

**REFUGEE STATUS APPEALS AUTHORITY**  
**NEW ZEALAND**

**REFUGEE APPEAL NO 75860**

**AT AUCKLAND**

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| <b><u>Before:</u></b>                    | V J Shaw (Chairperson)<br>B A Dingle (Member) |
| <b><u>Counsel for the Appellant:</u></b> | I Uca   |
| <b><u>Appearing for INZ:</u></b>         | No Appearance                                 |
| <b><u>Dates of Hearing:</u></b>          | 22 and 23 August, 7 and 8<br>September 2006   |
| <b><u>Date of Decision:</u></b>          | 9 May 2007                                    |

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**DECISION**

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[1] This is an appeal against the decision of a refugee status officer of the Refugee Status Branch (RSB) of Immigration New Zealand (INZ) declining the grant of refugee status to the appellant, a citizen of Iran.

**INTRODUCTION**

[2] This is the second time that the appellant, a married man aged in his late 30s, has appealed to this Authority. He arrived in New Zealand on 14 April 2004. He lodged his first application for refugee status on 25 May 2004 claiming that he feared being persecuted in Iran because he had been wrongfully accused of smuggling political dissidents and illegally trading in antiquities.

[3] The appellant's first refugee claim was declined by the RSB in a decision dated 31 May 2005. His appeal to this Authority, heard by a differently constituted panel, was unsuccessful; *Refugee Appeal No 75642* (1 November 2005).

[4] The appellant filed his second refugee claim on 9 January 2006. The basis of this second claim is that he has converted to Christianity and that on his return to Iran he will be regarded as an apostate and persecuted by the Iranian

authorities with whom he is already in trouble. The appellant's second refugee claim was declined by the RSB in a decision dated 9 May 2006.

### **JURISDICTION OF THE AUTHORITY TO HEAR THE APPEAL**

[5] The jurisdiction of a refugee status officer to consider a second refugee claim is governed by s129J of the Immigration Act 1987 (the Act), which provides:

**“Limitation on subsequent claims for refugee status —**

(1) A refugee status officer may not consider a claim for refugee status by a person who has already had a claim for refugee status finally determined in New Zealand unless the officer is satisfied that, since that determination, circumstances in the claimant's home country have changed to such an extent that the further claim is based on significantly different grounds to the previous claim.

(2) In any such subsequent claim, the claimant may not challenge any finding of credibility or fact made in relation to a previous claim, and the officer may rely on any such finding.”

[6] Pursuant to s129O(1) of the Act (which came into force from 1 October 1999), it is provided:

**“Section 129O(1)**

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

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

- (a) whether, in terms of s129O(1) of the Act there is jurisdiction to consider the appeal and, if so,
- (b) whether the appellant is a refugee within the meaning of Article 1A(2) of the Refugee Convention.

### **The appellant's first refugee claim**

[8] The account which follows is a summary of the evidence given by the appellant in the course of his first refugee claim.

[9] The appellant worked in the Iranian Merchant Navy (IRISL). During the course of a voyage in 1999 the captain of the ship was dismissed for smuggling antiquities. The appellant came under suspicion and at the conclusion of the voyage he was interrogated by the Security Intelligence Branch (*Herasat*) of the IRISL about his involvement with the captain's smuggling activities. His denials were eventually accepted and he was allowed to resume work on another ship although was subject to periodic security checks.

[10] In October 2001 the appellant's brother-in-law, a crew member on the same ship as the appellant, was caught smuggling on board his cousin who was in political trouble. Because of the family relationship the appellant also came under suspicion. When his ship returned to Iran he was detained for two months and mistreated during interrogation. Eventually it was accepted that he had not known about his brother-in-law's activities and he was released. He ignored the *Herasat's* requirement that he provide them with intelligence about his shipmates.

[11] He was again questioned by the *Herasat* after a Bible he had been given at a Belgian seafarers' club was discovered. During a voyage in April 2003 his wife reported that she was under surveillance causing him to become sufficiently depressed that the captain arranged for him to see a psychiatrist when the ship was in an Argentinean port.

