

**REFUGEE STATUS APPEALS**  
**AUTHORITY**  
**NEW ZEALAND**

**REFUGEE APPEAL NO 76100**

**REFUGEE APPEAL NO 76101**

**REFUGEE APPEAL NO 76102**

**AT AUCKLAND**

**Before:**

B L Burson (Member)

**Counsel for the Appellant:**

I Uca

**Appearing for the Department of Labour:**

No Appearance

**Date of Hearing:**

29, 30 & 31 October 2007

**Date of Decision:**

20 December 2007

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**DECISION**

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[1] This is an appeal against the decisions of a refugee status officer of the Department of Labour (DOL) declining the grant of refugee status to the appellants.

**INTRODUCTION**

[2] The appellant in *Refugee Appeal No 76100* is the husband of the appellant in *Refugee Appeal No 76102*. They will be referred to as “the husband” and “the wife” respectively. They are the parents of the appellant in *Refugee Appeal No 76101* who will be referred to as “the child”. The husband is a national of the Islamic Republic of Iran. The wife and the child are nationals of the People’s

Republic of China. The husband is the responsible adult for the child for the purposes of s141B of the Immigration Act 1987.

[3] The husband claims to have a well-founded fear of being persecuted because of an attack on him that took place in Malaysia by persons whom he suspects to be members of the *Ettela'at* – the Iranian Intelligence Service. The wife and child also claim to be at risk of being persecuted in Iran as members of the husband's family. They do not assert a fear of being persecuted in the People's Republic of China.

[4] That the wife and child do not have a fear of being persecuted in the People's Republic of China is dispositive of their appeals. This is because the enquiry under Article 1A(2) of the Refugee Convention is to determine whether or not New Zealand is obliged to offer surrogate protection to the wife and the child. If they are nationals of a country in respect of which neither has a well-founded fear of being persecuted for a Convention reason, then they cannot come within the meaning of a refugee because they would be able to seek protection from any harm that may accrue to them in Iran by returning to China.

[5] What follows then is an assessment of the claim that the husband possesses a well-founded fear of being persecuted in Iran. A summary of the evidence of the appellants in respect of this claim follows. An assessment of that claim is made thereafter.

## **THE APPELLANTS' CASE**

### **The evidence of the husband**

[6] The husband was born in the late 1960s in X. He is one of eight children born to his parents. The husband lived in X in Iran in the family home.

[7] Prior to the Iranian Revolution, his family was well-off. After the Revolution his family circumstances changed. His father was dismissed from his management position in a state corporation and, after a period of unemployment opened a small shop upon which the family relied for income. During this time, his father was accused of being a member of SAVAK (the secret intelligence service of the former Shah of Iran) and detained for a number of months during which time

the husband believes he was mistreated. The husband's family was subjected to abusive telephone calls by revolutionaries. Windows were broken and graffiti written on the walls of their home. The family was forced to move from their home into more modest surroundings.

[8] The husband did not complete his education. He decided that with the change in environment following the Revolution he did not enjoy schooling any more and, in the mid-1980s, left school against his father wishes. The husband wanted to leave school in order to begin working and make a life for himself. However, he found difficulty obtaining a job for himself and ended up assisting his father in the shop.

[9] The husband began contemplating living outside of Iran. He realised that in order to be able to leave the country he would need to show that he had completed his compulsory military service. He therefore volunteered when he turned 18 in mid-1986. The husband was sent to a military base in the north-west and given an administrative role and promoted to the rank of "private first". When not carrying out this administrative role, the husband's principal duty was to act as a guard for the captured Iraqi and *Mojahedin* prisoners; the latter being detained in a separate *Ettela'at* (Iranian intelligence) detention facility at his base.

[10] The husband continued with his military service without particular incident until 1988. At this time the area in which the husband was stationed came under heavy and sustained assault by a combined Iraqi army and *Mojahedin* force. During this battle, the husband refused an order to execute a group of Iraqi prisoners being held there. Immediately after this battle, the husband was punished for his part in suggesting that a group of 40 soldiers retreat in contravention to the direct orders they had been given and for assaulting the officer who gave the order when his actions in this regard were first questioned by that officer. He was sentenced to 50 days' imprisonment and stripped of his administrative role. For the remainder of his military service he was required to do normal guarding duties.

[11] On one occasion during this period, he telephoned the relatives of a *Mojahedin* prisoner who had begged him to let his family know of his plight. The following day, the husband was asked to go to the *Ettela'at* office at the base. He did so and as soon as he went to the office he was immediately attacked by three or four people. He was tied to a chair and physically assaulted with punches and

kicks. During this assault he was accused of being a member of the *Mojahedin* and asked when he joined the *Mojahedin* and why he helped them. The husband denied everything. He was interrogated in this fashion for three days at the base before being transferred to the *Ettela'at* office at a nearby city.

