteh from the time when he left Iran. The implications of these two highly important areas were not considered by the assessing officer. The officer concluded that the appellant did not have a well-founded fear of persecution, and there was no real chance he would suffer persecution if he returned to Iran.

No alternative consideration was made as to the possible relevance of the Exclusion Clause, Article 1F of the Convention.

THE ISSUES

In this case, the Authority considers that it is firstly necessary to determine whether the appellant falls within the provisions of the Inclusion Clause of the Refugee Convention, Article 1A(2), then, if a favourable conclusion is reached, because of the appellant's former membership of the Komiteh in Iran, it is necessary to consider whether the appellant is excluded from the Convention by virtue of the mandatory terms of Article 1F of the Convention.

The Inclusion Clause, Article 1A(2), relevantly states 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."

The provisions of Article 1F of the Convention however state:

> "The provisions of this Convention shall not apply to any person with respect to whom there are serious reasons for considering that:
>
> (a) he has committed a crime against peace, a war crime, or a crime against humanity, as defined in the international instruments drawn up to make provision in respect of such crimes;
>
> (b) he has committed a serious non-political crime outside the country of refugee prior to his admission to that country as a refugee;
>
> (c) he has been guilty of acts contrary to the purposes and principles of the United Nations."

The issues identified by the Authority in this case therefore are:

1. Does the appellant hold a genuine subjective fear of persecution?

2. Is the harm feared by him of sufficient gravity to constitute persecution?

3. Is the harm feared related to any one of the five grounds recognised in the Convention, or is it related to other factors?

4. Is the fear well-founded?

5. If a positive answer is given to all of the above four issues, is the appellant excluded from the provisions of the Convention, by virtue of the terms of Article 1F of the Convention?

ASSESSMENT OF THE APPELLANT'S CASE

In order to assess the appellant's subjective fear, it is firstly necessary to decide whether his evidence is credible, in whole or in part. After a lengthy hearing of one and a half days with the appellant, consideration of his initial interview at the airport, the statement made in support of his original application, his RSS interview, the explanations given at that time, and all of the questions put to him during the hearing with the Authority, the Authority has concluded that the appellant has been reasonably consistent in the presentation of his evidence throughout. The explanations of the discrepancies between the airport interview and the evidence given both to the RSS and to this Authority, were again put to

the appellant, and the Authority concluded that it agreed with the RSS that reasonable explanations had been provided for the apparent discrepancies. The Authority is therefore in a position where it accepts the core of his evidence. His credibility was greatly enhanced by his frank admission of his former Komiteh membership.

However, in respect of the appellant's replies to the questions relating to his personal involvement in Komiteh persecutions, interrogations, torture, and harassment of people detained by them, the Authority found great difficulty accepting the appellant's statements that he had managed to avoid any involvement in Komiteh persecutions, interrogations, beatings etc. The appellant admitted that he had been present at interrogations, torture and maltreatment of people detained by his section of the Komiteh, and also that he had specialist training as an intelligence officer, and was then employed in a plain-clothes intelligence section of the Komiteh. It is thus extremely difficult to conceive that the appellant was able to avoid all involvement in the notorious persecutory activities of the Komiteh over a period of some two years, until he was able to be transferred into the motor vehicle parts warehouse of the Komiteh for his last six months of service. The Authority concludes therefore, that the appellant has at best been a reluctant participant in the detentions and persecutory activities of the Komiteh. I do not accept that he was merely an innocent bystander. However, I do accept that, because their activities worried his conscience, he took steps to get out of the Komiteh. These efforts were ultimately successful in mid 1985.

The Authority also notes the somewhat unreliable nature of the evidence presented by him in respect of the prosecutor's report, which he stated was discussed with his family after they paid a bribe to the senior court official, to obtain the appellant's release from custody in 1992. The appellant admitted that neither he nor his family had actually seen the prosecutor's report, so that he could not say first-hand, that he had seen, in the terms of the report stating his own execution had been called for, but was not acted on because of the bribes paid to the senior court official.

Turning to the issues, the Authority's findings are:

1. The Authority finds that the appellant has a genuine, subjective fear. That fear is of imprisonment or possible execution for the expression of anti-government views and activities. His fear is heightened by the fact that he was a former pasdar in the Komiteh, who was able to obtain his release

from the Komiteh, and that he may be considered by current officers of the Komiteh as anti-government or anti-revolutionary.

2. The harm feared by the appellant is at the level of persecution.

3. The Authority considers that the harm feared by him is for his imputed political/religious beliefs that he is a perpetrator of anti-government views and these views were included in a tape-recording held by the authorities in Iran.

