REFUGEE STATUS APPEALS AUTHORITY
NEW ZEALAND

REFUGEE APPEAL NO. 70863/98

AT AUCKLAND

Before:	V J Shaw (Chairperson) D J Plunkett (Member)
Counsel for Appellant:	Ms C Curtis
Date of Hearing:	17 June 1998
Date of Decision:	13 August 1998

DECISION

This is an appeal against the decision of the Refugee Status Branch of the New Zealand Immigration Service declining the grant of refugee status to the appellant, a citizen of Iran.

THE APPELLANT'S CASE

The appellant is a 27 year old married woman. Her parents and nine out of ten siblings remain living in Iran. Her husband is currently in Thailand and is included in her refugee application.

In 1991, the appellant completed high school. She did not take up further studies, although she said that this had been her preference. She did not however make any application to attend a tertiary institution as she considered the atmosphere at universities not to be to her liking. She explained that at school she had been bothered by body odour. The heat, the requirement for female students to dress in the regulation long dress and scarf completely covering the head and the prohibition on woman using perfume, made for unpleasant body odour when the

students sat close together. The appellant believed the same situation would apply at a university which would make it difficult to concentrate on lectures.

Besides the appellant's concerns about body odour, she also expressed frustration at the pressure to conform with the Islamic dress code. On one occasion during her second year at high school, she and another 18 girls from her class were suspended from school for 20 days after the principal entered the classroom and noticed that their hair had escaped from under their scarves. The appellant said that she could not take this type of pressure.

In December 1991, the appellant married her husband, at that time a student studying economics. He later obtained employment with a taxi agency. According to the appellant, her husband was happy with his work and earned a good income. They lived with her husband's widowed mother who after some two years moved to another house owned by the husband's family, leaving the couple to live alone.

In 1994, the appellant enrolled in a three month hairdressing course at a local institute. The appellant said she did not know whether this was a private or state run institute although the copy of her certificate which she produced to the Refugee Status Branch is in the name of the Ministry of Labour and Social Affairs National Vocation and Technical Training Organisation, which suggests that it was a state institution. The appellant stated that she had first thought of becoming a hairdresser when she obtained her high school diploma, although she could not at first give any particular reason for why she did not undertake the training until some years after her marriage, even though she said she was not particularly happy staying at home. On further reflection, the appellant referred to the difference between being a daughter as opposed to the wife of the house. A daughter is expected to stay at home and to be a hairdresser would be seen by ordinary people as the equivalent of being a "bad girl" or prostitute although she agreed her own family did not adhere to such views.

After completing the hairdressing course, the appellant spent some months working for the principal of the institute then set up her own hairdressing business operating from her home. She said she loved her work and was able to make a good income. Hairdressing is a legal profession in Iran and the appellant was therefore able to openly advertise her services by placing a sign outside her home. However as the public display of female beauty is prohibited by the Islamic regime,

the Komiteh, according to the appellant, take a particular interest in the activities of hairdressers.

One day two Komiteh guards, in standard army uniform, came to the appellant's home. They had with them two young girls who the appellant recognised as customers whose hair and make-up she had done earlier that morning. The girls were obviously distressed. The guards demanded to know if it was the appellant who had done their make up. For the sake of the girls, she acknowledged that she was responsible, whereupon the girls were allowed to go. The guards then proceeded to lecture her about Islam and Islamic rules, warning her that she should not be doing make up for woman. She argued with the guards telling them that as a hairdresser, it was important for her that she be able to give her customers what hairstyle they desired. She accused the Komiteh of interfering in people's private parties where they had no right to go. She felt moved to argue in this way because of her anger at their interference. She said that she felt the same anger when stopped on the street for infringements of the Islamic dress code. This happened regularly and on more than one occasion she had been moved to argue when stopped, asserting that her scarf was fine and demanding to know why she was being picked on. Once she had been required to go to the police station where she had been questioned and spoken to rudely but suffered no other penalty. In response to her criticisms, the guards responded by warning her to stop her work and they said they had enough power to ensure that she was given a bad record and put in jail.

