

REFUGEE STATUS APPEALS AUTHORITY
NEW ZEALAND

REFUGEE APPEAL NO. 71492/98

AT AUCKLAND

Before: A R Mackey (Chairman)
D J Plunkett (Member)

Counsel for Appellant: Darrell C. F. Naden

Representative for NZIS: No Appearance

Date of Hearing: 14 and 21 May 1999

Date of Decision: 30 June 1999

DECISION

This is an appeal against the decision of the Refugee Status Branch (RSB) of the New Zealand Immigration Service, which declined the grant of refugee status to the appellant, a national of the Islamic Republic of Iran.

INTRODUCTION

The appellant is a 21 year-old single male who arrived in New Zealand on 24 April 1999 and claimed refugee status at the airport. He did not have valid entry documentation nor a passport and was detained in custody, apparently under s128 of the Immigration Act 1987.

He was interviewed at the Mt. Eden Prison by an RSB officer on two occasions - 28 April 1999 and 30 April 1999. From the file made available to the Authority, it is apparent that the appellant was desirous of having some form of legal representation and the RSB officer, from notes on the file, was also concerned on this issue. It is apparent that there was difficulty in the appellant contacting a legal representative because of language difficulties, problems in communicating with

prison officers, and some uncertainty on the part of the RSB officer as to what steps should be taken.

However, the RSB interviews proceeded without the appellant having representation. The appellant was sent the details of the interviews for comment and that correspondence was partially interpreted to him. He later replied in a letter dated 3 May 1999, which was later translated to the immigration officer and was used as part of her determination and final decision made on 6 May 1999.

The appellant appealed to this Authority, while in Mt. Eden Prison, on 6 May 1999. The Authority acknowledged receipt of the appeal on that date and set the matter down for hearing on 14 May 1999 at the Authority's hearing rooms. A letter delivered to the appellant (with a copy of his RSB file) was explained to him through an interpreter when a case officer of the Authority attended at the prison. A list of some eight counsel practising in the field of refugee law, with their names, addresses and contact telephone and facsimile numbers, was provided to the appellant at that time. From that list, it appears the appellant chose counsel and was able to come to arrangements that led to counsel representing him before this Authority on the two days of the hearing of the appeal.

The Authority expresses its concerns that, despite indications that the appellant wished to have representation of counsel in presenting his case to the RSB, he was unable to achieve this for the combination of reasons described above.

After the first day of hearing of the appellant's appeal, on 14 May 1999, the matter had to be adjourned for one week as the appellant's evidence had not been completed before the Authority. When the appellant's counsel made the New Zealand Immigration Service aware of the adjournment, the appellant was released from custody early in the evening of 14 May 1999. Accordingly, he was not accompanied by a prison officer at the resumed hearing on 21 May 1999.

At the conclusion of his hearing, the Authority allowed the appellant or his counsel to produce any additional documentation from Iran which the appellant had requested in a facsimile sent indirectly to his father in Iran through the offices of the appellant's counsel. The Authority was advised by counsel on 11 June 1999 that a reply had not yet been received and thus there was no additional evidence from the appellant's father. Counsel requested a delay in the Authority's decision. In the light of the conclusions by the Authority that are set out below, and that, on

the evidence presented, refugee status should be granted to the appellant, the members concluded that the appeal decision could be finalised at this point.

THE APPELLANT'S CASE

The appellant's family are from M in Iran. His mother died when the appellant was 17 months old and his father remarried in 1982. The appellant spent most of his childhood living with his grandmother and aunts from both sides of the family. His step-mother would not accept him living with his father and his half siblings. The appellant's father was a surgeon, holding an influential position with a hospital in M prior to the downfall of the Shah's regime. On one occasion when the Shah had visited the hospital where the appellant's father was the principal surgeon, he had been photographed with the Shah. This had later caused problems for his father who was demoted from his position for several years before being later reinstated.

The appellant's grandfather and other members of his family had actively participated in the Islamic Revolution, however, and had obtained significant local positions in the new regime. His grandfather held an important position as assistant to a Mr T, who was charged with a very important position as keeper of a major shrine in the holy city of M. His grandfather's position gave him important status in M, as he managed the assets and affairs of the shrine, which were evidently quite considerable. Some eight to 10 years ago, the appellant's grandfather visited New Zealand to buy cattle as part of his work administering to the assets and properties of the shrine. This appears, however, to have been only a coincidental association with New Zealand and it is not linked with the appellant's ultimate flight to this country.

The grandfather held the position until his death recently. His three sons included the appellant's father, an uncle who is a lawyer in practice in Iran and a third son who is a domestic pilot and factory owner.

The appellant's father is now in practice as a medical practitioner and is associated with the school of medicine at the M university.

The appellant described his relationship with his father during his childhood as a healthy one and, although he did not live with him, he saw him from time to time and they had regular telephone contact. His relationship with his aunts was also a good one but with the uncles, it was never easy. The uncles were strong Islamic

supporters of the regime. Over time, he came into constant arguments with them as his own beliefs developed and differed from those of his uncles. One maternal uncle held a high position within the government and is currently stated as being an ambassador in an Iranian Embassy abroad. The other uncle is the owner of a sizeable factory. When the appellant pursued his arguments with his uncles, including his support for the ideals and principles of the current President Khatami, his uncles were dismissive and told him to go away and learn more. The uncles were strong supporters of the fundamentalist factions in Iran, supporting the supreme religious leader, Ayatollah Khamanei.

