



Australian Government
Immigration Assessment Authority

Decision and Reasons

Referred application

IRAN

IAA reference: IAA21/08970

Date and time of decision: 6 May 2021 13:28:00

V Price, Reviewer

Decision

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

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

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

Background to the review

Visa application

1. The referred applicant (the applicant) claims to be an Ahwazi Arab and a citizen of Iran. He lodged an application for a protection visa on 24 August 2017.
2. On 26 March 2021 the delegate refused to grant the visa to the applicant finding that he did not have a real chance or risk of harm on return to Iran. The delegate was not satisfied the applicant had been targeted by the family of his former wife, that he faced harm as a non-practising Muslim in Iran, or that he had converted to Christianity in Australia as he claimed.

Information before the IAA

3. I have had regard to the material given by the Secretary under s.473CB of the *Migration Act 1958* (the Act).
4. On 22 April 2021, the applicant's representative provided to the Immigration Assessment Authority (IAA) a submission responding to the findings of the delegate, a statutory declaration provided by the applicant dated 19 April 2021 and supporting material. To the extent the submission and applicant's statutory declaration discusses matters raised before the delegate, this is not new information for the purpose of s.473DC(1) and I have had regard to it in my assessment. A medical report dated 10 March 2021, confirming the applicant attended [Hospital 1] (the day after the protection visa interview) and was diagnosed with shingles, was before the delegate at the time of making the assessment and is therefore not new information. I had regard to this report in my assessment, particularly in so far as it relates to the evidence provided by the applicant during the protection visa interview.
5. New information within the meaning of the Act was provided to the IAA. This consisted of a new claim that the applicant had posted material related to his Christian faith on social media (the new claim); excerpts of the applicant's [social media] page dated from 2020 which depict Christian iconography and messages (the [social media] pages); a letter dated 16 April 2021 from [Rev A] supporting the applicant's conversion to the Christian, Anglican faith; a statutory declaration dated 20 April 2021 by the applicant's friend [Mr B] attesting to the applicant's genuine religious conversion; a report dated 15 April 2021 from the applicant's consultant Psychiatrist [Dr C]; a translation of the significant part and the interpreter error in the SHEV interview; a report from [Hospital 1] dated 8 March 2021 respectively (the hospital report); and a number of newspaper articles relating to the culture of Iranian Arabs, the treatment of Christians in Iran and the recruitment practices of Iranian intelligence agencies (the news articles).¹
6. I accept that the new claim, the [social media] pages, the supporting statements from [Rev A] and [Mr B], the report from [Dr C], the information regarding the translation error, and the hospital report, constitute credible personal information, not previously known, which had it been so may have affected consideration of the applicant's claims. I consider this material

¹ Journal of Medical Ethics and History of Medicine, 'Breaking bad news protocol for cancer disclosure - an Iranian version' December 2017; CBC News, 'Edmonton software engineer says Iranian regime attempted to make him their spy' 27 August 2020; Opendoorsuk, 'Twelve arrests. Three cities; One Day', 14 July 2020; Reuters, 'Israel says Iran recruited Jewish emigres as spies' (undated); BBC, 'Kylie Moore-Gilbert Iran tried to recruit freed British-Australian academic as spy', 9 March 2021; Haaretz.com, 'Shin Bet Arrests Belgian Citizen on Suspicion of Spying for Iran', 29 September 2013 (updated on 10 April 2018).

highly relevant to determining the credibility of the applicant's written and oral evidence and that it will assist me to assess whether the applicant faces a real chance or risk of harm on return to Iran. I am satisfied that there are exceptional circumstances to justify considering this information. The material meets s.473DD(a) and (b) and I am not prevented from considering it.