[12] At the *Ettela'at* office, he was placed in a small cell. The husband was detained for a period of five months. During the first month of this detention, he was questioned repeatedly about his links to the *Mojahedin* and about the telephone call that had been made to the prisoner's family. As previously the questioning was accompanied by punches to his face, head and body and kicking. He recalls being knocked unconscious on a number of occasions and having cold water poured over him to revive him. Thereafter the mistreatment he suffered was in the nature of psychological torture. This took the form of a person coming into his cell and telling him that today was the day that he was going to be executed or that an order had been made for him to be executed within a few days. The person would tell the husband that he might be able to save himself by confessing as to his involvement and giving details.

[13] By the time of his release, the husband's period of compulsory military service even with the extension of time had expired. The husband went back to his base and signed all the forms necessary for him to be discharged from the army. He then made his way to another city where he had arranged to meet his family who took him back to the family home in X. He was not feeling mentally well as a result of his experiences in detention and was taking a number of medications. The husband encountered no further problems with the Iranian authorities after his return to X. However, he did experience some difficulty in obtaining his military service card. It took a number of months to obtain and eventually the husband had to pay a small bribe to be issued with the card.

[14] He spoke to his father and it was agreed that it would be best if he left Iran. It was suggested that he go to Japan because at the time this was visa free for Iranian nationals and therefore in 1990 the husband travelled to Japan for the first time. He travelled using his genuine Iranian passport. Although he had not encountered any problems with the Iranian authorities he was concerned that he might have difficulties leaving Iran because of what had happened during his military service. He therefore spoke to his father who in turn spoke to a close friend who the husband believes ensured that the husband had no difficulty departing Iran. He is unsure if any money was paid.

[15] Upon arrival in Japan he obtained a three month visitor's visa. However, he did not leave Japan at the expiry of that visa but remained illegally in Japan for the next four years. He obtained work with a company in a particular area of Japan. Whilst there he obtained an alien registration card. This did not confer on him any legal status in Japan. However, at the time there were many foreign workers in Japan who had overstayed their permits and those persons were issued with alien registration documents confirming their identity. After being in Japan for one year the husband began working for a different company at another locality and remained there until 1995. At this time, he was arrested and detained for overstaying. He was deported back to Iran. The word "deported" was stamped in his Iranian passport.

[16] Upon arrival in Iran the husband was taken into the *Ettela'at* office at the airport and questioned for three or four hours as to what he had been doing in Japan. His luggage was searched. After answering their questions the husband was released. His passport was not, however, handed back to him.

[17] The husband remained in Iran for the next two years. During this time he encountered no problems with the Iranian authorities. He started up a business with one of his siblings using savings that he had accumulated from his time in Japan. However the business was not successful and the husband began thinking that it might be better if he were to leave Iran again. The husband tried unsuccessfully to obtain his passport from the Iranian authorities. He first went to the airport but was informed that he had to go to another office. At that office he was informed that he had to visit yet another office.

[18] Not having any luck in obtaining his passport from the authorities, the husband once again approached his father for assistance. His father in turn approached the same friend who had helped the husband obtain his first Iranian passport. The husband duly obtained his second genuine Iranian passport. He does not know what steps were undertaken by his father's friend. He never spoke to this person directly. This passport contained the husband's correct name and details. It had a true photograph of the husband in it.

[19] The husband left Iran for the second time in 1997. He travelled to Singapore. At this time, Japan was no longer providing visa free entry to Iranian nationals. The husband had spoken to some Iranian friends about the possibility of him getting an entry visa for Japan by paying money but he was told that having

been deported there was no possibility that this would happen. The husband wished to go to Japan and not some other country because he was familiar with Japan and could speak the language to some extent. He therefore paid a Pakistani man in Singapore US\$10,000 to obtain a false Swedish passport and to use this to enter Japan.

[20] The husband did not encounter any problems entering Japan for the second time. He was given another 30 day tourist visa. At the expiry of that visa the husband travelled to South Korea for a couple of days and then re-entered Japan and obtained a further 30 day visa. Some three or four days after entering Japan after his trip to South Korea, the husband decided to destroy his false Swedish passport. He had decided that because he was not intending to leave Japan this passport was of no further use to him. Some three or four days later the husband was stopped and questioned by Japanese police. They quickly ascertained that he was the same person who had been deported for overstaying some years previously and that he had no current permission to remain in Japan. The husband was then taken before a court and convicted of immigration related offences. He was sentenced to 18 months' imprisonment because he had re-entered Japan within the period of time he had been prohibited from re-entry.

[21] During his time of imprisonment in Japan the husband did not have any contact with his family. However at the end of his term of imprisonment the husband was transferred from the immigration detention centre to the airport. He was allowed to make a telephone call at the airport and contacted his family to advise them that he would soon be returning to Iran.

