



Australian Government

Immigration Assessment Authority

Decision and Reasons

Referred application

IRAN

IAA reference: IAA21/09702

Date and time of decision: 30 September 2021 14:57:00

J Bishop, Reviewer

Decision

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

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

Background to the review

Visa application

1. The referred applicant (the applicant) claims to be a citizen of Iran. He arrived in Australia by boat [in] May 2013.
2. On 25 August 2017 the applicant lodged an application for a Safe Haven Enterprise Visa (SHEV). On 16 August 2021 a delegate for the Minister for Immigration (the delegate) refused the applicant's visa. The delegate determined the applicant did not face a real chance of serious harm or a real risk of significant harm now or in the foreseeable future in Iran.

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) (the review material). No further information has been obtained or received by the IAA.

Applicant's claims for protection

4. The applicant's claims to fear harm in Iran because he has:
 - abandoned Islam; and
 - converted to Christianity.

Include if making findings of fact prior to applying the legal criteria: Factual findings

5. The applicant provided copies of his untranslated birth certificate and certified copies of his Iranian driver's licence and its translation. He also provided a certified copy of his Iranian Exemption from Military Service record and its translation. For the purposes of this decision I accept the applicant is who he claims to be. I accept the applicant was born in Iran and is an Iranian citizen. I find the receiving country is Iran.
6. The applicant is on remand pending criminal proceedings and he attended his SHEV interview via the telephone with his migration agent. The applicant has not been convicted of any criminal offences and he is presumed innocent until he is. I do not know what criminal proceedings are pending and being on remand is not relevant to the assessment of the applicant's protection claims. I have had no regard to the applicant being on remand except to the extent that his current circumstances relate to his claim of being a Christian convert as outlined in the decision below.

The applicant's family in Iran

7. The applicant is the youngest child in his family and claims to have [specified family members] living in Iran. All his siblings are married and living in Tehran except one [sibling] who lives in Rasht. His father retired in 2011 and left his business to two of the applicant's brothers. His mother is a housewife. The applicant claimed he was never close to his father and brothers. He claims he was never able to talk to them about things and it was 'always cold'.

8. During the SHEV interview the applicant confirmed [a number] of his brothers work at the family's [shop] and one brother lives in Rasht working as [a specified occupation]. His sisters are married and do not work. The delegate asked the applicant if he has contact with his family and he responded that he only has contact with his mother. His father and brothers do not like that he has changed his religion. He last spoke to his brother about six months ago when he was speaking to his mother. His mother is aware of his current circumstances. The delegate asked if he told his brother about his current circumstances and he responded he wouldn't be able to help him.
9. During the applicant's arrival interview he said he went to [Country 1] on holidays with his brother in 2010, he gave his [brother's] telephone number as an emergency contact and one of his brother's arranged and paid \$5,000 to \$6,000 for him to travel to Australia. And, the applicant's response that his brother wouldn't be able to help him in his current circumstances did not indicate his brother wouldn't help but that his brother couldn't help. I accept the applicant has siblings and parents living in Iran. I accept his brothers own and work in a [shop]. I accept the applicant has regular contact with his mother. But I am not satisfied the applicant has a cold relationship with his father and brothers and I am not satisfied his relatives would not assist him if he returned to Iran.

2007 incident

10. In late 2006 the applicant claims he met a girl called [Ms A] on the way back from school. She was the applicant's first girlfriend - which was taboo in his family - so he didn't tell them and met [Ms A] in secret. In March 2007 the applicant went to [Ms A's] home where she was alone. [Ms A] was from a conservative Muslim family and when her father returned home and caught them he was furious. He beat [Ms A] and then the applicant. The applicant fled and that evening [Ms A's] father came to the applicant's house and spoke to the applicant's father. The applicant's father beat the applicant severely and was upset. He told the applicant he had brought shame upon the family.
11. The applicant's father didn't allow him to return to school and forced him to work at his [shop]. The applicant was a good student and was upset about being withdrawn from school.
12. During the SHEV interview the delegate asked the applicant if he went to high school and he said he went for a few months but his father and brothers asked him to go to work. When the delegate asked what happened when he went to work, he responded he was just asked to go to work. The delegate asked if anything had happened in his personal life for his father to give him that directive he responded that he met a girl and was given a terrible time. He said he went to the girl's house and the girl's father came and beat the applicant and the girl. The girl's father then talked to the applicant's father and his father told him he didn't deserve to go to school. Even before the incident with the girl in 2007, the applicant said he didn't have the right to speak to anyone about his private life and he couldn't speak about religion to anyone. 'They' just wanted to force upon the applicant that Islam is the only religion and there is no other religion in the world. When the delegate asked the applicant how his family treated him after the incident with [Ms A] he responded 'nothing', he just had to work like a robot. He had to go to work and then come home.
13. The applicant's first response was that he left high school because his father and brothers asked him to work in the family business. He did not discuss the incident with [Ms A] until the delegate gave him a specific prompt about his personal life. I accept the applicant was involved in an incident with a girl in 2007 as claimed but I am not satisfied that is the reason he left school. I am not satisfied the applicant's father stopped him from going to school

