



**Australian Government**  

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**Immigration Assessment Authority**

**Decision and Reasons**

**Referred application**

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IRAN

IAA reference: IAA17/02851

Date and time of decision: 22 December 2017 10:59:00

Rebecca Mikhail, Reviewer

**Decision**

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The IAA affirms the decision not to grant the referred applicant a protection visa.

*Any references appearing in square brackets indicate that information has been omitted from this decision pursuant to section 473EC(2) of the Migration Act 1958 and replaced with generic information which does not allow the identification of an referred applicant, or their relative or other dependant.*

## Background to the review

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### Visa application

1. The referred applicant (the applicant) claims to be a citizen of Iran. [In] November 2016 he lodged an application for a Safe Haven Enterprise Visa (application for protection). [In] June 2017 a delegate of the Minister for Immigration and Border Protection (the delegate) refused the grant of the visa.

### Information before the IAA

2. I have had regard to the material given by the Secretary under s.473CB of the *Migration Act 1958* (the Act).
3. On 27 June 2017 the IAA received a submission and further documents on behalf of the applicant.
4. The submission contains legal argument, references aspects of the delegate's decision and evidence the applicant already presented to the delegate. I do not consider the above to be new information and have had regard to it.
5. This submission claims that the applicant's father-in-law was not in a hurry to find him as he was sure that the applicant would return to his home sooner or later. I consider this new information as I am satisfied this claim was not raised before the delegate and is relevant. The applicant has not given any reasons as to why this information was not, and could not have been, provided to the Minister before the decision was made nor has satisfied me that it is credible personal information which was not previously known and, had it been known, may have affected the consideration of his claims. I am also not satisfied there are exceptional circumstances to justify considering this information. I am not satisfied s.473DD has been met.
6. In his decision, the delegate did not accept the applicant's claim that his father-in-law pulled a gun on him and threatened him. The submission claims the delegate "did not feel any need to explain why he cannot believe the story" though I note that the delegate referred to credibility concerns with the applicant's evidence when making this finding, including the fact that the applicant did not refer to this incident in his arrival interview. In response to this, the submission claims that pulling a gun to show power and influence over others is a regular custom for members of the Basij, Sepah and other semi-military and/or religious police forces. In support of this claim the submission refers to an article published in 2014 on the AI Monitor website about an incident where a famous religious singer pulled a gun out to threaten people after he was in a car accident and wanted to escape the scene before the traffic police arrived. Although I am satisfied this article was not before the delegate, I am not satisfied it is new information because I do not consider it relevant to this matter as it does support the argument that it is common for members of the Iranian security forces to pull out their gun to show power and influence when the story does not refer to a member of the Iranian security forces doing so but a famous religious singer. I have not had regard to this article for this reason.
7. In his decision, the delegate did not find it plausible that the applicant would apply for a passport and travel through the international airport when he claims his father-in-law had him blacklisted and the police were looking for him. In response, the submission claims that the timeframe for putting someone's name on a watch list varies and is sometimes very long and

complicated and, as there are many parallel security agencies throughout Iran, the timeframe for doing such a thing is not solid and varies. I am satisfied this is new information as it was not raised before the delegate and is relevant. I find this information is not credible personal information. During the protection visa interview the delegate asked the applicant why he chose to depart from the airport rather than travel over land and asked the applicant whether he feared his father-in-law had put his name on a blacklist. The delegate also gave the applicant seven days to provide any further information. I have also taken into account the applicant was legally represented at the time. The applicant has not satisfied me that this information was not, and could not have been, provided to the Minister before the Minister made the decision. I have also considered that no country information sources have been cited in support of this statement. I am not satisfied there are exceptional circumstances to justify considering this new information. I am not satisfied that s.473DD of the Act has been met.

8. In reference to the applicant's claim to have converted to Christianity, the submission claims that the applicant was suffering from tremendous stress and pressure "which eventually can lead anyone to feel desperate and depressed" and that the applicant managed to overcome his depression by going outside to meet other people and attending church services. It further claims that not participating in every Sunday church service was simply a side-effect of the applicant's depression. I am satisfied that this is new information as I find the applicant did not raise any claims in regards to suffering from depression to the delegate or that this was the reason for not attending church every Sunday and is relevant. During the protection visa interview the applicant claimed that he got lazy in regards to attending church as regularly because he had to work to provide financially for his family and is tired by Sunday and wants to rest. Also, no further evidence has been provided in support of the claim that he suffered from depression. The applicant has not satisfied me that this is credible personal information. The applicant has also not provided any reasons as to why this information was not, and could not have been, provided to the Minister before the Minister made the decision. I am also not satisfied there are exceptional circumstances to justify considering this information. I am not satisfied s.473DD of the Act has been met in relation to this new information.
9. The submission claims that in order to be a member of the Iranian disciplinary forces, you have to prove your sincere belief to both the Shia version of Islam and the political system of Iran. I am satisfied that this is new information as this information was not raised before the delegate and is relevant. However, I find this information is not credible personal information. The applicant has not satisfied me that this information was not, and could not have been, provided to the Minister before the Minister made the decision. I have also considered that no country information sources have been cited in support of this statement. I am not satisfied there are exceptional circumstances to justify considering this new information. I am not satisfied s.473DD of the Act has been met in relation to this new information.
10. The submission also makes a general comment about the numerous reports about the treatment of Christian converts by the Iranian authorities which they consider a serious threat to national security. Although the submission refers to "numerous reports" it does not cite any actual sources of country information to support these claims. Nonetheless, the applicant provided very similar unreferenced information about the situation of Christian converts in Iran in response to question 90 on his application for protection and there were country information reports before the delegate that provided similar information. For this reason I am satisfied the above statements about the situation of Christian converts in Iran is not new information and I have had regard to it.
11. Also attached to the submission were five support letters from people who claim to know the applicant and in their letters they vouch for the genuineness of his Christian faith. Most of the

