

REFUGEE STATUS APPEALS AUTHORITY
NEW ZEALAND

REFUGEE APPEAL NO 76226

REFUGEE APPEAL NO 76227

AT AUCKLAND

<u>Before:</u>	B A Dingle (Member)
<u>Counsel for the Appellants:</u>	D Mansouri-Rad
<u>Appearing for the Department of Labour :</u>	No Appearance
<u>Dates of Hearing:</u>	21 & 22 July, 11 August and 15 September 2008
<u>Date of Decision:</u>	12 January 2009

DECISION

[1] The appellants are an Iranian woman (*Refugee Appeal No 76226*) (“the appellant”) and her daughter (*Refugee Appeal No 76227*) (“the daughter”) who are both nationals of Iran. This is the second appeal of each of them to this Authority.

[2] The daughter is three years of age and is represented by the appellant, pursuant to section 141B of the Immigration Act 1987.

[3] The appellants originally arrived in New Zealand on 11 November 2006 accompanied by the appellant’s husband, AA.

[4] On 15 November 2006, they filed refugee claims. They were interviewed by the Refugee Status Branch (RSB) of the Department of Labour (DOL) on 1 December 2006.

[5] By early December 2006, the appellant, daughter and husband had begun living at a hostel where they continued to reside at the time of the appeal interview

for the present claim. The claims were declined by the RSB in a decision dated 16 March 2007. The appellants appealed to this Authority (differently constituted) and those appeals were dismissed on 27 August 2007 on the grounds that their account of events in Iran prior to their departure was not credible.

[6] As a result of the Authority's decline of their refugee appeals, the appellant and her husband were interviewed by an immigration officer from Immigration New Zealand regarding the family's return to Iran. The family applied for new Iranian passports through the Iranian Embassy in Wellington but as at the time of this appeal the passports do not appear to have been issued.

[7] The appellants lodged subsequent claims for refugee status on 1 February 2008. The mother was interviewed by the RSB on 14 March 2008 and a joint decision declining the subsequent claims was delivered on 16 May 2008. The appellants then appealed to this Authority for the second time.

[8] The appellant claims that she has a well-founded fear of being persecuted on return to Iran because she has separated from her husband in New Zealand on the grounds of domestic violence and a breakdown in the marriage. She claims that the separation has provoked an extremely negative reaction towards her from both her own family in Iran, her estranged husband and his family in Iran. Her husband, who remains in New Zealand and is also filing a subsequent claim, is also seeking to have full custody of the daughter, an outcome which the mother says will be supported by Iranian law and which she will be unable to prevent in Iran. She also claims that she will be unable to access any financial or other support from her family who are so disillusioned with her decision to separate that they are threatening her serious harm on her return to Iran.

[9] The issues to be determined in this case are:

- (a) whether the Authority has jurisdiction to hear the subsequent appeal;
- (b) whether or not the second claim to refugee status is credible; and, if so,
- (c) whether or not the second claim to refugee status is well-founded.

JURISDICTION OF THE AUTHORITY TO HEAR THE APPEAL

[10] Because this is the second occasion on which the appellants have appealed to this Authority, the Authority must first determine whether it has jurisdiction to hear the appeal.

[11] Neither a refugee status officer nor the Authority has unlimited jurisdiction to receive and determine a further refugee claim after a first claim has been finally determined. Section 129J(1) of the Immigration Act 1987 (“the Act”) is headed “Limitation on subsequent claims for refugee status” and sets out the circumstances in which a refugee status officer may receive and determine a second or subsequent claim for refugee status:

“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.**”

[Emphasis added]

[12] Where the refugee status officer declines the subsequent claim, or finds that there is no jurisdiction to consider the claim on the basis that the statutory criteria are not met, the claimant has a right of appeal to the Authority. Section 129O(1) of the Act provides that:

“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 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.”

[13] The Authority therefore intends to consider the appellants’ original claims, together with their further claims as presented at the second hearing, with a view to determining whether it has jurisdiction to hear the second appeal. If so, it will then determine whether the appellants are refugees within the meaning of Article 1A(2) of the Refugee Convention.

Comparing the appellants’ first and second claims for refugee status

[14] In summary, the appellants’ first claims for refugee status were based on derivative claims from that of the husband, AA, that his friendship and business dealings with members of the Baha’i faith had come to the attention of the Iranian authorities and as a result he had been detained and suffered serious physical

harm. They claimed that as a result of a court decision confiscating all of the husband's assets, they had been financially destitute and, therefore, accepted an agreement to open a new business with another Baha'i man. As a result of that relationship the husband again came to the attention of the authorities and was being sought by them at their families' homes. They feared the consequences of being located by the authorities and so made arrangements to leave Iran illegally. The husband said that if he were to return to Iran he would be arrested and he believed he would be executed.

[15] As noted above, the Authority did not accept the credibility of AA and the appellant as to the events which they claimed had occurred in Iran prior to their departure. The Authority also dismissed the general claims made by the wife and on behalf of the daughter that if they were to return to Iran they would be at risk of being persecuted because of their gender. The Authority found that there was no evidence before it which indicated that the wife had ever suffered serious harm in the past because of her gender or that on return to Iran she or the daughter would suffer gender discrimination at a level which amounted to being persecuted.

[16] The appellant's second refugee claim (summarised below) is based on her separation from her husband here in New Zealand and the consequences of that separation for her and her daughter should they now return to Iran.

Has the jurisdictional threshold been met?

