

REFUGEE STATUS APPEALS AUTHORITY
NEW ZEALAND

REFUGEE APPEAL NO 76107

REFUGEE APPEAL NO 76108

REFUGEE APPEAL NO 76109

REFUGEE APPEAL NO 76110

AT AUCKLAND

<u>Before:</u>	A R Mackey (Chairman) B L Burson (Member)
<u>Counsel for the Appellant:</u>	D Manning, E Griffin & A Barnes
<u>Appearing for the Department of Labour:</u>	No Appearance
<u>Date of Hearing:</u>	12 and 13 November 2007
<u>Date of Decision:</u>	26 November 2007

DECISION

[1] These are appeals against the decision of a refugee status officer of the Department of Labour declining the grant of refugee status to the appellants, nationals of the Islamic Republic of Iran.

INTRODUCTION

[2] The appellant in *Refugee Appeal No 76107* is the husband of the appellant in *Refugee Appeal No 76108*. They will be referred to as “the husband” and “the wife” respectively. The appellants in *Refugee Appeal No 76109* and *Refugee Appeal No 76110* are their children who will be referred to as “the daughter” and “the son” or “the appellant children” as the context requires. The husband is the

responsible adult for the appellant children for the purposes of section 141B of the Immigration Act 1987.

[3] At the beginning of the hearing Ms Griffin indicated that although she and Mr Barnes were appearing as counsel for the purposes of the appeal hearing, Ms Manning remained counsel of record for all four appellants. Ms Manning made no appearance before the Authority during the hearing. Ms Griffin adopted the Memorandum of Counsel dated 6 November 2007 prepared by Ms Manning.

[4] The husband claims that he may be arrested, detained, imprisoned and ill-treated in Iran because the authorities have discovered his involvement in anti-regime activities. During the hearing, both Ms Griffen and the wife told the Authority that, while reference had been made in the wife's statement to her beliefs as to the position of women in Iran, the wife was not claiming any well-founded fear of being persecuted on the basis of these beliefs or her gender. Her claim was simply that she was also at risk of serious harm because of her husband's activities.

[5] What follows is a summary of the appellants' evidence in support of their case. An assessment is made thereafter.

THE APPELLANT'S CASE

Evidence of the husband

[6] The husband was born in Tehran in the late 1960s. He has seven siblings who continue to reside in Tehran as do his mother and father, both of whom are retired.

[7] The husband described his parents as being "traditionally religious". That said, his upbringing was not particularly religious and the husband's parents placed no pressure on the children to adopt such religious practises. For his parents religion was a purely private matter. They did not mix religion and politics. The husband's family were a poor family from southern Tehran. Like many people in a similar socio-economic situation they supported the Revolution to the extent that they hoped that it would bring about a change in their economic fortunes. After the Revolution was successful the family's socio-economic situation

worsened considerably and they became somewhat disillusioned with the new regime.

[8] At the time of the Revolution, one of the husband's elder brothers, B1, was studying at Tehran University. B1 is approximately 12 or 13 years older than the husband. The husband described B1 as the person to whom family members, including his parents, would look for advice and financial support. Of all the family members he was the one who had achieved academically and was the source of information about domestic affairs. The husband described B1 as being a man of humanity.

[9] B1 told the husband and his siblings that he did not want them to believe things that were not true just because they were being forced to do so. He regarded Islam as a religion of superstition. B1 therefore took it upon himself to educate his younger siblings including the husband. B1 brought home books for the husband and his other siblings to read in which issues relating to poverty and social exclusion were discussed, albeit in simple language that younger children could understand and comprehend. At the time the husband was completing his intermediate level studies.

[10] At around this time B1 became involved with the Tudeh Party (an Iranian Communist party) and had participated in the demonstrations as part of the Tudeh Party which helped bring down the regime of the Shah. During this time, B1 and his friends would sometimes gather at the family home where matters of this nature were discussed. The husband's parents, being open-minded about such matters, had no objection to B1 bringing home his material or discussing these things in the family home.

[11] Also, although he had signed an undertaking not to be involved in politics as a condition of being allowed by the new regime to finish his studies, B1 often commented at home that the *Mullahs* now in charge of Iran were particularly unsuited for the governance role. They were, he said, uneducated and unqualified and were only concerned with religion. They should not be in control of the government apparatus according to B1.

