



Australian Government

Immigration Assessment Authority

Decision and Reasons

Referred application

IRAN

IAA reference: IAA20/07907

Date and time of decision: 16 March 2020 09:54:00

F Kerr, Reviewer

Decision

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 a referred applicant, or their relative or other dependant.

Background to the review

Visa application

1. The referred applicant (the applicant) claims to be an Iranian citizen of Azeri ethnicity. He arrived in Australia [in] July 2013. On 21 September 2017 he lodged an application for a Safe Haven Enterprise Visa (SHEV). On 17 February 2020, a delegate of the Minister for Immigration (the delegate) refused to grant 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 13 March 2020 the applicant's representative wrote to the IAA requesting an extension of time in which to provide a submission. The request stated that the representative was only recently engaged by the applicant and that they were currently in the process of receiving and collating new information and documentation which they intend to rely on in their submission. The representative was appointed to act for the applicant on 28 February 2020 and on 2 March 2020 was provided with documents held by the IAA relevant to the applicant's protection visa application, including audio recordings of interviews held by the Department with the applicant. It is not apparent from the request what new information and documentation the applicant's representative intends to provide, in what way it is relevant to the applicant's claims for protection or why it and/or a submission could not have been provided to the IAA within the 21 day time-frame set out in the *Practice Direction for Applicants, Representatives and Authorised Recipients*. In an email on 13 March 2020 the IAA advised the applicant's representative that the request had been considered but it did not grant an extension of time in which to provide a submission. In a further email on 13 March 2020 the applicant's representative acknowledged the IAA's refusal to grant an extension but reiterated that they were awaiting new information in support of the applicant's application but the information was coming from third parties and was taking longer than anticipated; the request for an extension was pressed. The request still gave no clear indication as to the nature of the information being obtained, from whom, how it relates to the applicant's claims for protection, or when the representative expected to receive the information. At 4.48 pm on 13 March 2020 the applicant's representative telephoned the IAA taking issue with the decision not to grant an extension. He advised they were currently working on a submission but they were waiting on another party for some new information, it was out of his control, and they intended to provide a submission as soon as possible or at any rate, within a few days. In the absence of a firm indication of what type of information relevant to the applicant's circumstances they were waiting on or a precise indication of when the IAA could expect the submission, it is not apparent why I should not proceed to make this decision.

Applicant's claims for protection

4. The applicant's claims can be summarised as follows:
 - He grew up in a moderate Shia family in Tehran, Iran. His mother is a practising Muslim but his father is not religious. His own interest in Islam faded during high school.

- In June 2009 he participated in peaceful protests following the announcement of Ahmadinejad as president. He witnessed how the Iranian regime brutally suppressed the protesters.
- On the Day of Ashura, 27 December 2009, he attended a protest with thousands of other people on the streets of Tehran. The Iranian regime used brutal force against the protesters. The Iranian authorities arrested, tortured and killed several people. After this event the applicant abandoned Islam.
- On several occasions the applicant was stopped and questioned by the Basij because of having an un-Islamic appearance and because he was walking with his girlfriend. On one occasion he was arrested and detained and abused for around an hour for being in the company of a girl who was not related to him by blood or marriage.
- In June 2013 he decided to leave Iran with [a relative]. He was frustrated and had no hope for the future.
- He has converted to Christianity.
- If he returns to Iran he fears the Iranian authorities will detain, torture and kill him because of his religious convictions and his political views.

Refugee assessment

5. 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

6. 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
 - 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.
7. There is no issue as to the applicant's identity. He has provided a number of documents, originals and translations in support of his identity. I accept the applicant's identity is as

claimed, that he is a citizen of Iran and no other and that Iran is the receiving country for the purposes of my decision.

8. I note that the applicant claims to be of Azeri ethnicity. I accept that is the case. He does not claim to fear harm on the basis of his ethnicity nor, on the material before me, does such a claim arise.

