



Australian Government
Immigration Assessment Authority

Decision and Reasons

Referred application

IRAN

IAA reference: IAA20/08006

Date and time of decision: 7 April 2020 19:51:00

N Micallef, Reviewer

Decision

The IAA remits the decision for reconsideration with the direction that:

- the referred applicant is a refugee within the meaning of s.5H(1) of the *Migration Act 1958*.

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 Faili Kurdish ethnicity from Ilam in Iran. He arrived in Australia [in] May 2013 as an unauthorised maritime arrival. On 2 June 2017 he lodged an application for a Safe Haven Enterprise Visa sub-class XE-790 (SHEV) claiming to fear harm in Iran. After interviewing the applicant on 6 December 2019, a delegate of the Minister for Immigration (the delegate) refused to grant this visa on 6 March 2020, on the grounds that Australia did not owe protection obligations to the applicant.

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) (the review material).
3. After refusal by the IAA, on 27 March 2020, of a request for extension of time for submissions, the applicant's representative provided to the IAA a written submission on 2 April 2020. The submission reiterated claims before the delegate and addressed the findings of the delegate and his reasons for rejecting the applicant's claims, including by reference to legal principles of fact-finding and assessing evidence. This amounts to argument and is not new information and I have considered the submission in the review.
4. The submission requested that the IAA grant an interview to the applicant and to his pastor [A], on the basis that the delegate, in the protection visa interview, had declined to interview the pastor regarding the issue of the timing of the applicant's religious conversion and disclosing this to the Department with the applicant's true identity, as the submission argued that this had been central to the delegate's decision to refuse the visa. The IAA is a limited form of fast-track review under the Act. It reviews the decision to refuse a visa application upon the review material; it is not bound by the delegate's decision or reasons for their findings on the evidence; and allows for certain written submissions to be received from an applicant outlining reasons for disagreeing with the delegate's decision or highlighting claims or matters that were overlooked by the delegate. The Act strictly prescribes the circumstances in which new information, including by way of interview with an applicant or witness, may be considered by the IAA. The issue of the timing of the applicant's claimed conversion and of his disclosure to the Department of amended information concerning his SHEV application were comprehensively and fully discussed in the SHEV interview, at which the applicant's representative was present, and at which the delegate clearly put to the applicant his concerns about this issue and I do not accept that it is a new issue raised only in the decision. The applicant was aware of the possibility to provide written information from witnesses and indeed provided many numerous statements regarding his conversion and or timing of disclosure, before the interview, including from Pastor [A]. There is no explanation of why any further written statement addressing concerns raised in the interview, or that the applicant seeks to be provided from Pastor [A], could not have been provided by the pastor before the decision, noting that written submissions to the delegate addressing the issue and other further witness evidence, including regarding his conversion and timing of disclosure, were provided after the interview. The applicant has had full and ample opportunity to provide all his information, including in submission to the IAA. In any event I have accepted the written evidence of the pastor in the review material and which may have been overlooked by the delegate, noting it was not specifically referred to by him in the decision. I have decided not to invite the applicant or the pastor to an interview.