The appellant explained that he had expressed his viewpoints on political and religious issues from a very young age, questioning such matters as to why the Mojahedin and Tudeh parties had been heavily involved in helping the Revolution and yet were now massacred; why some people lived in misery and poverty and others lived in luxury; and why so many of the highly educated intelligentsia of Iran had to leave the country to have their abilities recognised, rather than being supported and encouraged in their homeland.

The uncles warned the appellant that his views were dangerous and that they did not want the appellant to follow those ideas, as the name of the family would be targeted. The appellant, however, responded that his beliefs and religious ideals would not let him keep quiet.

Also, the appellant explained that one of his father's sisters was a member of an Islamic Association and that, through this association, together with her husband, they were strongly allied to the security forces which supported the fundamentalist elements in Iranian authorities.

In his schooling, the appellant explained that he had been reasonably successful and that his best subjects were in the field of social studies. Later he had developed an interest in technology and electronics and had gone on to study in that field at university.

While at high school, he had not been heavily involved in political activities and had concentrated on his studies. He had been reported by the Islamic Association on occasions whilst at high school, but these were not matters that he regarded as substantive.

The appellant explained that he had been allowed to sit several examinations for

the entrance to various universities. On one occasion, however, when he visited the holy city of Q for an entrance examination to medical school, he encountered problems. He was 18 at the time and, on arriving at Q for the first time, dressed in T shirt, jeans, sunglasses and with long hair, he had been arrested by the Basij and held in custody until after the time when the examination he had come to sit was completed. He noted in Q that there was strict observance of the Islamic dress code and that the vast majority of people were on pilgrimages. Having been detained, his entry card for the examination was taken away from him and torn up, and he was told that this was to be a lesson to him. There were no other students with him in a similar situation. The Basij told him that he was improperly dressed, was a homosexual and a western supporter because of his dress and appearance. He explained to us that being accused of homosexuality was considered an extreme insult in Iran and he certainly did not have that persuasion himself. He was held for one day and one night and was thus unable to be considered for entry to medical schools.

A short time later, however, he was able to sit a different type of entrance examination for university and was later accepted as a technical student at a university in I.

The appellant commenced his university career in 1996 at one of the many universities in I. He immediately became involved in student politics and groups supporting a more open-minded approach in Iran than the fundamentalist fanaticism that was represented in the views of former President Rafsanjani, Supreme Leader Khamenei, and the presidential candidate favoured by the conservative/ fundamentalist elements, Nateq-Nouri.

The appellant became heavily involved in promoting the views and ideas of Mohammed Khatami in the months preliminary to the presidential election in May 1997. (In the election, President Khatami obtained the remarkable, if somewhat unexpected victory, with 70% of the vote).

The appellant said his role had been to promote the more liberal ideas of President Khatami to fellow students and to organise other students to take part in activities in support of Mr Khatami. This involved him in setting up associations at other universities in I, with like-minded students. Also, in addition to speaking to small groups on his own university campus, he spoke in mosques and at other universities.

After the election of President Khatami, he became even more actively involved in the support of more democratic and liberal ideas in Iran which the students hoped would come about by their support of President Khatami and like-minded supporters. He said that students and fellow supporters, such as himself, were termed the “Green Gathering” or the “2nd of Khordad”. [This is a reference to an Iranian date (23 May 1997 on the Christian calendar) that marked the date of the election victory of President Khatami]. He was one of a group of approximately 15 activists at his own university.

A few months after the election of President Khatami, the appellant became involved in the organisation of a major rally in support of President Khatami. It was also intended to be a protest against the fanatics and fundamentalists who were trying to discredit the Khatami regime. In the city of I, the appellant stated that the students were 100% supportive of the Khatami regime and felt it their duty to support organised demonstrations which were planned in front of the universities. Prior to the demonstration, the appellant made contact with students in other universities and, by word of mouth, endeavoured to promote attendance at the rally amongst his fellow students at his own university. He considered that he was one of the main spokespersons for the protest at his own university. Requests had come to him from students, with similar views, at other universities to organise the students at his own university. He considered the requests had come to him personally as his political views were well known.

The appellant attended the rally of students, the attendance at which he estimated to be some 13,000 students in all. He went along with approximately 15 fellow students from his own university who were principal supporters and protagonists for the “Green Gathering” amongst the students at his university. He explained that the “Green Gathering” did not only involve “Green politics” but also implicated the green colour from the Iranian flag, peace, kindness and friendship. He and his fellow students saw these attributes were being promoted by President Khatami.

At the demonstration, the students started shouting slogans denouncing conservative/ fundamentalist politicians. Soon after the students started their demonstration, security intelligence officials and police told them to stop and attacked the students with batons. The students retaliated with sticks and the throwing of stones. The appellant said he was at the front of the demonstration as one of the organisers and was soon arrested and taken to the prison near DS. He

was held there for 12 days, which he considered was longer than any of the other students who were detained. The officials claimed that he was one of the organisers of the demonstration. He denied that role. During the time he was held in custody, he was slapped, punched, kicked, beaten with batons and whipped with a camel-hair rope. This abuse took place over the first six or seven days he was held in detention. On one occasion he said a car tyre was put around his body and water was poured over him. After being detained for some 12 days, and not confessing, the appellant was ultimately released and not charged with any specific offence.