[12] As a result of the books that B1 brought home and the discussions that B1 had with his friends and family in the family home, the husband had, by the time the husband finished high school, begun to see his social environment in a new light. He saw the social deprivation around him and began to believe for himself

what B1 had begun to express in the family home. He saw how hard his family worked and yet still remained poor. He found he shared the beliefs of B1 in relation to the regime and from that time on was opposed to it.

[13] After finishing his high school in the mid-1980s, the husband undertook his military service. This was during the Iran/Iraq war. Halfway through his period of three months basic training the husband was punished for not attending the compulsory prayer sessions. He was sent to a front-line unit and had his period of military service extended by one month. The husband remained in this unit for the remainder of his military service. The husband encountered no serious difficulties during his military service apart from the difficulties that would ordinarily be experienced by being a soldier on the frontline during a period of war.

[14] After completing his military service, the husband returned to Tehran where he worked for the next three years. However, the husband quickly realised that with the low salary that he was earning he would never be able to marry and fulfil his ambitions. He decided to travel overseas to earn a better income. Accordingly, in 1990, the husband went to Japan where he worked for the next seven years. He departed Iran on his own Iranian passport that he had obtained shortly after he had completed his military service obligations.

[15] For the next seven years the husband undertook a variety of manual jobs in the building and restaurant industries. The husband sent his earnings back to Iran. He estimated that the money he was earning in Japan was seven or eight times more than he was earning during his final year in Iran. He returned after seven years because of pressure from his family and because he had tired of working as hard as he had been to accumulate this money. By this time, the husband had accumulated sufficient capital to be able to purchase a good house and set himself up in business.

[16] Upon returning to Iran, the husband set himself up in business buying and selling cars. In 1999, he and the wife married. Also in 1999, the husband purchased a half-share in a building from a person who owned the building jointly with B1. Thereafter, the husband lived on the second floor while B1 lived on the third floor. They rented out the ground floor and divided the rental income between them.

[17] In 2000 the husband changed his business to property development. He purchased run-down houses in Tehran, demolished them and in their place built

multi-story apartment blocks for sale. The husband did not have an office but conducted this business from his home.

[18] After returning to Tehran in the late 1990s the husband became friendly with a relative, RR. RR and he were about the same age and they had been close prior to his departure for Japan. RR came to the husband and wife's house approximately once or twice a month until their departure. In the course of these visits, RR disclosed to the husband his own political views. RR knew that the appellant had been brought up in an open-minded environment and would be receptive to such conversations. RR was very knowledgeable and was highly critical of the regime and how the current Islamic culture in Iran was, in fact, a foreign culture. He compared the life of Mohammad with the lives of ancient Persian kings. He was particularly critical of the concept of *velayat-e-faghih* (the guardianship of the Islamic jurists), the basic organisational and governmental principal upon which the Islamic public was founded.

[19] In 2003, RR gave the husband a notebook that he had put together himself. Over the next one to two years, the husband received 15 to 20 of these notebooks. The notebooks discussed various themes including comparisons of different verses in the Koran; slavery in Iran; the rights of women under Islamic law; the concept of the guardianship of the Islamic jurists and how Islamic rule and power was exercised in Iran and how the establishment of Islam in Iran was a mistake. Although nothing was ever said directly, it was the husband's impression that RR had made other notebooks which he had given to other people he trusted. RR told the husband that he should not distribute these notebooks to anybody else but rather should destroy them after reading them. Despite this advice, the husband showed the notebook to his wife and also showed some of the notebooks to B1.

[20] In 2003, the husband decided to purchase a shop in a mall that had been constructed for a particular type of trade. He purchased the shop at a cheap price in the expectation that its value would rise over time and he could make a capital gain upon its resale. The market did not, however, act as the husband anticipated and he therefore decided that he would use the shop to be a kind of office for his property development business in Iran.

[21] At round this time, the husband was advised by MM, a land agent he knew in the north of Iran, that there were good profits to be made in developing land in this area which was a popular holiday destination. In late 2003, the husband

therefore transferred his business operation to the north of Tehran and spent an increasing amount of time there.