7. The news articles are best described as general country information rather than personal credible information and as such do not fall within the purview of s.473DD(b)(ii). Apart from one article which is undated,² the others all pre-date the delegate's decision. The applicant's representative has contended that this material was submitted to counter the findings of the delegate and thus could not have been provided earlier, and that they are all relevant to considering the applicant's claims. I am not satisfied as to either of these matters: the articles all broadly relate to claims squarely raised by the applicant and/or to concerns raised by the delegate during the protection visa interview. The applicant was represented throughout this process and provided numerous submissions prior to and after the interview, including in response to the delegate's noted concerns. In these circumstances, I am not satisfied that any of this information could not have been provided prior to the making of the decision and find that this material does not satisfy s.473DD(b)(i) of the Act. Further, three of the articles regarding the recruitment practices of Iranian intelligence agencies³ relate to the recruitment of foreign citizens as spies, rather than Iranian nationals such as the applicant in this case and does not assist my assessment of his claims. As such I am also not satisfied that there are exceptional circumstances to consider these three articles for the purpose of s.473DD(a).
8. However, I do accept the submissions of the agent that the article entitled 'Twelve arrests. Three cities; One Day'⁴ is directly relevant to assessing the applicant's claims: the article provides very recent examples of the targeting of Christian worshipers in Tehran. While I am not satisfied that the applicant could not have provided this article to the delegate, given its currency and relevance to assessing the applicant's claims and evidence, I have obtained it. For the reasons already set out, I am satisfied that there are exceptional circumstances to justify its consideration for s.473DD(a). I am therefore not prevented from considering this material.
9. The delegate referred to the 2018 United Kingdom Home Office (UKHO) report on Christian Converts in Iran. This was updated and replaced in February 2020 I have obtained this version of the report.⁵ This is the most recent consideration and guidance from the UKHO (a reputable and authoritative source) on the treatment of converts to the Christian faith in Iran and it is highly relevant to my assessment of the applicant's claims. I am satisfied there are exceptional circumstances to justify considering this report, it meets s.473DD(a) of the Act.

Applicant's claims for protection

10. The applicant participated in an Irregular Maritime Arrival and Induction interview (arrival interview) [in] July 2013. This contained information related to his identity, his family and his background in Iran as well as generally outlining some of his reasons for departing Iran,

² Reuters, 'Israel says Iran recruited Jewish emigres as spies' (undated).

³ Reuters, 'Israel says Iran recruited Jewish emigres as spies' (undated); BBC, 'Kylie Moore-Gilbert Iran tried to recruit freed British-Australian academic as spy', 9 March 2021: Haaretz.com, 'Shin Bet Arrests Belgian Citizen on Suspicion of Spying for Iran', 29 September 2013 (updated on 10 April 2018).

⁴ Opendoorsuk, 14 July 2020.

⁵ United Kingdom Home Office (UKHO), 'Country Policy and Information Note Iran; Christians and Christian converts', February 2020, 20200228081848 (UKHO 2020 Report).

including because his wife's family were members of the Revolutionary Guard and had threatened him.