[17] The determination of the first claims was made on 27 August 2007. Since then, in late 2007, the appellant says she has suffered an incident of domestic violence, and has separated from her husband. It is on the basis of this separation and the consequences for her should she now return to Iran, that she and the daughter claim refugee status for a second time. Such consequences include the threat of physical violence from the appellant's father and the social discrimination and barriers which will prevent the appellant from adequately providing for herself and the daughter. The appellant also claims she will face legal discrimination in her attempts to retain custody of her daughter.

[18] The Authority concludes that this amounts to a change of circumstances such that the second claim is based on significantly different grounds from the first. The change in circumstances has arisen since the determination of the first claim. The Authority therefore has jurisdiction to consider this second appeal.

[19] This decision now turns to summarise the evidence provided in support of the appeal and then consider whether the appellants are refugees within the meaning of the Refugee Convention.

THE APPELLANTS' CASE

[20] The account which follows is the summary of the evidence given by the appellant and witnesses in respect of the refugee claims of her and the daughter.

APPELLANT'S EVIDENCE

[21] The appellant was the second of six children born to her parents who live in a city in the south of Iran. The appellant's father is a carpenter who works elsewhere in the Middle East for six months of the year, returning home for the other six months with enough money to support the family. The appellant has two brothers both of whom still live at home and three sisters, two of whom remain living at home while one is married and lives overseas.

[22] The appellant was raised as a Shi'a Muslim and her parents continue to actively practise their religious faith. Her father and brothers attend the local mosque and her mother performs daily prayers at home and participates in other religious observances such as fasting through Ramadan.

[23] In terms of a wider social context, the appellant considers her parents and her extended family to be socially conservative, although she concedes that her up-bringing was marked by a strict hierarchy in the family whereby her father's word determined what happened in the family. The women in the family were expected to obey his directions and those of the appellant's brothers and other male relatives. As examples of her father's social conservatism, the appellant recalled having to follow strict rules about the way she dressed, not being able to socialise with males, having no meaningful influence as to who she married and being restricted in her ambition to work because her father did not approve of her seeking employment.

[24] The appellant completed her high school education by studying part-time until she was approximately 20 years of age.

[25] In early 2002, when the appellant was approximately 21 years of age, her family arranged for her to become engaged to AA. In keeping with traditional Iranian customs, the appellant's parents arranged her engagement because they knew AA's family and they thought he would make a good husband for her. The appellant was opposed to the idea because she felt that she was too young and she had hoped to persuade her father to let her find employment. The appellant's parents were not persuaded to change their plans and told her that she must not let the opportunity for a good marriage pass.

[26] In August 2002, the appellant married AA and they moved into their own house. It soon became clear to the appellant that she and her husband had different opinions about many things, including the extent to which AA should control the appellant's activities and interactions with other people. She was disappointed because although she had hoped she might discover more freedom when she left her father's house, AA opposed the appellant's plans to complete further study or find employment. He also expressed concerns about her socialising with other people and, after some time, he became obsessive about monitoring her telephone calls and face to face contact with even her female friends.

[27] While these issues developed over time, within about eight months of the marriage, the arguments became intense and frequent. The appellant's husband was suspicious if she ever left the house without his permission and he would interrogate her about her telephone calls and any socialising that she did with friends. He also criticised her dress and insisted that she change her appearance if her hair was showing or her clothes were close fitting. If her husband was feeling particularly stressed or anxious, he would even forbid her to look out the window as she sat in the passenger seat of the car with him.

[28] The appellant concedes that their home life could have been less tumultuous if she had obeyed her husband's directions about how she should live and whom she should see but that she found herself unable to live up to his expectations at all times. She felt oppressed by his constant supervision of every detail of her life and could not help but try and exert some independence, even when she knew that it would cause tension between them.

[29] In 2003, after they had been married for approximately a year, the appellant's husband began to physically assault her. These assaults would occur when they argued about matters such as those described above and when she

retaliated verbally to her husband in response to his criticism of her. She described her husband as a man who would become so incensed at her attempts to be independent that he would lose control and lash out at her, either punching or kicking her or sometimes throwing household objects. She estimated that arguments would end in a physical assault approximately once every one to two months, depending on how much she resisted his attempts to control her life. Following incidents of domestic violence, she and her husband would normally ignore each other for a few days before relations would thaw and they would continue with their daily lives.

[30] The appellant recalled some incidents where she sustained relatively serious injuries. After one argument, her husband knocked her head on the door of the closet which caused a bleeding wound. She estimates that this incident occurred approximately two to three years into the marriage. She also recalled him throwing a chair across the room at her, cutting her leg. On other occasions she would routinely be left with bruises, a swollen lip or a black eye.

[31] The appellant did not normally seek medical attention in relation to these injuries, preferring to remain indoors until physical evidence of the assaults had disappeared.

[32] The appellant was not able to access any meaningful support or protection from her own family in relation to the physical and verbal abuse. Occasionally she sought refuge with her family after an assault but her family's response, especially that of her parents and her brothers, was to tell her that arguments were an ordinary part of married life and should just be tolerated.

[33] On at least one occasion, her mother specifically referred to examples of other family members who had experienced extreme domestic violence and suggested that the appellant must simply accept it. Her family also suggested that she should stop resisting her husband's demands and said that if she obeyed him, the domestic difficulties would cease. The appellant's family would not accept her staying with them for a period during which she might recuperate because they felt strongly that her rightful place was in her husband's home and that she should, in all circumstances, be returned to him.