After the guards had gone, the appellant felt apprehensive. However, when she subsequently discussed what had happened with her husband, he made light of it telling her that the guards were probably just wanting to scare her. She put the incident aside and carried on working as before, cutting hair and doing make-up for her woman customers.

About a week or so later a customer requested the appellant to cut her hair, which she did. The woman then asked the appellant if she would come to her home to assist with hair and make-up in preparation for a big party. The appellant agreed and it was arranged that the woman would collect her on the appointed day and drive her to her home as she was not familiar with the neighbouring city where the woman lived.

The woman duly collected the appellant and they eventually ended up outside a house in the old quarter of the city. The woman knocked on the door which was opened by another woman completely covered, apart from her eyes, in a black robe. The appellant was suddenly pushed inside by her woman companion who commented to the woman inside “This is the one you wanted”. The appellant was immediately blindfolded then led through a narrow passage into a room where she was spoken to by a man. She felt terrified. She begged to know why she had been brought to the place and was told that anyone who was against them was brought there. They demanded to know if she was against the government which she denied. She was then taken to another room where she was handcuffed to the wall and lashed, she estimates about 15 to 20 times. Afterwards she was taken to another small dark room where her blindfold was removed and she was left alone. Her assailants did not tell her specifically why it was she was being punished in this way. Rather, they kept emphasising that they could do what they wanted and she should obey them. They did not directly refer to her hairdressing activities although she herself stated that she was only a hairdresser who loved her work and was not doing anything wrong. She was told that a woman’s beauty was against the government and that she should not work.

After some hours alone in the small room, the woman in black returned and applied the blindfold once again. She was made to accompany the woman to a waiting car and told to lie down on the seat. After driving for some time the car stopped and she was pushed out into a quiet back street. She managed to walk to a main street where she found a taxi to take her home.

When her husband learned what had happened he became extremely upset and wanted to make a complaint to the Komiteh. The appellant stopped him from doing so as she was afraid that this could lead to a further attempt to harm her.

As a result of her ordeal, the appellant became ill and suffered from depression. She spent about a month in bed and her husband took time off work to care for her. During this period they received a number of telephone calls from an anonymous male who threatened that if she told her story to anyone they had the power to get rid of her.

Once recovered the appellant resumed her hairdressing but she was sufficiently fearful to remove her sign and restrict her customers to family and friends. She and her husband hoped that in time the situation would return to normal.

Some two to three months later when the appellant was at home alone during the day three uniformed Komiteh guards arrived. They pushed their way into the house and proceeded to make a thorough search, damaging many items and making a mess in the process. When the appellant tried to speak, one of the guards hit her with his rifle butt on her eyebrow which left a bleeding cut. Fearing that they may harm her the appellant said nothing and the men left after about half an hour.

This last incident finally convinced the appellant and her husband to leave Iran rather than risk anymore threats to the appellant's safety. During the next couple of months they gathered their assets together in preparation for their departure. They travelled to Zahedan where they made contact with a Pakistani who organised their crossing the border into Pakistan. They did not tell anyone, including their family, of their plans to leave Iran. Accompanied by their agent they made their way to Islamabad. After two months they travelled to Vietnam using Greek passports. After a stay of one month they then moved on to Malaysia, followed by Thailand where they remained for around eight months. Eventually the agent managed to organise the appellant's travel to New Zealand but, according to her, they did not have enough money to pay for her husband to accompany her. On leaving Iran they had paid their agent US$12,000 on the understanding that this would be the full price for both her and her husband to come to New Zealand but that over the months they had waited in Asia, the price demanded by agents for illegal travel had risen substantially.

The appellant arrived in New Zealand on 6 August 1997 and immediately requested asylum.

THE ISSUES

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

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

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

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

2. If the answer is yes, is there a Convention reason for that persecution?

Because the issue of relocation arises in this case, the decision of this Authority in Refugee Appeal No 523/92 (17 March 1995) requires two additional issues to be addressed:

(a) Can the appellant genuinely access domestic protection which is meaningful?

(b) Is it reasonable, in all the circumstances, to expect the appellant to relocate elsewhere in the country of nationality?

