



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

**Decision and Reasons**

**Referred application**

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IRAN

IAA reference: IAA19/06635

Date and time of decision: 11 June 2019 16:20:00

M Currie, Reviewer

**Decision**

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

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

## Background to the review

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### Visa application

1. The referred applicant (the applicant) claims to be an Iranian citizen of Azari (Turkish) ethnicity. He arrived in Australia in July 2013 and lodged an application for a Temporary Protection Visa (TPV) in September 2017. In April 2019, a delegate of the Minister for Immigration and Border Protection found that Australia did not owe protection obligations to the Applicant. On 16 May 2019, the applicant's matter was referred to the Immigration Assessment Authority (IAA).

### Information before the IAA

2. I have had regard to the material given by the Secretary under s.473CB of the Migration Act 1958 (the Act). No further information has been obtained or received.

### Applicant's claims for protection

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3. The applicant's claims can be summarised as follows:
  - He is an Iranian citizen of Azari (Turkish) ethnicity who was born in Tehran in [year]. He was born to a Muslim family and was nominally raised as a Muslim. He was married and has one child.
  - In 2005, he was arrested after false accusations had been made against him. The charges were later dropped. In 2007, 2008 and 2009 he was prosecuted three times for the consumption of alcohol. On the third occasion, he was gaoled for three days. He had several other difficult interactions with the Iranian Police throughout his life.
  - He became dissatisfied with Islam. A Zoroastrian friend (F1) encouraged him to explore other religions. He explored conversion to Christianity in secret. In 2012, while the applicant was exploring a business opportunity in [Country 1], his wife, who remained in Iran, found a copy of the bible which he had hidden in his bedroom. After his return from [Country 1], she confronted him and he admitted to her that he had been considering converting to Christianity. She was a sincere adherent to Islam and was distressed.
  - The applicant later converted to Christianity in secret only informing a small group of friends. After his wife found out he had converted, she initiated divorce proceedings against him. She also advised her brothers (who were members of the paramilitary Basij) about his conversion. Her brothers informed the authorities of his conversion to Christianity.
  - The Iranian authorities investigated the applicant for his conversion. They attempted to detain him, but he was able to elude capture by going into hiding.
  - He made arrangements to depart Iran and travel to Australia. In Australia, he practiced Christianity for around one year, before he became dissatisfied with it. He no longer practices any religion and describes himself as agnostic.
  - He fears returning to Iran, as he believes that the Iranian authorities are aware of his Christian conversion and that he would be harmed upon return. Furthermore, he believes that his current agnosticism would also lead to harm.

- He also fears that his attempt to claim asylum in a western country would lead to him being imputed with anti-regime opinion

## **Factual findings**

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4. Since his arrival in Australia applicant has provided consistent information to Australian authorities about his identity. Soon after he arrived in this country, two identity documents were sent to the Department on behalf of the applicant; his Iranian birth certificate and his Iranian driver's license. These documents were not included with his Visa application however; during his Protection Visa Interview, the delegate broached the issue of these documents with the applicant who allowed the delegate to use these as further evidence of his identity. I have reviewed the information in the documents and compared it with information provided orally by the applicant. I note that the applicant has not provided translations for the two documents he provided however, during his protection Visa interview the delegate asked the translator who was present to provide an oral translation for these documents which indicated that the documents are supportive of the applicant's identity claims.
5. I am satisfied that the other identity documents provided support the applicant's claim for identity and he has established his identity to my satisfaction. I accept that the applicant is an Iranian citizen who was born in [year]; I accept that he is of as Azari ethnicity. For the purposes of this decision, I find that Iran is his receiving country.
6. I note that during his interview the applicant indicated that he formerly held a genuine Iranian passport and he travelled from Tehran under the auspices of this passport in 2012 as part of his journey to Australia. He says this passport was subsequently lost en route to Australia. During his Protection Visa Interview, the applicant claimed to the delegate that although the passport was genuine he had altered it so that it showed his brother's name rather than his own. Like the delegate, I found this explanation to be implausible, vague and unsupported by any evidence. According to country information before me, Iranian passports are modern and sophisticated identity documents<sup>1</sup>. I do not accept that the applicant could have his altered his passport in the way he describes. I conclude that the applicant departed his home country legally on a passport issued in his own name.