[34] The appellant did have some cousins with whom she sometimes shared her experiences and although they could offer no protection, they suggested that she see a counsellor. She did so on a couple of occasions but she could not convince

her husband to attend the sessions with her because he did not think that a counsellor would understand their personal situation or be of any assistance.

[35] In mid-2003, the appellant was offered employment by one of her relatives. She was eager to take up the offer but her husband refused her permission saying that he earned enough to support them both and that he did not want her working with other men.

[36] In mid-2004, the appellant became pregnant and she delivered a baby daughter in April 2005. During pregnancy the appellant was careful not to anger her husband and she also believes that he treated her with more respect during that time. He did not assault her in any serious way.

[37] In late 2006, an opportunity arose for the appellant, her daughter and AA to leave Iran and settle in a western country. For some time the husband had considered leaving Iran to make a better life for themselves. Various attempts they made to travel to Canada had not come to fruition but in late 2006, they were introduced to an agent who offered to help them travel to New Zealand. Arrangements for their departure were completed in two to three weeks. The agent required 35 million *toman* to facilitate their travel, 20 million *toman* of which they were able to liquidate from a property they owned in conjunction with the husband's brother. The remaining 15 million *toman* was lent to them by the appellant's father.

[38] Neither the appellant's family nor that of her husband were particularly supportive of the idea of them travelling abroad. Both families were of the opinion they had a good life in Iran and that the lifestyle in western countries was inferior and, from a moral perspective, tainted by non-Islamic principles and practices.

[39] Notwithstanding this initial resistance, the appellant convinced her father that he should lend them money to travel because it was their heartfelt desire to seek a life away from the restrictions of Iran and to provide their daughter with a wider education and a better quality of life. After several conversations, he agreed to lend them some money so that they could make the trip.

[40] For the appellant, the appeal of travelling to a western country was twofold. First, she believed that she and her husband and daughter would be able to enjoy a more relaxed lifestyle, uninhibited by the social and religious mores which she found oppressive in Iran. Second, she believed that the marriage difficulties she

and her husband experienced would be reduced. She felt that if she lived in a western society, her husband's attitude about women would relax and he would be less dictatorial about how she lived her life. She also believed that, taken away from her social context of friends and family, he would be less suspicious about who she was mixing with and that this would cause fewer arguments. She knew that domestic violence was not considered acceptable in western societies and believed that this would have a restraining effect on her husband who would no longer feel that he could assault her with impunity.

[41] As part of the preparations for travel, the appellant and her husband planned to mount a false refugee claim based on her husband's business associations with Baha'i in Iran. The appellant, her daughter and AA arrived in New Zealand on 11 November 2006. On 15 November 2006, the family lodged their first confirmation of claim with the RSB.

[42] On 6 December 2006, they moved to a hostel where they were allocated a unit consisting of two bedrooms with a bathroom adjoining both of them. The appellant's claim was declined by the RSB on 16 March 2007 and a subsequent appeal to this Authority was dismissed on 27 August 2007.

[43] When they first arrived in New Zealand, the relationship between the appellant and AA was reasonably good and was marked by a period of relative calm and no physical violence. The appellant and AA were focused on securing refugee status in New Zealand and starting their new life. While they had some disagreements about the way the appellant was dressing and her behaviour in New Zealand, these did not escalate to physical violence. The appellant believes that her husband did not assault her because he knew that there would be legal ramifications in New Zealand.

[44] However, once the appellant and her husband were declined refugee status and they began discussing the possibility of their return to Iran, their relationship deteriorated. The turning point for the appellant was in September 2007 when she signed a document confirming that she would apply for an Iranian passport and would make arrangements to travel back to Iran. At that point she recognised that she could not tolerate a return to her former life where her husband had complete control over her and where she would once again have to conform to the strict cultural and social practices expected by her husband, her family and society in general.

[45] Having lived in New Zealand for almost a year, the appellant had witnessed the freedom of women in New Zealand to determine how they lived their life and that freedom appealed to the appellant for both herself and her young daughter. While the appellant still wanted to make her marriage work, she no longer felt able to bear the physical and psychological torment that she believed she would suffer in Iran. These thoughts developed over a matter of weeks and by October 2007, the appellant felt sure that she did not want to return to Iran, even if her husband was planning to do so. The appellant had heard from other Iranian women in New Zealand that it may be possible to claim refugee status in New Zealand on grounds of domestic violence and she determined to make enquiries about that possibility with a lawyer.

[46] From late 2007, the appellant sought medical help for her fragile mental state from Dr Toni Wansborough. Dr Wansborough treated the appellant for depression and problems with anxiety and sleeping. Dr Wansborough also recalls that they discussed the possibility that the appellant may be able to claim refugee status on the grounds of domestic violence and that the appellant disclosed to her (Dr Wansborough) that she had suffered domestic violence in Iran.

[47] Towards the end of 2007, probably in late November, AA returned home to the hostel and found her talking with another Iranian man in the social room adjoining their unit. The appellant could immediately discern from AA's demeanour that he was angry. She followed him into their unit when he called to her. The pair immediately began arguing, AA accusing her of being a "loose woman" for speaking with another man. The appellant spoke back to her husband and the argument escalated to the point where AA slapped her on the face. The appellant left the room and the argument ended.

[48] The resumption of physical violence in the marriage became the tipping point for the appellant who, within the next day or so, decided that she would definitely not return to Iran with her husband. Within a week of the argument, the appellant informed her husband that she would not be returning to Iran with him. At first her husband did not take her seriously and believed that she was making threats that she would not see through.