Applicant's views, beliefs and conduct

9. The applicant's SHEV interview evidence about his protest activities in Iran was brief but generally consistent with his written SHEV statement. He said he wasn't active with any political party at the time, he attended one or two protests in 2009 related to the general election, never came to the attention of the authorities but he was the kind of person who would speak his mind so he would have attracted attention and been in danger from the authorities.
10. I am prepared to accept that the applicant participated in one or two protests in Tehran in 2009. Many hundreds of thousands of people took to the streets in the wake of the 2009 election as part of the Green Movement protests¹ and I consider it plausible that as a young person he joined in once or twice. I also accept he witnessed brutality and violence perpetrated by the Iranian security forces against the protesters. This too is consistent with the country information before me.²
11. The applicant does not claim, however, that he was arrested or that his participation in those protests ever drew the attention of the authorities, that he experienced harm because of it or that anything at all happened to him or any other member of his family in the four years between those protests and his departure from Iran. I find he is not of any interest to the Iranian authorities as a result of his attending the protests on one or two occasions in 2009 and the chance of him being harmed for that reason is remote.
12. In the written statement submitted with his SHEV application, the applicant provided some background to his thinking around religion and Islam. He was disillusioned with Islam and realised that the main problem in Iran was that the government acquired its legitimacy from Islam rather than the people. He also realised it was almost impossible to envisage a democratic government in the foreseeable future but also recognised the significant role religion plays in the life of a majority of people. He stated he had distanced himself from Islam but still believed in God and needed His existence in his life. In June 2017, he was introduced to [Church 1]; more recently he has become a member of [Church 2].
13. In his SHEV interview he made the new claim that in Iran, he had been thinking about Christianity but had not participated in any Christian activities apart from buying a small Bible in Farsi from a friend. He explained his friend wasn't a Christian, that he didn't know exactly where his friend got it from, or when he himself obtained it. The delegate put to him that Bibles in Farsi were prohibited in Iran. The applicant agreed but said that if people are interested, they can find it; it's only a small book so it wasn't particularly dangerous to be in possession of one in Iran. I do not consider any part of this claim credible. To be in possession of a banned Christian book is a serious matter and I would expect him to have made this claim before if it was true. Apart from that and the very hazy nature of his evidence, it does not

¹ Danish Refugee Council, Landinfo and Danish Immigration Service "Iran: On Conversion to Christianity, Issues concerning Kurds and Post-2009 Election Protestors as well as Legal Issues and Exit Procedures" , 1 February 2013 CIS25114

² Amnesty International, "'We are ordered to crush you': Expanding Repression of Dissent in Iran", 28 February 2012, CIS22610

seem credible that he would go to the trouble of buying a forbidden book, from someone who wasn't a Christian, because he was interested in Christianity, but then only look at it once or twice as he told the delegate. I do not accept that the applicant had any interest in Christianity before coming to Australia or that he purchased a Bible in Farsi to read because of that interest.

14. In support of his claim to have formally converted to Christianity the applicant has provided a number of documents from [Church 2]. One is a letter dated 5 December 2019 signed by [Leader A], [specified role at] [Church 2] and [specified leader of a welfare agency]. [Leader A's] letter sets out his own long experience in pastoral ministry, his personal knowledge of the applicant over seven months, the applicant's involvement with [Church 2] and the writer's assessment of the genuineness of the applicant's faith. I have had regard to this letter and the other material before me as well as the applicant's own evidence in his SHEV interview. However, for the following reasons, I do not accept that the applicant has genuinely converted to Christianity.
15. Firstly, there is the matter of the timing of his involvement with the Christian church. The applicant was advised twice in July and August 2016 that he should lodge an application for protection. He was then further advised by letter on 9 June 2017 that he was required to lodge his application for protection before 1 October 2017 and on that occasion was warned about the consequences of not doing so including that he would be barred from applying for any type of temporary or permanent visa in Australia and that he would lose access to Status Resolution Support Services. He claimed in his SHEV statement (which I note is dated three months after he started attending [Church 1]) that he still believed in God after he left Iran and in Australia was struggling to define his relationship with God and the way he was supposed to worship Him. Notwithstanding that he had been in Australia since July 2013 and would have had any number of opportunities to explore his relationship with God, specifically through Christianity, he did not do so until June 2017. I do not consider the timing of his involvement with the Christian church at all coincidental given that his first introduction to the [Church 1] occurred at the same time (June 2017) as he received the warning letter from the Department setting out the consequences of not applying for protection before the Department's deadline.
16. Secondly, I have formed the view the applicant has not been truthful about his involvement with [Church 1]. He claimed in his SHEV statement that he had been attending [Church 1] and Bible study sessions on a regular basis every week. In his SHEV interview, he said he'd been involved with [Church 1] for around nine months, he attended their praying and learning classes on Sundays, went to church on Sundays to listen to sermons and pray, and tried to go every week but on average it was probably twice a month. When the delegate put to him that the [Church 1] site indicates that its services and sermons are on Saturdays, the applicant said it was some time ago but he was still certain the service was on Sunday. The information before me seems to indicate that [Church 1] operates from premises associated with [another named church]. The claim that he went to church at those premises on Sundays is, on its face, not inconsistent with that. But he told the delegate that the reason he drove 45 minutes to an hour to [Church 1] was because the service was in Farsi. The information before me does not support that [Church 1] has "praying and learning classes" in Farsi on Sundays or that there are sermons in Farsi on Sundays. I would expect that if the applicant had, in fact, regularly attended [Church 1] he would know that and be able to remember on what day of the week he went there. Even allowing for his voluntary concession to the delegate that it probably wasn't every week that he went, the evidence he gave at his SHEV interview casts considerable doubt about the extent of his involvement with [Church 1].

