



Australian Government

Immigration Assessment Authority

Decision and Reasons

Referred application

IRAN

IAA reference: IAA19/06506

Date and time of decision: 22 May 2019 14:58:00

A Lindsay, 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 an referred applicant, or their relative or other dependant.

Background to the review

Visa application

1. The referred applicant (the applicant) claims to be a Christian convert from Iran. The applicant arrived in Australia [in] April 2013 and on 14 June 2014 he lodged an application for a Safe Haven Protection Visa (SHEV).
2. On 20 March 2019 a delegate of the Minister for Immigration (the delegate) refused the grant of this visa on the grounds that the applicant did not face a real chance of serious harm or a real risk of significant harm if he were to return to 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).
4. No further information has been obtained or received.

Applicant's claims for protection

5. The applicant's claims can be summarised as follows:
 - He converted to Christianity in 2006 or 2007 in Iran and prior to leaving the country in 2013, he attended house churches, engaged in proselytizing and held Christian gatherings at his home.
 - In 2009 he started participating in anti-regime political activities and became an active member of the National Council of Iran. He passed information to the National Council of Iran, participated in demonstrations (including as a member of the Green Movement) and posted and distributed anti-regime propaganda.
 - In 2009 he was arrested by the Basij for wearing a crucifix whilst participating in a political rally. He was detained for approximately four months, during which time he was tortured. He was sentenced to lashings by a court for anti-regime activities but not convicted of any offences regarding his Christian activities because he denied he was a Christian. After he was released from prison he was kept under surveillance by the Basij.
 - In 2011 he was arrested and detained in [a] Prison for three weeks whilst authorities tortured and interrogated him about his political activities. He was charged with and found guilty of offences related to his political activities by a court that operated inside the prison and only released when he signed a declaration saying he would not participate in anti-regime political activities again.
 - In 2011 he was stopped by police and told that Intelligence agents had raided his house and arrested his two house mates which he believed was because he held political and Christian gatherings at his home. The police officer was going to arrest him but he paid a substantial bribe and was let go. He went into hiding.
 - In early 2013 he was in hiding in Ahvaz with relatives when a friend, who was friends with a police officer, said the authorities were going to come and arrest him which he believed was in relation to his religious and political activities. He then fled to [City 1] and left the country via Tehran Airport using his own passport. Unbeknownst to him,

whilst he was hiding in Ahvaz, he had been found guilty of a number of charges and the verdict was handed down in absentia [in] February 2013, sentencing him to [number] years imprisonment.

- The applicant has acquired a criminal history whilst in Australia.
- He has posted political and religious posts on his [social media] page whilst living in Australia.
- He will be harmed by the authorities if he were to return to Iran because he would be identified as a returning asylum seeker.

Factual findings

6. On the basis of the documents provided by the applicant, I accept his identity and nationality as an Iranian citizen as claimed. Iran is the receiving country for the purpose of this review.
7. In January 2017 the applicant notified the then Department of Immigration that he had appointed a new migration agent. The migration agent forwarded a signed form 956 confirming this appointment to the Department. In February 2019 the Department sent a letter to this migration agent, both via email and post to the business address, the purpose of which was to provide the applicant with the opportunity to respond to adverse information under s.57 of the Act. The delegate confirmed that the letter posted to the migration agent's business address was delivered on 26 February 2019. Attempts were also made, unsuccessfully, to call the migration agent in relation to this correspondence. The delegate confirmed that the Department did not receive anything in response to the s.57 letter and they had not been notified that this migration agent had discontinued representing the applicant. The adverse information the Department was seeking a response to related to the applicant providing inconsistent information about: the timing of his alleged Christian conversion and concerns held regarding whether this conversion is genuine or it was done for the purpose of strengthening his protection claims; his reasons for leaving Iran and the validity of an [Court] Verdict provided by the applicant with his SHEV application; his ability to fly out of Tehran international airport using his own passport after he claimed to have gone into hiding from the authorities for a number of months because they wanted to arrest him and over a month after the Court Verdict was issued; and the applicant failing to fully disclose the criminal history he had accumulated in Australia in his SHEV application. I note the applicant is listed as being held at [a] Correctional Centre. The matters listed in the s.57 letter were outlined in full in the decision by the delegate and I note the applicant has not sought to provide a response to these matters with the IAA. The delegate found that the Department had met its obligations in attempting to put adverse information to the applicant, and given the fact that the s.57 letter was successfully delivered to the migration agents business address three weeks prior to the delegate handing down the protection visa decision, I am satisfied this is the case. I have turned my mind to whether an additional invitation to provide submissions or new information to the IAA should have been issued to the applicant. However I note the nominated representative is a migration agent who is listed as currently registered and there is no suggestion that the s.57 letter or the decision record were not received by the representative. The IAA is not in receipt of correspondence from the migration agent to indicate that he no longer represents the applicant. The IAA documentation regarding the fast track review process to be undertaken was sent directly to the applicant in both English and Farsi and he hasn't sought to further engage in the process, either directly with the IAA or via his representative. In these circumstances the applicant has had a meaningful opportunity to provide new information to the IAA and has failed to do so. I

