



**Australian Government**  

---

**Immigration Assessment Authority**

**Decision and Reasons**

**Referred application**

---

IRAN

IAA reference: IAA17/02511

Date and time of decision: 25 October 2017 15:16:00

Susannah McNeill, 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 an referred applicant, or their relative or other dependant.*

## Background to the review

---

### Visa application

1. The referred applicant (the applicant) is a national of Iran. [In] May 2016 he lodged an application for a Safe Haven Enterprise visa (protection visa application). He claims to fear harm from the authorities because he has converted to Christianity.
2. [In] April 2017 a delegate of the Minister for Immigration and Border Protection (the delegate) refused to grant the visa. The delegate did not accept the applicant was a genuine Christian convert.

### 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 19 May 2017 the IAA received a submission from the applicant's representative. This submission mostly consists of legal argument as to why the delegate's decision was wrong and to that extent it may be considered as argument rather than information. It also reiterates the applicant's claims made to the delegate.
5. Within the submission the representative has provided further detail from the applicant as to the reasons why he did not initially state he was a Christian. I consider some of this detail to be new information. The information includes other reasons why the applicant failed to reveal his conversion to Christianity at his "arrival entry" (arrival) interview which he participated [in] April 2013 [in immigration detention]. The applicant claims there 'was a rumour circulating around the IDC that the Islamic regime of Iran has some spies in the camp. There were even discussions about the nationality of the spies. Some believed that there are some Afghan (Farsi speaking ones) spies who are loyal to Iranian regime; while others would say that it's better to be careful only about Iranians, and not Afghan agents.' The discrepancies between the applicant's arrival interview and his written claims included in his protection visa (PV) application were discussed at his PV interview [in] December 2016. The applicant's representative in a post PV interview submission [in] December 2016 provided further reasons why the applicant had not revealed his conversion to Christianity. No reasons have been provided as to why this had not or could not have previously been put forward. The applicant has not satisfied me that this information could not have been provided to the Minister before the decision was made or that this is credible personal information, that had it been known, may have affected the consideration of the applicant's claims. Having regard to the totality of the circumstances, I am also not satisfied there are exceptional circumstances to justify considering it.

### Applicant's claims for protection

---

6. The applicant's claims can be summarised as follows:
  - He was born [in] Tehran, Iran.
  - As a student he worked in a [shop] where he met a Christian man 'B'. B left the shop after one month.

- In 2004 he married his wife; her family were in the Islamic Republic Army and were very religious.
- In 2006 he began working for 'S' Company providing [assistance] to factories and manufacturers. He was hired as a [position] in 'B' factory.
- In 2009 at a work party he met B again and got his telephone number. They met at a [location] to discuss Christianity. He also met Pastor 'A' and some other Christians. After two months he attended a house church for the first time.
- In 2009 the applicant participated in a street protest following the Presidential election and was arrested but ran away. He was freed on bail as his [family] were involved in cracking down on protestors. After this he did not participate in protests.
- The house church sessions were suspended for [a number of] months because of security concerns. He studied the Holy Scripture at work whenever he had a chance and read Pastor A's handouts.
- One day he went to work and the general director 'H' called him in for a meeting. He had his Holy book and handouts. He told H he had found them on the street and they didn't belong to him. He was asked to throw them away. He hid them at his mother's and told his mother who supported him. His mother started getting involved in Christianity.
- In 2010 he quit S company and registered his [own] company 'G'. He continued to visit home church sessions every two weeks.
- In 2011 he returned to work at S company and started working at B factory again. He took Pastor A's handouts and books to work with him.
- In 2012 when leaving B factory, he was searched and the Bible was found in his bag. The local Basij were informed and he was arrested.
- The general director H of Company S stood bail for him conditionally on his resignation without his work rights and his release (after two days) cost \$[amount].
- His wife and her family were upset and would not let him return home. He went to live with his mother.
- He continued working for his own company G. He started to receive threatening phone calls and letters calling him an apostate. He went on a trip with his mother. Upon his return the Basij came and took him to their base accusing him of Christianity. They gave him one week to give them his Christian contacts. His ex-wife's family was also pressuring him. They had a good relationship with the Basij.
- Early 2013 he called B. B advised him not to attend house church gatherings as intelligence might be watching him. He continued to study Christianity at home.
- His professional career became difficult, two contracts were cancelled and his employees quit and he closed his office.
- In March he arranged to attend a house church with B. The following day the Basij arrested him and detained him for three days and tortured him. He did not reveal his Christian friends. He was released.
- B advised him to leave Iran. He left Iran [in] March 2013.
- He joined [Church 1] in Australia and was baptised [in] April 2014.

