



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

**Decision and Reasons**

**Referred application**

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IRAN

IAA reference: IAA18/05761

Date and time of decision: 26 February 2019 11:51:00

J Stuckey, Reviewer

**Decision**

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

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

## Background to the review

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### Visa application

1. The referred applicant (the applicant) claims to be a citizen of Iran. [In] July 2013 the applicant arrived in Australia as an unauthorised maritime arrival and on 8 December 2016 he lodged an application for a Safe Haven Enterprise Visa (SHEV).
2. On 28 September 2018 a delegate of the Minister for Immigration (the delegate) refused to grant the visa.

### 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).
4. On 16 September 2018 the IAA received a submission from the applicant's representative. The submission attached the following new information:
  - *Letter from [Ms A], volunteer at [Church 1]* – the date of the letter is handwritten and not clear although it looks as though it appears to be 23 October 2018. This letter provides a personal reference for the applicant stating that he was introduced to the church in 2013 and that the church assisted him and his cousin through the Community Care program with food vouchers and furniture for their flat. It also states that the applicant took part in an English program run by the church. I note that in her decision the delegate found that the applicant's Christian conduct in Australia, including attendance at church, was for the sole purpose of strengthening his claim to be a refugee and disregarded this conduct under s.5J(6) of the Act. The letter came into existence after the delegate's decision was made and, as such, I am satisfied that it could not have been provided prior to that date. The letter outlines the church activities engaged in by the applicant. Whilst the applicant's activities were touched upon at the SHEV interview, not all of the activities were explored and there was no exploration of how the church assisted the applicant upon his arrival. I also note that that supporting information was not sought from the applicant and, in the circumstances, I am satisfied that there are exceptional circumstances to justify considering this new information and that s.473DD(b)(i) is met.
  - *Photograph of lashings* – this photograph was before the delegate and is not new information.
  - *Photograph of a scar* – the representative provided a photograph of what appears to be a scar at the back of a man's [Body Part 1], just below the [Body Part 2]. The representative referred to the photo in the context of the applicant's claim to have been shot by authorities in 2012 after filming the destruction of a cemetery. He stated that it is a photo of the wound on the applicant's [Body Part 1] and is evidence of 'the seriousness of the situation'. Whilst I accept that it depicts a scar, there is nothing to confirm that the scar was sustained by a bullet wound and there is nothing in the photograph to identify who the person in the photograph is. The photograph is in my opinion, of no real corroborative or probative value. I am not satisfied that there are exceptional circumstances to justify considering this new information.
  - *Photograph of the applicant's brother's [Country 1] Visa* – the submission states that the delegate made a point that the applicant's brother (who had travelled with him to

Australia) had returned to Iran without penalty. The submission further states that the applicant's brother fled Iran again and was granted permanent residency in [Country 1] due to his situation in Iran, stating that the applicant and his brother shared a number of characteristics which have placed each of them 'in peril' in Iran. This is new information. Whilst the information about the brother's [Country 1] visa may be credible personal information, I do not consider that it has any probative value in relation to the applicant's claims. There is no supporting evidence to verify or corroborate what the brother's claims were and on what grounds he was granted asylum in [Country 1]. Overall I do not consider this information to be of assistance and I am not satisfied that there are exceptional circumstances to justify considering this new information.