4. As to the question of whether the appellant's fear of harm is well-founded on the basis that there is a real chance of persecution if the appellant were to return to Iran, the Authority finds, when applying the benefit of the doubt in favour of the appellant, that a well-founded fear does exist. The appellant left Iran illegally, without a passport, at a time when he was required to report on a weekly basis to the local branch of the Komiteh, as part of the terms of his release from custody in 1992. He had continued to make the weekly reports over a period of one year, until the time of his departure. Thus, at that time, it was logical for the authorities in Iran not to have taken further action against him. The appellant and his family had paid a substantial bribe to a senior court officer, and the appellant had continued to observe the terms of his release. In that situation there was no apparent reason for the authorities to take him into custody again, or carry out the possible terms of the prosecutor's report, unless of course, the appellant did not comply with the reporting requirements. In this situation therefore, if the appellant were to return to Iran, he would obviously be stopped at the barrier because he does not have a passport. While this, in itself, may be a fairly minor offence, the Authority considers that there is a real chance that once the appellant's records were looked into, as a consequence of his not having a passport, then they would be referred back to the Komiteh and, at that time, evidence relating to the tape and the failure to report to the Komiteh on a weekly basis, would surface. At this point, there is a real chance that the appellant would be imprisoned or possibly executed for his anti-government activities.

Prima facie therefore, the appellant is in a situation where he is able to comply with the terms of the Inclusion Clause. The question remains however, as to

whether the appellant's former membership as a pasdar of the Komiteh places him in a situation where the mandatory provisions of Article 1F are applicable to him.

ISLAMIC REVOLUTIONARY GUARDS CORPS (IRCG) - ISLAMIC COMMITTEE (KOMITEH)(IRC) - (Members of both termed Pasdars or the Pasdaran)

At this point, it is necessary to give consideration to the whole background and nature of the Komiteh and then the role that the appellant played as a pasdar in the Komiteh over the period from 1983 to 1985.

Soon after the fall of the Shah's regime in 1979, an elitist group of Revolutionary Guards (the Komiteh) was established to enforce and uphold the highly restrictive religious and political criteria imposed by the revolutionary Islamic government, dominated by the political elite composed of Shi'a Muslim clerics and lay-persons allied to those clerics. The revolutionary guards operate under the direction of the Ministry of Intelligence and Security, and, since their inception, have been notorious for their rigid enforcement of required religious mores, political arrests and human rights abuses. Many of the abuses are reported in publications such as the yearly United States Department of State (DOS) reports, Amnesty International publications, and Human Rights Watch publications. They all report that there are continued abuses of human rights, including the denial of citizens to change their government, summary executions, widespread torture, arbitrary detentions, lack of fair trials, repression of freedoms of speech, press, assembly and association, systematic repression of some religious groups, and severe restrictions on women's and workers' rights (e.g. see page 1176, 1994 DOS report). Amnesty International reports such as "Iran: Imprisonment, Torture and Execution of Political Opponents" (January 1992) recorded violations of human rights in a similar vein.

> "Political prisoners, including prisoners of conscience, were sentenced to prison terms after unfair trials, held in secret, and were denied lawyers for their defence. Proceedings were in summary, lasting only minutes in some cases, and prison terms began only from the day of sentencing - the amount of time spent in pre-trial detention, frequently over a year, is not subtracted from prisoners' sentences.
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> "While a number of political prisoners were released in 1991, many of them remain subject to physical restrictions and those who fail to present themselves when summoned, risk their own or their relatives' detention."

The Komiteh (or Pasdaran), of which the appellant was a member, are widely recognised for their role in the suppressions of human rights, torture and maltreatment of political or other opponents who they considered possible opponents of the revolution.

The Pasdaran were established to reinforce the fundamentalist principles of the revolution and, in particular, to fight the war against Iraq. The functions of the Pasdaran are described in Official Gazette No 10953 (February 1982) and these are summarised in the publication "The Justice System of the Islamic Republic of Iran - a Report of the Lawyers' Committee for Human Rights" Washington DC, USA (May 1993). At 37, this report states:

> "This law legalises the activities of the Pasdaran and gives them important military and political functions. From 1982 to 1989, the Revolutionary Guards had their own ministry. Since 1989, they have come under the jurisdiction of the Ministry of Defence. They are bound in a special way to the leader of the Islamic Republic who is their Commander in Chief. In provincial cities, it is common for the local Pasdaran units to owe allegiance to the Friday Prayer Leader of the city. (This was reported to the Authority by the appellant in his evidence).
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> "The enumeration of the aims of the Pasdaran in Article 1 of the 1982 law, illustrates their ideological orientation. They have to "defend the Islamic revolution and its achievements, to enforce the concept of sovereignty of God in accordance with the laws and to strengthen the capability of defending Islam". They are also charged with more conventional duties, for example disarming people who are in possession of weapons and ammunition and, according to circumstances, co-operating with the police forces to restore law and order. During the execution of these functions, the Pasdaran are to be regarded as police officers.
>
> "The revolutionary committees are similar in several aspects to the Pasdaran. They were formed during the first months after the revolution. Their position was not legally established until 1986. The Pasdaran committees too, were charged with the defence of "law and order" and fell under the authority of the Minister of the Interior. They had to work in close co-operation with the Pasdaran on the one hand, and with the police forces on the other."