[22] In late 2005, RR told the husband that he had come as a result of their discussions to consider the husband a suitable person to help him and wanted to know whether the husband would agree to allow RR and his friend to produce some pamphlets in the husband's shop. Although the husband was ready to say yes immediately RR asked him to wait and consider it given the risks involved. The husband did so. After he communicated his agreement, it was decided that the husband's role was that of a sleeping partner. He took no part in the actual distribution but rather financed the production of the pamphlets. In particular, in addition to providing the premises where the pamphlets would be produced, the husband agreed that he would supply RR and his friend with a photocopier, computer and all of their stationery needs.

[23] Over the next year, RR and RR's friend went to the husband's shop approximately two or three times a week. Although the husband returned to the shop from time-to-time with potential customers for his apartments, he always discussed his timetable with RR in advance to make sure that every time he brought a potential customer to the shop, RR and his friend were not there. RR told the husband to keep the enterprise secret from his wife and the husband did so.

[24] While at the shop, RR and his friend produced approximately 1,500-2,000 pamphlets. In the beginning, the husband was shown an advance copy of what they were planning to print. This particular pamphlet discussed the concept of the guardianship of the Islamic jurists. Although the husband never saw any of the pamphlets, he understood from his discussions with RR during the year that the pamphlets were taken from the same material that RR had used to produce the notebooks he had given to the husband. However, whereas the notebooks were pages in length, the pamphlets contained only 10-12 lines of text.

[25] The husband understood from RR that they distributed them by placing them on the top of tall buildings and buses so that the pamphlets would be blown away and distributed in the wind or as the bus travelled along the street.

[26] In late 2006, the husband received a telephone call from the wife. She was agitated and told him that she had been telephoned by RR's mother who told her that the *Ettela'at* (Iranian Intelligence) had come to the shop and taken RR and his

friend with them. The wife said RR's mother had indicated this took place at around 8.30am or 9am in the morning. RR's mother had indicated to the wife that she had been questioned for one or two hours by the officials who asked her whether she was aware of her son's activities in the shop. She also said they searched the house.

[27] In the telephone call, the wife also told the husband that approximately half an hour before RR's mother's house had been visited by the *Ettela'at* officials, two strangers had visited the family home saying they owed him some money. They wanted to know his whereabouts. The wife did not know these people and the husband was not, in fact, owed any money by any old friends. The husband told the wife not to worry because he had done nothing wrong but nevertheless she should let him know should anything else happen.

[28] The husband spoke to MM, and told him of his problem. MM told him that he should remain where he was in the north of Iran while he made some discreet enquiries to find out what was happening. MM then took the husband to the villa he himself had rented in that area.

[29] Two days later, the wife telephoned the husband once more. She was very distressed and wanted the husband to tell her the truth about what he had been doing. She said that at approximately 6.30am or 7am that morning two *Ettela'at* officials had come to their house. The wife said that the officials had asked her to tell them what the husband was doing and indicated that if he did not come forward voluntarily his punishment would be that much harder. The wife told the husband that the *Ettela'at* officials had been aggressive towards her, had verbally insulted her and had even slapped her in the face.

[30] The husband became worried upon hearing this news. First, his wife had a heart problem and he was concerned how this may impact upon her. Second, he was also worried for his own safety because it was clear that the *Ettela'at* were connecting him to the activities of RR. The *Ettela'at* have a fearsome reputation in Iran and the mere fact that they were involved was a cause of real concern. The husband believes that the mere fact that he was the owner of the shop and had rented it out to RR and his friend would be proof enough in the eyes of the *Ettela'at* that he was actively involved in the anti-government activities they were conducting.

[31] The husband told the wife that she should take the money and gold that they had at the house and some clothes. The husband told the wife to bring all of their documents with them, meaning their passports. The husband already had his passport with him because he ordinarily carried travellers' cheques which he cashed for business purposes and banks often required his passport as proof of identification. He told the wife to be careful. The husband then telephoned the wife's brother, WB, and asked him to collect the wife and appellant children and take them to the wife's aunt's home and then bring them to where he was.