The appellant was heavily bruised and in considerable pain when he was released. He then decided to return to his home town, where his father prescribed pain medication for him and also arranged for him to visit a psychiatrist for treatment. After making a recovery in his home town, the appellant returned to his university in I (after being away a total of approximately one month) and went back to lectures. When he attended the lectures, he found that his name was not called out as being present. Accordingly, he went to the Islamic association of the university to find out what had happened. He explained to them that he had been in his home town of M and that was the reason for his absence. At that point, they put a letter in front of him. This letter was from the secret police and showed the appellant's name circled on it. The Islamic Association members told him that they knew about his case and that accordingly, he had been expelled from the university. The university authorities were under a duty to follow the directions of the Islamic Association.

He was speechless and shocked as a result of his expulsion. No reasons were given to him and he was simply told to go and talk to the secret police which, he said, was something no-one ever did, for obvious reasons.

After his expulsion, the appellant returned to his home town of M and moved about mainly staying with maternal aunts and uncles. His political activities, however, did not stop at that point and continued and grew quite vigorously over the following 18 months until he left to come to New Zealand. Unfortunately, in the RSB interview with the appellant, apart from ascertaining from the appellant that he had worked for two brief periods during that 18 months period, no further questioning or investigation of the appellant's activities over the period prior to his flight from Iran, was undertaken by the RSB. This omission has been significant in the determination of the appellant's appeal.

The appellant reported to the Authority that, in addition to the two brief periods of employment (one of these in a factory owned by his uncle), he became heavily involved in writing, including poetry, and the promotion of anti-fundamentalist political and religious views. He had promoted his views particularly with students in universities in M and in a number of mosques.

Once he was back in M, he moved around between the homes of his aunts and uncles as he was constantly coming into conflict with his uncles whom he considered were Muslim fundamentalists, committed to the policies of the Khamenei factions. After a few days in each place, he said, there would be a verbal conflict and he would be told that if he wished to remain, he would have to “shut up” and not think or become involved in political or religious matters. The appellant, however, did not take the advice of his uncles, but became more and more actively involved, particularly as he recovered from the depression and the physical abuse that he had received while he had been detained in I.

He also advised the Authority that it had been impossible for him to keep employment as even in his uncle’s factory, where he had been employed, he had been shown a piece of paper, which had been passed out to all shops and factories by the Department of Labour, which stated that anyone who had a “case” against them, could not be given employment, and that employers would be fined if they did. The detention in I amounted to a “case” in his view. He then tried to find private work with a friend but this work irritated his back which had been injured during the detention and so he had to resign.

The appellant then decided to put all of his thoughts and activities into his political and philosophical studies and spent long hours in study at university and public libraries in M. During this time, he studied, in Farsi, scientists such as Freud, Max Planc (physics), Hegel and other political scientists, Dr Motoheri (on “The Liberty of Women”), Lenin, Buddhism and Christianity.

The appellant also borrowed books from friends and other libraries and participated in discussions with students at various universities on the subjects in which he was interested.

He said that his political activities over this time were directed towards speaking against racism, corrupt fundamentalist religion, and undemocratic politics. This

became more and more intense as time went on and the appellant was talking and involved in discussion groups at three different universities in M. These universities were the school of medicine, an agricultural school and another university more dedicated to philosophical issues.

In addition to taking part and leading discussion groups at these three universities (where the appellant considered it was most effective to operate as the students could lead others into more liberal and democratic views), the appellant said he also became more involved in trying to publish a lot of his writings and poetry. He sent a considerable number of his articles and poetry to newspaper editors. However, as all newspapers were heavily censored in Iran, none of the articles or poems were ever published. The articles were sent anonymously. On one occasion, however, he had received a threatening reply, stating that if he ever wrote "such nonsense again we will kill you". He was not deterred by the threatening letter, however, and continued with his writings and sending his articles and poems to newspaper editors. He explained to the Authority that he had, in fact, been writing articles and poems for a long period of time but had only intensified the writings in the last 18 months. The appellant estimated that the threatening letter had been received in response to an article he had sent in approximately January 1997. He thought that the number of letters and articles he had sent to newspaper editors had been substantial although less than 100 in total. The articles and poetry were on a number of topics covering social, political, religious and other matters. Many of the articles were severely critical of material published in the newspapers, which was strongly pro-government.

At the hearing, the appellant produced his book of poetry and writings to the Authority (in Farsi). Included in the book was a copy of the threatening letter that had been sent to him. He explained that the book was not a personal history or diary, but was a book of his writings and thoughts that he had built up over the years.

The book was obviously one to which the appellant had devoted considerable attention and gave the appearance of a journal that had been extensively used and worked in and its contents were very important to the appellant. The appellant said there were also several other books of additional writings that he had completed and that these were still in M with one of his aunts. Some of the writings and works that he had put into his books, he said, were of a purely private nature, while the articles that he had sent to the newspaper editors were critical of

conservative and fundamentalist government practices in Iran. He considered that the authorities in Iran knew that he had sent the critical letters and articles to the newspapers as, although they were anonymous, he had received threatening letters apparently in reply.