because he didn't deserve to go. I find the more plausible reason is that the applicant's father and brothers wanted the applicant to work in the family business.

Non-practising, non-believing Muslim

14. The applicant's written evidence is that he was raised in a practising Shia family. His parents and brothers were strict about adhering to Islamic rituals. His father and [specified] brothers were actively involved in their local mosque and are respected members of the community.
15. The applicant claims that since he was a child he was forced to do daily prayers and fast during Ramadan. He was taught that he would be punished by Allah for failing to practice Islam. However, the incident in 2007 (as outlined above) which forced the applicant to withdraw from school made him question Islam. He was working in a [retail area] run and under the control of state backed mafia. He interacted with Muslims pretending to be pious but were involved in corruption. What he witnessed made him alienated from Islam to the point where the applicant didn't see himself as a Muslim.
16. During the applicant's SHEV interview the delegate put to him that he described making some observations of others when he was working. The delegate asked the applicant to tell him about them and he responded that people had to follow what others were doing but he wasn't like that. He wanted to be free and couldn't just follow. The delegate put to the applicant that he mentioned dealing with people pretending to be pious Muslims and asked him to tell him about that. The applicant responded people would do things because they had to. That is how things are in Iran. For the third time the delegate put to the applicant that he was drawing his attention to the Muslims engaged in corrupt conduct and asked him to tell him about that. The applicant responded the final year he couldn't take it anymore. He could see people pretending to do this and that and he would ask them why are you doing this. The delegate asked for a fourth time to tell him about that and the applicant responded people in the neighbouring shops would come and annoy him and herasat would investigate. He said in the middle of Ramadan he would take food with him to eat and he would be asked why he was doing that. When the delegate asked the applicant what happened he responded that he didn't like the environment because people forced you to do things and he wasn't observing those things. He couldn't understand why he had to close the shop at noon and go for prayers. The delegate asked if there were other incidents in Iran that caused him to further question Iran and he responded that he worked in a religious closed environment and people were not allowed to wear jeans and things like that.
17. The delegate asked the applicant numerous times to discuss what he witnessed when he was working that made him alienated from Islam but he was unable to provide any examples. Instead he discussed what he did in Ramadan that drew adverse attention from others. I am not satisfied the applicant witnessed anything while working that alienated him from Islam. Nor am I satisfied that the applicant was alienated from Islam because he worked in a closed religious' environment and people were not allowed to wear jeans.
18. The applicant claims he wouldn't pray and criticised Islam in front of his friend and other shopkeepers. When the delegate asked how people around him responded to him not engaging in Islamic practices, he responded that the way they looked at you they think you come from a different world and treat you based on that. I am prepared to accept the applicant was a non-believing, non-practising Muslim when he left Iran. However, I am not satisfied he wouldn't pray or criticised Islam in front of others as claimed.

