



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

**Decision and Reasons**

**Referred application**

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IRAN

IAA reference: IAA19/07089

Date and time of decision: 18 October 2019 15:10:00

S Mansour, Reviewer

**Decision**

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The IAA remits the decision for reconsideration with the direction that:

- the referred applicant is a refugee within the meaning of s.5H(1) of the *Migration Act 1958*.

*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 national. On 24 May 2017 he lodged an application for a Temporary Protection Visa (TPV).
2. On 29 August 2019 a delegate of the Minister for Immigration (delegate) refused to grant the applicant a TPV. In summary, the delegate accepted the applicant's past detention in Iran but did not accept that he was a genuine Christian convert and ultimately concluded that the applicant was not a person with respect to 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).
4. On 24 September 2019 the applicant, through his legal representative, provided to the IAA a submission. To the extent that it disputes the delegate's findings, makes factual and legal argument, refers to case law and reiterates the applicant's claims, I have had regard to it.
5. The applicant also provided a 13 September 2019 medical report from a mental health clinician. The report post-dates the delegate's decision and includes past but also very recent information about the applicant's symptoms and feelings since the time of his Protection Visa (PV) interview. It indicates that he was referred by his GP under a Mental Health Care Plan in relation to his ongoing depressive low moods and anxiety though it gives no date for that referral or detail of how many mental health sessions he has attended. It makes a recommendation, said to be made, 'on behalf of the applicant' rather than independently, that he be given another opportunity to be heard with an interpreter who is neutral to his opinions. The applicant at no stage prior to this raised concerns about the interpreter who assisted during his PV interview. It was apparent from listening to a recording of the PV interview that the interpreter did at times face difficulty with interpreting and he stated so. I do not accept, however, that the interpreter was not neutral. Aside from these elements, the content of the report largely reiterates the applicant's already raised claim that he converted to Christianity in Australia. It also discusses the conduct of the PV interview and the applicant's circumstances at that time. The applicant reported to the clinician that he experienced a range of symptoms and feelings during his PV interview. He reported that this resulted in his confusion and loss of confidence in answering questions during the PV interview. The applicant and his agent have previously broadly noted similar symptoms during the PV interview. A review of the PV interview audio does support that the delivery of the applicant's evidence may at times have been affected in the way he now describes. For example, his statement that he lost confidence seems to be illustrated when he initially discussed the person of John the Baptist in relative detail but later stated 'no, I can't talk about individuals' (in the Bible). The applicant's ability to provide evidence during his PV interview is a material consideration. However, the medical report does not provide any independent or evaluative medical opinion or assessment of the applicant's reported symptoms and to the extent that he already raised these symptoms or they were otherwise apparent from listening to the audio of the PV interview, I have had regard to this. The report adds little to what is before me. Overall, I am not satisfied that there are exceptional circumstances that justify considering the new report.

6. The submission also contains new country information. It refers to and extracts information from a 2013 United States Commission on International Religious Freedom Annual Report, a 2013 United Kingdom Home Office Country of Origin Report and a March 2015 Christians in Parliament report. Contrary to the IAA Practice Direction, the material was not identified as new information and no explanation was provided as to why the new country information meets either s.473DD(b)(i) or s.473DD(b)(ii). The applicant's representative is a lawyer and registered migration agent who would presumably be aware of the requirements of the Practice Direction and, further, I note that a copy of the Practice Direction was sent to the applicant. I have decided not to accept this new country information (s.473FB(5) of the Act). Even if I did accept the new country information, I am not satisfied, in what has been provided, that it would meet the requirements of s.473DD. The reports are dated a number of years prior to the delegate's decision and appear to be general country information rather than personal information. I have before me country reporting from a breadth of reliable sources including more recent publications and that which relates to the situation for Christians in Iran.
7. The applicant provided a copy of a new email sent to his agent on 20 September 2019, after the delegate's decision. It is said to be from the Pastor of the church in Australia that he told the delegate he currently attends (Pastor X). It is said to respond to the delegate's decision as it supports that the applicant's manifestation of his Christian faith is through his Christian behaviour and regular church participation, in circumstances where the delegate drew adverse inferences from the applicant's limited biblical knowledge. It names and relates to the applicant personally and it is said to corroborate his already raised claims regarding the genuineness of his conversion to Christianity at Pastor X's church, which the delegate did not accept. I am satisfied that it is credible in the relevant sense. I am satisfied it is credible personal information not previously known and had it been known may have affected the consideration of the applicant's claims. It is third party evidence that gives opinion from a member and leader of the church. I am also satisfied that there are exceptional circumstances that justify considering the new email.
8. The submission also states that the applicant is prepared to appear before the IAA to give evidence in relation to how his life and world view have significantly changed since he has found faith in Jesus Christ. The delegate questioned the applicant in great detail about this claim during the PV interview. The delegate also identified his concerns with this claim including in relation to the applicant's difficulty with answering some questions about his knowledge of Christianity. The applicant also had a further month after the PV interview, to provide additional information or evidence in support of his claims, to further address the concerns raised by the delegate during the PV interview or even request to be further interviewed by the delegate. It is not apparent why he has not done so. He was represented throughout the primary stage. I have taken into account the applicant's self-reported symptoms as expressed by him and his agent during the PV interview or otherwise apparent, and the potential impact of this on the delivery of his evidence. As outlined, I do not accept the interpreter that assisted during the PV interview lacked neutrality. I have not exercised my discretion to invite the applicant to give new information at an interview. However, given the applicant's evidence that his Christian faith is manifested through his behaviour and church attendance, which Pastor X has made a statement in support of and offered to speak further on the applicant's behalf about, I have instead exercised my discretion in favour of obtaining new information from Pastor X.
9. On 14 October 2019 a telephone interview was conducted with Pastor X. I am satisfied that various elements of new information arose during that discussion. In particular, that the applicant had not been baptised, given the applicant earlier claimed he had been. Pastor X also gave new information about the circumstances of the applicant's first attendance at his church

as well as his ongoing attendance, the elements of Christianity that were important to the applicant and his opinion on the applicant's claimed identification as a Christian. The new information provided by Pastor X is highly probative evidence and material to a consideration of the applicant's core claim of conversion to Christianity. I am satisfied there are exceptional circumstances that justify considering this new information. I have considered Pastor X's evidence in its entirety.