11. The applicant's claims for protection were set out in written statements provided to the department dated 23 August 2017, 5 March 2021, and 24 March 2021 respectively, the oral evidence he gave at the protection visa interview, and in his statement to the IAA referred to above.
12. The applicant's claims can be summarised as follows:
 - The applicant is of Arab ethnicity. He was born and resided in Khuzestan, Iran. He had a well-paid job as a [Occupation 1] for a [company] in Khuzestan and was assigned to villages or small towns, [undertaking assigned work tasks]. He was welcomed into these communities, invited into people's homes for dinner.
 - The applicant met [Ms D] in the course of his employment, and in September 2011, they married after a brief courtship. Following their marriage, the applicant learned that several of his wife's uncles were employed in high ranking positions within Iranian intelligence agencies: one uncle worked with the Sepah and two were with the Ettelaat. His wife's behaviour changed soon after their marriage, she became agitated and told the applicant his salary was insufficient to maintain her lifestyle. He then discovered that she was on 'antipsychotic medication'.
 - In February 2013 his wife's uncle, [Mr E], asked him to join the Ettelaat. He indicated that his Arab ethnicity, the nature of his employment and his good relationship with the locals, meant he was well placed to gain information for the government on the Arab population, particularly the Ahwazi Arab activists. The applicant stated he would consider [Mr E]'s offer but later advised his wife he could not work for the Ettelaat. She became angry and he attempted to divorce her. He was threatened by her father and attacked by her brother.
 - In about May 2013 the applicant was abducted at gunpoint and taken to an unknown location where he was held for several hours. [Mr E] was present during his capture. [Mr E] told him that he would become a security risk if he did not join them and that he faced harm for dishonouring the family if he proceeded to divorce his wife. The applicant, scared for his safety, told [Mr E] he would do what was expected of him as a member of the family and agreed not to divorce his wife. [Mr E] gave him a further chance and released him.
 - The applicant apologised to his wife and appeared to reconcile. However, he decided to leave rather than follow through with his promises and departed Iran [in] June 2013.
 - After he arrived in Australia, he learned that his family had been harassed by the Ettelaat: there were repeated raids on the family home with his mother injured in one such raid; his elder [brother] was arrested and imprisoned; his younger [brother] was arrested but later released; his sister's enrolment in her Masters' course was revoked; and his other brother was fired from his employment. The Ettelaat told his family the applicant is a risk; they want him returned to Iran and intend to imprison him. His elder [brother] was released from prison in 2018.
 - The applicant experienced significant mental health problems in Australia. He has been diagnosed with Major Depressive Disorder and Post Traumatic Stress Disorder (PTSD). To assist him to overcome his troubles his friend introduced him to Christianity in 2017. The applicant embraced the Christian faith, undertook the required religious education, and was baptised into the Anglican Church in 2018. He intends to follow this faith on

return to Iran, and in keeping with the teachings of his Church, he would 'spread the good word' proselytising on his new faith.

13. The applicant claimed to fear harm on return to Iran as an Arab man who refused to be recruited by the Iranian Intelligence Services, due to his conversion from Islam to the Christian faith and as a failed asylum seeker/returnee from the West.

Refugee assessment

14. 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

15. 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.

Applicant's health concerns

16. The applicant claimed at interview to have had long standing mental health issues. In a letter dated 14 August 2017 the applicant's longstanding General Practitioner (GP), states that the applicant was first referred to a psychologist and then a psychiatrist in 2014 due to depressive symptoms and that he has been under the care of psychiatrist, [Dr C] since August 2016, and has experienced aggravated depression, anxiety and suicidal ideation.
17. Reports from [Dr C], the applicant's treating Psychiatrist, dated 9 February 2021 and 15 April 2021 respectively confirm he has been seeing the applicant regularly since 2016. [Dr C] states the applicant has been diagnosed with major depressive disorder with some PTSD symptoms and indicated that these symptoms were consistent with the history that the applicant presented of the traumatic experiences prior to fleeing Iran. The applicant has been treated with various anti-depressants and adjunctive medications and at the time of the interview he was on the psychotropic medication [specified] ([number] mg daily). [Dr C] stated that his suicidal ideation had reduced, but cognitive disturbance, a significant degree of short-term memory impairment, difficulty organising thoughts and impairments to concentration are

typical features of major depressive disorder. In [Dr C]'s view these factors would have been present during the applicant's protection visa interview and would account for any perceived 'evasiveness or dissembling'.