19. The applicant claims his non-practising of the Muslim faith became serious to the point that on a few occasions herasat called him to their office and questioned him about what he had said. In February 2013 the applicant was called to the herasat office for the last time. He was shouted at and accused of being kafir. He was told he would not be tolerated anymore. They spoke to the applicant's brothers and threatened to seal up their shop. After this the applicant claims he feared showing up at the shop to work.
20. During the applicant's SHEV interview the delegate asked him to tell him about when he was called into the herasat office. The applicant responded that members of the herasat realised he wasn't doing things. When he was called he was asked why he didn't act normally like being one of them. The applicant said he was terrified and worried he would be jailed or killed because he didn't have faith in god and didn't worship god. The applicant said he wasn't confident and couldn't go back to work. When the delegate asked when this happened he responded before he came to Australia. When the delegate asked how long before he came to Australia, he responded that he didn't know exactly maybe a month or two beforehand. When the delegate asked the applicant if his family were aware he had been called to the herasat office he responded they closed down the shop and his family blamed him. The delegate put to the applicant that the shop was re-opened at some point and the applicant responded because he quit and didn't go there anymore. He said they force you to do everything.
21. The delegate asked if there was a particular incident that led him to be detained by herasat and he didn't answer the question. He responded that he thought they were humans and were going to talk to him like humans but it was horrifying. The delegate repeated the questions and the applicant responded that they kept saying he wasn't a Muslim and whatever they said he said yes because he wanted to run away. The delegate put to the applicant that he had mentioned eating during Ramadan and asked if there was anything else that led herasat to want to talk to him and he responded that they asked him why he didn't speak like a Muslim and act like a Muslim and respect Islam.
22. The applicant's oral evidence about what happened to him when he attended the herasat office was unconvincing. Despite multiple prompts from the delegate for more information his evidence was that herasat asked him why he wasn't acting normally and said he wasn't a Muslim. His written evidence was herasat spoke to his brothers and threatened to close their shop. His oral evidence was that his family became aware that he had been called to the herasat office because herasat closed their shop. Based on the evidence before me, I am not satisfied the applicant was ever of interest to the herasat. I am not satisfied the applicant was ever called to herasat offices and questioned as claimed. Nor am I satisfied the applicant's family shop was ever threatened with being closed or closed as claimed.
23. In around March 2013 the applicant decided to leave Iran. He feared he would face criminal charges and imprisonment for criticising and insulting Islam as he has been an outspoken person by nature.
24. During the SHEV interview the delegate asked the applicant what his family thought about him leaving Iran and he responded that he didn't tell them. He said on the last day he just said good-bye to his mother. He said his family would have caused problems if they knew. When the delegate asked what problems, he responded he would have been stopped and not allowed to go. The delegate put to the applicant that he was trying to understand why his family would try and stop him from leaving Iran and he responded because he would cause problems for his family as well. People would say that their brother has left and gone overseas. He said 'they' see living in another country as something that is really bad.

However, during the applicant's arrival interview he said his brother arranged and paid for his travel to Australia.

25. I am not satisfied the applicant didn't tell his family he was leaving Iran as claimed. Nor am I satisfied his family would try to stop him or that living in another country is something that is seen as really bad.
26. The applicant's evidence is that he left Iran via the airport using his genuine passport. I accept that claim.

Conversion to Christianity

27. The applicant claims in October 2013 he relocated to Melbourne and had been suffering depression for a long time. He didn't have work rights and had difficulties understanding English. The applicant always believed in god and needed his presence in his life. Since he had abandoned Islam he was confused about the notion of god. In about March 2016 his friend IB introduced him to [Church 1]. IB was the applicant's housemate in 2014 and they had become close friends. IB is a devout Christian and, every time they met, he would talk to the applicant about Christianity and how it had changed IB's life.
28. The applicant claims that the first time he stepped into [Church 1] he was impressed by the number of people present. He continued to attend the church every Sunday and would attend the church on Tuesday evenings. The applicant met many people who shared their story and how Christianity had changed their life and perception of spirituality. [In] October 2016 the applicant was baptised. Since his baptism the applicant has embraced Christianity.
29. During the SHEV interview the applicant repeated his claim of becoming interested in Christianity through his friend. He said since he was a child he saw people crying and beating themselves at the mosque and it scared him. But when he went to [Church 1] for the first time everyone welcomed him and he felt like a human. When the delegate asked the applicant to describe his first experience of going to [Church 1] he responded that it was a big church of about 1300 people who welcomed him and were very friendly to him. The delegate asked the applicant why he went back to [Church 1] and he responded he started going on Sundays and sometimes on Tuesday afternoons. He was researching the religion and talking about it with other people like him. The delegate asked the applicant if he could remember some of his research and he responded he started asking people who spoke his language and had converted. He then got some books, did some research and investigations and started watching videos. The delegate asked what stood out to him about Christianity when he was doing his research and he responded the religion was compassionate, respected people and didn't force people to do anything.
30. When the delegate asked the applicant to describe what happens during a ceremony at [Church 1] he responded that when he first started going he found out it was a big family and he was part of that family. When the delegate asked the applicant what happened at the start of [a Church 1] ceremony he said everyone starts signing together. When the delegate asked the applicant what happened after the songs had been sung he responded he had researched and investigated the religion and then got baptised. The delegate put to the applicant that he wanted to know how a ceremony at [Church 1] unfolded. The applicant said the father starts speaking about good things god's son has done for the people, about not being annoying, about not bothering people, about the religion and all these things. When the delegate asked what some of the things 'he' did for the people were the applicant