am satisfied it is not necessary to take any further steps to seek submissions or new information from the applicant.

8. During the SHEV interview the interviewing officer clarified inconsistent statements made by the applicant on a number of occasions, including instances where he provided information about certain events in the arrival interview which he later contradicted or provided a markedly different version of in his SHEV application or during the SHEV interview. I have listened to the arrival and SHEV interviews. At the start of the arrival interview I note the applicant was advised of the importance of telling the truth, that if information he provided during this interview differed from information provided at a later stage in the visa application process, this may raise doubts about the reliability of what he has said and that the interview was his opportunity to provide any reasons why he should not be removed from Australia. The applicant said he should be given the benefit of the doubt if he provided contradictory information because he was new to Australia and did not know much about regulation in this country. The applicant also said that the arrival interview was not a comprehensive interview, which I accept is the case and would be particularly pertinent if the applicant had merely provided a less detailed account of the more serious incidents he felt caused him to flee Iran, which he later expanded on in his SHEV application or interview. However that did not happen here and his explanations do not account for the numerous and significant inconsistencies in the applicant's evidence. The applicant also said he was afraid the information he gave in the arrival interview would be provided to Iran, despite him being assured at the start of the interview that this would not happen and his confirmation that he understood the important information read out at the start of the interview, which included a discussion about the Department's privacy obligations regarding information he provided during the interview, and the consequences of providing differencing information. At the commencement of the SHEV interview the applicant was given the opportunity to correct any information that he had provided previously and he declined to do so. As I will outline below, the inconsistent information provided by the applicant throughout the visa application process causes me to hold serious concerns about his credibility.
9. In his Statement of Claim dated 14 June 2016, which was submitted with the applicant's SHEV application, the applicant claimed he converted to Christianity in Iran in either 2006 or 2007. The applicant said he attended house churches, held Christian gatherings at his home and engaged in proselytizing by telling friends and family about Christianity and encouraging them to read the bible and attend house churches. When giving details of how he came to convert to Christianity in Iran, the applicant spoke of being accepted into a house church quite quickly with the process of his initial inquiries through to his eventual baptism occurring within a six month period, but was unable to recall the date of his baptism.
10. Copies of the applicant's Individual Management Plans, that were completed whilst he was being held in immigration detention, have been provided by the Department. In a plan dated 29 April 2013, whilst initially held at [a detention centre], the applicant identified as Muslim, requested that he be provided with halal foods and be allowed to go to mosque every Friday. In a plan dated 27 June 2013 whilst he was held in detention in [Territory 1], two months after he arrived in Australia, the applicant again said he was Muslim, preferred to eat halal meals but was not desperate to go to mosque. In an undated plan, also completed whilst in immigration detention in [Territory 1], the applicant identified as being Muslim but indicated he wanted to convert to Christianity and would like to attend a place of worship whilst in detention.
11. This information in the Individual Management Plans and the Statement of Claim differs markedly from his version in the arrival interview, conducted in two parts on 21 May and 5