- The Basij and intelligence visited his mother once a month. [In] December 2015 his mother passed away from psychological pressures and a [medical condition].

## **Refugee assessment**

---

7. 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**

8. 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.
9. Based on the identity documentation provided to the Department, I accept that the applicant’s identity is as claimed and that he is a national of Iran and no other country. Iran is the receiving country.

### *Contact with Christianity in Iran*

10. For the following reasons, I am not satisfied that the applicant had any contact with Christianity in Iran.
11. The applicant arrived in Australia [in] March 2013 and his arrival interview was conducted three weeks later [in] April 2013. I have listened to the audio recording of this interview and in my opinion the applicant had a relaxed and comfortable tone. He answered the questions put to him confidently and without hesitation. His interviewing officer was patient and calm in her approach and the interpreter was both professional and helpful to both the officer and applicant. On a number of occasions the applicant laughed; one time joking that the person who assisted him in [a certain country] physically resembled him and stating “so in brief you can just put handsome”.
12. Asked what his religion was, the applicant unhesitatingly responded Shia Islam. Asked why he left his country of nationality, the applicant stated it was a work related issue. He was active in

[a certain field] and he had a contract with some government organisations to provide [work]. They tried to influence the type of [work] [according] to their value systems but he resisted. They stopped paying the money as per the contract and he then couldn't pay his contracted engagements. He was supposed to pay on certain dates and that's how the problem started. The next Presidential election was just around the corner and they were demanding that he encourage the employees to vote for certain candidates. Because he wasn't being paid, his bank cheques were declined and he was in trouble with them. The problems started a year ago in 2012. Asked what problem he had with the banks, the applicant stated cheques he was giving to people wouldn't be cleared because he had no money in his account because the government wasn't paying him on time to put him under pressure to do what they wanted.

13. Asked if anything specific happened to make him leave, the applicant said he received threats from one of the government organisations that if he didn't cooperate they would make a case against him and put him in jail. They could use the contracts they [had] and because he hadn't been paying the employees they could put him in jail. They would encourage [others] to put him under pressure; they managed to find his home number, his parents' number and contact them and demand money. They could do a lot with [that number of people]. The applicant provided the names of two big companies.
14. The applicant in his statement of claims included with his PV application claimed B, who had advised him to leave Iran, told him not to tell his story to absolutely anyone until he found a trustworthy lawyer who was ready to help with his case. The Iranian regime had numerous spies and informants outside of Iran and any leaked information might put his mother in serious danger. He promised B he would do exactly as he was told. He further stated that after being [in immigration detention] for 22 days when he had his interview, and because there was an Iranian interpreter in the room, he 'simply didn't risk' telling his true motive for coming to Australia. After being released and talking with his mother, she advised him the Basij agents were pressuring her to find him.
15. The delegate advised the applicant that she had read his 19 page statement of claims but the reasons he put in his arrival interview were so different than those in his written statement it was as though they had been written by a completely different person. In response, the applicant stated [in immigration detention] his mother was still alive, under extreme pressure and being harassed by the Basij and Sepah at the same time. His Christian friend had advised him that only in his lawyer's presence and when he was settled in Australia should he talk about his Christian claims. He didn't talk to any of the other Iranian asylum seekers because he was really scared, 'scared of his own shadow', let alone speaking about Christianity.
16. Questioned further, the applicant stated he had only been out of Iran maybe [a number or number of] days and he was really fearing for his mother's safety. His mother had nobody else but him, and even her own family 'weren't going around her.' Put to the applicant that he still spoke to his aunts in Iran, were they not involved in his mother's care, the applicant said that because his mother's family also realised he was becoming an active Christian, to save their own life and for their own security, they cut off from his mother. Asked whether they were still in contact with him twice a month, the applicant said maybe once or twice a month they were in touch. I note in the applicant's PV application he stated he talked to his [aunts] who possess the same surname as his mother twice a month via the telephone. At the end of his PV interview the applicant stated his arrival interview and his claims were not opposite each other, they complimented each other, he had problems with his company they stole \$[amount] of him and he only didn't mention his Christianity. He did not mention this because his Christian friends in Iran had told him to be careful if he was sent back to Iran.