5. The substance of the representative's submission raised a number of arguments concerning the delegate's decision, which I have considered.
6. The submission also introduced other information not before the delegate, stating that the applicant is in full-time employment and holds [a specified position] at work. I note that in his SHEV application the applicant stated that he has been working continuously since January 2015. It is difficult to see how this information regarding his employment would have any impact on the consideration of his claims. Overall I am not satisfied that this information may be relevant to the review and, as such, I am not satisfied that it is new information under to s.473DC.
7. The submission referred to an inconsistency in evidence highlighted by the delegate – that the applicant had claimed in his SHEV application that the Christian material found on *his* computer in Iran had been downloaded by the applicant whereas at the SHEV he claimed that the computer had belonged to his brother and his brother had downloaded the material. In his submission to the IAA the representative claimed that the applicant did do the downloading but it had been done for his brother. I have considered whether this is merely a clarification of a misunderstanding or mistranslated evidence but I am not convinced that this is the case. This is new information. This assertion directly contradicts the applicant's own assertion in his statement of claims where he stated "Inside my laptop I had a lot of Christian materials such as the Persian bible..." and more notably that he told the authorities that he had downloaded them so as to understand Christianity better, stating that he was seriously thinking of renouncing Islam. The delegate had specifically asked the applicant on two occasions about the inconsistent account given in the SHEV application and at the interview and the applicant responded by saying that because the hard drive was his brother's and not his, he felt there was no relationship between his brother's case and his. The delegate also explicitly stated at the end of the interview that any additional information provided to the department before a decision is made on the application will be considered. A period of almost five months passed between the interview and the date of the decision. The information now being provided appears to be little more than an attempt to reconcile the different versions of events previously given. On its face I do not regard it as reliable. I am not satisfied that there are exceptional circumstances to justify its consideration or that s.473DD(b) is met.
8. The representative also stated in the submission that the applicant's baptism will take place 'within a few weeks of the date of writing'. The date of writing was over five months ago and yet no confirmation of the applicant's baptism has been received. Given nothing further has been received in relation to this claim I am not satisfied that the assertion is credible or has any probative or corroborative value and in the circumstances I am not satisfied that there are exceptional circumstances to justify its consideration.

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

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9. The applicant's claims can be summarised as follows:

- He was born on [date] in Isfahan, Iran where he grew up with his parents and [siblings]. His family were Shia Muslim.
- In 2012 the applicant travelled to an area outside of Isfahan where he saw excavators destroying a Baha'i cemetery. The applicant filmed the excavating with his mobile phone. Someone saw him doing this and, on the highway back to Isfahan, officers in an unmarked police vehicle told the applicant and his friend to stop but they kept going. The applicant was shot in the [Body Part 1] and woke up the next day in hospital. After a week he was transferred to prison. On the way to prison he was interrogated and tortured for two hours and accused of being a spy.
- Whilst he was detained, the Etelaat went to his house and took all of his electronic devices and found Christian materials in his laptop.
- The applicant was found guilty of promoting and supporting a religion other than Islam and was sentenced at court to [specified duration of] imprisonment. He was also lashed [number] times as part of his sentence.
- Soon after his conviction he was granted bail for a week after his father provided his land title deeds as surety.
- Whilst on bail the applicant left Iran and travelled to Australia via [Country 2].
- The applicant is Christian but is not yet baptised.
- The applicant fears the following if he returns to Iran:
  - He will be executed because he fled while being a prisoner;
  - He will be arrested, interrogated, tortured and eventually executed for a crime which he never committed (being a spy); and
  - as a converted Muslim he will receive the death penalty.

## **Factual findings**

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10. The applicant has submitted copies of Iranian identity documents including a national identity card, an Iranian birth certificate, and an Iranian discharge certificate. On the basis of these and consistent evidence, I accept his identity and nationality as claimed.

## **Events in Iran**

11. At his arrival interview the applicant claimed that he took part in the 2009 election protests in Iran in support of the reformists and that in 2008 or 2009 he was detained by the Basij for two days. The applicant did not include these claims in his SHEV application or at any time during the SHEV application process, even after the delegate repeatedly asked at the interview if he had any other claims. In her decision the delegate made mention of these earlier claims but noted that they had not been raised and noted that the applicant had not claimed to be politically active in any way. She found that the applicant did not have a political profile in Iran. In his submission to the IAA, the applicant's representative asserted that the delegate appeared to have conflated to the 2009 incident with the 2012 incident but conceded that

whilst the 2009 incident might have brought the applicant to the attention of the authorities, it is not significant in and of itself to warrant protection.

