



Australian Government

Immigration Assessment Authority

Decision and Reasons

Referred application

IRAN
IAA reference: IAA19/06593

Date and time of decision: 18 June 2019 13:36:00
S Mansour, Reviewer

Decision

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

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

Background to the review

Visa application

1. The referred applicant (the applicant) claims to be an Iranian national. On 31 March 2017 he lodged an application for a Safe Haven Enterprise Visa (SHEV).
2. On 1 May 2019 a delegate of the Minister for Immigration (delegate) refused to grant the applicant a SHEV. In summary, the delegate accepted that the applicant was a non-practising Muslim but ultimately found that the applicant was not a person in respect of whom Australia had protection obligations.

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). Included was a document containing the applicant's passport photos and a copy and English translation of his military service discharge card, to which I have had regard. However, I have disregarded employment history information included in the same document as this does not relate to the applicant, indicates the name of a different individual on the top of each page, and the delegate confirmed this information was not considered by him when he made the decision.
4. The most recent Department of Foreign Affairs and Trade (DFAT) report on Iran published on 7 June 2018 is new information which I have obtained. The delegate referred to a 2016 DFAT report. The 2018 report updates information in previous reports on Iran and has been specifically prepared for protection status determination purposes. I am satisfied that there are exceptional circumstances to justify considering this new information.
5. On 27 May 2019 the applicant through his agent provided a submission to the IAA. To the extent that it reiterates and further details the applicant's claims, makes legal argument, disputes the delegate's decision, refers to information that was before the delegate and to case law, I have had regard to it.
6. The submission also includes new information. It is now claimed that the applicant fears harm on return to Iran as a failed asylum seeker, who has sought asylum from a hostile western country and that he would be imputed with a political opinion against the Iranian regime including due to the mere act of seeking asylum. Under the complementary protection assessment, the delegate said that he had found, under the refugee assessment, that the applicant did not face a real chance of serious harm for reason of being a failed asylum seeker from a western country. However, the applicant has not raised this as a separate claim to the delegate nor does the refugee assessment indicate the delegate considered it. The delegate's statement appears to be an error in the decision. The applicant's 2017 statutory declaration indicated his risk of prosecution for adultery (a separately raised claim) would be worsened on return to Iran for reasons which included that he had left the country and sought asylum in Australia. He also claimed that his brother had alerted the authorities to him being overseas. I am satisfied that the broader and separate claim of his imputed political opinion arising due to the mere act of seeking asylum in a hostile western country is new information. The applicant has not explained why this claim could not have been raised at an earlier stage. He was provided legal representation in preparing the statutory declaration, which included a similar claim as outlined but still did not include this separate new claim. Although unrepresented at the PV interview and despite the

PV interview and other overall circumstances that I have noted below which were specific to his provision of documentary evidence and the Christianity claim, I am not satisfied he faced similar circumstances in relation to raising this new failed asylum seeker claim, whether in the statutory declaration, at the PV interview or prior to the decision. The delegate advised him of the importance of raising all his claims for protection and that any information received until a decision was made would be considered. The new claim is supported by new country information sources (discussed below) but these pre-date the delegate's decision and are of limited corroborative value or even relevance due to their old age. The most recent source is dated in 2012 and incidences referred to date back to 2011. The information provided in support of the claim is generalised and unconvincing. More recent country information reporting within the review material on the situation for failed asylum seekers returning from the west to Iran does not corroborate this claim. Further, I have considered his return to Iran as a failed asylum seeker as part of his general circumstances, to the extent that that claim already arises on the material before me. The applicant has not explained why exceptional circumstances exist to justify considering this new information. Overall, I am not satisfied there are exceptional circumstances that justify considering this new information.

