



Australian Government
Immigration Assessment Authority

Decision and Reasons

Referred application

IRAN

IAA reference: IAA20/08656

Date and time of decision: 25 September 2020 13:11:00

S Kamandi, Reviewer

Decision

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

Visa application

1. The referred applicant (the applicant) claims to be a national of Iran. He arrived in Australia in May 2013 and on 28 July 2017 lodged a Safe Haven Enterprise Visa (SHEV) application. On 31 August 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.

Information before the IAA

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

Applicant's claims for protection

3. The applicant's claims can be summarised as follows:
 - The applicant was born in Tehran and is a Lor Iranian. As permitted by Islamic laws, the applicant's father married women on a temporary basis. When the applicant was six years old, his father married another woman and had a child with her. The applicant's father was abusive towards his mother and sister. His mother could not leave his father as there was no social security for single women and she could not support herself and her children.
 - As the applicant grew older, he became more aware of the inhumane laws of Islam. He hated Islam for its cruel rules. He heard of and saw many people being imprisoned for making changes to the government and the law. He left Iran in 2013 in search of living in a better country not governed by religious laws.
 - In 2017, the applicant moved to Melbourne and met a Christian convert. She talked to the applicant about Christianity and invited him to attend church. After talking to his friend and attending church and Bible study classes, the applicant was baptised in July 2017.
 - The applicant will continue to practise his Christian religion if returned to Iran. He fears that he will not be able to practise his religion freely and in the manner that he does in Australia. He also fears that the authorities know about his conversion to Christianity and that he will be convicted of committing apostasy.

Refugee assessment

4. 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

5. 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.
6. The applicant has consistently claimed to be a national of Iran. He provided the delegate with documentary evidence, including his Iranian birth certificate, driver's license and compulsory military exemption card. I accept that the applicant is a national of Iran and that Iran is the receiving country for the purposes of this review.
7. The applicant has given consistent evidence regarding his reasons for departing Iran in 2013. I accept that the applicant's experiences with his father in Iran informed his decision to depart the country in search of a better life. I accept that due to his father's behaviour and treatment of the applicant, his mother and sister, the applicant disliked the Islamic rules imposed on them and considered Islamic laws as inhumane and cruel.
8. The applicant's SHEV application indicates that he moved to Melbourne in April 2017. In his SHEV statement, the applicant claims that when he moved to Melbourne, he met a Christian convert and that she talked to him about Christianity and invited him to attend church. At the SHEV interview, the applicant confirmed that he was not a Christian in Iran and that he converted to Christianity in Australia. He stated that he always believed in God but had problems with the Islamic laws and rules imposed on the society in Iran. Consistent with his evidence in his SHEV statement, the applicant stated that when he moved to Melbourne, he met his Christian convert friend who talked to him about Christianity and that after a while he started to go to church. He explained that after starting to discuss Christianity with his friend, he became familiar with the religion and decided that he liked the religion and wanted to be publicly known as a Christian. The applicant explained that becoming a Christian helped him with life and dealing with his past traumatic experiences in Iran. He also expressed his understanding of the religion and referred to aspects of the religion that assisted him with becoming a better person and leading a better life. I found the applicant to be very open and forthcoming about his experiences and found his evidence about his motivation and journey towards Christianity compelling.
9. The applicant provided the delegate with a copy of his baptism certificate which indicates that he was baptised [in] July 2017. The delegate was also provided with further supporting documents from the church, including an information sheet about the church and its activities and a letter of support from the pastoral administrator of the church.

10. At the SHEV interview, the applicant stated that he attends Bible study classes and talks to others about the religion and Jesus Christ. He referred to assisting his friends in need and inviting others to attend church. When asked about his current church attendance, the applicant explained that due to the pandemic he was unable to attend services at the church, but that he did attend church services online every week. The letter of support from the pastoral administrator of the church dated 27 August 2020, support the applicant's claims regarding his religious activities. The letter indicates that the applicant has been involved in Bible study classes since he joined the church and that he has been a regular attendee of weekly Sunday services and fortnightly Bible study classes. The letter also indicates that the applicant has been a valuable contributor to his church community and displayed commitment to the church and Christian religion.
11. Having regard to the applicant's consistent evidence, the very open and forthcoming manner he presented his evidence about his reasons for departing Iran, his motivation and journey towards Christianity, and the supporting evidence provided to the delegate, I am satisfied that the applicant has genuinely converted to Christianity in Australia and is a practising Christian. I accept that he partakes in religious activities within his church and he has displayed ongoing commitment to Christianity since his introduction to the religion in 2017. I am satisfied that he learnt about Christianity, attended church and was baptised in 2017 otherwise than for the purpose of strengthening his claims for protection. Accordingly, s 5J(6) of the Act is not engaged and I am not required to disregard the applicant's conduct in Australia in assessing whether he faces a real chance of serious harm on return.
12. In his SHEV statement the applicant claims that he will not be able to continue to practice his religion if returned to Iran. At the SHEV interview, when asked about what would happen to him if returned to Iran, the applicant stated that he would not be able to go to church or practise his religion in the manner that he has in Australia. He referred to Iran's strict Islamic religious laws and that as a convert he will be harmed and will not be able to continue to practise his faith. Given my findings about the applicant's conversion to Christianity, his regular church attendance and ongoing engagement with the church since his introduction to Christianity and the church and my overall impression of his sincere commitment to the religion, I am satisfied that the applicant will continue to practise his Christian faith if returned to Iran and that he will seek to engage with communal worship as he has in Australia.
13. I note that the delegate was also satisfied that the applicant converted to Christianity but found that he would be able to "maintain his Christian beliefs either individually or as part of a group as he has previously done and will not face a real chance of harm from Iranian authorities".
14. The most recent DFAT report¹ indicates that 99 per cent of Iranians are Muslims. Shia Islam is the official state religion and the constitution requires that all laws and regulations be based on Shia Islamic criteria. Legislation and government policy heavily favour the majority Shia population, leading to pervasive structural discrimination against non-Shia Muslims and religious minorities. The law prohibits citizens from converting from Islam to another religion and only Christian groups which include Assyrians, Chaldeans and Sabeen-Mandaeans and other groups present prior to Islam in Iran are recognised and are required to register and deliver sermons in their traditional language. Activities of recognised Christians are closely monitored to guard against proselytising and only recognised Christians can attend church. Non-Christians and converts are not to participate in church services and the authorities have

