



Australian Government
Immigration Assessment Authority

Decision and Reasons

Referred application

IRAN

IAA reference: IAA20/08148

Date and time of decision: 15 May 2020 15:43:00

F Kerr, 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 a citizen of Iran. He arrived in Australia as an unauthorised maritime arrival [in] April 2013. On 14 July 2017 he lodged an application for a Safe Haven Enterprise Visa (SHEV). On 7 April 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 30 April 2020 the applicant's representative provided a submission and number of attachments to the IAA. The submission is in two parts. The first part indicates it was written by the applicant's representative; it comprises argument and commentary on the delegate's decision. The second part is written in the first person and indicates it was written by the applicant. It extracts from and responds to the delegate's decision and the evidence relied on. To that extent, I do not consider the first or second part of the submission to be new information.
4. The submission also refers to the applicant having posted a number of posts on [social media] regarding his new faith and devotion to Christianity and states it is not new information as it has already been provided to the Department prior to the Department's refusal. The submission requests that the IAA check the applicant's [social media] page and states that the IAA will find that the applicant has posted a number of posts almost every day since around July 2017.
5. That the applicant has posted on [social media] concerning his Christianity was information before the delegate and is not new information for the purposes of Part 7AA of the Act. However, it is not evident that the applicant has provided the [social media] content to the delegate. There is a document in the review material provided to the IAA which appears to be a link to, and screenshot of, the applicant's [social media] page; there is a note attached to it which appears to indicate that the delegate visited the applicant's page and has summarised in broad terms its content. It does not appear that the posts themselves were provided and it is that content which the applicant's representative has invited the IAA to obtain. I have decided not to exercise my discretion to obtain that information from [social media]. The IAA does not have a duty to get, request or accept any new information whether the IAA is requested to do so by a referred applicant or by any other person, or in any circumstances: s.473DC(2). If the IAA does decide to accept or get new information, it is only able to consider that information in exceptional circumstances. The applicant had assistance in preparing and lodging his SHEV application and with providing information to the IAA; he was also accompanied by his representative at the SHEV interview at which he was told it was his responsibility to raise all his claims for protection and provide evidence in support and that if his application was refused he may not have another opportunity to provide information. A period of around six weeks elapsed between the SHEV interview and the delegate's decision which was, in my view, adequate time in which to provide the relevant content to the delegate. As discussed below, the delegate's summary of the [social media] material is in the referred material and I have, in any case, accepted the applicant's claims to have posted information on [social media] about his conversion to Christianity. In the circumstances, I have decided not to exercise my discretion to obtain (check) posts from the applicant's [social media] page.

6. The submission attached letters of support from [Reverend A] dated 22 April 2020, [Reverend B] dated 23 April 2020, and [Mr A] dated 22 April 2020 (together, the letters of support). The letters of support were not before the delegate and are new information.
7. I am satisfied there are exceptional circumstances which justify my considering the letters of support. The letters all post-date the delegate's decision and to that extent, could not have been provided to the delegate before she made her decision. According to the submission they have been provided to dispute the delegate's findings that the applicant is not a practising Christian and is not attending church services to the extent that he has implied at interview and throughout his statement of claims. Having regard to the content of the letters, it is clear that they build on and add to information previously provided to the delegate about the applicant's conversion to Christianity. The submission indicates they have been provided specifically to address the way in which the delegate construed some of the applicant's evidence. The letters corroborate the applicant's ongoing church attendance and commitment to Christianity, a matter the delegate doubted. The applicant has satisfied me that s.473DD(b) is met and I am satisfied there are exceptional circumstances to justify my considering the letters of support.
8. In accordance with s.473DC(1) of the Act, I have obtained new information regarding persons who have departed Iran and sought asylum overseas from the most recent Department of Foreign Affairs and Trade (DFAT) country report for Iran(the new report)¹. The new report is dated 14 April 2020 and was published after the date of the delegate's decision. The new report is DFAT's most recent assessment of the situation in Iran for persons who exited lawfully and sought asylum while overseas and updates the earlier DFAT reports relied on by the delegate. DFAT reports are prepared specifically for the purposes of protection status determination and are informed by DFAT's on-the-ground knowledge and discussions with a range of sources in Iran. I am satisfied there are exceptional circumstances to justify considering this new information: s.473DD(a).

