

REFUGEE STATUS APPEALS
AUTHORITY
NEW ZEALAND

REFUGEE APPEAL NO 76268

AT AUCKLAND

<u>Before:</u>	J Baddeley (Chairperson) B L Burson (Member)
<u>Counsel for the Appellant:</u>	D Ryken
<u>Appearing for the Department of Labour:</u>	S Houlston and V Wells
<u>Date of Hearing:</u>	11 & 12 November 2008
<u>Date of Decision:</u>	10 March 2009

DECISION

INTRODUCTION

[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) cancelling the refugee status of the appellant, a national of Iran, pursuant to s129L(1)(b) of the Immigration Act 1987 ("the Act").

[2] By consent, this appellant's evidence was heard together with that of his brother, AA, (refer *Refugee Appeal No 76267*), who also lodged an appeal against cancellation of his refugee status. The evidence of each appellant is considered in support of the other's appeal. The appellant's brother, AA, fled Iran in 1998 because of his support of Ayatollah Montazeri and his criticism of the Supreme Leader Ayatollah Khamenei. The appellant joined his brother, AA, in his political activities. Both the appellant and his brother, AA, were influenced by and acted at the direction of BB. BB, a wealthy and influential man, fled Iran in 1998 to escape the adverse interest of the supporters of Ayatollah Khamenei. The appellant's brother followed soon afterwards. Both were granted refugee status.

[3] The appellant subsequently joined in the student protests in July 1999 and escaped when arrested by fundamentalist *Feshar*. He fled Iran while being pursued by the security forces for his role in the student protests. He subsequently lodged a claim for refugee status based, in part on his assistance to BB, but principally on his participation in the 1999 student protests.

[4] In 2003 BB made his first return to Iran; he returned there seven more times and is currently living there. The appellant returned to Iran in 2004 to visit his sick father and his brother, AA, returned for the same reason in 2005.

[5] The appellant filed an application for the exclusion of evidence presented by the respondent relating to BB's refugee claim and the return of BB, his wife and daughter to Iran. The Authority declined the application in a decision published on 7 October 2008, prior to the appeal hearing.

JURISDICTIONAL ISSUES

[6] Pursuant to s129L(1)(b) of the Act, where recognition of a person as a refugee has been given by a refugee status officer and where it appears such recognition may have been procured by fraud, forgery, false or misleading representation or concealment of relevant information (hereinafter referred to as "fraud"), a refugee status officer may determine to cease to recognise the person as a refugee. Such a decision may be appealed to this Authority pursuant to s129O(2) of the Act.

[7] When the Authority is considering an appeal against a decision of a refugee status officer under s129L(1)(b) of the Act, there are two stages to the Authority's enquiry. First, it must be determined whether the refugee status of the appellant "may have been" procured by fraud. If so, it must then be determined whether it is appropriate to "cease to recognise" the appellant as a refugee. This determination will depend on whether the appellant currently meets the criteria for refugee status set out in the Refugee Convention: *Refugee Appeal No 75392* (7 December 2005) at [10]-[12]. In this regard counsel for the appellant conceded in his closing submissions (9 December 2008) that the appellant "is no longer a refugee".

[8] Given that these are inquisitorial proceedings, it is not entirely appropriate to talk in terms of the burden or onus of proof. Nonetheless, it is well-recognised and accepted that, in cancellation proceedings, it is the responsibility of the

Department of Labour to present such evidence in its possession by which it can responsibly be said that the grant of refugee status may have been procured by fraud. It is also our view that the term “may have been procured by fraud, forgery, false or misleading representation, or concealment of relevant information” is deliberately imprecise and signals a standard of proof that is lower than the balance of probabilities but higher than mere suspicion: *Refugee Appeal No 75563* (2 June 2006).

THE APPELLANT’S REFUGEE CLAIM

[9] The account which follows is a summary of the evidence given to the RSB on which refugee status was granted.

[10] While at university in 1996 the appellant became involved in a student group *Daftah Takhim Vahdat-e-Daneshjouee* (“*Takhim Vahdat*”) protesting against the regime. He attended meetings and wrote and distributed pamphlets for the group. At about the same time, his sister was also involved in these student protests. She was arrested by the intelligence service and detained for 15 days.