¹ Department of Foreign Affairs and Trade (DFAT), "DFAT Country Information Report – Iran", 14 April 2020, 20200414083132.

closed churches for failing to comply with these restrictions, including churches that existed prior to 1979. DFAT reports that Iranian Christians who are not members of recognised churches generally practice in underground “house churches” and understands that a high percentage of unrecognised Christians are converts from Islam. Authorities interpret the growth in house churches as a threat to national security and periodically carry out raids of their premises, particularly those that proselytise and seek out to convert others. The report notes the judiciary’s handing down of long sentences in relation to house church activities, with eight churches being convicted of acting against national security in 2017. DFAT assesses that small, self-contained house church congregations that maintain a low profile are unlikely to attract adverse attention, with members of larger congregation that engage in proselytization and have connections with broader house church networks likely to face official repercussions such as arrest and prosecution. While arrest and detention of ordinary congregants has been noted, DFAT indicates that leaders of house churches face a higher risk of arrest and prosecution. It is noted that Muslim converts charged with apostasy face punishment that is the subject of judicial discretion. While no provisions in the Iran’s penal code criminalises the act of apostasy, Article 167 of the constitution requires judges to apply sharia law in situations where the law is silent. DFAT assesses the risk of execution for conversion or act of apostasy to be low, but it assesses that converts risk arrest and detention if conversion is revealed, with Christians found to be proselytising facing a higher risk of arrest, prosecution and imprisonment. DFAT also assesses that individuals suspected or found to be guilty of national security-related offences are detained and vulnerable to mistreatment that may amount to torture inside prison.

15. The 2018 Austrian Centre for Country of Origin and Asylum Research and Documentation (ACCORD) report on Iran² also indicates that under sharia law apostasy committed by a Muslim-born person is punishable by death at the discretion of the judiciary. While it is noted that Christian converts are typically not charged with apostasy and that in general authorities charge people for being a threat to national security, converts can be charged and prosecuted. The report notes that in 2017, the Supreme Court upheld a death sentence for posting social media posts considered to be apostasy. In addition, the report indicates that Iranian authorities have declared the operating of house churches illegal with a view that they threaten national security. Consequently, since 2005 and especially since 2009/10 Christian converts have increasingly been targeted for arrest and charged with security-related offences. The report also notes that the authorities use informers to infiltrate the house churches and use widespread monitoring of telecommunication and electronic communication if a Christian comes to the attention of the authorities. The report further indicates that while the constitution prohibits all forms of torture, detainees are the subject of torture and abuse in Iranian prisons.
16. The 2018 Annual report by the United States Commission on international religious freedom³ also indicates that the government of Iran discriminate against its citizens on the basis of religion and while apostasy is not codified as a crime in the Penal Code, individuals are still tried as apostates. It is reported that Christian Converts are particularly targeted for repression, pastors of house churches are commonly charged with unfounded national security-related crimes, and government-controlled media outlets continue to spread anti-Christian sentiment. The report specifies that while the Iranian authorities have for decades raided house church services and arrested hundreds of worshippers and church leaders, the severity of sentencing has increased in recent years.

² Austrian Centre for Country of Origin and Asylum Research and Documentation (ACCORD), “Iran – COI Compilation”, 1 July 2018, 20190326122102.

³US Commission on International Religious Freedom, “United States Commission on International Religious Freedom Annual Report 2018”, 25 April 2018, CIS7B83941863.

17. In light of the country information before me, I am satisfied that if the applicant returned to Iran and practised his Christian religion, including partaking in activities such as attending house church services and talking to others about his faith, he would face more than a remote chance of being the subject of adverse attention from the authorities, including the possibility of being monitored, arrested and subsequently charged and placed in detention during which there is a real chance that the applicant would be the subject of torture and significant physical abuse. I am satisfied that the harm faced by the applicant would amount to serious harm and find that it would involve systematic and discriminatory conduct carried out by the Iranian authorities against the applicant, as a Christian convert, for the essential and significant reason of his religion.
18. In considering whether the applicant could take reasonable steps to modify his behaviour to avoid a real chance of persecution, any such steps would involve concealing his religious beliefs and ceasing to be involved in practice of his religion. This would amount to a modification of behaviour that cannot be required under s 5J(3)(c) of the Act. Therefore, I find that there are no reasonable steps the applicant could take to modify his behaviour such as to avoid the real chance of persecution on return to Iran.
19. I find that the applicant cannot access effective protection in Iran. As the Iranian authorities are the agent of harm, and there is no information that the applicant can seek protection from any other non-state agents in Iran, I am not satisfied that effective protection measures are available to him, and find that he faces a real chance of persecution in all areas in Iran.
20. I am satisfied that the applicant's fear of persecution based on his conversion to Christianity is well-founded. Given this finding, I do not consider it necessary to address any other claims that arise on the applicant's evidence.

Refugee: conclusion

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

Decision

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

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.

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36 Protection visas – criteria provided for by this Act

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- (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.

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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.