responded “many many things”. He was Jesus Christ the son of god and would show people the path of god.

31. The applicant’s evidence is that he spoke to people who could speak his language and had converted, he bought books, he conducted research and investigations and he watched videos. He attended [Church 1] – at a minimum - on Sundays, and sometimes on Tuesdays, from March 2016 until about 2019. Yet the level of detail the applicant was able to provide about what stood out to him about Christianity and what happened at [Church 1] was not consistent with a person who had bought books, conducted research, spoke to people, attended such ceremonies well over 150 times and who claimed to have embraced the religion. I am prepared to accept the applicant attended [Church 1] but I am not satisfied he has attended on a regular basis as claimed. I accept the applicant has some superficial understanding of the Christian faith, but I am not satisfied he researched, investigated or watched videos about the Christian faith as claimed.
32. In support of the applicant’s claims of conversion to Christianity he provided a certificate of baptism dated [in] October 2016 from [Church 1]. During the SHEV interview the delegate asked the applicant why he decided to become baptised and he responded that he continued to attend the church and was told that to accept this religion you had to be baptised. When the delegate asked the applicant what preparations he had to do for his baptism he said he was given an explanation of what was going to happen. He would stand before the crowd, the father would take him to the bath, he would be baptised and then he would pray with the other people attending. When the delegate asked the applicant how it felt to be baptised he responded that it meant he was born into a new world and became a Christian. It meant he had to read more and his life changed. I accept the applicant has undergone the ritual of baptism at [Church 1] and that he has a rudimentary understanding of what that ritual means in the Christian faith.
33. The applicant’s written evidence is that he has established a spiritual and meaningful connection with god. The delegate asked the applicant to describe his relationship with Jesus Christ and he responded that he is his saviour and the Holy Spirit (although I note Jesus Christ is not the Holy Spirit). He said when Jesus came into his life there was no sadness and everything was different. He said life was going well for him and everything was in the right place. No one was forcing him to do anything anymore. The delegate asked the applicant how he achieved closeness with god and he responded before he thought god belonged to Islam but he knows differently now. He said whatever he wants from god, god will give to him. When the delegate asked the applicant how he communicated with god he responded again that whatever you want, ask from a pure heart and it will be given to you. He will give you blessings and says not to take things that don’t belong to you, don’t bother or annoy other people and don’t blame or judge others. The delegate asked the applicant how becoming a Christian had changed his life and he responded he was not angry or sad anymore. In Iran he thought that was normal but he has become a normal person. In Iran people are forced to accept Islam and from a Christian point of view that is not right.
34. The applicant claims to have started his Christian journey in March 2016 and claims to have embraced the religion. However, he was unable to describe how he achieved closeness with god, how he communicated with god or what his relationship with Jesus Christ was. And, becoming a Christian changed his life because he is not angry or sad anymore. The applicant’s answers did not demonstrate he has a spiritual and/or meaningful connection with god and I am not satisfied that he does. Nor am I satisfied he is not angry or sad anymore because he has become a Christian.