Also, during his time in M, over the past 18 months, the appellant said he had been endeavouring to put like-minded students in touch with each other and to promote the activities of the "Green Gathering". He estimated that he had made approximately 10 speeches at the three universities in M and, in addition to the "speeches", he talked extensively to students about the ideas of President Khatami on democracy, liberty of women, opposition to government cruelty and promotion of the real Islamic faith. His "speeches" had involved groups of between 40 and 60 people at a time and usually took place before the lecturer arrived, over a period of some 10 minutes to half an hour. He would use the time to make points and then follow them up in later talks or speeches. He could not go on for more than 10 to 30 minutes as it became dangerous and it was essential to spread his messages by word of mouth only. He also explained that fundamentalists and students who were supporters of the Islamic Association had challenged him and attempted to argue against his logic. The appellant found that he had been able to argue successfully against the flawed logic of the supporters of the Islamic Association and this had helped his support and ability to continue with his activities. He told the Authority that he had not suffered any physical harm from the Islamic Association supporters.

Over the final six months that the appellant was in Iran, however, he considered that his activities became more and more risky as various students and other supporters in the "Green Gathering" were being kidnapped and killed. Although the university authorities in M had not done anything to remove him, he felt that over time it was becoming more risky and as the activities gathered towards the next Iranian presidential election (due in approximately one and a half years' time), his chances of being murdered or kidnapped by the fundamentalist forces in Iran would increase.

Over the past six months, before his departure, the appellant's father became aware of his activities and told him what he was doing was very dangerous, not only from his personal perspective but also as it affected the total family. His father also warned him that, as M was one of the more religious cities in Iran, very much committed to the fundamentalist and controlling groups within much of the

Iranian government, it was becoming more and more dangerous for him. It was with this in mind that the appellant's father started encouraging him to leave Iran and began a search for agents to assist in the appellant's flight.

Ultimately, when an agent was found, because his father considered the risk to the total family was considerable, his father decided to sell his own house and give the money to the agent and the appellant, so that he could flee from Iran. In addition to this, the appellant said his own desire to leave became stronger in the months before he left.

The appellant told the Authority that he definitely considered something was going to happen to him because of his expanding activities and the growth of the "2nd of Khordad" movement and opposition to it in many cities in Iran. He explained that there had recently been a number of killings in Iran of high level government people and many students with strong political views. This was all part of a suppression of the support for pro-Khatami views and movements in Iran.

When asked why he continued to give speeches and promote such highly contentious views in M prior to leaving, the appellant explained to the Authority that he was very committed to his causes and would have kept on with his activities until he was stopped.

We asked why he considered that authorities would be looking for him personally. He informed us that there had been increased questioning of other students at the universities in M by the Islamic Association members and that much of this questioning was directed towards his activities. Beyond this, he said his father had been told by some friends that "bad things would happen to [the appellant] if he did not stop his activities".

The appellant informed the Authority that the student leaders who had been reported as disappearing recently were not personally known to him but people with similar political activities to him were amongst those who had been killed or detained. He considered that his very active political profile with the three universities in M and, prior to that, his arrest for organising a protest rally in I, put him at a high level of risk.

If he returned to Iran, he considered that he would be killed as he would be arrested and tortured because of his past political activities. He had left the

country illegally and would be detained on his return. That reason alone would lead to an investigation into his political background. He also considered that because of his role as a unofficial leader supporting the "Green Gathering" in M in the universities, he was being followed by secret police and local informers in his home district.

During the hearing, the Authority questioned the appellant on a number of areas of his evidence where the RSB had concluded that the appellant had dubious credibility or had given explanations that they did not consider plausible. The appellant's explanations of these to the Authority centred around problems that he had with the interpreter at the airport (where he considered the interpreter had been biased and had not properly completed the application forms, or had incorrectly misrepresented his answers to the immigration officer). Beyond this, he considered that it was inappropriate for the RSB to dismiss this claim because "he had lived in Iran over the last two years without incident", when the RSB had simply not questioned him on his activities over the last 18 months before he left Iran, apart from the two questions related to his employment during that period.

The appellant's counsel produced copies of several recent articles in relation to Iran and the tensions between the pro-Khatami supporters and the hard line fundamentalist supporters of the spiritual leader of Iran, Ayatollah Khamenei. Also provided was an extract from an article of 14 February 1999 from Associated Press, relating to student demonstrations at the I University of Technology. This article stated that thousands of students and professors had demonstrated in the city of I to protest beatings of university students at a rally early in February 1999. The Associated Press article stated:

"Some 1,000 students and professors demonstrated in the Iranian city of [I] to protest beatings of university students at a rally earlier this month, the official Islamic Republic News Agency reported Sunday.

It is said the protesters at the [I] University of Technology on Saturday criticized the "negligence of the law enforcement personnel," who apparently did not intervene to break up a scuffle in which a student was stabbed. IRNA said "hooligans and bandits" had attacked students at the Feb. 3 rally, called to seek better transport for women students.

Iran has been struck by a wave of violence, triggered by the intensified power struggle between supporters of hard-liners and moderates inside the ruling Islamic government.

Since the moderate Mohammad Khatami was elected president in May 1997, vigilantes loyal to the hard-liners have attacked liberal newspapers, broken up pro-democracy demonstrations and even gone after senior officials allied with Khatami.