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

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

- He is an Iranian national of Azeri ethnicity who was born and resided in Tehran, Iran.
- He grew up in a Shia Muslim household but from a young age took issue with many tenets of Islam and refused to comply with Islamic practices.
- He was arrested and assaulted by the Basij on multiple occasions due to his non-compliance with Islamic codes of behaviour and dress.
- He was also arrested, detained and beaten up by police officers due to walking with his girlfriend in public.
- In 2009 he joined the Green Movement and was involved in protests.
- In the months preceding his departure from Iran, his Christian friend ('M') took him to a Pastor's home twice.
- He left Iran in 2013 as it was extremely difficult for him to be systematically deprived of his basic human rights.
- In Australia he attended church briefly while in detention. Afterwards, from 2014 to 2016 and once settled into the community, he attended a church close by to his home (Church A) and since 2016 began attending a more contemporary protestant church (Church B).
- [In] February 2017 he was baptised as a Christian at Church B and continues to practise Christianity. He wishes to practise Christianity in Iran including through inviting others to the faith.
- He fears harm in Iran as a Christian who has converted from Islam, who will be considered an apostate. He is a non-conformist who would not abide by Islamic laws and practices in Iran. As a failed asylum seeker, he would be stopped and questioned about his religious beliefs on re-entry to Iran.

### **Refugee assessment**

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11. 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

12. 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.
13. The applicant claims to be a national of Iran and has provided a copy and English translation of his Iranian national identity card and *shenasnameh* (birth certificate). I accept he is a national of Iran. Iran is the receiving country for the purpose of this review.
14. The applicant consistently indicated his ethnicity as Azeri and that he was born and resided in Tehran for the majority of his life before coming to Australia. I accept this.
15. As detailed since an early stage during his 2013 entry interview, the applicant was born into a Shia Muslim family and felt that Shia Islam had been forced upon him. The applicant further detailed his growing discontent towards and disagreement with, particular Islamic principles and practices including those that affected broader Iranian society, both in his 2017 statement of claims and in oral evidence given at the 2019 PV interview. He stated after 2010 he conducted more online research about Islam and his anti-Islamic sentiments were solidified. I note that he was not particularly sophisticated in his PV interview responses and did come across as nervous and stressed by the PV interview context at times and at one stage he stated he was stressed. However, I found his PV interview evidence on his reasons for and the nature of his disengagement with Islam, to be forthcoming and persuasive. He also provided illustrations of negative experiences he personally had around Islam and broader societal issues he was opposed to. I accept that despite being raised as a Shia Muslim, the applicant took issue with the religion from a young age, and refused to comply with certain religious practices. I accept that he entirely ceased his Shia Muslim practices a few years before leaving Iran and similarly no longer had any belief in Shia Islam.
16. The applicant claimed that in the months preceding his departure from Iran, his Christian friend ('M') twice took him to a pastor's home in Karaj, about three hours away. M was said to be a Christian convert who this same pastor had converted. The applicant's oral evidence suggested he could not recall precisely what M told him that triggered his interest in talking to this pastor. However, he did discuss some matters which he claimed influenced his decision, though these were not particularly convincing given the country context. Country information including from DFAT and a 2013 joint report by the Danish Refugee Council (DRC), Land Info and Danish Immigration Service (DIS) details that the Iranian Penal Code strictly prohibits proselytization by religious minority groups and it is a capital crime for non-Muslims to convert Muslims. The authorities have periodically cracked down on house churches with a particular

emphasis on leaders of churches that actively broadcast, proselytise or seek out new members. The applicant said this pastor was wary of seeing him at his place often given he was a Muslim-born person. Thus, his friend did not take him there again, due to the dangers involved. Given this, I have significant doubts that the pastor would even agree to meet him in the first instance. This is particularly given that the applicant's evidence was that at that time, he solely had a superficial interest in learning more about Christianity rather than any real interest in conversion. It also seems highly doubtful that the applicant would have commuted such a long distance away to see a pastor, despite merely requiring more information about Christianity at the time. He may have sourced further information through less drastic and risky avenues such as his Christian friend or online research (noting he claimed he had acquired additional information about Islam online). I consider the alleged circumstances even more doubtful given his written evidence that he did not even stay long at the pastor's house and they only spoke briefly. The overall circumstances are unconvincing. I accept as outlined that the applicant did have a strong conviction against Shia Islam before he left Iran and did stop practicing Shia Islam while in Iran. I am not satisfied however, that at that very preliminary stage, he went and saw a pastor.