[12] During April 2004, when his ship docked in Brisbane, the appellant learned that the family home had been searched and his wife detained for one month and questioned about his alleged activities smuggling dissidents and illegally trading in antiquities. A family friend, AA, had also been arrested and charged with illegally trading antiquities.

[13] Once in New Zealand, believing it was only a matter of time before the Iranian authorities requested that he be detained on board then returned to Iran, the appellant made the decision to desert his ship. Soon afterwards he learned that AA had been sentenced to 10 years' imprisonment for illegally trading in antiquities.

[14] The panel who heard the appellant's first appeal rejected his claim to have deserted his last ship in New Zealand because he feared being arrested by the Iranian authorities who had wrongfully accused him of criminal activities. The lack of any restrictions placed on the appellant during the weeks prior to his desertion, when his wife was supposedly detained, was held to be inconsistent with his being

wanted by the Iranian authorities on suspicion of having committed serious criminal offences, as was his lack of knowledge of and apparent disinterest in the charges brought against AA and the nature of the allegations made against himself.

The appellant's second refugee claim

[15] Since his arrival in New Zealand the appellant has lived with a relative, BB, a divorced woman and three of her children.

[16] In 2005, about a year after his arrival, an Iranian woman friend of BB who had become a Christian talked to the appellant and BB and her family about her faith and encouraged them to attend a church. As her own church was some distance away, the friend arranged for an acquaintance to drive the appellant, BB and her three children to Sunday services at a local Pentecostal church.

[17] As the services were in English the appellant was not able to follow the service in detail but, even so, he enjoyed the experience. At the time, he had been feeling depressed because of being separated from his family and the pressures he knew his wife had to cope with in his absence. He found that as he attended more services and his knowledge of Christianity grew, he began to feel at ease.

[18] The appellant was raised as a Muslim but, although he retained his belief in God, he had given up formal practice of Islam. In recent years, he had felt a desire to have a religion that allowed him to know God in his own way rather than simply demand adherence on the basis of being born into the faith.

[19] The appellant's reading about Islam, usually in books found in ships' libraries, had convinced him that Islam did not offer him a path to God. In particular he found unattractive aspects of the Prophet Mohammad's conduct, such as his marrying a six year old girl and his frequent involvement in wars. His first introduction to Christianity had come when visiting seafarers' clubs in foreign ports where Christian materials were often available in the Farsi language. His interest had been stimulated by this material but he had not thought to take the matter any further until BB's friend had actively encouraged him to attend a church service in New Zealand. Thereafter he had regularly attended Sunday services along with BB's three children. BB herself, while she would occasionally accompany them, did not wish to give up being a Muslim.

[20] Apart from regular attendance at Sunday morning services, the appellant reads his Bible at home. When work commitments allow, he and BB's children do Bible study and prayers together for around 30-40 minutes in the late afternoon. In May 2006, the appellant and BB's teenage daughter were both baptised.

[21] The appellant maintains daily telephone contact with his wife and children – sometimes they will speak together several times a day. His wife and children have found his prolonged absence extremely difficult emotionally and one child has even had to have psychological counselling. In consequence, the wife is often upset when talking on the telephone with the appellant.

[22] On one occasion around August 2005, the appellant, on hearing his wife crying on the telephone, felt moved to tell her about his new-found Christian faith in the hope that she too might find comfort and hope in Christianity. He told her that he had been attending church and urged her to learn more about the Christian faith by watching Christian programmes which are able to be accessed in Iran surreptitiously on satellite television channels.

[23] Sometimes when talking to his wife on the telephone, he will speak about his Christianity and even quote to her a few lines from the Bible.

[24] During December 2005, soon after the wife had shifted to new rental accommodation, she informed the appellant that she had been summonsed to the *Herasat* and reminded that she was to keep the *Herasat* informed of her current address. She was also told that the *Herasat* knew of the appellant's conversion to Christianity. The appellant is uncertain how they learned of this but speculates that it may have been because his wife's telephone was under surveillance or through his wife telling her family and someone amongst the more conservative relatives then informing the *Herasat*.

[25] Around this time the appellant also learned from his wife that the IRISL had placed a caveat on the title of a house he and his wife owned (the title is in the sole name of the wife) thereby preventing the house being sold or leased. His wife was told that the matter would only be resolved once the appellant returned to Iran.