authors claim to know the applicant from [Church 1] or [Church 2]. I am satisfied these letters are new information as they were not before the delegate when he made the decision and are relevant as they provide corroborative evidence in relation to the applicant's purported Christian conversion. The applicant's current representative has claimed that these letters were provided to the applicant's former agent shortly after his protection visa interview in order to be sent to the delegate but were ignored by his former representative. No evidence has been provided in support of this claim and one letter even refers to events since [a date in] June 2017 which I note is approximately two weeks after the delegate's decision. I have also given consideration that, when the delegate asked the applicant if he had any letters from his churches during his interview, he responded "I do not have letters. This is between me and my God". Although I accept as plausible that these letters may have been prepared after his interview and prior to the delegate's decision, none of the letters are dated so there is no credible evidence before me that these letters were prepared prior to the delegate's decision. I have also observed that three of the support letters have been written in nearly identical terms where the authors all claim to regularly meet the applicant at [Church 1] and that they know him as a real gentleman, who takes his faith seriously, and strongly believes he is a genuine Christian as they themselves are Christians and members of [Church 1]. I find it of considerable concern that all three letters have been written in nearly identical terms which gives the obvious impression that the authors have been told what to write in their letters. In another letter from [an individual], he claims he is a member of [Church 2] and had met the applicant there before the applicant started attending [Church 1]. He further claims that the applicant found that, after three years of attending [Church 1], he had not learnt much Bible truth and had not grown in his faith, so the applicant decided to return to [Church 2] from [June] 2017. Although, in part, this refers to alleged events after the delegate's decision, the applicant himself has not provided information to the IAA that he has stopped attending [Church 1] and now attends [Church 2] so I question the veracity of this claim. Given the above concerns I have raised, I am not satisfied s.473DD of the Act has been met in relation to these five new letters.

12. Also attached to the submission were a number of photos purported to be of the applicant's father-in-law. Some of these photos had already been provided with the applicant's application for protection so I am satisfied these photos are not new information. Other photos had not been previously provided to the delegate and are relevant and I am satisfied these photos are new information. The photos allegedly show the applicant's father-in-law in uniform on various occasions and sometimes in meetings when he was younger and others show him at an older age. The applicant's current representative claims that the photos were provided to the applicant's former agent shortly after the applicant's protection visa interview in order to be sent to the delegate but were ignored by his former representative. No evidence has been provided to support this claim. The applicant has not satisfied me that these photos could not have been provided to the Minister before the Minister made the decision. The applicant previously provided the delegate with other photos of his purported father-in-law in uniform on different occasions and, in his decision, the delegate accepted that the applicant's father-in-law was a member of the Islamic Republic of Iran Disciplinary Forces. Given this, even if these photos were accepted as credible personal information, the applicant has not satisfied me that, had they been known, they may have affected the consideration of his claims. I am also not satisfied there are exceptional circumstances to justify considering these new photos. I am not satisfied s.473DD has been met.

### **Applicant's claims for protection**

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13. The applicant's claims can be summarised as follows:

- He is a citizen of Iran and resided in Tehran.
- He was born into a Muslim family and was forced to pray and fast.
- He was married to a woman named [Ms A] [in] October 2004 and his father-in-law is a police officer.
- He did not believe in Islam and did not practise it and was picked on by his father-in-law for not attending prayers and religious ceremonies. They had fights about it and his father-in-law tried to convince his wife to divorce him and threatened to have him arrested.
- He has been arrested several times and there were incidents in his workplace because of his father-in-law. He was targeted and questioned on the street by his father-in-law's colleagues. He was arrested after having a fight with his father-in-law where he [caused property damage]. After this incident he moved in with relatives for a month prior to travelling to Australia.
- He departed Iran in May 2013 on his own genuine passport which the people smugglers then took from him on route to Australia.
- He claims there is no freedom of speech or religion and he did not have basic fundamental rights in Iran.
- He became interested in Christianity in Australia and was baptised at [Church 3] on [date] August 2013 in [Australian City 1] and has since been attending [Church 1] in [Australian City 2].
- He showed his wife his baptism certificate which was leaked to his father-in-law and he fears his father-in-law will inform the authorities and the applicant will be arrested if he were to return to Iran. His father is also upset at him because of their past interactions and because the applicant left Iran secretly.

## **Factual findings**

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### **Background**

14. The applicant has provided his original Iranian Military Service Completion card and Birth Certificate and their translations which confirm his identity details. I am satisfied he is a citizen of Iran and that Iran is the receiving country for the purpose of this assessment.
15. The applicant claims that he married his wife, [Ms A], on [in] October 2004 and provided a copy of her birth certificate and translation. Both their birth certificates confirm the details of their marriage which I accept occurred.

### **Father-in-law**

16. I have a number of concerns in relation to the credibility of the applicant's claims in respect of his father-in-law as a result of inconsistencies in his evidence and the plausibility of aspects of his claims.
17. In his application for protection the applicant claimed that his father-in-law is a police officer who works for the Basij, though during the protection visa interview he claimed his father-in-law was one of the [rank] of the police of Naja. The applicant also provided various photos purportedly of his father-in-law in uniform and a photo of the applicant, his wife and father-in-law. However I note during his entry interview held [in] June 2013 he claimed that his father-

in-law was a retired police officer who had retired [a number of] years prior. He has also provided a copy of a letter purportedly sent to his father-in-law addressed to “[a named individual]” which refers to a week commemorating the Iran Disciplinary Forces from the Chief Commander, however, I note the letter is not dated so there is no indication when this letter was sent. During the protection visa interview the applicant also referred to going to see his father-in-law at his shop when he described their last altercation in 2013 which further suggests his father-in-law is no longer working as a police officer.