17. The applicant's claim to have since converted to Christianity in Australia is not straight forward. This is because the applicant has not been a particularly reliable witness in relation to this specific claim. There are aspects of this claim which I consider he has embellished. I have set out my concerns in more detail below. I am also satisfied that he has fabricated elements of this claim including that he met with a pastor in Iran. This does raise doubts as to whether there are any truthful elements to this claim. However, for the reasons I have set out below, I have ultimately accepted that he has, in the last 12 months, developed a genuine belief in and consistent engagement with Christianity and his current Church.
18. During the applicant's very early 2013 entry interview he did mention that he came to Australia to change his religion. He also noted Shia Islam had been forced upon him but that he did believe in the oneness of God. He made no mention of which religion he intended to convert to. He made no mention of Christianity. I have considered his early evidence against the context of his PV interview evidence on his personal convictions against Islam. Iran is a theocracy and the applicant has discussed his anti-Iran and anti-Islam sentiments interchangeably at times. I consider his early statements to be more reflective of these sentiments rather than any genuine or conclusive decision to convert to a religion at that time.
19. At the PV interview, the applicant also claimed he was exposed to Christianity during his time in Australian detention and attended a church a few times in detention. He has not provided any documentary evidence of this claim or any convincing or specific details. I am not satisfied he had any meaningful engagement with any church while in detention.
20. The applicant further claimed that after settling in [City 1] from about 2014, he started attending an Anglican church (Church A) there until about 2016 with the purpose of learning about Christianity. He participated in bible study sessions for a total of about five months, spread out over these years. He said he was introduced to two Iranian pastors at Church A. Church A was close by to his home. Yet, he was unable to recall the name or exact address of Church A at the PV interview. He was also unable to consistently recall the name of one of the two Iranian pastors. Despite his claimed poor memory, he has not provided evidence which demonstrates this is a diagnosed medical issue. I am not convinced that he faces more than natural lapses in memory due to the passage of time. I do not consider that such natural memory lapses would explain forgetting something so recent in time and core to his claims. Nor has he supported his time at Church A with any documentary evidence. I am not satisfied he had any meaningful engagement with Church A from 2014 to 2016.

21. The applicant also claimed that in about late 2016 he joined a different church, of protestant denomination, and that this is his current church (Church B) and where he met Pastor X among other pastors he noted during the PV interview. Unlike his other evidence about his interest in Christianity while in Iran, in detention, and at Church A, the applicant has supported his engagement with Church B with some convincing detail and documentary evidence. This evidence is of course not free from doubt, given my concerns with his overall credibility on this claim. However, of notable weight in my opinion is the email evidence he has provided from Pastor X of Church B and the evidence which was subsequently obtained from Pastor X on the basis of his initial email offer to speak further on the applicant's behalf. Pastor X is an Assistant Location Pastor at Church B, a men's pastor and responsible for men and new comers. Pastor X stated he has a couple of thousand men in his location out of a total of about 4000 individuals. He emphasised the magnitude of the process involved and in which he is engaged, in welcoming new comers to Church B in a strategic and organised fashion. Naturally, he has a very busy role. In my view and also in Pastor X's view, given Church B's significant congregation size, multi-national composition with over 100 nationalities that attend the church, and that Pastor X oversees thousands of individuals, it is noteworthy that he and the applicant have managed to become personally known to each other as close friends since 2016 and have developed a closer relationship during the last twelve months. This is not the case for many individuals Pastor X oversees and his evidence was that there are many persons who were much longer term Church B members but more spasmodic attendees whom the Pastor does not know personally. Given these circumstances, I also place weight on Pastor X's willingness to provide information in support of the applicant's engagement with Church B. I found Pastor X to be forthcoming and open about his hesitation with providing similar support to other members of the Iranian community and his recognition that not all individuals were genuine. I consider his evidence about the applicant's level of engagement and commitment to Christianity to overall be reliable and to hold particular weight given his long term interactions and observations of the applicant both at Church B but also on a personal level.
22. During the PV interview, the applicant was asked how he became aware of Church B and responded that he was first introduced to Church B through a friend. Pastor X noted that often new comers came through word of mouth. In relation to how the applicant and Pastor X specifically first met in around late 2016, Pastor X gave a detailed, compelling and believable account. He stated that the applicant was and continues to live with a housemate (C) in Australia who suffers from [a medical condition] and is C's main form of support. C is also a member of the Iranian community. The applicant and C went to Church B. The applicant initially approached Pastor X's 'boss,' the Location Pastor, and told her they needed to speak with someone and needed prayer for his friend's [condition]. The Location Pastor then referred them to Pastor X who since that time has remained in close contact with both the applicant and C and engages in follow up with them. What stood out to Pastor X about the applicant during those initial encounters was that the applicant acted on C's behalf and was proactive in seeking prayer from a pastor.
23. In relation to the applicant's church attendance thereafter, the applicant first started to attend Church B once every two to three weeks but in the last 12 months (or since around October 2018) Pastor X repeatedly indicated that he considers the applicant to have deepened his engagement with Christianity and this has been reflected in his very regular Sunday church attendance. While it does initially strike as convenient timing that the applicant would become increasingly drawn to Church B in the preceding year in possible preparation for his PV interview, I cannot discount the evidence around his initial reasons for attending Church B or Pastor X's opinion that indeed the immigration process is an incredibly stressful one of uncertainty, which in the applicant's case he believes had caused him to lean further into the Christian faith. In any event, he was not advised of his PV interview until July 2019, some nine

months after his more frequent church attendance commenced. Moreover, it is noteworthy that Church B is not proximate to the applicant's home and in the Pastor's view the applicant has made real and ongoing efforts which are difficult to fabricate. Furthermore, according to Pastor X, the applicant's support in bringing C to Church B has continued until present times. The Pastor also expressed his opinion that the applicant's journey was not dissimilar to others who had turned to Christianity in that time was required for the individual to trust and understand the (new) environment.

