



**Australian Government**  
**Immigration Assessment Authority**

**Decision and Reasons**

**Referred application**

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IRAN

IAA reference: IAA20/08270

Date and time of decision: 2 June 2020 12:43:00

G Deal, Reviewer

**Decision**

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

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

## Background to the review

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### Visa application

1. The applicant claims to be from Tehran, Iran. [In] May 2013 he arrived by boat in Australia. On 23 June 2017 the applicant lodged an application for a Temporary Protection Visa (visa application) with the Department of Immigration, now part of the Department of Home Affairs.
2. On 17 April 2020 a delegate of the Minister for Immigration (the delegate) refused the grant the visa. The delegate found the applicant's claim to have fled Iran after he pushed a Basij member when they went to his home looking for his brother, fabricated. While he accepted the applicant had been baptised a Christian and had attended church since being in Australia, on the evidence, which he found poorly supported and not credible, he did not accept his conversion was genuine. Overall, the delegate found the applicant did not meet the relevant definition of refugee, did not face a real risk of significant harm and was not a person in respect of whom Australia had protection obligations.

### Information before the IAA

3. I have had regard to the review material given by the Secretary under s.473CB of the *Migration Act 1958* (the Act). This includes the Department's decision refusing the applicant's brother's protection visa application dated 23 January 2018 and the IAA's decision affirming that decision on 31 August 2018. These were broadly referred to by the delegate in the visa interview when the outcome was discussed and the applicant's then migration agent indicated they and the applicant were aware of this.
4. By emails dated 14 May 2020 and 26 May 2020 the applicant's migration agent forwarded submissions and three supporting letters to the IAA. The submissions contain arguments and information that was before the delegate and I have had regard to these. The support letters comprise new information, and are discussed below.
5. In his visa interview the applicant told the delegate that since being in Australia he had converted to Christianity and attended church regularly. The applicant now provides three supporting letters in this regard from a lay pastor and Reverend at his church all dated 25 April 2020, about a week after the delegate's decision was made. This is new information. In the visa interview the applicant's then migration agent said she had only told the applicant about the interview the night before and as such there was insufficient time to arrange a supporting letter from his pastor at the church. However when the delegate asked if there was anyone he could contact at the applicant's church the applicant gave the delegate the number for this pastor at his church. Erroneously forming the view this person did not have an official role at the church, possibly because of interpretation errors now identified by the applicant, the delegate chose not to call that person. The applicant now asserts that he was under the impression he did not need to provide anything further. I am satisfied that this information could not have been provided to the delegate before his decision was made. I am also satisfied this is credible personal information which had it been known may have affected consideration of the referred applicant's claims. The letters from the lay pastor and Reverend corroborate the applicant's claimed Christianity and Christian activities. I am satisfied that there are exceptional circumstances to justify considering the information.

6. I have obtained the 2020 DFAT report<sup>1</sup>. It was published three days after the delegate's decision was made and I am satisfied that there are exceptional circumstances to justify considering this recently published report documenting the conditions in Iran including in relation to Muslim born Christian converts.

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

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7. The applicant's claims can be summarised as follows:
- He is an Iranian national from Tehran, Iran.
  - He completed up to the first year of high school and then worked in the [family] businesses.
  - In 2009, a relative's cousin was murdered by authorities during the Green Movement protests.
  - He was harassed by the Iranian authorities in Iran including being beaten while attending [a] festival and was hospitalised because of his injuries. He fears that after this event he was identified as someone to watch.
  - After a number of adverse interactions with authorities his brother was labelled a thug by Iranian authorities and fled Iran in late 2012, ultimately bound for Australia. He also sought protection in Australia.
  - Early 2013 during a raid on their home looking for his brother the applicant pushed an officer injuring him. He fled the scene hiding at his aunt's place for a few days. The authorities subsequently looked for him briefly detaining his father in connection with the incident. A number of days later the applicant fled Iran illegally in fear of his life.
  - Since leaving the authorities have looked for him and his brother and harassed and harmed his parents in connection with them.
  - Since being in Australia he has converted to Christianity and proselytises.
  - He fears harm by the Basij or other Iranian authorities, including torture, physical abuse and imprisonment.
  - He has been in Australia for a lengthy period of time and if returned involuntarily will be harmed as a pro-Westerner and against the regime.