18. In his application for protection, the applicant claimed that his father-in-law insisted he follow Islam and attend mosque and other religious ceremonies and he would have arguments with him in regards to religion which eventually escalated into fights. His father-in-law would also “poison his wife’s ears” to divorce him and threatened to have him arrested and that is why he had to leave Iran. In his application for protection he also claimed that he was blacklisted and targeted and questioned on the street by the Basij who were his father-in-law’s colleagues.
19. Just prior to leaving Iran, the applicant claimed that his father-in-law told the applicant to come and see him in his shop where he told him that he and his brother were going to teach him a lesson because his parents had not brought him up well. The applicant became angry and lost his control and got into a fight with his father-in-law who pulled out a gun and told him he was going to kill him, in response, the applicant [caused damage to the shop] in his anger. After leaving the shop, he claims he was subsequently arrested and kept in custody for the entire day. During the protection visa interview he claimed that after he was released from police custody, his father-in-law called him and insulted him and told him that next time he gets him he would definitely kill him and demanded that he attend religious festivals. The applicant lost control and swore at him and his father-in-law threatened to kill him again. The applicant claims that, after being released from custody, he then moved to live with his [relative] [and] moved around for about a month until he was able to organise his travel to Australia. During the protection visa interview he claimed that his father-in-law took his wife and child after the above incident and sent men to the applicant’s [shop] to arrest him. His business partner also told him that officers had come to the applicant’s shop trying to find an excuse to close it.
20. In his application for protection, the applicant claimed that he had been arrested several times and rounded up by the police because of his father-in-law however during the protection visa interview he claimed that he had only been arrested once on the last occasion after the argument in his father-in-law’s shop. In his application for protection he claimed that his father-in-law is officially working with the police and it is easy for him to press charges against him, however, the applicant has not claimed that he was actually charged with any offence during his last altercation with his father-in-law and after his arrest or on any other occasion. I also do not consider it plausible that his father-in-law would send officers to arrest the applicant again when he claims he had already been arrested and released after the above incident. I also find it difficult to believe that his father-in-law would tell him that the next time he sees him he would definitely kill him whilst at the same time demand that he attend religious festivals with him.
21. The applicant has also claimed that his father-in-law’s intention is to separate him from his [child] and wants his wife to divorce him and claims that his father-in-law took his wife and children after their last altercation and is angry with him for leaving Iran and threatened to kill him. However, the applicant has not claimed that his wife has since divorced him given he has now left the country and I do not consider it plausible that his father-in-law would wait for the applicant to return to Iran in order to do this given his purported threats and sentiments towards the applicant.

22. When the delegate asked the applicant why he could not just move away from his father-in-law, he responded that everywhere he would go his father-in-law would be able to find him but that his father-in-law did not know the address of his [relatives] where he had been hiding because they are distant relatives. He then claimed that his father-in-law was able to find them but he did not waste time and left the country in a month and was able to sell his [property] in less than a week. I do not find this explanation plausible. I find it implausible that his father-in-law, who he claims was a senior member of the police, was unable to find him at his relative's house just because they are distant relatives and is, nonetheless, inconsistent with his claim that his father-in-law eventually found them. I also do not consider it plausible that he was able to sell his [property] in less than a week.
23. During the applicant's entry interview, when asked why he left Iran, he referred to how the Mullahs treat people and that life is too hard and they would not let you breathe and if you are not part of them there is nothing for you. He claimed they would send you to jail for the slightest thing and if you do not look like them there is nowhere to go and you cannot make a living. He did not raise any fears in relation to his father-in-law. When asked if he had ever been arrested or detained, he only referred to one incident when he was out with his niece and they were suspected of being boyfriend and girlfriend and they were held for one day and night until they were able to prove that they were related. He also referred to an incident where the authorities wanted to confiscate his [vehicle] and used teargas but it is unclear from his evidence in what context this occurred. As noted earlier, he also claimed that his father-in-law is a retired officer and possibly a [senior member of] the police and that he retired [a number of] years ago from the police in Tehran. When this inconsistency in his evidence was raised by the delegate during the protection visa interview, the applicant responded that he did not just say he left Iran because of Mullahs and said Mullahs means Islam. He also said that he would not leave their baby because of a slight issue so it was a huge issue that caused him to leave. He claimed that during that interview he was just asked about his schooling and family and it was mainly those types of questions and he was not asked about his case so he did not know what to say and he got tired and just wanted to get the interview over with. His current representative has also argued that applicants are not asked precise and complete questions about their claims for protection and most applicants do not give exactly their reasons for leaving their country during these interviews. Whilst I am mindful that entry interviews are not for the purpose of assessing an applicant's claims for protection, I do not agree with this submission which I find to be an unsupported generalisation. I also note that during the applicant's entry interview, the case officer canvassed a number of topics in addition to his schooling and family and he was specifically asked why he left Iran and what he thinks would happen on return and was questioned in regards to any political involvement and interactions with the police and security organisations in his home country. I am not satisfied that the applicant has provided a credible explanation for the significant discrepancy in regards to the reasons he gave for leaving Iran given during his entry interview and application for protection.
24. I accept that the applicant's father-in-law was a police officer and that he held a high rank in the Iranian police force but I do not accept that the applicant's father-in-law was still working as a police officer when the applicant departed Iran in 2013 and have given more weight, and accept, the applicant's claim in his entry interview that his father-in-law retired from the police force [a number of] years prior to the applicant's departure from Iran. I am satisfied the applicant has fabricated the rest of the claims he has raised in relation to his father-in-law. I do not accept that his father-in-law used to pressure him to follow Islam, attend mosque and religious ceremonies or that they would fight about it or that his father-in-law threatened him if he did not comply or that the applicant was harassed by his father's colleagues, was arrested or that the last incident in his father-in-law's shop occurred at all. I do not accept that the

applicant left Iran due to these incidents or that he fears his father-in-law for the reasons he has claimed.