[32] The following day, the wife, the appellant children and WB came to where the husband was staying. The wife was very angry with the husband. Although worried that the husband had endangered her own life and the lives of the children by undertaking these activities she was more upset that he had done so and not told her about it.

[33] The family remained in the north of Iran for the next 10-12 days while MM made arrangements for them to leave the country. During this time, the husband had no contact with anyone from his family or his wife's family. However, soon after they arrived the wife telephoned her mother. The wife's mother told the wife that *Ettela'at* officials had gone to the wife's parents' house enquiring as to their whereabouts. Some days later the wife also telephoned B1's wife and spoke to her. The husband believes that B1's wife also told the wife that their house had been visited.

[34] MM arranged a helper to assist them in leaving Iran. The husband paid MM 4 million *tomans* for their departure to be arranged and a further 1.5 million *tomans* for the tickets. The helper arranged by MM said that it would be safer if the husband was to leave first and that the wife and children follow thereafter. They followed this advice and in late 2006 the husband departed Iran. The wife and children followed a week later and joined him. Neither experienced any difficulties departing Iran.

[35] The family remained in Thailand for approximately two weeks. While there the husband spoke to his two sisters, S1 and S2. He telephoned S1 approximately two days after arriving in Thailand to let the family know they had arrived safely. S1 told him that the *Ettela'at* officials had been to her house and conducted a search. S1 also said B1's house had been searched. In his conversation with S2, S2 told the husband that the *Ettela'at* officials had in fact

visited all the family members looking for them. The husband also contacted WB and asked him to have a friend check on the shop.

[36] The appellants travelled from Thailand to New Zealand. Since being in New Zealand the husband has been in contact with his family on a monthly basis. During this time he has spoken to all of his family members albeit he has spoken to his mother, B1 and S1 more than the others. In a telephone call with his mother approximately three and a half months ago, his mother told him that the officials had visited his parents' house asking questions as to his whereabouts. The officials told her that if they knew where their son was they should ask him to present himself to the authorities. Approximately one month ago the husband was informed by B1, that B1 had also been recently visited by the authorities. B1 told him that on this occasion he indicated to the authorities that all he knew was that the husband had now left Iran. B1 also told him that he had been informed by RR's mother that both RR and his friend were detained in Evin Prison.

[37] Since being in New Zealand the husband has also spoken to members of his wife's family when they have been in contact with the wife in New Zealand. In particular, the husband has spoken to his father-in-law shortly prior to the visit by the *Ettela'at* officials to his parents' house two and a half months ago. His father-in-law told him that some two or three days before, the wife's parents had also been visited by *Ettela'at* officials asking as to their whereabouts. News of these visits has been kept from the wife because of her state of mental health. The husband has also spoken to WB who told him that the shop had an official lock placed over it.

Evidence of the wife

[38] The wife was born in Tehran in 1980. She lived with her parents and three brothers in the family home prior to her marriage to the husband in mid-1999. After that time the couple rented a house for two years and then purchased the family home where they remained living until they left New Zealand.

[39] The wife told the Authority that even before her marriage she could see that the husband and B1 had a very close relationship. The husband told her during the marriage that even when he was a very young child he had a strong bond with B1.

[40] The wife told the Authority that approximately one to one and a half months after she married the husband she first became acquainted with RR and that, thereafter, RR would come to the family home approximately once a month. She said RR and the husband were very close friends and during the visit to the family home the husband and RR talked about many things. Often these discussions turned to the nature of the regime and the role that Islam had played in Iran. Discussions of such a nature were new to the wife. Her own family did not engage in discussions of this nature and she was very interested to learn about such matters and have her intellectual horizons broadened.

[41] The wife confirmed that RR began giving the husband some notebooks to read. These notebooks were prepared by RR as far as she was aware but she did not know where he got the information from. They had a number of different topics including the personalities of *imams*, comparisons of *imams* to ancient Persian kings; how cruel the regime was towards women; slavery and other matters. As a result of her exposure to these discussions in these notebooks, the wife came to believe that what RR was saying was, in fact, true. The wife told the Authority that RR, along with B1, had a big impression on the husband. She said that he always believed what was contained in the notebooks but was not naturally able to express his feelings in such a way. The notebooks, she believed, gave the husband an opportunity to learn to express his own beliefs in "a proper way".