[26] Around Iranian New Year in early 2006 the appellant telephoned his family but he was coldly received. His parents, who had recently shifted to live in the same city as his wife, had learned of his conversion and expressed their

displeasure. His parents regarded themselves as good Muslims and observed prayers and other rituals. Of his four siblings, one brother is extremely religious and one sister only slightly less so. The other two siblings are not overly observant.

[27] In an earlier telephone conversation with his mother, the appellant had felt bound to tell her of his conversion when she had been reminding him of his obligation to be a good Muslim. She had however simply dismissed what he had said out of hand. It now appeared that his family had learned of his conversion through the wife's family – the wife's father and the appellant's mother are brother and sister. The appellant had tried to speak to his family on several further occasions but they have shunned him.

[28] The wife's family have also been displeased about the appellant's conversion and have been putting pressure on the wife to divorce the appellant.

[29] As the appellant jumped ship there may well be financial penalties provided for in his employment contract that the shipping company would seek to recover from him. He had, for instance, been told that his ship had been "fined" \$US40,000. When his wife had tried to access his salary she had discovered that all his bank accounts had been frozen and had been told that this was because his jumping ship had cost the shipping company so much money.

[30] Further, the appellant learned from his parents that a friend who had stood as guarantor under his employment contract had been required to pay a relatively substantial sum. According to the appellant, a guarantor was normally only required for the first three years of a seaman's employment with the IRISL. In the event of the seaman deserting his ship in a foreign port, the guarantor would be called upon to indemnify the company. When initially employed in the 1990s this sum had been 3 million *toman* but the appellant thought that it was now 7 million *toman*.

[31] Following the problems the appellant had encountered in November 1999 after coming under suspicion of assisting the captain to smuggle antiquities, the IRISL disciplinary committee had ordered that he sign a second head employment contract as though he was a new employee. Hence he had been required to find another guarantor. The appellant explained that in addition to the head contract he would sign a further contract prior to joining a ship for any particular voyage.

[32] However, he had been surprised to learn from his parents that his guarantor had been required to indemnify the shipping company as it had been his understanding that the guarantee had only been for a period of three years and would have expired by the time the appellant jumped ship.

[33] The appellant has not contacted his friend and guarantor as in his present situation he is afraid to trust anyone. He expects his friend will understand his position and he will repay him, if necessary, in the future.

[34] The appellant is afraid for his safety should he return to Iran. He jumped ship because he was under suspicion of smuggling people and antiquities. The authorities have also come to learn of his conversion placing him at real risk of serious harm.

[35] Besides the appellant, the Authority heard oral evidence from three witnesses; BB the appellant's cousin, BB's teenage daughter and a member of the appellant's church.

[36] BB has been living in New Zealand for some 15 years. Prior to the appellant, a first cousin on her father's side of the family, coming to New Zealand she had not seen him since he was a child. When he had arrived at her home in April 2004 he had informed her that he was leaving his ship because he had problems with the company he worked for in Iran. He had not provided any real details and she was not the sort of person who asked questions about other people's business.

[37] Over time, however, she had learned that the appellant was stressed and upset. Similarly, she became aware that his wife in Iran with whom she sometimes spoke on the telephone was upset at the situation. Matters about which the wife had spoken to BB included the wife having to keep changing homes, that around the time of the appellant coming to New Zealand the wife had been taken away for questioning and her family had had to look after her children and that the wife's family regarded the appellant's conversion to Christianity as unacceptable and were putting pressure on her to divorce him.

[38] BB confirmed that, on occasions, she had heard the appellant talking to his wife about the Christian religion. Although the wife had not said so directly, BB had gained the impression from their conversations together that the wife

approved of her husband's conversion despite the pressure she had come under from her own family.

[39] BB's parents in Iran were also aware of the appellant's conversion – BB assumes they would have learned through the family. Her father had told her during a telephone conversation that she should not allow the appellant to remain living in her home as he would be a bad influence on her children. She had not dared to tell her father that in fact her eldest daughter had been a Christian for a number of years and that the three younger children still living with her were all now Christians. From her father's perspective one was born a Muslim and you passed that religion on to one's children. Were she to tell him that all her four children were now Christians "it would make no sense to him at all".