[22] In 1999, the husband was deported back to Iran for the second time. At the airport in Tehran the husband was once again questioned by the *Ettela'at* officials at the airport for a number of hours. Again he was questioned about what he had been doing in Japan. He was released but told to report back to the airport when requested.

[23] Some three days after the husband's arrival in Iran in 1999 his father died. Some three or four days after his father's death the husband received a summons to re-attend the *Ettela'at* office at the airport. The husband went as requested. At the airport he was taken into a small room where there were four people waiting. Without warning these four people began physically abusing him. They then began questioning him as to where he had obtained his second passport and who

had obtained it for him. These four men then began beating him with their fists and kicking him. The officials accused him of being against the regime.

[24] The husband was detained for a period of nearly four months. During the first month of his detention he was repeatedly questioned about how he had managed to obtain his second passport. During these interrogations, the husband was repeatedly punched and kicked.

[25] Upon his release the husband was told that he had to report weekly to the local *Sepah* office. He was told to take his birth certificate and driver's licence with him when he reported. The husband reported as requested and took the requested documentation. This was retained by the *Sepah* officials. The husband continued to report to the *Sepah* as directed for the following 14 months. At this time the husband was told that he no longer needed to report and his passport along with his driver's licence and birth certificate were returned to him. Apart from being made to wait a number of hours when reporting, the husband experienced no other problems with the authorities in Iran.

[26] However, by the time he had received his passport back, the husband had decided that he wished to leave Iran for a third time. He decided to travel to Malaysia as he did not need a visa to enter Malaysia. He left Iran using his genuine second Iranian passport in 2001.

[27] For the first eight or nine months of being in Malaysia the husband could not find work. He survived on the money that he still had from his time in Japan but when this ran out, he had to live on the streets. He then met another Iranian who offered the husband a room in his house and occasional work. In 2002 the husband met the wife through this man. They formed a relationship. The wife helped the husband financially to set himself up in business.

[28] In mid-2005 the husband and the wife were married. Their life in Malaysia continued without particular incident until late 2005 when the husband received a telephone call from his mother informing him that he would be receiving a visit from one of his younger brothers, B1, in approximately one week's time. B1 duly arrived as the husband's mother had indicated. He was not alone but rather was accompanied by a friend, AA.

[29] After a couple of days, B1 told the husband that he and AA had had to flee Iran. He said that the firm that he had been working for had been seconded to the

Iranian Ministry of Defence to work on a top-secret nuclear missile weapons programme. This was the first time the husband had known of B1's involvement in activities of this kind. B1 told him that two of his colleagues had been taken away for questioning and that one had disappeared. As a result, he had to go into hiding and leave Iran illegally. B1 did not go into any further detail except to say that something had happened at work that made him anxious about his own safety and that of their family in Iran. The husband did not speak to AA about these problems.

[30] While B1 and AA were staying with the husband and wife they regularly went outside the family home to try and find a way of leaving Malaysia. After they had been with the husband and wife for approximately one month, B1 and AA left the family home and departed Malaysia. The husband has not seen either of them since.

[31] At around the time B1 was preparing to leave Malaysia the husband's passport expired. He was anxious about approaching the Iranian Embassy for a new passport to be issued because of his previous experiences. He therefore paid some money to another Iranian person to obtain the passport for him. He did not fill out any forms or sign any documents. He merely gave this Iranian person a photograph. Some two or three days later he received his third Iranian passport.

[32] Approximately two or three weeks later the husband received a telephone call from B1 telling him that he had arrived safely in Italy. A few days later the husband spoke to B1 again. In this telephone conversation he learned that AA had been stopped when trying to leave Malaysia for Canada and had been deported back to Iran. He does not know how B1 knew that AA had been stopped and deported back to Iran.

[33] Shortly after this the husband was attacked in his shop in Malaysia by three unknown men. The men simply walked into his shop, which was located on the second floor of a building, and without warning attacked him with a knife and a wooden object. He sustained a severe cut/laceration stretching from his left shoulder down to his navel. The type of injuries he received caused the husband to believe his assailants intended to kill him. He was rendered unconscious as a result of his injuries and when he awoke he found he was in a hospital. He learned that he had been discovered near a nearby shop in the market and rushed to hospital. The husband does not know his assailants. They looked Iranian. The



husband had no problems with anybody in Malaysia and he believes that the attackers were from *Ettela'at*.

[34] After a couple of days in hospital the husband returned to the family home. He received a telephone call from his mother advising him that members of the *Ettela'at* had come to the family home and taken her away for questioning. She was interrogated and told that both the husband and B1 were against the Iranian regime and they should be killed. The husband's mother was unwell at the time of the interrogation and passed out. From what the husband understands about the interrogation of his mother she was not so much questioned but accusations were made that her sons were against the regime and they would be found and executed. After hearing this, the husband and wife both felt that it was no longer safe for the husband to be in Malaysia.