June 2013, where he identified as a Christian and said that he converted to Christianity about three or four months before coming to Australia. The applicant said he left Iran [in] March 2013 and arrived in Australia [in] April 2013, so if this earlier version of when he converted to Christianity is correct then the earliest date for his conversion would be late 2012 or early 2013, not 2006 or 2007 as stated in the Statement of Claim. Even within the same interview, the applicant provides different versions about the altercation with authorities that he says led to him going into hiding for four months prior to him leaving the country. In the first version, the applicant said he managed to escape from a house church when the Basij attended and he hid from the authorities in the northern part of Iran for four months. He said his father told him the authorities had requested that he attend court in late 2012 or early 2013, which he did not do. When asked if he had ever been arrested in Iran the applicant provided a modified version about what preceded him hiding in northern Iran for three or four months prior to leaving the country; he said he was arrested in late 2012 for being found at a house church by the Basij and detained for ten to twelve days. The applicant claimed he was tortured whilst in detention by being hit with a hose, kicked, slapped and told he would be executed. The applicant said his father signed some paperwork and he was released from detention and that he did not attend court because his father 'scrapped' the court paperwork and told the authorities the applicant was not there. Whilst he was in hiding in northern Iran the applicant said the authorities attended the house where he was hiding, he managed to escape from a third floor window and his father made the arrangements for his departure from Iran.

12. It is illegal to convert from Islam in Iran. Conversion may result in prosecution with capital punishment as a possible penalty, although there is only one known case in recent years, from 1990, where a person charged with apostasy received the death penalty and it was actually carried out.¹ The level of secrecy surrounding the existence of house churches and the informal nature of the movement makes it difficult to provide statistics on the number of unrecognised Christians in Iran, however country information indicates that Iran has a growing unrecognised Christian population and many of them are unhappy with the way Islam is practiced by the regime.² The growth in house churches in Iran has been interpreted as a threat to the nation and authorities periodically crack down on them, with a particular focus on the leaders who proselytise, broadcast or seek out new members.³ It is estimated that 99% of arrests of church leaders are affiliated with house churches.⁴ Due to an underlying fear of denunciation or spies from the government infiltrating the church, house churches are reported as being very careful of people outside of their network or community who show interest in joining them and it could take between six to eight months before an outsider could be welcomed into a house church.⁵
13. In the SHEV interview the applicant claimed that a house he had in Karaj was used for house church gatherings and it was confiscated by the Ettela'at. There is no mention of a home being confiscated by the Iranian authorities in the applicant's SHEV application, or in his earlier dealings with the Department. Nor has the applicant produced any documentation in support of this aspect of this claim. The delegate questioned the applicant about how he

¹ Danish Immigration Service, Landinfo and Danish Refugee Council, "On Conversion to Christianity, Issues concerning Kurds and Post-2009 Election Protestors as well as Legal Issues and Exit Procedures: Joint report from the Danish Immigration Service, the Norwegian LANDINFO and Danish Refugee Council's fact-finding mission to Tehran, Iran, Ankara, Turkey and London", United Kingdom, 9 November to 20 November 2012 and 8 January to 9 January 2013, February 2013, CIS25114.

² Ibid.

³ Ibid.

⁴ Ibid.

⁵ Ibid.

came to find out certain people were Christians and were associated with house churches, noting this was not something that was openly discussed in Iran. The applicant responded that these people referred to their holy books and wouldn't lie and this resulted in the applicant becoming curious and asking questions. The applicant said people he met through his own friends used to take him to house churches and he engaged in research for about five or six months prior to converting to Christianity in Iran. The applicant did not refer to having any challenges in being accepted into a house church which does not align with the aforementioned country information regarding the time period before a house church is willing to welcome an outsider into their church.

