

REFUGEE STATUS APPEALS AUTHORITY
NEW ZEALAND

REFUGEE APPEAL NO 76202

AT AUCKLAND

<u>Before:</u>	A N Molloy (Member)
<u>Counsel for the Appellant:</u>	D Mansouri-Rad
<u>Appearing for the Department of Labour:</u>	No appearance
<u>Dates of Hearing:</u>	28 & 29 May 2008
<u>Date of Decision:</u>	14 July 2008

DECISION

[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 the Islamic Republic of Iran.

INTRODUCTION

[1] The appellant is a single man in his early 40s. He claims that he has a well-founded fear of being persecuted if returned to Iran for reason of an imputed political opinion and for reason of his religion.

[2] This appeal turns upon whether the appellant's claim is credible. His credibility is assessed following the summary of his account which is outlined below.

THE APPELLANT'S CASE

[3] The appellant was born and raised in Rasht in the north of Iran. He lived in that city for most of his adult life, although he has also spent periods of time in Tehran and in Cyprus.

Problems with the *Basij* and *Komiteh*

[4] The period following the Islamic Revolution in Iran in 1979 saw a proliferation of quasi-security forces in Iran. These local authorities, known as *Basij* and *Komiteh*, were often peopled by individuals who had grasped the opportunity to obtain power and status which would otherwise have been denied them but for the Revolution. Many of those involved had little hesitation in taking advantage of the impunity with which they could act, and abused the power bestowed upon them.

[5] Much of the appellant's adolescence and early adulthood was blighted by conflict with these forces. His difficulties tended to arise because he was not prepared to back down when stopped and abused because of his dress sense or the company he kept. As a result, he was detained and beaten on numerous occasions over a period of perhaps a decade.

[6] It was not until the death of his mother during the mid-1980s that the appellant began to take stock of his actions. He decided to change his attitude. When accosted by the *Basij*, he became more compliant and simply absorbed whatever provocation was offered. As a result, over a period of time, interest in baiting him seemed to subside and, perhaps because he was no longer quite so attractive a target, his problems with those entities eventually came to an end.

[7] However, these were not the only difficulties the appellant experienced.

Problem with the *Pasdah*

[8] On one occasion during the early 1990s, several police officers approached the appellant and a group of friends and demanded to see the contents of the appellant's bag. When he refused, one of the officers approached the appellant to arrest him. The appellant managed to trip the officer and then escaped in the melee which followed.

[9] The appellant then had to go into hiding for about a month. During that time, his older brother managed to broker a resolution of the matter with the police officer involved. It was agreed that the appellant would present himself at court, which he did. The appellant was convicted and fined and the matter came to an end. He did not experience any further consequences as a result of this incident.

Dispute with *Ansar-e Hezbollah (Hezbollah)*: XY

[10] The appellant was a skilled proponent of various martial arts. He taught evening classes at several clubs and attended various coaching courses. (Several certificates to this effect were provided to the DOL by the appellant). These skills brought him to the attention of XY, a local leader of the *Hezbollah*. The two met from time to time at the appellant's classes, and eventually XY asked the appellant to conduct classes for *Hezbollah*. The appellant did not wish to teach skills which could be misused. He refused politely, claiming that he was already fully committed.

[11] In response, XY had the appellant abducted. He was detained for several days during which he was continually beaten and mocked. The cumulative effect of this mistreatment proved too much for the appellant. He eventually relented, agreed to teach dedicated classes for the local *Hezbollah* and was released.

[12] The appellant complied with the training demands placed upon him for about six to eight months, however his dissatisfaction with the coercion imposed upon him and the nature of the organisation he was helping created an underlying anxiety. He eventually decided that he could not continue and that his only option was to leave Rasht.

[13] The appellant travelled to Turkey on holiday. Once in Turkey, he went to the Turkish part of Cyprus and, from there, paid an agent to help him to enter the Greek part of Cyprus. The appellant sought asylum as a refugee and remained there from mid-2004 until mid-2006.

[14] While in Cyprus, the appellant renewed his acquaintance with people he had known from Iran during his childhood. Some had fled to Cyprus years earlier as a result of political problems. One in particular was a former member of the *Mujahedin*. He also made new friends among the Iranian expatriate community there, including some Christians.