ASSESSMENT OF THE APPELLANT'S CASE

Before proceeding to determine the above two issues it is necessary to first make an assessment of the appellant's credibility. She has given a consistent and un-embellished account. Although we have some doubts as to the reasons for the appellant's husband remaining in Thailand this does not affect our acceptance of her account of events in Iran.

In written submissions from the appellant's counsel, Ms Curtis, it is submitted that prior to leaving Iran, the appellant experienced physical and emotional persecution from Pasdars responsible for enforcing the Sharia in that she was held against her will and physically assaulted as well as being assaulted on a second occasion when her house was searched. Should the appellant fail to conform with the demand that she cease working as a hairdresser or comply with the Sharia dress code she risks the Pasdars seeking once more to impose conformity.

The appellant, it is argued, "... is not allowed to dress or work as she chooses. The appellant suffers discrimination because she is a woman". Although acknowledging that discrimination per se does not establish a case for refugee status, counsel relies on the Authority's previous view expressed in Refugee

Appeal 1039/93 (13 February 1995), that discrimination can effect woman differentially and that proper weight should be given to the impact of discriminatory measures on women. Further in reliance on Refugee Appeal 2039/93 (12 February 1996), it is submitted that compliance with the Islamic moral code will cause anguish as it is abhorrent to the appellant's deepest beliefs. She should not be expected to comply with a code which discriminates against women such as herself and is thereby repugnant to her.

Persecution in our jurisprudence is defined as "the sustained and systemic violation of basic human rights" Hathaway, The Law of Refugee Status, Buttersworth, 1991, 104. Refugee Appeal No. 1039/93 13 February 1995 pages 19 and 20.

We commence our assessment of the well-founded issue with a consideration of the substantive rights at risk.

The appellant was directed by the Komiteh to cease working as a hairdresser. The right to work is recognised in Article 23 UDHR and Article 6 International Covenant on Economic, Social and Cultural Rights 1996 (ICESCR).

Article 23 UDHR states:

> "1. Everyone has the right to work, to free choice of employment, to just and favourable conditions of work and to protection against unemployment.
>
> 2. Everyone, without any discrimination, has the right to equal pay for equal work.
>
> 3. Everyone who works has the right to just and favourable remuneration ensuring for himself and his family an existence worthy of human dignity, and supplemented, if necessary, by other means of social protection.
>
> 4. Everyone has the right to form and join trade unions in the protection of his interests."

Article 6(1) ICESCR states:

> "1. The States Parties to the present Covenant recognise the right to work which includes the right of everyone to the opportunity to gain his living by work which he freely chooses or accepts, and will take appropriate steps to safeguard this right."

Article 7 is concerned with the right to the enjoyment of just and favourable conditions of work, including remuneration which provides workers with fair wages,

equal remuneration for equal work, a decent living for workers and their families, safe and healthy working conditions, equal opportunities for promotion, rest, leisure and reasonable limitation of working hours.

Both Article 23 UDHR and Article 6 ICESCR conceptualise work as being integral to the attainment of a decent living. For most people the ability to earn ones livelihood is the means of realising an adequate standard of living, itself a right protected by Article 11 ICESCR which states:

> "The State's Parties to the present Covenant recognise the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous and improvement of living conditions."

In his discussion on the right to work, Hathaway notes:

> "Even the most conservative theorists agree that the sustained or systemic denial of the right to earn one's living is a form of persecution, which can coerce or abuse as effectively as imprisonment or torture." (page 121)
>
> "Traditionally, however, the economic proscription principle has been narrowly defined to focus on situations of total exclusion from the remunerative employment." (page 122).
>
> Persecution may therefore be established when individuals are prevented from securing any employment or where the only work which she is permitted to access is, for example of an extremely dangerous nature or grossly out of keeping with her qualifications and experience." (page 133)
>
> Hathaway, The Law of Refugee Status, Butterworths 1991.

In the present case, for the appellant to have to give up entirely her work as a hairdresser would result in loss of income. However, we are not satisfied that the overall economic consequences would be so detrimental as to amount to persecution. While acknowledging the limitations on the choice of careers open to women in Iran, there has been no blanket exclusion from pursuing alternative employment. Evidence also establishes that in the first years of her marriage, the appellant did not work at all outside of the home so that her earnings, while no doubt allowing for her and her husband to live more comfortably than would otherwise be the case, were not critical to her enjoyment of an adequate standard of living.

