



Australian Government
Immigration Assessment Authority

Decision and Reasons

Referred application

IRAN

IAA reference: IAA20/07876

Date and time of decision: 11 March 2020 14:19:00

S Kamandi, Reviewer

Decision

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

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

Background to the review

Visa application

1. The referred applicant (the applicant) claims to be a national of Iran. He arrived in Australia in November 2012 and on 5 June 2017 made a Safe Haven Enterprise Visa (SHEV) application.
2. On 11 February 2020, a delegate of the Minister for Immigration (the delegate) refused to grant the visa on the basis that the applicant was not a person in respect of whom Australia owed protection obligations. The delegate did not accept the applicant's conversion to Christianity in Australia as genuine and was not satisfied that the applicant faced a real chance of serious harm or was at a real risk of significant harm for reasons of being a non-practising Muslim or as a returned asylum seeker.

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 6 March 2020, the Immigration Assessment Authority (IAA) received an email from the applicant's representative attaching a submission; a statutory declaration signed by a number of members of the [Church 1] congregation; and country information reports.
5. The submission outlines the applicant's disagreement with the delegate's decision and refers to the applicant's claims and evidence that was presented to the delegate which I do not consider to be new information and have had regard to in undertaking this review. The submission also makes reference to the documents provided to the IAA and includes an extract from the "National Church Life Survey". Although the submission indicates that this survey is referenced above, it does not appear that the survey has been referenced within the submission. The information also does not appear to have been before the delegate and I consider it to be new information. The extract appears to be in support of the submission that church attendance is seen by many Christians as key in maintaining their faith. I am not satisfied that the information could not have been provided to the delegate or that it contains credible personal information in the relevant sense. I also do not consider that the extract included in the submission, which is brief and lacks context, materially adds to the information about Christians and Christian converts that was before the delegate. I consider the information of very limited value and I am not satisfied that there are exceptional circumstances to justify considering the new information.
6. The one page statutory declaration signed by a number of members of the [Church 1] is undated. However, the submission indicates that the statutory declaration is new information as it was obtained in response to the delegate's decision. This information was not before the delegate and I accept that it is new information. The content of the statutory declaration indicates that the applicant is a member of the congregation and attends church services and Bible study sessions, information which was presented by the applicant and I accept and have considered. The signatories of the statutory declaration also attest to the genuineness of the applicant's faith. Apart from references to the applicant's church activities, the members of the congregation in asserting that they have no doubt about the applicant's genuineness of his faith, have not provided an explanation about the basis of their belief or how they have come to this conclusion. I consider the information to be of limited

value and I am not satisfied that there are exceptional circumstances to justify considering the statutory declaration.

7. The June 2014 Danish Immigration Service report titled "update on the situation for Christian Converts in Iran" was before the delegate and is not new information.
8. The IAA has also been provided with extracts from the Human Rights Council, "Report of the Special Rapporteur on the situation of human rights in Islamic Republic of Iran" dated 6 March 2017; the Amnesty International Report published on 22 February 2012; and the United States Commission on International Religious Freedom report published on 2 May 2016. In addition the IAA is provided with an article titled "Iran detains dozens of Christian converts as rights group urge world to intervene" published in BosNewsLife in December 2016. These extracts and the report were not before the delegate and are new information. In referencing these reports, the submission argues that Iranian Christians and Christian converts in Iran face discrimination, physical harm and are unable to practise their religion. As the reports were published some years prior to the delegate's decision, it is not apparent why the information was not provided to the delegate nor do the reports appear to contain credible personal information, in the relevant sense. I note that the delegate's decision references a range of more recent reports from credible sources regarding the treatment of Christians and Christian converts in Iran. This includes the 2018 DFAT report, the "international Religious Freedom" report published by the US Department of State in 2018 and the UK Home Office report on Christians and Christian converts published in 2018. I do not consider that the extracts and the report provided to the IAA add materially to the information about Christians and Christian converts in Iran that was before the delegate and I am not satisfied that there are exceptional circumstances to justify considering these reports.
9. The submission also indicates that the applicant is prepared to appear before the IAA to give evidence in relation to how his life and his world view have significantly changed since he had found faith in Jesus Christ. The IAA is required, subject to Part 7AA of the Act, to review a matter without accepting or requesting new information and without interviewing the applicant (s.473DB). The applicant's claim about his conversion to Christianity in Australia was discussed at length at the SHEV interview. During and at the conclusion of the SHEV interview, the applicant was asked to address the delegate's concerns regarding his evidence and to provide any further claims or details that he wanted the delegate to consider. At the conclusion of the SHEV interview the applicant was specifically asked if he had put all of his claims to the delegate and was informed that any further information received prior to the decision will be considered. I am satisfied that the applicant was provided with ample opportunity to express his evidence in this regard and was advised that he could provide any additional information that he wished to be considered to the delegate prior to the decision being made. The applicant has also provided the IAA with further submission about his conversion to Christianity, which I have considered. In indicating that he is prepared to appear and give evidence in relation to his Christian faith, the applicant has not specified what further information he wishes to or is able to provide to the IAA or why that information is not included in the submission to the IAA. Given that the applicant has had a real opportunity to present his claims to the delegate and given the legislative framework governing the IAA as referred to above, while I have considered whether to exercise my discretion to invite the applicant to provide further information, in the circumstances I have decided to proceed with the decision without doing so.