18. On the evidence before me I accept that the applicant has a long history of mental health issues. I accept that he has been diagnosed with major depressive disorder and symptoms of PTSD. I accept has been on medication since 2014 and that he continues to be under the care of his GP and Psychiatrist.
19. The applicant has also provided evidence, in the form on reports from [Hospital 1] supporting that he had attended the hospital the night before the protection visa interview, was released at 1.30am on the morning of the interview, and was on pain relief medication during the interview. The applicant returned to hospital the day after the interview where it was identified that he had shingles. He would have been suffering from this condition at the time of the interview.
20. I accept on the evidence that the applicant has issues with concentration and memory and that his oral evidence provided at the protection interview needs to be considered in light of these matters as well as his broader mental health concerns, his attendance at the hospital prior to the interview and his state of illness during the interview. I have taken these matters into account in my assessment of his claims and his overall credibility.
21. The applicant claimed he ceased a promising future playing [sports] in Iran due to [an] injury. He provided photographs of himself as a youth in Iran with a [sports] team. He has also provided several character references from members of the Australian community who have come to know him through his work coaching various [sports] teams through 2017 and 2018, including from [Mr F], President of [a sports club], The Hon. [Judge G] and [Mr H]. These attest to excellence in his various roles with these organisations and to his good character. I accept he is well regarded in this context and his current role in coaching is consistent with his claimed past involvement in the sport. I accept these claims are credible, and find he played [sports] in his youth and quite the sport due to injury. In addition, the applicant's claims that he suffers from back pain are supported by a 2016 report from [a radiology clinic] indicating that there are some defects in his spine. I accept he suffers from persistent back pain.

Background and area of return

22. On the evidence before me, I accept that the applicant was born in [City 1] near Khuzestan, Iran and that he is a national of Iran. Iran is his receiving country for the purpose of this assessment. There is nothing in the evidence before me to indicate that he has a right to enter and reside in any other country apart from Iran and I am not satisfied this is the case. The applicant largely resided in Ahwaz in Khuzestan throughout his life in Iran, his evidence is that his parents, sister, and brother remain in that area and I find this is the area to which he would return in the future.
23. Information before me is that Arabs in Iran predominantly reside in the south-western province of Khuzestan bordering Iraq, and that Iranian Arabs are often referred to as 'Ahvazis', after the capital city of Khuzestan Province (Ahvaz/Ahwaz).⁶ The applicant spoke Farsi during his interview, but indicated this is because his mother of his mother's heritage. I

⁶ Department of Foreign Affairs and Trade (DFAT), "Country Information Report-Iran", 14 April 2020, 20200414083132 (DFAT 2020 Report).

accept the applicant's explanation and given his birth and residence in a predominately Arab area of Iran; I accept he is Ahawzi Arab as claimed.

24. The applicant has provided photographs which appear genuine depicting him performing his work as a [Occupation 1]. His evidence on his employment has been consistent and appears credible. I accept the applicant worked as a [Occupation 1] in the Khuzestan area.
25. The applicant provided evidence of his marriage to [Ms D] and I accept they were married [in] September 2011. The applicant has consistently stated since his arrival in Australia that they are separated and there is nothing in the evidence before me which leads me to doubt this assertion. I accept that the applicant and [Ms D] are separated.

Applicant's religion

26. The applicant claimed to have converted to the Christian faith during his time in Australia. The delegate did not accept that the applicant had genuinely converted to this faith and considered his responses at interview generic in nature. For the reasons below, I have reached a different conclusion on this matter.
27. I consider the applicant provided detailed oral and written evidence regarding his conversion, providing a coherent narrative on his introduction to the faith in 2017, at a time of instability in his mental health when he was experiencing suicidal ideation and was in great distress. I note this evidence is supported by the reports of [Dr C] and his GP confirming he was experiencing suicidal ideation at that time. The applicant was also able to explain why he was attracted to Christianity, including the principles of forgiveness of one's sins and the belief in a peaceful life. He stated that matters align with his personal beliefs. Given my accepted findings regarding the applicant's mental and physical health, these aspects of his evidence have an air of credibility and I accept his statements on this matter.
28. The applicant provided a certificate of Baptism confirming that he was baptised into the Christian faith by [Rev A] at [Church 1] [in] July 2018. [Rev A] has also provided two supporting letters dated 10 February 2021 and 16 April 2021 respectively. In these letters, [Rev A] confirms that he was the Senior Pastor to [Church 1], a Farsi speaking congregation, between 2013 and September 2020. He states that he was the one who provided the applicant with his first bible (in Farsi) so he could read the bible and get to know Jesus. He confirmed that the applicant worshipped regularly at the Church for a year, that he completed [Course 1] (required to enable an individual to be baptised), and was judged to be sincere in the commitment to the faith by three leaders of this course as well as by [Rev A] himself prior to his 2018 baptism. [Rev A] detailed the requirements of this course (12-15 contact hours with an interactive format) and noted that this course was used as a means to weed out non-genuine converts to the faith. He also noted that, in his view, the manner the applicant came to discover Christianity (through a dream) is entirely typical of his experience with Iran Christian converts and the significance they place on dreams within their spirituality. Relevantly, [Rev A] states that it is his belief that the applicant has a genuine commitment to the Christian faith.
29. I note that [Rev A]'s area of expertise within the Church is the conversion of people to Christianity, particularly those from a Muslim background. He has 20 years full time experience as an ordained Anglican minister and has led hundreds of people to convert to the faith. In his role, he was engaged with training new believers and usually met with them twice weekly. He has worked internationally and engaged in study in this area. I consider that [Rev