Applicant's claims for protection

9. The applicant's claims can be summarised as follows:
 - He was born into a Muslim family and had no control over the religion that he was born into.
 - His parents separated when he was [age] years old. His father was a very devout Muslim. Because of this, the Islamic faith was imposed on him against his will and he came to resent it. The applicant lost interest in Islam and although he worked for the same company as his father they were not in touch outside of business related meetings.
 - He had a bad relationship with his father who was a hard and a dishonest man.
 - He lost his job and found it difficult to find another one as he could not satisfactorily answer questions about Islam.
 - When he arrived in [City 1] he was introduced to Christianity. He didn't take an interest and did not attend church after the first few times with his friends.
 - Around 2016 he was introduced to an Iranian Church Leader at [Church 1] in [suburb]. He attended Bible Study classes for six weeks prior to his Baptism. He was baptised [in] December 2016.

¹ DFAT "DFAT Country Information Report Iran" 14 April 2020 20200414083132

- His father disinherited him after he found out about the applicant's conversion.
 - If he is forced to return to Iran, he cannot practice Christianity or announce his conversion and would be punished and dealt with harshly. Converting from Islam is a crime in Iran and converts face jail time and other penalties.
 - He has posted about his conversion to Christianity on [social media]
 - He talks to his [specified family members] in Iran about Christianity as it is his duty to evangelise others. [These family members] are exploring Christianity under great difficulties in Iran and most of the information is provided by the applicant.
 - In Australia he worked with a man called [Friend A] who he felt needed to be led to the Church. With his assistance [Friend A] attended church and commenced preparation for baptism.
 - The authorities have definitely checked his [social media] which include his conversion and religious material that he has put up over the years.
10. The delegate accepted that the applicant had been baptised, had posted photographs of his baptism on [social media] and had posted religious content to his social media including his love for Jesus and Christianity. She otherwise found his claims not to be credible. She considered his description of the significance of Christianity in his life vague and unconvincing and his knowledge of Christianity not commensurate with his claimed history of church attendance. For that reason and because he was unable to answer some basic details including the address of the church he attends, the address of the church where he was baptised and the family names of two of the pastors there, [Reverend A] and [Reverend B], she did not accept he was a genuine convert to Christianity. She also did not accept that the applicant had engaged with Christianity or attended church services to the extent he had claimed. She considered he was unable to demonstrate the significance of Christianity in his own life and a level of knowledge she would expect in order to for his claims regarding his desire to share his knowledge of Christianity to be credible.
11. The delegate found the applicant's views about why he dislikes Islam (and could not connect with it while he was in Iran) to be very vague as the examples he provided appeared to be lacking in personal significance for his own life. She also considered he did not refer to a number of the matters he mentioned in his SHEV statement including mandatory religious questions during the employment process.
12. In the submission to the IAA, it was argued that because the delegate did not accept the applicant's explanations for why he couldn't provide the street address of the Church or the surnames of [Reverend A] and [Reverend B], the delegate ignored the letters dated 13 July 2017 and 22 February 2020 from [Reverend A] which confirmed the applicant's regular church attendance at [Church 1] virtually every Saturday since late 2015 or early 2016 and his genuine conversion to Christianity. The applicant also submitted that he didn't understand what he was being asked when the delegate asked him about the personal significance of Christianity to him; he found the question vague and did not understand that she wanted him to say which books of the bible he loved best and to provide details of these books. He also takes issue with the delegate's characterisation of his evidence regarding his [Friend A] and proselytising activities in Australia as vague and not credible. He reiterated the evidence of his SHEV interview that he did bring [Friend A] to church and tried to lead him to but that [Friend A's] interest faded; contrary to the delegate's decision he did not claim that [Friend A] was still involved in the church, that he had been baptised, or that he still attends Bible studies.