[42] The wife also told the Authority that RR was often saying to the husband and wife in these discussions at the family home that it was very important to share this knowledge. RR's slogan was that if he can make just one person realise just what is actually happening then that is a big result.

[43] The wife confirmed that the husband bought a shop in about 2003. He picked a shop in a plaza that had been established for a particular trade in the hope that the value of the shop would rise due to demand and he could re-sell the shop at a profit. She told the Authority that this did not happen.

[44] The wife had no knowledge whatsoever of the husband's involvement in any political activities. However, in late November 2006, two strangers visited the family home and said they were old friends of the husband who owed him some money. The wife did not think anything of it at the time. However, an hour or so later, the wife was telephoned by RR's mother. The wife remembers the call was around lunchtime. RR's mother told the wife that she had been visited by *Ettela'at* officials who said that they had arrested RR and his friend at the shop, taking all of

the material from the shop. RR's mother had no idea why this was happening and asked the wife if she knew anything. The wife told RR's mother that she also had no idea what was going on. RR's mother told the wife that she had been asked whether she knew about their sons' activities and that the officials had searched the house.

[45] The wife telephoned the husband who had been in the north of Iran for eight or nine days as part of his business and told him what had happened. The husband told her not to worry as he had done nothing wrong but to let him know if anything further happened.

[46] Approximately two days later at about 6.30am-7am, the wife received a further visit from two persons who identified themselves as *Ettela'at* officials. The officials were abusive and aggressive towards her. She was asked where the husband was and whether she was aware of his activities or the activities of RR and his friends. When she denied all knowledge of any such activities the officials laughed and said how could she possibly not know given her husband had rented the shop to them. The wife was questioned for approximately 20-25 minutes during which time she was slapped.

[47] The wife telephoned the husband again and told him of this latest visit. Upon telling her husband of this, the husband told the wife to pack up all necessary documents, jewellery and money and to meet him in the north of Iran. The wife then telephoned her brother, WB, who told her that he had already been contacted by the husband who had asked him to take the wife and children to the wife's aunt's house. From the aunt's house the wife, WB and the children travelled to the north of Iran where they arrived in the early hours of the following morning.

[48] The wife told the Authority that for the first day she was in the north of Iran with her husband the couple just argued. She was very upset and angry more so because the husband had not told her what he was doing rather because he was doing the activity itself. The wife confirmed that later on that day, she rang her mother and rather than introducing herself on the telephone, described herself as an old friend. The wife said her mother told her that people had come to their home looking for her and her husband. The wife confirmed that she did speak to B1's wife a couple of days later but was not told that any visit had been made to their house during this time.

[49] The wife told the Authority that she has been in contact with her family since she has been in New Zealand but she has not been made aware of any further visits to the family home. They have just exchanged pleasantries.

Submissions

[50] On 7 November 2007, the Authority received from Ms Manning a memorandum of submissions together with a further statement from the husband. At the conclusion of the hearing Ms Griffin made oral submissions. These submissions have been taken into account in reaching this decision.

THE ISSUES

[51] 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."

[52] 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 APPELLANTS' CASE

Credibility

[53] The evidence of the husband and the wife was both internally consistent and generally consistent between them. They each displayed a positive demeanour when giving their accounts, particularly as it related to the discovery of the husband's involvement with RR and the visits to the wife by the *Ettela'at* officials. Generally the credibility issues raised by the refugee status officer were

satisfactorily dealt with. There were minor discrepancies relating to peripheral matters such as the telephone call to B1's sister in Thailand. However, having seen and heard the husband and the wife, the Authority is satisfied that such minor inconsistencies that did arise can be explained by two separate individuals trying to separately recollect incidents which did, in fact, occur.

[54] As to the *Ettela'at* interest in the husband and the wife, the Authority has some concerns relating to the apparent two-day delay between the raid on the shop in which RR and his friend were arrested and the visit to the family home when the wife was questioned and assaulted. However, having regard to the totality of the evidence before it, and taking note of the otherwise credible nature of the evidence of both the husband and the wife and their demeanour, the Authority is left in some doubt as to the overall veracity of the claim. The husband and the wife are therefore accorded the benefit of that doubt in accordance with usual principles in this jurisdiction.