On Thursday, about 100 hooligans attacked Hadi Khamenei, younger brother of Iran's supreme leader, Ayatollah Ali Khamenei.

Hadi Khatami, 51, a press adviser to Khatami, owns the liberal-leftist newspaper Jahan-e Islam. His moderate political views are in contrast to those of his elder brother, who is a leading hard-liner in the Iranian hierarchy.

On Tuesday, the intelligence minister resigned after the ministry admitted that some of its agents were arrested on suspicion of involvement in the killings of opposition writers and intellectuals.”

This article was produced by counsel to counter the claim made in the RSB's decision that the appellant's application lacked credibility as there was no evidence of any demonstrations (taking place in 1997 as claimed by the appellant) at the I university. This claim was made by the RSB on the basis of a search of Internet material in the New Zealand Refugee Status Library. Counsel also submitted that the search could have been flawed in that the RSB had referred to the “E” University, rather than the “I” University. He submitted that while the above quotation was not a direct reference to a demonstration in 1997, it certainly referred to “pro-democracy” demonstrations in relation to similar issues in early 1999, and possibly before that.

The other articles produced by counsel related to the development of the “2nd of Khordad” movement, otherwise known as the Unity Party of Iran (UPI), which the appellant claimed was the same movement as the “Green Gathering”; and two reports of an alarming pattern of killings and disappearances of prominent Iranian writers and government critics that was emerging in Iran in late 1998 - reported by Amnesty International (full references to these provided later in the decision).

Facsimile to the appellant's father

Issues related to a facsimile sent by the appellant indirectly to his father from his counsel's offices arose during the hearing and gave the Authority serious concerns. These were largely alleviated when the transcript of the facsimile was actually made available to the Authority and translated.

During the hearing, the appellant stated in evidence that he had tried to contact his father to obtain copies of a number of documents which he considered could assist in his application and possible appeal.

The appellant began consulting his copy of the facsimile (in Farsi). The Authority then requested the appellant to produce all of the contents of the facsimile if he

wished it to be part of his evidence. In considerable debate on this issue, the appellant showed extreme reluctance to produce the document or disclose its contents.

After consulting with his counsel in a break allowed by the Authority, the appellant then agreed to produce the document and arrange for a translation into English. The facsimile stated:

“My dear father hello:

I hope you are well. I do not have enough time to write. Sorry if I couldn't call you. I'm in prison. Yes, don't be surprised. Because my case is not completed they don't believe in me and they have asked me for more proof. I have had three interviews so far - once at the airport and twice at the prison. My last hearing is this coming Friday for which they finally got me a lawyer.

If they don't believe in my case they will deport me by the first flight back to Iran. I have a good case. I have told them about my imprisonment because of my political activities but I don't know why they don't believe me.

Is it because this country is far from the rest of the world and they don't hear the news, or maybe they don't have access to Internet. I feel sorry for myself being in prison. I've done nothing wrong to be here. I have committed no robbery, no murder, no drug dealing. This is the kind of country that I always wanted to live in. I don't know why they are doing this to me. They have put me among a lot of drug dealers and addicts. Please help me. If they deport me, that's the end of my life.

Father in this letter I'm mentioning names which if the secret police find out about my years of fight would be wasted. After reading this letter burn it. I have written this letter in Farsi so that even my lawyer wouldn't know about these names. When I got here, they brought me an interpreter who made my life even more difficult. If there was someone else my life would be easier now. Father I am suffering the worst tortures in this place. I can't even say my prayers. It is so dirty and polluted. If this prison was in Iran, they wouldn't even keep animals in it. In spite of all this I've seen humanity in their faces. My cell-mate is a black man who has no education. He doesn't even flush after using the toilet. He gave his breakfast to me because I couldn't get mine and I know that he didn't have any dinner either.

Father I have time before Friday. Please gather all these documents:

- (1) fax my student ID card and all study documents plus my diploma;
- (2) all the summonses from the Islamic Association - I believe my cousin has them;
- (3) fax the latest newspapers and the one relating to my arrest and demonstrations. I think you can get these from the library.
- (4) please send a letter confirming that you sold your house to pay for my trip - these people don't believe me.
- (5) go to KS who you know - ask him to find these people:
(a) HE (b) ZK (c) MV (d) HA. Ask them to send the letters to your address and you fax them to my lawyer. Ask them to write all the details of my imprisonment, demonstrations and torture.
- (6) the prescriptions for the medication I used to treat my injuries from the torture after my release from prison
- (7) ask Dr G to write details of my situation after my release from prison and the medicines as well and do the same thing with Dr K, I think, until M has

got by prescriptions.

This is my lawyer's fax - Mr D
[fax number].

I ask all the friends' and relatives' forgiveness. Just know this - I haven't come here to have fun. If I had stayed in Iran I was not afraid of death - I was worried about you. As it says in the Quran "Death in the path of God is not death as you are alive in his presence and receiving his blessing".

I will contact you as soon as I come out of prison.

Visit holy shrines on my behalf.

I write this letter to my dear uncle N who understands Islam very well, who taught me the real meaning of life. Dear uncle, I'm writing this letter as my life hangs at the edge of the blade. If I could stay here my life is safe. Otherwise there will be no visits between us.

I thank you for all your kindness. You taught me the lessons of freedom and being free."