Refugee assessment

13. 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

14. 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.
15. There does not appear to be any issue as to the applicant's identity. He has provided a number of documents which support his identity and that he is a national of Iran. I accept his identity as claimed and that he is a national of Iran and of no other country. Iran is the receiving country for the purposes of my assessment.
16. I consider the applicant's account credible. With the exception of some matters discussed below, the applicant's account has been presented with broad consistency over the visa application process. His account is also generally consistent with the country information before me.
17. The delegate was of the view that the applicant was vague about why he disliked Islam and the difficulties he encountered due to his views about Islam, stating that his answers lacked any indication of personal significance to his life. I can't agree with the delegate. The applicant referred to a number of matters: not being able to go with your girlfriend in public because you may get cautioned or summoned by the police (which he had been and signed an undertaking not to do so again); matters related to his appearance (dress, long hair, beard) as well as being made to pray and what he saw as the pretence of being forced to pray even if you didn't believe. He spoke with real feeling when describing what he saw as the hypocrisy of the leaders, mullahs, and Imams and said he thought they didn't really believe either but had to and it was a way of staying in power.
18. I do have some concerns about the credibility of aspects of his account and I have formed the view that he has somewhat exaggerated his experiences in Iran. For example, in his SHEV statement he claimed that he thought it was because some co-workers became aware of his

contempt for Islam that he lost his job. In his SHEV interview, however, it transpired that at the time he lost his job the company was downsizing and approximately 200 other employees had also been dismissed. The applicant said he wasn't really sure why he'd been dismissed; it could have been because of the downsizing or maybe because of his appearance, suggesting that his refusal to conform to Islamic ideas regarding his beard and mode of dress, may have been the reason. However, he said a friend of his had also been dismissed and he (the friend) was told it was because of downsizing. On the evidence, I find that the reason the applicant lost his job in April 2012 was unrelated to any personal issues of conformity in his appearance related to his views about Islam and was because his employer was downsizing.

19. I do, however, accept that after this he found it difficult to get a job. Contrary to the delegate's decision this was a matter the applicant referred to in his SHEV interview. His evidence was that employers were more interested in your knowledge of the basics of Islam than in whether you had knowledge of Excel and Word. It is also consistent with the country information that candidates, at least for public sector employment, are required to undergo questioning about their knowledge of, and adherence to, Islam². The applicant did not specifically claim that he applied for jobs in the public sector but I note that Article 4 of the Constitution requires that all of the country's laws and regulations be based on Shia Islamic principles³. I consider it likely that this would translate to employment practices and I am willing to accept that the applicant may have had difficulty in obtaining a job because he was unable to satisfactorily answer questions related to Islam.
20. In his SHEV statement, the applicant described his first experiences of Christianity through some friends he met on the boat and with whom he stayed in [City 1]. The applicant's description of his trajectory from scepticism to belief sounded unforced and natural. He said he was very opposed to religion but agreed to attend church because of their friendship. Consistently with what he said in his SHEV statement, he told the delegate in his SHEV interview that he went a few times to church but then didn't as he was very sceptical, thinking Christianity would be just another religion like Islam. He then described being at a particularly low ebb (unemployed, depressed) and said that the next time his friends asked him, he decided to go with them. He met [Reverend B], a priest there, they sat down and had a coffee and the applicant told him he was very depressed; [Reverend B] asked the applicant if he wanted him to pray for him; he did; the applicant calmed down, felt good, and since then has been going to church.
21. The applicant provided a copy of his baptism certificate with his SHEV application indicating he was baptised in the [denomination] church [in] December 2016 by [Reverend A]; he has also provided a number of letters of support from [Reverend A], [Reverend B] and [Mr A], the [Manager] of a [service] company for whom the applicant does some contracting work; that letter confirms that from when the applicant first started working with [that named] Company in February 2016, he requested that he not work Saturdays so that he could attend church.
22. [Reverend A's] letter of 22 April 2020 corroborates the applicant's evidence about his attendance and involvement with the church. He states the applicant was initially an infrequent visitor; he has known the applicant since at least the start of 2016, or late 2015, when he began regularly attending services; his letter states the applicant has attended virtually every Saturday service since then, with only a small handful of absences due to illness for example.
23. The delegate asked the applicant about the significance of Christianity in his life. He responded that his own life had changed by living the way of the cross. He said that as a Christian he tries

² DFAT "DFAT Country Information Report Iran" 7 June 2018, CIS7B839411226

³ DFAT "DFAT Country Information Report Iran" 7 June 2018, CIS7B839411226

to follow the orders of the book (presumably a reference to the Bible) such as to do good deeds for your parents and whatever you want to happen for yourself you do for your neighbours; don't lie; don't do any adultery or bigotry; don't do robbery; and accept God, the Son and the Holy Spirit. He emphasised how important it was to him to be able to freely choose a religion that mattered to him and referred to feeling as though his church community was his family and he looked forward every week to seeing his brothers and sisters in Christ.