17. Thirdly, there appears to be a period of nearly a year between his involvement with the [Church 1] ceasing and his commencing attendance at [Church 2]. When the delegate pointed this out in the SHEV interview, the applicant gave some very vague evidence about a church he said he'd attended in [another town] through a friend; he didn't go regularly or continuously and couldn't remember the name of the church only that it meant "[deleted]" in Farsi. The applicant said in his SHEV interview that he "felt in his heart" he was a Christian from the time of his involvement with [Church 1]. However, even if I accept he did occasionally attend a Christian church over this period, the fact that he did not attend church on a regular or consistent basis, or seek out another faith community to become involved in, tells against his commitment to learning about Christianity and developing his own relationship with God.
18. Fourthly, and relatedly, the letter from [Leader A] states that the applicant came to [Church 2] in around May 2019 because the previous churches he had been attending did not present much opportunity for exploring the Christian faith. What is meant by that is not clear and I note that the information from the [Church 1] site indicates it offers a number of activities including Bible study generally every Tuesday. More significantly, when the delegate asked the applicant why he stopped his involvement with [Church 1] he said he found out the people there were "two faced conniving people" and it put him off. This explanation is quite a different account than what [Leader A's] letter suggests the applicant told him about why he left [Church 1].
19. Finally, the depth of knowledge of Christianity he was able to demonstrate in his SHEV interview seems entirely at odds with the certificates of attainment he has provided from [Church 2]. The evidence indicates that he became involved with [Church 2] in around May 2019; he completed a Christianity [course] in August 2019; became [a] Member of [Church 2] [in] November 2019; and completed a [course] in December 2019. He was asked whether he knew any prayers and he said yes, there were some in the Bible but was unable to name any; eventually he said they were the "Holy Prayers". He was also asked if he had been baptised. He said yes, in August 2019 by [name] (presumably a reference to [Leader A]). He was asked what baptism meant to him and he said that "when you get baptized you get new life, exactly the way Jesus Christ died and 2 days later got resurrected" and that when you start believing in Jesus Christ you repent your sins and go forward to a new life. He was also asked about how Christianity impacted on his daily life. He said he had become better at loving and forgiving people.
20. The letter from [Leader A] does not support that the applicant was baptised in August 2019 by [Leader A], only that he received a certificate of achievement at that time in front of the congregation and in doing so, publicly reaffirmed his Christian faith. I accept that this was the case and also that he has been publicly accepted as [a] member of [Church 2] (certificate dated [in] November 2019, video) but the evidence before me does not support that the applicant was baptised and I do not accept that he has been.
21. The applicant has also provided evidence that he posted Christian-themed material on [social media]. The screen-shots provided indicate he posted around ten items, many of them quotes from Christian sources ([a Christian source], Bible verses, etc), over about six months from [June] to [December] (the year is unstated). With the exception of one photograph of the applicant with three other unidentified people two of whom are wearing badges, the material is not original content and none obviously relates to [Church 1] or [Church 2]. The applicant did not refer at all to his [social media] activity in his SHEV interview and did not claim to fear harm because of it. In summary, the [social media] posts are limited in number, frequency and original content and I do not give them much weight as evidence of the genuineness of his conversion.