From the Amnesty publication "Iran - Violations of Human Rights" (1987) pages 8, 9 and 12, the Authority noted the following statements:

> "*Political arrest and imprisonment*
> Amnesty International believes that there are at present many thousands of political prisoners in the Islamic Republic of Iran, but cannot estimate how many of them are possible prisoners of conscience. They include writers, journalists, doctors, lawyers, lecturers and teachers, students, housewives, factory and manual workers. Some are very old (sometimes aged over 70), some are in their teens and were still at school at the time of their arrest.
>
> "Victims of arrest since the February 1979 revolution cover the entire political spectrum, ranging from communists to members of monarchist groups. Among those at present in prison in the Islamic Republic of Iran are members and supporters of the Democratic Party of Kurdistan of Iran, *Komeleh*, the People's *Feda'i* Organisation of Iran, the People's *Mojahedine* Organisation of Iran (PMOI), *Rah-e Kargar*, the *Tudeh* Party, and the Union of Communists, as well as members and supporters of groups who support the return to power of the monarchy. Also imprisoned are members of the Baha'i faith.
>
> "Amnesty International acknowledges that some political prisoners, including prisoners of conscience, have benefited from amnesties or reductions in sentences

of imprisonment. However, it opposes unreservedly the incarceration of any individual for the non-violent expression of his or her conscientiously held beliefs, and calls for the immediate and unconditional release of the many people thus imprisoned in the Islamic Republic of Iran.

"2.1. *Law enforcement agencies with responsibility for effecting political arrests*
In the overwhelming majority of cases of political arrests brought to the organisation's attention in recent years, the arrests have been effected by the Islamic Revolutionary Guards Corps (IRGC) and Islamic Revolutionary Committee (*Komiteh*)(IRC) members. However, Amnesty International has also been informed that political arrests have been made by military and other personnel.

"According to Article 150 of Iran's Constitution:

> "The Corps of Guards of the Islamic Revolution, established in the early days of the triumph of the Revolution, is to be maintained in order that it may continue in its role of guarding the Revolution and its achievements. The duties of this Corps, together with its areas of responsibility, in relation to the duties and areas of responsibility of the other armed forces, are to be determined by law, with emphasis on brotherly co-operation and harmony among them."

"*Ettela'at* (25 August 1985) quoted Hojatoleslam Salek, deputy chief of the Islamic Revolutionary Committee, defining their area of competence as follows:

> "IRCs would be responsible for protecting public places, and sensitive facilities, dealing with crimes relating to intelligence, security and anti-revolutionaries, anti-narcotics drive, anti-corruption drive, riots control, unauthorised demonstrations, and anti-revolutionary disorders ..."

"Over the years, the IRGC's growth appears to have been matched by the increasing scope of its competence, until it became a powerful and virtually autonomous body, largely unaccountable to any higher authority for its actions.

"...a former Islamic Revolutionary judge told Amnesty International:

> "The IRGC is an absolute power in Iran. Theoretically, on security and intelligence matters, they receive orders from the prosecutor's office, but in fact the IRGC can even bring about the transfer or removal of the *hakem-e-shar'* [religious judge] or the Friday Imam [prayer leader]. They have created an atmosphere whereby even the *hukkam-e shar'* are cautious in their dealings with them. They consult the IRGC when issuing a verdict and even when passing sentence ..."

The Komiteh as an organisation, no longer exists under a law consolidating the police forces of the Islamic Republic, promulgated in July 1990. That law stated that the merger was to take place within one year.

At the time when the appellant joined the Komiteh in 1983, as an alternative to being conscripted into the Iranian army, men over the age of 18 could volunteer for the Komiteh or the Sepah.

The DOS report of 1993 reports that, even after the merger of the various polices forces:

> "The government continues to reinforce its hold on power through arrests, summary trials and executions, and other forms of intimidation carried out by an extensive internal security system. The Revolutionary Guards and security forces operating within the Ministry of Intelligence and Security in the Interior Ministry are known to make political arrests and commit other human rights abuses."