Applicant's claims for protection

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

- The applicant's family are extremely traditional and devout Muslims. The applicant questioned his belief in Islam but hid it from his family. He did not practise Islam but had to be very careful not to get caught by his family or the authorities. He left Iran in 2012 to research other religions.
- The applicant has been practising Christianity in Australia. He was baptised [in] April 2013 at [Church 2]. Due to English language difficulties, the applicant sought a Farsi speaking church. He started attending [Church 3] to learn more about Christianity. However as this church was far from his place of residence, he only attended on a fortnightly basis. The applicant found [Church 4] which is located near his home and has been attending Bible study classes in this church and was baptised in February 2019.
- The applicant posted information about his involvement with the Persian church community, as well as Bible excerpts, on [social media]. His family knows about his conversion and his father refuses to speak with him. The applicant's [social media] friends in Iran have rejected him and told the applicant's brother that they don't want anything to do with the applicant.
- The applicant has tattoos of the Christian cross symbol and a prayer with the words "[specified]" on his [Body Part 1].
- The applicant fears harm at the hands of the authorities for not believing in Islam, not practising Islam and his conversion to Christianity. He fears that his family and friends would report him to the authorities as an apostate and he would be prosecuted for apostasy on his return to Iran. He would not be able to practise Christianity nor would he be able to display his tattoos which are an expression of his identity and his Christian faith.

Refugee assessment

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 has consistently claimed to be a national of Iran. He has provided documents to support his identity and nationality. On the information before me I accept that the applicant is a national of Iran and that Iran is the receiving country for the purposes of this review.
 14. In his SHEV statement, the applicant claims that his family in Iran are extremely traditional and devout Muslims. He had a very strict and religious upbringing. Since he was “small” he questioned his belief in Islam but had to hide this from his family as he feared that he would lose them. He did not believe in Islam, could not follow the religion and had to be very careful that he was not caught by his family or the authorities and lived in fear. He departed Iran in 2012 because he was no longer practising Islam.
 15. At the SHEV interview the applicant was asked about his religious beliefs. He confirmed that he was a Muslim growing up in Iran. When asked how he practised Islam, the applicant stated that he did not follow any religious rituals such as praying and fasting. When asked when he stopped practising Islam, the applicant stated that since he was about 15 or 16 years of age and that from that time until his departure he did not practise Islam. While the applicant’s evidence in his SHEV statement indicates that he had to be careful about his views about Islam and not following the religion, at the SHEV interview the applicant gave evidence that although his father was very religious and forceful and asked him to go to the Mosque, he did not comply. This seems to suggest that the applicant’s lack of interest in practising Islam was known to his family and undermines his claim that he had to hide his non-practise of Islam from his family in fear of losing them. Further, while the applicant claims that he was brought up in a very strict and religious family and was forced to pray and follow the religion, at the SHEV interview he stated that he does not know much about the differences between Shias and Sunnis as he was not interested in religion and he never learnt about it. When reminded of his claim that he was brought up in a strict Muslim family and forced to adhere to religious practises from a young age, the applicant stated that because he was not a fan of the religion he never paid any attention and therefore cannot recall any information. I find the applicant’s evidence that he was brought up in a very religious and strict Muslim family and forced to practise the religion up until he was 15 or 16 years old, not compatible with his evidence that he never paid attention or learnt anything about the religion.
 16. Country information¹ indicates that although the official religion of Iran is Shia Islam, Iran is one of the least religious countries in the Middle East. While many Iranians see Islam as part of their identity, many have moved from institutionalised religion. It is highly unlikely that the authorities would monitor religious observance by Iranians and that many do not regularly