### **Refugee assessment**

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8. 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.

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<sup>1</sup> Department of Foreign Affairs and Trade (DFAT), 'DFAT Country Information Report - Iran', 14 April 2020, 20200414083132.

## Well-founded fear of persecution

9. 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.
10. Based on the applicant's evidence, including his documentary evidence, I accept he is an Iranian national from Tehran, Iran, where his family continue to live and I consider that if he were to return it would very likely be to there. I consider Iran the receiving country. Given the consistency of the claim and the detail provided I also accept his claimed education and work history in Iran. The applicant has also consistently claimed a relative's cousin was murdered by authorities during the Green Movement protests in 2009, which may have been the case. However, in his visa application he said that he was not there himself and has not otherwise indicated it concerned him personally, and I cannot see the relevance of this to his claims. I accept the applicant's brother travelled to Australia arriving [in] November 2012 and lodged an application for a protection visa in 2016 which was declined by the Department.
11. The applicant claims he was badly beaten (and treated in hospital for his injuries) by authorities in 2011 while attending [the] Festival which led to him becoming of adverse interest. In his visa application he said the authorities who beat him were plain clothed and he did not know if they were from the Basij or the police and that he was not arrested, only beaten, and then went to hospital for treatment. Nonetheless the claim is somewhat detailed and has been consistently made and I accept he attended this festival and am willing to accept that when authorities tried to shut it down he was hurt in the melee that ensued. I note, in his visa application he merely said that he "fears" that after this assault he was identified as someone to watch in his neighbourhood. In the visa interview when the delegate enquired as to how he formed this view the applicant said it was because of things that were happening to his friends, and what he was hearing, and he was "suspicious" but "wasn't sure". He confirmed he was never charged and when the delegate asked if the authorities subsequently went to his home for him in connection with this incident the applicant said no. I also note that it was some two years after this isolated incident that the applicant left in 2013 and he has not said he had any contact with the authorities in relation to this incident in that time. I do not accept he was personally identified by authorities at the festival or subsequently of interest to them in connection with this incident. It has now been some 13 years since this isolated incident. The applicant also vaguely stated in his visa application that he was "harassed in minor ways by the Basij, particularly with stop and searches". The country information suggests they often intimidate civilians perceived to be breaching moral codes, and that they are the subject of

considerable popular resentment because of this.<sup>2</sup> While I am willing to accept he may have been harassed by them, as are other civilians, he has not otherwise elaborated on this brief claim in written submissions or his visa interview, despite opportunities, and I am not satisfied he faces a real chance of harm on account of this or his experience at [the] Festival.

12. Before claiming he had converted to Christianity in the visa interview, the applicant's main claim was that he had fled Iran in fear of his safety in about March 2013 after pushing a member of the police or [Basij] , and injuring them, during a raid on his family home early 2013. He claims they had gone to his family home looking for his brother (after his brother failed to report to them, which he was obliged to do on a weekly basis). The Department's decision declining his brother's protection visa application indicates his brother arrived in Australia [in] November 2012 after fleeing Iran because he was wanted by the authorities and feared for his life. The applicant claims he pushed the Basij or police member after they mistreated his mother during the raid in 2013. He immediately knew they had been injured and so fled their apartment and hid at his aunt's place in another suburb for two to three days. He subsequently called his mother who told him they had looked for him and had taken his father but that his father was subsequently released because he was an elderly man. His mother warned him to leave Iran. He arranged to get his passport from his mother and then two to three days later he went to [a location] and crossed the border [to] [Country 1]. He left Iran in March 2013, which based on his timeline of events indicates the raid was closer to March 2013. He claims that since being in Australia they have looked for him and his brother on two occasions. He "suspects" they mistreated his parents but his parents did not tell him about this because they did not want to worry him. His parents were forced to move because of this to another part of Tehran, but the authorities found them and visited again looking for him and his brother and his mother fears going out.
13. In the visa interview the delegate noted that the applicant's claim hinged on his brother's claim to be of ongoing adverse interest to the authorities but that his brother's claims in this regard were found to be not credible. Like the Department I find it implausible his brother would be subjected to the sort of harassment and detention claimed for a number of years merely because he was initially briefly detained for having visible tattoos in 2008, and despite his brother's assertion that he would provide supporting information of his weekly reporting obligations, this aspect of his claim was unsupported. The applicant's then migration agent said that they were aware of the outcome of the applicant brother's visa application and that the applicant knew his brother's protection visa application had been declined. The applicant said in the visa interview that when his brother left Iran the view they took of tattoos in Iran may have been different and that now they might not be viewed as negatively. He also said he understood his brother had done a number of things to attract their attention, including playing loud music and drinking alcohol and that he believed it was a combination of these factors. The applicant's then migration agent provided the delegate with additional written submissions<sup>3</sup> in the visa interview (new statement). In his new statement the applicant said he understood his brother was in trouble for having tattoos, that he was detained a few times, and that the last time in 2009 he was released with weekly reporting obligations and when his brother failed to report one week they raided the family home looking for him, which was when the applicant pushed one of [them] injuring them and fled. However in contrast, the Department's decision indicates the applicant's brother claimed the reporting obligations commenced after he was detained and released in 2012. When asked in the visa interview the