[49] Within another week or so, the appellant had contacted a lawyer and spoken about the possibility of making a refugee claim on domestic violence grounds. The Christmas and New Year holidays then intervened and the

appellant was not able to consult her lawyer further until late January 2008. She filed her claim for refugee status on 1 February 2008.

Family response in Iran

[50] In response to the relationship breakdown, AA contacted the appellant's family in Iran and asked them to intervene on his behalf and persuade the appellant to resume the marriage. In approximately January 2008, the appellant's father telephoned her, berating her for her actions and telling her that she must reconcile with AA and return to Iran. He said that she could not count on the support of her family unless she remained married and did not taint the reputation of the family. In approximately February 2008, her father telephoned again and threatened her that if she returned to Iran as a separated or divorced woman that she would be shaming the honour of the family and that he would physically harm her and "destroy her".

[51] More recently, the appellant has been in contact with her mother who also believes that the appellant should resume the marriage to preserve the family reputation. Her mother expressed concern that if the appellant's marriage dissolves, it will impact on the eligibility of her sisters for marriage.

Evidence of AA

[52] AA appeared on a separate day to give evidence in support of the appellant's appeal, having been requested to do so by the appellant's lawyer.

[53] AA described the wife's family as an ordinary Iranian family who followed Islam and took great stock by traditional values and social mores, particularly around the role of women in the family, the importance of marriage and the integrity of the family unit. Against western standards, he considers them socially conservative.

[54] Specifically, he noted that the appellant's family supported the idea that girls and young women should be educated but nevertheless thought that a woman's place in adulthood is in the home as a wife and mother. He stated that both families believed in the importance of the Islamic value of a "modest woman". In practical terms, this means that she should dress in long, loose fitting clothes and with a veil; seek and take direction from males in the family about behaviour and permissible activities; and should not socialise with men or be employed outside

the home unless in strictly prescribed or supervised roles. When asked if he also ascribed to those values, he replied with the rhetorical question “Who doesn’t agree?” thereby indicating that he thought they were cultural values unanimously accepted by all Iranians.

[55] AA told the Authority that in his attempt to convince the appellant to reconsider her decision to separate, he had contacted her family in Iran and told them about the relationship breakdown. First, he asked her family to convince the appellant to listen to him. At a later date, in early 2008, he says he rang her family and said that he did not know “where the appellant was going or what she was doing”, impliedly asserting that she was behaving immorally and possibly having a relationship with another man. He reports that at first her family blamed him (the husband) for taking the appellant to another country. In later conversations, her family simply said they did not know what action he should take to remedy the situation.

[56] When asked to speculate on what reaction the appellant would get from her family if she returned to Iran as a separated woman, AA clearly thought that they would be displeased but was not willing to speculate as to whether or not they would either harm or support her. AA is not currently in contact with the appellant’s family.

[57] As to the daughter, AA was emphatic that no matter what the outcome of the appellant’s refugee claim, or his own, he wanted to secure full and permanent custody. He reasoned that he was entitled to full custody as her father and that because of the appellant’s recent behaviour (rejecting Islamic customs and social mores), she could not be relied upon to raise the daughter in an appropriate way. He said that he no longer wished to be married to the appellant, “such a woman who turns her back on customs – comes to a free country and does what she likes...” and said “she should give me my child and go away”. He told the Authority that even if they returned to Iran together, he would kick her out (of the house), drop her at her parents’ house and take the daughter.

Evidence of MM

[58] MM is a male Iranian national who resides at the appellant’s hostel and has met both the appellant and AA there. MM currently has his third refugee claim being considered by the Authority. His first two refugee claims have previously

been considered on appeal by the Authority and have been dismissed on the basis that they have no credibility.

[59] MM was the individual with whom the appellant was in conversation just prior to the incident when AA slapped the appellant. MM recalled the incident which began when AA returned to the hostel and found him (MM) and the appellant talking in the shared lounge room. MM recalls that AA looked angry and called the appellant in to their living unit, after which he heard shouting between them. He was not aware of the appellant being assaulted.

[60] After that incident, in approximately March or April 2008, the appellant approached MM and asked him if he could organise accommodation for her outside of the hostel. MM tried to arrange something but it fell through. He has not had any other interaction with either the appellant or AA which is relevant to this appeal.

Evidence of Dr Wansborough

[61] Dr Wansborough appeared to give evidence on the second day of the hearing. She is a general practitioner who treated the appellant at the City Peoples' Centre, Auckland. She confirmed her letter of 12 February 2008 in which she had summarised the symptoms with which the appellant had presented (during several consultations) since October 2007 including anxiety, depression, sleeping difficulties, poor memory and concentration, tearfulness and poor appetite. In that letter, Dr Wansborough also reported that the appellant had told her of domestic violence suffered in Iran and marital problems that the appellant and AA were experiencing in New Zealand.

[62] At the time of the appeal, the appellant was on two medications, one of which - an antidepressant - is known to cause memory issues for some individuals. Dr Wansborough was not aware of any memory issues experienced by the appellant. When asked by the Authority whether she knew of any reasons why the appellant would have difficulties giving evidence to the Authority, Dr Wansborough answered "No".

[63] Dr Wansborough was unable to give any further details about the domestic violence alleged to have occurred at the hostel in New Zealand and had made only general references in her notes with regard to the violence reportedly suffered in Iran. She was also aware from approximately early 2008 that the appellant was

considering applying for refugee status on the basis of domestic violence suffered in Iran.