12. In the circumstances I am not satisfied that the applicant took part in the 2009 election protests as claimed, or that he was detained by the Basij in 2008 or 2009. I consider that if these events involving the authorities in Iran had occurred as claimed, that they would have been significant events in the applicant's life and I find it difficult to accept that he would not have referred to them at any time during the process of applying for protection. I find his failure to refer to these events, even after being repeatedly asked if he had any other claims to add, indicate that they did not occur.
13. The applicant claims that he rode motorbikes in Iran as a hobby and for relaxation and that one Friday afternoon in September 2012 he and his friend went for a ride outside of Isfahan. His friend was riding the bike and the applicant was his passenger. The applicant claims that they came across a Baha'i cemetery which was being destroyed by excavators. He claimed that he started to film the excavation on his phone as he wanted to show his neighbour friend who was Baha'i.
14. The applicant claims that someone filmed him filming the excavation and when he and his friend returned to the highway back to Isfahan some police in an unmarked vehicle tried to get them to stop. They kept riding and one of the police officers shot the applicant in [Body Part 1] (below [Body Part 2]). The next thing he remembers was waking up in hospital after having [surgery] and claims that he was there for a week. The applicant's description of these events was far-fetched. For example, it seems an unbelievable coincidence that the authorities happened to be covertly filming the applicant at a cemetery in an area, described by the applicant as 'very far from a city', at the same time that the applicant was filming. Also, the applicant has provided no information regarding what happened to the friend who was also on the motorbike or what happened to the footage that the applicant supposedly took of the excavation site. With such limited detail I find it difficult to accept that the applicant was shot in the [Body Part 1] by authorities after filming an excavation site. I also note he provided no medical evidence attesting to his wounds or any treatment received. Without supporting documentation I also find it difficult to accept the claim that the applicant sustained a significant injury to his [Body Part 1]. The delegate asked the applicant if he had any documentation to support his hospitalisation and the applicant replied somewhat nonsensically that 'they' tried not to give him any documents because 'they' were from an intelligence security department.
15. The applicant claims that he was transferred to jail after being in hospital for a week. He claims that whilst being transferred he was taken to an office of the Etelaat and tortured for two hours. Although this is a significant claim the applicant's evidence on this matter was vague and confusing. He claimed that the authorities initially thought he was a spy for the Baha'i or Israel. When discussing this at the SHEV interview he claimed that he was marked as a spy and as a person who had spied for overseas and was a 'betrayed' yet he has provided no explanation of the supposed link between filming a cemetery and being a spy for an overseas entity. He also provided little detail to support what the alleged torture entailed. Aside from claiming that he was interrogated for being a spy, the applicant has provided no information as to how he was tortured, how many people were involved in the torture, or what injuries (if any) were sustained.
16. In his SHEV application the applicant claimed that whilst he was being detained (and tortured) by the Etelaat, the Etelaat went to his home to search for evidence of his spying activities but instead they found considerable information relating to Christianity on his laptop, including a

Persian bible. He said he had a lot of information inside his laptop which he had downloaded to read and to understand Christianity better. He claims that at the time he had been in regular contact with other people who were tired of Islam and had converted to Christianity. He said that since he had finished his military service he was thinking of renouncing Islam and said it was his intention to join those friends who were already converted to Christianity. He claims that after this material was found he was transferred to a prison where he spent six months before being convicted of 'promoting and supporting a religion other than Islam'. The revolutionary court sentenced him to imprisonment for [duration] and to [number] lashes. No documentary evidence has been provided relating to these claimed proceedings.