[40] BB also stated that the appellant had told her that his family were aware of his conversion and that they were upset with him. She had noticed that the appellant was no longer speaking to his family on the telephone.

[41] BB's daughter gave evidence that around March 2004, her mother's friend had encouraged the family to attend church and that she, her younger brother and sister and the appellant now attended church every Sunday. At home they also prayed and read the Bible together. She estimated they would do this for around 30-45 minutes up to five times a week.

[42] Finally, the Authority heard from a member of the appellant's church. This witness stated that he had always attended the 11am Sunday service where he regularly saw and talked to the appellant. Up to 1,500 people might be present in the congregation. Initially the appellant had been able to speak only a few words of English but his English conversation had now much improved. The witness had no other relationship with the appellant apart from their meetings at church.

[43] In support of his first refugee claim, the appellant provided to the RSB a copy of his passport and his seafarers' identity document, various documents relating to his work and a letter, dated 7 September 2005, written by his wife and faxed to the appellant's former counsel.

[44] The Authority received a range of documents, which included the following:

- (a) Written statements from the appellant, BB and BB's daughter.
- (b) Baptism certificates for the appellant and BB's daughter.



- (c) Letter dated 2 November 2005 from the school attended by the appellant's older daughter referring her for counselling in respect of her father's absence and a subsequent report to the school from the counsellor dated 1 August 2006. The counsellor stated that the daughter had become depressed and her education level had declined because of her feelings of uncertainty about the future and her unhappiness when comparing herself with other girls who talked about their father and because of the family's poor financial situation.
- (d) Various medical documents relating to the treatment of the younger daughter in respect of a broken arm.
- (e) Copy of a six month employment contract between the appellant and IRISL dated 22 December 1999 and provided as an example of the contract signed before taking up a position on board ship. Clause 14 required the appellant to submit a guarantee that he would not desert while being out of the country.
- (f) Records of the international telephone calls made by the wife on her land-line telephone during the months March-July 2006 with selected translations of the calls made to the appellant in New Zealand plus three telephone invoices from the period September 2004-September 2005. The records show that the wife was calling the husband on an almost daily basis, sometimes several times a day.
- (g) Two lease agreements, the earlier dated July 2004 and the later November 2005, in respect of the two different houses lived in by the wife and children since July 2004. In both agreements a family friend signed as the lessee and the wife as a witness.
- (h) Copy of an agreement for sale and purchase of a property purchased by the wife and officially registered in July 2002. Handwritten on the document was the notation "Based upon the Order of the Judicial High Council the considered property will be confined and under (illegible) of the Islamic Republic Shipping until further notice". Beside the notation was the stamp "Placed Under Ban".
- (i) Letter dated 15 August 2006 from a member of the appellant's church. The writer states that he has known the appellant since mid-

2005 after being introduced to a family that was interested in learning about Christianity. Transport was arranged to take the family to a church to attend a Sunday morning service. At the service the family had heard the Gospel message and some, including the appellant responded and accepted Jesus Christ into their lives as Saviour. For some months thereafter the writer transported the appellant and family members nearly every Sunday to the church service and this continued until the appellant was able to arrange transport for himself and the family. The writer expresses the view that the appellant's conversion to Christianity is genuine in that he has seen a change in the appellant's nature, as described in the Bible "that if anyone is in Christ he is a new person".

- (j) Undated letter from a New Zealand resident Iranian friend who states that he and his family came to New Zealand in 1994 and three years later converted to Christianity. He had worked with the appellant in a restaurant for some 18 months. He had felt comfortable talking to the appellant because "unlike many other Muslims, he did not become upset if talked to about Christianity" and he was interested in listening to what the friend had to say. The friend had talked to the appellant about the Bible and the words of God whenever he found an opportunity. Later he learned the appellant had converted to Christianity.
- (k) Letter dated 16 September 2006 signed by 23 members of the appellant's church, including two of the church pastors, certifying that the appellant was known to the signatories as a member of the church, a regular attendant and as a Christian convert who genuinely follows his faith.
- (l) Letter dated 18 August 2006 from Dr Wansbrough. She states that she first saw the appellant in August 2004 and, although well at the time, his sleep was poor and he was constantly ruminating on his family. Thereafter there had been no follow-up as he had quickly become employed. He had consulted Dr Wansbrough on 18 August 2006 complaining of poor memory and difficulty recalling details as well as difficulty in sleeping.