Applicant's claims for protection

5. In a Statutory Declaration dated 7 May 2019 (the 2019 statement) and in the SHEV interview of 6 December 2019 (SHEV interview) the applicant made claims in support of his SHEV application, disavowing claims he had previously made including in the Statutory Declaration dated 30 May 2017 attached to the SHEV application (SHEV statement). The applicant's claims relied upon before the delegate can be summarised as follows:
- He was born in Dezful-Shush in Iran on [date] as an Iranian citizen, born to Iranian-born parents, who were of Faili Kurdish ethnicity and Shi'a Muslim faith. After his father died when he was about [age] years old, he and his mother [did some work] in [City 1] for about two years until she moved the family to live in Ilam city, Ilam Province. He has [number of] siblings, all of whom bar his brother, MR, live in Iran, mostly in Ilam.
 - He was educated in Ilam and gained a [qualification] in February 2012 [in] Ilam.
 - He will be seriously harmed in Iran, including possibly arrested or executed, on religious grounds:
 - He became an atheist in Iran and came to the adverse attention of the authorities in Iran for his anti-Islamic views. At university he had begun to doubt Islam and God, concerned about its cruelty and anti-women and anti-homosexual restrictions. He read and discussed philosophy, religion and critiques of Islam with two friends and later shared his views and anti-Islamic books with family and close friends. He stopped after he noticed people following him after work and after study. He was questioned and insulted at work by two Basij officers, demanding to inspect his laptop, and warned him they would return. During his military conscription in Kermanshah in 2012, the Sepah judiciary officers [questioned] him about his previous activities in Ilam and about his brother, MR, who had fled with his family from Iran, and once detained him for a day and night. Just before his military discharge, Ilam Sepah sent notice to his family home that he must attend the Sepah office. He went into hiding in Kermanshah for his safety and decided flee from Iran after a Kurdish friend [warned] him that a big file was being made against him and he would probably be detained.
 - Not only has he renounced Islam, but since being in Australia he has converted to Christianity. He will be persecuted as an apostate. He had become curious in and then involved in reading and learning about Christianity over some time. When his sister-in-law's life was saved in May 2018 after the applicant prayed to Jesus Christ, he converted to Christianity and was baptised in the [specifid faith] at [Church 1] [in] June 2018, where he continues to practice his faith and is deeply involved in the leadership team and community and evangelises to and has converted others. Iranian people here know of his Christian evangelising. If returned to Iran he would continue to practice his faith and evangelise the truth of Christian faith.
 - He will be seriously harmed in Iran as a Kurdish political activist who is pro-Kurdish nationalism and against the Iranian regime. In October 2016 he set up and was President of ([Organisation 1]) in Australia. He organised and was involved in Kurdish cultural events through the [Organisation1] and was a community leader. In 2018 and 2019 he actively participated in public protests in support of oppression of Kurds and support of Kurdish nationalism and was photographed by the media at these events.
 - The Iranian authorities will know of his anti-Islamic and anti-regime views and his apostasy, Christian evangelising and pro-Kurdish nationalist activities because many people in Iran and Australia know of his beliefs and there are spies in the Iranian

community here. He was already of adverse interest to the Iranian authorities as an anti-Islamist before he left and so they would be watching him in Australia and all these activities in Australia will combine to make him a bigger target for the authorities in Iran.

- He was sexually abused [in] Iran when he was at school. This has had devastating impact on his life and he still has nightmares.

Refugee assessment

6. 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

7. 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.
8. On 7 May 2019 the applicant corrected and changed the details of his identity and citizenship claimed with the Department, admitting that he had provided false claims about these to the Department until that point. The new claims of his name, date and place of birth and area of residence, parentage and nationality are supported by the Iranian documentary evidence then provided, including translated originals of birth certificate, national identity card (NIC), educational and military conscription documents. Nothing on their face indicates that these documents are not genuine, and I accept that the applicant is [an age] year old Iranian national and citizen, born in [year] in the Islamic Republic of Iran (Iran) and who grew up mainly in Ilam. I accept his own evidence that his family are Faili Kurdish Iranians. I find that Iran is the applicant’s receiving country.
9. Until the May 2019 amendments to his identity and claims, the applicant had maintained since his arrival that his name was “EY”, with a date of birth in [year], making him a minor upon arrival in Australia. He had maintained claims of persecution in Iran including that he was a stateless Faili Kurd born in Iran, whose parents were from Iraq deported to Iran, that they were

impoverished in Iran [and] that due to his ethnicity and statelessness he had been denied education or any rights in Iran. He remained known in the community in Australia by this name and age, including in completing [education] in Australia, gaining a scholarship to a University, in employment and setting up [ORGANISATION 1]. Those identity and family claims have been recanted, as set out above.