24. There are also obvious indications that despite elements of truth to this claim, and the applicant's initial interest and involvement in supporting his friend emotionally and spiritually through taking him to Church B, that the applicant was also opportunistic and to a degree did exploit these circumstances to embellish a claim around conversion to Christianity in his 2017 PV application. This is reflected in the claims that he met with a Pastor in Iran and had an engagement with church in detention and previously at Church A, all of which I have not accepted. What further highlights his exploitation of his initial circumstances at Church B is his contrived baptism claim as included in his 2017 PV application. Pastor X indicated that in fact the applicant had not, to date, been baptised at Church B. Pastor X has consistently indicated his close, ongoing and deep connection and friendship with the applicant, which now spans a period of three years. I would expect Pastor X to be aware of the applicant's baptism. I am satisfied that the applicant has not been baptised. Given these multiple fabricated claims in the 2017 PV application, I am also satisfied that the applicant did not at all identify as a Christian at the time of his 2017 PV application. Pastor X also, quite frankly, seems to imply that the applicant was not always so sincere given that when the applicant first came to Church B, his focus was more so on himself and his own 'survival.'
25. Despite all this, it has now been over two years since the applicant first contrived these claims and he has continued attending Church B for three years. While not free from doubt, the more recent evidence does support that specifically in the last 12 months, the applicant's faith in Christianity has deepened beyond a superficial curiosity or as a form of support or spiritual exploration in relation to his ill friend, become sincere and has been exhibited more clearly. I have also had particular regard to the various processes that Church B engages in to follow up with new comers and the highly organised and strategic nature of Church B. I have considered the applicant's claims against this lens and had particular regard to his alleged close connection with Pastor X and Pastor X's specific approach to welcoming and retaining new members which he believes is achieved through connection to a person above a process. Approximately eighteen months ago, the applicant invited Pastor X to dinner at his home with him and his friends, which Pastor X believed was significant. The applicant also maintains phone contact with Pastor X and the evidence indicates their discussions revolve around their friendship but also spiritual matters and sharing spiritual support including discussion about God, trust in God and faith. Pastor X believes he has seen the applicant transform as a person in the time he has known him, though he acknowledged it was difficult to explain or quantify. However, according to Pastor X, the applicant has, through drawing closer to the Christian faith as it is taught at Church B, become more peaceful, joyful and has more of a heart for people and wants to bring change to the world, than when they first met and when he observed the applicant to instead be more selfish and a very 'edgy' person. He attributes these changes to the applicant's awareness of and personal relationship with Jesus as his Saviour.
26. I have also had regard to the highly contemporary nature of Church B and its specific services that are available to members. According to Pastor X, a 'member' of Church B is a very informal classification that applies to a person in regular attendance including the applicant. One who so identifies can even purchase a T Shirt or cap stating so. Pastor X's evidence suggested that baptism was not at all a requirement for membership of Church B, not forced upon church



members and more of a personal decision taken by each individual and based on the individual's own timeline for being ready for the step. Pastor X expressed no concerns in relation to the applicant's failure to become baptised and did not believe the applicant was opposed to baptism but that he would do so once ready. Church B's main service is the Sunday service and there are three sessions. Apart from this, there are about fifty smaller groups that engage in social and fellowship activities during the week. According to Pastor X, the applicant's home is not proximate to these group events and his role as primary supporter of C has hindered him in being involved in these smaller groups, though he does believe he is engaged in informal Christian Iranian groups in his own area that are not run by Church B. He was also confident that the applicant would commit to a church roster in future.

27. In relation to the nature of his engagement with Christianity, the applicant submits that his Christian behaviour and regular church participation are the primary manifestations of his Christian faith rather than biblical knowledge. The evidence also supports that his primary activity is regularly attending the weekly Sunday service which involves praise and worship, announcements, a message and then fellowship time afterwards. Pastor X's evidence was that he has observed the applicant to have become well known and well connected among the Iranian but also non-Iranian church congregation. He stated the applicant was 'in the thick of the service' and engaged on a Sunday rather than in the back seat. The applicant discussed the Sunday services consistent with the account given by Pastor X and also noted he enjoyed the positive energy, that it was a very friendly and warm environment with people coming and approaching you. Pastor X's evidence similarly highlighted that Church B did focus on building a 'family' within its congregation and this was one of the key aspects of Christianity at Church B. Pastor X also noted the applicant stayed after services for 'connect time' and also would queue up to wait to speak to Pastor X and check how he was going, despite the crowds and waiting time. Pastor X also gave evidence that the applicant makes financial contributions to Church B.
28. Regarding Church B's core beliefs, Church B's website as referred to by the delegate and Pastor X's evidence as also outlined, emphasise that Church B is a highly relational, fellowship centred, evangelical church that strongly focuses on expansion and inviting others to the faith. The applicant also discussed the importance of evangelism, albeit in simple terms, during the PV interview. He said that one of the most important aspects of his faith was when Jesus invited people to and preached about Christianity as well as confessing one's sins and returning to God.
29. Church B does believe in the bible as the literal word of God, but the weight of the evidence supports that Church B centres on relationships, evangelism and fellowship. The evidence from the applicant and Pastor X does not indicate the applicant attended any specific bible study sessions at Church B, although the applicant does read the bible in his personal time. However, I am not satisfied he has become sincere in connecting with Christianity until more recent times and similarly am not satisfied he has engaged with the bible until recent times. On the evidence and my earlier findings, I would not expect that he would have any sophisticated biblical knowledge. At the PV interview, the applicant stated that even in the Farsi language, the bible was difficult to understand and he continued learning. He repeatedly emphasised his desire to learn more about the bible, which seems consistent with the more recent sincerity of his engagement with Christianity.
30. Despite this, the applicant did demonstrate some biblical knowledge and personal biblical interpretation and applicability to his own life during the PV interview. For instance, he discussed the figure of John the Baptist as a powerful man who was baptising people with water. He said that despite this John the Baptist recognised his inferior position to Jesus and told people that when Jesus came, he would baptise people with the Holy Spirit, through which

they would have eternal life. The applicant also said that normally humans just wished to progress and acquire higher positions but it was good for one to just accept and appreciate what they had. I note the interpreter appeared to have some difficulties during these discussions. Nonetheless, he also did interpret that the applicant said that if a person was rich with lots of wealth and they gave this away, and allowed Jesus and Christianity (into their lives), they would get back (in return) on Judgement Day. The applicant also discussed the story of Peter and referred to Peter as Jesus' best student. He stated that Jesus knew that he was going to reject him three times and he had mentioned this to Peter but despite this, Peter kept doing so, but eventually believed in Jesus. I am satisfied that the applicant has engaged with the bible in his personal time in the last 12 months.