[45] Besides the above documentation the Authority has read and considered counsel's submissions dated 21 August 2006 and 13 October 2006 and the accompanying country information.

### **JURISDICTION**

[46] With the first and second claims in mind, it is now possible to address the question of the Authority's jurisdiction.

[47] The decision in respect of the appellant's first refugee appeal was issued on 1 November 2005. The appellant says that he started attending church around March/April 2005 and that it was in the following months that he came to consider himself a Christian. Indeed, he told his wife as much around August 2005. The appellant did not mention his church attendance and adoption of Christianity when interviewed by the Authority in respect of his first refugee claim in September 2005 because, he claims, his former counsel advised him not to do so as it would only arouse suspicion as to his credibility.

[48] The adoption of a religious faith such as Christianity is a process that generally occurs over time. It would seem clear, however, that by 1 November 2005, when the decision in respect of his first appeal was published, the appellant had already come to regard himself as a Christian. In that sense, therefore, there has been no changed circumstance.

[49] However, the claim is also made that knowledge of the appellant's conversion did not reach the wider family and/or the authorities until well after the determination of the first appeal. It was only at that point that circumstances can truly be said to have changed in Iran. The Authority finds that this constitutes changed circumstances which suffice to make the grounds of the appellant's second refugee claim significantly different from his previous one. It follows that we find that the Authority has jurisdiction to consider the second appeal.

[50] With that finding being made, we turn now to the question whether the appellant is a refugee.

## **THE ISSUES**

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

"... owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it."

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

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

## **ASSESSMENT OF THE APPELLANT'S CASE**

[53] Before addressing the issues postulated by the Convention, it is necessary to determine the credibility of the appellant's claim.

### **Conclusions on credibility**

[54] The appellant's evidence of his post-arrival conversion to Christianity and his subsequent communications on that subject with people in Iran is accepted. Before addressing the reasons for that finding, however, it is necessary to record our endorsement of the finding on the appellant's first appeal as to the lack of credibility of his original refugee claim.

### **The grounds of the first refugee claim**

[55] We reject the appellant's claim that he made the decision to jump ship in New Zealand because he had come under renewed suspicion of smuggling antiquities and political dissidents. This assertion, which formed the basis of his first refugee claim, was rejected by the Authority in its decision of 1 November 2005.

[56] Pursuant to s129P(9) of the Act the Authority is entitled to rely on these earlier findings. Further, having seen and heard from the appellant ourselves, we are satisfied that his claimed reasons why he jumped ship in New Zealand are not truthful and his repetition of his earlier false claims does him little credit. We have questioned the appellant closely over four days. We do not know the true reason why he decided to jump ship in New Zealand. We do note, however, that, as a seaman, he has had numerous opportunities over the last decade to claim refugee status in a Western country had he desired to leave Iran merely for socio-economic reasons. It is unlikely that a mere desire for better opportunities was the reason and we do not discount the possibility that his decision to jump ship may have stemmed from some un-revealed personal trouble.

[57] Having noted that reservation, we turn now to the reasons for accepting the truth of the appellant's conversion to Christianity.

#### Genuineness of Christian conversion

[58] The evidence establishes that, since around March 2005, the appellant has been attending a church on a regular basis and that he was baptised in May 2006. He has also been accepted as a genuine member of the church by two of the church pastors and members of the congregation to whom he is known.

[59] As to the genuineness of the appellant's conversion, although we have harboured some concerns, after careful consideration of the evidence overall we find that we must extend the benefit of the doubt to him. In doing so, we note the circumstances of the appellant's conversion. It occurred against a professed disillusionment with Islam but an openness to a relationship with God and followed his coming into contact in New Zealand with long-standing Iranian residents who were Christians. The first such person was a work colleague with whom he worked for over a year and the second, a friend of the family with whom he lived, who was instrumental in encouraging not only the appellant but the whole family to attend the local Pentecostal church.

