REFUGEE STATUS APPEALS AUTHORITY
NEW ZEALAND

REFUGEE APPEAL NO 76241

AT AUCKLAND

Before:	B L Burson (Member)
Counsel for the Appellant:	I Anand
Appearing for the Department of Labour:	No Appearance
Date of Hearing:	13 August 2008
Date of Decision:	12 January 2009

DECISION

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

INTRODUCTION

[2] This is the appellant's second claim for refugee status in New Zealand. The appellant, together with his wife and small child, arrived in New Zealand on 11 November 2006. They lodged their claims for refugee status (the first claim) on 15 November 2006. Following an interview with the RSB on 7 December 2006, the first claim was declined by the RSB by a decision dated 16 March 2007. The appellant duly appealed. By decision dated 27 August 2007, the Authority dismissed the appeals of the appellant and his wife ("the first appeal").

[3] On 26 March 2008, the appellant lodged a second claim for refugee status. He was interviewed by the RSB in respect of this claim on 8 May 2008. By decision dated 29 May 2008, the RSB declined the second claim. The appellant again duly appealed. As this is the appellant's second appeal, the appellant must

first establish that the Authority has jurisdiction to hear and determine this appeal. It is to this issue that the Authority now turns.

THE AUTHORITY'S JURISDICTION TO HEAR SECOND AND SUBSEQUENT CLAIMS

[4] The Authority's jurisdiction in relation to second or subsequent claims is set out in s129O(1) of the Immigration Act 1987 ("the Act"):

> "A person whose claim or subsequent claim has been declined by a refugee status officer, or whose subsequent claim has been refused to be considered by an officer on the grounds that circumstances in the claimant's home country have not changed to such an extent that the subsequent claim is based on significantly different grounds to a previous claim, may appeal to the Refugee Status Appeals Authority against the officer's decision."

[5] Jurisdiction to hear and determine subsequent refugee claims under s129O(1) of the Act is determined by comparing the previous claim to refugee status against the subsequent one. This involves a comparison of claims as asserted by the refugee claimant. In the absence of significant difference in the grounds upon which the claims are based, there is no jurisdiction to consider the subsequent claim: *Refugee Appeal No 75139* (18 November 2004).

[6] Where jurisdiction is established, the merits of the subsequent claim will be heard by the Authority. This hearing may be restricted by the findings of credibility or fact made by the Authority in relation to the previous claim. Section 129P(9) of the Act prohibits any challenge to a finding of fact or credibility made by the Authority in relation to a previous claim and the Authority has a discretion as to whether to rely on any such finding.

[7] In this appeal, therefore, it is proposed to consider the appellant's original claim and his further claim, as presented at the second appeal, with a view to determining:

(a) whether, in terms of s129O(1) of the Act, the Authority has jurisdiction to hear the second appeal; and, if so

(b) whether the appellant is a refugee within the meaning of Article 1A(2) of the Refugee Convention.

The appellant's first claim

[8] The appellant claimed that owing to his association with Baha'is (a well known religious minority in Iran which suffers discrimination at the hands of the regime), he had encountered difficulties with the Iranian regime including being beaten in detention and taken before a court.

The appellant's second claim

[9] The appellant's second claim is based on a fear of harm at the hands of his wife's family on the basis of his "having lost control" of their daughter (his, now estranged, wife). In particular, he claims that one of his wife's uncles has links to the *Ettela'at* (the Iranian intelligence services) and that this uncle has told his family that a file has been opened against the appellant at the airport. The appellant believes that he will be arrested and killed upon his arrival at the airport in Iran.

ASSESSMENT OF THE JURISDICTIONAL QUESTION

[10] At the hearing on 13 August 2008, the Authority told the appellant that having considered matters and heard from Mr Anand in relation to the issue of jurisdiction, it accepted that it had jurisdiction to hear the second appeal.

[11] Whereas the appellant's first claim was based on a negative political opinion being imputed against him by the regime on the basis of his association with Baha'is, his second claim is based on a fear of harm from his wife's family for breaching their honour. The second claim is based on significantly different grounds from the first. Moreover, the claimed threats against the appellant by members of the wife's family have been made only after the first claim had been determined. The circumstances giving rise to the second claim had thus arisen after the determination of the first claim. The jurisdictional threshold is, therefore, crossed.

[12] What follows is a summary of the appellant's evidence in support of his second claim. An assessment follows thereafter.

THE APPELLANT'S CASE

[13] The appellant was born in the mid-1970s in a small village but, at a young age, moved to X where he remained while he lived in Iran.

[14] He was born into a traditional, religiously-minded family who complied with all of their obligations as Shi'a Muslims in terms of prayer, fasting and other matters. His family hailed from the AA tribe which is very conservative in its views, particularly around issues of gender relations. His family held very conservative views as to the role and status of women. Women must dress modestly and obey their husbands. In return, husbands should not do anything wrong and work to provide for the wife. Women were obliged to be covered in the presence of males from outside the family and should not engage such males in conversation.