[15] The appellant had been interested in Christian churches for some years and had, from time to time, frequented them in Iran. He had been reluctant to pursue his curiosity while in Iran because of the antipathy towards converts. However, in Cyprus he was not subject to such restraints. He attended church there frequently, albeit that he did not understand much of what was going on because of the language barrier.

[16] Towards the middle of 2006, the appellant learned that XY had been transferred away from Rasht. The appellant's brother obtained assurances that XY's departure meant that there was no remaining reason why the appellant should not return to Rasht. He did so in August 2006.

Problems with AB

[17] About a week after he returned to Rasht, the appellant was again accosted by members of *Hezbollah*. They were led by AB, who had previously been second-in-command to XY.

[18] The aim of the detention initially appeared to be some form of retribution, as AB reminded him that he had abandoned his commitment to *Hezbollah*. However, it became something more when a search of the appellant's house uncovered various items including a DVD on the life of Jesus and a small booklet on Christianity which the appellant had brought from Cyprus.

[19] This time the appellant was detained for more than a fortnight. He was subjected to more of the severe physical and mental abuse that he had previously been forced to endure and he was accused of having converted to Christianity.

[20] The appellant was eventually released when his brother surrendered the deed to a property which he owned. The appellant also had to surrender his Iranian passport.

[21] After spending a short period of time recovering from his ordeal, the appellant decided to leave Rasht and moved to Tehran. He decided that his difficulties were likely to reoccur from time to time and accordingly decided to leave Iran again.

[22] The appellant paid a bribe to obtain a new Iranian passport which was issued in a variation of his surname. The remainder of his personal details remained the same. He used the passport to travel to an Asian country in early

2007, where he made contact with an agent who agreed to help him travel further afield. The appellant returned to Iran after about a week. He went back to Rasht for a short time before returning to Tehran.

[23] Eventually his agent made contact and advised him to obtain a visa for Thailand. The appellant did so and travelled there in April 2007. The agent's attempts to assist the appellant came to nothing so the appellant eventually returned to Iran again as he was running short of money.

[24] In July/August 2007, the appellant was finally contacted by the agent with more concrete travel plans. The appellant flew from Iran to Asia and, after spending a short time there, he travelled to New Zealand.

[25] Shortly before the appellant had left Iran, but after he had made arrangements to do so, a further problem arose.

[26] Two of his friends from Cyprus had been deported to Iran. One was arrested upon his return because he had formerly been a member of the *Mujahedin*. The appellant was not sure why the other was arrested. The appellant heard that, as a result of finding photographs of the appellant with those two individuals, the authorities in Rasht were looking for him and a fourth individual.

[27] The appellant has since been informed by a family friend that one of his friends has died from leukaemia which was diagnosed while he was in prison.

[28] The other individual has been released, but has avoided the appellant's attempts to make contact from New Zealand. Accordingly, the appellant has been unable to find out why he was detained or why he was released.

[29] The appellant arrived in New Zealand in August 2007 and sought refugee status at the airport. He lodged a confirmation of claim for refugee status in writing with Immigration New Zealand on 11 September 2007. The appellant believes that if he were to return to Iran, he would be apprehended and detained as a result of the latest attempts by the officials to find him because of his association with the two formerly Cyprus-based Iranian friends. He also believes that he cannot return to Rasht without risk of further mistreatment by *Hezbollah*. Finally, he has begun to explore the Christian faith in more depth while in New Zealand and he believes that this would also cause problems for him in Iran.

[30] After interviewing the appellant over five days while he was detained in custody in October and November 2007, a refugee status officer of the DOL issued a decision declining his application for refugee status on 18 March 2008. It is from that decision that the appellant appeals.

Material received

[31] Prior to the hearing, Mr Mansouri-Rad forwarded a memorandum of submissions under cover of a letter dated 26 May 2008. During the course of the hearing, the appellant also provided the Authority with copies of photographs of himself and associates in Cyprus, a copy of an asylum-seeker's booklet and a copy of an asylum-seeker's permit, both issued in Cyprus. The original of each of those two documents was sighted by the Authority.

[32] Counsel also provided submissions in connection with the practice of holding property deeds as security in Iran, under cover of a letter dated 4 July 2008. The Authority notes finally that Mr Mansouri-Rad wrote to the Cypriot authorities to request copies of the appellant's application for asylum, however no reply was forthcoming.