[35] The wife and child have Chinese passports. The couple discussed the possibility of travelling to China. The wife's parents were unhappy that she had married a Muslim. In their minds Muslims were terrorists. It was decided that the wife would travel to China with the child to try and convince her parents to accept the husband. If they did, the family would travel to China. The couple felt that if they travelled to China with her parents still opposed to the marriage they would put pressure on them to end the relationship which they did not want to happen.

[36] Although the attack happened in February 2006 the wife had to apply for a returning resident's permit for Malaysia to be stamped into her Chinese passport. This was not issued until 6 October 2006. Shortly thereafter the wife travelled to China. However she was not able to convince her parents to change their minds regarding the husband. In the meantime the husband kept a low profile and hardly went out of the house. He did not socialise with members of the Iranian community in Malaysia.

[37] After the wife returned to Malaysia the couple decided they would look elsewhere. They obtained an agent who arranged for them to travel to New Zealand on a false visitor's visa. They left Malaysia in 2007.

[38] Shortly after the family arrived in New Zealand the husband telephoned his mother. She told him that *Ettela'at* officers had returned to the family home and taken the husband's younger brother B2 away for questioning. His mother also told him that his eldest brother, B3, who was a pilot and instructor with a senior

rank in the Iranian Air Force, had been grounded as a result of the actions of the husband and B1. While the husband and B3 had never been close due to ideological differences surrounding the regime, the husband's mother told the husband that this had caused even more bitterness in the relationship with B3.

[39] Some two or three weeks prior to the hearing the husband was in telephone contact with his mother again. She told him that B2 had been questioned by the *Ettela'at* officials at his university shortly after he enrolled in the final year of his course.

[40] The husband believes that if he returned to Iran he will be arrested, detained, tortured or killed. He believes he will be treated in this way because he has helped his brother escape. He has no doubt in his mind that the people who attacked him were *Ettela'at* officials. He believes his previous problems with the regime will be held against him and heighten the risk of him suffering these forms of mistreatment.

#### The evidence of the wife

[41] The Authority heard from the wife. She confirms she was born in Beijing in 1970 and lived without problem in China. She travelled to Malaysia in 2002 to study. She first studied an English language course and then commenced a multi-media course. A few months after arriving in Malaysia she met the husband and they commenced living together a few months later.

[42] The wife confirmed that early in the relationship the husband had told her something about his background. He mentioned that he had had big problems with his government during his period of military service and that he had been persecuted by his government. The wife stated she did not press him for too many details because whenever she asked him it always brought a lot of sad and anguished memories to the surface. The wife told him that they did discuss their respective families. She confirmed the husband had told her that his father had died and that this had been a shock to him. The wife told the Authority she wondered why it was that he did not travel back to Iran to see his family and told the Authority the husband had told her he was worried he would have "big problems" if he returned. The wife also confirmed that the husband had told her when discussing their families that he had an elder brother who was a pilot for the government and of their having different political points of view.

[43] The wife confirmed that B1 had visited them in Malaysia with a friend, AA, and for about a month in late 2005 or early 2006. She confirmed that approximately a week before he arrived the husband had told her that B1 was going to visit. The wife only had limited contact with B1 and AA during their stay. She could not speak Farsi and their English was limited. The husband mentioned something about the reason why he was there, telling her that B1 was doing some very dangerous work which had something to do with nuclear weapons. He said they did not want to work on this type of weapons and that is why they had to leave Iran.

[44] The wife herself thought that B1 was sensitive about talking about his job. At the time she had recently finished her multi-media degree and so was interested to learn about the brother's education as she was aware that he had gone to university. When she tried to raise the subject with him B1 quickly changed the subject in a way which made her believe he did not want to talk about it.

[45] The wife confirmed that the husband had been attacked in Malaysia. She told the Authority that she was at home one day in February 2006 when she received a telephone call to say that the husband was in hospital. When she went to the hospital the husband was unconscious. He had a large bandage across his upper chest. When he recovered consciousness the husband told her that he had been attacked by people from his government. He did not tell her what had happened he just told her not to worry. The wife believes that the husband did not want to give her the details so as not to worry her.

[46] The husband was hospitalised for two days after which time he came home. After that time he ceased working and the couple sustained themselves on the savings he had earned from his business. He also stayed at home and hardly went out.

[47] The wife confirmed that the couple discussed travelling to China. She told the Authority that her husband had not been accepted by her family because he was Muslim. She therefore wanted to travel to China with the child to try and persuade them to accept the husband. First of all she had to obtain a re-entry visa for Malaysia. This took some time. After it was received she and the child travelled to China but her family was still not willing to accept the husband. She returned to Malaysia. The couple decided they would travel elsewhere.