7. Various new country information sources are referred to and some extracted briefly in the submission. They all appear to pre-date the delegate's decision and some are particularly old sources dating back to 2010 and 2011. They are provided primarily in support of the applicant's claim to fear harm due to converting to Christianity and also relate to his new claim to the IAA regarding his failed asylum seeker status on return to Iran as outlined and appear to relate to his claim before the delegate of his adultery punishment being worsened due to seeking asylum in Australia. The material before me already includes sources that engage with similar themes and similar information including more recent country material. The new country information referred to which is not similarly included in country sources already before me is largely outdated and thus of limited relevance. I am not satisfied there are exceptional circumstances that justify considering any of the new country information submitted by the applicant.
8. On 28 May 2019 the IAA wrote to the applicant inviting him to provide a complete copy of the baptism certificate he presented during his Protection Visa (PV) interview, a copy of the baptism certificate he intended to attach to an email to the Department of Home Affairs (Department) prior to the PV interview if this was a different baptism certificate, a copy of the court summons he referred to during the PV interview and if applicable, any evidence he had sent this to the Department previously. The IAA also invited him to provide documentation in support of his claimed Christian conversion including evidence of the nature and frequency of his engagement with the church from 2017 until present.
9. On 3 June 2019 the applicant provided a complete copy of the baptism certificate that he had presented at the PV interview, a letter from a church pastor and a copy and English translation of the court summons. At the PV interview, the delegate sighted this same baptism certificate and took an incomplete photocopy of it. Given the applicant presented the complete document at the interview and the delegate sighted it, I am satisfied that the complete baptism certificate is not new information and I have had regard to it.
10. However, the letter from the church pastor is new information. There is also new information about the Christianity claim in the 27 May submission, though it has not been identified, contrary to the Practice Direction. The new information in the submission quantifies the level of the applicant's participation in church activities and bible study sessions. That the applicant's baptism (in July 2018) was preceded by 'months' of attending bible study sessions and that he has spent 'hundreds of hours' attending bible study and other Christian activities

at his church (as opposed to church services which is also referred to, noting he has already claimed he attended Sunday services quite often) is new information. It is also now claimed that the applicant's declaration of belief in Christ is endorsed as genuine by his pastor and other members of the church congregation. At the PV interview, despite the Christianity claim being a central claim, limited time was dedicated to discussing the applicant's claimed conversion in any real depth. At times the applicant was cut off while speaking. He was not asked to provide supporting or further evidence of the Christianity claim, at any stage, taking into account he was unrepresented at the time he first raised the claim up until the decision. Though undated, the contents of the pastor letter indicate it post-dates the delegate's decision. It has been provided by the applicant in response to the IAA's invitation and to support his claimed conversion. The new information in the submission has been provided prior to the invitation but also in support of the applicant's claimed conversion. In all the circumstances, I am satisfied that all of this new information including the pastor letter was not and could not have been provided to the delegate before the decision and that there are exceptional circumstances that justify considering all this new information.

11. At the PV interview the applicant indicated he had sent a copy of the court summons to the Department. No record of the document being sent is apparent and the court summons is new information. However, the English translation of it is dated in June 2018, which supports the possibility that he did attempt to send this to the Department before the PV interview. The applicant's comments at the PV interview also indicate that he was under the impression that this document had already been received by the Department and no attempts were made to alert him to its non-receipt prior to the decision. The document is of some corroborative value to his previously raised claims. Having referred to it since his 2017 statutory declaration, it is capable of being believed. It identifies him by name. The delegate finds that he did not receive this court summons based in part on its non-provision. I am thus satisfied that it is credible personal information in the relevant sense which was not previously known and had it been known may have affected the consideration of the applicant's claims. For the same reasons, I am satisfied that there are exceptional circumstances that justify considering the court summons and its' translation.

Applicant's claims for protection

12. The applicant's claims can be summarised as follows:
 - He is an Iranian national who was born into a Shia Muslim family in Ahwaz city, Khuzestan province, Iran (Ahwaz).
 - In around 2011, he had an affair with a married woman (H) in Iran and her husband learnt of that affair.
 - In April 2012 he received a court summons. In July 2012 he went into hiding. In October and November 2012 he received two threatening phone calls from H's husband.
 - In February 2013, he left Iran due to fear of harm by H's husband or prosecution for adultery. Within a month, his brother received a call from the authorities enquiring about him and stating he would be arrested for ignoring the court summons. His brother told the authorities the applicant was overseas.
 - In around 2013, while in [Australian City 1] he became familiar with a Christian church, due to financial support he received from the church. He initially had no serious interest in Christianity but over time, he became touched by Christian people, their behaviour and support to him, such that in around mid-2017 he became serious about Christianity.

- In about early 2018 he attended six weeks of church classes in preparation for baptism and in July 2018, he was baptised as a Christian. He is currently a practising Christian and wishes to practise Christianity in Iran including through proselytising.
- He also fears that his punishment for adultery would be particularly harsh on his return to Iran due to disregarding the summons, leaving the country and seeking asylum in Australia.