[15] While these traditions did not place an absolute prohibition on women taking up employment, this was subject to very strict control. For example, it was not acceptable for a woman to work in a shop or in any other situation where she may have contact with males who were not members of her family. These cultural norms were reflected in his own family. His mother is a housewife and has never held employment. Two of his four sisters are also housewives. His remaining sister works as a teacher but only of young girls in a state school. Another sister occasionally does design and painting but lives at home.

[16] In accordance with their custom, the appellant's parents set about arranging a wife for him. They identified the daughter of a family who originated from the same small village and who were part of the AA tribe. This was a typical practice. People from the tribe tended to marry within the tribal grouping because they shared the same conservative social values. The appellant, accompanied by his mother and aunt, attended the wife's family's house and met his wife for the first time in approximately April 2001. At this meeting, all the females apart from his (then) future wife ("the wife") wore a *chador.* The wife wore a *hijab* to enable the appellant to have some view of her facial features. An agreement was made to marry and the couple were formally married soon afterwards. However, in accordance with their custom, the couple did not commence living together as husband and wife until after their wedding party, which was held some three months after they first met.

[17] After their marriage, relations between the appellant and the wife, by consent, were conducted along the conservative lines they had been taught to respect. The wife obeyed the appellant and he set about providing for her through his work. He undertook a variety of odd jobs including being a street trader and a

taxi driver. He did not allow the wife to work. Her role was to look after the home and raise their child who was born in April 2005. She was required to be covered if she went out of the house and was not to wear 'harsh make-up'.

[18] The appellant became increasingly dissatisfied with life in Iran. Economically, life was a struggle; the cost of living seemed to be increasing. Furthermore, over the years he had become resentful of the restrictions placed on daily life. He had been subjected to minor harassment by regime officials for having tinted windows in his car. He found the restrictions on minor things like the lengths of his sleeves wearisome. He also wanted a better life for his daughter. In particular, he did not want her subjected to the Iranian education system. Finally, in 2006, the appellant had had enough and decided to leave the country.

[19] The appellant mentioned this to his parents and the wife's parents. Both sets of parents were against the idea. They questioned why he wanted to leave Iran for a western country as he had "a good life" in Iran. The appellant told them that he wanted to have a better life and one that was more secure for his child. While not happy, the appellant managed to secure the agreement of both sets of parents. He informed both sets of parents of their intention to travel to Canada or New Zealand on a false basis and that someone had agreed to assist them getting to one of these destinations.

[20] The appellant financed their travel, in part, by selling to his brother his share in a building they co-owned. The rest of the money, some 15 million *tomans* – which the appellant estimated to have been worth around US$10-15,000 at the time – was lent to him by his father-in-law. His father-in-law only provided these funds after the appellant had told him that he was prepared to travel abroad alone and leave his wife and child behind. Neither family played any other part in their departure.

[21] In 2006, the family left Iran. They encountered no difficulties leaving. While in Thailand, the agent told them that it would be better for them as a family if they went to New Zealand. The appellant took his advice. The family therefore came to New Zealand using false passports. They arrived in late 2006.

[22] After arriving in New Zealand, they kept in contact with their families. They were not told that there was any particular problem with them being in New Zealand. Both the husband and the wife told them the briefest of details

amounting to no more than that they were waiting for a court to determine an application for residence.

[23] Shortly after arriving in New Zealand, the appellant began noticing a change in the wife's behaviour. She began not wearing a *hijab* on a routine basis. At the time, the appellant was happy enough for her to not wear it. He was anxious that his wife not be the object of attention because she was wearing a *hijab* when in her passport photograph she did not. Nevertheless, over the course of the next five or six months, the husband noticed that the wife's behaviour was increasingly at odds with how she behaved in Iran.

[24] In particular, she was increasingly dressing immodestly. She began exposing more of her body to view than was, in his opinion, proper. He noticed she was spending more time on her mobile telephone. She was now laughing with strangers, including other men who were at the accommodation centre where they had been required to live following the lodgement of their refugee application in New Zealand. The appellant raised his concerns with his wife and she, at least initially, would comply with his request to dress more conservatively and refrain from such improper interactions.

[25] Over time, the appellant became increasingly worried about the possibility that his wife was having an affair with another Iranian male at the accommodation centre. He noticed that when he came home his wife would disappear into the room and talk on her mobile telephone. When the appellant checked her mobile telephone, he found that all the history of numbers called and received had been deleted. This made him suspicious.