[48] The wife confirmed the husband had to pay some money to get his passport from the embassy because he was worried about going to the embassy in person.

#### The statement of B1

[49] In the English translation of his statement, B1 asserts that in July 2005, he accepted a job with an Iranian company to work on a “secret project” located near Tehran. The project was based in Parchin, an area known to be used by the Iranian Ministry of defence for the production of missiles. B1’s employment related to the production of metallic structures for the quick loading and transport of missiles into bunkers. The missiles themselves carried signs indicating they had been manufactured in North Korea and were to be kept on the ground ready to be loaded onto trucks and possibly launched.

[50] B1 further asserts that towards the end of November 2005, secret information concerning the project he was involved in leaked out and he, along with five or six other colleagues, were interrogated during which he was beaten. As manager, B1 was one of the main suspects and was subjected to “psychological torture” to pressure him into confessing or denounce a fellow worker. One week later, another of his colleagues was interrogated. This person disappeared. B1 asserts that a further three days later, he was advised by his superior not to return to work until advised to do so. Two days thereafter, his house was searched by the secret services in order to arrest him. Although not directly stated, the implication is that B1 was not at home at the time and managed to avoid capture. Taking this as a sign that he had been denounced by the person who had disappeared, B1 decided to flee Iran and a colleague joined him.

[51] B1 confirms that he travelled to Malaysia where he stayed with the husband. He asserts he and AA were both seeking to travel to Canada to claim refugee status. He asserts that AA was stopped at the border by Malaysian police and deported to Iran.

#### Documents received

[52] On 17 October 2007, the Authority received from counsel statements by the husband and the wife responding to issues raised in the Refugee Status Branch interview report and clarifying certain statements made therein.

[53] On 26 October 2007, the Authority received from counsel a supplementary statement from the husband, a memorandum of counsel and a schedule of documents of country information as per the attached schedule of documents. On 30 October 2007 the Authority received a certified translation of the husband's military service completion card. On 31 October 2007 the Authority received from counsel a further schedule of documents containing items of country information. On 4 December 2007, the Authority received a further memorandum of closing submissions together with a bundle of country information as per the schedule of documents attached thereto. All this material has been taken into account in reaching this decision.

[54] On 7 December 2007, the Authority served counsel with a copy of the United States Office of the Director of National Intelligence report *Iran: Nuclear Intentions and Capabilities* (November 2007) and directed that any submissions thereon be filed by 4pm Friday 14 December 2007. On 18 December 2007 counsel filed her submissions together with country information relating to reactions to the issuing of this report.

## **THE ISSUES**

[55] 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."

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

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

## ASSESSMENT OF THE APPELLANTS' CASE

### **Credibility**

[57] The Authority finds the husband to be a partially credible witness. The wife was a credible witness. Specifically, the Authority accepts his account of his past circumstances as it relates to his background, period of military service and various travel to and from Iran. These matters are, however, somewhat peripheral to the claim the husband makes to be in need of protection under the Refugee Convention. Rather, the core of his claim is that the attack on him in 2006 was an attack by *Ettela'at* officials connected in some way to his sheltering B1 and AA in Malaysia who had fled Iran after working on a secret nuclear missile weapons programme. For the reasons that now follow, the Authority rejects this as a plausible context for the assault which took place on him.

[58] In order to understand the plausibility of the claimed context for the assault, some account of the Iranian nuclear programme, and the concerns it raises on the international stage, is helpful.

### The Iranian nuclear programme in the international arena

[59] Since the existence of a larger, more sophisticated and more completed uranium enrichment programme was confirmed by inspectors from the International Atomic Energy Agency (IAEA) in February 2003, the issue of the true intentions behinds Iran's nuclear energy programme and, in particular, concerns that Iran is seeking to divert enriched uranium into a covert nuclear weapons programme has emerged as one of the most significant contemporary global geopolitical issues. So much so that, on 31 July 2006, the Security Council, acting under Article 40 of the United Nations Charter issued a binding Chapter VII resolution – S/Res/1696(2006) – demanding that Iran suspend all enrichment related and reprocessing activities. The resolution expressly records the serious concern in the Security Council that Iran had not been totally forthcoming in respect of its nuclear activities. It states:

*“Noting with serious concern the IAEA Director General's report of 28 April 2006 (GOV/2006/27) and its findings, including that, after more than three years of Agency efforts to seek clarity about all aspects of Iran's nuclear programme, **the existing gaps in knowledge continue to be a matter of concern**, and that the IAEA is unable to make progress in its efforts to provide assurances about the absence of undeclared nuclear material and activities in Iran,*