Factual findings

13. The applicant claims to be a national of Iran and has consistently provided his identity details since his arrival to Australia in 2013. He has provided a copy and translation of his Iranian military service discharge certificate. Since his arrival interview, his evidence indicates that before reaching Christmas Island, the boat he was travelling on capsized. He indicated this is why he was unable to provide other identity documents which were lost at sea. On the evidence, I accept the applicant's claimed identity. I accept he is a national of Iran. Iran is the receiving country for the purpose of this review. I accept he was born in Ahwaz. Since then, according to his PV application, he spent a significant proportion of his life in Karaj city but resided in [Town 1] for the purpose of his university studies.
14. Since his arrival interview, the applicant's evidence at times suggested that he was of Arab ethnicity. For instance, he has stated he has an Arabic background. However, he has never concretely indicated he is Arab and at other times his evidence has suggested he is Persian, such as in his PV application and accompanying statutory declaration. He has not made any claims to fear harm regarding his potential Arab ethnicity and I am not satisfied that any such claims arise on the evidence.
15. On the evidence including country information before me on the large proportion of Iranians who do not practise or identify as Shia Muslims, I also accept that the applicant was born into a Shia Muslim family in Iran and that he identified with Shia Islam by default as claimed but after about eight or nine years old, no longer practised the religion while in Iran.
16. Although the applicant has been broadly consistent on aspects of his adultery claim since his arrival to Australia in 2013, I have serious doubts as to the truthfulness of this claim due to significant credibility and plausibility issues with some key aspects of the claim. His evidence on the circumstances that led to him meeting H and the development of their relationship was unconvincing. Asked where he met her, he claimed that they initially first met on a phone call. Against the context of a social group setting at his shared house while he was a university student, he had expressed his wish to have a girlfriend in his life and in response his friend gave him H's number and told him H was divorced. They spoke to each other over the phone and after a short while H visited him at his share house, and they had sexual intercourse the same day that they met in person. He only saw H in person this one time during the relationship. Country information from DFAT from 2013 indicated that while pre-marital and extra-marital relations were common in Iran, they were rarely demonstrated or spoken of openly. The delegate referred to country information in the decision which indicates that any actual or alleged sexual relationship outside of marriage is considered a crime in Iran and is punishable by 100 lashes and in some circumstances stoning to death. It indicates that women are at a greater risk of being accused and convicted of adultery. Though the delegate did not specify the source of this country information, the applicant has not refuted it and has similarly claimed that adultery attracts the death penalty in Iran. Moreover, DFAT information similarly indicates that stoning is a possible criminal punishment for adultery, according to judicial discretion. Even taking into account the applicant's claim

that he only learnt of H's marital status after they had sex, given the country information, I consider it highly doubtful that H, as a married woman in Iran, would meet the applicant at his shared house or that the applicant would do so, where they may easily risk being caught or seen together, whether as engaging or perceived to be engaging in pre-marital relations from the applicant's perspective or extra-marital relations from H's perspective. The evidence does not indicate that they took any precautions when deciding to meet. I consider it highly unlikely that they would not have taken steps to be discrete about the meeting or at least precautionary measures to establish trust with each other prior to meeting, particularly as the applicant claims this was a short while after they started talking. It is also doubtful, given the country context, that H would travel from a city between two to four hours driving distance away as claimed, to meet a person she had only spoken to on the phone for a short time by that stage, at his home, on their first encounter, without any apparent concern of the risks associated with having or being perceived to have an extra-marital affair or even mere concern at meeting essentially a stranger under such circumstances.