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<sup>2</sup> DFAT, 'DFAT Country Information Report - Iran', 14 April 2020, 20200414083132.

<sup>3</sup> The new statement was originally dated 17 September 2018. In the visa interview the applicant's then migration agent brought this to the interview and when it became clear that the delegate had not received a copy the migration agent said she assumed it had been submitted to the Department and proceeded to amend the date to the date of the visa interview.

applicant also admitted he had not actually seen his brother reporting in Iran but said his brother had told him he was reporting. In his visa application the applicant said he lived with his brother but that they had not discussed their claims because it brought them great stress. In the visa interview the applicant said his brother had driven him to the interview. When the delegate referred to these statements the applicant indicated they had still not really spoken about the events leading to them fleeing Iran. I find this explanation unconvincing in circumstances where they have lived together in Australia, his brother drove him to the interview, and these claimed experiences were what led them to fear for their lives and flee and the applicant's reasons for fleeing directly related to his brother's claimed profile. Based on the evidence before me I do not accept his brother was or is of adverse and on-going interest to the authorities as claimed.

14. I also have serious concerns about the applicant's timeline of events which make me doubt the veracity of the claimed raid. The Department's decision indicates the applicant's brother left Iran and arrived in Australia [in] November 2012. Based on the applicant's evidence in his visa application and interview, the applicant left (in March 2013) about a week after the raid, give or take some days. It therefore appears the raid was nearer to the end of February 2013. When questioned in more detail in the visa interview about the claimed raid, the applicant said they noticed his brother had not reported after he failed to report for one or two weeks and they went to their home to see why he had not reported. However the period of time between his brother's departure and the purported raid was significantly greater than one or two weeks, it was about, if not more than, three months. The applicant was unable to explain this significant discrepancy when the delegate pointed it out, merely stating he did not know exactly how many days it was, all he knew was that they raided the house and he left around five days later.
15. While I acknowledge it was some seven years prior and that the applicant was only notified of the visa interview the day prior, the applicant had the assistance of a migration agent and claims the events at the raid led him to fear for his life however when questioned he could not recall some basic details of the day and when given the opportunity to elaborate his responses were distinctly lacking in detail, even when the delegate asked him a series of probing questions seemingly in an effort to elicit more detail. The applicant did not sound like he was recalling the lived experiences of what must have been a fairly traumatic event, if it were true. For example, when the delegate asked the applicant about the raid and how he knew they were looking for his brother the applicant merely said they asked for his brother, he could not recall what day the raid occurred, when pressed he said he thought it was a work day but he was not at work, he could not recall why he was not at work. When the delegate sought more detail and asked him if he worked every day the applicant indicated that as it was a family business he could essentially come and go as he liked. When asked if they were armed he said he thought maybe they had guns and radios and then asked if by armed the delegate meant they had guns under their shirts and the delegate indicate that he did. The applicant merely repeated what was in his visa application and new statement about how he pushed one when they slapped his mother. The delegate also asked the applicant if there was anything he wanted to tell him about the raid that would help convince him of its credibility. The applicant's response was repetitive and vague and not directly related to the raid, for example, he said these things happened in the past and they are still happening in Iran, maybe he said things differently to this brother, he was not aware of what his brother had done, he just knew about the alcohol and tattoos which might have been small things but maybe they were made bigger.
16. When the applicant was asked in the visa interview if there was any summons or charge or official process started against him because of the events during the purported raid the applicant said "no". I note that the applicant has claimed the authorities have continued to visit his family home looking for him in connection with these events, detained his father and