*Noting* with serious concern that, as confirmed by the IAEA Director General's report of 8 June 2006 (GOV/2006/38) **Iran has not taken the steps required of it by the IAEA Board of Governors, reiterated by the Council** in its statement of 29 March and which are essential to build confidence, and in particular Iran's decision to resume enrichment-related activities, including research and development, its recent expansion of and announcements about such activities, and its continued suspension of cooperation with the IAEA under the Additional Protocol". (emphasis added)

[60] On 23 December 2006, the Security Council, acting under Article 41 of the United Nations Charter, issued another binding Chapter VII resolution – S/Res/1737(2006) imposing limited sanctions on officials and companies associated with the Iranian nuclear programme. In so doing, it noted with concern the failure by Iran to comply with the request in S/Res/1696(2006). This resolution is also significant in that it places the concern of Security Council members at the proliferation risk presented by both the Iranian nuclear programme and Iran's failure to comply with the earlier resolution, squarely within the Security Council's primary obligation under the United Nations Charter to maintain international peace and security. The Security Council remained seized of the matter.

[61] This concern by the Security Council that Iran's nuclear ambitions may constitute a threat to international peace and security occurs against the background concerns that the United States or Israel could, if diplomacy fails to halt uranium enrichment, launch a military strike on Iran's nuclear facilities – see International Crisis Group report *Iran: Is there a way out of the Nuclear Impasse?* (23 February 2007) (the ICG report) at p16; Y Mekelberg *Israel and Iran: From War of Words to Words of War* Royal Institute for International Affairs Briefing Paper MEP BP 01/01 (March 2007). Although both reports suggest military intervention could produce disastrous regional and global consequences, such an attack can not be ruled out. Indeed, it has been suggested that a recent attack by the Israeli air force on a target in Syria in September 2007 may have been a dry run for just such an attack – see P. Beaumont "Was Israeli raid a dry run for attack in Iran" *The Observer* (16 September 2007).

[62] While the recent report of the United States Office of the Director of National Intelligence – to be discussed at greater length in due course – has suggested that Iran may have halted work on its weapons programme in 2003, the issue of Iran's true nuclear ambitions remains an issue of pressing international urgency. Israeli officials continue to assert that unilateral military action against Iran remains a possibility – see R. McCarthy "Unilateral military strike still an option, senior ministers insist" *The Guardian* (8 December 2007). The United

States Defence Secretary has recently asserted, at a regional security conference in Bahrain, his belief that Iran may have restarted its nuclear weapons programme and called for a US-regional joint air and missile defence system to protect Gulf states from the threat this poses – see S Tisdall “Iran Remains a potential threat, Gates warns” *The Guardian* (10 December 2007).

[63] Against this background, it is difficult to imagine an issue of greater sensitivity or urgency to the Iranian regime than the protection of whatever secret nuclear weapons programme it may be conducting. When judged by this yardstick, the husband’s claim that this provides the context for the attack on him is so implausible it borders on the absurd.

### **Implausibilities**

#### The delay in the visits to the family home

[64] The husband told the Authority that, having fled this secret missile programme, B1 had gone into a short period of hiding before leaving Iran. This would have been at least one week prior to B1’s departure as it was at this time that the husband’s mother had telephoned him to warn of B1’s arrival in Malaysia. B1 and AA then stayed with the husband and wife for one month. During this month, the husband was in contact with his mother on one or two occasions. At no time during these calls, however, was he ever informed that any member of the family had been questioned by the Iranian authorities. Indeed, the husband’s evidence was that he was not made aware by his family of any visits to them regarding B1 until a few days *after* he had been attacked.

[65] It must be recalled that, according to the husband, the attack on him occurred some two or three weeks after B1 had left Malaysia. In other words, the appellant claims that despite B1 having fled a secret nuclear weapons programme and gone into hiding after the authorities discovered a leak of sensitive information, no visit to any of B1s family members was undertaken until at least six weeks after B1 had disappeared. This stretches credulity to breaking point.

[66] Counsel rightly reminds the Authority in her closing submissions of the dangers in making judgements about the plausibility of actions or lack of actions by Authorities in the country of origin based on the decision-makers beliefs as to how the authorities in the country of refuge would act. The Authority agrees.



Having reminded itself of the need for caution before making such a finding, the Authority notes that its concerns do not relate norms of culture, religion or other idiosyncrasy which may impact upon the actions of officials in the country of origin. Rather, the Authority's concern derives from basic norms of investigation and the steps that can reasonably be expected to be universally taken by any investigating authority, regardless of such idiosyncrasies, to try and locate the whereabouts of a person of interest who has gone missing. In short, had B1 truly been employed in such a programme and disappeared in such circumstances as he and the husband claim, there can be no doubt that there would have been visits to B1's family members within a very short space of time to try and ascertain his whereabouts.