### **Christian conversion**

25. After arriving to Australia the applicant claims that he was influenced by his friends and converted to Christianity. During the protection visa interview he claimed that he had not thought about Christianity when he lived in Iran although a friend had lent him a Bible at some stage to read. He claimed that when he was released from Australian immigration detention in July 2013 he went to the library in [Australian City 1] and some Christians approached him and told him about Jesus Christ and told him to come to their [church] which he did. He claims he found the church service amazing and described how people were dancing instead of crying and weeping and that the people there would spend time explaining things to him rather than forcing it on him. He claims that Christianity is about forgiveness and love and being humble and joy which he distinguished with Islam. He claimed he became interested in Christianity because he saw the love for people and how good and kind respectful Christians were with each other and referred to the fact that they would pray together and pray directly to God, unlike in Islam. He said that after talking to Christians he realised the Koran was full of lies. He claims that during the two months he was living in [Australian City 1] he went to that church regularly and attended Bible study classes and that he was eventually baptised. The applicant has submitted a Baptism Certificate to support his claims which indicates he was baptised at [Church 1] on [date] August 2013. In his application for protection the applicant claimed that he moved to [Australian City 2] in August 2013. During the protection visa interview he claimed that when he moved to [Australian City 2] he went to a church in [a suburb] then to [another] church, both of which he did not name. He claims he then found out their denomination was [different] so he started going to [Church 1] in [another suburb] which he now attends.
26. In the submission to the IAA, the applicant's current representative claimed that a Certificate of Baptism "is enough to prove someone is a convert in every place of the world" and that no case officer or authority has the right to question or doubt his genuine faith because the applicant holds a Certificate of Baptism and identifies himself as a Christian. I do not agree with this submission as I am not satisfied these factors alone are sufficient in assessing the genuineness of an applicant's claimed conversion to Christianity. During the protection visa interview the applicant was able to elaborate on the differences between Islam and Christianity and did not hesitate explaining the importance of baptism to him and was able to recite one passage from the Bible that he liked. Nonetheless, I have significant concerns in regards to other aspects of his evidence in relation to his claim to have converted to Christianity.
27. The applicant claims that he decided to become a Christian and was baptised within two months of attending a church in [Australian City 1]. When the delegate asked him what process he had to go through to be baptised he said "they taught us for two months" and referred to being initially confused as he had been brainwashed about Islam since childhood and their Farsi speaker did not know much about Christianity as he was only a new convert and the congregation in [Australian City 1] were English speakers. He claims, however, the more he read about it, and after a Farsi speaker from their [Australian City 2] church was able to answer his questions, he became convinced. I find the timing of his baptism of concern given he claimed he was not interested in Christianity whilst he lived in Iran and decided to convert and be baptised within two months of attending a church, where he initially found the information confusing and faced language barriers. Of further note, during the protection visa interview he could not recall the name of the [Australian City 1] church that he was baptised in because the name was in English. However, he later claimed that his English has improved since then so I



find it hard to believe that he could still not remember the name of the church approximately four years later and particularly when he has a copy of baptism certificate from that church. This strongly suggests that the applicant has not placed much importance on the process of his baptism and the Church that baptised him which I find incompatible with someone who has genuinely converted to a new religion. Although he claimed that he attended Bible study classes in the [Australian City 1] church he further added that, if he had not, they would not have baptised him. In conjunction with my other concerns, I find this contributes to my doubt as to his motivations in attending this church and his baptism within such a short time frame.

28. It also appears from the applicant's evidence that he moved to [Australian City 2] shortly after being baptised and he has claimed that after moving to [Australian City 2] he would go to church regularly but later got lazy and did not go as much. He claimed he attends church once or twice per month and is not active like before because he is working and is tired by Sundays. Although he claims that he prays every morning and night and reads and talks to God on Sundays he also admitted that he did not read the Bible as much because he got lazy. I find the fact that the applicant admits to becoming lazy about attending church every week and reading the bible regularly demonstrates a lack of commitment to the applicant's claimed new religion. When asked if he had any letters of support from his church he replied that he did not as "this is between me and my God". I am not satisfied that this is a reasonable explanation for not providing letters of support from his church in support of his application for protection and claims. Although he demonstrated knowledge about Christianity, given he was baptised within two months of attending a Christian church for the first time without any prior interest in converting to Christianity and his demonstrated lack of commitment to attending church and reading the Bible and the absence of any letters of support from his church to corroborate his claims, I have significant doubts as to the genuineness of his claimed Christian conversion.
29. Although I accept that the applicant was baptised in a church in [Australian City 1] in 2013 and has attended church in Australia, I am not satisfied he did so otherwise than for the purpose of strengthening his claims to be a refugee. I am not satisfied the applicant will continue to practise Christianity and attend church or identify as a Christian if he were to return to Iran because I am not satisfied he has genuinely converted to Christianity.
30. The applicant claims his father-in-law found out about his conversion as he showed his baptism certificate to his [wife] which his mother-in-law saw and showed to his father-in-law. He believes that his father-in-law will have informed the authorities about his conversion to Christianity and will have him arrested. During the protection visa interview the delegate asked the applicant to provide any evidence of him having sent the image of his baptism certificate online but there is no indication he provided this evidence to the delegate. Given this and my findings above in relation to the claims he raised about his father-in-law and his purported Christian conversion, I do not accept these claims. I am not satisfied the Iranian authorities are aware of the applicant's church attendance and Christian baptism in Australia. I am also not satisfied his family or wife's family in Iran are aware of his church attendance and baptism.