[11] The appellant shared BB’s views about promoting democracy and the need to restrain the influence of fanatical religious leaders and the separation of religion and politics. He actively supported the election of President Khatami. BB was one of those organising Khatami’s campaign and on his instructions the appellant put up election posters and held meetings to promote Khatami. After the presidential elections BB continued to promote the ideas of Ayatollah Montazeri, and in particular his criticism of the supreme power vested in Ayatollah Khamenei. The appellant was closely involved with BB in these activities until June 1998 when BB disappeared. The appellant learned that he had fled Iran with his wife and son to escape supporters of Ayatollah Khamenei. BB had land and other assets confiscated.

[12] AA had been similarly involved in assisting BB in his support of Montazeri. AA came to New Zealand where he applied for refugee status. He was subsequently granted refugee status in December 1999. After their departure from Iran in 1998 the appellant was detained by *Ettela’at* and interrogated about their whereabouts and activities.

[13] In March 1999, the appellant attended a meeting of *Takhim Vahdat* which was disrupted by fundamentalist *Feshar* groups. In July 1999 the Iranian parliament passed legislation restricting freedom of the press. The appellant joined in the ensuing student protests at Tehran University. Security forces attacked the student dormitory. The appellant escaped and went on to lead another group of students shouting slogans and carrying a placard "Death to Khamenei". He and his group were attacked again by security forces. His two friends who were leading the same group were captured. The appellant escaped and with his family's help found refuge in a village outside Tehran.

[14] The security forces searched for him at his family home and questioned his family. His father advised him to leave Iran. He illegally crossed the border to Pakistan. With an agent's help obtained a false passport in Pakistan and eventually arrived in New Zealand in December 1999 and claimed refugee status on arrival.

The grant of refugee status

[15] The appellant was interviewed by the RSB on 11 April 2000 in respect of his application and a decision granting him refugee status was published on 3 July 2000. He was granted permanent residence on 7 August 2003 and citizenship on 11 March 2004.

The Notice of Intended Determination Concerning Loss of Refugee Status

[16] On 22 May 2007, a refugee status officer issued a Notice of Intended Determination Concerning Loss of Refugee Status to the appellant some seven and a half years after the initial refugee application for refugee status was made.

[17] In brief, the notice advised the appellant that the refugee status officer intended to make a determination which might result in the loss of his refugee status. The grounds relied on were that:

- (a) The appellant returned legally to Iran on 6 June 2004 despite having asserted in his refugee claim that he would be executed on return to Iran.
- (b) BB returned to Iran on eight or more occasions after being granted refugee status. His first return was in 2003. BB's wife returned nine times to Iran.

According to an exit stamp in her passport, and contrary to BB's claim that she had accompanied him in their illegal departure, she had legally departed Iran on 3 October 1998.

- (c) The appellant's brother, AA, legally returned to Iran on 14 March 2005, entered Iran again on 6 June 2005 and legally exited Iran on 30 June 2005.
- (d) The appellant's claim to refugee status was based, in part, on his assistance to BB in his anti-regime activities. The frequent returns of BB to Iran from 2003 and his brother AA's return in 2005 cast doubt on their claims (and the appellant's) to fear persecution at the hands of the Iranian authorities.

[18] In view of these concerns the refugee status officer intended to determine whether or not the refugee status of the appellant may have been procured by fraud and if so whether it should be cancelled.

[19] Having interviewed the appellant on 11 July 2007 the refugee status officer issued a decision on 30 June 2008 concluding that:

- (a) The appellant's refugee status may have been procured by fraud; and
- (b) He ought to cease to recognise the appellant's refugee status.

[20] A decision was duly delivered to that effect against which the appellant now appeals.

THE APPELLANT'S CASE ON APPEAL

[21] The account which follows is a summary of the evidence given by the appellant and his brother, AA, at the appeal hearing. It is assessed later.

[22] The appellant maintains that the account that he gave in respect of his original claim to refugee status is truthful. He rejects the suggestion that his claim was procured by fraud. He does, however, concede that he returned to Iran in 2004, his brother returned in 2005 and BB had made various returns to Iran from 2003. Furthermore, he accepts he was issued with an Iranian passport by the Iranian Embassy in New Zealand in 2004.

[23] However, none of this, he says, establishes that his refugee status may have been procured by fraud.