THE APPELLANT'S ROLE AS A PASDAR

It is now necessary to consider this appellant's involvement as a pasdar in the Komiteh. Does this place him in a position where the Exclusion Clause should apply to him? Are there "serious reasons for considering" that, by his mere membership of the Komiteh, noting the acts carried out by that organisation, he must be deemed either to have committed crimes against humanity, as defined in the international instruments, or to have been guilty of acts contrary to the purposes and principles of the United Nations?

Firstly, the appellant cannot be said to have committed a serious non-political crime outside of the country of refuge because the Komiteh obviously was a legal organisation within Iran and actions of its officers were therefore legal, even if they were abhorrent to the provisions of the International Covenant on Civil and Political Rights (e.g. Article 9).

The provisions of the UNHCR Handbook on Procedures criteria for determining Refugee Status are also relevant. Article 149 states:

> "The competence to decide whether any of these exclusion clauses are applicable is incumbent upon the Contracting State in whose territory the applicant seeks recognition of his refugee status. For these clauses to apply, it is sufficient to establish that there are "serious reasons for considering" that one of the acts described has been committed. Formal proof of previous penal prosecution is not required. Considering the serious consequences of exclusion for the person concerned, however, the interpretation of these exclusion clauses must be restrictive."

A balancing evaluation is required in each case. Article 156 states:

> "In applying this exclusion clause, it is also necessary to strike a balance between the nature of the offence presumed to have been committed by the applicant and the degree of persecution feared. If a person has well-founded fear of very severe persecution, e.g. persecution endangering his life or freedom, a crime must be very grave in order to exclude him. If the persecution feared is less serious, it will be necessary to have regard to the nature of the crime or crimes presumed to have been committed in order to establish whether the applicant is not in reality a fugitive from justice or whether his criminal character does not outweigh his character as a *bona fide* refugee."

Article 157 urges mitigating circumstances to be taken into account.

In this case, the appellant voluntarily joined the Komiteh and, soon after, discovered its notoriety. After a period of approximately one year, he decided that he did not wish to remain in the Komiteh. Approximately one further year later, he was successful in obtaining a transfer from the intelligence section of the Komiteh into a motor vehicle servicing section. Six months after that, he was able, after a significant effort, to obtain his release after paying back all of the salary he had been paid during his time as a pasdar. Although he states that he was not directly involved in any torture or persecutory behaviour and endeavoured to act as a driver or non-active participant in arrests, interrogations and torture of people detained by him and his fellow pasdars, the Authority does not accept he has been a mere bystander. Therefore it must be assumed he did participate in persecutory acts which have been pervasive in the Komiteh.

As his credibility is accepted logically, it is also accepted that he initially suffered minor harassment from former colleagues in the Komiteh, after he had managed his release. This led to discrimination against him in obtaining necessary consents to operate his factory. When he was later detained, however, by the Komiteh in 1992, and a tape-recording of his criticism of the Iranian regime were played to him, his plight became serious. He states that only after payment of a considerable bribe, was he able to obtain his release, and that the recommendation of the Komiteh was that he should be further detained and possibly executed. He maintains that he has been singled out by the Komiteh to this extent, because of his past membership and subsequent rejection of the organisation.

Even as at 1983, it must be objectively assessed that the appellant knew the Pasdaran were an elitist group established by the then relatively new regime, and he joined them of his own choice. The Authority accepts that this does not appear to have been a politically or religiously motivated choice, but more one based on economic reasons. The appellant then remained in the Komiteh for a period of two years, firstly as an ordinary pasdar and then he was selected to the Intelligence unit. The Authority considers it would be naive to accept that the appellant was never involved in any persecutory behaviour or breach of internationally accepted human rights during his period of membership.

Taking all of these matters into account, the Authority has reached the conclusion, by adopting the recommended restrictive approach to the Exclusion Clause, that the benefit of the doubt should be given to this appellant that he was a minor functionary within the Komiteh, who joined that organisation in the erroneous belief that he would not have to carry out abhorrent arrests and persecution of his fellow citizens. When he discovered the activities carried out by the Komiteh, he took active steps to remove himself from it and then at considerable cost, was finally able to be released.

On balance therefore, the Authority considers that, taking all relevant factors into account, the Exclusion Clause is not applicable to this appellant.

CONCLUSION

The Authority finds this appellant has a well-founded fear of persecution based on political beliefs that would be imputed to him by the authorities in Iran, should he return to that country and that, on balance, the Exclusion Clause should not be applicable to him. Accordingly, the appellant is found to be a refugee within the meaning of Article 1A(2) of the Convention. Refugee status is granted. The appeal is successful.

.....
Chairperson