10. I have substantial concern that the applicant was naively persuaded by people smugglers regarding what account he should give in Australia about his background and identity, rather than more plausibly being advised by his older brother, MR, who had already successfully arrived in Australia nearly two years earlier, particularly noting the similarity of their shared false claims of statelessness and I consider his true name was falsified to conceal his true relationship to his brother in Australia, whom he had claimed to be his father's cousin. I accept that by the lie about his age he hoped, as a minor, to avoid detention on Manus or Nauru; however I consider his claim that people smugglers told him there were cannibals there to be fanciful, and his SHEV evidence that he believed the people smugglers regarding the violence on the islands because he was so young and naïve at the time implausible as he was not in fact the youth he had pretended to be.
11. These May 2019 identity and nationality and family background amendments significantly shifted much of the basis of the applicant's claimed persecution in Iran, and introduced in the 2019 statement the new claim that he was now a practicing and devoted evangelical Christian. Prior to that the applicant had first claimed in the Entry interview to be of Shi'a Muslim faith, then claimed in the SHEV statement that over a period of time in Iran he had questioned and then begun to lose his faith in Islam and his God but now had become an atheist and feared arrest or execution for having left Islam and denied the Prophet. He had also claimed persecution as a Faili Kurd and a leader in Australia of [ORGANISATION 1] and would be perceived as a Kurdish political activist in Iran. I note from the documentary evidence that [ORGANISATION 1] was set up as a cultural and connecting forum and not for any political purpose or activities.
12. The applicant's changing faith and religious practice has become a central ground before me of his persecution claims in Iran. The delegate did not accept the applicant had become an atheist in Iran of concern to authorities, or that he had genuinely converted to Christianity in Australia. The real issues of credibility inherent in assessing such claims have become enmeshed in and exacerbated by the applicant's admitted prior dishonesty in his dealings with the Department on fundamental and material matters. This issue was somewhat compounded before the delegate by the circumstance of the timing of the applicant's disclosure to the Department of his correct identity and amended claims of [date] May 2019 - which was only made after [date] April 2019 - when the Department notified the applicant's older brother, MR, with whom he lived, that it had information suggesting MR had provided false information in support of his own protection visa application regarding being a stateless Faili Kurd and other background details and by which his visa might be cancelled. This circumstance creates tension between the available rational inference that the applicant's confession and disclosure of amended claims to the Department only occurred because he feared he had been caught out by the Department, through his brother, in a false claim of statelessness and his hand was forced, to avoid being denied a visa on those grounds, as was put to him by the delegate - and the applicant's pressing, including in submissions to the delegate, that the disclosure of his real identity was motivated by his own moral compass and his new Christian faith's adherence to honesty, but that he had been initially afraid of all the consequences to come forward.
13. With respect I consider the IAA submissions mischaracterise the delegate's reasoning as a "reverse-engineered decision" and that relied only or primarily on the applicant's "temporary

dishonesty” and the timing of its’ remedying. There were shifting inconsistencies on the face of the various accounts of his faith. The delegate gave careful reasons in support of his findings that the applicant’s claims of genuine Christian conversion were not credible and that his church attendance had been motivated primarily (but not solely) to strengthen his asylum claims. In the context of the applicant’s evidence admitting he had been previously swayed to give to Australian authorities accounts of himself as told to him by others, in order to assist his protection success, the wider general context of country information from international sources, cited in his decision, reporting on the incidence of asylum seekers particularly in the west, sometimes using conversion to Christianity as a pretext not to be deported back home and that the anecdotal success of this is widely known in Iran, was an entirely irrelevant consideration to acknowledge. Having established that the applicant had lied about himself to the Department, the applicant’s credibility was and remains a relevant issue to assess.

14. Nevertheless, I agree with submission that having once lied, in the manner and for the reasons claimed, is not itself determinative of the question of the genuineness of the applicant’s Christian conversion or his future intended practice, and neither is, of itself, the manner or circumstances in which the applicant notified the Department of his corrected identity and claims. I also note the submission that particular witness evidence in the review material provided by the applicant in support of his claimed genuine conversion was not expressly referred to as individually assessed in the delegate’s decision.