14. The applicant claimed to have engaged in Christian activities here in Australia such as attending churches in [a number of suburbs], during those times when he was not in detention. The applicant was unable to state the name of the churches he claimed to have attended. Despite the applicant saying that the priest performing services in [a] church where Iranians attended was always the same, when asked to provide the name of the priest or pastor at this or any of the churches he attended, he could not name him and only described him as "a tall guy ... not much hair ... I don't remember." The applicant claimed he attended celebrations and functions as part of the Christian Iranian community but did not provide any meaningful detail about the types of functions he claims to have attended. The applicant claimed he was going to church once a month and regularly read the bible. I note there is no letter of support for the applicant from a member of the church community, or other evidence presented in support of this claimed involvement.
15. I note the existence of the Court Verdict produced by the applicant with his SHEV application, which is discussed later in this decision. This Court Verdict purports to sentence the applicant to four years imprisonment for offences of: converting from Islam to Evangelical Christianity; active membership in [a church] (which the applicant claims is a translation error of the term [name deleted] which he claims is an active anti-government Christian political group); establishing underground churches to proselytize Christianity for the youth; and, collaborating with foreign Christian organisations to proselytize Christianity. For the reasons outlined below, I am not satisfied this is a genuine document.
16. I do not accept the applicant has converted to Christianity, either in Iran or here in Australia, or that he has proselytized, attended house churches, worn a crucifix or held religious gatherings at his home whilst still in Iran. I have had regard to the applicant's explanation in the SHEV interview when asked by the interviewing officer to explain why inconsistent information had been provided by him about when he converted to Christianity. The applicant stated he was concerned about telling the truth about his Christian conversion during the interview because of a fear this information would be provided to the Iranian authorities. This explanation does not account for the discrepancy. The discrepancy the delegate was seeking clarification about was that the applicant initially claimed he converted to Christianity three or four months before arriving in Australia (which would be late 2012 or early 2013) and then at a later stage in the application process the applicant said he converted to Christianity in 2006 or 2007. If the applicant was fearful of his claims being provided to the Iranian authorities to the extent that it impacted on what he said during the arrival interview, it is difficult to understand why he made reference to converting to Christianity at all. The information provided by the applicant in his Individual Management Plans indicates he continued to adhere to Islam after he arrived in Australia, and after he claimed to have converted to Christianity. The applicant's account about the ease and rate at which he was able to access and attend a house church in Iran does not align with the country information that indicates a high degree of caution is exercised by house churches when accepting new members. I find the lack of a letter of support or other documentation

confirming the applicant's engagement with Christian activities telling when considered in conjunction with the other issues I have identified with this particular claim. The applicant produced a questionable legal document which purports to sentence him to a term of imprisonment for offences related to Christian activities in Iran. The applicant only provided scant evidence about his alleged attendance at a Christian church or at functions or celebrations in the Christian community whilst here in Australia and given his inability to provide any meaningful detail about these activities during the SHEV interview, I am not satisfied they actually occurred. I also refer to my later finding in relation to the applicant's claim that he posted religious posts on his [social media] page, which I did not accept.

17. I have not accepted the applicant's home was ever used for religious gatherings, I am not satisfied the Ettela'at confiscated his home. It then follows that I do not accept the applicant was present at a house church in Iran when the Basij arrived and nor do I accept that he either managed to escape or was arrested, detained and released prior to going into hiding in northern Iran following such an event.
18. The applicant claims to have participated in anti-regime political activities from 2009 until he left Iran in 2013 and this resulted in him being arrested and detained on two occasions and going into hiding after being tipped off about the authorities planning to arrest him again, which resulted in him eventually leaving the country.
19. In the Statement of Claim the applicant said that from 2009 he started participating in anti-regime political activities including becoming an active member of the National Council of Iran. The applicant said he passed information to the National Council of Iran whilst participating in anti-regime rallies and protests, posting anti-regime propaganda in public areas and distributing this propaganda to people who attended the house churches with him. During 2009 whilst participating in a political rally, the applicant said he was stopped and arrested by the Basij because he was wearing a crucifix. The applicant said he was initially detained at the Basij outpost for three days and was then transferred to [a] Prison where he was detained for three months and twenty-three days whilst awaiting trial. He was taken to court and sentenced to lashings for his anti-regime political activities but not convicted of the offences related to his Christian activities because he denied he was a Christian. The applicant claimed that he was kept under surveillance by the authorities after his release and was regularly approached by the Basij to present his identity card and give details about where he was going and what he was doing. The applicant said he was arrested again in 2011 and detained in [a] Prison for three weeks where he was tortured and interrogated about his political activities. This included him being asked who he was working for and why he was opposed to the government. He claims he was lashed with wires, hung from his feet, had nails from his hands and feet removed, they broke his fingers and toes and put hot needles under his fingernails. He was found guilty of charges relating to his political activities and of working for foreign governments and was released when he signed a declaration acknowledging he would not participate in these types of activities again and he would reside in a certain area, which he later identified as Tehran. Also in 2011, the applicant was stopped by a police officer in Karaj who told him that intelligence agents had raided his house the day before and had arrested his two house mates. The applicant believed this occurred because they had held political and Christian gatherings at this house. The police officer was going to arrest the applicant but he paid a significant amount of money as a bribe to the office and was let go. The applicant said he went into hiding by initially staying with his sister in Tehran and from there went to his father's villa in [City 1] for about one or two months. The applicant then returned to his father's home in Karaj and when this place was raided he fled to Ahvaz. Whilst in hiding in Ahvaz in early 2013, the applicant was told the authorities were planning to come and arrest him and he believed this was related to his political and religious