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] Before determining the appellant's claim, it is necessary to determine whether he is a credible witness.

[36] Aspects of the appellant's detailed and complex account caused the Authority some concern. However, for various reasons set out below, the Authority finds that the appellant's core account of his life before he arrived in New Zealand is credible.

[37] The appellant's testimony was detailed and, for the most part, spontaneous. He provided documentary corroboration of some aspects such as his time spent in Cyprus as an asylum-seeker from 2004 until mid-2006. He also provided a document which appears to corroborate his account of his conviction and fine following his encounter with the *Pasdah* in 1994.

[38] The appellant's evidence was largely understated and he did not attempt to give inappropriate emphasis to various events which he was recounting. For example he accepted that the problem with the *Pasdah* was no longer relevant to his predicament. Similarly, he did not suggest that his numerous encounters with the *Basij* and *Komiteh* were prospectively relevant to his predicament and he candidly admitted that his own intransigent and belligerent attitude had contributed to the problems he had in the past.

[39] The Authority was concerned about the appellant's ability to depart and re-enter Iran in 2007 and with the timing of the most recent resumption of official interest in him (shortly before he left for New Zealand) in July 2007. However, the appellant did not claim that his desire to leave Iran was based upon a present and immediate need in 2007. Rather, it was based upon a plausible desire to get away given that in 2006 he was again subjected to the abduction and mistreatment which he had first experienced in 2003.

[40] With regard to the abductions by two successive *Hezbollah* leaders there is country information which corroborates the arbitrary manner in which the various branches of the Iranian authorities are capable of acting. For example the United States Department of State *Country Reports on Human Rights Practices for 2004: Iran* (February 28 2005) states that

“Several agencies share responsibility for law enforcement and maintenance of order, including the Ministry of Intelligence and Security, the Law Enforcement Forces under the Ministry of Interior, and the Islamic Revolutionary Guards Corps, a military force established after the revolution. A paramilitary volunteer force known as the Basiji, and various gangs of men known as the Ansar-e Hezbollah (Helpers of the Party of God), or "plain clothes," aligned with extreme conservative members of the leadership, acted as vigilantes. Civilian authorities did not fully maintain effective control of the security forces, and there were instances in which elements of the security forces acted independently of government authority. The regular and the paramilitary security forces both committed numerous, serious human rights abuses.” (p1)

[41] More recently the United Kingdom Home Office Country Report: Iran (January 2008), para 9.01 cites from a paper prepared in August 2004 by the Geneva Centre for the Democratic Control of Armed Forces:

“The Islamic Republic has at its disposal an entire array of military forces and revolutionary security forces besides a number of parastatal organizations, called bonyad (foundations).... Besides these officially recognized forces in Iran we also find various gangs of men known as the “Helpers of God” (*ansar-e hezbollah*), who act as vigilantes aligned with extreme conservative members of the power-elite. These vigilant groups attack and intimidate critics and dissidents and usually go unpunished because of the bias of the judiciary dominated by conservatives.

[42] The appellant’s reluctance to return to Iran now is heightened by virtue of his connection with Iranians with whom he had associated in Cyprus. The appellant’s evidence in that regard must be considered against the background of his evidence as a whole. The appellant’s account is not inherently implausible and he did not attempt to embellish what happened. He recounted that the friend who died in custody had apparently died of natural causes, although the appellant suspects that this may not be the whole truth. The second friend had been detained and released. The appellant has his suspicions about how that friend had been treated, but had been unable to speak to him to verify this.

[43] On balance, the Authority cannot be sure that the appellant’s account of his life in Iran is untrue and it is appropriate to grant him the benefit of any doubt.

Christianity

[44] Throughout the course of his refugee determination process, the appellant has professed an interest in Christianity. The Authority accepts that he may have a general interest and curiosity about Christianity. However it finds that the appellant has not converted to Christianity and does not have any genuine desire to do so. His claim to the contrary is no more than a misguided attempt to add weight to his claim for refugee status.