17. I have considered that the applicant and H may have trusted each other due to his friend knowing H, though not directly claimed. However, even considering this explanation, the circumstances remain doubtful because the applicant claims he did not even know how his friend knew H. It remains unclear why his friend thought H was divorced and did not know she was married, suggesting his friend knew very little about H, but yet did know her well enough to have her number and suggest a relationship between her and the applicant. Despite his claimed relationship with H for a few months, the applicant's evidence about H was also vague. He provided some details of her physical features but beyond this, struggled to give details. Asked H's age, he said he did not ask about this but at the time of their relationship, he thought she was about [age]. Asked whether H worked or was a housewife, he said he did not ask her for those kinds of details and did not know much about her.
18. The applicant's claims about how H's husband learnt of the affair similarly appear doubtful. He claimed that due to a high home phone bill H's husband became suspicious and having noticed the applicant's number on the bill, contacted the applicant. His statutory declaration evidence indicates the applicant was calling H's house whereas at the PV interview he referred to H calling him from her house phone and the applicant calling the home number just once or twice. The statutory declaration indicates the applicant became aware of H's marital status soon after their relationship became sexual and that he continued the relationship for two months, after which H's husband contacted him. Thus, in either case, given the country context and circumstances as outlined, I consider it highly doubtful that despite the applicant's evidence that he and H also spoke on her mobile phone, either of them would choose to additionally use her home phone number and make his number obvious to the husband. While I accept the plausibility of extra marital affairs occurring in Iran, I do not consider the circumstances against which the applicant claims he met H, his vague knowledge of her or the circumstances against which he claims her husband found out about the applicant to be credible.
19. The applicant has provided what he claims to be a court summons issued against him while he was in Iran due to a complaint made by H's husband against him. The court summons issuance date is [April] 2012 and it requests his attendance at court [in] April 2012. He claims the summons was received by his family at their home in Karaj while he was studying in [Town 1]. He claims he went into hiding in Ahwaz after completing his university studies in July 2012 although he returned to Karaj for a few days before he left Iran. At the PV interview, he claimed that during the approximately ten month period between receiving the summons and leaving Iran in February 2013, he did not work or do anything and alternated residence between different relatives' homes in Ahwaz. The applicant claims to have

managed to depart Iran on his genuine passport without any problems arising from the court summons against him, and has not provided any meaningful explanation for why he believes this was the case. I consider this particularly doubtful when considered against his statutory declaration claim that within just one month of his departure from Iran his brother received a telephone call from the courts asking about his whereabouts, that his brother told them he had left the country and that they then warned his brother he would be arrested for ignoring the summons. If the applicant were of such interest for evading the courts or for any other reason, it seems strange that they only took an interest in him soon after he departed Iran despite his lack of response to the summons for an extended period while he remained in Iran and noting the courts apparently were unaware of his departure from Iran (such that it may trigger their contact with the brother for instance). These claims further sit at odds with the applicant's claim that H's husband rang him twice, in October and November 2012 questioning him about his non-attendance at court, and threatening to find him and hurt him, and that the applicant was not able to deny the affair any longer by that stage as he knew H had disclosed it. Under such circumstances, I do not consider it plausible that the applicant would receive no official attention from the courts or the authorities and no enquiries, particularly to his own phone number which he did not claim he changed (or even to his family's home number), before he left Iran, when he no longer denied the affair, when H's husband was intent on finding him, given H had his number and could have easily provided this to the courts if it were not already available to them and taking into account the circumstances of his failure to appear at court for several months after the summons. The court summons document does not overcome my concerns about the credibility of these claims and given my concerns, I have not placed any weight on it.

20. Overall, due to my above outlined concerns, I am not satisfied that the applicant ever met a person H, or was ever in any relationship with a person named H that led to any issues with her husband. I am not satisfied of the adultery claim or any of his claims stemming from this.
21. The applicant also claims that he is a practising Christian. On 13 January 2019, soon before the PV interview which took place on 24 January 2019, he attempted to email the Department his baptism certificate; however no attachment was included in that email. The email also referred to his change of religion since 2018. The applicant had not previously raised this claim. Though the timing of raising the claim just prior to the PV interview and despite having been baptised around six months earlier, does raise doubts, I have had regard to his claims that he did not become serious about Christianity until around mid-2017 and he was baptised in 2018, both of which were after he lodged his PV application in March 2017 and that he remained unrepresented after lodging his PV application until the decision.
22. In considering the applicant's claimed conversion to Christianity I have also had regard to his evidence at the PV interview and that that evidence did appear overall unrehearsed and spontaneous.
23. Regarding how the applicant came to know of Christianity, I found his evidence frank. After he moved from [Australian City 2] to [Australian City 1], he initially rented a house with his sister supported by Australian government financial assistance. However, when that financial support ended, a church in [Australian City 1] started supporting them and in this way he became acquainted with that church. He did not recall the name of the church which he said was due to the five/six years that had since passed. However, he indicated the church's location and that it was [Church 1]. He appeared frank and forthcoming when he detailed that he initially was not serious about Christianity despite his commutes to go to church and that it was only about one and a half years prior to the PV interview (or around mid-2017)

that he attended another church (his claimed current church) and became more serious about Christianity.