17. I note that despite these claims in his SHEV application, and despite these claims being reiterated by the applicant's representative in a lengthy letter dated 24 November 2016, at the SHEV interview the applicant's evidence about aspects of these claims changed. At interview the applicant claimed that the external hard drive confiscated by the Etelaat actually belonged to his brother, not he (as previously claimed). He said they found out about his brother's intention to convert to Christianity but accused the applicant of trying to change his religion. He claims that after they looked at his brother's hard drive, which contained lots of information about being a Christian, they accused him of encouraging other Muslim people to convert to Christianity. At the interview the applicant went to some pains to explain that the material found on the computer was his brother's, and not his. He told the delegate that they had 'marked' him for encouraging other Muslim people to convert to Christianity. He added that he was 'really struggling' to let them know, to let them understand, that it was not for him but, he said, they didn't want to listen to him and he felt very 'helpless' and he didn't know what to do so he didn't say anything. When asked by the delegate why his statement of claims did not mention that it was his brother's information found on the computer he said it was because the hard drive was not his, it was his brother's, and he felt there is no relationship between his brother's case and his case. This response does not explain the inconsistency and I consider the two contradictory versions of this event significantly diminish the credibility of the claim. His more recent version of events is also difficult to reconcile with his earlier statement that he downloaded the material so that he could better understand Christianity.
18. The applicant claimed that as a result of the discovery of the information he was charged and convicted of promoting and supporting a religion other than Islam. I note that there are no court documents, or other evidence, to support the applicant's assertion that he was charged or that the court handed down the sentence of imprisonment and [lashes]. Although the applicant provided a photograph of a man's back which had been recently lashed, the photograph is taken from behind and there is nothing in the photograph to identify that the subject is the applicant. I consider it would be possible to provide evidence of the applicant's alleged lashings, either by medical report or via a photo of the lashes which identified the applicant. I note that even after the delegate found the photo of the lashings did not identify the applicant, the representative provided the same photo to the IAA as evidence of the claim.
19. The applicant claims that shortly after his conviction he was granted bail to leave prison for one week after his father handed over his land title deeds. In the SHEV interview he claimed that this happened after he received the lashes, stating that his father arranged this so that he could get some treatment for his injuries. No court documentation was provided to support the claim that the applicant's father put up his title documents, or any documentation relating to medical treatment. The applicant said he had the court's permission for him to leave jail for four or five days, claiming he had a copy of the sentence but it was lost when his boat from [Country 2] sank. The delegate asked if his parents had copies of the documents and he said they didn't, claiming that he was really rushed when he left Iran and 'couldn't think'. He said the only copy of the documents had been lost. Whilst I accept it is possible that documents

may be lost I find it difficult to believe that there would not be any documentary evidence available to support the father's handing over of the title deeds, especially when the applicant claimed (at the interview) that when he fled Iran the government took his father's house and sold it at auction. I note that the delegate asked if he had any documents regarding putting the house up for bail and he said "I think so because he has signed something". The delegate asked the applicant to ask his father for the documents but that nothing was forthcoming.