In the Canadian case of Juan Alejandro Araya Hererio v Immigration Appeal Board Decision 76-1127, January 6, 1977, cited in Hathaway, Ibid. page 122 it was held that being forced to accept work manifestly incompatible with one's occupational

training could amount to persecution. This finding appears to recognise that work, besides being the normal means of ensuring an adequate standard of living, has a personal and social dimension which is closely related to the realisation of self worth and dignity.

The appellant's evidence is that she loved her work. We accept that for her to give it up would be personally frustrating and resented. We did though closely question the appellant about her career aspirations. Although she mentioned having thought of hairdressing as a career after finishing high school, it seems that she was put off by the social stigma in Iran that attaches to young single women following such a profession. Once married, she did not immediately pursue hairdressing training although we could not establish from her evidence any particular impediment to her so doing. It must however be acknowledged that once having undertaken her training and having set up her own business, the appellant obviously took much pleasure in her work finding it personally rewarding over and above the obvious satisfaction of being well remunerated.

Ideally the appellant would like to be able to continue in her chosen profession. The ideal though cannot be the standard against which to measure whether or not the restriction on the right to work is persecutory. Not every breach of a claimant’s human rights constitutes persecution. Refugee Appeal No. 2039/93, Ibid., page 14. As Hathaway notes in his discussion on core social, economic and cultural rights, such rights in international law are defined in terms of minimally accepted standards so that not every incidence of unfairness supports a finding of persecution. If this is so in respect of the material standard of living it must also be the case in respect of the social and personal benefits derived from employment. In this context it is relevant to note that the appellant, who is still a young woman in her twenties, had practised hairdressing for little more than 18 months while the length of her training was only three months. There has not therefore been a substantial investment in terms of years of training and accumulated experience which may make any proscription on following one’s normal profession particularly onerous. We are unable, on the evidence, to find that a restriction on the appellant's right to work as a hairdresser in her home country amounts to persecution.

Furthermore, the evidence is in no way conclusive on the question of the appellant having to give up her occupation. Her counsel has referred to her being the victim of non-state agents. There would appear to be a definite link between the initial

visit of the two Komiteh guards and the subsequent luring of the appellant to an old house and punishing her by lashing. Either the guards or zealots acting at their direction are the most likely culprits. However, the failure to take immediate official action against the appellant, and the somewhat mysterious nature of the punishment all suggest that her assailants and/or those directing them were acting in an unofficial capacity hence the warnings in the phone call that she should not tell her story to anyone. The possibility of any legal redress is unrealistic. The appellant may well continue to be of interest to the same guards and/or their associates in her provincial home city if she chooses to continue to defy their instruction and carry on hairdressing. Even so, the evidence strongly suggests that her difficulties are localised, possibly having their origins in her challenge to the authority of the original two Komiteh guards who visited her.

We therefore find that the appellant can access genuine domestic protection through relocation. The possibility of further harassment stemming from this particular incident should the appellant relocate to another area and re-establish her business must be remote, that is, well below the real chance test for well-foundedness.

We also consider that relocation is reasonable, should the appellant wish to resume hairdressing. Although she has experienced an instance of cruel treatment she recovered and there is no evidence that the experience was so damaging that her ability to lead a normal life has been compromised. She and her husband are still young, with no obligations that tie them to their home city. We also note that the appellant's husband worked for a period in another region.

The second limb of the appellant's case is that she objects to wearing the hajib. As one might expect, the general right to dress as one pleases or control one's appearance does not specifically appear in any international human rights instrument. However, the concept of "privacy" protected in both articles, Article 12 UDHR and Article 17 ICCPR is recognised as intimately connected to individual existence and autonomy. Control over one's appearance is just one of the many facets that contribute to identity Refugee Appeal No. 2039/93. (12 February 1996) pages 32-33.