31. According to Pastor X the applicant has developed a solid and genuine faith in Jesus Christ as a born again Christian. In relation to the applicant's broader Christian knowledge and attraction to Christianity, the applicant was not a particularly articulate witness during the PV interview, as noted by his agent. However, he did refer to a number of important tenets of his Christian faith. He referred to confession and repentance, Judgement Day/the Second Coming or Jesus' return and the repayment of one's actions, Christianity as a means or path to Salvation, the trinity, Jesus's sacrifice as well as the concepts of re birth or being re born. He also discussed that he realised that harming himself as a Shia Muslim or self-flagellation was in his view wrong and would not make God happy and that during his travels to [Country 3] while working he viewed that people were able to live their lives (more freely) through other religions. His perception was that Islam was in contrast with Christianity where being kind to others and prayer made God happy. He is opposed to many aspects of Islam which he does not believe exist in Christianity including multiple wives and the concept of temporary marriage. He also finds it difficult to understand certain stories in Islam including surrounding the Prophet Mohammad and stated his process towards the Christian faith was a gradual one. His evidence and Pastor X's was that in his view Christianity offered him a religion that was free from the rules and regulations he felt imposed upon him as a Muslim. It is true that the evidence suggests that the applicant has associated certain negative behaviours or negative life experiences with his prior Muslim faith and certain positive behaviours and experiences with the Christian faith, which are circumstantial and contextual. Despite this, I cannot discount that this is the nature of his personal journey to Christianity. In further reflection of this, Pastor X noted the applicant was initially seeking an alternative to Islam. However, he also discussed how, having then entered Church B's community, the applicant further became attracted to many elements of it including the love, the laughter, the caring people, but also the experience of grace, forgiveness and fellowship. This was also reflected during the PV interview at various points when the applicant placed repeated emphasis on being drawn to the concept of being able to repent, confess and start a new life and be reborn. Pastor X also emphasised his opinion that the applicant had now come to know God/Jesus Christ on a personal level as his Saviour in comparison to his prior lack of engagement with Islam where he only knew about God. Pastor X's evidence was that he observed the applicant's Christian behaviour, faith and trust in God, during services but also in their personal phone discussions.
32. Overall, I am satisfied that the applicant has fairly recently, in the last 12 months, developed a sincere attachment, basic but genuine belief in and consistent engagement with Christianity through Church B, an evangelical and contemporary church. In particular, through his weekly attendance at Sunday services and fellowship with church members. I am satisfied he identifies as a Christian member of Church B in the terms described by Pastor X and notwithstanding his failure to yet become baptised. I accept he is not particularly scripturally knowledgeable but does continue to discover Christianity gradually. I am satisfied that he has engaged in Christian and Christian related activities in Australia 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. He initially attended Church B

and thereafter continued to do so for a variety of reasons. The evidence indicates a friend introduced him to Church B, but he also attended Church B in order to seek prayer and spiritual support for C, having observed and supported C as his housemate and friend in his serious illness, because Church B and its beliefs were an alternative to and in his view contrasted to Islam which he had by that stage already rejected for some years, as he was drawn to the contemporary nature of Church B as a church/religion without stringent rules or regulations, and because of the social, communal and fellowship connections he grew attached to over time within Church B's congregation and through his personal relationship with Pastor X. Notwithstanding this s.5J(6) finding, the applicant's embellishment and fabrication of elements of this claim, including that he was baptised, does to me suggest that after his initial exposure to Church B, he did take the opportunity to also attempt to strengthen his claims for protection by mischaracterising and misrepresenting the level and nature of his involvement with Church B as it was in 2017.

33. In relation to the applicant's intention to continue identifying as a Christian or engaging in Christian activities, I place weight on his attendance at Church B's Sunday services for a period of three years now but especially on his more frequent, committed, engaged and genuine interest in Sunday services for the past 12 months. The outlined evidence indicates he continues to invite and bring C to Church B until recent times. The applicant claims he also talks to friends in Australia and tries to invite them to church. I accept that he has a lot more to learn about Christianity as he himself has expressed and I am satisfied he would, if returned to Iran, continue such learning in the same manner that he has done in Australia. He has become a part of a highly evangelical church community. On the evidence, I am satisfied that he will or will wish to seek the same aspects of Christianity that he has engaged in in Australia if returned to Iran. I am satisfied he will seek out a house church or likeminded community in which to worship, where he will feel welcome and befriended by other Christians, connect to them due to their shared faith and invite others to do likewise. I accept he will attend church as he has in Australia and this may involve discussion of the bible, praise and worship and communal activities. During the PV interview, he also said he would preach in Iran by speaking to people and explaining Christianity. I am not convinced by his claim that he has already spoken to his siblings in Iran about Christianity but on the evidence, I am prepared to accept this is something he may wish to do in the reasonably foreseeable future. He also discussed that wherever a few people gathered to read the bible, the Holy Spirit was present and this in itself could be seen as a church on his return to Iran. I accept he may be involved in such activity.
34. DFAT indicates that Muslims in Iran who leave their faith or convert to another faith may be at risk of an apostasy charge. According to the Iranian Penal Code, it is a capital crime for a non-Muslim to convert a Muslim and for this reason, none of the country's three recognised minority religions proselytise or accept converts as members. DFAT indicates that 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. Iranian Christians who are not members of the recognised ethnic minority churches generally practice in underground 'house churches' and according to DFAT and the Finnish Immigration Service (FIS)'s August 2015 report, there are a significant and growing number of such churches in Iran. According to DFAT, local sources indicated that many converts were unhappy about their designation as Muslims at birth and wished to explore their religious identity. Others see adoption of the faith as a form of rebellion against the Iranian government.
35. DFAT reports that some house churches are very informal and involve small gatherings of close family and friends on a regular or semi-regular basis for prayer, worship and bible reading,