activities. This caused the applicant to again flee to [City 1], prior to leaving the country by flying out of the international airport in Tehran under his own passport without incident. Unbeknownst to the applicant, whilst he was hiding in Ahvaz, he had been found guilty of a number of charges and the verdict was handed down in absentia [in] February 2013, sentencing him to [number] years imprisonment.

20. The applicant's evidence in his Statement of Claim conflicts markedly with the information he provided in the arrival interview. During the arrival interview, the applicant said he had not been associated or involved with any political groups or organisations and nor had he been involved in activities or protests against the government whilst living in Iran. The applicant's reasons for leaving Iran, given in the arrival interview, were solely related to his interactions with the authorities as the result of his alleged conversion to Christianity. There was no mention of him engaging in anti-regime political activities at all. The applicant also said the only time he was arrested in Iran was as previously mentioned where he was detained for ten to twelve days towards the end of 2012 when the Basij found him inside a house church. Following this arrest the applicant said he didn't go to court because he escaped.
21. During the SHEV interview the applicant said the first political activity he participated in was as part of the Green Movement in 2009. The applicant said he participated in three rallies, mostly in Tehran, as well as distributing pamphlets or writing murals on walls. He said he also participated in protests in 2011 when the citizens of Iran were seeking a change of presidential candidate. Also during this interview, the applicant claimed that after his release in 2011 he continued to participate in demonstrations, which conflicts with his evidence in the Statement of Claim where he said he went into hiding in 2011 after being told by a police officer that the authorities were looking to arrest him, following the arrest of two of his house mates. The applicant's residential history, in both his SHEV application and arrival interview, does not list him as living in an address other than his family home in Karaj from 2009 until March 2013 when he left the country. The applicant did not make any reference to being an active member of the National Council of Iran or passing information to them during this interview, even when asked specifically about the types of anti-regime political activities he had engaged in. He also did not produce any documents to establish he is or was a member of the National Council of Iran. The delegate raised the discrepancies in the applicant's claim about his political activities in Iran in the decision and found that the applicant was not politically active in Iran, detained or tortured in 2011 and that he was not an active member of the National Council of Iran. I note the applicant has not sought to respond to these findings with the IAA.
22. The authorities may revoke permission or prohibit a person from leaving Iran for reasons such as having committed crimes or having outstanding issues with the government and these people are recorded on a list in the computer system utilised by airport personnel.⁶ It is reported that following a legitimate court verdict being issued if the police are unable to access the person who is the subject of the verdict then that person would be informed by the authorities at the point of departure when attempting to leave the country they are unable to do so.⁷ The Department sought a response from the applicant in writing regarding his evidence of being on the run from the authorities for some time yet being able to leave the country using his own Iranian passport without issue and as previously mentioned, no response was received.

⁶ Danish Refugee Council and Danish Immigration Service, 'Human Rights Situation for Minorities, Women and Converts, and Entry and Exit Procedures, ID Cards, Summons and Reporting, etc.', April 2009, CIS17329.

⁷ Danish Refugee Council, Landinfo and Danish Immigration Service, 'Iran: On Conversion to Christianity, Issues concerning Kurds and Post-2009 Election Protestors as well as Legal Issues and Exit Procedures', February 2013, CIS25114.