24. Regarding his reason to convert to Christianity, the applicant referred to his personal experiences with Christian people and Christianity, including the kindness, hope and support he received from Christians. He said he started to understand that being good to each other is the way of life. He referred to being emotionally and mentally touched by the church services. He said he had goosebumps when he heard the church music, singing and the story of Jesus' crucifixion. He claimed that Christianity made it very easy for him to speak to his own God, the God that had given him everything he had wished for and asked for, including a good life and a good job. He referred to feeling that he had not chosen the Christian faith but rather felt he had been chosen to go on this path. He referred to attending lunch gatherings during which there were questions and answers asked and he heard stories about Christianity, Jesus' miracles and the way that Jesus lived. He said this started him off.
25. Regarding his decision to be baptised, he said that prior to the baptism, he learnt a lot about Christianity and was studying the religion. He said that he believed that one of the ways to be a true Christian was through baptism. He therefore decided to speak to the church Pastor to let him know his desire to be baptised. He claimed the Pastor then sent him to classes for six weeks, though I note the letter from the pastor suggests this was five lessons over a course of five weeks. He detailed that during those classes, he was asked to think deeply about baptism and to ask questions or express any doubts he may have about it before being baptised. One month after those classes were completed, the applicant was baptised in July 2018. He presented his baptism certificate at the PV interview and has since provided a complete copy of it. It indicates the church as [Church 2] and supports the applicant's claimed baptism in July 2018 and the location of the church consistent to the applicant's PV evidence.
26. In relation to practising Christianity, the applicant indicated he had a bible at church and one online in Farsi on his mobile phone. He said he read the bible at church and in his free time. He claimed he attended church often and whenever he could. However, if he was required to work on Sunday, he would not attend church. He was also unable to attend bible studies much as they are on Tuesday and he works Tuesdays. In addition to church services, as he is working as [an occupation] in Australia, he has volunteered his [services] for free to his church. He also has tea with church persons and if so, washes up afterwards and sweeps and mops the floors. He claimed he would help out in ordinary chores and also practised Christianity through making donations to the church, whenever he was able to spare extra money.
27. In relation to his knowledge of Christianity, the applicant answered questions at the PV interview with ease and appeared to have a reasonable understanding of Christianity. Asked about his favourite bible story, he detailed the story of a woman who had been bleeding for 12 years until she touched Jesus' robe and was healed. Asked about important Christian festivals, he discussed Christmas, and answered questions on the location of Jesus' birth, and the names of Jesus' parents. He referred to Easter as the Resurrection Day and to Good Friday and Jesus' resurrection from the dead on the Sunday after that. He also referred to Pentecost. The delegate also asked other basic questions on Christianity, which the applicant answered with ease, apart from one question on Jesus' religion. He was able to give information on the number and names of the disciples including that it was Judas who betrayed Jesus, Jesus' occupation as a carpenter, and the names of Adam and Eve.
28. Asked about how he would live his life as a Christian in Iran, the applicant said he wanted to have what had been given to him from Christianity and wanted to practise Christianity in Iran.

He said that one of the missions of a Christian is to proselytise and he wished to do so. He referred to a bible verse in relation to this.