Christian Conversion

15. The applicant explained the significant contradictions across his various accounts given of whether he is Muslim; or had become an atheist only in Australia “*slowly slowly*” after being finally free to discuss his ideas here; or had already been a committed atheist in Iran “*evangelising*” his anti-Islamic views and distributing banned material to others, bringing him to adverse attention of and probable imminent arrest by the Basij or Sepah - as having to maintain consistency with the early lie about his age before the 2019 corrections, as he felt a minor would not be believed to have renounced Islam. I accept he held that rationale.
16. I accept that the applicant grew up as and was educated as a Shi’a Muslim in Iran, within his family and at school. At school he went to mosque as it was required but he stopped attending after high school. Although upset at first, his family did not force him to continue practicing Islam. I accept that at university in Iran he discussed religious and philosophical views with [friends], began to question and doubt his Muslim faith, uncomfortable with aspects of the strict and oppressive expression of Islam as practiced and enforced in Iran and began to dislike what he saw as a punitive cruel religion and its God and gave examples of disliking the treatment of women and homosexuals and the cruel treatment like stoning people for alcohol, adultery or sexuality. I do not doubt that many young adults, even of previously strong faith, may go through times of doubt and questioning of their faith and interest in other philosophical or spiritual views. That this occurs also in Iran, with many urban youth particularly disenchanting with the theocratic state’s use and abuse of religion, is clear from the country information before me, which indicates rising secularism, atheism and exploration of other religions in Iran.¹ I accept he read banned literature critical of Islam, and may have talked about this and his views with family members and close friends and shared some material with them.

¹ Including: Ali Sadrzadeh, ‘Turning away from Shia in Iran – ‘A Tsunami of Atheism’’, Qantara, 7 February 2013, CXC28129415432; Austrian Centre for Country of Origin and Asylum Research and Documentation (ACCORD), “Iran: Treatment of atheists by State and non-State actors”, 12 June 2017, CISED50AD4616; LSE Middle East Centre (United Kingdom), “The Revival of Nationalism and Secularism in Modern Iran”, November 2015, CISEC96CF14725

17. Nevertheless I have substantial concerns with the plausibility of the applicant's present claims that he had come to the adverse attention of the Basij or Sepah for atheist or anti-Islamic activities. had brought him to the such to be followed by the authorities and they had frequently questioned him on suspicion of distributing material or for being an atheist or anti-Islamic. I consider he has exaggerated his "evangelising" in Iran. I have concern about the plausibility that the Basij, if they really suspected or had been informed about him circulating anti-Islamic banned material, would merely have questioned him at his work about his family and his lap-top and then simply left him be after being rebuffed from searching the lap-top as demanded. If the authorities had genuinely suspected him of circulating banned material I have doubt that they would have simply let him go home, to delete it all off the computer, and would never come to the house to search it or come to question him again at home; moreover if he was still under suspicion whilst doing military conscription and being questioned nearly monthly because of this, I find it difficult to accept that he would not have been confronted with any specific accusation or specific material he claims to have circulated and believes he was informed on about, whilst already in the domain of the authorities rather than released by discharge with a future notice to attend the Sepah in Ilam. I consider it improbable that with his claims of performing all the expected Islamic practice and ritual whilst undergoing conscription that the authorities would still be compiling a "big case" against him or that his friend would have known about it to warn him, impelling him to flee Iran. I consider all these claims to be unpersuasive and implausible and his explanation for inconsistency not to alleviate that. I place no weight at all on statements from the applicant's Australian-made friends regarding their beliefs of the genuineness of the applicant's claims regarding events in Iran, noting they are unspecified and not based on any first-hand knowledge or witnessing by the authors.
18. Nevertheless I accept that increasingly doubting his Islamic faith and embracing more atheist views in Iran, in Australia the applicant became more openly atheistic in his belief with the greater freedom here to openly discuss and explore his attitudes and belief. I do not consider it is necessary in this matter to find a defining time point of atheism. Noting concern by the delegate, I do not consider it necessarily implausible that a person having renounced one organised religion would then later embrace another organised religion, even one that similarly might, on some views, have less than free attitudes to women's rights or homosexuality. I accept that the applicant has reflected on this aspect of faith and drew distinction of a personal matter between a person's actions and God, even if a matter not endorsed by his religion, rather than the state punishing or executing a person in the name of religion. I accept that a person's journey of faith from practicing religion, particularly an enforced one, to questioning and doubting it and even becoming atheistic may nevertheless revert to another form of faith religion, for a person interested in matters of spirituality or faith.² The applicant's evidence of his growing interest in learning about Jesus Christ and Christianity, evolving from early curiosity is supported by the 8 July 2018 written statement of his [friend], JD. He described her as a [Christian] and I consider it reasonable to find that the Church she took him to see in 2014 was [a] church. (He had later once tried [a different] Church before eventually joining [Church 1], as it was closest to his home.) He stated he spent a long time reading the Bible in Persian, watching movies about Jesus Christ and exploring information on the internet to learn more about Christianity, but was not yet a believer. He asked Hindu and Buddhist friends about their faiths, but was not attracted to religions that pray to statues. He described increasingly feeling empty in atheism and needing the strength of God in his life.
19. The applicant's evidence of being converted to Christianity [in] May 2018 by the miracle of a resuscitation of his sister-in-law (also his second cousin) upon his prayer to Jesus that he would be a follower if only He would save her, seems somewhat contrived. Nevertheless, the Hospital