### **Non-belief in Islam and political opinion**

31. The applicant claimed that he was born into a Muslim family and was forced to pray and fast by his family. He did not have basic fundamental rights in Iran and no freedom of speech or religion and wanted to live like every other young person in western countries. He claims he

did not believe in Islam or its teachings and he believes that you should not be forced to follow a religion. I note that during the applicant's entry interview held [in] June 2013 when he was asked what his religion was he said "unfortunately Shia". During the protection visa interview the applicant claimed that he believed in God but not in Mohammed. Although I have not accepted that the applicant has genuinely converted to Christianity, I found the applicant evidence during the protection visa interview in regards to his disbelief in Islam to be convincing and, given he indicated he is disdain for the religion he grew up with during his entry interview, I accept that he was born into a Shia Muslim family but does not believe in Islam but believes in God.

32. The applicant has also claimed there is no freedom of speech or religion and he did not have basic fundamental rights in Iran. During the applicant's entry interview he also referred to participating in the 2009 presidential election protests which country information confirms were large-scale protests prompted by accusations of electoral fraud.<sup>1</sup> I am satisfied the applicant has a political opinion against the Iranian regime. I note that he did not raise any claims of protection in regards to participating in the 2009 presidential election protests in his application for protection or during the protection visa interview. Although I accept the applicant participated in these protests there is no evidence to suggest that he was of any adverse interest to the Iranian authorities for this reason. I have not accepted the claims he raised in regards to arguments with his father-in-law in relation to religion and Islam. There is also no credible evidence that he has publicly voiced his political and religious opinion in other ways that attracted the adverse attention of the Iranian authorities or any other group or person.

#### **Departure from Iran**

33. The applicant claims he departed Iran legally on his own passport and that the smuggler took his passport which I accept occurred as the applicant has been consistent in regards to this claim.

#### **Refugee assessment**

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34. Section 5H(1) of the Act provides that a person is a refugee if, in a case where the person has a nationality, he or she is outside the country of his or her nationality and, owing to a well-founded fear of persecution, is unable or unwilling to avail himself or herself of the protection of that country; or in a case where the person does not have a nationality—is outside the country of his or her former habitual residence and owing to a well-founded fear of persecution, is unable or unwilling to return to it.

#### **Well-founded fear of persecution**

35. Under s.5J of the Act 'well-founded fear of persecution' involves a number of components which include that:
- the person fears persecution and there is a real chance that the person would be persecuted
  - the real chance of persecution relates to all areas of the receiving country
  - the persecution involves serious harm and systematic and discriminatory conduct

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<sup>1</sup> Australian Department of Foreign Affairs and Trade (DFAT), "DFAT Country Information Report Iran", 29 November 2013, CIS26780

- the essential and significant reason (or reasons) for the persecution is race, religion, nationality, membership of a particular social group or political opinion
- the person does not have a well-founded fear of persecution if effective protection measures are available to the person, and
- the person does not have a well-founded fear of persecution if they could take reasonable steps to modify their behaviour, other than certain types of modification.

36. As I have rejected the applicant's claims of fear of harm from his father-in-law, I am not satisfied he has a well-founded fear of persecution from his father-in-law for the reasons he has claimed.

37. As I am not satisfied that the applicant has attended church and was baptised in Australia otherwise than for the purpose of strengthening his claim to be a refugee, I have disregarded this conduct in determining whether he has a well-founded fear of persecution pursuant to s.5J(6) of the Act.

38. Country information sources that were before the delegate indicate that many Iranians in Iran do not attend mosque regularly and do not practise Islam and consider themselves as secular or agnostic.<sup>2</sup> In its most recent 2016 report on Iran, the Australian Department of Foreign Affairs and Trade (DFAT) assessed that it is highly unlikely that the government would monitor religious observance by Iranians – for example, whether or not a person regularly attends mosque or participates in religious occasions such as Ashura or Muharram– and thus it would generally be unlikely that it would become known that a person was no longer faithful to Shia Islam. Perceived apostates are only likely to come to the attention of Iranian authorities through public manifestations of their new faith, attempts at proselytization, attendance at a house church or via informants. Atheists are also unlikely to come to the attention of security authorities unless they seek to publicise their views.<sup>3</sup> Although I am satisfied the applicant does not believe in Islam and believes that one should not be forced to follow a religion, I have not accepted that he was in conflict with his father-in-law because of his religious opinion and refusal to practise Islam and there is no credible evidence he was of adverse interest to, or was otherwise harmed, by the Iranian authorities or community for his political or religious opinion. Although the applicant claims that he grew up in a religious family, he has not claimed to have suffered any harm from them or fears them because of his religious opinion/lack of belief in Islam. Other than attending the 2009 election protests, I am not satisfied on the evidence that he has publicised his religious and political opinion. I am satisfied the applicant will not publicise his religious and/or political opinion if he were to return to Iran due to a lack of interest rather than a fear of persecution. I am not satisfied the applicant's lack of belief in Islam will come to the adverse attention of the community or Iranian authorities in Iran because he will not engage in public manifestations of Shia faith. I am not satisfied the applicant faces a real chance of harm in Iran from the Iranian authorities, community, his family or his wife's family because of his religious and political opinion, both individually and cumulatively.