29. Overall, on the evidence, I am satisfied that the applicant engaged in Christian and Christian related activities in Australia and was baptised other than for the sole purpose of strengthening his claims to be a refugee and that s.5J(6) of the Act does not apply. The applicant initially became involved with [Church 1] due to the financial assistance the church was providing him. He later became involved in [Church 2] and although he claims his involvement was initially 'not serious' with regards to Christianity, his evidence of his attraction to the helpfulness of Christians again suggests he engaged in the conduct partly due to the community support he received. I am also satisfied he may have partly engaged in this conduct due to some interest in exploring Christianity.
30. Overall, on the outlined evidence, I accept the applicant's claim that he was baptised in July 2018 following some preparatory classes. I also accept, on the outlined evidence, that he has taken some interest in Christianity and subsequently he has had some involvement and interaction with the Christian faith, a Christian church and a Christian community while in Australia and thus he has acquired some knowledge about Christianity due to this.
31. However, I nonetheless have some doubts as to whether his interest in Christianity ever evolved into a genuine commitment to the Christian faith, to genuinely identifying as a Christian or to any ongoing commitment to practise Christianity. The IAA, in its 28 May 2019 invitation to the applicant, invited supporting documentation of his claimed Christian conversion including evidence of the nature and frequency of his engagement with the church from 2017 until present. The IAA stated this may include but was not limited to a statement detailing his Christian beliefs and practises, evidence of his attendance at church or church related activities and letters of support from the church. The applicant's response solely included his complete baptism certificate copy and a brief letter from his church pastor. Contrary to the invitation, no meaningful or compelling supporting documentary or similar evidence was received to support the nature and frequency of his engagement with the church from 2017 until present. His claims that his baptism was preceded by 'months' of attending bible study sessions and church services and that he has spent 'hundreds of hours' attending bible study, church services and other Christian activities at his church and similarly that he attends church quiet often including Sunday services unless he has a Sunday work shift, have not been meaningfully detailed or supported by any further evidence of the same. Despite his overall apparently evident familiarity with Christianity displayed at the interview, I have significant doubts as to his claimed extent of ongoing involvement in Christianity and whether he is a genuine Christian in the manner described or that should he return to Iran, he would at all practise or wish to practise Christianity or proselytise as claimed.
32. It was argued that the delegate's finding that the applicant was not a genuine Christian was not based on probative facts and reference was made to the applicant attending almost two years of church and Christian activities consistently. However, there is no credible evidence before me to support the applicant's claims of doing so or to corroborate his claims of currently being a genuine Christian. The pastor's letter is incredibly vague and states that the author has been 'asked to acknowledge' the applicant's attendance of five lessons on baptism over five weeks and that he was baptised in their church about 12 months ago. It briefly states that 'he also attends our services.' I note some strange anomalies in that letter such as the letterhead logo which appears blurry and the incorrect spelling of 'church' in the church's claimed email address. The letter is undated. It was also claimed that the applicant's faith was endorsed as genuine by his pastor and members of the congregation. However, this too has not been corroborated by any documentary evidence including the church letter. The

church letter does not endorse the applicant's faith as genuine or his claimed level of participation in bible study, church services and church activities nor have any other forms of evidence been provided to support these assertions, even when an express invitation was given to provide evidence supporting the applicant's conversion claim. Importantly, given the applicant's claims to have been more serious about Christianity since around 2017 and his claimed involvement in the church since then, I consider it surprising and highly doubtful that he has not provided any compelling evidence to support his claimed ongoing practise of Christianity (at any level), particularly when specifically invited to do so by the IAA. I consider this failure to provide such evidence to undermine the claim that the applicant has consistently engaged in Christian religious practise and activities since 2017 and that he has been continuing to engage in such practises to recent times. Notwithstanding my earlier s.5J(6) finding, the outlined evidence thus also indicates that at least part of the reason for the applicant's Christianity related conduct in Australia was for the purpose of strengthening his claims for protection.

33. Despite his ability to discuss his claimed Christian practise at the PV interview, I do not consider, in the absence of any credible or compelling supporting evidence, that this alone suggests he is currently or has recently engaged in such activities or has a current, genuine commitment to Christianity and related activities. He has not provided any possible explanations for his apparent inability to produce such evidence. The evidence before me does not satisfy me the applicant has a genuine, ongoing commitment to Christianity as a religion he has accepted for himself rather than a religion he has merely explored in the past. On all the evidence before me including that provided in response to the invitation, I am not satisfied that he is currently practising Christianity in any of the ways he has claimed. I am also not satisfied that he is a genuine Christian or has any current, real commitment to Christianity.