² Ali Sadrzadeh, 'Turning away from Shia in Iran – 'A Tsunami of Atheism'', Qantara, 7 February 2013, CXC28129415432

Discharge summary supports his evidence that in the hospital she had two “code blue” emergency interventions and required [treatment]; and from reference in the report to a discussion at some point with “patient and her cousin”, I accept that the applicant may have been present in the hospital at that time. I accept that such an event would be distressing for family to witness or experience and is a situation in which prayer for help might be made. Albeit there may be some exaggeration in his description, in the context of his then explorations about Jesus and Christianity and searching for spirituality I accept that he took her recovery as a sign from God. I accept that he later attended and was baptised as a Christian at [Church 1] [in] June 2018.

20. The evidence from his pastors and baptism certificate indicate that the applicant was baptised in his real name of GP. Significantly, his baptism and Church engagement, in his true name, pre-dates by nearly one year the NOICC to MR, or any suspicion that the Department had uncovered their falsehood. I consider the baptism and joining of this church having been in his real name to lend weight to his claims of being a genuine religious conversion. It would have been far simpler for the applicant, if doing this purely or even primarily for protection claim reasons, to have maintained his pretended identity for his baptism and gathered his formal religious documentation evidence purely in the name known on his SHEV application. I note that, apart from the pastors who refer only to his real name, all of the support statements from other Church members refer to the applicant’s real name, with (E) in brackets, and they describe his dedication to the Church and its community and his religious commitment by reference to his name as E. None of them refer in any way to any later time of coming to know that, or any surprise about, his name was GP and not really E. I accept explanation submitted that his baptism and thereby acceptance into the Church was under his real name, but was familiarly known as E as his “nickname”. Given the tangled web he had created about his identity I do not consider this to be entirely irreconcilable.
21. The numerous Church member support letters provided attest to the applicant’s regular involvement and dedicated commitment in various aspects of Church life and disciple and leadership programmes, including in performing his roles in the church including serving on the [various teams] to meet and encourage new members and his evangelising amongst others including the Iranian community, and regular attendance at services. The applicant also described his regular attendance at mid-week discussion groups to learn and share faith and friendship. Whilst I accept he may have introduced his relatives and a Kurdish friend into the church I am not sure this evidences wide-ranging “evangelising”. Nevertheless I accept that he does speak openly and publicly about and promotes his faith beyond the Church. I place some weight on the statement of a work colleague, who is not part of [Church 1] but who shares similar religious views, attesting to the religious discussion and support on their faith journeys that he and the applicant share, in a context removed from the Church environment, as supporting that his religious practice is not just confined to Church days. His SHEV interview evidence regarding his understanding of his new faith was thoughtful and consistent with a Christian of newly discovered faith. Also outside of this particular Church membership, he has demonstrably had deep religious discussion with his two friends, [both] before and after his conversion. Both attest to his drive and leadership capabilities.
22. I take account of evidence from the applicant’s [friend] and [ORGANISATION 1] colleague, that he had confessed to her in June 2018, shortly after his Christian conversion, of his real name, his fear and shame and his intention to rectify this situation with the Australian authorities. I accept the applicant’s evidence of the burden of living under the false identity he had assumed and that it would be difficult for him to sustain into the future with real and meaningful relationships. I accept that he may have intended to rectify it one day, at some point; however I suspect he may have been awaiting the outcome of his visa application. I accept he had myriad conflicting