A] is experienced to evaluate the genuineness of an individual's conversion and give weight to his opinion.

30. The applicant has also provided a letter dated 10 February 2021 from the current pastor of the Church, [Rev I]. This confirms that the applicant began attending church with a friend in 2017, completed [Course 1] at which he was a regular attender and engaged well, and confirms that he has continued his Church attendance since his baptism. [Rev I] considers the applicant needs to learn more to become a mature Christian but states his unhesitating belief regarding the applicant's genuine faith and commitment to the Christ. The applicant's friend [Mr B] has also attested to the continuation of the applicant's Christian faith stating in his statutory declaration that they had regularly discussed the applicant's faith and that the applicant would often pray with him in times of need.
31. I find the evidence before me regarding the applicant's religious conversation compelling. I give weight to the credible unembellished manner in which the applicant presented his evidence and the supporting material provided by [Rev A], [Rev I] and [Mr B]. On the evidence before me, I accept that the applicant has genuinely renounced Islam and converted to the Christian faith. I am also satisfied that he has done so other than for the purpose of strengthening his claims for protection, including for reasons related to his mental and physical health, and because he wanted a new life. Accordingly, s.5J(6) of the Act is not enlivened in this case.
32. When asked what he would do on return to Iran, the applicant stated he would not follow the Muslim faith, that he would continue to follow Christianity. He gave evidence that he currently 'spreads the good word' proselytising to others he meets, including for example on public transport. [Rev A] confirmed that all converts at [Church 1] are taught that they have a responsibility to share their faith with others and that they are encouraged to evangelize. The applicant credibly demonstrated how he currently engages in such conversations during his protection visa interview, and in his statement to the IAA, [Rev A] stated that he believed the method adopted by the applicant, of asking key to open up a natural conversation regarding religion and enabling him to share his personal testimony and journey was an effective means of fulfilling the obligation to evangelize. Further, the applicant's [social media] pages provided to the IAA demonstrate he has been posting Christian videos and other material, including on key dates such as Easter from at least April 2020, which supports his claims to have been evangelising. I accept that the applicant engages in evangelical/proselytising activities here in Australia. He has stated that he would continue to do so on return to Iran, and I accept this is the case.
33. Iran is a theocracy with Islamic beliefs and customs enshrined in law.⁷ Shi'a Islam is the official state religion and the constitution requires that all laws and regulations be based on (Shi'a) Islamic criteria and the law prohibits citizens from converting from Islam to another religion and apostates (those who leave Islam) are seen as a threat to the regime.⁸ The Christian, Zoroastrian and Jewish religions are the only recognised non-Muslim faiths in Iran and they are granted some freedom to practise their faith and to comply with their own canon in their personal affairs and religious education.⁹ However, Christians and Christian churches must be registered with the authorities, and only recognised Christians can attend

⁷ DFAT 2020 Report; UKHO 2020 Report; United States Department of State (USDOS), 'Country Reports on Human Rights Practices for 2019 - Iran', 11 March 2020, 20200312093514 (USDOS 2019 Human Rights Report); USDOS, 'Iran 2018 International Religious Freedom Report, 21 June 2019, 20190627091702 (USDOS Religious Freedom 2018 Report).