[60] At the time he started to attend church, the appellant was depressed because of the prolonged separation from his family and burdened with guilt at his wife and children's growing distress over his absence. That he responded to the church's message and the social contact and support offered to him is understandable. So too is his description of finding in Christianity a sense of being

unburdened or “at ease”. Against this background the appellant’s adoption of the Christian faith is plausible.

Genuineness of family’s knowledge of conversion

[61] Also plausible is that at some point, in response to his wife’s distress, during her frequent telephone calls, the appellant would feel compelled to share with her the fact of his conversion and the consequent emotional benefits he had experienced. The appellant estimated he would have first mentioned that he had become a Christian to his wife around August 2005. That his wife had later spoken to her parents of the matter is also accepted, as is the appellant’s claim that the wider family are aware of his conversion.

[62] The appellant’s account of responding to his mother’s exhortation that he be a good Muslim with the rejoinder that he is now a Christian and her simply dismissing the comment impressed as a credible detail. That his family would subsequently have had confirmation of his conversion from his wife’s family – recalling that the wife’s father and the appellant’s mother are brother and sister – is credible. Also credible is their displeasure and refusal to speak with the appellant on the telephone over recent months.

[63] We place particular weight on the evidence of BB. As conceded by counsel, BB is not a sophisticated person. Her account of her telephone conversation with her own father who had learned of the appellant’s conversion through the family network and was, in consequence, demanding that she not allow the appellant to live in her home was believable. So too was her evidence about being too timid to admit to her father that all her own children were also Christians.

[64] The Authority accepts that both the wife’s family and the appellant’s family in Iran are now aware of his Christian conversion. Also accepted is that both sets of parents, while not religious extremists, are traditional practising Muslims for whom the notion of the appellant converting to Christianity is distressing.

[65] BB also corroborated the appellant’s claim that the appellant’s wife was frequently distressed when telephoning the appellant and had herself told BB that she was under pressure from her family to divorce the appellant. We consider that the motives behind such pressure may well lie as much in the appellant’s prolonged absence as his conversion. It was apparent from the appellant’s

evidence that his own parents were baffled by his remaining in New Zealand and that, at least when they were still on speaking terms, he had had to allay their concerns by assuring them that he was just working and would soon return to Iran. News of his conversion in such circumstances is very likely to have antagonised his wife's parents to the point that they have encouraged their daughter to divorce the appellant.

Genuineness of the Iranian authorities' knowledge of the appellant's conversion

[66] It is the appellant's evidence that around December 2005, soon after his wife had shifted to a new address, she had been interviewed by the IRISL *Herasat* and admonished that she was required to keep them informed of her current address. She was also questioned about the appellant's whereabouts and intentions. During the interview, the appellant claims, she was told that the *Herasat* knew of his conversion.

[67] The appellant cannot account for how the *Herasat* would have learned of his conversion though believes it might have come from a family member or through surveillance of his wife's telephone.

[68] Whether the *Herasat* would consider the appellant's actions in jumping ship warranted surveillance of his wife's telephone is doubtful. The appellant himself would appear not to think so, though we stress that we remain uncertain as to the real cause of his having jumped ship. He readily acknowledged that, apart from in the initial period following his leaving his ship, when his wife made a point of using a friend's telephone and for a brief period during which she used a mobile phone, she has always used her land-line telephone to contact the appellant. As the telephone records confirm, the couple communicate almost daily and we are told, speak in an uninhibited way including, on occasions, talking about the Christian religion.

[69] Certainly, the appellant is of interest to his former employer, the IRISL. As a ship jumper, he is liable for financial penalties due under his employment contract, including any costs incurred by the ship as a result of delay caused by the appellant's desertion. To this end his bank accounts have been frozen, a caveat has been placed on the title of a property owned by the appellant and his wife and demands made of his guarantor. It is also plausible that, as the appellant has claimed, his parents and his wife's parents, with whom his wife was staying for a period, have been questioned about the appellant.

[70] While we consider it unlikely that a family member would have informed the *Herasat* of the appellant's conversion we cannot firmly discount it or, for that matter, surveillance of the wife's telephone. The appellant is extended the benefit of the doubt on the point.