reasons that made him afraid to come forwards to confess his deceit and a real fear of various consequences and ramifications in different areas of his life from such a course. I find he was eventually prompted to do so and his hand forced by the Department's NOICC issued to MR, which would in all probability implicate and expose his own falsity. This undermines somewhat his claims that his confession and amendments to the Department were from purely Christian reasons of honesty. But nevertheless the timing and final prompt of the disclosure to the Department, whilst of some relevance to his credibility, is not determinative of his faith.

23. I have carefully considered whether the applicant's baptism into [the] Church and his regular and ongoing activities with [Church 1] have been engaged in for the purpose of strengthening his claims to be a refugee. I place weight on the multiple and varying sources of witness statements testifying to the applicant's level of commitment to the church and the roles he fulfils and his practice of and thoughtful engagement in his faith, and the authors' belief of his genuineness. I have no reason to doubt these witnesses. There is always possibility they have been misled and mistaken. However, I do place weight also on the fact that the applicant converted and joined this church in his true name at a time before suspicion of his family had arisen. I place weight on his religious interactions outside of this church environment. Overall, in balancing the evidence and real concerns before me I am satisfied that the applicant's embrace of and conversion [to] Christianity is genuine and his involvement in attending at service, bible and disciple study groups and performing engagement roles within the church and leadership courses have been engaged in otherwise than for the purpose of strengthening his claims to be a refugee.
24. I accept that if returned to Iran the applicant would want to continue to practice his religion including in the communal celebration manner practiced in Australia. I accept that evangelising is part of [the] Church and the applicant would wish to tell people about the 'truth' of Christianity as he sees it and that he has been saved by his faith.
25. I have had regard to country information in the review material before me and which addresses the treatment of Christians and Christian converts in Iran.³ The DFAT report indicates that 98 per cent of the population of Iran identify as Muslim. DFAT describes Iran as a theocracy that mixes religion and state more completely than almost any other country. There is a pervasive structural discrimination against religious minorities. The Islamic Revolutionary Guards Corps (IRGC), the Ministry of Culture and Islamic Guidance, and the Ministry of Intelligence and Security all monitor religious activity, including churches, in Iran. As noted in oral submissions to the delegate, Iranian Muslims converting to Christianity is considered to be apostasy in Iran, which DFAT reports is widely considered under *sharia* law to be a capital crime.
26. DFAT and other sources report death sentences for apostasy are now rare and I do not accept the applicant faces a real chance of persecution in that manner. Whilst charges of apostasy are not an everyday occurrence, authorities continue to use religiously based charges including against some Christians and Muslim-born converts to Christianity, which are often accompanied by charges related to national security. Accused are unlikely to have adequate legal defence, and are likely to be convicted. The US ICRF report reported a dramatic uptick in arrests of Christians in Iran between 2017 and 2018.