## **Consumption of alcohol, Police**

7. In his Protection Visa Interview, the applicant claimed that around 2005 he was the subject of an arrest warrant though he cannot outline the exact circumstances. He believes that this warrant was executed on him after he had been misidentified as participating in a physical altercation with an unnamed third party. The applicant was summoned to court at this time but was released when it became apparent that he was not the perpetrator of the altercation. The applicant indicates that this incident was clearly a case of mistaken identity and he does not feature in his claims for protection.
8. The applicant has also put forward several claims about interactions he had had with the Iranian police throughout his time in Iran. These included three separate incidents related to the consumption of alcohol, which is illegal in Iran. The applicant says that in 2007, 2008, and 2009 he was convicted of consuming alcohol in his home. On these occasions, he received a fine and lashes. On the third occasion, he was jailed for three days.

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<sup>1</sup> Department of Foreign Affairs and Trade (DFAT), "Country Information Report: Iran June 2018", CIS7B839411226  
DFAT, "DFAT Country Information Report: Iran June 2018", CIS7B839411226

9. The applicant has not indicated that these past convictions related to his protection Visa application in any way. The applicant has not indicated that he consumed any alcohol in Iran at any time after 2009. He has not indicated that he consumes alcohol in Australia or that he would resume consuming alcohol if returned to Iran. He has not claimed that these incidents would cause him problems if he returned to Iran now, almost a decade later. In the circumstances, I am not satisfied the applicant would resume consumption of alcohol if returned to Iran.

#### **Other difficulties**

10. Finally, I note that the applicant has also claimed that he had three adverse interactions with the Iranian Police in a restaurant. These incidents are said to have occurred when the police entered a restaurant where the applicant was spending time with friends. The applicant's explanation for these events has been extremely brief and does not feature further in his protection claims. He has not explained where or when these events happened, what led to them or what the consequences of them were. Though he has described what happened during these events as torture, he has not explained what happened or what he means by torture. He is not claimed that he was detained at any time so it is not clear how he was 'tortured'. Given the complete lack of any details, I have many doubts about the veracity of these incidents. Having reviewed the applicant's claims carefully and in the absence of any specific information about these events, I am not satisfied that these events ever occurred.

#### **Christian conversion**

11. The applicant's principal claim for protection is that during the course of his life he became dissatisfied with his religion (Orthodox Shia Islam). He confided his concerns to a Zoroastrian friend (F1) who advised him that he should consider exploring other religions. On F1's advice, the applicant explored other religions to which he might convert.
12. Sometime in 2012, the applicant and another friend (F2) went on a trip together to [Country 1]. The trip was part holiday and part exploration of business opportunities in the country, however due to circumstances outside the applicant control he was unable to operate a business in [Country 1] and he returned to Iran. While he was in [Country 1], the applicant's wife had found a Christian Bible in the applicant's bedroom. After his return from [Country 1], she confronted him about the Bible. At that time, the applicant admitted to her that he had some doubts about his Islamic religion and indicated that he had been exploring alternative faiths. He told her he was planning to convert to Christianity. The applicant's wife was distressed as she was a sincere adherent of the Islamic faith.
13. Sometime later, the applicant converted to Christianity. He did not tell anybody except a small select group of friends he trusted. When his wife found out about his conversion, she was unhappy and initiated divorce proceedings against him. She also reported the applicant's conversion to her brothers, who were members of the paramilitary Basij. Together, the applicant's wife and her brothers reported the applicant's conversion to the Iranian authorities.
14. After the authorities were informed about the applicant's alleged conversion to Christianity, Iranian police commenced an investigation of the applicant and he was required to attend a police station on several occasions. Initially he was not charged because the evidence against him was weak. By this time, the applicant was in hiding, living with his mother, having been in conflict with his wife. As there are serious penalties in Iran for converting from Islam the

applicant feared for his life. On three occasions, the Iranian police attempted to arrest him however, he was not present at these times eluded capture. While he was in hiding, the applicant made arrangements to travel to Australia. He departed Iran from Tehran International airport and flew to [Country 2] and then on to and then travelled on to [Country 3] from where he came to Australia by boat.