22. Considering all of the evidence, I accept that the applicant had some limited involvement in the [Church 1] in 2017/early 2018, may have attended another unidentified church infrequently in 2018, and that from around May 2019 has been actively engaged in [Church 2] and has been received publicly in that congregation as a member. I am not, however, persuaded that the applicant's conversion to Christianity is genuine. [Leader A's] letter states that he is a professional who would never say a person was a Christian if he was not convinced they were and he states the applicant has become a Christian. However, [Leader A's] letter indicates that his ministry assistant has spent more time with the applicant than he has himself and while I accept the content of [Leader A's] letter, it does not assist in overcoming the problems identified above about the applicant's evidence.
23. Overall, I am not persuaded that the applicant is a genuine convert to Christianity or that he will practise Christianity, attend church or identify as a Christian if he returns to Iran.
24. I am not satisfied that he has attended church in Australia, participated in Christian-themed courses, been accepted as a member of [Church 2], or posted Christian-themed content on [social media] otherwise than for the purpose of strengthening his claim to be a refugee. Pursuant to s.5J(6) I have disregarded this conduct in determining whether he has a well-founded fear of persecution.
25. The applicant's evidence from his SHEV application is that he was raised in a moderate Shia family, although he told the delegate in his SHEV interview that his mother is very religious and forced him to observe Islam. I consider this more or less consistent with what he said in his SHEV statement – that when he was younger he was more under the influence of his mother and would do daily prayers, however, his interest in Islam faded in High School. I accept his evidence in this regard. His SHEV statement also referred to some problems he experienced because of having an un-Islamic appearance or being in public with his girlfriend. Notwithstanding the length of time between when he prepared his SHEV statement and the date of the SHEV interview, he did not refer to those issues in his SHEV interview or, in particular, that on one occasion he was arrested, detained and abused for an hour because he was in company with a girl not related to him. I think that if this had happened and he genuinely feared this, or worse, happening again he would have referred to it in his SHEV interview either when he was asked about his reasons for leaving Iran or at the end of the interview when he was asked whether there was anything else he had not already mentioned about why he could not return to Iran. On that basis, I do not accept that he was stopped and detained on several occasions by the Basij or morality police for having an un-Islamic appearance or being in public with his girlfriend, or that he was arrested, detained and abused for an hour because he was in company with a girl not related to him.
26. The applicant referred in his SHEV statement to civil liberties becoming significantly restricted during the second term of the Ahmadinejad government and the frustration he felt about the political situation in Iran. This was not a matter discussed in his SHEV interview but given his participation in one or two protests in 2009, I am willing to accept he holds the views he claims he does and that he does not practise Islam.
27. Under Iranian law, a Muslim who leaves his or her faith or converts to another religion can be charged with apostasy or other religiously-based charges; charges of apostasy have resulted in the death penalty.³ However, apostasy charges are no longer an everyday occurrence in Iran, and when used, religiously based charges often have clear political overtones or where

³ Department of Foreign Affairs and Trade (DFAT) "DFAT Country Information Report Iran April 2016", 21 April 2016
CIS38A8012677

proselytising is involved.⁴ Further, country information before me indicates that notwithstanding official government policy and law, Iran is an increasingly secular society and young people in particular, are disillusioned with political Islam. They continue to be Muslim, but cannot stand the power of the Shia clergy, their control over how others ought to live, and are especially intolerant towards their corruption.⁵ It's estimated that only 16-17 percent of people practise Islam; most others are secular or even agnostic.⁶ The Department of Foreign Affairs and Trade's (DFAT) most recent 2018 report states that the Ministry of Culture and Islamic Guidance and the Ministry of Intelligence and Security monitor religious activity. This reference, however, appears to relate to structural issues concerning government policy and legislation based on Shia Islamic principles. DFAT's report does not suggest that the state monitors individual religious practice and there is otherwise no indication in its 2018 report of a change from its earlier 2016 assessment that it considered it highly unlikely the government of Iran monitors religious observance, for example, whether a person regularly attends mosque or participates in religious observance, and it was therefore unlikely that it would become known that a person was no longer faithful to Shia Islam.⁷ In the case of atheists, atheistic and anti-Islamic content is subject to censorship⁸ and atheists who seek to publicise their views may come to the attention of the authorities but they are otherwise unlikely to come to the notice of the authorities.⁹ Generally, Iranians are free to criticise the government robustly, both in public (conversations on the street, workplaces) and online (social media), within limits well known to Iranians; daily life is otherwise vibrant and sophisticated.¹⁰