mistreated his parents and that his parents have had to move because of the harassment. His evidence in this regard has also been vague and varied. In his visa application he said they visited twice and then his parents had to move but they found them and visited them again looking for the applicant and his brother. Then in the visa interview at one point he merely said they looked for him and then at another point that they did not visit regularly only every five or six months looking for him and his brother. I find it implausible that the authorities would continue to look for the applicant with any regularity some seven years after he left Iran, because he purportedly pushed an [officer].

17. On the evidence, including the identified issues with the timeline, the applicant's vague and repetitive evidence of the raid and, at times, implausibility of his claims, and that I do not accept his brother had or has a profile of on-going interest to authorities I do not accept there was a raid on the applicant's home looking for his brother in 2013 and that the applicant fled Iran in fear of his safety, as claimed. It follows that I do not accept his father was briefly detained in connection with this or that his parents were harmed or harassed, as claimed. It follows that I do not accept the applicant left Iran illegally as claimed. I also note that in the visa interview, when pressed, the applicant conceded that the town where he crossed into [Country 1] was also the site of a legal border crossing from Iran and while he continued to assert he left illegally via the mountains, on the evidence including that he was in possession of his genuine passport at that time, I consider it more plausible he crossed at the legal border crossing. I do not accept the applicant was wanted by authorities when he left Iran in 2013.
18. The applicant claims to fear harm in Iran as a Muslim born Christian convert who proselytises.
19. In support of this claim the applicant provided a Baptism certificate which indicates he was baptised as a Christian with a [Church] [in] May 2018 and I accept this. He has also provided three letters, one from the lay pastor who heads the Iranian congregation at his church and two from the reverend at the church which state that the applicant has attended the church since February 2018. The letter from the lay pastor states the applicant is an "extremely active" member of the church and the reverend states he "regularly attends" and is an "active member" shown by his attendance at worship services on Sundays. The letter from the reverend also indicates Persian bible studies classes are run on Wednesdays. When asked in the visa interview about his involvement with the church, the applicant said he went every Sunday. I consider the lay pastor's description of the applicant as an "extremely active" member of the church somewhat of an exaggeration and the reverend's description more accurate based on the applicant's spontaneous response in the visa interview. While the reverend did not commence at the church until March 2019, I am willing to accept the applicant commenced with the church in February 2018, was baptised in May 2018, and now attends service on Sundays. While the applicant briefly showed the delegate some photos and footage of him at church the day before the visa interview, captured on his mobile phone, the Department has confirmed the applicant did not subsequently provide these to the delegate, despite his migration agent indicating in the interview she would. As I accept he attended church and was baptised it is not apparent to me that these would further assist and I have decided not to take steps to obtain them from the applicant.
20. However, for the reasons detailed below, I consider the applicant has engaged in the Christian activities in Australia solely for the purposes of strengthening his claims for protection:
  - The timing of the applicant's claim to have converted to Christianity raises serious concerns for me regarding the genuineness of his conversion. The applicant lodged his visa application on 23 June 2017. At that time his main claim was to fear harm in connection with the raid on his family home which hinged on his brother's claim to be of

ongoing and adverse interest to the authorities. On 23 January 2018 the Department refused the applicant's brother's protection visa application finding his claim to be of adverse and ongoing interest, not credible. The IAA affirmed that decision on 31 August 2018. The applicant made the new statement on 17 September 2018 mentioning, for the first time, his claimed conversion to Christianity and related claims.