¹ DFAT, “DFAT Country Information Report Iran April 2016”, 21 April 2016, CIS38A8012677; The Economist, “Religion: Take it or leave it”, 1 November 2014, CX1B9ECAB7499; Austrian Centre for Country of Origin and Asylum Research and Documentation (ACCORD) “Iran: Freedom of Religion; Treatment of Religious and Ethnic Minorities COI Compilation”, 28 September 2015, CISEC96CF13622; Danish Immigration Service, ‘Update on the Situation for Christian Converts in Iran’, June 2014, CIS28931; ACCORD, “Iran: Treatment of Atheists by State and non-State actors”, 12 June 2017, CISED50AD4616.

attend Mosque, with the more secular group of Iranians not paying attention to rituals such as Friday prayers.

17. While I am willing to accept that, like many Iranians, the applicant did not practise Islam or attend mosque from the time he reached the age of 15 or 16 and up until his departure from Iran in 2012, I do not accept the applicant's evidence that he had to hide not practising the religion from his family or that his family were strict conservative Muslims. The applicant's evidence indicates that he refused to attend mosque, even when asked by his father to do so, for at least the [number of] years prior to his departure from Iran and while he was residing with his family in the same house. Despite the applicant's claimed fear of losing his family for reasons of questioning Islam and non-practise of Islam, his evidence does not suggest that he had any issues with his father or any other members of his family regarding his religious beliefs or practise. He indicated that he did not comply with his father's demands to attend the mosque, but did not indicate that his father or his family caused him any harm as result or that his non-compliance caused issues between him and any of his family members. At the SHEV interview the applicant also confirmed that he had no issues with the authorities for reasons of his religion or otherwise.
18. The applicant claims that he departed Iran in 2012 because he was not practising Islam and wanted to research other religions. He claims that he since his arrival in Australia he has been a practising Christian and won't be able to continue practising Christianity if returned to Iran. As set out below, I have a number of concerns regarding the applicant evidence about his reasons for departing Iran and his conversion to Christianity.
19. Given the applicant's evidence that he did not practise Islam since the age of 15 or 16 and was never interested in or paid any attention to religion, it is not apparent what changed that caused him to depart Iran in search of another religion. The applicant's evidence does not suggest that in the years that he was not practising Islam he had any interest in any other religions or that he was in search of a religion. Further, his evidence also does not indicate that he was in any way harmed by his family, the authorities or any other person for not practising Islam. At the SHEV interview, after discussing the applicant's activities in Australia, the delegate asked why he needed to search for a religion, particularly given that now he is in a country where one does not have to have a religion. The applicant stated that he is a good person and that when he has a family of his own, he wants his children to have a religion. He fears for his kids not having a religion. When asked why that was the case, the applicant stated that it is cultural to believe and follow something. He then stated that he didn't want his children not to have any religion and to have the choice to choose a religion. While the applicant claims that it is cultural to believe and follow a religion, I note that he spent most of his adult life in Iran without following a religion. Further, given that the applicant claims that he departed Iran in search of a new faith, his evidence does not reveal any thought process or any personal emotional/spiritual need for belonging to a religious community or practising a religion, but rather that it is cultural and that he is in search of a religion for the sake of his future children. I found the applicant's evidence in this regard less than compelling.
20. The applicant's evidence that he came to Australia to research other religions and choose one that he wants to follow is at odds with his claim that after his release from immigration detention he was approached by members of [Church 2], was offered assistance with furniture and clothing, and that this led him to attend the church and without knowing anything about the church or the religion, he was baptised in April 2013. At the SHEV interview, the applicant stated that he did not attend the church for a very long time. He attended every Saturday for about three or four months. The church service was conducted in English and he could not understand what was said and did not learn anything about the