24. He was also asked if he prayed. He said "when I wake up I pray"; he spoke of prayer as a kind of thanksgiving that you can do anytime and anywhere. He said that of course he went to church to pray; he went every week. The delegate found the applicant was not attending church services to the extent he implied at interview and in his statement of claim. This is not consistent with the evidence of [Reverend A] and [Reverend B] that the applicant was at the time of his SHEV interview a regular weekly attender and the letters provided to the IAA confirm that the applicant continues to do so.
25. The delegate appears to have formed this view because of the applicant's inability to remember the date and place where he was baptised, the address of the church he currently attends and the fact that he didn't know [Reverend A's] or [Reverend B's] other names ([Reverend A] and [Reverend B]).
26. The letters of [Reverend A] and [Reverend B], and the applicant's submission to the IAA, provide what I consider reasonable explanations for what the delegate saw as problems with his evidence: [Church 1] community has met in two different locations during the time the applicant has attended; the church is very close to where he lives, he just goes there and has no need to know the street address; the congregation generally refer to [Reverend A] and [Reverend B] either by their first names only or as Pastor (or brother) [A] or Pastor (or brother) [B]; and his baptism was four years ago, the exact date is not as important as what is in your heart.
27. When asked what Christianity meant to him personally, the applicant's evidence indicated he had found passages in the Bible that resonated with him personally particularly as regards the family and his own experiences of a difficult relationship with his father; he had been able to forgive his father, notwithstanding his harsh treatment of the applicant. He was also asked about what being baptised meant to him. He said it meant freedom from sins, it gives you a feeling of lightness, of resurrection, you believe that Jesus will come back someday and we will come back with him. He was asked what that meant for him. He said "Eternal life as Jesus promised, Jesus was crucified to forgive our sins."
28. The applicant has a Farsi Bible and indicated he reads it regularly. The delegate referred to this but said that the applicant's answers to her questions did not demonstrate the personal significance of the Bible or Christianity to him. In his submission to the IAA, the applicant took issue with the way in which the delegate questioned him about these aspects of his faith and said he did not understand that she was asking him to say what were his favourite parables and books of the Bible. He said he reads the bible virtually every day and had she asked him about a certain part of the bible specifically he could have answered the question. Having listened to the interview, I agree that the delegate did not ask any specific questions about the Bible. I also note [Reverend B's] evidence that he has observed that the applicant reads the Bible for himself; and that the applicant also engages with sermons and sometimes gives me feedback when [Reverend B] preaches which in my view demonstrates an active engagement with the teachings of Christianity.
29. It is also clear that the applicant participates in voluntary church activities (cleaning, kitchen duties, church camp) outside of regular church services. I accept that over the past four years

the applicant has attended church generally every week, has studied to be baptized, has been baptized, and continues to participate in the life of the church community to which he belongs.