20. On 11 September 2018 the applicant's representative wrote to the delegate advising that the applicant had contacted his family but stated that they don't have any documents relating to his issues in Iran. He advised that the applicant strongly believes that those documents exist but they have been misplaced since he left Iran and he thinks his family might have lost them. I have difficulty accepting this claim. Firstly, I consider it implausible that, had the applicant's father been required to sell the family home on account of the applicant fleeing Iran, that this significant information would not have, at least, been referred to in his application. As it was, he only provided this information at the interview after the delegate specifically asked what had happened to his father's property after the applicant left Iran. Secondly, I find it extremely difficult to accept that the applicant's father would not be able to access any documentary evidence of the claimed transfer of the title deeds to the government.
21. In light of my concerns detailed above I do not accept that the applicant's claims in relation to the events described in Iran prior to his departure. I do not accept that he filmed or witnessed the destruction of a cemetery or that he was chased by police outside of Isfahan in 2012 and shot in the [Body Part 1]. I do not accept that he was tortured as claimed and I do not accept that the authorities in Iran found Christian material in his home or that he started having thoughts about converting to Christianity when he lived in Iran. I do not accept that he was imprisoned and lashed as claimed. As a consequence of these findings I am not satisfied that when the applicant left Iran he was serving a period of imprisonment or was out on bail. I am not satisfied that he was of any interest to the Iranian authorities for these reasons. I also note that the applicant left Iran via the Tehran airport on his own passport, indicating he was not of interest to the authorities when he left Iran for any other reason.
22. I note that in his SHEV application the applicant claimed that if he returns to Iran he will be arrested, interrogated, tortured and eventually executed for being a spy, which, he said, is a crime he never committed. He said he has never been a spy but the authorities will never believe him. I find this claim to be at odds with his earlier assertion that the authorities had charged him with lesser offences relating Christianity after they found Christian material on his devices (which I have rejected) but not with any offences that may be regarded as relating to 'spying'. The applicant has provided no other information regarding this claim other than to draw a vague connection between taking footage of the Baha'i cemetery and the connection between the Baha'i and Israel. I find this connection to be far-fetched and in any event, I have not accepted that the applicant was pursued by the authorities for taking footage of the excavation of the cemetery and I have found that he is of no interest to the authorities in Iran for any other reason. Overall, I do not accept that the applicant is of interest to the authorities in Iran on the basis of being a spy.

### **Christianity**

23. The applicant was born into a Shia Muslim family but described himself at the arrival interview as having no religion. The applicant now claims that he cannot go back to Iran because he is a Christian and he fears that, as a converted Muslim, he will receive the death penalty.

24. I do not accept the applicant's claims that he started having thoughts about converting to Christianity when he lived in Iran and that he had downloaded Christian material onto his laptop. I do not accept he had any involvement with Christianity in Iran.
25. In his SHEV application the applicant claimed that as soon as he was released from the Immigration Detention Centres he started attending [Church 1]. He claims that he is not yet baptised but he is receiving instruction to prepare for baptism.
26. The applicant claims that he goes to [Church 1] and he also attends a Community Centre / church in [Suburb 1], [Australian State 1]. At the SHEV interview he said he changed churches (from [Church 1] to the community church) after an Iranian Christian friend told him about the community church. In the letter of support from a [Church 1] volunteer, the author states that the applicant and his cousin had been introduced to the church by an Iranian couple who felt that they would benefit from contact with them as a church community and that the church subsequently helped them with food vouchers and furniture for their flat as they 'struggled to make ends meet'. The applicant also took part in the English program at the church. The letter also said the applicant and his cousin did many practical jobs around the church. The author notes that in mid-2014 the church ran a 15 week series called the ALPHA course, which the applicant participated in and decided at the end of the course "to live his life as a Christian not a Muslim". The author also notes that they haven't seen a lot of the applicant in the last couple of years because he has needed to work and was unable to attend church. The letter makes no other observations on his Christian practice or faith. Based on the letter from [Church 1] and the applicant's own evidence, I accept that the applicant became involved in that church in 2013 when he received a hand getting on his feet, attended English classes and helped around the church in a practical sense. That said, I am not satisfied that the letter provides any real corroborative evidence as to the extent of his Christian worship or involvement in the church beyond these peripheral activities and his attendance at an English speaking course. I do not accept his claim that he still attends [Church 1].
27. I accept when the applicant started becoming involved with that church in 2013, that the church provided an environment of support. As such, I do not agree with the delegate's findings that the applicant's activities with the church since he has been in Australia were engaged in for the sole purpose of strengthening his claim for protection. I do not accept however that he has any genuine ongoing interest in Christianity or that he has converted to the faith.
28. The applicant stated that the other church which he now attends does not look like a church and described it as somewhere people could exchange ideas, pray, and talk together. He said that he attends once a fortnight and sometimes twice a week to do bible study. He said the church has no particular pastor. At the SHEV interview the applicant spoke about this community and the friend who introduced him to the group. On the other hand, I note that he has not provided any evidence, such as a letter of support, to support his claimed attendance at this church or bible study. Whilst I am willing to accept that the applicant may have attended this community church on at least one occasion, I am not willing to accept he attended on a regular basis, as claimed. Nor am I willing to accept that he regularly attends bible classes, given his demonstrated lack of understanding of the bible.
29. At the interview the applicant was questioned at length in relation to his knowledge of Christianity and I found his responses to demonstrate a very shallow understanding of Christianity. For example, he stated that communion was something that took place once a year but he couldn't say what that occasion was or whether it was a happy or sad day. The delegate raised concerns about the depth of his knowledge at the interview and after a break,