religion. While he claims that he wanted to research other religions in Iran, but was unable to do so because the internet was monitored and it was too risky, he stated that he did not undertake any research regarding the religion or the church, did not even know that the church was a church of Mormons, before being baptised. He also confirmed that he did not research any other religions since his arrival in Australia but chose to be baptised in the first church that he attended. I have difficulty accepting that if the applicant departed Iran in genuine search of a new religion, a country where he was unable to freely research other religions or convert to other religions, that he would convert to the first religion he came across and do so without any knowledge and understanding of the religion. I consider the applicant's explanation that he got baptised to terminate his relations with Islam and that his baptism was an "emphatic rejection" of Islam, less than satisfactory and consider it to undermine his claim that he was in genuine search of a new faith.

21. At the SHEV interview, the applicant stated that because of the spark that was ignited within him, he was keen to search for an Iranian church and learn more about Christianity. Although not entirely clear when, the applicant stated that as soon as he found an Iranian church he started attending. He referred to [Church 3], and stated that he went there because his friends were also going there. However, because the church was some distance from his place of residence, he only attended services on a fortnightly and sometimes monthly basis. When asked if he researched any other churches closer to where he resided, the applicant did not directly answer the question but stated that [Church 3] was recently opened. He stated that he went to this church for about one and half years, he felt welcomed there and listened to songs and services conducted by the pastor, but stopped going because of the distance. I do not accept that if the applicant was in genuine search of a deeper understanding of Christianity, as expressed in his statement dated 28 October 2019, that he would only attend services on a fortnightly or monthly basis because of the distance of the church from his home. This is particularly concerning given that he claims to have found a church that spoke his native language which allowed him to fully participate in the religious activities, was welcoming of him and where his friends were also attending. In addition, I also find it concerning that while that the applicant claims that a spark ignited within him and that he was keen to learn more about Christianity, his evidence does not suggest that he investigated any other avenues, such as considering the possibility of attending other churches closer to him home, undertaking online research or partaking in any other activities to further his understanding of the religion.
22. The applicant's evidence is that in late 2017, he started going to another Farsi speaking church close to his home. His October 2019 statement refers to the church as Farsi Baptist Church which operates on the premises of [Church 4] and that the applicant attends Sunday service, Bible study classes on Tuesdays and was baptised in February 2019. The applicant has not provided any evidence in support of his baptism in February 2019. I note the applicant's evidence at the SHEV interview that the church was not registered at the time and was being registered that afternoon. At the SHEV interview, the applicant was asked if besides attending church he does anything else to learn about the religion. The applicant referred to attending Bible study classes for a period of two years and that he has had a Farsi Bible for a few years. When asked about how Christianity has changed his life as opposed to when he was a Muslim, the applicant referred to Jesus Christ sacrificing his life for humanity to have eternal life, that he now has a lord, that he can go to a place to meditate and talk to Jesus who in turn listens to him and that a God exists. While the applicant displayed some knowledge of the Bible, which I attribute to him attending Bible study classes in the recent years, I found his evidence regarding his journey towards Christianity and the impact of his new found faith on his life personally, unconvincing. His evidence in this regard was presented in a rehearsed and vague manner and lacked convincing details. While I am

mindful that a person's reasons for engaging with a religion are very personal and not something that can be measured against abstract standards, I did not find the applicant's explanations regarding his decision to be baptised in 2013 and follow Christianity compelling.