THE ISSUES

[64] 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."

[65] 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 APPELLANTS' CASE

Credibility

[66] Before the identified issues can be addressed, an assessment must be made of the appellant's credibility.

[67] In making this credibility finding, the Authority notes concerns it has in relation to the timing of the claim and the fact that the appellant failed to raise the issue of domestic violence in her first claim or until it became clear that she would otherwise be removed to Iran. The Authority also had some concerns about the fact that AA has made a simultaneous second claim, thus raising the possibility that they are acting in concert to secure refugee status.

[68] Against these concerns, the Authority observes that the appellant has given a generally consistent account of the domestic violence which occurred in Iran, the way in which she came to the decision to separate from her husband and submit

her own claim for refugee status, and the reaction of her family in Iran. She has explained her belated disclosure of the domestic violence by stating that at the time of her first claim her relationship had improved somewhat and that she intended to remain in the marriage. In any event, she says the first claim was conjoined with her husband and she would not have felt able, in that context, to disclose the domestic violence. The Authority accepts this explanation as plausible and consistent with the recognised behaviour of victims of domestic violence who are typically hesitant about revealing the existence of domestic violence while they continue to maintain the relationship in which the violence occurs.

[69] The Authority has also had the benefit of hearing from AA, the alleged perpetrator of the domestic violence. Again, notwithstanding the Authority's concerns that the appellant and AA may be acting in concert in relation to their second claims for refugee status, and the fact that they have both previously made a false claim, the Authority accepts the husband's evidence as to his marriage breakdown as credible. His evidence in that regard appeared to be spontaneous and unrehearsed. In particular, his initial reluctance to discuss the domestic violence and the way in which his evidence then developed with his rationalisation of the assaults in terms of his belief that a woman should obey her husband, by force of violence if necessary, gave a strong impression that it was evidence of genuinely held beliefs and events. His evidence is also consistent with what is widely reported to be the predominant set of social mores in Iran. The Authority also accepts his claim that he will pursue custody of the daughter as soon as practicable.

[70] Although AA's perception of their relationship was distinct in some respects from that of the appellant – in that he considered the violence an acceptable and normal aspect of the relationship – he corroborated her account as to the general cause of their arguments and admitted having physically assaulted her, both in Iran and in New Zealand. He considered that their marriage had taken a very ordinary course in that many issues arose which had to be dealt with and “every husband and wife argue”. The Authority did not examine AA about the grounds for his own refugee claim or any other matters relating thereto.

[71] The Authority also accepts the evidence of Dr Wansborough as to the mental issues with which the appellant has presented and the fact the appellant reported historic incidents of domestic violence to her as early as October 2007.

Dr Wansborough helpfully provided her consulting notes to the Authority and used these as an *aide memoire* during the oral interview. While her evidence was limited to medical issues and records of the appellant's self-reported historical abuse, her appearance nevertheless enabled the Authority to question her about the appellant's apparent state of mind through late 2007-2008. This evidence was consistent with the appellant's own evidence as to her emotional and mental state through that period.

[72] Having considered the evidence in the round, the Authority finds that, in the circumstances, the appellant is entitled to the benefit of the doubt as to the domestic violence in her marriage and the reaction of her family to her separation. For the purpose of this decision, her account is accepted. In granting her the benefit of the doubt, the Authority reminds itself that the duty to afford the benefit of the doubt is especially high in cases where the consequences of a wrong or mistaken rejection of the appellant as a refugee would be serious (*Refugee Appeal No 265/92* (29 June 1994)). The Authority is satisfied that it is appropriate to extend the benefit of the doubt in this case because of the widespread violations of human rights in Iran which are encountered by women in the predicament of the appellant. These are expanded on below.

Does the appellant have a well-founded fear of being persecuted?

[73] Persecution has been defined as the sustained or systematic violation of core human rights demonstrative of a failure of state protection (*Refugee Appeal No 2039/93* (12 February 1996)).

[74] Given the predicament of the appellant in this case, the Authority is satisfied that if she is returned to Iran, there is a real chance that she will suffer serious harm in the form of physical violence from her father (for which she will receive no protection from the state) and/or gender discrimination and social exclusion to a level which reaches the "being persecuted" threshold.

Country information

[75] Country information about the status and treatment of women in Iranian society and the state's response to issues of gender violence was considered in detail by the Authority in *Refugee Appeal No 2039* (12 February 1996), and again in *Refugee Appeal No 71427* (16 August 2000). In the latter decision, the findings

are summarised by citing Ann Elizabeth Mayer in *Islam and Human Rights: Tradition and Politics* (2nd ed, 1995) at p112:

"The record ... overwhelmingly establishes that Islamic principles, Islamic law, and Islamic morality have been interpreted in Iran to justify depriving women of any semblance of equality with men, subjecting them to a wide range of discriminatory laws and treatment, and effectively confining them to serving their husbands, performing domestic tasks, and bearing and raising children."

[76] The Authority is satisfied that there has been no material change in the status of women in Iran since those decisions were published. It is apparent from current country information that the Iranian state continues to provide inadequate protection and support for women.

Family violence

[77] As to domestic violence, the United Kingdom Home Office Country Report: *Iran* (April 2005), reports, at para 6.148:

"Abuse in the family was considered a private matter and was seldom discussed publicly ... although surveys (e.g. Tehran University surveys) indicate levels of domestic violence are very high, women have almost no legal redress, and there is a fair amount of social tolerance of domestic violence."