Reasons for return to Iran

[24] The appellant returned to Iran to see his ailing father, who was suffering from prostate cancer. He had already had one unsuccessful operation for this condition. The appellant describes his father as having a low pain threshold, being somewhat of a hypochondriac and prone to frequent and lasting depression. The appellant did not entirely believe his father's dire reports of his condition but when the appellant heard from his mother that she believed his father was dying, he decided that he would have to return to Iran despite the risks this entailed, to see his father before he died. The appellant supplied medical reports dated 1996, 2004 and 2007 relating to his father's treatment for a prostate condition.

[25] The appellant was aware that in 2004 under Khatami's presidency there was some liberalisation of political and social control. In particular, he was aware that an amnesty had been extended to Iranians who had departed Iran illegally. They were being encouraged to apply for Iranian passports and, on the fulfilment of certain conditions such as payment of a fine and undertaking not to be involved in political dissent, they were issued passports. He knew of people who had safely returned and remained in Iran in these circumstances.

[26] Initially, the appellant attempted to travel to Iran on his New Zealand passport by applying for an Iranian visa. This was refused and he was advised to apply to the Iranian Embassy in Wellington for an Iranian passport. He completed the application and provided the identification documents required. In addition he had to pay a fine to atone for his illegal departure and give a written undertaking that he was no longer politically active and express remorse for his past actions. He was issued with his genuine Iranian passport in May 2004. It did not, however, contain an exit permit.

[27] The appellant's brother, AA, had also wanted to return to Iran, but the appellant was closer to his parents and more affected by his mother's distress so he chose to go alone partly to test whether it would be safe for his brother to follow later.

Precautions taken

[28] The appellant believed that he could minimise any danger on return by taking some precautions:

- (a) He gave the telephone number of the New Zealand Embassy in Iran to his family. If anything untoward occurred, the family in Iran or his brother in New Zealand could contact the embassy.
- (b) He also telephoned CC, a friend from university days whom he knew had access to the appropriate officials for illegally obtaining passports in Iran, in case he was unable to leave Iran on the passport issued from the Wellington embassy. CC undertook to help him.

Return to Iran

[29] The appellant travelled with his partner to Iran via Sydney. He reluctantly agreed to spend several weeks in Sydney where his partner wanted to stay with her brothers who lived there. On arrival in Iran his partner (an Iranian woman who had similarly been granted refugee status and New Zealand citizenship) passed through immigration controls without incident. The appellant was detained by immigration officials. He was questioned by two officials who he believes were from *Ettela'at*. They took his passport and asked about his activities since leaving Iran. They repeatedly questioned him about any recent political involvement and his reasons for returning to Iran. They asked what he was doing in New Zealand, where he lived and with whom. They did not ask him about his previous political involvement in Iran with either BB or the student demonstrations in 1999. They did not return his passport to him.

[30] While in Iran the appellant kept a low profile remaining with his family. He was careful to avoid attracting the attention of *Feshar* groups from whom he had escaped during the 1999 student demonstrations.

[31] A few weeks after his arrival the appellant made enquiries about retrieving his passport from the passport office. His enquiries were unsuccessful. It became obvious that there was no realistic prospect of the authorities returning his passport.

[32] He asked his friend CC to obtain an Iranian passport. The appellant paid 6 million *tomans* to CC knowing that most of the money would be used to bribe

officials in the passport office. On CC's instructions he later made another application to a particular official. A month later he received a new passport in his own name.

[33] He left Iran without incident using the passport to travel to the United Kingdom with his partner to visit friends. While in the United Kingdom the camera bag in which he had kept his Iranian passport was stolen. He had not intended to use this passport for the rest of his journey back to New Zealand because after leaving Iran he travelled on his New Zealand passport. He did not become aware that his Iranian passport was missing until he arrived back in New Zealand.

[34] The appellant does not believe that it is safe for him to return while President Ahmadinejad is in power. Ahmadinejad holds fundamentalist hard line views. The political climate has changed from the more tolerant regime of Khatami during which the appellant had returned in 2004. He remains very close to his parents (particularly his mother) and in 2007 applied for a visitor's visa for her so she could come to New Zealand because he believes it is too dangerous for him to return to Iran to see her. This was refused. He made a further (also unsuccessful) application to the Minister of Immigration. When this was refused the appellant moved to live in Australia where he successfully applied for a visa for his mother to visit him there.

The relevance of the returns of BB and AA

[35] The appellant does not accept that the frequent returns of BB and the return of his brother, AA, to Iran are relevant to his claim. The appellant was questioned about BB and his brother after their departure in 1998, however, this did not prompt him to leave Iran. It was after their departure that the appellant became involved in student demonstrations which came to a head in the widely reported attack on the student dormitory in July 1999. It was this which caused him to flee Iran and apply for refugee status in New Zealand.