while others are larger. An increasing number of house churches involve 'internet pastors' who had fled Iran but continue leading the church via the internet. The Iranian authorities deem the growth of house churches as a threat to national security and consider these to be illegal. Authorities periodically cracked down on house churches, with emphasis on their leaders where the church has actively been proselytising or seeking out new members. The joint report by DRC, Land Info and DIS highlighted that baptism is not at all a definitive requirement for joining a house church in Iran and most baptisms, given the risk, are undertaken abroad. Most conversions were directly related to the reading of the bible.

36. DFAT indicates that crackdowns on house churches increased under the Rouhani government. In July 2017, eight Christians were convicted with 'acting against national security through the establishment of a house church' and 'insulting Islamic Sanctities.' They were sentenced to ten to 15 years imprisonment and as at December 2016, approximately 90 Christians were in detention or awaiting trial because of their religious beliefs and activities. The Iranian authorities subjected Christians in detention to severe physical mistreatment, including beatings and solitary confinement.
37. According to the DIS's June 2014 report on the situation for Christian converts in Iran, an international organisation in Turkey observed that house churches in Iran were not necessarily well versed in Christianity and were essentially community building initiatives by informal evangelical leaders who are familiar with church doctrine to varying degrees. Moreover, the source described that the house churches more often have a communal nature rather than a hierarchical nature. According to Amnesty International's International Secretariat (AIIS), as referred to by the DIS, the Iranian authorities are believed to be monitoring house church gathering participants and persons participating may be at risk of arrest and detention, and even if the authorities were not pursuing ordinary members of house churches, it is highly likely they have many members under surveillance. The same DIS report indicates that according to Christian Solidarity Worldwide (CSW), the situation for Christian converts has been worsening and it seems that gatherings among such groups could lead to arrest by the authorities, even in the case of social events such as picnics, which are not necessarily church gatherings. CSW referred to a picnic gathering event in March 2014 during which participants were arrested. CSW is of the view that it seems to have reached the point that whenever people gather, there can be a risk of raid.
38. In 2015 the Austrian Centre for Country of Origin and Asylum Research and Documentation (ACCORD) referred to the arrest and detention of 69 Christian converts in 2014, the arrest of at least 42 Christians in 2013, and the conviction of 35 of those Christians in 2013 for participating in informal house churches, associating with churches outside the Islamic Republic of Iran, perceived or real evangelical activity, and other standard Christian activities with sentences from one to ten years imprisonment. Furthermore, if a convert is active in informal church activities or proselytising, problems may arise with the authorities.
39. According to the June 2014 DIS report, regular members of home churches that are arrested are often used to gain information about the church operations and may be threatened to stop their activities or to assist the authorities in sourcing incriminating information about the church. The length of detention of converts depends on who arrested them and where.
40. According to the 2018 US Department of State International Religious Freedom Report, human rights organisations and Christian NGOs continued to report arrests of Christians in Iran for their religious affiliation or activities, including members of unrecognised churches. News reports stated that authorities subjected arrested Christians to severe physical and psychological mistreatment, which at times included beatings and solitary confinement. In

February 2018, the UN special rapporteurs on freedom of religion or belief, on the situation of human rights in Iran, on minority issues and on the right to health issued a joint statement publically expressing their concern over lengthy prison sentences issued to Christian converts and leaders in Iran, reports of their mistreatment in prison and more broadly, the targeting of religious minorities, especially Christian converts.

41. DFAT indicates that the Iranian security forces are conspicuous in many aspects of Iranian life, with an extensive network of police, security and intelligence services who exercise effective control over almost all areas of the country. Moreover, for ordinary Iranians, interactions with security forces can be unpredictable and can be influenced by prevailing political circumstances and individual personalities. Country information indicates that torture and other ill-treatment of detainees remains common in Iranian detention facilities (especially to enforce confessions), including prolonged solitary confinement, threats of execution or rape, sexual humiliation, forced virginity tests, sleep deprivation, burnings, the use of pressure positions, electroshock, denial of medical care and repeated beatings.
42. On the evidence, I find that the applicant, as a recently committed person to the Christian faith as he understands it through Church B, will, in his ongoing practice of and further exploration of Christianity and Christian related activities in Iran, as described above and corroborated by country information, face a real chance of serious harm in the form of monitoring, arrest, detention and thereafter severe physical mistreatment and torture, on return to Iran. I am satisfied that the essential and significant reason for the harm is the applicant's religious beliefs. I find that the persecution involves systematic and discriminatory conduct.
43. The harm which the applicant fears emanates from the Iranian authorities who operate under laws which apply across Iran. I find that the real chance of persecution relates to all areas of Iran.
44. Section 5J(2) of the Act does not apply because there are no effective protection measures available to the applicant in Iran and given the Iranian government is the agent of harm.
45. I consider that requiring the applicant to modify his behaviour, either by concealing, altering or renouncing his religious beliefs, or ceasing to be involved in the practice of Christian activities including church attendance, communal worship, fellowship and social activities, falls within a kind of behavioural modification that an applicant cannot be required to make under s.5J(3)(c)(i) of the Act. I find that s.5J(3) of the Act does not apply.
46. The applicant has a well-founded fear of persecution for the purpose of s5J.
47. As I have found that the applicant has a well-founded fear of persecution in Iran owing to his Christian beliefs, I have not considered his other claims for protection.