[78] A typical analysis of the situation in Iran is provided by a 2001 report by the Refugee Women's Resource Project, *Asylum Aid Refugee Women and Domestic Violence: Iran* ("the Asylum Aid Report"). It records that there is no specific recognition of domestic violence in Iranian legislation and a victim of domestic violence would have to prosecute a claim of assault and battery under the regular Criminal Code. The report goes on to state that such complaints to the police "are unlikely to be taken seriously unless perhaps several incidences of very severe injury have been reported" (See para 3.1, *op cit*).

[79] The report also records that, while no accurate statistical information on domestic violence in Iran is available, evidence collected from women involved in divorce disputes gives an indication of the scope of the problem:

"According to research conducted in Tehran on divorce and its causes, 75% of women who were involved in divorce disputes said that they had been physically attacked by their husbands. The rate of domestic violence was reported to be as high as 72 percent. Many incidents of domestic violence ended with a women's death or serious injury." (See Parvin Paidar "Women and the Political Process in Twentieth-Century Iran" (Cambridge University Press, 1995) p352)."

[80] The report details the overall discrimination against women inherent in the Iranian legal system and reveals that opportunity for women to access redress for,

and protection from, domestic violence is so small as to be negligible. The same report states that “no evidence has been found of any support services for women experiencing domestic violence run either by the state or by NGOs” (see para 4.3, *op cit*).

[81] There is no information before this Authority to suggest that, since the publication of the reports cited above, the situation for women victims of domestic violence has altered in any significant respect.

Separated and divorced women

[82] There is a strong social stigma attached to separated and divorced women in Iranian society. A survey of the situation faced by separated and divorced women in Iran is provided (with reference to a range of academic analyses) in the Asylum Aid Report. As to the general situation for such women the reports states at paragraph 5.1 that:

“According to the Islamic regime, a woman’s main purpose in life is to marry and have children. Single or divorced women have neither prestige nor social status and suffer discrimination in many areas in addition to those ...which apply to women in general.”

[83] Relevant to this appellant, are reports that finding adequate housing and employment are difficult as a divorced woman.

[84] The Asylum Aid report provides figures suggesting that although girls make up almost half of the student population, the employment rate for women is nine percent and 72% of those are restricted to the educational sector (*op. cit*, p.27). In other words, less than three percent of women have jobs outside the education sector. Furthermore, women’s employment (in the formal sector at least) relies on them being granted permission to be employed by a male in their family.

“Women must obtain permission from their husbands and/or another male head of the family to seek employment or to be employed. This could cause problems for a woman who has fled domestic violence and was unable or return to her family ... or whose family refused to take her in. Indeed, women’s economic survival after divorce is dependent on family support” (Asylum Aid report, *op.cit*, p 26)

[85] The report goes on to identify the lack of affordable childcare provision, the lower wages accessible for single women and the fact that they cannot access wage related family benefits which would automatically accrue to employed men with children. These factors combine to mean that a woman on her own with

young children, who is estranged from her family, would have “extreme difficulty” in supporting herself, (Asylum Aid report, *op. cit.*, p 27).

[86] The obstruction to finding employment as a divorced woman is therefore significant, particularly in the absence of support from her own relatives to assist in providing childcare or financial support. This is exacerbated if the woman has initiated divorce herself, in which case she will not be entitled to any financial support, or the return of her *mahri-eh* (a severance payment set in the marriage contract). This leaves her with no financial resources at all for either herself or the child for even a temporary transition period. (See for example, Ponzetti, J.J. Jr. 2003, *International Encyclopaedia of Marriage and Family*, Macmillan Reference, New York.)

[87] Country information also indicates that divorced women encounter practical impediments in finding adequate housing. While there are no legal barriers to a divorced woman renting accommodation alone, the social attitudes of landlords will make such arrangements difficult and the social disapproval will be intense. (Immigration and Refugee Board of Canada, *Iran: Whether a divorced woman is considered to be "single" in the same way as a woman who has never married; whether a single or divorced woman can rent accommodation on her own in an urban centre; whether a single or divorced woman can work outside her home*, 1 June 1998. IRN29551.E. Online. UNHCR Refworld, available at <http://www.unhcr.org/refworld/docid/3ae6aad864.html> (accessed 6 October 2008)).

[88] As to the consequences of divorce in relation to the custody of children, the Iranian law and society has a strong bias towards enforcing the father's rights to a child. Iranian law provides that the superior right of guardianship is always retained by a father while the physical custody of children may remain with a mother until the children are seven years of age, reverting thereafter to the father unless it can be proved that he is a drug addict or criminal. (United Kingdom Home Office 2007, *Iran, Operational Guidance Note* (27 February 2007). See also the United Kingdom Home Office Country Report; *Iran* (October 2004) and also the discussion of the inherent breaches of Articles 2, 3 and 26 of the International Covenant on Civil and Political Rights, (ICCPR) and Articles 2, 3, 15 and 16 of the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) at [74]-[78] of *Refugee Appeal No 71427* (16 August 2000).

[89] However, a father can contest even this nominal right to custody in the court and can seek custody of a younger child including in cases where it is asserted

that the mother is not an appropriate care-giver for moral reasons, or where she is unable to financially support the child. Custody issues therefore are inherently related to the socio-economic status of the mother and her ability to maintain adequate support and housing for herself and the child.