- I consider the applicant sought to exaggerate his claimed involvement with the church. In the new statement (dated in September 2018) the applicant states "I started going to Church about 18 months ago" (making it about January 2017); however this is significantly different to his subsequent claims to have started attending church in February 2018 which is also the date stated in the lay pastor and reverend's letters. I accept he commenced in February 2018 which I also note was just after the refusal of his brother's visa application by the Department. I do not accept he started attending in September 2017.
- The applicant's evidence about his knowledge of the faith has been cursory and somewhat repetitive. In the new statement the applicant said Christianity had brought him peace, he trusted in God and Jesus, he told them his worries, he has faith, Jesus said that kindness, charity and compassion and connection are more important than material things and he tries to live according to this. The applicant brought a copy of his bible to the visa interview. The delegate noted it looked brand new and also that he had highlighted some pages and the applicant said it was very clean. When asked what these parts were about the applicant said he had not memorised them off the top of his head but he said they were about people who had brought faith. He mentioned the "New Testament" and "John, Matthew and Luke". He explained that taking the hand of an elderly person to help them cross the road or picking up rubbish was also a way of living Jesus' way and that was how he also practised the faith. When asked to provide some examples of this behaviour the applicant said that the bible states love your neighbour even if they are bad. When asked what else he could tell the delegate about Jesus the applicant referred to some verse numbers and pages of his bible and mentioned people trying to be the creators of peace, that those who forgive will be forgiven, Jesus' blood was shed for our sins and so that we could be put on the right pathway. He said he did not want to talk a lot about these things and then mentioned a story, which was the same the story from the bible detailed in his new statement, about Jesus being offered some bread by the devil after fasting for 40 days but that he refused it.
- I have found the applicant's evidence of his claimed proselytising in Australia unconvincing. In his new statement the applicant also said he had found happiness as a Christian and there was "no way that I will give this away if I am forced to return to Iran" and "I will spread the Word of God" and will "tell people my story". In the visa interview after discussing his claimed Christianity at length and the applicant vaguely mentioned he took a friend to church they had a break. On returning from the break the delegate asked the applicant if he had anything else he would like to say regarding his claims and the applicant indicated he did not. However his then migration agent indicated to the applicant to mention what they had just discussed and after talking about how the applicant found the faith because he was down at that time, the migration agent asked the applicant if he would continue to practise the faith if he returned to Iran and the applicant said "Yes I would, why wouldn't I continue?" and the migration agent said "Because they will kill you". The applicant said that Jesus was killed because of him and so he would die for him and that whichever country he were in he would promote the faith and that he had taken a friend to church. The migration agent asked "He wasn't Christian?" and the applicant agreed and the migration agent asked "Is he Christian now?" and the applicant said "yes". The migration agent asked "What would you do if



you went to Iran?” and the applicant said “Yes, I would continue, this is Jesus’ pathway”. The migration agent then said a number of things including that the applicant would be in danger if he went back because his church was one that actively proselytized and this was at the centre of their practice. I found the migration agent’s questions leading and the applicant’s responses lacking in detail and a sense of commitment. I have serious doubts he has a friend he took to church who has since converted given the lack of detail, and the late mention, and only when prompted, of this significant aspect of his claims, and I do not accept it.

21. As I consider the applicant has engaged in his Christian activities in Australia solely for the purposes of strengthening his claims for protection I have disregarded this conduct for the purposes of my assessment of s.36(2)(a), as required by s.5J(6).
22. The applicant claims to fear harm because of the time he has spent abroad in a Western country. The country information before me indicates that Iran has historically refused to facilitate the involuntary return of its citizens who arrived in Australia before March 2018<sup>4</sup> and as such I consider if he were to return it would be on a voluntary basis.<sup>5</sup> The country information before me does not indicate a returnee will be harmed solely because of time spent in a Western country. The applicant has not otherwise engaged in activities in Australia that may attract the adverse attention of the Iranian authorities. I do not accept the applicant’s brother is of ongoing adverse interest to authorities as claimed. I do not accept the applicant was wanted by the authorities when he left Iran in 2013. Based on the country information above and the applicant’s profile I am not satisfied he faces a real chance of harm on account of his experiences in Iran, his brother or his time spent in Australia.