23. At the conclusion of the SHEV interview, the delegate expressed concerns about the applicant's evidence. In Particular the delegate stated that he had concerns that the applicant did not research any other religions and attended the first church that he came across, and then commenced attending a different church. The delegate also indicated that as explained by the interpreter in detailing his beliefs in Christianity, the applicant made references to being a good Muslim, which may indicate that he was still practising Islam or considered himself to be a Muslim. The applicant was given some time to think about the delegate's concerns and to provide a response. In response, the applicant stated that references to being a good Muslim were just "slip of a tongue" on his part and restated his reasons for changing churches as provided earlier, without expressing any further details or reasons for not researching other religions.
24. The applicant's SHEV statement dated 30 May 2017 indicates that the applicant had not directly told his family about his conversion to Christianity and that although he has posted information about his involvement with the Persian church community on [social media], he was not aware of anyone from his home area seeing his social media posts. The applicant did not include any evidence of his [social media] posts in his SHEV application. The applicant's statement dated 28 October 2019 and provided to the delegate the day before the SHEV interview, indicates that as a result of the applicant's [social media] posts, his family are now aware of his conversion to Christianity and that his father refuses to talk to him. The statement also indicates that the applicant has limited contact with his brother and mother and even less contact with his other siblings. His friends in Iran have rejected him and told his brother that they don't want to have anything to do with the applicant and that he fears that on return to Iran his family and friends would report him to the authorities as an apostate. The applicant also believes that his [social media] posts would be considered as promoting and spreading Christianity by the authorities and he would be prosecuted for apostasy. At the SHEV interview, the applicant stated that his family have found out about his conversion to Christianity from his friends and due to his [social media] activities. He also stated that he has not spoken to his family and has very little contact with his brother.
25. I note that while the applicant's SHEV statement/application and further statement are prepared with the assistance of Refugee Legal, no evidence of his [social media] activities have been included. The applicant did not provide any details of his [social media] posts, such as when he started posting material in relation to his Christian activities on [social media], the extent of his social media activities or why he posted such material on [social media] considering the risk of his family becoming aware of his activities in Australia, particularly given that he claims that his family are strict Muslims and he had to hide his religious views from them in Iran. The applicant was also put on notice regarding the delegate's concerns about his Christian activities in Australia and was informed that any further material in support of his claims would be considered if received prior to the decision. The applicant did not provide the delegate with any further material in the three month between the date of the SHEV interview and the delegate's decision, nor has he provided any information in relation to his social media activities to the IAA. Given that I have not accepted the applicant's claim that his family are devout strict Muslims, my concerns regarding the applicant's evidence about his reasons for departing Iran and his conversion to Christianity as set out above and lack of any evidence in support of his assertion that he has posted Christian material on [social media], I am not satisfied that the applicant has posted material regarding his engagement with the Persian Christian community in Australia or any other

Christian religious material on [social media]. Other than his claimed [social media] activities the applicant's evidence does not suggest that he has communicated information about his activities in Australia with his family, friends or other people in Iran. I am not satisfied that the applicant's family or friends have been made aware of his religious activities in Australia or that they have rejected the applicant or would report him to the authorities as an apostate.