39. Although not specifically raised by the applicant, the delegate considered whether the applicant will face persecution in Iran as a failed asylum seeker from a western country. In one report by Amnesty International an unnamed Iranian judge is quoted as saying that rejected

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<sup>2</sup> Danish Immigration Service, "Update on the Situation for Christian Converts in Iran", June 2014, CIS28931; "Iranian Atheists: Waiting to Come Out", Ria Novosti (Russian News and Info Agency), 19 March 2013, CXC28129414486; "Young Iranians affected by the embargo, tired of political Islam", Asia News IT, 1 April 2015, CXBD6A0DE4714

<sup>3</sup> DFAT, "DFAT Country Information Report Iran April 2016", 21 April 2016, CIS38A8012677

asylum-seekers returning to Iran are questioned, regardless whether they were politically active in Iran or abroad. According to the judge, they are guilty if they attempted to engage in “propaganda” against Iran, and remain in detention until a verdict has been delivered by a judge. Returning asylum-seekers are thus placed in detention for several days until the police have verified that they had not engaged in any political activities, after which they are released.<sup>4</sup> In 2011 DFAT considered it unlikely that authorities would prosecute someone simply for claiming asylum overseas although it is possible that a known dissident would be prosecuted in this way.<sup>5</sup> In 2013 the Head of the Iranian Passport and Visa Department, also stated that it is not a criminal offence in Iran for any Iranian to ask for asylum in another country.<sup>6</sup> DFAT more recently reported that strong anecdotal evidence suggests that officials do not attempt to prosecute a voluntary returnee—largely because most failed asylum seekers leave Iran legally.<sup>7</sup> I am not satisfied the Iranian authorities impute failed asylum seekers from western countries as holding an anti-regime or anti-Islamic opinion. There are a small number of reports of student activists, journalists and political activists, some of whom were returning as failed asylum seekers, being arrested on return to Iran at the airport, however, I am not satisfied the applicant has such a profile or any other profile that would attract the adverse attention of the Iranian authorities on return. In 2013, the International Organization for Migration (IOM) stated that Iranians who have left the country on their passports and are returned on a *Laissez-passer* will be questioned by the Immigration Police at the airport. This questioning may take few hours, but according to IOM nobody has been arrested when travelling back on a *Laissez-passer*.<sup>8</sup> It appears this information has been provided in regards to voluntary returns. Even if the applicant were to return to Iran on a *Laissez-passer* and be questioned by the Iranian authorities on return, I am not satisfied this amounts to serious harm and I am not satisfied he will face a real chance of harm from the Iranian authorities during questioning for any reason. I am not satisfied the applicant will face a real chance of serious harm from the Iranian authorities as a failed asylum seeker from Australia/western country.

### Refugee: conclusion

40. The applicant does not meet the requirements of the definition of refugee in s.5H(1). The applicant does not meet s.36(2)(a).

### Complementary protection assessment

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41. A criterion for a protection visa is that the applicant is a non-citizen in Australia (other than a person who is a refugee) in respect of whom the Minister (or Reviewer) is satisfied Australia has protection obligations because there are substantial grounds for believing that, as a necessary and foreseeable consequence of the person being removed from Australia to a receiving country, there is a real risk that the person will suffer significant harm.

### Real risk of significant harm

42. Under s.36(2A), a person will suffer ‘significant harm’ if:

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<sup>4</sup> Amnesty International, “We are ordered to crush you’ Expanding Repression of Dissent in Iran”, 1 February 2012, CIS22610

<sup>5</sup> DFAT, “Response to IRN 11738 Iran - Article on returned asylum seekers and people exiting Iran with false documents”, 19 April 2011, CX263145

<sup>6</sup> UK Home Office, “Country Information and Guidance - Iran: Illegal Exit”, 20 July 2016, OGD7C848D28

<sup>7</sup> DFAT, “Country Information Report – Iran”, 21 April 2016, CIS38A8012677

<sup>8</sup> UK Home Office, “Country Information and Guidance - Iran: Illegal Exit”, 20 July 2016, OGD7C848D28

- the person will be arbitrarily deprived of his or her life
- the death penalty will be carried out on the person
- the person will be subjected to torture
- the person will be subjected to cruel or inhuman treatment or punishment, or
- the person will be subjected to degrading treatment or punishment.

43. As I have rejected the applicant's claims of fear of harm from his father-in-law, I am not satisfied he has faces a real risk of suffering significant harm from his father-in-law for the reasons he has claimed.

44. For reasons already stated I have not found the applicant will face a real chance of harm in Iran because of his religious and/or political opinion. As real chance equals real risk<sup>9</sup> I am also not satisfied the applicant will face a real risk of significant harm on return to Iran for these reasons.

45. For reasons already stated, I have not accepted the applicant has genuinely converted to Christianity. I am not satisfied that he will practise Christianity, attend church or identify as a Christian if he were to return to Iran. Although the applicant has attended church and been baptised in Australia I am not satisfied that the Iranian authorities or community, or his family or wife's family in Iran are aware of this or that there is a real risk they will become aware of this. I am not satisfied the applicant faces a real risk of significant harm in Iran from the Iranian authorities, the community, his family or his wife's family as a result of his church attendance and baptism in Australia.

46. Having considered the country information that was before the delegate and the applicant's profile, I am not satisfied the applicant will face a real risk of significant harm from the Iranian authorities on return to Iran as a failed asylum seeker from a western country/Australia. Even if the applicant were to be questioned on return to Iran by the Iranian authorities if he returns on a *Laissez-passer*, I am not satisfied he would face a real risk of significant harm during questioning for any reason and I am not satisfied that being questioned amounts to significant harm as it does not reach the level of pain, suffering or extreme humiliation required to amount to cruel or inhuman treatment or punishment or degrading treatment or punishment. It also does not involve torture, an arbitrary deprivation of life or the death penalty.

#### **Complementary protection: conclusion**

47. There are not substantial grounds for believing that, as a necessary and foreseeable consequence of being returned from Australia to a receiving country, there is a real risk that the applicant will suffer significant harm. The applicant does not meet s.36(2)(aa).