When questioned by the Authority as to why he had been so reluctant to produce the document, the appellant explained that it was because he did not want the names of the individuals referred to in the facsimile to be disclosed in any way, as he considered it may put those persons at risk. The Authority allowed the appellant a 14 day period to produce any responses that may have come from his father or uncle as a result of the facsimile. The appellant advised us that he was unsure whether he would receive any response, as his uncle N, who was a hard-line fundamentalist, may not pass the information on to his father, or that his step-mother may urge his father not to be co-operative because she did not support the appellant and had complained and been resentful of the problems that the appellant had caused to his father and other members of the family prior to his leaving Iran.

As the Authority considered it was able to reach a decision on the material and evidence provided, it decided not to adjourn the matter further to await additional documentation which appeared somewhat unlikely to be received, in the circumstances.

THE ISSUES

The Inclusion Clause in Article 1A(2) of the Refugee Convention relevantly provides that a refugee is a person who:-

"... owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside

the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence, is unable or, owing to such fear, is unwilling to return to it."

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

1. Objectively, on the facts as found, is there a real chance of the appellant being persecuted if returned to the country of nationality?
2. If the answer is yes, is there a Convention reason for that persecution?

ASSESSMENT OF THE APPELLANT'S CASE

To determine the above issues, it is at first necessary to conclude whether the appellant's evidence was credible. Because of the negative credibility assessment of the RSB, and the complexities of the appellant's story, both as to its background and presentation (possibly caused through the lack of counsel and the fact that he was in custody while at the RSB level), the Authority closely examined this appellant on a wide range of issues relating to his credibility and the areas that were of concern to the RSB. The Authority has reached the conclusion that while the appellant may have embellished some of his evidence, and the members were still left with some confusion over the timing of some events in the appellant's story, the Authority considers that the benefit of the doubt should be given to the appellant and his credibility accepted as to the core of his story.

The Authority found the appellant to be a very intelligent, complex and serious young man, with a strong commitment to the highest principles of his Islamic faith and an equally strong, if somewhat idealistic, view as to how Iranian society should operate in a democratic and open fashion. Possibly due to his youth and lack of good advice in the initial stages of his application, he did not appear to know which areas of his story to prioritise. This caused considerable confusion in the hearing of his appeal and obtaining his concentration on the issues that needed to be determined. Perhaps most notably, it was the failure of the RSB officer to concentrate virtually any enquiries into the 18 months prior to the appellant fleeing from Iran that led to the failure of the RSB officer to fully understand this appellant's circumstances and background. In all refugee cases, the period immediately prior to flight by a refugee should be given close attention by a refugee determination adjudicator as, logically, this period will be highly relevant to

the determination and, in particular, the well-foundedness of the fear. An incomplete story is valueless.

Turning to the issues, therefore, the Authority found that the appellant had been a student activist very much involved in the pro-Khatami student support activities that took place immediately prior to and after the election of President Khatami in 1997. The Authority accepts that at the I University, the appellant was one of a small group involved in promoting the somewhat liberal views of Mr Khatami and his nationally known supporters. This brought the appellant into direct conflict with the hard-line and more fundamentalist views of the controlling authorities. The Authority accepts that he was detained and severely maltreated after taking part in a demonstration in mid-1997 and that, as a result of this, he was expelled from university and returned to his home town of M. When he returned to his home town, after a period of recovery from the physical and psychological effects of his detention, the appellant became very actively involved in the promotion of the "2nd of Khordad" or "Green Gathering" and saw himself as a key figure in co-ordinating and promoting the more liberal views for which, he considered, President Khatami and his supporters stood. This included fighting corruption, promoting the true Islamic religion, respecting women, honouring old people, and allowing freedom of speech and democracy.

The Authority found that over the 12 months prior to his departing Iran, in his somewhat uncoordinated activities as a freelance student and activist he became more and more committed. The attempts to publish his views by writing to newspaper editors, appearing and speaking out in the three universities in M on a regular basis, almost verged on a reckless disregard of the risk that he was running.

It is therefore necessary for the Authority to consider, prospectively, whether he has a well-founded fear of being persecuted should he return to Iran. In addition to the Associated Press article of 14 February 1999, which notes that Iran is involved in a wave of violence by the intensifying power struggle between hard-liners and moderates inside the Islamic government, the Authority noted an Amnesty International report of 11 December 1998 (AI Index MDE 13/25/98). That report, headed "Alarming pattern of killings and "disappearances"" states:

"An alarming pattern of murders and "disappearances" of several prominent Iranian writers and government critics is emerging in Iran, Amnesty International said today.

Amnesty International is concerned for the safety of Mohammad Ja'far Puyandeh, Hushang Golshiri, Kazem Kordavini, 'Ali Ashraf Darvishiyani and Mansur Kushan, all of whom are prominent Iranian writers. They were questioned by the authorities in October 1998 in connection with their desire to establish an independent writers association, Kanun. Mohammad Ja'far Puyandeh went missing on 9 December while travelling to a meeting. This follows the recent possible "disappearance" and unexplained deaths of two other writers and critics of the Iranian government, Majid Sharif and Mohammad Mokhtari.

The body of Majid Sharif, a translator and journalist who contributed to the banned publication Iran-e Farda, was identified in a Tehran mortuary on 24 November by his brother, who had been summoned by officials. The coroner's report cited "heart failure" as the cause of death. Majid Sharif went missing on 20 November after leaving for the town of Mashad to attend a funeral.