[36] When asked about BB's current circumstances, the appellant could provide little information because he has had very little contact with him over the last six years. He also could not explain the stamp in BB's wife's passport indicating a legal departure from Iran in 1998. On his return to Iran in 2004 the appellant did not meet BB. Nor does he socialise with him in New Zealand because of an estrangement caused by his current *de facto* relationship. BB's wife does not approve of the appellant's *de facto* partner. The appellant's understanding is that

BB still has powerful friends in Iran and is able to remain there because of their protection. BB is currently engaged in attempting to have lands and other assets which were confiscated after his departure, returned to him. The appellant believes that BB is at risk in Iran and if he were in BB's position he would not remain there.

[37] The appellant filed further documentation on 9 December 2008 relating to BB's circumstances in Iran. These documents were obtained by AA from BB subsequent to the hearing:

- (a) A document relating to the land BB has owned in X village for the last 17 years.
- (b) A letter concerning the legal proceedings BB is undertaking to regain ownership of confiscated land holdings.
- (c) A letter protesting the capture and detention of BB by *Basij*.
- (d) A letter describing how in 2008 BB was taken by force from a meeting by a group of people claiming to be security forces who took him to a prison where he was kept for a week.
- (e) A custodial receipt issued by the National Department of Prisons relating to a prisoner's possessions and state of health. The date of this document and personal details of the prisoner (including his name) are not legible to the translator.

[38] The appellant claims that this custodial receipt relates to the detention of BB in May 2008 described in (d) above. BB was taken into custody because his attendance at the meeting was in breach of a curfew imposed by the authorities.

[39] The appellant asserts that the fact of BB's return and his current residence in Iran does not belie his own claim to have fled persecution in Iran in 1999 primarily because of his involvement in student protests. His association with BB was not the principal plank of his claim to refugee status. BB unlike the appellant has powerful friends. The protection of powerful associates is not available to the appellant which was why he took precautions before travelling to Iran and kept a low profile while there.

THE RESPONDENT'S CASE ON APPEAL

[40] The respondent provided the Authority with a copy of the RSB file relating to the Notice of Intended Determination Concerning Loss of Refugee Status, including a copy of the file relating to the appellant's original claim for refugee status.

[41] On 30 October 2008, the respondent filed a brief of evidence of Paul Rawson, a refugee status officer familiar with the cancellation files of the appellant and his brother, AA. Mr Rawson gave oral evidence to the Authority and was cross-examined by counsel for the appellant concerning a letter or memorandum issued by the *Basij* dated 19 December 1998 directing that BB and his family and the appellant's brother, AA, and his wife are to be arrested because they are people "against the Revolution". This letter was produced in support of the appellant's brother, AA, and BB's claim to refugee status. This document does not however form part of the appellant's claim; he was not mentioned in it nor was it mentioned in the RSB decision granting him refugee status. The Authority concludes that it is not relevant to this appellant's cancellation appeal.

Documents and submissions

[42] The appellant submits in support of his appeal the following:

- (a) Opening submissions dated 10 November 2008.
- (b) Bundle of documents 1-11.
- (c) Closing submissions and attachments dated 9 December 2008.
- (d) Further submissions and attachments dated 15 December 2008.

[43] The respondent provided:

- (a) Opening submissions dated 10 November 2008 and attached briefs of evidence and country information.
- (b) Closing submissions dated 28 November 2008.

[44] Both counsel also made oral submissions which have been taken into account in reaching this decision.

ASSESSMENT OF THE APPELLANT'S CASE

Credibility

[45] Before determining whether an appellant's refugee status may have been procured by fraud it is necessary to determine whether the evidence given in support of his appeal is credible. In this case most of the events relied on by the respondent are not in dispute: the passport issued by the Iranian Embassy in New Zealand in 2004, the appellant's return to Iran in 2004, his obtaining a second Iranian passport in 2004, the returns of his brother AA and BB and their families to Iran. It is the credibility of the appellant's explanations for these facts which must be assessed.