35. The delegate asked the applicant if there were particular teachings of Jesus Christ that resonated with him on a personal level and he responded Jesus said when you pray you shouldn't do that in public or in the presence of others. Jesus said that if you are helping someone your left hand and left arm shouldn't be aware of what your right hand is doing. When the delegate asked the applicant how these teachings translated into his own life and actions, he responded that when he compared the two religions Islam tells you what to wear and how to pray. He said 'this' religion doesn't force you, it just tells you not to do things in public. He said the way you pray is different and encourages you to help each other. When the delegate asked if there were any other teachings of Jesus that were important to him the applicant responded that Jesus said not to make a life in this material world but build things in another life. He said Jesus said not to find fault with other people, not to poke your nose in other people's lives because they will do the same to you, if you ask for 'it' it will be given and if you work hard for what you want it will be achieved. The applicant said if the son asked his father for bread the father would not give him a stone. He said Jesus has told him how to live like a normal person and he follows Jesus.
36. The delegate asked the applicant if there was a particular prayer that he said on a regular basis and he responded the Lord's Prayer. He said 'holy father in heaven give us the bread' but he then said he couldn't remember the whole thing. The delegate asked the applicant if he could say any other verses and he responded 'give us our bread for today and forgive us for the sins that we have made forgive other people's sins as I have forgiven other people's sins'. The delegate asked the applicant the importance of that prayer to him and he responded to live a life without sin and not to hurt other people. Just to live life like a human being.
37. If the applicant did recite the Lord's prayer on a regular basis I find it astounding he was unable to recall most of its words. And, his reasons as to why that particular prayer was important to him did not appear to align with the words that he did recite. I am not satisfied the applicant regularly recites the Lord's Prayer or that prayer has importance to him.
38. The delegate asked the applicant if being on remand had affected his relationship with god and he responded that it had. He said the only thing that has helped him hold on and hang in there is the prayer and getting closer to god. He realised whatever you want from god that god is going to give it to you. And, this period was a test for him. When the delegate asked the applicant how his Christian faith had helped him meet that test he responded becoming stronger, thinking and praying. He said when he leaves, he will not make the mistakes he has made in the past and try to purify himself.
39. The delegate asked the applicant how he practised his Christian faith while he was on remand and he responded [Reverend A] comes to see him every week but because of COVID19 the chapel hasn't been opened for a while. The delegate asked the applicant if he could obtain a reference from [Reverend A] about his Christian practice while on remand and he responded that he could.
40. On 9 May 2021 the applicant's representative sent a typed letter to the delegate. The letter was headed 'Character Reference' for the applicant and dated [in] May 2021. The letter stated:

It is my pleasure to give a character reference for [the applicant].

I have had regular contact with [the applicant] over these past months and have always found him to be polite, and extremely respectful and caring of others.

My experience has shown [the applicant] demonstrating great commitment to whatever he avails himself, and is always supportive of his fellow inmates were possible. He is interested in furthering his knowledge of the Christian faith, thus, has consistently attend services whilst incarcerated.

I can only speak highly of [the applicant] who has presented to be trustworthy and a person of sincere integrity.

I can be contacted if needed at anytime.

41. The letter is signed by [Reverend A, with family name A variant].
42. On 25 June 2021 the delegate sent the character reference to the Reverend via an email and asked for a contact number so he could have a discussion with her about it. That same day the Reverend responded. The Reverend stated "Thank you for sending attached reference. I now recall the incident, and as I have had no further contact with [the applicant] at [the prison] since that time, I am no longer involved in this matter." The email was signed off [Reverend A, with family name A]".
43. On 7 July 2021 the delegate wrote to the applicant and provided the following information and invited him to comment:

The referee for the 'Letter of Support' you provided as evidence of your conversion to Christianity was contacted to verify the letter and your practice of Christianity whilst on remand. Although [Reverend A] acknowledged and endorsed the letter you provided she indicated she no longer has any involvement in your matter. This suggests to me you are no longer engaging with [Reverend A] for the purpose of formally practising your Christian faith. This raises a concern regarding the genuineness of your conversion to Christianity and ongoing practice of Christianity whilst on remand.

I have also been unable to locate your [social media] account wherein you have claimed a video of your baptism at [Church 1] was uploaded. This suggests that you do not have a [social media] account, or that your account is not registered under your name. This may lead me to find that the Iranian authorities would be unable to identify you as a person who has converted to Christianity on the basis of your social media activity, as your account either does not exist or is not listed under your name.