#### **Decision**

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The IAA affirms the decision not to grant the referred applicant a protection visa.

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<sup>9</sup> *MIAC v SZQRB* (2013) 210 FCR 505.



## Applicable law

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### **Migration Act 1958**

#### **5 (1) Interpretation**

...

**bogus document**, in relation to a person, means a document that the Minister reasonably suspects is a document that:

- (a) purports to have been, but was not, issued in respect of the person; or
- (b) is counterfeit or has been altered by a person who does not have authority to do so; or
- (c) was obtained because of a false or misleading statement, whether or not made knowingly

...

**cruel or inhuman treatment or punishment** means an act or omission by which:

- (a) severe pain or suffering, whether physical or mental, is intentionally inflicted on a person; or
- (b) pain or suffering, whether physical or mental, is intentionally inflicted on a person so long as, in all the circumstances, the act or omission could reasonably be regarded as cruel or inhuman in nature;

but does not include an act or omission:

- (c) that is not inconsistent with Article 7 of the Covenant; or
- (d) arising only from, inherent in or incidental to, lawful sanctions that are not inconsistent with the Articles of the Covenant.

...

**degrading treatment or punishment** means an act or omission that causes, and is intended to cause, extreme humiliation which is unreasonable, but does not include an act or omission:

- (a) that is not inconsistent with Article 7 of the Covenant; or
- (b) that causes, and is intended to cause, extreme humiliation arising only from, inherent in or incidental to, lawful sanctions that are not inconsistent with the Articles of the Covenant.

...

**receiving country**, in relation to a non-citizen, means:

- (a) a country of which the non-citizen is a national, to be determined solely by reference to the law of the relevant country; or
- (b) if the non-citizen has no country of nationality—a country of his or her former habitual residence, regardless of whether it would be possible to return the non-citizen to the country.

...

**torture** means an act or omission by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person:

- (a) for the purpose of obtaining from the person or from a third person information or a confession; or
- (b) for the purpose of punishing the person for an act which that person or a third person has committed or is suspected of having committed; or
- (c) for the purpose of intimidating or coercing the person or a third person; or
- (d) for a purpose related to a purpose mentioned in paragraph (a), (b) or (c); or
- (e) for any reason based on discrimination that is inconsistent with the Articles of the Covenant;

but does not include an act or omission arising only from, inherent in or incidental to, lawful sanctions that are not inconsistent with the Articles of the Covenant.

...

#### **5H Meaning of refugee**

(1) For the purposes of the application of this Act and the regulations to a particular person in Australia, the person is a refugee if the person:

- (a) in a case where the person has a nationality—is outside the country of his or her nationality and, owing to a well-founded fear of persecution, is unable or unwilling to avail himself or herself of the protection of that country; or
- (b) in a case where the person does not have a nationality—is outside the country of his or her former habitual residence and owing to a well-founded fear of persecution, is unable or unwilling to return to it.

Note: For the meaning of *well-founded fear of persecution*, see section 5J.

...

## 5J Meaning of well-founded fear of persecution

- (1) For the purposes of the application of this Act and the regulations to a particular person, the person has a well-founded fear of persecution if:
  - (a) the person fears being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion; and
  - (b) there is a real chance that, if the person returned to the receiving country, the person would be persecuted for one or more of the reasons mentioned in paragraph (a); and
  - (c) the real chance of persecution relates to all areas of a receiving country.

Note: For membership of a particular social group, see sections 5K and 5L.
- (2) A person does not have a well-founded fear of persecution if effective protection measures are available to the person in a receiving country.

Note: For effective protection measures, see section 5LA.
- (3) A person does not have a well-founded fear of persecution if the person could take reasonable steps to modify his or her behaviour so as to avoid a real chance of persecution in a receiving country, other than a modification that would:
  - (a) conflict with a characteristic that is fundamental to the person's identity or conscience; or
  - (b) conceal an innate or immutable characteristic of the person; or
  - (c) without limiting paragraph (a) or (b), require the person to do any of the following:
    - (i) alter his or her religious beliefs, including by renouncing a religious conversion, or conceal his or her true religious beliefs, or cease to be involved in the practice of his or her faith;
    - (ii) conceal his or her true race, ethnicity, nationality or country of origin;
    - (iii) alter his or her political beliefs or conceal his or her true political beliefs;
    - (iv) conceal a physical, psychological or intellectual disability;
    - (v) enter into or remain in a marriage to which that person is opposed, or accept the forced marriage of a child;
    - (vi) alter his or her sexual orientation or gender identity or conceal his or her true sexual orientation, gender identity or intersex status.
- (4) If a person fears persecution for one or more of the reasons mentioned in paragraph (1)(a):
  - (a) that reason must be the essential and significant reason, or those reasons must be the essential and significant reasons, for the persecution; and
  - (b) the persecution must involve serious harm to the person; and
  - (c) the persecution must involve systematic and discriminatory conduct.
- (5) Without limiting what is serious harm for the purposes of paragraph (4)(b), the following are instances of **serious harm** for the purposes of that paragraph:
  - (a) a threat to the person's life or liberty;
  - (b) significant physical harassment of the person;
  - (c) significant physical ill-treatment of the person;
  - (d) significant economic hardship that threatens the person's capacity to subsist;
  - (e) denial of access to basic services, where the denial threatens the person's capacity to subsist;
  - (f) denial of capacity to earn a livelihood of any kind, where the denial threatens the person's capacity to subsist.
- (6) In determining whether the person has a **well-founded fear of persecution** for one or more of the reasons mentioned in paragraph (1)(a), any conduct engaged in by the person in Australia is to be disregarded unless the person satisfies the Minister that the person engaged in the conduct otherwise than for the purpose of strengthening the person's claim to be a refugee.