[71] In summary, we find:

- (a) We accept that the appellant jumped ship;
- (b) We do not accept his claimed reasons for doing so;
- (c) We accept that he has converted to Christianity in New Zealand;
- (d) We accept that his own family and his wife's family are aware of his conversion; and
- (e) We accept that the *Herasat*, in the course of investigating the appellant's desertion from his ship, have also learned of his conversion.

[72] It is now necessary to turn to the issues raised by the Convention.

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

[73] In various decisions over recent years the Authority has examined the position of Iranian Christian converts and reaffirmed that the mere fact that an appellant has converted to Christianity does not of itself necessitate a grant of refugee status. See, for instance, *Refugee Appeal No 74911* (1 September 2004) *Refugee Appeal No 74704* (19 October 2004) and *Refugee Appeal No 75368-71* (12 July 2005).

[74] More recently, in *Refugee Appeal No 75376* (11 September 2006), the Authority reviewed the position of Christian converts in the changed political climate following the election of President Ahmadinejad in July 2005. His election consolidated the conservatives' dominance of the political system – a dominance which the December 2006 local election results suggest may be more tenuous than was thought to be the case at the time of Ahmadinejad's election: International Crisis Group *Iran: Ahmadi-Nejad's Tumultuous Presidency* (6 February 2007). While the Authority noted evidence of increased intolerance of



political dissent and religious minorities, it concluded that there was no evidence of a change to the policy of avoiding formally convicting Christian converts of apostasy nor, despite some evidence of increased targeting of house church leaders, had there been a significant deterioration in the treatment of ordinary Christian converts.

[75] While an ordinary convert who is neither a church leader nor proselytiser is unlikely to attract persecution, the Authority has repeatedly emphasised the importance of a careful examination of the background and personal characteristics of an individual claimant and his or her profile with the Iranian authorities so as to establish whether or not additional risk factors may be present.

[76] The appellant, we find, has a profile with the Iranian authorities, in particular the *Herasat* within the IRISL, the Iranian state shipping company. He is a ship jumper. On his return he can expect to be subject to disciplinary action in terms of his employment contract and the regulations referred to therein. According to the Australian Department of Foreign Affairs and Trade, an Iranian ship jumper would not face prosecution under the ordinary criminal law but could face fines and even a light prison sentence for breach of his employment contract. (DFAT Refugees, Immigration and Asylum Section *Islamic Republic of Iran: country profile for use in refugee determination* (March 1996). The authorities have already taken steps against the appellant in the form of freezing his bank accounts, placing a caveat against the title of his and his wife's property and making a demand on his guarantor.

[77] The Authority also takes into account the fact that knowledge of the appellant's religious conversion is now widespread within his and his wife's family and has met with disapproval. His wife's parents, already disgruntled with the appellant because of the difficulties his absence has caused for his wife and children, have put pressure on the wife, since receiving news of his conversion, to divorce the appellant. There is also evidence that the appellant's conversion has come to the attention of the *Herasat*.

[78] Against this background, the Authority concludes that there are additional risk factors present which make it likely that official censure of the appellant, because of his apostasy, will go well beyond that of an ordinary convert with no political profile.

[79] The Islamic regime's long-standing disregard for fundamental human rights remains unchanged. The lack of an independent judiciary and due process, the use of arbitrary arrests and detentions and the widespread use of torture is well documented: United States Department of State *Country Reports on Human Rights Practices for 2006: Iran* (6 March 2007). Accordingly, the Authority finds that there is a real chance that, on his return to Iran, the appellant will be detained and because of his apostasy punished beyond what would be the norm for an ordinary ship jumper. He is at risk of being tortured in the course of interrogation and/or punished with a significant term of imprisonment.

### **Convention reason**

[80] We are satisfied on the evidence that any such persecution of the appellant would be, at least in part, for reasons of religion. A contributory reason will suffice, so long as it is not remote to the point of irrelevance. See in this regard *Refugee Appeal No 72635* (6 September 2002) at [167]-[179].

### **CONCLUSION**

[57] For the reasons mentioned above, the Authority finds the appellant is a refugee within the meaning of Article 1A(2) of the Refugee Convention. Refugee status is granted. The appeal is allowed.

.....  
V J Shaw  
Chairperson