[45] In reaching that conclusion the Authority relies upon the following:

- a) The appellant made no attempt to convert to Christianity in Cyprus despite the fact that he had Iranian friends there who had done so.
- b) The appellant was unable to express any particular reason why he was interested in Christianity. When asked what attracted him to Christianity, his replies invariably identified aspects of Islam which he finds distasteful or objectionable. However, rejection of Islam is not in itself evidence of a genuine intention to convert to Christianity.
- c) While the appellant was interrogated by the Iranian authorities in connection with his possession of Christian materials in 2006, this was not the reason for his detention, it did not prevent his release, and it did not create any subsequent difficulties for him before he left Iran.

[46] Despite reaching this conclusion the Authority is satisfied in all the circumstances of this case that this aspect of exaggeration is not indicative that the remainder of the appellant's claim is fabricated.

Summary of credibility findings

[47] In summary, the appellant's account of events leading up to his departure from Iran in 2007 is accepted in totality.

[48] The Authority accepts that the appellant is an Iranian national from the north of Iran. It accepts that he experienced ongoing difficulties with local authorities in Rasht in 2003 and again in 2006. It is also accepted that he came to the attention of the Iranian authorities again in 2007 as a result of his association with two other Iranian expatriates who had been forcibly returned from Cyprus earlier that year. His claim is assessed on that basis.

Objectively, on the facts as found, is there a real chance of the appellant being persecuted if returned to Iran?

[49] For the purposes of refugee determination, "being persecuted" has been described as the sustained or systemic violation of basic or core human rights,

such as to be demonstrative of a failure of state protection; see *Refugee Appeal No 2039/93* (12 February 1996).

[50] The Authority has consistently adopted the approach set out in *Chan v Minister for Immigration and Ethnic Affairs* (1989) 169 CLR 379 (HCA), in which it was held that a well-founded fear of being persecuted is established when there is a real, as opposed to a remote or speculative, chance of such persecution occurring. Even a low likelihood of harm can be significant enough to afford an appellant the benefit of the protection conferred by the Refugee Convention, provided that it is real or substantial rather than remote or merely speculative: *Refugee Appeal No 72668/01* [2002] NZAR 649 at [116-130]

Current country information

[51] With respect to human rights in Iran generally, the United States Department of State *Country Reports on Human Rights Practices for 2007: Iran* (March 11 2008) asserts that during that year the government's poor human rights record worsened: there was a lack of judicial independence and of fair public trials and there were reports of unjust executions after unfair trials; security forces arbitrarily arrested and detained individuals, held political prisoners and committed acts of politically motivated abduction and torture; there were severe officially-sanctioned punishments including death by stoning, amputation and flogging; and prison conditions remained poor. It notes that:

"On December 18, for the fifth consecutive year, the UN General Assembly adopted a resolution expressing "deep concern at ongoing systematic violations of human rights." (Introduction)

[52] Similar assertions appear from other sources such as Human Rights Watch *World Report 2007: Iran*, which notes that:

"Respect for basic human rights in Iran, especially freedom of expression and assembly, deteriorated in 2006. The government routinely tortures and mistreats detained dissidents, including through prolonged solitary confinement. The Judiciary, which is accountable to Supreme Leader Ali Khamenei, is responsible for many serious human rights violations.

President Mahmoud Ahmadinejad's cabinet is dominated by former intelligence and security officials, some of whom have been implicated in serious human rights violations, such as the assassination of dissident intellectuals. Under his administration, the Ministry of Information, which essentially performs intelligence functions, has substantially increased its surveillance of dissidents, civil society activists, and journalists."

Summary of findings

[53] The appellant has been subjected to significant and arbitrary mistreatment by the Iranian authorities in the past. Having regard to all of the evidence the Authority finds that there is a real chance the appellant would come to the attention of the Iranian authorities if he were to return to Iran. If so it is likely that the appellant would be detained again and subjected to severe interrogation and physical mistreatment amounting to serious harm, tantamount to being persecuted.

CONCLUSION

[54] Turning to the first principal issue, the Authority finds that objectively, on the facts as found, there is a real chance of the appellant being persecuted if returned to Iran. This would be for reason of his imputed political opinion, and is accordingly for a Convention reason.

[55] For these reasons, the Authority finds that the appellant is a refugee within the meaning of Article 1A(2) of the Refugee Convention. Refugee status is granted and the appeal is allowed.

"A N Molloy"
A N Molloy
Member