Mohammad Mokhtari, another writer questioned over the establishment of Kanun, was found dead in suspicious circumstances on 9 December after having been missing for six days. Marks on his head and neck suggest he may have been beaten and strangled.

"The Iranian authorities should undertake a full, impartial and independent investigation into the deaths of Majid Sharif and Mohammad Mokhtari and make the results of any such investigation public", the organization said.

Dariyush Foruhar, a prominent critic of the Iranian government, and his wife, Parvaneh Foruhar, were killed at their home in Tehran on 22 November. Dariyush Foruhar, Minister of Labour in the Provisional Government of Mehdi Bazargan in 1979, was the leader of the Iran Nation Party (Hezb-e Mellat-e Iran), a banned opposition group. Parvaneh Foruhar was also a prominent opposition activist.

It is currently unclear who was responsible for the killings, described by President Mohammad Khatami as a "repulsive crime". The Interior Minister Abdolvahed Musavi-Lari has stated that "the government is determined to get to the root of the matter and deal with the culprits whoever they may be or whatever their position". Associates of Dariyush Foruhar have expressed their belief that the killings may have been politically motivated.

Amnesty International is concerned that recent events may represent a trend towards targeting of opposition figures and while not seeking to apportion blame, would remind the Iranian authorities of their duty to ensure that the lives of all citizens of the Islamic Republic of Iran are protected, in accordance with Article 6 of the International Covenant on Civil and Political Rights (ICCPR), to which Iran is a state party. Article 6 of the ICCPR states: "Every human being has the right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life."

Also noted is a report from Human Rights Watch, dated 25 November 1998, entitled "HRW Deplores Pattern of Harassment and Killing of Opposition Figures in Iran, Calls on Iranian Government to Bring Killers to Justice" (New York, November 25, 1998). This article stated:

"In an open letter sent today to Iran's President, Hojatoleslam Mohammad Khatami, Human Rights Watch expressed its shock about the killing by unknown assailants of opposition figures Dariyush and Parvaneh Forouhar, in their Tehran home on Sunday November 22, 1998. The Forouhars frequently protested the restrictions placed on their nonviolent political activities by the Iranian authorities and had expressed fear about their personal safety.

Mr. Forouhar was the leader of the banned Iran Nation Party and a former Minister of labor in the transitional government of Mehdi Bazargan. Forouhar's wife, Parvaneh Forouhar (Eskandari), was a political activist and spokesperson of the Iran Nation party.

Human Rights Watch said that the killing of the Forouhars is part of a longstanding pattern of harassment and persecution of government critics in Iran. This pattern has continued despite President Khatami's public statement encouraging freedom of expression. "Words alone cannot allay the growing concerns that those who speak out may be intimidated, beaten, or killed," said Hanny Megally, the Executive Director of the Middle East and North Africa Division of Human Rights Watch.

The Forouhars lived their lives under close government surveillance. Human Rights Watch had observed that their telephone was wiretapped and visitors to their house were monitored. Megally noted that many Iranian government officials have called for an investigation of the murders. "Since government agents were watching the Forouhars so closely, this should be an open-and shut case," said Megally, and "the Iranian government must locate the culprits without delay."

The Authority, however, considered that balanced against this must be the evidence that President Khatami was voted into power with a majority of 70% of the electorate supporting him. This was put to the appellant and he was asked why he should consider himself at risk when he was promoting the alleged views of the President of the country, who had been voted in with a 70% majority. The appellant submitted that whilst this situation was correct, the control of the security forces and secret police was still held by the conservative elements supporting the Khamenei elements of government and that the presidential supporters were not in control of these fundamentalist elements.

In this regard, we noted an article from the Herald Tribune of 20 July 1998 p.2 - "In Iran, an Evolution Amid Muted Applause". This article initially reported an event in July 1998 where Iranian officials were setting ablaze 100,000 pounds of seized drugs and when President Khatami stepped up to the lectern after receiving acclamation from his supporters, rival groups attempted to drown out the salutes and a commotion arise.

"... And in full view of the President, visiting UN officials, the diplomatic corps and thousands of guests, security forces had to drag away the rowdiest participants."

The article goes on to state:

"Mr Khatami has transformed the public debate over basis political issues, lifted restrictions on publishing, filmmaking and the news media, solidified relations with the Gulf Arabs and the Europeans and reached out - though only rhetorically - to the United States.

But Mr Khatami, a cleric who proclaims fidelity to Iran's Islamic constitution, finds

himself fighting battles with political and religious enemies to keep his programs alive and his allies in office.

Under the constitution, the spiritual leader of Iran, Ayatollah Sayed Ali Khamenei, controls the armed forces, the security and intelligence services, radio and television and the judiciary.”

The article further states:

“Even Mr Khatami’s closest aides openly acknowledge the problems.

“Many of the levers of power are not in the hands of the president and since his rivals had a bitter defeat when he was elected and are holding some of the most powerful positions, they’re not giving him any help,” Mohammed Ali Abrahi, Mr Khatami’s closest personal adviser, said in an interview.

“Compounding the problem is that many of the 20 million people who voted for him don’t understand his limitations and are demanding speed and action. Some of them don’t even believe in religion or the constitution. So we’re caught between fascism and anarchy.”