30. There is one matter I think the applicant has exaggerated. He stated in his SHEV application that his [specified family members] in Iran have seen the change in him, they've become intrigued and asked him to send tapes of the worship; he does so regularly and they are now exploring Christianity. The applicant did not refer to this in his SHEV interview and I think that if this was really the case, he would have mentioned it when discussing with the delegate his family's reaction to his conversion. I do not accept that he sends tapes of Christian worship to [those family members] in Iran and that they are now exploring Christianity. I do, however, accept that he has posted Christian themed material on [social media].
31. The delegate identified an apparent discrepancy between the applicant's written claims where he said he brought a friend to church, [Friend A], who was preparing for baptism, and the SHEV interview when he told the delegate that [Friend A] did not convert; they had a falling out and he hadn't seen him since then. The applicant's SHEV statement was signed in 2017; in his SHEV interview he reiterated that he had brought [Friend A] to church but [Friend A] had lost interest and stopped going. The applicant did not claim that [Friend A] had been baptised and the letters of [Reverend A] and [Reverend B] indicate that the applicant brought [Friend A] to church, [Friend A] attended [Church 1] for some time and studied for baptism but he did not complete the course, which I consider consistent with the applicant's evidence.
32. Matters such as those referred to above (church attendance, baptism, volunteer activities) are not, by themselves, necessarily indicative of the genuineness of a person's faith and, as noted above, the delegate doubted the genuineness of the applicant's claim to have converted to Christianity because she considered he had provided little evidence that he holds a genuine interest in, and commitment to, Christianity. However, I found the applicant's evidence at his SHEV interview convincing and persuasive; while I accept that aspects of his evidence were vague, he did not speak in trite generalities but appeared to be making a genuine effort to communicate the changes Christianity had wrought in his life. I also place weight on [Reverend A's] evidence that although the applicant is not a very verbal or intellectual person, and his faith may be considered simple, it is a very clear faith all the same.
33. Having regard to all the evidence before me, I find the applicant is a genuine convert to Christianity, that his faith as a Christian, attendance at church and membership of a faith community, is an essential part of his life. On the evidence before me, I am satisfied the activities he has engaged in as part of the Christian church are not for the sole purpose of strengthening his claims for protection. I find that the applicant's ongoing involvement in both public and private Christian worship as well as community activities is based on a genuine commitment to Christianity.
34. As to whether he would continue to practise Christianity if he were to return to Iran, he said he would. He would take the book (the Bible) with him and will participate in church and say he is Christian because it is his belief. Asked how the Iranian authorities would know that he had converted to Christianity, he said he would tell them his religion when he was asked about it at the airport because as a Christian it was his duty.
35. Having accepted the genuineness of the applicant's conversion to Christianity, I also accept his evidence that if he were to return to Iran, he would seek to continue to practise his faith as a Christian.

36. It is forbidden for Muslims in Iran to convert to other religions, and Christian converts do not have access to the registered churches that exist in the country⁴. Iran recognises officially three non-Muslim faiths – Christianity, Zoroastrian, and Jewish; none of them proselytises or accepts converts as members⁵. The prohibition on them doing so is strictly enforced by the Iranian authorities⁶. Christian and Christian churches must be registered with the authorities and only recognised Christians are able to attend church. The authorities closely monitor registered churches to ensure services are not conducted in Farsi and perform identity checks on worshippers to confirm that non-Christians or converts do not participate in services⁷. A number of churches which have failed to comply with the restrictions have been closed down⁸. The result is that Iranian Christians who are not members of one of the recognised ethnic minority churches generally seek to practise in underground, illegal “home churches” and networks of such churches have been established, where small groups of converts meet in private homes.⁹ If the authorities receive a report about a specific house church, a monitoring process will be initiated by the authorities in order to collect information about both the members and who is doing what in the community¹⁰.
37. DFAT assessed in 2018 that small self-contained ‘house church’ congregations that maintain a low-profile and don’t seek to recruit new members were unlikely to attract adverse attention from the authorities beyond monitoring and, possibly, low-level harassment although members of larger congregations that do engage in proselytization and have connections to broader house church networks are more likely to face official repercussions which may include arrest and prosecution¹¹. Other recent information indicates that the Iranian authorities view the organized house church movement as a political opposition that threatens national security¹². Consequently, Christian converts have been increasingly exposed to arrests and charges of security-related crimes since 2005, and especially after 2009-2010¹³. Official reports and the media continued to characterize Christian house churches as “illegal networks” and “Zionist propaganda institutions.”¹⁴
38. Christians who have converted from Islam are considered apostates – a criminal offence in Iran. Sharia law does not allow for conversion from Islam to another religion, and it is not possible for a person to change their religious affiliation on personal documentation¹⁵. The punishment for apostasy is death although DFAT states the authorities do not actively search for Christian converts and assesses that the risk of execution for apostasy/conversion is low¹⁶. Other sources indicated that the simple fact of conversion and an “anonymous” life as a Christian to not themselves lead to arrest¹⁷; if a convert does not proselytize or promote a house church, the

⁴ Norwegian Country of Origin Information Centre Landinfo “Iran: Christian converts and house churches (1) - prevalence and conditions for religious practise”, 27 November 2017, CISED50AD8640

⁵ DFAT “DFAT Country Information Report Iran”, Department of Foreign Affairs and Trade, 7 June 2018 CISB839411226