44. The applicant's representative responded to the delegate's letter and stated the applicant told him [Reverend A] stopped attending the remand centre in and around January 2021. The applicant believes it is for this reason that [Reverend A] stated she no longer has any involvement in the matter. The applicant's representative urged the delegate to contact [Reverend A] again for clarification.
45. There are several inconsistencies about the letter of support provided by the Reverend. Firstly, the last name of the Reverend is spelt [family name A variant] on the letter but the Reverend's correct name is [family name A]. I find it implausible a person would not notice her name, bolded under where she purportedly signed, would fail to notice it wasn't spelt correctly. Second, the letter states the Reverend had regular contact with the applicant over these past months and this was consistent with the applicant's oral evidence given during his SHEV interview. However, this is not consistent with the applicant's later evidence that the Reverend had not been attending the remand centre since about January 2021. Third, the letter stated that the applicant had been consistently attending services whilst incarcerated but the applicant's oral evidence, during his SHEV interview, was the chapel had been closed for some time due to COVID19. And, lastly, the Reverend's response to the delegate's email was not clear. She stated that she now recalled the 'incident' but had no more involvement

with the applicant since that time. The Reverend's letter was written [in] May 2021 and just six weeks later she stated she had no more involvement with the applicant. I have serious doubts about whether [Reverend A] did in fact write the letter of support provided for the applicant. However, even if I accepted the Reverend did provide the letter in May 2021, by June 2021 she was not willing to discuss the matter with the delegate and had no further involvement. This raises doubts about whether the Reverend continued to have the opinion she purportedly expressed in the letter about the applicant.

46. Based on the evidence before me, I am not satisfied the contents of the letter of support is still reliable. However, I am prepared to accept the applicant had some contact with [Reverend A] while he has been on remand but I am not satisfied he had regular contact with her as claimed. I am not satisfied he attended services "consistently" or that he had a genuine interest in furthering his knowledge of the Christian faith. Nor am I satisfied being a Christian has helped him while he is on remand.
47. The applicant's written evidence is that he proudly introduces himself as a Christian to the community and his friends and family are aware of his conversion. When the delegate asked the applicant how people in Iran would be aware he has converted to Christianity he responded that people will know because a friend posted his baptism on [social media] and he told his family he had converted.
48. During the SHEV interview the applicant said his family was aware of his conversion to Christianity. He told his mother and his mother told the rest of his family. His mother didn't like that the applicant had converted and his family don't have any respect for him. The delegate asked the applicant if he talked to non-Christians about his faith and he responded that his name and surname indicate he is a Muslim and for that reasons he doesn't talk to anyone about it and fears talking about it. The delegate asked the applicant if he had ever talked to Muslims about his Christianity and he responded no. He said he is in prison and his life would be in danger because they wouldn't understand. When the delegate asked the applicant if he spoke to atheists, he responded he speaks to Christians about Christianity in prison. The delegate asked the applicant how important it was to him to spread the word of god and he responded that he could tell non-Christians about the benefits of Christianity, the words of god and about the compassion and love. When the delegate asked if he had spoken to non-Christians before going to prison he responded that it was his duty to speak to people with no faith or religion about Christianity and to tell them to go to church with him. But it is their choice in the end.
49. The applicant's written evidence is that he proudly introduces himself as a Christian to the community, his friends and family but his oral evidence was that he didn't talk to Muslims about being Christian but he did talk to Christians about Christianity.
50. The applicant's representative submitted 13 pages of screenshots from the applicant's [social media] account that was in his 'nickname' of [name]. On [a day in] June 2017 the applicant reposted a post headed "I love Jesus" and then a post of thanks to god for all that he has done. On [a day in] August 2017 the applicant posted a picture of a large group of people with the caption "[Church 1]" with a symbol of two hands together, a love heart symbol and the words "my family". [That same day] the applicant reposted a post from another [social media] account with what appears to be a picture of a man portraying Jesus praying in a synagogue. On [several specified days from] June 2017[until] September 2017 the applicant posted a map showing where [Church 1] is in Melbourne and headed the post "[Applicant's nickname] checked in to [Church 1]".