the representative conceded that the applicant's knowledge of Christianity is not in-depth but explained that the applicant was a learner in the Christian faith and, 'in the process of learning, he is being accepted into the Christian community'. At this point in the interview the applicant stated that he was trying really hard to get to know whatever he needs to know about this faith. He said that he is sure that one day he will be baptised but the time is not yet. I note that despite this, no confirmation of the applicant's baptism has been provided to date.

30. I found the applicant to be generally vague and unconvincing when asked about how he came to Christianity. He claimed that the night before he travelled to Australia he ate dinner with a Christian family and before they ate they prayed for their journey and nothing major happened through his journey to Australia. He said the Australian authorities got 'them' from the water and, he said, "I think now I have a stronger faith to this religion". This was in 2012 and, as stated, the applicant still has only a very basic understanding of the religion and is not yet baptised. The applicant also provided vague responses when asked how converting to Christianity had changed his life, stating that when he reads the Bible it makes him relax and unwind.
31. The applicant also struggled when asked to describe Christian church service rituals. When asked what happens at church he said, 'Everyone is warm and friendly, everyone talks about their week, the verse of the day is recited and there is music then afterwards they drink coffee and eat morning tea'. The applicant claimed that although he is not baptised he is able to take communion. When asked what the bread and wine represented he said "forgiving your sins". After a break with his representative he explained that he didn't understand the question and clarified that the wine represents the blood and the bread the body. The applicant has raised no issues with the interpreter and I do not accept that the he did not understand the question. Instead, I consider that he did not know the answer. Overall, I found the applicant's description of church services to be lacking in detail and inadequate.
32. I am conscious that there is not a universal standard of knowledge about such matters as the Christian faith, and care does need to be exercised not to impose an arbitrary standard. But in this case, the applicant claimed he had been attending once a fortnight and sometimes twice a week to undertake bible study, and his responses at interview were not at all commensurate with his claimed level of engagement. The applicant also claimed that he downloads verses of the Bible onto an app on his phone and reads a new verse every week however, when was asked if he could tell a particular story from the Bible his response was confusing - he seemed to conflate two different stories, explaining that when God created two animals (a male and a female) from each kind, Adam felt lonely so he also created Eve.
33. Although I have accepted that the applicant attended [Church 1] I consider his understanding of Christianity and the Bible to be very basic and not commensurate with someone who has been pursuing Christianity for the past six years. I found his explanation of how he came to Christianity to be vague and unconvincing and I have noted that he struggled to describe even the basics of a Christian church service. He was unable to describe common Christian rituals and I find it implausible that he would be able to take communion without being baptised. I have also taken into account the fact that, despite his claimed commitment to pursuing Christianity for the past six years, he has not yet taken the step of baptism. Whilst each of these factors is not determinative on their own, I consider that cumulatively they paint a picture of someone who lacks a genuine interest in Christianity or a commitment to taking on a new faith. In the circumstances I do not accept the applicant's claim to be Christian.
34. I note the delegate found that the applicant will be able to maintain his 'atheist' beliefs without a real chance of harm in Iran yet also concluded that he had not renounced Islam. As

discussed, the applicant claimed to be Christian and has made no assertion that he is an atheist. In the circumstances I am not satisfied that the applicant is an atheist.