⁶ Ibid

⁷ DFAT “DFAT Country Information Report Iran” 14 April 2020 20200414083132

⁸ Ibid

⁹ Norwegian Country of Origin Information Centre Landinfo “Iran: Christian converts and house churches (1) - prevalence and conditions for religious practise”, 27 November 2017, CISED50AD8640

¹⁰ UK Home office “Country and Policy Information Note Iran: Christians and Christian Converts”, May 2019, 20190531161542

¹¹ DFAT “DFAT Country Information Report Iran”, Department of Foreign Affairs and Trade, 7 June 2018 CISB839411226

¹² Norwegian Country of Origin Information Centre Landinfo “Iran: Christian converts and house churches (1) - prevalence and conditions for religious practise”, 27 November 2017, CISED50AD8640

¹³ Ibid

¹⁴ US Department of State “Iran 2017 International Religious Freedom Report”, 29 May 2018, OGD95BE927512

¹⁵ UK Home Office “Country and Policy Information Note Iran: Christians and Christian Converts”, May 2019, 20190531161542

¹⁶ DFAT “DFAT Country Information Report Iran” 14 April 2020 20200414083132

¹⁷ UK Home Office “Country and Policy Information Note Iran: Christians and Christian Converts”, May 2019, 20190531161542

authorities will not know about him/her.¹⁸ It is where the conversion is followed up by other activities as for instance proselytising and training others, the case differs¹⁹. The convert's actions and activities and the degree to which their conversion is 'visible' will determine whether or not they would be at real risk. Those who have converted from Islam and whose conversion is likely to come to the attention of the authorities in Iran through evangelical or proselytising activities are likely to be at real risk of persecution on return²⁰.

39. I have accepted that the applicant would seek to continue his Christian life in Iran and that he would seek out a church community (a house church) to be involved in. I think it is probable that the applicant has overstated his desire to proselytise and to that extent, I agree with the delegate that he does not appear to have the requisite level of knowledge of the Christian faith to effectively be in a position to spread the Christian word in Iran. On the evidence before me I have, however, accepted that he was active in trying to bring his [Friend A] to the church and I accept [Reverend A's] and [Reverend B's] submissions that an intellectual explanation or theological argument is not always required; it is frequently the personal experience of the convert that resonates with others and persuades them to the faith. On balance, I accept that the applicant would seek in a low-key way to proselytise or promote Christianity. The country information before me indicates that this risks bringing him to the attention of the Iranian authorities.
40. While there are reports of Christian converts being arrested by the Iranian authorities, the number of arrests are statistically very low when comparing them to the overall number of Christians and converts in Iran. Furthermore, the evidence suggests that the Iranian authorities appear to target the leaders and organisers of house churches rather than 'ordinary' converts (i.e. those who are not active evangelisers).²¹ Nonetheless, ordinary members of house churches also risk arrest; they will be released again on the condition that they stay away from proselytizing and if they stop proselytizing, the authorities will stop gathering information about them²². The country information indicates that although it is not uncommon for arrested converts to be threatened with possible apostasy charges, it is very rare for it to happen²³ and the country information does not support that, by itself, the act of converting together with some proselytising carries a real risk of execution on the ground of apostasy. I do not accept that there is a real chance of the applicant being sentenced to death on apostasy charges.
41. The country information does, however, indicate and I accept that the applicant risks being monitored, arrested, and detained on the basis of his Christian religion and the way in which he might seek to manifest his faith.
42. Convert cases are usually considered as national security matters which are handled by the Revolutionary Court on the basis that the authorities perceive activities related to conversion as political activities²⁴. According to Article 498 of Iran's Islamic Penal Code, "forming a group

¹⁸ Danish Immigration Service and the Danish Refugee Council "Iran: House churches and converts", Feb 2018, CIS7B83941873; Austrian Centre for Country of Origin and Asylum Research and Documentation (ACCORD) "Iran - COI Compilation", 1 July 2018, 20190326122102,

¹⁹ ¹⁹ Danish Immigration Service and the Danish Refugee Council "Iran: House churches and converts", Feb 2018, CIS7B83941873

²⁰ UK Home Office "Country and Policy Information Note Iran: Christians and Christian Converts", May 2019, 20190531161542

²¹ Ibid

²² ACCORD "Iran - COI Compilation", 1 July 2018, 20190326122102

²³ UK Home office "Country and Policy Information Note Iran: Christians and Christian Converts", May 2019, 20190531161542

²⁴ Danish Immigration Service and the Danish Refugee Council "Iran: House churches and converts", Feb 2018, CIS7B83941873

composed of more than two people with the purpose of disrupting national security” can carry a 10-year prison sentence²⁵. Notwithstanding constitutional protections against arbitrary arrest and detention, many organisations report that the authorities commonly use arbitrary arrest to impede perceived anti-government activities including religious minorities²⁶. Individuals under arrest often remain in detention facilities for long periods without charge, and are sometimes prevented from informing others of their whereabouts for several days²⁷.