51. On 4 July 2016 the Department sent the applicant a letter inviting him to make an application for a protection visa. The applicant was baptised about two months after the Department invitation and I have concerns he went through a baptismal ritual at that particular time to strengthen his claims for protection. This raises doubts about whether the applicant's evidence is credible.
52. On 21 May 2017 the Minister for Immigration and Border Protection announced that all illegal maritime arrivals had to lodge their protection visa applications on or before 1 October 2017. On 9 June 2017 the applicant was sent a letter from the Department informing him of the Minister's announcement and outlining what would happen if he didn't make an application by the due date. On 25 August 2017 the applicant lodged his protection visa application.
53. If the applicant has embraced the Christian faith, proudly introduces himself as a Christian and believes it is his duty to speak about Christianity to non-believers, I find it astounding he has provided no statements of support from his friends and/or community to support this claim. Nor has he provided evidence of his baptism being posted on [social media]. The applicant's [social media] account is not in his own name and his posts about the Christian faith comprise of [number] posts stating he has checked into [Church 1], a picture of, I presume [Church 1] congregation indicating that was the applicant's family, and two reposts about Jesus. The applicant has posted about [number] Christian posts during the period from [a day in] June 2017 – which was soon after the Minister for Immigration and Border Protection's announcement – to [September] 2017 – about one month after he lodged his visa application. And, the applicant has provided no explanation why there are no Christian posts since that time.
54. Based on all the evidence before me, I am not satisfied the applicant proudly introduces himself as a Christian, believes it is his duty to speak about Christianity to non-believers or that people in Iran - including his family - would know he has converted to Christianity.
55. I have accepted the applicant went to [Church 1] on a number of occasions and went through the ritual of being baptised. And I accept the applicant has some basic knowledge of the religion. However, he could not recall a prayer he claimed to regular pray and is important to him and I was not satisfied he had a spiritual and meaningful connection to god. Given his claimed involvement with the Christian faith, I found his evidence about the religion lacking in detail and unconvincing. I was not satisfied the applicant attended church on a regular basis or went to church during the week as claimed. I am not satisfied the applicant prays on his own. I am not satisfied the applicant has ever held a genuine interest or belief in the teachings of Christianity. Based on all the evidence before me, I am not satisfied the applicant has ever been a genuine Christian or practised the religion. I am not satisfied the applicant ever converted to Christianity.
56. During the SHEV interview the delegate asked the applicant how he would continue to practice his Christian faith in Iran and he responded it was impossible and it was too dangerous. Even if I accepted the applicant had converted to Christianity I am not satisfied he would continue to practice his faith openly upon his return to Iran. Simply converting to Christianity is not enough to put a person at real risk of persecution.¹ Those Christian converts that practise their faith discreetly in Iran, do not face a real risk of harm or ill-

¹ Iran: Christians and Christian converts', UK Home Office, March 2018

treatment.² I am not satisfied the applicant would face a real chance of serious harm in Iran now or in the foreseeable future even if I accepted he had converted to Christianity.

Refugee assessment

57. 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

58. 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.

59. I accepted the applicant was, and is, a non-practising and non-believing Muslim. DFAT reports³ that secularism is widespread particularly in major cities in Iran. But I was not satisfied the applicant made – or would make upon his return to Iran - his beliefs known to others. Religion is a private matter and how one wishes to observe Islam is a matter for the individual. A significant proportion of the population does not attend mosque or pray on a regular basis. DFAT assesses that non-practising Muslims face a low risk of official and societal discrimination in Iran especially in major cities. Based on all the evidence before me, I do not accept the applicant would be viewed as an apostate by the Iranian authorities and would face charges for renouncing Islam. I am not satisfied the applicant faces a real chance of serious harm in Iran because he doesn’t believe or practise the Muslim faith now or in the reasonably foreseeable future.

60. I accepted the applicant was an Iranian citizen who left Iran on a genuine Iranian passport. I accept the applicant no longer has his passport and in order to return to Iran he would need to obtain documentation to facilitate his travel. While officials assist Iranians who wish to voluntarily return, Iranian overseas missions will not issue travel documents to an Iranian whom a foreign government wishes to return involuntarily to Iran. However, Iran and

² DFAT Country Information Report - Iran', Department of Foreign Affairs and Trade, 13 April 2020

³ Ibid

Australia signed a Memorandum of Understanding (MOU) on Consular Matters on 19 March 2018 to facilitate the return of Iranians who arrived after that date and who have no legal right to stay in Australia.⁴ The applicant does not fall into this category and I am satisfied there is not a real chance the applicant will be returned to Iran involuntarily. If the applicant did return to Iran in the foreseeable future, then it would only be on a voluntary basis, using a temporary travel document issued by the Iranian authorities.