35. Although he was born into a Shia Muslim family, I accept the applicant's claim he made at his arrival interview - that he doesn't have any religion and that he doesn't believe in Islam. At the SHEV interview, when the applicant was asked when his thoughts on Islam started to change, he replied, "Since the time I understood what religion is". When asked what it was about Islam that he was dissatisfied with, he said that it is not a fair religion and that all of the rights are for men and there are no rights for women. The applicant spoke naturally and genuinely on this issue when questioned at the arrival interview and at the SHEV interview and I accept that he was a non-practising Muslim in Iran and continues to be a non-practising Muslim.
36. I accept that the applicant will be returning to Iran having sought asylum in a Western country (Australia). I also accept his assertion that he gave his passport to the people smuggler in [Country 2] and, as such, he will be returning without an Iranian passport. Although he hasn't claimed to fear harm on this basis I note that the delegate considered this issue and so have I.

### **Refugee assessment**

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37. 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**

38. 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.
39. I have not accepted the applicant's claims relating to witnessing the destruction of a cemetery in Iran or that he was of interest to the authorities in Iran for any reason when he left Iran. I have not accepted he would be perceived as a spy in connection with these claims. As such I am not satisfied that he faces a real chance of harm on these grounds, now or in the foreseeable future.

40. I am not satisfied that the applicant has converted to Christianity and, as such, I do not accept that he will be returning to Iran as a Christian, or will engage in any Christian activity in the reasonably foreseeable future. I have accepted that the applicant had some involvement in [Church 1] when he arrived in Australia - receiving help, attending English classes, and providing practical help in return. I have also accepted that more recently he has attended a community church, but not on a regular basis. That said, the applicant has made no claim to have publicised his involvement in these churches, via social media or otherwise, and there is no evidence to suggest that he has an interest or an intention to do so in the future. There is no evidence that the applicant's involvement at churches in Australia has come to the attention of the authorities in Iran. Even if the applicant's activities at church in Australia were to become known, DFAT<sup>1</sup> reports that it is unlikely that individuals will be prosecuted for apostasy (which includes converting to another religion) and that perceived apostates are only likely to come to the attention of the Iranian authorities through public manifestation of their new faith, attempts at proselytization, attendance at a house church or via informants. There is no suggestion that a person who had some engagement with a church abroad, but hasn't converted and isn't pursuing that activity upon return, would be of any interest to the authorities in Iran upon return. As such, I am not satisfied that the applicant faces a real chance of harm on this basis, now or in the foreseeable future.
41. I accept that the applicant will be returning to Iran as a non-practising Muslim. I note that at his arrival interview in 2013 the applicant claimed to have experienced discrimination in Iran for being non-practising however, I note that despite the ample opportunity to do so, the applicant has not claimed in his SHEV application, or at any time in the SHEV process, to have experienced harm for being a non-practising Muslim in the past in Iran and I do not accept that this is the case. DFAT's 2016 Report<sup>2</sup> considered it highly unlikely that the government would monitor religious observance by Iranians – for example whether or not a person regularly attends mosque or participates in religious occasions –thus it would be generally unlikely that it would become known that a person was no longer faithful to Shia Islam. DFAT's 2018 Report<sup>3</sup> does not suggest that the situation has changed in Iran. The 2018 Report states that under Iranian law, a Muslim who leaves his or her faith or converts to another religion can be charged with apostasy<sup>4</sup>. Although the Iranian Penal Code does not have specific provisions penalising apostasy, it is a crime punishable under sharia law, which judges may also apply<sup>5</sup>. Whether or not the applicant's religious views and conduct bring him within the concept of apostasy as understood in Iran, country information in the referred material indicates that it is highly unlikely that the government would monitor his religious observance in any event. DFAT further reports that it is unlikely that individuals will be prosecuted on charges of apostasy and that perceived apostates are only likely to come to the attention of the Iranian authorities through public manifestation of their new faith, attempts at proselytization, attendance at a house church or via informants.<sup>6</sup> As stated, I have not accepted that the applicant has adopted another faith. There is no evidence that the applicant has ever spoken publically about his views on religion, and I note that there is no suggestion of an interest or intention to do so in the future.
42. Overall, having regard to the applicant's behaviour and the country information, I am not satisfied that he faces a real chance of any harm for being a non-practising Muslim.