17. In relation to the delegate's concerns, the applicant's representative submitted that during his 19 years working with asylum seekers and refugees, he had 'encountered hundreds of times with people who were afraid to tell the story of their lives, even when they were in a very safe place like northern EU countries.' The main reason they do not tell the truth is that 'they are afraid of leaking personal information.' Furthermore, the applicant's 'Christian friends advised him not to put himself and his mother in danger by announcing his new faith and Conversion to Christianity' until he was absolute sure that he was in a safe place and he was not going to be sent back.
18. Information before the delegate also indicates that whilst in immigration detention in Australia throughout April and May 2013 the applicant presented himself to centre management Serco as a Shia Muslim on at least four occasions and one time stated he wanted to attend a mosque. It is also noted a couple of times he required Halal food.
19. I am not persuaded by the applicant's explanation for not providing his true reasons for seeking asylum in Australia at his first opportunity provided; that of his arrival interview. His reasons given for leaving bear no resemblance to those in his protection visa application. He did not mention the pressure from his ex-wife's family or their connections with the authorities, he did not mention he had been detained twice or that he had been tortured. Asked whether he had ever been arrested or detained by the police or security organisations at his arrival interval, the applicant stated 'no'. Asked whether the police and security or intelligence organisations impact on his day to day life in his home country, he stated 'no'. Some three years passed between this interview and his making of the protection visa application. The review material indicates that at no time during the intervening time did he seek to advise the Department of Immigration of what he now claims is the correct information. The material, including that about his claimed Christian activities in Australia, also indicates that he was not in detention for the majority of that period.
20. There are other elements of his arrival interview that do not correspond with his statement of claims and evidence given at his PV interview which make me seriously doubt the veracity of his conversion to Christianity or interest in the Christian faith whilst in Iran. In his arrival interview the applicant made no reference to his ex-wife and her family, their strong belief in Islam or their connections with the authorities, as a reason for leaving Iran. In his arrival interview the applicant advised he had been living at his last address for a year up until he left Iran [in] March 2013 at [Address 1] and his ex-wife was still living there. From 2006 until 2011 he was living at [Address 2] and that is where his mother now resided. In contrast in his claims for protection the applicant stated in mid-2012 he went to live with his mother and then in his application form his addresses are listed from 2006 until November 2012 that he was residing at [Address 1] and from November 2012 until March 2013 at [Address 2]. The order has been reversed. The applicant also advised in his arrival interview that one month before he departed he had separated from his wife; and that since August or September last year (2012) he had a girlfriend.
21. The applicant has also provided inconsistent information about his participation in the 2009 protests. In his arrival interview, when asked whether he or any members of his family had been involved in any activities or protests against the government, the applicant stated 'yes'; in 2009 he attended the protests but he always escaped, they never arrested him or detained him. He still attended annual protests but it wasn't as big as it used to be. In his protection visa claims, the applicant said after the election of 2009 he participated in one of the street protests and got arrested when he ran away; he was freed on bail because his [family] were involved in the cracking down on protesters. At his PV interview, the applicant stated he was opposed to the government, there was no choice or freedom of opinion, but when asked

whether he had been politically involved in Iran or taken a stand against the government, he stated no. Asked whether he had been involved in protests before, the applicant said the government of Iran mixes religion and politics together so if your religion is different you have an imputed political opinion, they label you a spy. Asked whether he had previously been known to the government before he left Iran, the applicant stated they identified him two or three months before his departure. Despite being given the opportunity, the applicant made no reference to any involvement in the 2009 protests and his apparent arrest. Given these inconsistencies I am not satisfied the applicant was involved in the 2009 protests or that he was arrested and released on bail with the assistance of his [family]. I am of the view the applicant has never expressed his dislike for the government in Iran in a public forum and this is not because of any fear of persecution but just that he is not so inclined. There is no evidence that the applicant has been politically active in Australia and I am not satisfied he would be politically active on his return to Iran.