#### **Refugee: conclusion**

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

#### **Complementary protection assessment**

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

#### **Real risk of significant harm**

25. Under s.36(2A), a person will suffer ‘significant harm’ if:
  - the person will be arbitrarily deprived of his or her life
  - the death penalty will be carried out on the person
  - the person will be subjected to torture
  - the person will be subjected to cruel or inhuman treatment or punishment, or

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<sup>4</sup> Under a Memorandum of Understanding with Australia Iran has agreed to facilitate the return of Iranians who arrived after March 2018 who have exhausted all legal and administrative avenues to regularise their immigration status in Australia.

<sup>5</sup> DFAT, 'DFAT Country Information Report - Iran', 14 April 2020, 20200414083132.

- the person will be subjected to degrading treatment or punishment.

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

27. As detailed above I accept the applicant was baptised as a Christian in May 2018 and has attended church on Sundays since February 2018. While apostasy charges for Muslim born converts to Christianity may be punishable by death, country information before me<sup>6</sup> indicates the death penalty is not common, has not been issued for a conversion in the last 10 years and that no one has been arrested in Iran solely because of a conversion. It is reported that Muslim born returnees who have conducted Christian activities abroad but who do not carry out these activities or announce their conversion in public on return will not be of interest to the authorities. Their return will only cause problems if they have been known by the authorities before leaving Iran. This is consistent with the more recent DFAT report.<sup>7</sup> I consider the applicant has engaged in his Christian activities in Australia solely for the purposes of strengthening his claims for protection. In the new statement the applicant said "Most of my family understands that I am Christian, but some relatives have cut off from me. My father's sister is a very strict Muslim and she will think I am mortad. I believe that she will inform the Basij that I have changed my religion, if she has not done this already". In the visa interview the delegate referred to these comments in the new statement and the applicant only said he had told his mother and brother, that his brother said he should do whatever he wanted to do and had earlier said he still spoke to his parents regularly, indicating they had not disowned him or told authorities or threatened to tell authorities. He did not mention his aunt, despite the opportunity to elaborate on this most significant aspect of this claim and I do not accept he fears his aunt has or will tell the authorities and he has not specified any other relatives who he claims have disowned him or told authorities. I note the applicant has only been involved with the church since February 2018. I consider none of his family would have much interest in telling the authorities about these activities given the country information before me indicates this is unlikely where no family members have ties with the government or Basij (which the applicant has not indicated is the case) and also that the authorities have no interest in prosecuting returnees for these types of activities abroad.<sup>8</sup> I am not satisfied the applicant faces a real risk of harm on account of his Christian activities in Australia.

28. In considering the applicant's refugee status above, I have concluded there was no 'real chance' the applicant would suffer harm on his return to Iran for the reasons claimed. 'Real chance', and 'real risk' involve the same standard. For the same reasons, I am also not satisfied the applicant would face a 'real risk' of significant harm.

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<sup>6</sup> Danish Immigration Service and Danish Refugee Council, 'Iran: House Churches and Converts', 1 February 2018, CIS7B83941873; Austrian Centre for Country of Origin and Asylum Research and Documentation, 'Iran: House Churches; Situation of Practising Christians; Treatment by Authorities of Christian Converts' Family Members' 14 June 2017, CISED50AD4620.

<sup>7</sup> DFAT, 'DFAT Country Information Report - Iran', 14 April 2020, 20200414083132.

<sup>8</sup> Danish Immigration Service and Danish Refugee Council, 'Iran: House Churches and Converts', 1 February 2018, CIS7B83941873; Austrian Centre for Country of Origin and Asylum Research and Documentation, 'Iran: House Churches; Situation of Practising Christians; Treatment by Authorities of Christian Converts' Family Members' 14 June 2017, CISED50AD4620.

**Complementary protection: conclusion**

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

**Decision**

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

## Applicable law

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### ***Migration Act 1958***

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

In this Act, unless the contrary intention appears:

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***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.

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

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- (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.

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#### *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.