#### **Refugee: conclusion**

48. The applicant meets the requirements of the definition of refugee in s.5H(1).

#### **Decision**

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The IAA remits the decision for reconsideration with the direction that:

- the referred applicant is a refugee within the meaning of s.5H(1) of the *Migration Act 1958*.

## Applicable law

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

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

In this Act, unless the contrary intention appears:

...

***bogus document***, in relation to a person, means a document that the Minister reasonably suspects is a document that:

- (a) purports to have been, but was not, issued in respect of the person; or
- (b) is counterfeit or has been altered by a person who does not have authority to do so; or
- (c) was obtained because of a false or misleading statement, whether or not made knowingly

...

***cruel or inhuman treatment or punishment*** means an act or omission by which:

- (a) severe pain or suffering, whether physical or mental, is intentionally inflicted on a person; or
- (b) pain or suffering, whether physical or mental, is intentionally inflicted on a person so long as, in all the circumstances, the act or omission could reasonably be regarded as cruel or inhuman in nature;

but does not include an act or omission:

- (c) that is not inconsistent with Article 7 of the Covenant; or
- (d) arising only from, inherent in or incidental to, lawful sanctions that are not inconsistent with the Articles of the Covenant.

...

***degrading treatment or punishment*** means an act or omission that causes, and is intended to cause, extreme humiliation which is unreasonable, but does not include an act or omission:

- (a) that is not inconsistent with Article 7 of the Covenant; or
- (b) that causes, and is intended to cause, extreme humiliation arising only from, inherent in or incidental to, lawful sanctions that are not inconsistent with the Articles of the Covenant.

...

***receiving country***, in relation to a non-citizen, means:

- (a) a country of which the non-citizen is a national, to be determined solely by reference to the law of the relevant country; or
- (b) if the non-citizen has no country of nationality—a country of his or her former habitual residence, regardless of whether it would be possible to return the non-citizen to the country.

...

***torture*** means an act or omission by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person:

- (a) for the purpose of obtaining from the person or from a third person information or a confession; or
- (b) for the purpose of punishing the person for an act which that person or a third person has committed or is suspected of having committed; or
- (c) for the purpose of intimidating or coercing the person or a third person; or
- (d) for a purpose related to a purpose mentioned in paragraph (a), (b) or (c); or
- (e) for any reason based on discrimination that is inconsistent with the Articles of the Covenant;

but does not include an act or omission arising only from, inherent in or incidental to, lawful sanctions that are not inconsistent with the Articles of the Covenant.

...

#### **5H Meaning of refugee**

(1) For the purposes of the application of this Act and the regulations to a particular person in Australia, the person is a refugee if the person:

- (a) in a case where the person has a nationality—is outside the country of his or her nationality and, owing to a well-founded fear of persecution, is unable or unwilling to avail himself or herself of the protection of that country; or
- (b) in a case where the person does not have a nationality—is outside the country of his or her former habitual residence and owing to a well-founded fear of persecution, is unable or unwilling to return to it.

Note: For the meaning of *well-founded fear of persecution*, see section 5J.

...

### 5J Meaning of well-founded fear of persecution

- (1) For the purposes of the application of this Act and the regulations to a particular person, the person has a well-founded fear of persecution if:
  - (a) the person fears being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion; and
  - (b) there is a real chance that, if the person returned to the receiving country, the person would be persecuted for one or more of the reasons mentioned in paragraph (a); and
  - (c) the real chance of persecution relates to all areas of a receiving country.

Note: For membership of a particular social group, see sections 5K and 5L.
- (2) A person does not have a well-founded fear of persecution if effective protection measures are available to the person in a receiving country.

Note: For effective protection measures, see section 5LA.
- (3) A person does not have a well-founded fear of persecution if the person could take reasonable steps to modify his or her behaviour so as to avoid a real chance of persecution in a receiving country, other than a modification that would:
  - (a) conflict with a characteristic that is fundamental to the person's identity or conscience; or
  - (b) conceal an innate or immutable characteristic of the person; or
  - (c) without limiting paragraph (a) or (b), require the person to do any of the following:
    - (i) alter his or her religious beliefs, including by renouncing a religious conversion, or conceal his or her true religious beliefs, or cease to be involved in the practice of his or her faith;
    - (ii) conceal his or her true race, ethnicity, nationality or country of origin;
    - (iii) alter his or her political beliefs or conceal his or her true political beliefs;
    - (iv) conceal a physical, psychological or intellectual disability;
    - (v) enter into or remain in a marriage to which that person is opposed, or accept the forced marriage of a child;
    - (vi) alter his or her sexual orientation or gender identity or conceal his or her true sexual orientation, gender identity or intersex status.
- (4) If a person fears persecution for one or more of the reasons mentioned in paragraph (1)(a):
  - (a) that reason must be the essential and significant reason, or those reasons must be the essential and significant reasons, for the persecution; and
  - (b) the persecution must involve serious harm to the person; and
  - (c) the persecution must involve systematic and discriminatory conduct.
- (5) Without limiting what is serious harm for the purposes of paragraph (4)(b), the following are instances of *serious harm* for the purposes of that paragraph:
  - (a) a threat to the person's life or liberty;
  - (b) significant physical harassment of the person;
  - (c) significant physical ill-treatment of the person;
  - (d) significant economic hardship that threatens the person's capacity to subsist;
  - (e) denial of access to basic services, where the denial threatens the person's capacity to subsist;
  - (f) denial of capacity to earn a livelihood of any kind, where the denial threatens the person's capacity to subsist.
- (6) In determining whether the person has a *well-founded fear of persecution* for one or more of the reasons mentioned in paragraph (1)(a), any conduct engaged in by the person in Australia is to be disregarded unless the person satisfies the Minister that the person engaged in the conduct otherwise than for the purpose of strengthening the person's claim to be a refugee.