23. The applicant produced a Court Verdict issued in absentia by [a] Court [in] February 2013 to the applicant which lists the following charges: [information deleted]. I do not accept this Court Verdict is a genuine document. During the SHEV interview, the applicant said he found out about this Court Verdict whilst he was in Australia in 2013 and that his father told him he had been sentenced to four years jail and a court order has been signed for him to be executed. This Court Verdict makes no reference to an order of execution having been signed and the applicant has not produced any other document which purports to be such an order. When the interviewing officer sought to clarify this discrepancy in the applicant's evidence, the applicant referred to the term of imprisonment and execution both being mentioned in the same court order (which is not the case), and then suggested he would be imprisoned for four years first and then executed. He then said he didn't know. The applicant said this verdict was related to his participation in political demonstrations but I note the charges listed in the document relate to the applicant's alleged religious activities only, which I have not accepted he engaged in whilst in Iran. I note the country information which confirms the ease at which fraudulent or forged legal documents can be accessed in Iran.⁸ In the original decision, the delegate did not accept the Court Verdict was a genuine document and the applicant has not provided any evidence to the IAA to counter this finding. The delegate found that the applicant has attempted to materially enhance his claims for protection by producing this Court Verdict and falsely claiming he was liable to face four years imprisonment if he were to return to Iran and I concur with this finding.
24. I do not accept the applicant participated in anti-regime political activities at all whilst in Iran. I also do not accept he was arrested, detained, tortured, charged or of any interest to the authorities in relation to anti-regime political activism prior to him leaving Iran. The applicant's evidence in relation to his anti-regime political activities contains significant discrepancies. The applicant's earlier evidence was that he had no involvement in political groups, organisations or demonstrations at all and had only been arrested once in 2012 in relation to his religious activities and it did not involve him attending court. The applicant's later version includes him having ongoing involvement in anti-regime activities from 2009, being arrested on two occasions (but not in 2012), appearing in court, being sentenced to lashes or signing an undertaking and having gone into hiding for either seven or eight months or a period of up to two years, prior to leaving Iran in March 2013. The applicant's evidence given during the SHEV interview about where he stayed when he went into hiding involved him first fleeing to Ahvaz, in the south west of Iran,⁹ and then moving to his father's villa in the north of Iran ([City 1]) which was the last place he claims to have stayed in Iran, which is markedly different to his version in the Statement of Claim where he said he first fled to his sister's home in Tehran, then to his father's villa in [City 1], moving back to his family home in Karaj before staying with relatives in Ahvaz before again fleeing to [City 1] and then leaving the country. The applicant's version about how long he was in hiding for has changed from him saying he went into hiding in 2011 after being tipped off about his pending arrest by a police officer in the Statement of Claim, to him saying he was on the run for seven or eight months prior to leaving the country in March 2013. The applicant's version in the SHEV interview where he said he did not see his family for seven or eight months whilst on the run conflicts with his Statement of Claim where he claimed to have returned to his family home in Karaj whilst on the run. The applicant's inconsistent statements regarding his alleged participation in anti-regime political activities in Iran, when he was arrested in Iran and on what grounds and his reason for leaving Iran were put to him in the s.57 letter in February 2019 and as previously noted, a response was not received. The applicant has not since sought to address the concerns identified in the delegate's decision. Having regard to the

⁸ Ibid.

⁹ Department of Foreign Affairs and Trade (DFAT), "DFAT Country Information Report Iran", 29 November 2013, CIS26780.

aforementioned country information regarding the list the authorities use in Iran to prevent certain persons from leaving the country, I consider it implausible that a person who claims to have been actively pursued by the Iranian authorities for anti-regime political activities for at least seven or eight months was not placed on this list, and was able to fly out of the international airport in Tehran in March 2013 using a passport held in his own name without apparent issue. I also refer to my later finding in relation to the applicant's claim that he posted political posts on his [social media] page, which I did not accept.