[26] The situation deteriorated further towards the end of 2007 when, following the dismissal of the first appeal, both the appellant and wife had been required to sign documentation enabling Immigration New Zealand (INZ) to remove them back to Iran. After signing this documentation, the wife's behaviour towards the husband changed yet again. Whereas previously she would comply – at least temporarily – with his requests regarding her clothing and interaction with other people, now she argued to his face that she would not listen to him and could do what she liked. By now, the couple was arguing frequently every day. Eventually, things came to a head during one particular argument when she informed the appellant that there was no way she was going back to Iran with him and that she would stay here with his daughter.

[27] While all of this had been going on, the appellant and his wife had been keeping in contact with their respective families. Concerned about his wife's behaviour, the appellant had mentioned the changes in the wife's behaviour to her family. He spoke to her mother, father and two brothers. He asked them to each to speak to the wife and tell her to stop behaving in this manner. Initially, the reaction of her family was that this was his problem and that he should sort it out with his wife.

[28] However, following the wife's announcement that she was not going to return to Iran the attitude of the family hardened towards him. In early 2008, the appellant began arguing with his father-in-law about the wife's refusal to return to Iran. The father-in-law told the appellant that he blamed him for the situation because it had been his decision to take the wife away from Iran.

[29] The appellant was also talking to his parents about the situation. He informed them of his plan to seek custody of his child and to return to Iran where he would obtain a divorce from the wife. He had made his mind up that he could not live with her behaving in this way.

[30] In March 2008, at around the time of the Iranian New Year, there was a meeting between the appellant's family and the wife's family. During this meeting, the appellant's family told the wife's family that they should take steps to control their daughter because it was she, and not their son (the appellant), who had strayed from their shared values and customs. The appellant's family made known to the wife's family that, in their view, their son should be free to return to Iran with his child and resume his life. They indicated to the wife's family the appellant's intention to divorce the wife because of her unacceptable behaviour. This proposal incensed the wife's family. One of the people who attended this meeting was one of the wife's uncles who, although employed, was widely known within the family group to be a member of the *Ettela'at*. He angrily denounced the husband and said that if he returned to Iran that he would be killed.

[31] The appellant was informed of this in a telephone conversation shortly thereafter by his father. He subsequently learned that AA had mentioned to the family that he had created a file against the appellant at the airport. The appellant does not know what is in the file but believes it could be any false accusation to do with anti-government political activity or some religious matter. Either way, he is extremely concerned that if he is sent back to Iran he will be arrested upon arrival at the airport, detained and killed.

Submissions and documents

[32] Mr Anand made opening submissions to the Authority and further closing submissions at the end of the hearing. Mr Anand submitted the appellant should be found a credible witness and, on the facts, recognised as a Convention refugee. At the conclusion of the hearing, the Authority gave the appellant until 5pm on 22 August 2008 to file country information relating to the practice of husbands being blamed for breaches of strict social codes by the wife, a problem the Authority indicated was not aware existed in Iran. Further written submissions were received on 22 August 2008 in which Mr Anand's earlier oral submissions were repeated. However, no country information or other evidence has been provided to date.

THE ISSUES

[33] 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."

[34] 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 appellant 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 APPELLANT'S CASE

Credibility

[35] The Authority does not find the appellant's claim to be credible. The Authority notes at the outset that the appellant's first appeal was dismissed on the basis that it was implausible and unsupported by available country information.

The Authority found that the appellant (and the wife) had "tailored a false account around genuine incidents" in order to try and obtain refugee status – see *Refugee Appeal Nos 76033, 76034 and 76035* (27 August 2007) at [41]. Indeed, in the statement he filed in support of the second claim, the appellant admits that "I made some false statements in some parts of my claim to strengthen my claim to gain refugee status".

[36] While the fact that the appellant has told lies in support of his first claim and first appeal does not necessarily mean what he has said in support of his second appeal is also untruthful, his willingness to present false evidence in the past means that his current evidence needs to be assessed with great care. Having carefully considered the appellant's evidence, for the reasons that now follow, the Authority has no doubt that the appellant's account of being at risk from the wife's her family is also untrue.

Implausibility of the claim

[37] The Authority has long recognised that issues around gender relations and, in particular, the inferior status and discriminatory treatment of women in Iranian society and the state's inadequate response to issues of domestic violence, can give rise to legitimate claims for recognition as a Convention refugee – see the detailed discussions in *Refugee Appeal No 2039* (12 February 1996) and *Refugee Appeal No 71427* (16 August 2000). However, the appellant's case goes further. At its heart is the claim that he*, as the male*, will be harmed by the wife's family who blame him for the offence to their honour resulting from his wife's adoption in New Zealand of a more liberal, western-style, attitude towards women's clothing and social relations than their social value system allows for.