15. In Iran, the Christian community is divided into Christians by birth, and new converts. There are estimated to be about 300,000 Christians in Iran, though estimates vary widely, who adhere to a variety of Christian denominations<sup>2</sup>. There are no clear figures on the number of converts to Christianity since conversion is forbidden by law, and is usually conducted in secret. Christians in Iran do face many restrictions associated with their religion and harassment is common<sup>3</sup>. Nevertheless, I find the applicant's account of his conversion to Christianity and the events surrounding it to be vague, evasive and implausible. Country information before me indicates that there are only a very limited range of circumstances where a wife might initiate a divorce in Iran<sup>4</sup>. An unsubstantiated claim of conversion to Christianity like the one described does not meet the threshold. This country information seems to cast doubt upon the applicant's claim.
16. I observe that during his Protection Visa Interview the applicant did not seem to know much about Christianity. When first asked to describe the book which his wife had found he describes it as merely a Christian book. Later when the delegate asked for more information about the book, he said that it was a copy of the Bible. During his Protection Visa Interview, the applicant did not seem to understand that the Bible was in fact the central text of Christianity. Though he says, he converted to Christianity in Iran, on his own evidence he never attended a Christian church, or a Christian service and he was not baptised. He did not seem to have any other interaction with Christians in Iran. His claim of conversion seems to be based solely upon the 'research' he had privately conducted into alternative religions, including the Christian faith.
17. I also note that the applicant says the investigation against him relied on evidence provided by two close friends of his whom his wife had co-opted into providing evidence against him. However, the applicant had previously indicated that he only advised very close friends of his conversion to Christianity. I do not find it plausible that his wife could co-opt those 'close friends' of his to give evidence against him in the circumstances described.
18. I note when he first came to Australia the applicant also advanced an account of his Christian conversion which was similar to that presented in his protection Visa interview. However, at that time he indicated that he had been detained and beaten by the Iranian authorities for his conversion. However, in his TPV application the applicant indicated that this was an error and that he had never been beaten or detained for his conversion. He indicated the error arose from a mistranslation during his 2013 entry interview. However, I have listened to that interview and I am not persuaded that the applicant's characterisation of the 2013 interview is fair. I note that the interview went for over two hours and during it, the applicant conversed freely and at length with the translator at the time; there is no suggestion that the applicant's comments were mistranslated. Furthermore, during the entry interview the applicant twice

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<sup>2</sup> Finnish Immigration Service, 'Christian Converts in Iran', 21 August 2015, CISEC96CF14127

<sup>3</sup> UK Home Office, "Iran: Christians and Christian converts", 01 March 2018, OG9EF767914

<sup>4</sup> Kaur, S, 'Muslim Women's Rights in Divorce in Islamic Jurisprudence and Iranian Law: An Anallaysis', IOSR Journal of Humanities and Social Science, 01 September 2017, CISEDB50AD7962 & Mohammad Reza Mohammadzadeh Rahni, Peyman Kavousi and Fatemeh Kavousi, Divorce in Iran and cases in Which the Woman Has the Right to Divorce, Textroad, 15 September 2014, CIS2F827D92339

indicated that he had been detained for the two-day period in his responses to two separate questions. I am not satisfied a translation error occurred as he now claims.

19. After careful consideration, I am not persuaded that the applicant has been entirely truthful about his time in Iran. I find his shifting account of his conversion and what happened to him, his vague answers about Christianity and his overall account to be implausible. I do not except that he is telling the truth. I conclude that the applicant invented his Christian conversion in order to justify his claim to be an asylum seeker. I do not except that he ever truly considered conversion to Christianity in Iran or that his wife found out. I do not accept that his then wife reported his conversion to her brothers who were in the Basij. I do not accept that the applicant's ex-wife had brothers who were members of the Basij. I do not accept that she reported the applicant's Christian conversion to the authorities or that he was ever investigated for a Christian conversion. I do not accept that the Iranian authorities have any knowledge of his dissatisfaction with Islam, or his exploration of other faiths. I conclude the applicant has fabricated all of these events. I accept that the applicant was married and that he is subsequently divorced. I conclude this divorce occurred while he was still in Iran and that thereafter he decided to travel overseas. I conclude that the applicant was never of interest to the authorities in Iran for his religious views.
20. Though I have many concerns about the quality of the applicant's evidence, and I have not accepted his Christian conversion claimed, I am willing to accept that he was dissatisfied with his Islamic religion in Iran. I also am willing to accept that he was not a sincere or faithful adherent of his faith. I conclude that he was a non-practising Muslim in Iran. I am also willing to accept that he does not currently practice his religion in Australia and that he is an agnostic.

#### **Christian Activities in Australia**

21. The applicant says that for around a year after his arrival, he attended Christian services in Australia; he says he was baptised during this period. The applicant has not offered any other supporting evidence about his Christian activities in Australia. In light of my findings above, and the absence of any supporting evidence, I am not satisfied that the applicant did attend Christian services in Australia, or that he was baptised. I conclude that like his other 'Christian' claims, he invented these events in order to enhance his claims for protection.

#### **Refugee assessment**

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22. 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**

23. 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.

24. The applicant was born and lived in Tehran for his entire life before coming to Australia. His parents and his large extended family continue to reside in Iran, principally in Tehran. I conclude that he returned to Iran the applicant would reside in Tehran and live there, as he formally did.