25. The applicant claims he has posted political and religious posts on his [social media] page.
26. This claim was not mentioned in the SHEV application or Statement of Claim and was only raised as a brief statement in the final stages of the SHEV interview, after the applicant had been given the opportunity to speak with his representative. The applicant did not provide any further detail about the nature of these [social media] posts, including whether they specifically related to Iran or Islam, and nor did he provide a copy of these posts in the post-interview submission or to the IAA.
27. I am not satisfied the applicant has posted religious or political posts on his [social media] page.
28. In the post-interview submission the applicant's representative claimed the applicant faced a real chance of serious harm if he were to return to Iran on the basis of him being characterised as a an Iranian who had sought asylum abroad.
29. The applicant advised in his Statement of Claim that his Iranian passport was taken by the people smugglers when he was in Indonesia. I accept that if the applicant were to return to Iran he would need to do so using temporary travel documents and this may result in the authorities identifying him as a returning asylum seeker.
30. The applicant has acquired a criminal history since residing in Australia. The delegate noted in the decision that in 2018 the applicant had been found guilty of a number of criminal offences, including 'aggravated breaking and entering and committing a serious indictable offence' and was serving a term of imprisonment of approximately six years.
31. The interviewing officer raised a concern in the SHEV interview about the applicant not fully disclosing his criminal history to the Department which was later raised again in the aforementioned s.57 letter the Department sent to the applicant's migration agent.
32. The SHEV application, at question 86, asked the applicant to list all crimes or offences he had been found guilty or convicted of as well as indicating any criminal charges that were pending at the time of completing the document. In his June 2016 SHEV application, completed with the assistance of a registered migration agent, the applicant only advised that in Australia in 2015 he was charged with break and entry and was awaiting trial at that time. The applicant also advised that he believed he was the subject of an arrest warrant in Australia in 2015 when he failed to attend court in relation to a charge of using an expired driver's licence. In response to a request for further information (and Australian Federal Police Clearance), the applicant's migration agent later produced a National Police Certificate dated 17 August 2016 which shows that in 2015 the applicant had been fined by the courts for seven traffic offences and convicted of breaking and entering a dwelling house with intent to steal.
33. While I accept the applicant has acquired a criminal history since arriving in Australia I do not regard this as relevant to the assessment of his evidence or the questions to be determined

before me. The applicant has not claimed that he fears harm on the basis of him acquiring a criminal history in Australia if he were to return to Iran, and I consider no such claim arises on the material.

Refugee assessment

34. 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

35. 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.
36. I have not accepted that the applicant’s claims associated with his alleged conversion to Christianity and nor have I accepted he was arrested, detained, tortured or charged by the authorities for engaging in anti-regime political activities before he left Iran. I have also not accepted that the applicant converted to Christianity, attended church, engaged in Christian activities or posted political and religious commentary on [social media] since arriving in Australia. I am not satisfied the applicant was of any interest to the authorities when he left Iran for reasons associated with his religious or political beliefs and there is no evidence before me to indicate he has come to their attention for either of these reasons since arriving in Australia. I am also not satisfied the applicant faces a real chance of any harm on these bases if he were to return to Iran.
37. I accept the applicant may be identified as a returning asylum seeker if he were to return to Iran. Prior to a Memorandum of Understanding (MOU) being signed on 19 March 2018 between Australia and Iran, Iran refused to issue travel documents to allow involuntary returnees to return to the country. That MOU now facilitates the return of involuntary

returnees however it only covers returnees who arrived in Australia after it was signed.¹⁰ This is not the case for the applicant and if he were to return, I consider it would be only be on a voluntary basis.

38. DFAT has reported that Iranian authorities pay little attention to failed asylum seekers on their return to Iran and have little interest in prosecuting failed asylum seekers for activities conducted outside Iran, including the making of protection claims.¹¹ According to DFAT, an Iranian who no longer possesses a valid passport can obtain temporary travel documents through a program run by the International Organisation for Migration (IOM) to assist voluntary returnees to Iran. Authorities usually question a voluntary returnee, only if they have already come to official attention such as by committing a crime in Iran before departing.¹² I have not accepted the applicant was charged with a crime, convicted of any crime or was of any interest to the authorities prior to leaving Iran and nor have I accepted that the applicant has come to their attention since arriving in Australia. The country information before me does not support a finding that persons who are not of interest to the Iranian authorities previously, such as the applicant, and who have sought asylum in Western countries, such as Australia and resided there for a significant period, are imputed to hold anti-Iranian government political opinion or that they face a real chance of harm on that basis. I am not satisfied the applicant faces a real chance of experiencing any harm as a returning asylum seeker if he were to return to Iran.

Refugee: conclusion

39. 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

40. 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

41. 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.

¹⁰ DFAT, "DFAT Country Information Report: Iran", 7 June 2018, CIS7B839411226.

¹¹ Ibid.

¹² Ibid.

42. I have concluded that the applicant does not face a real chance of any harm for the reasons claimed. As 'real chance' and 'real risk' are of the same threshold, I am therefore satisfied that the applicants do not face a real risk of harm, including significant harm on these other bases.

Complementary protection: conclusion

43. 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.

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.