22. Another matter of concern is his statement that he tried to join the Basij in his arrival interview. Asked whether he had ever served with a police, security or intelligence organisation, the applicant stated 'yes.' He tried at one point to join the Basij to make it easier to do his job so they would take him as one of their own 'but it was so overwhelming' and he couldn't do his job so he quit. This was in December 2012 and January 2013. This was not mentioned in his statement of claims and is inherently inconsistent with the claims that at this point of time he purportedly had been arrested and detained by the Basij.
23. I also note the differences in his work history at his arrival interview and those provided in his PV application/interview. The applicant in his arrival interview made no mention of his working in a [retail] shop to supplement his university studies. He did include his unpaid job [as] a student and when asked if there were any other jobs, he stated no. In his statement of claims the applicant claimed he sometimes worked to gain experience and make money to help his mother with university fees. He started working in a [shop]. This is where he met his Christian friend B. This was not included in his employment history on his PV application. At his PV interview the applicant clarified it was a [retail] shop, [and] it was casual work.
24. Whilst I understand the arrival interval is not the occasion for an applicant to present their claims in full it is their opportunity to provide any reasons why they should not be removed from Australia. The applicant was told at the beginning of his arrival interview that he was expected to give true and correct answers to each question asked, that he should understand that if the information he gave at any future interview was different from what he told now, this could raise the doubts about the reliability of what he had said. He was also told the Department was careful to protect the privacy of all information he gave and that this information would not be made available to the authorities in Iran. Asked whether he understood what had been said and whether he understood the interpreter, the applicant stated 'yes.' I do not accept the applicant was afraid to reveal his true claims in his arrival interview. As noted above the applicant did not appear fearful or frightened in his tone having listened to the recording; if anything he presented as relaxed and very much in control.
25. It is not only the discrepancies between his arrival interview and his actual PV claim that leads me to conclude that he has fabricated this claim. Aspects of his claims I find implausible. Firstly the applicant claimed that after the protests in 2009 one day he went to work at S and his general director H called him into his office and when he showed up he saw the Holy book and handouts in his hands. In order not to get fired he told H he had 'found the stuff in a bag in a street' and they didn't belong to him. H accepted his word and told him to get rid of it and he took the material to his mothers. I find it far-fetched the applicant would have a bag of

Christian material at his office including the Bible; that H would accept his explanation so readily and; lastly, H would delegate the task to the applicant the disposal of the material.

26. I also find the applicant's claim that three years later in 2012 again he took Christian material to S company so he could study more and that he was caught leaving B factory with the Holy book and was subsequently detained by the Basij. I do not find it plausible that the applicant would take such a risk, given his claimed previous experience. Asked about it at his PV interview, the applicant said he took the material to S Company because nobody would search his bag and no one saw him put it in his bag. At B factory they searched everyone's bag when staff wanted to go in and out and because of this he left the Bible at work but he got caught taking it out. He had his own room in the company and when he was reading he would lock the door during his lunch time break. Apart from taking what would appear to be a significant risk, the applicant would have had his bag searched when he first brought the Bible to B factory.
27. [In] January 2017 the applicant submitted two letters purportedly from the Iranian Department of Intelligence regarding the applicant's bank account in Iran which has been blocked by their direct order. His representative stated that although there is no direct evidence in the letters showing the reasons for the 'blockage', it is very common in Iran that this happens to a person who the authorities believe have committed apostasy. I am not so persuaded. I agree that the translation does not corroborate the applicant's claim that the authorities believe he has committed apostasy. I note that the order may also be explained by the applicant's original statements in his arrival interview that his cheques were not clearing when he paid his contractors or employees. The applicant did not assert in his PV application or at his PV interview to fear harm on his return to Iran because of his failure to meet his contractual obligations or pay his former employees. I am satisfied the applicant's past business or employment practices are not his reasons for claiming asylum in Australia, and that he does not have a fear of harm on this basis.
28. After analysing the above information, I am not satisfied that the applicant had any connections or association with Christianity in Iran, that he got involved in a house church through his friend B, that he was caught with the Bible or religious material at work and detained at all by the authorities for any period of time and that his ex-wife's family were well connected with the [authorities]. I also do not accept the applicant's claim that his ex-wife's family and the Basij continued to harass his mother in order to find him after he left Iran. I reject the applicant's claim to have converted to Christianity in Iran, or had any interest in Christianity while in Iran, in its entirety.