28. Outside his involvement once or twice in 2009 protests, the applicant does not claim he was an active member of a political party or that he participated in any other form of political activity or protest, including while he has been in Australia. In regard to his religious views and practise, he told the delegate he had put Islam aside when he left Iran but still believed in God. He did not claim to have expressed his views about Islam and the Iranian regime to anybody while he was in Iran or that after 2009 when he 'abandoned' Islam, he had experienced any problems because of it which is consistent with DFAT's assessment. He told the delegate he was not the type of person to be quiet and not give voice to his opinions and he wanted to change the system but I consider this statement largely self-serving. He does not claim, and there is no credible evidence before me, that apart from his brief participation in up to two protests in 2009, he has given voice to his political opinion and anti-Islam views or that he pursued political activities in Iran and he does not claim that he did so because of a fear of persecution. There is no evidence that in the nearly seven years he has lived in Australia, he has participated in any protests or political activities against the Iranian regime. While I think he has exaggerated the strength of his political views, I am willing to accept he holds the views he does about the Iranian government and its legitimacy. However, on the evidence before me, I am not satisfied that he intends to, or is genuinely committed to, express his political views publicly or that he would engage in political activity other than possibly attending large-scale protests such as the ones in 2009 and I find there is no more than a remote chance of him attracting adverse attention if he does given his lack of any kind of profile.

⁴ Ibid and DFAT "DFAT Country Information Report Iran", 7 June 2018, CIS7B839411226

⁵ Asia News IT "Young Iranians affected by the embargo, tired of political Islam", 1 April 2015, CXBD6A0DE4714

⁶ Ibid

⁷ DFAT "DFAT Country Information Report Iran April 2016", 21 April 2016 CIS38A8012677; DFAT "DFAT Country Information Report Iran", 7 June 2018, CIS7B839411226

⁸ Iran Human Rights Documentation Center "Restrictions on Freedom of Expression in the Islamic Republic of Iran", March 2016, CIS38A8012530; DFAT "DFAT Country Information Report Iran April 2016", 21 April 2016 CIS38A8012677

⁹ DFAT "DFAT Country Information Report Iran April 2016", 21 April 2016 CIS38A8012677

¹⁰ Ibid

29. The applicant has no existing profile with the Iranian authorities and on the information before me, I consider the prospect of his religious or political views or actions, including his possible non-observance of Islam, attracting the adverse attention of the Iranian authorities or any other group or persons to be remote. Considering the evidence as a whole, I am not satisfied that there is a real chance of him suffering harm on the basis of his religious and political views now or in the reasonably foreseeable future if he returns to Iran.

Return to Iran

30. The applicant claims he departed Iran legally through Imam Khomeini airport using his own passport. I accept he did so. In his SHEV interview he told the delegate that he threw his passport in the water. I accept this is plausible and that to return to Iran he would require some kind of temporary travel document.

31. Historically, Iran has refused to issue temporary travel documents to allow the involuntary return of its citizens from abroad. However, in 2018 Iran and Australia signed a Memorandum of Understanding to facilitate the return of Iranian citizens who arrived after 19 March 2018 and have no legal right to remain in Australia.¹¹ This does not apply to the applicant and I am satisfied he is not at risk of involuntary return.

32. For that reason, I find that if he were to return he would do so voluntarily, facilitated by the Iranian authorities issuing him with a travel document. In such cases, authorities in Iran are forewarned of the person's return, however, a voluntary returnee will usually only be questioned if they have previously come to official attention, for example, by committing a crime before leaving Iran¹² or if they have acquired a profile as a result of anti-regime activities while abroad.¹³

33. I have accepted that the applicant attended one or two protests in 2009. However, he does not claim to have been arrested or that he came to the attention of the authorities for that participation and I have found above that he does not have any profile with the authorities for any reason.

34. For a number of years, DFAT reports have not suggested returnees are harmed for reason only of having sought asylum overseas. Iranians have been leaving the country in large numbers since the 1979 revolution and the authorities accept that many will seek to live and work overseas for economic reasons.¹⁴ The applicant was not of any adverse interest when he left Iran, and has not been an anti-regime activist in Australia. I am not satisfied he is at risk of being identified for questioning by the authorities if he returns.