⁸ DFAT 2020 Report; USDOS Religious Freedom 2018 Report.

⁹ DFAT 2020 Report; USDOS Religious Freedom 2018 Report

church.¹⁰ DFAT states that there are approximately 20 officially recognised Christian Churches in Iran all of which pre-date the 1979 Islamic Revolutions and those recognised are: ethnic Armenians, Assyrians, Chaldeans and Sabeen-Mandean.¹¹ Security officials monitor registered churches to ensure the services are not held in Farsi (to avoid proselytising), and conduct identity checks to confirm that non-Christians or converts do not participate in services.¹² Any unrecognised Christian group is considered to be a house church and, due to the restrictions facing registered Churches, many converts to Christianity are forced to find appropriate house churches to pursue their faith.¹³

34. There has been a growth in the number of house churches in Iran and they exist across the country varying in size and structure: some are part of house bigger network, but others are small groups consisting of friends and family.¹⁴ Iranian authorities monitor these groups as they are considered a threat to national security installing informants in the congregation and raids are conducted on these churches, particularly those that actively proselytise or seek out new members.¹⁵ Small, self-contained house church congregations that maintain a low profile and do recruit new members may face some monitoring and low-level harassment.¹⁶ Larger congregations which proselytise and that have connections to broader house church networks are more likely to face arrest and prosecution as are leaders of these churches.¹⁷
35. Under Iranian law, a Muslim who leaves his or her faith or converts to another religion can be charged with apostasy.¹⁸ DFAT advises that apostasy and blasphemy cases are no longer an everyday occurrence in Iran, however authorities continue to use religiously-based charges (such as ‘insulting Islam’) against a diverse group of individuals, including Muslim-born converts to Christianity.¹⁹ Some religiously-based cases have clear political overtones, while other cases seem to be primarily of a religious nature, particularly when connected to proselytisation.²⁰ In 2017, a 21 year old found to have made social media posts critical of Islam and the Quran while on leave from military service, was sentenced to death, though it is unclear whether this has been carried out.²¹ DFAT advises that death sentences in apostasy and blasphemy cases are rare and assesses that those accused of religiously-based charges are more likely to face charges related to national security. In these cases the individuals are unlikely to have adequate legal defence, and are likely to be convicted.²²
36. In early 2018, 20 Christian converts participating in a workshop were arrested.²³ Those individuals were subsequently released, however, in 2019 four Christian converts were sentenced to 10 years in prison and another 114 were arrested on charges of proselytising.²⁴ More recently, in December 2019 nine converts were sentenced to five-year prison terms,

¹⁰ DFAT 2020 Report.

¹¹ Ibid.

¹² DFAT 2020 Report; UKHO 2020 Report; USDOS Religious Freedom 2018 Report; and Danish Immigration Service (DIS) and Danish Refugee Council (DRC), ‘Iran: House Churches and Converts’, February 2018, CIS7B83941873 (DIS and DRC House Churches 2018 Report).

¹³ DFAT 2020 Report; and DIS and DRC House Churches 2018 Report.

¹⁴ DFAT 2020 Report; UKHO 2020 Report; and see DIS and DRC House Churches 2018 Report.

¹⁵ DFAT 2020 Report; UKHO 2020 Report; and see DIS and DRC House Churches 2018 Report.

¹⁶ DFAT 2020 Report.

¹⁷ Ibid.

¹⁸ DFAT 2020 Report; USDOS Religious Freedom 2018 Report.

¹⁹ DFAT 2020 Report.

²⁰ Ibid.

²¹ Ibid.

²² Ibid.

²³ Ibid.