[38] This is implausible. First, the appellant could not satisfactorily explain what it is about the offence to their honour which meant that he would be seen as the one to blame as opposed to the wife. Second, the Authority indicated to the appellant during the hearing that, while the country information of which it was aware certainly supported the notion that the wife might be blamed by her own family and kin for transgressions of social codes, it was unaware of any country information to support his claim that some families blamed the husband in these circumstances. Despite time being given at the conclusion of the hearing to produce country information on this point, nothing has been submitted on this issue. It is the clear statutory duty of the appellant to place before the Authority the necessary information to support his claim – s129P(1) Immigration Act. He has not.

[39] While the lack of country information is not necessarily determinative of refugee appeals generally, in this case, the Authority has no doubt that the lack of any corroborating country information points towards its far-fetched and untrue nature.

Inconsistencies and mobility as to the claimed reaction by the wife's family

[40] Initially, in his written statement made in support of the second claim, the appellant stated his wife had family members who were "strict" in their religious views. When asked by the RSB in the interview in respect of his second claim to explain which relatives he meant to describe as "strict", the appellant replied her "immediate family" were religious as were all of her uncles on her paternal side. The only distinction he drew was that some of her uncles worked in the

government and that one, BB, was widely believed to have links to the *Ettela'at*. At another point in his RSB interview, the appellant again asserted that, as far as he was aware, her family were "mostly restrictive Muslims".

[41] Yet when questioned about her own and her family's religious beliefs in her own interview in respect of the first claim, the wife described her family as being "just very moderate". When confronted with the wife's description of her family in the RSB interview report, the appellant changed his evidence to say that it was not her immediate family who were strict but "her extended family, many of whom hold ultra-orthodox religious views" and are "connected with the government". He agreed that her immediate family are "more moderate" by comparison but that "they still have strong religious views".

[42] This explanation is rejected. At no time prior to being confronted with the inconsistency between his and the wife's descriptions of her family had he sought to make such a distinction but rather had been willing to represent the family unit as a whole having the same ' strict' or 'fanatical' religious views.

[43] Furthermore, in his initial statement, the appellant asserted that "considering his wife's family culture and beliefs" they would not allow him to live in safety. When asked by the RSB to elaborate on this, he stated they were "very religious fanatical Muslims and fanatical towards women". Before the Authority, the appellant attempted to explain that the threats he faced from the wife's family stemmed not from their now admittedly moderate religious views, but from strict cultural traditions surrounding *nahmuz* (a gender related code of honour – see discussion in *Refugee Appeal No 76044* (11 September 2008) at [76]). Yet this represents a fundamental shift in context. In his written statement and RSB interview, the appellant places the honour issue as being driven by religion. For example:

(a) In his statement in support of the second appeal, in the paragraph immediately following his assertion that her family consider he is to blame for the wife "destroying their honour", he states "my wife has many relatives who are very strict in their **religious** beliefs".

(b) In his RSB interview in respect of the second claim, when asked to elaborate on his written statement that he believed that since arriving in New Zealand his wife had forgotten "where she comes from and what her

values in life were" the appellant stated he meant it was: "because she [was] born and lived in a **religious** family".

[44] The appellant's attempts in evidence before the Authority to explain the differences between his and the wife's description of her family by an appeal to cultural norms are thus at odds with what he has stated previously. Moreover, religion and culture, while different, are not hermetically sealed from each other in Iranian society. His attempt to draw some bright-line between the two further points to the untruthfulness of his claim.

[45] The Authority has no doubt that the mobility in the appellant's evidence as to the wife's family reflects the essentially untrue nature of his claim to have been threatened by the wife's family as he has claimed.

As to the assistance the wife's family provided in their departure

[46] In his first refugee appeal, in which the religiosity of the wife's family was not an issue, the appellant told the Authority that his father-in-law had provided US$35,000 to assist them to relocate abroad. However, in his evidence before the Authority in respect of the second appeal, the husband changed his evidence to say that his father-in-law had only provided US$10-15,000 and that the remainder he had financed himself. Asked to explain this discrepancy, the appellant explained that this was what the smuggler had told him to say. This is rejected. The source of the funds used to come to New Zealand had no significance in the context of the first claim which was based on a false assertion that agents of the Iranian state were persecuting him because of his association with Baha'is. Given the nature of the first claim, there was no need to cover up the payment by the father-in-law.

[47] Rather, the Authority has no doubt that this discrepancy is symptomatic of the underlying falsehood of this second claim and represents the appellant trying to down-play the extent to which the wife's family assisted them in their decision to migrate because this greater level of willing assistance does not now fit the untrue picture he is trying to paint of them.

CONCLUSION

[48] For the reasons mentioned above, the Authority finds the appellant is not a refugee within the meaning of Article 1A(2) of the Refugee Convention. Refugee status is declined. The appeal is dismissed.

"B L Burson"
B L Burson
Member