25. Having not accepted the applicant's principal claim for protection, I am left with only his residual claims. That he would return to Iran as an agnostic; and that his attempt to claim asylum in Australia would lead to him being imputed with anti-regime political opinion.

#### *Non-practising Muslim*

26. I have accepted above that the applicant is a non-practising Muslim who described himself as an agnostic. The applicant fears that he would be harmed as a non-practising Muslim, and as an agnostic, if returned to Iran.

27. Country information before me does indicate that in Iran religious practice is a sensitive issue; a Muslim who leaves his or her faith or converts to another religion can be charged with apostasy<sup>5</sup>. 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<sup>6</sup>. 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<sup>7</sup>. However, in most cases, apostasy charges rarely result in a court appearance or a conviction<sup>8</sup>.

28. Politically motivated apostasy charges were frequent in the years following the Iranian revolution, often leading to death sentences but DFAT reports that these are no longer an everyday occurrence<sup>9</sup>. Nevertheless, Iranian authorities continue to use religiously based charges (such as 'insulting Islam') against a diverse group of individuals. In recent years, the group has included Shi'a members of the reform movement, Muslim-born converts to Christianity, Baha'i, Muslims who challenge the prevailing interpretation of Islam (particularly Sufis), and others who espouse unconventional religious beliefs (including members of recognised religious groups). Some religiously-based cases have clear political overtones, while other cases do seem to be primarily of a religious nature, particularly when connected to proselytization<sup>10</sup>. In March 2017, Iranian courts upheld a death penalty decision for a man

<sup>5</sup> Department of Foreign Affairs and Trade (DFAT), "Country Information Report: Iran June 2018", CIS7B839411226

<sup>6</sup> Finnish Immigration Service, 'Christian Converts in Iran', 21 August 2015, CISEC96CF14127

<sup>7</sup> Department of Foreign Affairs and Trade (DFAT), "Country Information Report: Iran June 2018", CIS7B839411226

<sup>8</sup> Finnish Immigration Service, 'Christian Converts in Iran', 21 August 2015, CISEC96CF14127

<sup>9</sup> DFAT, "Country Information Report: Iran June 2018", CIS7B839411226

<sup>10</sup> DFAT, "Country Information Report: Iran June 2018", CIS7B839411226

convicted of apostasy in Arak<sup>11</sup>. There is no evidence before me that agnostics face any harm in Iran.

29. Despite these factors, there is considerable information about the prevalence of non-practising Muslims in Iran. In 2016, DFAT assessed that it highly unlikely that the government would monitor religious observance by Iranians – for example, whether or not a person regularly attends mosque or participates in religious occasions such as Ashura or Muharram – and thus it would generally be unlikely that it would become known that a person was no longer faithful to Shia Islam<sup>12</sup>. At the same time, it was noted that Atheists are unlikely to come to the attention of security authorities unless they seek to publicise their views. A Muslim who leaves his or her faith to practise atheism can be charged with apostasy<sup>13</sup>. More recent reporting from DFAT suggests that individuals may face charges for apostasy, but this is usually linked to other sensitive political issues or religious conversion<sup>14</sup>. A 2014 report by the Danish Immigration Service which indicated that abstaining from Muslim rituals, such as not attending mosque for example after having converted would not necessarily arouse any suspicion as many in Iran do not regularly attend mosques<sup>15</sup>.
30. I have found that the applicant was a non-practising Muslim at the time he departed Iran and I accept he is currently agnostic. Whilst religious discrimination and harassment can occur in Iran, I note that in that instance where the death sentence was applied above, the man had published criticisms of Islam and the Koran online. This applicant has not advanced any claim that he has made public criticisms of a religious nature at any time and so his case is not analogous with that mentioned above. I have concluded that this applicant was a non-practising Muslim in Iran, prior to his departure. He has not indicated that he faced any harm, discrimination or persecution on this basis at any time in Iran. The applicant has not advanced any claim to indicate that he has any involvement in politically sensitive issues. I have not accepted his principal claim to be a convert. I have concluded that the applicant was not of interest to the authorities in Iran at the time of his departure, and that he departed Iran legally. I am not satisfied that he would be of interest to the authorities in Iran now. In the circumstances and considering the country information, I am not satisfied that the applicant would face a real chance of harm arising from his status as a non-practising Muslim, or as an agnostic, if returned to Iran.