#### *Conversion to Christianity in Australia*

29. In his statement of claims the applicant claimed that in Australia he initially went to Church with his housemate and went to [Church 1]. He was baptised in [Church 1] [in] April 2014. Included with his PV application was a Certificate of Baptism dated [in] April 2014 from [Church 1] and it includes the name of applicant and the Minister who performed the ceremony. At his PV interview the applicant said he started attending Church a couple of months after his arrival in Australia at [Church 1] and was baptised 9 months later. At that time there were many Iranians at that church but now they had their own Church in [Australian City 1]. His support person at his PV interview was a friend from that Church. Two years ago he started attending [Church 2] also in [City 1]. Asked what it meant to him to be Christian, the applicant stated 'Freedom'. He was a new person with a new life, he didn't have his old mentality and he was no longer a materialistic person or bound by the fanaticism that had been shoved into his head (in Iran) but was free of it. To him baptism meant being born again, he was a dead person but had been reborn. He had joined Christian groups on social media and had liked their stuff but

had not shared anything regarding his Christianity as long as his mother had been alive; he had become a Christian for his own heart and not to show off.

30. The applicant stated that in Iran when he read the Bible in Persian he had read the Gospel of Matthew. He found the life of Jesus and his miracles interesting. He helped people as a Christian in his daily life now as much as he could whoever he could, he didn't care if they were black and white. Before he went to bed he prayed every night to God and when he met Christian people who were not Christian he told them about Jesus and religion and maybe their hearts would open up and they would believe in Jesus. To practise his faith he went to Church mainly, Bible study and prayed every day. Asked about the Bible study class he attended, the applicant said someone was not teaching him as a Pastor but as a teacher. Each time he taught him parts of the Holy Book and they prayed.
31. The delegate asked the applicant to tell her about one of the stories or parables or miracles of Christ that had impacted on him the most. The applicant stated the biggest miracle was Christ overcoming death, when he knew he was dying on the cross he told his believers he would come back after three days and he did and this affected him. When asked about a parable Jesus told his disciples or the public, the applicant said to be humble, you won't enter God's kingdom unless you are humble. Asked about a miracle, the applicant said he fed 5000 people and he healed people. He stated the times of the Sunday Church services. He said there were four or five parish priests at [Church 2] but could only confidently recall the name of one pastor '[name]'; he thought one might be [of another name]. At the end of his interview the applicant claimed that in Iran he had become a Christian in his heart but in Australia he was officially baptised. He was a Protestant Christian and it was the responsibility of Protestants to teach their religion unlike Catholics and Orthodox, they were required to talk about their faith and invite others.
32. Whilst I am prepared to accept the applicant has participated in a Christian baptism in Australia in April 2014 I am not satisfied the applicant is a genuine Christian convert, or that his interest in Christianity is genuine. I accept the applicant was able to demonstrate a base knowledge of Christianity. The only evidence of his attendance at Church was a Baptism certificate from [Church 1] and the presence of his support person who he also had met at [Church 1]. The applicant stated that he has been mostly attending [Church 2] for the past two years but did not present any supporting evidence of this. Despite claiming to have liked certain pages relating to Christianity on social media he presented no evidence of this. Given the lack of supporting documentation I am left to rely on the applicant's own word. Having found the applicant to have fabricated his claims as to why he left Iran I consider the applicant to be an entirely unreliable witness. I am of the view the applicant has also engineered this claim. I am not satisfied the applicant's involvement with the Christian faith in Australia is genuine. I find that the applicant's conversion to Christianity and attendance at church has been for the sole purpose of strengthening his claims for protection. Therefore pursuant to s. 5J(6) of the Act I have disregarded this conduct in my assessment of s.36(2)(a).