²⁴ Ibid.

and in July 2020, nine Christians were arrested from the home of a Christian convert in Tehran.²⁵

37. DFAT considers that authorities do not actively search for converts and in 2020 the United Kingdom Home Office (UKHO) advised that simply converting to Christianity is not enough to put a person at risk of persecution, rather whether they face a real risk of harm will be determined by their actions, activities and the degree to which their conversion is visible. DFAT states that Muslim converts to Christianity who maintain a low profile do not face a risk of harm and this appears to include those who convert abroad. However, DFAT considers that converts will risk arrest and detention if their conversion is revealed, and both the UKHO and DFAT advise that those found to be proselytising face a high risk of arrest, prosecution, and imprisonment.²⁶ Moreover, recent reports from DFAT, the United Nations General Assembly and the United States Department of State (USDOS), have all indicated that that torture and other mistreatment of detainees continues to occur in Iranian detention facilities, including as a means to extract information.²⁷
38. On the evidence before me, I find that the applicant has genuinely adopted the beliefs and values of Christianity and that will continue to adhere to this faith on return to Iran. I accept he will seek out opportunities and people to share his faith with others and that by necessity he will attempt to find a house church. I accept that evangelizing is a tenant of his Church, that he will openly discuss his beliefs in Christianity as claimed. I consider that in doing so there is a real chance he will come to the attention of the Iranian authorities in the process of seeking to follow, practise or proselytise on his religious beliefs, I accept that he would be considered a convert or apostate. Given the independent information above and his very particular circumstances, I consider that there is a real chance he would be arrested, detained, and questioned. Noting credible information from DFAT, USDOS, and the UN General Assembly that torture and other mistreatment of detainees continues to occur in Iranian detention facilities,²⁸ I am satisfied that there is a real chance he will face serious harm during any period of arrest, detention and questioning. On the information from DFAT and the UKHO, if charged and convicted there is also a real chance that he would be imprisoned. I am satisfied that he faces a real chance of serious harm on return to Iran now or in the reasonably foreseeable future due to his religion.

Other claims

39. As set out above, the applicant has also claimed to fear harm on return to Iran as an Arab man who refused to be recruited by the Iranian Intelligence Services, and as a failed asylum seeker/returnee from the West. However, given I have found in favour of the applicant on another basis, I have not reached a concluded view on whether the applicant faces a real chance or risk of harm on return to Iran for reasons associated with a past dispute with his former wife's family, as an Arab man who refused to be recruited by the Iranian Intelligence Services, or his status as a failed asylum seeker/returnee from the West. These are matters which may be subject to consideration in the future.

²⁵Ibid; and Opendoorsuk, 'Twelve arrests. Three cities; One Day', 14 July 2020.

²⁶ DFAT 2020 Report; and UKHO 2020 Report.

²⁷ DFAT 2020 Report; and United Nations General Assembly, 'Situation of human rights in the Islamic Republic of Iran: Report of the Special Rapporteur on the situation of human rights in the Islamic Republic of Iran', 28 January 2020, 20200228105335; USDOS Human Rights 2019 Report

²⁸ DFAT 2020 Report; and United Nations General Assembly, 'Situation of human rights in the Islamic Republic of Iran: Report of the Special Rapporteur on the situation of human rights in the Islamic Republic of Iran', 28 January 2020, 20200228105335.

Conclusion.

40. On the totality of the evidence before me, including the independent information and the applicant's claims and particular circumstances, I am satisfied that he faces a real chance of serious harm in the form of a threat to his life of liberty and significant physical ill treatment or harassment on return to Iran now or in the reasonably foreseeable future. I am satisfied that such treatment amounts to persecution, that it involves systematic and discriminatory conduct, he faces this treatment for reasons of his religion, and that this is the essential and significant reason for his persecution.
41. As the harm he fears is perpetrated by the authorities, and these issues will be present throughout Iran, I am satisfied the chance of harm relates to all areas of the country and that the applicant would not be able to obtain effective state protection against the persecution he fears. Further as the persecution relates to his religious beliefs and practice, I am not satisfied that he can be required to take any reasonable steps to modify his behaviour to avoid a real chance of persecution.

Refugee: conclusion

42. 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.