[90] After presenting some of the findings of a study of Islamic family law (Mir-Hosseini, Ziba (2000) *Marriage on Trial: A Study of Islamic Family Law*, London, I.B. Tauris,) the Asylum Aid report quotes Mir-Hosseini's comments (at p.160) that:

"...a mother-child unit becomes viable only when women are financially able to support their children.... In practice, a matrifocal option is a possibility for those who can afford to assume total responsibility for the upkeep of the children. Not many women are in a position to do this; for a large majority, divorce often entails the loss of their children, which may partially explain the lower incidence of divorce in Iran"

Does the appellant have a well-founded fear of being persecuted?

[91] The appellant told the Authority that if returned to Iran, she would not resume her marriage with AA. The Authority accepts this as a truthful statement of her intent. AA also said that he no longer wished to be married to the appellant but that he wished to pursue custody of the daughter.

[92] The dissolution of the marriage leaves the appellant with two possible courses of action should she return to Iran.

[93] The first is that she seeks financial support and protection from her own family for herself and her daughter. However, the reaction of the appellant's family to her separation from AA has been one of anger and threats of retribution for what they perceive as a damning taint on the family's social status and reputation. Her mother and sister have counselled the appellant to resume her marriage for everybody's sake and to try to behave appropriately so that her husband does not resort to violence. Her father has made direct threats of violence against her stating that if she returns to Iran as a separated women he will "destroy" her. The appellant does not believe that her father would kill her but she feels certain that she would be the victim of violence from him.

[94] Country information indicates that she is unlikely to be able to access meaningful protection from violence at the hands of her father should she remain living in the family home. Her family have previously counselled her to tolerate the violence from her husband, because to do otherwise would bring shame on the

family. The Authority is satisfied that the same reaction would manifest were her father to physically harm her.

[95] Whether or not the appellant faces a real chance of serious harm from her father also involves a consideration of the legal protection available to her in Iran. The issue of protection from domestic violence has been considered in detail by the Authority in recent years. See, for example, *Refugee Appeal No 75609* (2 June 2006), *Refugee Appeal No 75662* (20 March 2006), *Refugee Appeal No 75301* (24 January 2006). The country information indicates there is a lack of redress and protection for victims of domestic violence in terms of both legal remedies and accessible social support. In *Refugee Appeal No 71427/99* (16 August 2000), the Authority comprehensively reviewed the legal position of women in Iran, in particular women victims of domestic violence who seek redress from the court. At the conclusion of this review the Authority found:

"... the policy of gender discrimination and the enforcement of gender-based norms against women as a group in Iran is of a nature which permits a finding of persecution in the sense of a sustained or systemic violation of basic human rights." (op. cit. at paragraph [78])

[96] This finding has been cited with approval by the Authority in *Refugee Appeal No 71238* (21 September 2000) and *Refugee Appeal No 75301* (24 January 2006). Although these cases were concerned with domestic violence in a marriage context, the Authority is not aware of any information which suggests that the position of women victims of domestic violence from within their family meets with a more positive outcome. (See for example United Nations Economic and Social Council, *Integration of the Human Rights of Women and a Gender Perspective: Violence Against Women: Mission to the Islamic Republic of Iran*, Report of the Special Rapporteur on violence against women, its causes and consequences, Yakin Ertürk (27 January 2006) E/CN.4/2006/61/Add.3.)

[97] On that basis, the Authority finds that there is a real chance of physical harm faced by the appellant from her father, which will be accompanied by further harm in the form of inadequate avenues of redress and protection. The Authority cannot satisfy itself that, were this appellant to try and access protection from social agencies, the court, or other family members she would have any success. This outcome meets the threshold of persecution as it is a breach of the fundamental human rights not to be subjected to cruel, inhuman or degrading treatment or punishment (Article 7 of the International Covenant on Civil and Political Rights).

[98] The second possible course of action for the appellant is to attempt to build a life as a single, divorced, woman with a dependent child. However, as the country information above reveals, this too is likely to expose the appellant to serious harm in the form of severe discrimination and social stigmatisation and an inability to provide herself and her child with an adequate standard of living.

[99] The appellant has never been employed and, given the low rate of women in the formal employment sector and the requirement that she have the permission of her husband or father to take up employment, she is unlikely to find secure, adequately-paid employment.

[100] In addition to the difficulties that the appellant is likely to face in trying to live as a divorced woman with a child, she will also be faced with the prospect of losing custody of her daughter. AA has expressed a clear intention to seek permanent and exclusive custody of her daughter as soon as he is able. As discussed earlier, Iranian law sanctions the husband's family obtaining permanent custody for children over the age of seven and at any time before the child is that age where the appellant can be proven to be unfit. It is reasonable to assume that the allegations of her immoral behaviour (which have been made by the husband to both families in Iran) will be used by her husband in official proceedings to secure his custody of the daughter and to deprive the appellant of access to the child. This will undoubtedly put the appellant at further disadvantage in a system of family law which is already fundamentally discriminatory against the rights and interests of women. Furthermore, there is a real chance that the appellant will be in a precarious financial position and be deemed unable to adequately provide for the child, on which basis she would also lose custody of the daughter.

[101] Once the daughter reaches the age of seven, the appellant could only retain custody by proving to an Iranian court that her husband and/or his family are unfit to have custody. Nothing in the claim or in the country information available indicates that the appellant would succeed in preventing AA from securing legal custody of the daughter on that basis. In the event that it were possible for the appellant to persuade an Iranian court that AA was "unfit", the custody rights would automatically fall to AA's father, in accordance with Iranian law.