³ Including: Department of Foreign Affairs and Trade (DFAT), "DFAT Country Report: Iran", 7 June 2018, CIS7B839411226; United Kingdom (UK) Home Office, "Iran: Christians and Christian converts", March 2018, OG9EF767914; United States (US) Department of State, "International Religious Freedom Report for 2017 – Iran", 29 May 2018, OGD95BE927512; US International Commission for Religions Freedom (US ICRF), "Annual Report 2019 - Iran"; Danish Immigration Service and Danish Refugee Council, "Iran: House Churches and Converts", February 2018, CIS7B83941873

27. DFAT reports that the small number of Christian churches in Iran, catering to expatriates or to officially-registered, Christian-born ethnic Iranians, are prohibited from ministering to Iranians. The authorities have closed several churches in recent years for failing to comply with restrictions, which include no services in Farsi and the need to perform identity checks on persons attending services. Non-registered Iranian Christians and converts therefore practice their faith in underground or house churches, most of which follow Protestant or Evangelical teachings. These are seen by the authorities as a threat to national security and there are periodic crackdowns. The US ICRF reported that Christians have been sentenced to prison terms for activities including holding private Christmas gatherings. The proselytising of Evangelical Christian communities to those outside their own community attracts repression. The judiciary has handed down long sentences in relation to house church activities: in July 2017, the Revolutionary Court convicted eight Christians of “acting against national security through the establishment of a house church” and “insulting Islamic sanctities”, and sentenced the group to between ten and 15 years’ imprisonment. As at December 2016 there were an estimated 90 Christians in detention or awaiting trial because of religious activities. Human rights observers have reported that authorities have subjected Christians in detention to severe physical mistreatment, including beatings and solitary confinement.
28. DFAT, consistently with the country information before me, reports that international observers advise that Iranians who convert to Christianity outside the country are unlikely to face adverse attention from authorities upon return to Iran, provided they have not previously come to the attention of authorities for political activities conducted in Iran, maintain a low profile and do not engage in proselytisation or political activities within the country. DFAT assesses that small, self-contained house church congregations that maintain a low profile and do not seek to recruit new members are unlikely to attract adverse attention from authorities beyond monitoring, and possibly, low-level harassment. Members of larger congregations that do engage in proselytisation and have connections to broader house church networks are more likely to face official repercussions, which may include arrest and prosecution.
29. Informants or other Muslim community members may report a person for being a Christian convert, and further sources in the UK Home Office report indicate that even the everyday bureaucracy of administration can bring a person’s Christian religion or conversion to official attention, as many official documents and application forms require a person’s religion to be specified.
30. I accept the applicant has converted [to] Christian faith. I accept he would wish to continue practising this religion in Iran, communally, and that this includes sharing with others his faith, or evangelising. Whilst he may be able to avoid adverse attention by modifying his behaviour, such as by acting discreetly and secretly in his worship and maintaining low profile, and not sharing his religious views with others, or by actively denying his faith, I find this would involve a modification that cannot be required under s.5J(3)(c)(i). I am satisfied that Christian converts in Iran who do not modify their behaviour in such a way and who gather to worship communally or attend illegal house churches face more than a remote possibility of coming to adverse attention of the authorities. I am satisfied this real chance would arise for the applicant for expressing his religious faith by attending any communal [worship], including if in an underground house church, and/or openly sharing his views on his Christian faith with others in Iran. I accept this adverse attention would amount to serious harm, as it may include monitoring, detention, harassment and physical ill-treatment. I am satisfied that this harm is systematic and discriminatory conduct carried out by the Iranian authorities against Christian converts from Islam for the essential and significant reason of their religion.

31. Country information indicates that an extensive network of police, security and intelligence services exercises effective control over almost all areas of Iran. As the harm feared by the applicant would be inflicted by the authorities, I find that effective protection measures are not available to the applicant and that the real chance of harm relates to all areas of Iran.
32. I am satisfied the applicant's fear of persecution on the basis of his conversion to Christianity is well-founded. Given this finding, while I have flagged some issues for consideration above, I have not made any findings on the applicant's other claims for protection.

Refugee: conclusion

33. The applicant meets the requirements of the definition of refugee in s.5H(1).

Decision

The IAA remits the decision for reconsideration with the direction that:

- the referred applicant is a refugee within the meaning of s.5H(1) of the *Migration Act 1958*.

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.