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<sup>1</sup> Department of Foreign Affairs and Trade (DFAT), "Country Information Report Iran", 21 April 2016, CIS38A8012677.

<sup>2</sup> Ibid.

<sup>3</sup> DFAT, "Country Information Report", 7 June 2018, CIS7B839411226.

<sup>4</sup> Ibid; Iran Human Rights Documentation Centre, "Apostasy in the Islamic Republic of Iran", July 2014.

<sup>5</sup> US Department of State "2015 Report on International Religious Freedom – Iran", 10 August 2016, OGD95BE926723.

<sup>6</sup> DFAT, "Country Information Report Iran", 21 April 2016, CIS38A8012677.

43. I have accepted that the applicant will be returning to Iran as a failed asylum seeker who is no longer in possession of his passport. As such, his return would require temporary travel documents issued by Iranian diplomatic representatives and I accept that if he returns to Iran he may be identified as having sought asylum in Australia.
44. DFAT's 2018 Country Information Report<sup>7</sup> in relation to the treatment of returnees in Iran states that Iran has historically refused to issue travel documents to allow the involuntary return of its citizens from abroad. The exception to this is involuntary returnees who arrived in Australia after 19 March 2018 and have no legal right to stay. The applicant entered Australia well before this date. As such if the applicant were to return to Iran I am satisfied it would only be voluntarily. Whilst the applicant may be identified as having sought asylum in Australia, DFAT states that according to international observers, Iranian authorities pay little attention to failed asylum seekers on their return to Iran. International observers report that Iranian authorities have little interest in prosecuting failed asylum seekers for activities conducted outside Iran, including in relation to protection claims.
45. DFAT states that authorities will usually question a voluntary returnee on return only if they have already come to official attention, such as by committing a crime in Iran before departing. The applicant is not such a person. DFAT is not aware of any legislative or social barriers to voluntary returnees finding work or shelter in Iran, or any specific barriers to prevent voluntary returnees from returning to their home region.
46. With respect to the applicant's particular circumstances, I am not satisfied that he was a person of adverse interest to the authorities at the time of his departure and there is no evidence before me that he has engaged in any activity since he has been in Australia which would attract the attention of the authorities upon return. As such, I consider the chance of the applicant being questioned upon return, or suffering harm as a result of being a returning asylum seeker is remote, and I am not satisfied that he faces a real chance of any harm on this basis.
47. As such, I am not satisfied that the applicant will face a real chance of serious harm now or in the foreseeable future should he return to Iran. The applicant does not have a well-founded fear of persecution within the meaning of s.5J.

#### **Refugee: conclusion**

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

#### **Complementary protection assessment**

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49. 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.

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<sup>7</sup> DFAT, "Country Information Report Iran", 21 April 2016, CIS38A8012677.

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

50. 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.

51. I have not accepted any of the events the applicant claimed to have occurred in the lead up to his departure from Iran. As such, I have concluded that the applicant does not face a real chance of any harm on that basis. I have also found that the applicant does not face a real chance of any harm for his Christian-related activities in Australia, being a non-practising Muslim or for being a returning asylum seeker. As 'real chance' equals 'real risk', I am also not satisfied that there is a real risk that the applicant would face any harm, including significant harm, as defined, on any of these grounds.

### **Complementary protection: conclusion**

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

### **Decision**

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

## Applicable law

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

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

In this Act, unless the contrary intention appears:

...

***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.