## 5K Membership of a particular social group consisting of family

For the purposes of the application of this Act and the regulations to a particular person (the **first person**), in determining whether the first person has a well-founded fear of persecution for the reason of membership of a particular social group that consists of the first person's family:

- (a) disregard any fear of persecution, or any persecution, that any other member or former member (whether alive or dead) of the family has ever experienced, where the reason for the fear or persecution is not a reason mentioned in paragraph 5J(1)(a); and
- (b) disregard any fear of persecution, or any persecution, that:
  - (i) the first person has ever experienced; or



- (ii) any other member or former member (whether alive or dead) of the family has ever experienced;

where it is reasonable to conclude that the fear or persecution would not exist if it were assumed that the fear or persecution mentioned in paragraph (a) had never existed.

Note: Section 5G may be relevant for determining family relationships for the purposes of this section.

#### **5L Membership of a particular social group other than family**

For the purposes of the application of this Act and the regulations to a particular person, the person is to be treated as a member of a particular social group (other than the person's family) if:

- (a) a characteristic is shared by each member of the group; and
- (b) the person shares, or is perceived as sharing, the characteristic; and
- (c) any of the following apply:
  - (i) the characteristic is an innate or immutable characteristic;
  - (ii) the characteristic is so fundamental to a member's identity or conscience, the member should not be forced to renounce it;
  - (iii) the characteristic distinguishes the group from society; and
- (d) the characteristic is not a fear of persecution.

#### **5LA Effective protection measures**

- (1) For the purposes of the application of this Act and the regulations to a particular person, effective protection measures are available to the person in a receiving country if:
  - (a) protection against persecution could be provided to the person by:
    - (i) the relevant State; or
    - (ii) a party or organisation, including an international organisation, that controls the relevant State or a substantial part of the territory of the relevant State; and
  - (b) the relevant State, party or organisation mentioned in paragraph (a) is willing and able to offer such protection.
- (2) A relevant State, party or organisation mentioned in paragraph (1)(a) is taken to be able to offer protection against persecution to a person if:
  - (a) the person can access the protection; and
  - (b) the protection is durable; and
  - (c) in the case of protection provided by the relevant State—the protection consists of an appropriate criminal law, a reasonably effective police force and an impartial judicial system.

...

#### **36 Protection visas – criteria provided for by this Act**

...

- (2) A criterion for a protection visa is that the applicant for the visa is:
  - (a) a non-citizen in Australia in respect of whom the Minister is satisfied Australia has protection obligations because the person is a refugee; or
  - (aa) a non-citizen in Australia (other than a non-citizen mentioned in paragraph (a)) in respect of whom the Minister is satisfied Australia has protection obligations because the Minister has substantial grounds for believing that, as a necessary and foreseeable consequence of the non-citizen being removed from Australia to a receiving country, there is a real risk that the non-citizen will suffer significant harm; or
  - (b) a non-citizen in Australia who is a member of the same family unit as a non-citizen who:
    - (i) is mentioned in paragraph (a); and
    - (ii) holds a protection visa of the same class as that applied for by the applicant; or
  - (c) a non-citizen in Australia who is a member of the same family unit as a non-citizen who:
    - (i) is mentioned in paragraph (aa); and
    - (ii) holds a protection visa of the same class as that applied for by the applicant.
- (2A) A non-citizen will suffer **significant harm** if:
  - (a) the non-citizen will be arbitrarily deprived of his or her life; or
  - (b) the death penalty will be carried out on the non-citizen; or
  - (c) the non-citizen will be subjected to torture; or
  - (d) the non-citizen will be subjected to cruel or inhuman treatment or punishment; or
  - (e) the non-citizen will be subjected to degrading treatment or punishment.

- (2B) However, there is taken not to be a real risk that a non-citizen will suffer significant harm in a country if the Minister is satisfied that:
- (a) it would be reasonable for the non-citizen to relocate to an area of the country where there would not be a real risk that the non-citizen will suffer significant harm; or
  - (b) the non-citizen could obtain, from an authority of the country, protection such that there would not be a real risk that the non-citizen will suffer significant harm; or
  - (c) the real risk is one faced by the population of the country generally and is not faced by the non-citizen personally.

...

*Protection obligations*

- (3) Australia is taken not to have protection obligations in respect of a non-citizen who has not taken all possible steps to avail himself or herself of a right to enter and reside in, whether temporarily or permanently and however that right arose or is expressed, any country apart from Australia, including countries of which the non-citizen is a national.
- (4) However, subsection (3) does not apply in relation to a country in respect of which:
- (a) the non-citizen has a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion; or
  - (b) the Minister has substantial grounds for believing that, as a necessary and foreseeable consequence of the non-citizen availing himself or herself of a right mentioned in subsection (3), there would be a real risk that the non-citizen will suffer significant harm in relation to the country.
- (5) Subsection (3) does not apply in relation to a country if the non-citizen has a well-founded fear that:
- (a) the country will return the non-citizen to another country; and
  - (b) the non-citizen will be persecuted in that other country for reasons of race, religion, nationality, membership of a particular social group or political opinion.
- (5A) Also, subsection (3) does not apply in relation to a country if:
- (a) the non-citizen has a well-founded fear that the country will return the non-citizen to another country; and
  - (b) the Minister has substantial grounds for believing that, as a necessary and foreseeable consequence of the non-citizen availing himself or herself of a right mentioned in subsection (3), there would be a real risk that the non-citizen will suffer significant harm in relation to the other country.

*Determining nationality*

- (6) For the purposes of subsection (3), the question of whether a non-citizen is a national of a particular country must be determined solely by reference to the law of that country.
- (7) Subsection (6) does not, by implication, affect the interpretation of any other provision of this Act.