[67] This lack of any attempt to try and locate B1 via his family for such a length of time is so far fetched that, on its own, it would have caused the Authority to reject the claim that there is any connection whatsoever between the attack on the husband and Iran's real or imagined secret nuclear missile weapons programme. However, the following matters have also reinforced the Authority's conclusion in this regard.

#### The issuing of the husband's third Iranian passport in Malaysia

[68] The husband was issued with a new Iranian passport by the Iranian Embassy in Malaysia in early February 2006. Yet, on the husband's evidence, this occurred after B1 had been in hiding for over one month after fleeing the missile programme. This too is implausible. If the husband's account is true, the regime would have anticipated that B1 would flee the country. There can be no doubt that B1's identity would therefore have been 'red-flagged' at every Iranian diplomatic post abroad as being a person of the utmost and most urgent interest to the regime. These diplomatic posts would be of the highest state of alert for any application possibly linked to the missing person. The Authority has no doubt that, against such a background, an application for a passport by a person bearing the same family name as the wanted person would result in an investigation being made as to a familial connection. Furthermore, if such connection was established, the Authority has no doubt that the relative's application would not be processed without some investigation into what that person knew about their relative's disappearance. Yet in this case, nothing happened and the husband's passport was issued a few days after he made the application.

[69] The husband seeks to counter the incongruity by saying he paid a bribe. While acknowledging the existence of corruption in Iranian society, the Authority rejects this as a plausible explanation. The idea that a consular official would take the risk of issuing a passport to a person sharing the same name as a person who fled Iran's secret weapons programme upon payment of a bribe is simply implausible. It is hard to imagine a person of greater interest to the regime. Given Iran's poor human rights record, if this bribe was discovered, the danger to the personal safety of the consular official would be extreme. The risk is simply too great given the political context.

[70] Moreover, at the time he was issued the passport, the husband had not been attacked. His family members in Iran had not been visited. By his own account, he had no reason to suspect the Iranian authorities were interested in him at all. The husband could provide no convincing explanation as to why, in that case, he needed to pay a bribe to have his third genuine passport issued. The husband states he felt uncomfortable approaching the authorities as a result of his previous experiences and had used an intermediary in the past when obtaining his previous passports. This may be so, but is a long way from convincingly establishing that he needed to pay a bribe to have the third passport issued. It must be remembered that at the time the husband applied for his third passport, his second passport, which had been returned to him by the authorities while he was in Iran following his second trip to Japan, had simply expired. He was of no interest to them. There is no credible reason for a bribe to have been paid. This part of his evidence is rejected.

#### B1's claimed involvement in a secret nuclear missile programme

[71] As has been widely reported, the United States Office of the Director of National Intelligence has recently issued a report *Iran: Nuclear Intentions and Capabilities* (November 2007) (The NI estimate) in which an assessment of the status of Iran's nuclear programme is offered. What is significant for present purposes is that, at page 5, the NI estimate asserts "with high confidence" that Iran halted work on its nuclear weapons programme in 2003 by which it meant work on "nuclear weapon design...weaponization work and covert uranium conversion-related and uranium enrichment-related work." This appears to contradict B1's claim to have been working on a secret nuclear missile weapons programme in

late 2006. However, two points need to be borne in mind in relation to the NI estimate.

[72] First, it reported “with only moderate confidence” that the 2003 halt represents a halt to Iran’s entire nuclear weapons programme. The NI estimate does not elaborate further on which elements of the programme intelligence gave some plausible but uncorroborated basis for believing may have been continued post-2003. While B1 makes reference in his statement to the possible firing of the missiles, it is not clear whether the type of work B1 asserts his company was involved in (the construction of bunkers and a weapons transportation system) would be considered part of the “weaponization” programme. It is, therefore, possible that some parts of the programme have continued.

[73] Second, as the country information provided by counsel on 18 December 2007 establishes, the NI estimate has been criticised by both ‘hawks’ within the American political establishment and ‘doves’ within the American ‘liberal’ foreign policy community as well as figures within the British intelligence community as a document which has pulled its punches on the issue given the historical failures of the United States intelligence community in the run up to the 2003 invasion of Iraq – see P. Richter “Doves find fault with Iran report too” *The Los Angeles Times* (7 December 2007); T. Shipman, P. Sherwell and C. Wheeler “Iran ‘hoodwinked’ CIA over nuclear plans” *The Sunday Telegraph* (9 December 2007); M. Champion and J. Solomon “Group says Iran resumed weapon programme” *Wall Street Journal* (11 December 2007).

[74] For these reasons the NI estimate cannot, on its own, be considered determinative of the issue of B1’s claimed continued involvement in the programme in late 2006.