The 2004 passport

[46] The appellant was issued by the embassy with an Iranian passport in May 2004. The exact date of issue is unknown because the passport was confiscated on his arrival in Iran. The appellant had heard from his brother, AA, and BB that President Khatami had issued an amnesty to Iranians abroad whether they had left legally or illegally encouraging them to apply for passports and return to Iran. This particularly applied to those who had sought asylum overseas. In *Refugee Appeal No 76160* (11 September 2008) the Authority noted the following country information:

"[52] On its own, the obtaining of a passport is not of significance. There is clear country information that, during the 2001-2005 period when Ayatollah Khatami was in power, his more liberal and tolerant regime actively promoted the safe return of exiled Iranians. In an interview with the newspaper *Ettela'at* on 20 September 2001, Dr Mohammad-Ali Hadi, the then-Deputy Consul of the Minister of Foreign Affairs stated (as translated):

"Deputy Consul Office provides service including issuing birth certificate and passport to all Iranians regardless of their political or ideological views; we mean all Iranians who have resided or sought asylum in foreign countries, or in some way have confronted the Islamic Republic of Iran. This has been an effective policy up to now tens of thousands of refugees have received passport or returned to Iran. I must add that the Iranians, who have in some way confronted the Islamic Republic of Iran in foreign countries, are less than half percent."

[53] And see the United Kingdom Home Office *Country Report: Iran* (October 2003), which noted:

"6.105. Government attitudes to the question of returnees people who left illegally, failed asylum seekers etc seems to have become more pragmatic. In September 2002 the deputy foreign minister announced that Iranians who have obtained the citizenship of foreign countries with Iran's prior agreement can, once again, become Iranian citizens.... and further that the question of illegal exit had been resolved.

6.106. In the case of returned asylum seekers it has been reported by observers that they have seen no evidence that failed claimants, persons who have illegally exited Iran, or deportees face any significant problem upon return to Iran.... Several times in the recent past, senior government officials have declared that all Iranians

living abroad are welcome to return home without fear of reprisal.... and the Foreign Ministry's Consular Department has confirmed that applying for asylum abroad is not an offence in Iran."

[54] As to the existence of the policy during Khatami's rule, of welcoming returning Iranians without reprisals, see also *Refugee Appeal No 75974* (25 September 2007)."

[47] That policy came to an end with the election of Ahmadinejad in July 2005 subsequent to the appellant's legal departure from Iran.

[48] The appellant first applied for an Iranian visa in his New Zealand passport. This was refused. The Iranian Embassy, however, issued him a valid passport but conditional upon the payment of a fine for his illegal departure in 1999 and the letter of repentance for his earlier opposition to the regime. The passport was also devoid of an exit permit. The Authority has not sighted this passport but the appellant's description of the procedure he had to follow (the payment of a fine and the letter of repentance) and the absence of an exit permit is consistent with his brother's experience of obtaining an Iranian passport. Refer *Refugee Appeal No 76267*.

[49] The Authority accepts as credible and consistent with country information the appellant's claim that he was able to obtain an Iranian passport at that time because of the change of regime. The obtaining of the passport in 2004 is not inconsistent with his having fled the Iranian authorities in 1999.

Reasons for return

[50] The appellant was prompted to return to Iran because of his father's ill health. He had undergone an unsuccessful prostate cancer operation. The appellant, after hearing his mother's concern, became so worried about his father's ill health that he returned to Iran in 2004. Despite his desire to see his parents he has not returned to Iran again.

[51] Prior to the appeal hearing, the appellant produced two medical reports dated 2007 from Iran regarding his father's depression and his prostate problems indicating that a second operation had taken place in 2007. On 15 December 2008 the appellant filed further medical reports which describe treatment, including operations, which his father had received for his prostate condition in 1996, 2004 and 2007. The Authority accepts that the appellant returned to Iran in response to his mother's report of his father's imminent death and his concern to see his father before he died.

The replacement passport

[52] On arrival, the appellant was questioned by officials for several hours and his passport confiscated. This is consistent with the fact that he had no exit permit in his passport and therefore came under suspicion.

[53] Country information confirms that bribery may be used to obtain travel documents and facilitate entry into or exit from Iran. The United Kingdom Home Office *Country of Origin Report: Iran (May 2007)* states:

“Based on consultations with UNHCR’s office in Tehran, a UNHCR official provided the following information in 31 March 2006 correspondence: It may happen in practice that individuals who have fraudulent travel documents or outstanding financial, military or legal obligations or are sought or under suspicion by the government for political reasons resort to paying bribes to the Iranian border officials to pass through the control system unharmed. The higher the risk the more they pay.”