In contrast to earlier times when many political battles were fought in secret, tensions in the system now play out much more openly.”

“... In this environment, social and political liberalisation seems uneven.

Despite all the emphasis on the rule of law, Mohsen Saidzadeh, an outspoken midlevel cleric who has written and spoken extensively on the rights of women, was arrested at his home in early July.”

Other articles noted include “Dominant factions Erosive War Against Khatami”, *Le Monde*, April 23, 1999.

This article states:

“Be aware that a storm is on the way in Iran. In just a few days, Khatami's friends have suffered several blows. If Khatami does not launch any counter-offensive against these attacks, the danger exists that at least for a while - may be until next parliamentary elections which they supposedly wanted to dominate - the enthusiasm (of his faction) would dampen

The daily *Zan* (woman) owned by Rafsanjani’s daughter was closed down. Three of Khatami’s close allies, Mohajerani, Khadivar and Karbaschi, have come under attack one after the other. And Majlis finally grabbed the control of daily *Hamshahri* from the former Mayor of Tehran

Are conservatives, who through Khamenei’s mandates are still controlling key organizations such as the Parliament, the judiciary system, Army, and security forces, are taking revenge? ... What is left is to find out when and how Khatami would fulfill his words ...”

A short article from the Iran state-controlled newspaper *Daily Arya* of 11 April 1999, headed “Another victim of “Chain of Political Assassinations””, stated that:

“Unconfirmed rumors indicate that colonel Khanlar Hedayati, whose body was found last year, is another victim of the chain of assassinations. He was killed viciously and his body was left hanging ...

He was a pro-Mossadeq [the late pro-democracy Iranian premier during Shah's time, whose government was removed in coup de'ta (sic) by Shah's emissaries] figure.”

Finally, an article from the Deutsche Presse-Agentur (9 July 1998) “ Pro-Khatami party to start work” is relevant. This states:

“A political party close to Iran’s President Mohammad Khatami will start work soon, the Teheran daily Farda reported Thursday.

The Unity Party of Iran (UPI) announced in a statement that it will officially start work from next Tuesday for “strengthening and registering the 2nd of Khordad popular movement,” the daily said.

The Iranian date of 2nd of Khordad (May 23, 1997) marks the election victory of Khatami last year when more than 70 per cent of the people voted for him and what the president’s supporters consider to be a widespread popular call for changes of previous policies in Iran.

“Grounds for the presence of the people (in the political scene) as the main owners of the revolution will only become possible through formation of political parties,” the statement said.

“Therefore, a number of executive officials and MPs have formed the UPI for enabling popular ruling and implementation of the constitution,” the statement added.

UPI will be the first genuine political party officially registered and permitted by the country’s administration. So far the active parties had been in form of societies and associations and thereafter without political significance.

Another pro-Khatami party, the “Kargozaran Sazandegi” (KS-Servants of Reconstruction), was supposed to start work in May but the secretary general of the party, suspended Teheran Mayor Gholam-Hussein Karbaschi, is currently facing trial on charges of embezzlement and mismanagement.

Among the founders of the KS were also Faezeh Hashemi and Mohammed Hashemi, daughter and brother of former President Akbar Hashemi Rafsanjani, respectively, as well as Central Bank Governor Mohsen Nurbakhsh and Culture Minister Attaollah Mohajerani, all moderate technocrats close to Khatami.

KS started its unofficial political activities during the 1996 parliamentary elections and was instrumental in Khatami’s resounding defeat of the conservative establishment’s candidate in last year’s presidential election.”

On balancing the country information and the appellant’s reasonably prominent, profile, both in I and M, together with his past record and the fact that as he left the country illegally and thus will be likely to come to the attention of the authorities on his return, the Authority has reached the conclusion that the appellant does have a well-founded fear of persecution should he return to Iran.

The Authority also considers that even if he was able to pass through the border without bringing himself to the attention of the authorities, his commitment and dedication to promoting his liberal politics and purist Islamic views are so profoundly held by him that he would continue those activities even at risk of detention or more dire circumstances, should he return to Iran.

From the country information set out above, the Authority has reached the conclusion that while the appellant is clearly a pro-Khatami supporter, the Khatami presidency and its supporters may not control the security forces in Iran, who appear to be carrying out a campaign of repressing the more outspoken activists and supporters of Khatami. From his profile, we consider there is a real risk of the appellant being detained and dealt with by these security forces.

This appellant has been detained in the past; he is therefore known to the authorities. We accept, giving the benefit of the doubt to the appellant, that his activities in M over the past 18 months are known to the authorities and that his continuing support and outspoken activities, together with his stream of critical letters to newspaper editors, place him in a situation where he is at a real risk of being detained and persecuted by the fundamentalist elements who still control large sectors of the Iranian government. Realistically assessed, at this time, state protection is not available to him.

In relation to Issue 2, the Authority considers that the appellant's risk of persecution arises because of his political views.

On the basis of our above conclusions, we find that the appellant is a refugee within the meaning of Article 1A(2) of the Refugee Convention.

CONCLUSION

The Authority has reached an affirmative answer in relation to both issues 1 and 2 stated above. The appellant is a refugee within the meaning of Article 1A(2) of the Refugee Convention. Refugee status is granted. The appeal is successful.

.....
Chairman