In the Iranian context, the restrictions of the Islamic dress code must be regarded as discriminatory against women in respect of both the excessive nature of the restrictions and the penalties imposed. Further the motivation for such

discrimination, just one of the many forms of oppression of women in Iranian society, stems from a political religious perspective, fundamental to which, is the denial of women an existence as independent autonomous beings and which views any challenges to such arrangements as a challenge to the legitimacy of Islamic culture, morality and ultimately the state (Ibid. pages 42 to 46).

We turn now to examine whether or not the present appellant's wearing of the hajib will result in a sufficiently serious outcome to constitute persecution. In answer to counsel's question, the appellant stated that in the event of her returning to Iran she would not wear the hajib. We doubt the sincerity of this answer. This in no way reflects adversely on the appellant. There can be no expectation that she should martyr herself through exposure to such cruel punishment as lashings, a punishment in clear breach of Article 5 UDHR (torture, cruel and inhumane or degrading treatment or punishment).

We do not doubt the appellant's abhorrence of the restrictions imposed upon her and other women in Iran. We readily accept that she holds a genuine interest and commitment to the ideals of feminine beauty and that she resents the Islamic regime's denial of the right of women to dress as they please and to enhance their appearance through hair-styling and the use of make-up. For someone with both a personal and professional interest in the world of fashion and beauty, such restrictions must be somewhat irksome. Further, for many women, particularly from educated and less traditional groups, the wearing of the hajib constitutes the most visible symbol of the oppression that confronts them in their daily lives.

While acknowledging the difficulties involved in making an assessment of a particular individual's personal and emotional responses, the evidence suggests to us that the appellant was able to accommodate herself to the restrictions of life in Iran. The only prior breaches that occurred of the dress code were minor or largely inadvertent e.g. some hair escaping which, if noticed by the Komiteh, resulted only in her being spoken to and on one occasion being questioned at the police station without further penalty. The appellant has stated in her written statement that despite the social and political limitations, she and her husband "had a happy life". They lived well, had good food, and necessities, good savings and "were completely satisfied with our lives". Although her statement also refers to life, not only for her but her fellow citizens, bringing torment there is no evidence that this "torment" resulted in any undermining of her capacity to function in a normal manner and to enjoy many pleasures. The incident she suffered in mid

1995 was indeed traumatic for her although she recovered from the experience. We do not believe that she is likely to court such attention again through the loss of control associated with the build up of intolerable pressures.

Nor do we find that even when taken cumulatively with the proscription on her right to work as a hairdresser that the result will amount to a systemic violation of core human rights such as to amount to persecution.

In her submissions, counsel has drawn an analogy with the appellant in Refugee Appeal No. 2039/93 pointing out that the present appellant, unlike the appellant in that case, has actually experienced being detained and assaulted. Although this is so we find that the circumstances of the appellant in Refugee Appeal No. 2039 are readily distinguished.

In that case the appellant had suffered harassment over a number of years because of her family's association with a Khuzestan resistance movement including being detained and questioned on an almost weekly basis by the Komiteh. She also had developed a deep resentment at the control exercised by the male members of her Arab family over the female members, which extended on two occasions to taking the life of a female member for marital/sexual transgression. It is significant that her own life was found to be at risk from retribution from male relatives because of a pre-marital sexual relationship with a man in this country.

The appellant has also expressed the fear that she will suffer punishment in the event of her returning to Iran because of having left Iran, illegally. Illegal departure may be punished by a fine or imprisonment for up to three years, the longer periods of imprisonment being reserved for cases involving the use of forged and falsified documents. (Human Rights in Iran: Update of Selected Issues; Canadian Immigration and Refugee Board, October 1996. The appellant is not a person with a political profile likely to make her of immediate interest to the authorities, or to attract a disproportionately severe penalty. What sanction may be imposed on her will be in the nature of prosecution rather than persecution.

For the above reasons, we find that the appellant does not meet the well-founded test. We therefore do not need to examine issue two relating to Convention ground.

CONCLUSION

In summary, our conclusions are as follows:

1. On an objective assessment of the facts there is no real chance of persecution in the event of the appellant returning to Iran.

2. The question of Convention ground does not arise.

For these reasons, the Authority finds that the appellant is not a refugee within the meaning of Article 1A(2) of the Refugee Convention. Refugee status is declined. The appeal is dismissed.

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Chairperson