61. If the applicant did return to Iran in the foreseeable future, then it would only be on a voluntary basis, using a temporary travel document issued by the Iranian authorities. Those who return on temporary travel documents are questioned by the Immigration Police at the airport about the circumstances of their departure and the reasons for travelling on a temporary travel document. This questioning takes between 30 minutes and one hour but can take longer if the returnee gives evasive answers or is suspected of having a criminal history. Arrests and mistreatment are not common during this process. I accept the applicant would be questioned by the Iranian Immigration Police if he returned to Iran on temporary travel documents. But I am not satisfied the applicant would face a real chance of serious harm from being questioned by the Immigration Police on his arrival in Iran.
62. Millions of Iranians travel into and out of Iran each year without difficulty, including the large Iranian diaspora residing in North America and Europe.⁵ People with an existing high profile may face a higher risk of coming to official attention on return to Iran, particularly political activists.⁶ DFAT's more recent report states that Iranian authorities pay little attention to failed asylum seekers on their return and have little interest in prosecuting failed asylum seekers for activities conducted outside Iran, including in relation to protection claims.⁷ This includes posting social media comments critical of the Iranian government (heavy Internet filtering means most Iranians will never see them), protesting outside an Iranian diplomatic mission, converting to Christianity or engaging in LGBTI activities. I am not satisfied the applicant was of any adverse interest to the Iranian authorities when he left Iran. And although I accepted the applicant attended [Church 1], got baptised and engaged in some Christian activities like posting Christian content on [social media], I am not satisfied the Iranian authorities would have any adverse interest in those past activities. I am not satisfied the applicant would be of any adverse interest to the Iranian authorities if he returned to Iran.
63. I have considered the applicant's personal characteristics and circumstances against the country information before me. Taking into consideration those of his claims which I accept on a cumulative basis, I find that he would not face a real chance of serious harm amounting to persecution, now or in the reasonably foreseeable future.

Refugee: conclusion

64. 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).

⁴ DFAT Country Information Report - Iran', Department of Foreign Affairs and Trade, 13 April 2020

⁵ Ibid

⁶ Ibid

⁷ Ibid

Complementary protection assessment

65. 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

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

- the person will be arbitrarily deprived of his or her life
- the death penalty will be carried out on the person
- the person will be subjected to torture
- the person will be subjected to cruel or inhuman treatment or punishment, or
- the person will be subjected to degrading treatment or punishment.

67. 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.

68. Section 36(2B) provides that there is taken not to be a real risk that a person will suffer significant harm in a country if:

- it would be reasonable for the person to relocate to an area of the country where there would not be a real risk that the person will suffer significant harm
- the person could obtain, from an authority of the country, protection such that there would not be a real risk that the person will suffer significant harm, or
- the real risk is one faced by the population of the country generally and is not faced by the person personally.

69. I have accepted that the applicant may face a low risk of official and societal discrimination for being a non-believing, non-practising Muslim. I have accepted that the applicant would be questioned by the Iranian Immigration Police if he returned to Iran on temporary travel documents. But, I was not satisfied that the applicant would be returning with an adverse profile and I am not satisfied that facing a low risk of official and societal discrimination and/or being questioned by the Immigration Police would ever amount to suffering significant harm within the meaning of s.5(1) and s.36(2A) upon his return to Iran now or in the foreseeable future.

70. The applicant has relatives living in Iran who he remains in contact with. The applicant has worked in Iran for his family's business and he has worked in Australia. I am not satisfied the applicant would not be able to find accommodation and/or employment to support himself if he returned to Iran.

71. I did not accept the applicant would face a real chance of serious harm for any of his other claimed reasons. As the "real risk" test in the complementary protection provisions imposes

the same standard as the “real chance” test applicable to the assessment of “well-founded fear”,⁸ I also find that the applicant does not face a real risk of significant harm for any of his other claimed reasons.

Complementary protection: conclusion

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

Decision

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

⁸ *MIAC v SZQRB* (2013) 210 FCR 505 per Lander and Gordon JJ at [246], Besanko and Jagot JJ at [297], Flick J at [342].

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.