35. Overall, I am not satisfied that there is a real chance that the applicant faces harm in the reasonably foreseeable future because he has sought asylum in Australia.

¹¹ DFAT "DFAT Country Information Report Iran", 7 June 2018, CIS7B839411226

¹² DFAT "DFAT Country Information Report Iran", 7 June 2018, CIS7B839411226; National Council of Resistance of Iran, "6 Years of Imprisonment for a Refugee, After Returning to Iran From the Netherlands", 4 March 2017, CXC9040668613; Iran Human Rights (Norway), "Woman Asylum Seeker Lashed 80 Times After Being Deported to Iran From Norway", 20 September 2017, CXC90406614387; Human Rights Activists News Agency "An Arab Asylum Seeker Sentenced to Jail after Returning to Iran" 30 May 2017, CXC9040668619

¹³ International Campaign for Human Rights in Iran "New Video: Iranian Expats Face Arrest upon Return to their Homeland" 23 April 2015, CXBD6A0DE5203; Radio Zamaneh "Jailing of returning journalists called part of anti-Rohani plan" 31 July 2014, CX324017; Amnesty International (United Kingdom), "Amnesty International - Urgent Action: 125/11: Student activists held in Iran", 6 May 2011, CX264288; Iran Human Rights (Norway) "The Kurdish asylum seeker Rahim Rostami, charged with "actions against the nation's security", released on bail", 19 June 2011, CX274950

¹⁴ DFAT "DFAT Country Information Report Iran", 7 June 2018, CIS7B839411226

36. In considering his profile and the country information before me, I am not satisfied that even taken together, there is a real chance he would face harm on return to Iran for any reason now or in the reasonably foreseeable future.

Refugee: conclusion

37. 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

38. 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

39. Under s.36(2A), a person will suffer 'significant harm' if:

- 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.

40. The expressions 'torture', 'cruel or inhuman treatment or punishment' and 'degrading treatment or punishment' are in turn defined in s.5(1) of the Act.

41. I have not accepted that the applicant has genuinely converted to Christianity. I accept that he has attended church, studied aspects of Christianity, and has been formally recognised as [a] member of [Church 2] in Australia. However, he does not claim and there is nothing in the material before me to indicate that the Iranian authorities are aware of his involvement with the Christian church in Australia. While I accept that he felt he had abandoned Islam at the time he left Iran, I have not accepted that he had an interest in Christianity when in Iran or that he bought and read parts of a Bible in Farsi. As I do not accept that he has genuinely converted to Christianity, I am not satisfied that he would seek to practise the Christian faith on return to Iran, publicise the fact of his involvement with the Christian church, or that he would engage in any activity that might lead to him being publicly identified as a Christian and that would result in a real risk of him being harmed. The country information indicates that the Iranian authorities have little interest in prosecuting failed asylum seekers for activities conducted outside Iran including in relation to protection claims such as converting to Christianity¹⁵ and I am not satisfied the applicant will face a real risk of significant harm from the Iranian authorities as a result of his involvement with Christianity in Australia.

¹⁵ Ibid

42. The country information before me indicates that under Iranian law, a person who leaves their faith or converts to another religion, including Christianity, can be charged with apostasy.¹⁶ However, I have found above that the applicant has no real interest in, or commitment to, Christianity and I find he will not practise Christianity, identify or be identified as a Christian in Iran or disclose that he was involved with a Christian church in Australia. I am not satisfied that the applicant would face a real risk of significant harm as a result of his church attendance, Christian studies or reception into [Church 2] in Australia if he were to return to Iran.
43. I have found that there is not a real chance of harm to the applicant now or in the reasonably foreseeable future for any of the other reasons he has claimed. As 'real chance' and 'real risk' involve the same standard¹⁷, it follows that I am also satisfied that there is no real risk of him suffering significant harm for any of the reasons claimed, alone or in combination, if he returns to Iran.

Complementary protection: conclusion

44. 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

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

¹⁶ Ibid

¹⁷ *MIAC v SZQRB* (2013) 210 FCR 505. *MIAC v SZQRB* (2013) 210 FCR 505.

Applicable law

Migration Act 1958

5 (1) Interpretation

In this Act, unless the contrary intention appears:

...

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.