43. Since the election of President Rouhani there appears to have been a crackdown on religious minorities²⁸. Christians continued to experience disproportionate levels of arrests and detention, and high levels of harassment and surveillance and it has become increasingly common for authorities to arrest worshippers, raid house churches, and confiscate Bibles²⁹. Freedom House reported in 2019 that in the past several years, a number of informal house churches have been raided and their pastors or congregants detained³⁰. 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. According to international observers, as of December 2016 approximately 90 Christians were in detention or awaiting trial because of their religious beliefs and activities³¹. In March 2017 a Christian convert was issued a five years sentence for “forming a group for disrupting national security”³².
44. News reports stated that Christians who were arrested were subject to severe physical and psychological mistreatment by authorities, which at times included beatings and solitary confinement and prison authorities reportedly continued to withhold medical care from prisoners³³. More generally, human rights organisations report that torture and other mistreatment of detainees occurs in Iranian detention facilities; common methods of torture include threats of execution or rape, sexual humiliation, sleep deprivation, electroshock, burnings and the use of pressure positions, and severe and repeated beatings³⁴. It is alleged that the Iranian authorities have systematically failed to investigate allegations of torture and mistreatment, and have sometimes threatened to subject complainants to further torture and long sentences³⁵.
45. Considering the evidence as a whole, I am satisfied that there is a small but nonetheless real chance that if the applicant openly engaged in communal worship as he does here and indicated he would do on return, the applicant risks being identified as a Christian and is at risk of arrest,

²⁵ Ibid

²⁶ DFAT “DFAT Country Information Report Iran” 14 April 2020 20200414083132

²⁷ Ibid

²⁸ “Iran Escalates Persecution of Religious Minorities Under Rouhani”, The Washington Free Beacon 13 May 2015, CXBD6A0DE6451

²⁹ UK Home Office “Country and Policy Information Note Iran: Christians and Christian Converts”, May 2019, 20190531161542

³⁰ Ibid

³¹ Ibid and “Iran Escalates Persecution of Religious Minorities Under Rouhani”, The Washington Free Beacon 3 May 2015, CXBD6A0DE6451

³² Danish Immigration Service and the Danish Refugee Council “Iran: House churches and converts”, Feb 2018, CIS7B83941873

³³ UK Home Office “Country and Policy Information Note Iran: Christians and Christian Converts”, May 2019, 20190531161542

³⁴ DFAT “DFAT Country Information Report Iran” 14 April 2020 20200414083132

³⁵ Ibid

detention and physical mistreatment. I find that the conduct of the authorities in inflicting such harm is systematic and discriminatory for reason of the applicant's religion.

46. The Iranian security forces exercise effective control throughout Iran and I am satisfied that the real chance of harm the applicant faces relates to all areas of Iran. I am satisfied he has a well-founded fear of persecution for the purposes of s.5J(1). I am also satisfied that effective protection measures would not be available to the applicant in Iran and s.5J(2) does not apply.
47. It is possible that the applicant could avoid a real chance of persecution by choosing not to practise his faith or by concealing his faith but this would involve an impermissible modification of behaviour. I find that s.5J(3) does not apply. I consider that requiring the applicant to modify his behaviour, either by concealing his Christian beliefs, by renouncing his Christian faith or by ceasing to be involved in the practice of that faith, including talking about Christianity to others, falls within a kind of modification that an applicant cannot be required to make in s.5J(3)(c)(i).
48. I am satisfied the applicant has a well-founded fear of persecution in Iran on the basis of his religion. For that reason, I do not find it necessary to address any of his other claims about why he fears returning to Iran.

Refugee: conclusion

49. 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.