26. The applicant's October 2019 statement also indicates that the applicant has tattoos on his [Body Part 1], one of the Christian cross and another of the words "[specified]". This was not raised in the applicant's SHEV application and it is not apparent when the applicant got these tattoos. The applicant has not provided any evidence of these tattoos. At the SHEV interview, the applicant did not refer to his tattoos and when asked if there was anything further that he wanted to raise, he did not mention his tattoos or any fear of harm as a result of his tattoos. This is despite the fact that the applicant provided the delegate with a statement the day before the interview describing the tattoos as an expression of his faith and that he would not be able to display the tattoos in Iran. I also note that the applicant has not provided the IAA with any evidence or information about his tattoos. Again given my concerns about the applicant's evidence regarding his conversion to Christianity and lack of any credible evidence to substantiate the applicant's claim regarding his tattoos, I am not satisfied that the applicant has any tattoos. Furthermore, country information² before me indicates that tattoos are very common in Iran, particularly amongst youth, and does not support that Iranians are harassed or detained specifically for displaying tattoos with Christian symbols or words.
27. I accept that the applicant has attended the three churches as claimed in Australia. I accept that he was baptised in [Church 2] in April 2013 and that he commenced attending Persian speaking Churches in the recent years and has attended Bible study classes. The applicant was asked whether apart from his attendance at Church he undertakes any other religious activities, to which he responded with reference to his attendance of Bible study classes every Tuesday. Given my concerns about the applicant's evidence as set out above, I am not satisfied that the applicant departed Iran in search of a new religion or that his conversion to Christianity is genuine. On the applicant's evidence I am not satisfied that he has a genuine commitment to Christianity or that apart from attending church, his baptism in 2013 and his recent attendance of Bible study classes, he has engaged in any other activities to promote the religion. I am not satisfied that the applicant has any intention or desire to practise Christianity if returned to Iran. I have formed the view that the applicant engaged in all of his Christian activities, including his baptism, solely for the purpose of strengthening his claim to be a refugee. In accordance with s.5J(6) of the Act I am required to disregard all of the applicant's Christian activities in Australia when determining whether he has a well-founded fear of persecution.
28. As indicated above, I am willing to accept that since the age of 15 or 16, the applicant did not practise Islam in Iran. The applicant's evidence does not indicate that he encountered any issues or faced any harm for reasons of his non-practise of Islam, such as not attending Mosque, at the hands of the authorities, his family or any other person. While, I am not satisfied that the applicant has renounced Islam all together, I am willing to accept that he has not practised Islam for some years and that he does not intent to practise Islam if returned to Iran. I have not accepted the applicant's claim that he has posted religious material on [social media] nor am I satisfied that he would in the future communicate

² DFAT, "DFAT Country Information Report – Iran", 29 November 2013, CIS26780; DFAT, "DFAT Country Information Report Iran April 2016", 21 April 2016, CIS38A8012677.

information about his religious activities in Australia or no-practise of Islam to others. Given the country information about non-practising Muslims in Iran cited above, and the applicant's lack of any adverse religious, political or other profile in Iran, I consider the chance of the applicants facing any harm in the reasonably foreseeable future at the hands of the authorities or any other person for reason of his non-practise of Islam and/or religious views, to be no more than remote.

29. Although not expressly claimed, the delegate considered whether applicant faced a real chance of harm for reasons of returning to Iran as a failed asylum seeker returning from a western country.
30. The applicant claims, and I accept, that he is not in possession of a valid Iranian passport. Therefore, he would require travel documents issued by Iranian diplomatic representatives to return to Iran. Historically Iran did not issue travel documents to involuntary returnees. On 19 March 2018, Iran and Australia signed a Memorandum of Understanding that includes an agreement by Iran to facilitate the return of Iranians who arrived after this date and who have no legal right to stay in Australia.³ However, as the applicant arrived in Australia prior to 19 March 2018, I find that if he were to return to Iran, it would necessarily be on voluntary basis. Further, where temporary travel documents are issued by Iranian diplomatic representatives overseas, authorities at the airport will be forewarned about the person's return.⁴ I accept that if the applicant did voluntarily return, this may lead Iranian authorities to infer that he sought asylum in Australia.
31. However, DFAT advises that voluntary returnees do not attract much interest amongst the large regular international movements of Iranians and that they will generally move quickly through airports. Further, where temporary travel documents are issued by Iranian diplomatic representatives overseas, while the authorities at the airport will be forewarned about the person's return, they will only question returnee if they had done something to attract the specific attention of the authorities.⁵ International observers have reported that the Iranian authorities pay little attention to returned asylum seekers on their return to Iran and have little interest in prosecuting for activities conducted outside of Iran, including in relation to protection claims. DFAT advises that unless the person has an existing profile with the authorities, the risk profile for the individuals will be the same as for any other person in Iran within that category.⁶
32. Given that the applicant was of no adverse to the authorities for any reason in Iran and my findings regarding his activities in Australia, I am not satisfied that the applicant faces a real chance of any harm as a returned asylum seeker from Australia. The information before me does not support the applicant's assertion that on return to Iran he would be questioned by the authorities about his commitment to Islam or his activities in Australia.
33. In considering the applicants' circumstances as a whole and in light of what I have accepted of the applicant's claims, I am not satisfied that the applicant face a real chance of harm for any of the claimed reasons, including the his religious activities in Australia, his non-practise of Islam or returning from Australia after having sought asylum. I am not satisfied that the applicant has a well-founded fear of persecution within the meaning of s.5J of the Act.