### 5K Membership of a particular social group consisting of family

For the purposes of the application of this Act and the regulations to a particular person (the *first person*), in determining whether the first person has a well-founded fear of persecution for the reason of membership of a particular social group that consists of the first person's family:

- (a) disregard any fear of persecution, or any persecution, that any other member or former member (whether alive or dead) of the family has ever experienced, where the reason for the fear or persecution is not a reason mentioned in paragraph 5J(1)(a); and
- (b) disregard any fear of persecution, or any persecution, that:

- (i) the first person has ever experienced; or
- (ii) any other member or former member (whether alive or dead) of the family has ever experienced;

where it is reasonable to conclude that the fear or persecution would not exist if it were assumed that the fear or persecution mentioned in paragraph (a) had never existed.

Note: Section 5G may be relevant for determining family relationships for the purposes of this section.

#### **5L Membership of a particular social group other than family**

For the purposes of the application of this Act and the regulations to a particular person, the person is to be treated as a member of a particular social group (other than the person's family) if:

- (a) a characteristic is shared by each member of the group; and
- (b) the person shares, or is perceived as sharing, the characteristic; and
- (c) any of the following apply:
  - (i) the characteristic is an innate or immutable characteristic;
  - (ii) the characteristic is so fundamental to a member's identity or conscience, the member should not be forced to renounce it;
  - (iii) the characteristic distinguishes the group from society; and
- (d) the characteristic is not a fear of persecution.

#### **5LA Effective protection measures**

- (1) For the purposes of the application of this Act and the regulations to a particular person, effective protection measures are available to the person in a receiving country if:
  - (a) protection against persecution could be provided to the person by:
    - (i) the relevant State; or
    - (ii) a party or organisation, including an international organisation, that controls the relevant State or a substantial part of the territory of the relevant State; and
  - (b) the relevant State, party or organisation mentioned in paragraph (a) is willing and able to offer such protection.
- (2) A relevant State, party or organisation mentioned in paragraph (1)(a) is taken to be able to offer protection against persecution to a person if:
  - (a) the person can access the protection; and
  - (b) the protection is durable; and
  - (c) in the case of protection provided by the relevant State—the protection consists of an appropriate criminal law, a reasonably effective police force and an impartial judicial system.

...

#### **36 Protection visas – criteria provided for by this Act**

...

- (2) A criterion for a protection visa is that the applicant for the visa is:
  - (a) a non-citizen in Australia in respect of whom the Minister is satisfied Australia has protection obligations because the person is a refugee; or
  - (aa) a non-citizen in Australia (other than a non-citizen mentioned in paragraph (a)) in respect of whom the Minister is satisfied Australia has protection obligations because the Minister has substantial grounds for believing that, as a necessary and foreseeable consequence of the non-citizen being removed from Australia to a receiving country, there is a real risk that the non-citizen will suffer significant harm; or
  - (b) a non-citizen in Australia who is a member of the same family unit as a non-citizen who:
    - (i) is mentioned in paragraph (a); and
    - (ii) holds a protection visa of the same class as that applied for by the applicant; or
  - (c) a non-citizen in Australia who is a member of the same family unit as a non-citizen who:
    - (i) is mentioned in paragraph (aa); and
    - (ii) holds a protection visa of the same class as that applied for by the applicant.
- (2A) A non-citizen will suffer **significant harm** if:
  - (a) the non-citizen will be arbitrarily deprived of his or her life; or
  - (b) the death penalty will be carried out on the non-citizen; or
  - (c) the non-citizen will be subjected to torture; or
  - (d) the non-citizen will be subjected to cruel or inhuman treatment or punishment; or
  - (e) the non-citizen will be subjected to degrading treatment or punishment.



- (2B) However, there is taken not to be a real risk that a non-citizen will suffer significant harm in a country if the Minister is satisfied that:
- (a) it would be reasonable for the non-citizen to relocate to an area of the country where there would not be a real risk that the non-citizen will suffer significant harm; or
  - (b) the non-citizen could obtain, from an authority of the country, protection such that there would not be a real risk that the non-citizen will suffer significant harm; or
  - (c) the real risk is one faced by the population of the country generally and is not faced by the non-citizen personally.

...

*Protection obligations*

- (3) Australia is taken not to have protection obligations in respect of a non-citizen who has not taken all possible steps to avail himself or herself of a right to enter and reside in, whether temporarily or permanently and however that right arose or is expressed, any country apart from Australia, including countries of which the non-citizen is a national.
- (4) However, subsection (3) does not apply in relation to a country in respect of which:
- (a) the non-citizen has a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion; or
  - (b) the Minister has substantial grounds for believing that, as a necessary and foreseeable consequence of the non-citizen availing himself or herself of a right mentioned in subsection (3), there would be a real risk that the non-citizen will suffer significant harm in relation to the country.
- (5) Subsection (3) does not apply in relation to a country if the non-citizen has a well-founded fear that:
- (a) the country will return the non-citizen to another country; and
  - (b) the non-citizen will be persecuted in that other country for reasons of race, religion, nationality, membership of a particular social group or political opinion.
- (5A) Also, subsection (3) does not apply in relation to a country if:
- (a) the non-citizen has a well-founded fear that the country will return the non-citizen to another country; and
  - (b) the Minister has substantial grounds for believing that, as a necessary and foreseeable consequence of the non-citizen availing himself or herself of a right mentioned in subsection (3), there would be a real risk that the non-citizen will suffer significant harm in relation to the other country.

*Determining nationality*

- (6) For the purposes of subsection (3), the question of whether a non-citizen is a national of a particular country must be determined solely by reference to the law of that country.
- (7) Subsection (6) does not, by implication, affect the interpretation of any other provision of this Act.