[54] The Authority accords to the appellant the benefit of the doubt regarding his evidence as to the obtaining of a second Iranian passport by paying a considerable amount of money (12 million *tomans*) to CC whom he knew had successfully procured passports in the past.

[55] The Authority also accepts that the appellant lost this passport; the appellant produced a copy of the lost property report dated 27 November 2004 he had filed with the Southampton Police concerning the loss of his camera bag in which he had kept his passport. He did not become aware that his passport was missing until he arrived in New Zealand because he had not used it to travel other than to depart from Mehrabad airport.

The ability of BB to return to Iran

[56] Because of the tensions between himself and BB which arose in about 2001 due to BB’s wife’s disapproval of the appellant’s *de facto* partner, the appellant had had no social interaction or anything more than cursory communication with BB. The appellant had very little information about BB’s current circumstances. He believes that BB is able to live in Iran because of the protection he has from powerful friends but admits that this is nothing more than speculation. The Authority accepts that, in the circumstances, it is unlikely that the appellant would be aware of the private arrangements that BB had made. It also accepts that BB was a wealthy and influential individual prior to his leaving Iran in 1998 and therefore would be likely to have the political and social connections to

ensure this current safety. In addition, the documentation received by his brother, AA, from BB and filed subsequent to the hearing (refer para [34]) supports the appellant's belief that despite his influential connections, BB remains subject to harassment, surveillance, restrictions on his movements and occasional detentions.

[57] In summary, the Authority finds that the appellant's evidence is credible.

Whether the grant of refugee status may have been procured by fraud

[58] The appellant asserts that in any event, his own circumstances and the risk he faces in Iran cannot be assessed with reference to BB or his brother, AA. The appellant's refugee claim was principally founded on his activities in the 1999 student protest. It was not his involvement with BB which precipitated his escape from Iran in 1999. The claims of BB and AA were based primarily on their support of Montazeri, culminating in their departure in 1998. Their ability to safely return to Iran (in the case of BB some four years and in the case of AA some six years after their departure) demonstrates that, in 2005, they no longer faced the same immediate dangers as in 1998. However, this does not impugn the credibility of the appellant's claim to have been at real risk of being persecuted in 1999 because of his participation in student protests. The Authority finds there is no evidence which indicates that the returns of AA and BB to Iran demonstrate fraud in the procuring of this appellant's refugee status.

[59] As noted above, the Authority accepts that the appellant's motivation to return to Iran was to see his ailing father who he believed to be dying. This was a compelling reason for him to risk the dangers such a return might involve. As the Authority has noted in other cancellation appeals, the mere fact of a refugee's return does not of itself demonstrate the original claim to refugee status was fraudulent (refer *Refugee Appeal No 75700* (28 June 2006); *Refugee Appeal No 76014* (30 May 2007)). Each case must be decided on its own facts.

[60] In this case the appellant returned four years and nine months after he escaped from Iran; he returned in 2004 to a regime which he believed to be tolerant towards returnees; he took the precaution of contacting his friend CC and advising his family to contact the New Zealand Embassy in case he had difficulties leaving Iran or other problems with the authorities.

[61] The threshold of “may have been procured by fraud” is a low one. It does not require the Authority to find that refugee status was procured by fraud. Instead, as was said in *Refugee Appeal No 75563* (2 June 2006) at [20]:

“...The term (may have been) signals a standard of proof that is lower than the balance of probabilities but higher than mere suspicion. Beyond that it is not realistic to define an expression that is deliberately imprecise.”

[62] Notwithstanding that the threshold is low, the Authority is satisfied that the explanations advanced by the appellant for his ability to return and remain in Iran for several months and access the border are credible. Neither the timing nor the circumstances of his return cause the Authority to doubt the veracity of his original claim. In consequence, it cannot be said that refugee status may have been procured by fraud. It follows that the Authority must find that the “may have been” threshold is not met.

[63] Given that finding, there is no jurisdiction to address the second limb of the test, namely whether it is appropriate to cease to recognise the appellant as a refugee.

[64] It follows that the appeal must succeed.

CONCLUSION

[65] In view of the foregoing, the Authority finds that the evidence does not establish that the grant of refugee status to the appellant may have been procured by fraud, forgery, false or misleading representation or concealment of relevant information.

[66] The appeal is allowed.

“J Baddeley”

J Baddeley
Chairperson