³ DFAT, "DFAT Country Information Report Iran", 7 June 2018, CIS7B839411226.

⁴ DFAT, "DFAT Country Information Report Iran April 2016", 21 April 2016, CIS38A8012677.

⁵ DFAT, "DFAT Country Information Report Iran April 2016", 21 April 2016, CIS38A8012677; DFAT, "DFAT Country Information Report Iran", 7 June 2018, CIS7B839411226.

⁶ DFAT, "DFAT Country Information Report Iran", 7 June 2018, CIS7B839411226.

Refugee: conclusion

34. 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) of the Act.

Complementary protection assessment

35. A criterion for a protection visa is that the applicant is a non-citizen in Australia (other than a person who is a refugee) in respect of whom the Minister (or Reviewer) is satisfied Australia has protection obligations because there are substantial grounds for believing that, as a necessary and foreseeable consequence of the person being removed from Australia to a receiving country, there is a real risk that the person will suffer significant harm.

Real risk of significant harm

36. 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.
37. The expressions 'torture', 'cruel or inhuman treatment or punishment' and 'degrading treatment or punishment' are in turn defined in s.5(1) of the Act.
38. I accept that the applicant engaged in some Christian religious activities while in Australia. He attended three churches, was baptised and attended Bible study classes. However, I have found that the applicant has not engaged in these activities due to his genuine belief in Christianity or that he would practise or promote Christianity if returned to Iran. I do not accept that the applicant has any tattoos or that he has posted material with Christian content on [social media] or that his family and friends have rejected him and would report him to the authorities as an apostate. The applicant's evidence otherwise does not indicate that the authorities have monitored his activities in Australia or that they are aware of his Christian activities in Australia and the information before me does not suggest that the Iranian authorities have any interest in returnee's activities undertaken abroad. The applicant has not indicates nor is there any information suggesting that the applicant's family in Iran have been approached by the authorities in relation to the applicant's activities in Australia. I also do not accept that he has any intention or desire to practise or promote Christianity if returned to Iran or that he would tell anyone about his Christian activities in Australia or that he would be questioned about it on return. I am not satisfied that the applicants face a real risk of significant harm, as defined in ss. 36(2A) and 5J(1) of the Act, in Iran for reasons of his Christian activities in Australia.
39. I have found above that the applicant does not face a real chance of harm in Iran for any of the other claimed reasons. The Federal Court held that 'real risk' imposes the same standards as the 'real chance' test. Having regard to my findings and reasoning above I am also satisfied

that the applicant does not face a real risk of significant harm on those grounds, should he return 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

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

Applicable law

Migration Act 1958

5 (1) Interpretation

In this Act, unless the contrary intention appears:

...

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

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

...

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

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

but does not include an act or omission:

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

...

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

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

...

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

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

...

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

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

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

...

5H Meaning of refugee

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

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

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

...

5J Meaning of well-founded fear of persecution

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

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

Note: For effective protection measures, see section 5LA.
- (3) A person does not have a well-founded fear of persecution if the person could take reasonable steps to modify his or her behaviour so as to avoid a real chance of persecution in a receiving country, other than a modification that would:
 - (a) conflict with a characteristic that is fundamental to the person's identity or conscience; or
 - (b) conceal an innate or immutable characteristic of the person; or
 - (c) without limiting paragraph (a) or (b), require the person to do any of the following:
 - (i) alter his or her religious beliefs, including by renouncing a religious conversion, or conceal his or her true religious beliefs, or cease to be involved in the practise 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.