[55] The Authority therefore accepts the evidence of the husband and the wife as it relates to the husband's involvement in the financing and production of anti-regime pamphlets, the subsequent discovery of his involvement by *Ettela'at* officials and their continued interest in particularly the husband's whereabouts. The claim will be assessed against this basis.

Well-founded fear of being persecuted

Country information

[56] It has long been recognised in the jurisprudence of the Authority that Iran is a country in which serious human rights violations can, and does, occur – see, for example *Refugee Appeal No 300/92* (1 March 1994); *Refugee Appeal No 70631/97* (6 November 1997); *Refugee Appeal No 71091/98* (25 February 1999); *Refugee Appeal No 73710/02* (15 April 2003) and *Refugee Appeal No 74266* (5 July 2005). Country information confirms that Iran remains a country in which serious human rights violations occur. Regard can be had to the United States Department of State *Country Reports on Human Rights Practices 2007: Iran* (8 March 2007) which states, at section1c:

“The constitution prohibits torture for the purposes of extracting a confession or acquiring information. In 2004 the judiciary announced a ban on torture, and the Majles passed related legislation, approved by the Guardian Council. Nevertheless, there were numerous credible reports that security forces and prison personnel tortured detainees and prisoners.”

[57] Further regard can be had to Human Rights Watch *World Report: Iran* (2007) which also states:

“Since President Ahmadinejad came to power, treatment of detainees has worsened in Evin prison as well as in detention centers operated clandestinely by the Judiciary, the Ministry of Information, and the Islamic Revolutionary Guard Corps. The authorities have subjected those imprisoned for peaceful expression of political views to torture and ill-treatment, including beatings, sleep deprivation, and mock executions. Judges often accept coerced confessions. The authorities use prolonged solitary confinement, often in small basement cells, to coerce confessions (which are videotaped) and gain information regarding associates.”

Application to the husband's appeal

[58] Having accepted the credibility of the husband's and the wife's accounts, there can be little doubt that the husband possesses a well-founded fear of being persecuted. The Iranian intelligence services had discovered his involvement in anti-regime activities. Country information establishes that there is no freedom of belief and expression in Iran and that those who undertake activities such as the distribution of anti-regime pamphlets and literature are liable to be detained and interrogated. The persons the husband acted with, RR and his friend remain in Evin Prison. It is likely that upon his return the husband will be similarly detained. Country information available makes it abundantly clear that any such detention would carry with it a real chance of his being tortured or subjected to other forms of serious harm amounting to his being persecuted.

[59] The first principle issue is answered in the affirmative for the husband.

Application to the wife's appeal

[60] The wife does not possess a well-founded fear of being persecuted. Although she has been questioned on one occasion by *Ettela'at* officials and verbally abused, the assault on her was minor. The wife has not been detained to put pressure on the husband. None of the husband's other siblings or his parents have been detained. Indeed, B1, who has a history of anti-regime activity in the early days of the Revolution, has not been detained on suspicion that he may have been involved with the husband with whom he shared the same residential building during the period when the pamphlets were being produced. That nothing has happened to B1 strongly suggests that the chance of the wife being subjected to serious harm on her return, on the basis of her relationship to the husband, is remote and conjectural. It does not reach the real chance threshold.

The appellant children

[61] There is no information before the Authority to establish that the appellant children will be subjected to any form of ill-harm in order to put pressure on the husband. The appellant children do not face a well-founded fear of being persecuted.

Convention reason and nexus

[62] There is no doubt that the husband's predicament is being contributed to by his political (actual and imputed) opinion. This second principal issue is also answered in the affirmative for him. It does not need to be addressed in respect of the wife and children.

CONCLUSION

[63] For the reasons set out above, the Authority finds the husband is a refugee within the meaning of Article 1A(2) of the Refugee Convention. Refugee status is granted. His appeal is allowed.

[64] The Authority finds the wife and the children are not refugees within the meaning of Article 1A(2) of the Refugee Convention. Refugee status is declined. Their appeals are dismissed.

"B L Burson"

B L Burson
Member