#### *Attempt to claim asylum in a Western country*

31. The applicant says that he fears his attempt to claim asylum in Australia would lead to him being imputed with anti-regime political opinion if he returns to Iran. He fears that this may lead to persecution if he is returned to his home country.
32. I have already found that the applicant did not depart illegally; rather, he departed Iran on a valid Iranian passport issued in his own name.
33. Historically, Iran has refused to issue travel documents to allow the involuntary return of its citizens from abroad, with the recent exception of persons who arrived in Australia after the signing of a Memorandum of Understanding in 2018<sup>16</sup>. As the applicant arrived in Australia in

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<sup>11</sup> DFAT, "Country Information Report: Iran June 2018", CIS7B839411226

<sup>12</sup> DFAT, Country Information Report: Iran April 2016", CIS38A8012677

<sup>13</sup> DFAT, Country Information Report: Iran April 2016", CIS38A8012677

<sup>14</sup> DFAT, "Country Information Report: Iran June 2018", CIS7B839411226

<sup>15</sup> Danish Immigration Service, Update on the Situation for Christian Converts in Iran, June 2014, CIS28931

<sup>16</sup> DFAT, "DFAT Country Information Report - Iran", 7 June 2018, CIS7B839411226 & DFAT, "DFAT Country Information Report Iran April 2016", 21 April 2016, CIS38A8012677



2013, I conclude that that if he were to return to Iran it would have to be on a voluntary basis. As he no longer has a Passport in his possession, he would have to obtain a temporary travel document<sup>17</sup>. The country information indicates that authorities at the airport in Iran will be forewarned about the return of a person on a temporary travel document because of Iran's sophisticated government systems<sup>18</sup>. In these circumstances, I accept that the Iranian authorities may infer that the applicant had sought asylum in Australia.

34. Information before me indicates that millions of Iranian citizens travel overseas every year without difficulty including to a range of non-Muslim countries<sup>19</sup>. In 2016, DFAT noted that where direct connections do not exist, Iranians are generally able to travel onto third countries freely<sup>20</sup>. The Head of the Passport and Visa Department at Iran's Ministry of Foreign Affairs stated in November 2012 that it was 'not a criminal offense in Iran for any Iranian to ask for asylum in another country'<sup>21</sup>. According to international observers, Iranian authorities pay little attention to failed asylum seekers on their return to Iran. Iranians have left the country in large numbers since the 1979 revolution, and authorities accept that many will seek to live and work overseas for economic reasons. International observers report that Iranian authorities have little interest in prosecuting failed asylum seekers for activities conducted outside Iran, including in relation to protection claims<sup>22</sup>. The authorities will usually only question a voluntary returnee on return if they have already come to official attention, such as committing a crime<sup>23</sup>.

35. I have found that the applicant was not of any interest to the Iranian authorities at the time of his departure. I also found that he was able to depart Iran legally on his own passport issued in his own name. He has not made any claim to suggest that any of his activities in Australia would lead to him being of interest to the authorities in Iran. Given the passage of time, in the absence of any event which may lead to his lead to suspicion against him I conclude the applicant would not be of interest to the Iranian authorities now. Country information does not support that the applicant would face a real chance of harm (or any interest) from the authorities now, almost six years after his departure merely for having spent time in a western country, or for claiming asylum. Given these factors, I am not satisfied that the applicant would face a real chance of harm arising from his status as a person who sought asylum, or spent time in a western country, or any combination of these claims

### **Refugee: conclusion**

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

### **Complementary protection assessment**

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37. 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

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<sup>17</sup> DFAT, "Country Information Report: Iran June 2018", CIS7B839411226

<sup>18</sup> DFAT, "DFAT Country Information Report Iran April 2016", 21 April 2016, CIS38A8012677

<sup>19</sup> DFAT, "Country Information Report: Iran June 2018", CIS7B839411226

<sup>20</sup> DFAT, "Country Information Report: Iran April 2016", CIS38A8012677

<sup>21</sup> 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", Danish Refugee Council, Landinfo and Danish Immigration Service, 01 February 2013, CIS25114

<sup>22</sup> DFAT, "Country Information Report: Iran June 2018", CIS7B839411226

<sup>23</sup> DFAT, "DFAT Country Information Report - Iran", 7 June 2018, CIS7B839411226, & DFAT, "DFAT Country Information Report Iran April 2016", 21 April 2016, CIS38A8012677

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**

38. 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.

39. I have not accepted the applicant's principal claims. I have found that the applicant would not face any harm if returned to Iran as a result of his agnosticism, his status as a non-practicing Muslim or his attempt to claim asylum in Australia. As 'real chance' and 'real risk' have been found to meet the same standard, it follows that the applicant would not face a real risk of significant harm arising from these issues if returned to Iran.

### **Complementary protection: conclusion**

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

### **Decision**

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

## Applicable law

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

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

In this Act, unless the contrary intention appears:

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***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.