[75] However, the husband told the Authority that during the Revolution his father was suspected of being a SAVAK agent and detained for a number of months. Graffiti was daubed on the wall of their home and windows smashed. More pointedly, the husband was himself detained for a number of months during his military service on suspicion of helping a *Mojahedin* prisoner. As noted in *Wall Street Journal* cited above and the ICG report (*ibid* at p1), the exile group which first leaked the existence of a more extensive nuclear programme than had been declared to the IAEA by the Iranian regime was the National Council of Resistance in Iran – the political wing of *Mojahedin-e-Khalq* (aka MEK, MKO).

[76] As noted in *Refugee Appeal No 75900* (21 November 2006) at paragraph [86], the MKO supported Iraq during its war with Iran and, following its exile from Iran in the early 1980s, established its headquarters first in Europe and then, in 1986, in Iraq. It is highly likely that the *Mojahedin* whom the husband helped (who claimed to have been recruited while studying in a European country) was part of, or affiliated in some way to, the MKO. It therefore appears unusual that B1, who came from a family with a record of suspected anti-revolutionary activity including suspicion of helping a member of the organisation which exposed its secret nuclear programme, would be permitted to work on such a sensitive programme in 2006 – B2's service in the air force notwithstanding.

[77] A secret nuclear weapons programme is, in the current climate, the sort of work that would only be performed by a person who the regime was sure could be trusted absolutely. In a country where entrance to state universities is vetted and prioritised for persons from families who have displayed loyalty through the "martyring" of a family member in the name of the Revolution, the idea that the husband's family's somewhat chequered past would not prevent a family member from entering a secret nuclear missile weapons programme appears implausible.

[78] Counsel submitted an e-mail from B1 to the husband dated 4 August 2007. In this e-mail, B1 states he is enclosing a translation into English of the statement to the Italian Immigration authorities. B1 refers to sending a further document or documents which his "lawyer has made up" but asserts that the statement and this document "are not very different from each other". At the conclusion of the hearing, the Authority raised with counsel the issue of contact with B1's lawyer and was advised that a letter had been written to that person some six weeks prior but nothing had, as yet, been forthcoming. As at the date of this decision, no further documentation from B1 or his lawyer has been received from counsel. No decision has been made on B1's refugee claim by Italian authorities as far as the Authority is aware.

[79] The Authority also notes that in the statement it received, B1 refers to a 10 page statement of his case in Farsi which "comprised many attached documents proving it". Having regard to the fact that B1 evidently has no objection to the particulars of his refugee claim being used by the husband, and that both B1 and the husband are represented by lawyers, the Authority is surprised that at no time before or after the appeal has it received copies of these documents. It is the statutory responsibility of the husband to establish his claim for refugee status –

see *Jiao v Refugee Status Appeals Authority and Attorney General* [2003] NZAR 647. The Authority can only determine an appeal on the information that is before it and cannot second guess what the documents referred to by B1 may comprise. As things stand, on the information and evidence before it, for the above reasons the Authority is not satisfied as to the veracity of B1's involvement in a secret nuclear weapons missile programme.

### **Conclusion on credibility**

[80] When these matters are aggregated and considered cumulatively, the Authority has no doubt that the explanation offered by the husband for the attack on him is not credible. Whatever the reason for the attack, the Authority has no doubt that it is unrelated to involvement by B1 in any secret nuclear missile weapons programme.

### **The risk on return**

[81] The Authority notes that the husband was detained by Iranian officials upon his return from Japan on both occasions. The Authority notes that on both occasions this took place after he had been deported from Japan after completing a period of imprisonment there for overstaying. However, at the time of his subsequent departure to Malaysia, his second Iranian passport and other documents had been returned to him and he was no longer required to report to the Iranian authorities. In other words, whatever their original concern about how he obtained his second Iranian passport, the Iranian authorities had no interest in him for this or any other reason by the time he departed for Malaysia. In her closing submissions counsel has described the husband as being a "small fish who had no political profile as such". This is an accurate description of him. His obtaining a third passport in Malaysia following the expiry of this passport will not excite any interest in him.

[82] The first principal issue is answered in the negative for the husband. The need to consider the second issue does not, therefore, arise.

### **The wife and child**

[83] The wife and child do not claim any well-founded fear of being persecuted in China. Their claim is that, as the family members of the husband, they too

might be placed in some danger. Although, having regard to what has been set out in paragraph [4] above, having regard to the findings above, the Authority does not accept that there is any credible basis for linking the attack on the husband to any activities B1 had undertaken in Iran. Their claims are not well-founded in any event.

### **CONCLUSION**

[84] For the reasons mentioned above, the Authority finds the appellants are not refugees within the meaning of Article 1A(2) of the Refugee Convention. Refugee status is declined. The appeals are dismissed.

"B L Burson"

B L Burson  
Member