[102] The Authority acknowledges that the denial of custody rights does not *per se* constitute persecution. Courts in most countries are called upon to decide questions of custody, frequently to the exclusion of one or other parent. However, in the circumstances of this case, the Authority finds that the real chance of the

arbitrary denial of custody rights to the appellant, by application of the substantively discriminatory Iranian law, constitutes a breach of fundamental human rights law which prohibits discrimination on the basis of gender. See particularly Articles 2 and 3 of ICCPR, and Articles 2, 3, 15 and 16 of CEDAW. In the context of family integrity, Iranian custody law is also in breach of Article 23(4) of the International Covenant on Civil and Political Rights (ICCPR) which obliges state parties (of which Iran is one) to:

"... take appropriate steps to ensure equality of rights and responsibilities of spouses as to marriage, during marriage and at its dissolution. In the case of dissolution, provision shall be made for the necessary protection of any children."

[103] Clearly, Iranian custody law does not ensure equality of rights and responsibilities of spouses following the dissolution of marriage. Rather, the law establishes a system of substantial inequality where women are unable to maintain custody of children (beyond the age of seven) except in circumstances which will rarely arise, and do not apply in the present case. The arbitrary loss of custody under discriminatory laws can also be viewed as a violation of the appellant's right to equality before the law and courts, as set out in Articles 14 and 26 of the ICCPR and the right to protection from arbitrary interference in family and privacy, as set out in Article 17 of the ICCPR.

[104] Overlaying all of the above harms is the appellant's evolving sense of identity as an individual and woman who is entitled to have control over her own life and who is not content to fulfil the roles prescribed by her husband, family or traditional Iranian society. Her husband is aware of her developing independence and considers it to be an affront to fundamental Iranian values. When he discerned that she was moving away from strictly traditional forms of dress and behaviour during the marriage his reaction was antagonistic, to the point of physically harming her. The Authority finds that this facet of the appellant's personal life is likely to exacerbate hostility from her husband and his family and will be used against her in the fight for custody of the daughter.

[105] For all of the reasons give above, the Authority is satisfied that the appellant faces a real chance of serious harm should she return to Iran.

[106] In *Refugee Appeal No 71427* (16 August 2000) at [72], the Authority held that a finding of persecution can only be made if the facts establish a finding of serious harm and an absence of state protection.

[107] The issue as to whether state protection is available for the appellant in this case is straightforward. With regards to the custody rights, the state itself has established and maintained the legislative framework which, through its application of substantively unequal rights between men and women, is the source of serious harm faced by the appellant. As to the family violence at the hands of her father, the country information reveals a systemic failure by the state to protect victims of family violence and provide adequate legal redress or social protection for the harm they face. Likewise, with regards to the appellant's ability to access economic stability and social support sufficient to provide her and her child with adequate housing and material support, the country information indicates a systemic failure to provide support and protection to divorced women who retain custody of children and do not have the protection of their families.

[108] It follows from the Authority's findings that, should the appellant return to Iran, she faces a real chance of serious harm, for which the state will not protect her. The appellant therefore has a well-founded fear of being persecuted in Iran.

[109] The persecution that the appellant faces is for reason of her membership of a particular social group, namely women (See *Refugee Appeal No 71427* (16 August 2000)).

[110] Accordingly, the framed issues are answered in the affirmative.

Does the daughter have a well-founded fear of being persecuted?

[111] The daughter is also at risk of being persecuted on return to Iran. Given the likely social and economic situation of the appellant as a divorced woman with a child, there is a real chance that the daughter too will be subject to social discrimination and harassment. The appellant's difficulty in finding employment combined with the lack of material assistance available to her in the way of child-related benefits (which would be paid to a male with dependents) or maintenance payments from AA, will expose the daughter to financial deprivation on the grounds of gender and social status discrimination, a breach of Articles 26 and 27 of the Convention of the Rights of the Child.

[112] Furthermore, Iranian custody law establishes a system for the determination and enforcement of custody which is based on political and religious justifications as opposed to the best interests of the child, thereby violating Article 3 of the Convention of the Rights of the Child. Furthermore, the arbitrary denial of custody

rights to the mother when the daughter is seven will impose a corollary arbitrary loss of close contact between the daughter and her mother in breach of Articles 7 and 9 of the Convention. This loss of contact will be particularly acute in the present case where AA (the father) has had little contact with his daughter in the past year and has no real relationship with her on a day-to-day level. The Authority finds that these outcomes are sufficiently serious for the young daughter to reach the “being persecuted” threshold.

[113] The issue of state protection is simply addressed because the Iranian state breaches the positive state duties set out in the Convention on the Rights of the Child (identified above) on the basis of gender and social status discrimination. Furthermore, the Iranian legislative and social framework for the provision of children fails to designate the best interests of the child as the primary consideration (see Article 3 Convention on the Rights of the Child)

[114] The persecution that the daughter faces is by reason of her membership of a particular social group, namely children. In making this finding, the Authority observes that the Convention reason need only be a “contributing factor to the risk of being persecuted” (*Refugee Appeal No 72635* (6 September 2002)).

[115] Accordingly, the framed issues are answered in the affirmative for the daughter.

CONCLUSION

[116] For the above reasons, the Authority finds that each of the appellants are refugees within the meaning of Article 1A(2) of the Refugee Convention. Refugee status is granted to both appellants. The appeals are allowed.

“B A Dingle”
B A Dingle
Member