*Failed asylum seeker/returnee from a western country*

33. Although the applicant did not specifically claim to fear harm being returned home as a failed asylum seeker, the matter was considered by the delegate and therefore I have also considered it. I accept the applicant has spent over four years in Australia. I accept he will be returning to Iran having sought asylum in Australia. According to DFAT, Iran says it does not accept involuntary returnees. However, in practice, border authorities regularly accept Iranians with valid Iranian travel documents returned involuntarily or even those without documentation if persuaded they are Iranian. Iranian overseas missions will not issue travel

documents to an Iranian whom a foreign government wishes to return involuntarily to Iran. Officials provide assistance to Iranians who wish to voluntarily return to Iran, even if they left irregularly. Strong anecdotal evidence suggests that officials do not attempt to prosecute a voluntary returnee—largely because most failed asylum seekers leave Iran legally (e.g. regular departure through airports or with passports).<sup>1</sup>

34. From DFAT's anecdotal observation at airports, a voluntary returnee (complete with IOM bags) does not attract much interest from authorities amongst the large regular international movements of Iranians. Credible sources have told DFAT that returnees will generally move quickly through airports – usually Tehran Imam Khomeini – without official interest. Where temporary travel documents have been issued by Iranian diplomatic representatives overseas, authorities at the airport will be forewarned about a person's return because of Iran's sophisticated government systems. Irrespective of whether a returnee is travelling on a temporary travel document or their ordinary passport, credible sources have told DFAT that they will generally only be questioned if they had done something to attract the specific attention of authorities. The vast majority of people questioned would be released after an hour or two.<sup>2</sup> Other country information before the delegate also accords with DFAT; it is political activists (imputed or actual) including writers, journalists or students who have done something to attract the attention of the authorities either in Iran or abroad who may be arrested on their return to Iran.<sup>3</sup>
35. On the evidence before me I am not satisfied the applicant would attract the adverse attention of the Iranian authorities including having sought asylum or resided here for a period or is otherwise of interest to the authorities in Iran. I accept the applicant may be questioned and even detained for a brief period of time as a returnee. I am not satisfied that this treatment of being questioned or detained briefly would amount to serious harm.

#### **Refugee: conclusion**

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

#### **Complementary protection assessment**

---

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

#### **Real risk of significant harm**

38. Under s.36(2A), a person will suffer 'significant harm' if:

---

<sup>1</sup> Department of Foreign Affairs and Trade (DFAT), "DFAT Country Information Report Iran", 21 April 2016, CIS38A8012677, 5.33.

<sup>2</sup> Ibid 5.34.

<sup>3</sup> Amnesty International, "Amnesty International - Urgent Action UA 125/11 Student activists held in Iran", 6 May 2011, CX264288; "Jailing of returning journalists called part of anti-Rohani plan", Radio Zamaneh, 31 July 2014, CX324017; "Rouhani has yet to deliver on press reforms in Iran", Committee to Protect Journalists (CPJ), New York, 13 March 2014, CX318970; "Mousavi's campaign worker arrested upon return to Iran", Radio Zamaneh, 16 February 2014, CX318168.

- the person will be arbitrarily deprived of his or her life
- the death penalty will be carried out on the person
- the person will be subjected to torture
- the person will be subjected to cruel or inhuman treatment or punishment, or
- the person will be subjected to degrading treatment or punishment.

39. I have concluded that the applicant does not face a real chance of serious harm resulting from his past involvement with Christianity in Iran as I have rejected this claim in its entirety. Given real chance and real risk involve the same standard, I am not satisfied he faces a real risk of harm on this basis.

40. I have not accepted that he has genuinely converted to Christianity in Australia. I am also not satisfied that his non-genuine conversion to Christianity, his baptism and his attendance at church in Australia will come to the attention of the Iranian authorities. As I am not satisfied the applicant has any genuine interest in Christianity, I am also not satisfied that he will participate in any such activities in Iran on return. I also note the matters he raised at his arrival interview were not pursued further by the applicant as a basis for claiming protection.

41. I accept that as an asylum seeker returning to Iran without a passport he may be questioned and briefly detained on his return for a couple of hours but I do not consider that this would amount to significant harm.

42. I find that there is no real risk that the applicant would suffer significant harm from the Iranian authorities upon his return.

#### **Complementary protection: conclusion**

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

#### **Decision**

---

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

#### **Applicable law**

---

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

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

...

**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.