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 accept that the applicant is an Iranian national who was born in Ahwaz and has spent significant time in Karaj city. I accept that he was born into a Shia Muslim family but after about eight or nine years of age he no longer practised Shia Islam. I am also satisfied he would not practise Shia Islam on his return to Iran. I accept that the applicant was baptised as a Christian while in Australia in July 2018 following some preparatory classes. I accept that he has taken some interest in Christianity and subsequently he has had some involvement and interaction with the Christian faith, a Christian church and a Christian community while in Australia and he has acquired some knowledge about Christianity due to this. I am not satisfied that the applicant is currently practising Christianity in any of the ways claimed. I am not satisfied that he is a genuine Christian convert or has any current, real commitment to Christianity. Given my lack of satisfaction as to any ongoing commitment to Christianity or current practise of Christianity, I am also not satisfied that he would or would wish to identify as a Christian, practise Christianity or engage in Christian related activities should he return to Iran. I am not satisfied that he would seek to attend a house church or otherwise meet with Christian persons or engage in Christian related or communal activities including proselytising. On the evidence, I am satisfied he would not do so and would not wish to do so due to his lack of genuine commitment to the Christian faith.
37. DFAT consistently reports that a Muslim who leaves their faith or converts to another religion in Iran can be charged with apostasy. The Penal Code does not specifically criminalise apostasy, but provisions in the Penal Code and Constitution state that *sharia* applies to situations in which the law is silent, and judges are compelled to deliver sharia based judgements in such cases. Although the Koran does not explicitly say that apostasy should be penalised, most Islamic judges in Iran agree that apostasy should be a capital crime. DFAT also reported in 2016 that it considered it unlikely that individuals will be prosecuted on charges of apostasy and highly unlikely that the government would monitor religious observance by Iranians such as whether or not a person regularly attends mosque or participates in religious occasions, and thus it would generally be unlikely that it would become known that a person was no longer faithful to Islam. Perceived apostates were said to only be likely to come to the attention of the authorities through public manifestations of their new faith, attempts at proselytization, attendance at a house church or via informants. Moreover, according to DFAT, international observers advise that Iranians who convert to Christianity outside the country are unlikely to face adverse attention from the authorities on return, provided that they have not previously come to the attention of the authorities for political activities conducted in Iran, maintain a low profile and do not engage in proselytization or political activities in Iran. At the PV interview, asked whether he faced issues in Iran as a non-practising Muslim, the applicant claimed he did not, nobody noticed him and that nobody really cared. I am not satisfied that he would engage in any activities relating to Christianity in Iran. There is also no credible evidence before me to indicate that the applicant's Christian related activities in Australia have come to the attention of the Iranian authorities or that there is a real chance they would come to such attention or be of any adverse interest to the Iranian authorities or anybody in Iran in the reasonably foreseeable future. On all the evidence, I am not satisfied that the applicant faces a real chance of any harm in Iran as an individual who has been baptised abroad at a Christian church and engaged in Christian activities abroad and/or as a perceived Christian convert and/or as a non-practising Muslim or due to the combination of any of these reasons or any related reasons.

38. The applicant also claims he fears that his punishment for adultery would be particularly harsh on his return to Iran due to his disregard of the April 2012 court summons, but also due to leaving the country and seeking asylum in Australia. I have not accepted the adultery claim. According to DFAT, Iran has historically refused the issuance of travel documents for the facilitation of involuntary returns of its citizens from abroad, but on 19 March 2018, Iran and Australia signed a Memorandum of Understanding (MOU) on Consular Matters including an agreement by Iran to facilitate the return of Iranians who arrived after this date and who have no legal right to stay in Australia. The applicant is not subject to this MOU, having arrived before March 2018. I accept that he is not in possession of a passport and if he is to return to Iran he will require travel documents which are issued only to voluntary returnees. If the applicant returns to Iran I am satisfied it will only be as a voluntary returnee. Country information from DFAT indicates that the Iranian authorities would usually question a voluntary returnee only if the individual has already come to the official attention of the government, such as committing a crime in Iran before departing. The applicant left Iran on his genuine passport and I am not satisfied he held any profile with the Iranian government when he departed or committed any crime in Iran before departing. There is no credible evidence to support that he has since come to any such official government attention. I am not satisfied he is currently of any interest to the Iranian authorities or anybody else in Iran. DFAT indicates that the Iranian authorities pay little attention to failed asylum seekers on their return to Iran. Since the 1979 revolution, Iranians have departed Iran in large masses and the authorities accept that Iranians will seek to live and work abroad for economic reasons. The Iranian authorities have little interest in prosecuting failed asylum seekers for activities engaged in abroad, including activities relating to protection claims such as converting to Christianity. Persons with existing high profiles may face a higher risk of coming to official attention on return, particularly political activists, but the applicant does not hold such profile. On the evidence, I am not satisfied that the applicant faces a real chance of any harm on this basis, even taking into account his Christian related activities in Australia.

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.

42. I have found above that there is not a real chance the applicant will be harmed in Iran. The same standard applies in assessing real chance and real risk.¹ Based on the factual findings and country information outlined above, I find that the applicant will not face a real risk of significant harm in Iran.

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.

¹ *MIAC v SZQRB* (2013) 210 FCR 505.

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.