



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

**Decision and Reasons**

**Referred application**

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IRAN

IAA reference: IAA17/02771

Date and time of decision: 11 January 2018 11:49:00

Susannah McNeill, Reviewer

**Decision**

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

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

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

## Background to the review

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### Visa application

1. The referred applicant (the applicant) is a national of Iran. [In] July 2016 he lodged an application for a Safe Haven Enterprise Visa (protection visa application). He claims to fear persecution because he is a Christian convert.
2. [In] May 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 and that he had converted to Christianity to strengthen his claims for protection.

### 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 18 June 2017 the IAA received a submission from the applicant's representative. This submission mostly consists of legal argument as to why the applicant'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. Along with the submission the representative also provided a reference letter from [Church 1] dated [June] 2017. This document itself is new information and is submitted as providing further corroborative evidence of the Church's view of the applicant's commitment to Christianity. The letter is written in response to the delegate's findings that the applicant's engagement with Christianity was for the purpose of strengthening his claims to be a refugee and that the reference letter of [March] 2017 from [Church 1] included with the applicant's PV application, in the delegate's opinion, did not provide 'further evidence about the nature' of the applicant's commitment or an evaluation of his Christian faith. This letter of [June] 2017 specifically confirms the applicant has a 'genuine commitment to Jesus Christ and his Christian Faith'. The letter postdates the delegate's decision and as such was not and could not have been provided prior to the delegate's decision. The letter relates directly to the applicant, and originates from a credible source. However, it adds little in the way of information that was not previously known about the applicant. It reiterates the Church's support and belief in the applicant's commitment to Christianity which I believe [Church 1] had already provided in its letter of [March] 2018. Taking everything into account, I am not satisfied there are exceptional circumstances which would justify my consideration of this information.
6. The representative has also included a copy of a country information report that was not in the referred material and which he also makes reference to in his submission. This is the "Iran: Freedom of Religion; Treatment of Religious and Ethnic Minorities COI Compilation September 2015"<sup>1</sup> report from the Austrian government also known as the ACCORD. This is new information. The report is general country information and pre-dates the Delegate's decision. The representative has argued that he made reference to this report in his oral submission towards the end of the applicant's protection visa (PV) interview in noting there was still a real chance of being caught in a raid when attending a house church in Iran regardless of the number of times someone attended a house church or whether they were a regular or senior member. The representative claims the delegate refused to provide a break towards the end of

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<sup>1</sup> Austrian Centre for Country of Origin and Asylum Research and Documentation (ACCORD), "Iran: Freedom of Religion; Treatment of Religious and Ethnic Minorities COI Compilation September 2015", 1 September 2015, CISEC96CF13622.

the interview when he requested one. Instead the delegate stated she was not putting any s.57 notice to the applicant. However, the representative states the matter was considered as part of the delegate's refusal decision and he submits the delegate erred by refusing the provision of natural justice at the interview or before the decision was made in relation to this matter. I have listened to the recording of the PV interview. I note the representative asked for a break and the delegate said she had nothing adverse arising from his application that she had to put in the way of a s.57 request and that she had been frank and put her concerns forward. The applicant had told her the factual circumstances, they could talk all day about the country information but it was not his area of expertise. If he wanted to make a submission on that, that was fine. She then asked the representative if he wanted to make oral submissions and the representative made a brief reference to the Austrian ACCORD in arguing that it was not just senior members of house churches being targeted by the Iranian authorities. The delegate then advised the representative that if he wished to make written submissions he had seven days in which to do so and if needed he could request an extension of another seven days if necessary. I am of the view the applicant could have provided a copy of the Austrian ACCORD prior to the delegate's decision. The representative did not identify which specific ACCORD report he was referring to and given the report was not easily identifiable, the representative could have been referring to any number of reports issued by the ACCORD. The delegate considered a range of country information sources some of which contain similar information about the treatment of Christian converts. The applicant has not satisfied me that the requirements of s.473DD(b)(i) or s. 473DD(b)(ii) are met in relation to the Austrian ACCORD. Furthermore, I am not satisfied that there are exceptional circumstances which would justify my consideration of this information

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

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

- He was born a Shia Muslim in Tehran, Iran in [birth date].
- His father was a fundamentalist Muslim and an active member of the Basij. As a child his father took him to Mosque and religious ceremonies and he grew up in a religious environment.
- As a teenager he was a member of a local Islamic assembly and attended religious gatherings with his friends every [particular day of the week]. He witnessed some immoral behaviour from the assembly leaders that were considered against Islamic instruction.
- He was in regular contact with his cousin R who migrated to [Country 1] in approximately 2003 and was a Christian convert.
- In 2007 he started to work at his brother K's [shop] [in] Tehran. He met V, [an employee] of [another] shop; V was [a] Christian. V told him about Christianity, Jesus, the bible and their religious customs.
- Several months later V gave him a Persian bible and told him he would find the answers to his questions about life, its creator and many other things in the bible.
- Sometime in 2009 his father entered his room and caught him reading the bible. His father bashed him, burnt his bible and swore he would kill him if there was further proof of his interest in Christianity. About a week later two people he believes were Basij bashed him viciously. They told him his father had told them of his interest in Christianity. They threatened to kill him if he continued his interest.

- After talking to his cousin in [Country 1] he decided to leave Iran. Whilst attempting to reach [Country 1] a false passport he was stopped in [Country 2] and returned to Iran.
- He returned to work and asked V to take him to his Church. V advised this was not possible because [other] churches are monitored by the regime. V introduced him to friends who attended a house church which he attended a few times.
- In one of the bible study sessions the house was raided. He managed to escape; however, he left his mobile behind. He believes the authorities accessed the photos and numbers on his phone and he would be identified. He fled Iran shortly after.
- Since arriving in Australia he has regularly attended [Church 1] in [a town in State 1] and [in] October 2013 he was baptised. He attends church regularly and is an active member.
- He has been active on social media promoting Christianity. His father is aware of his conversion to Christianity.
- He fears persecution if returned to Iran because he is a Christian convert and an Apostate.

### **Refugee assessment**

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8. 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**

9. 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.
10. There is no issue as to the nationality of the applicant. I accept that the applicant is a national of Iran and that Iran is the receiving country for the purpose of this review.

### *Contact with Christianity in Iran*

11. The applicant claimed to have become involved in Christianity in Iran through his friend V whilst working at his brother's [shop]. He became interested in Christianity. In 2012 he was attending a bible study session when it was raided and [a number of people] were arrested. He left his mobile phone behind and he believed this would implicate him.
12. At his protection visa (PV) interview [in] March 2017 the applicant described his upbringing. He left school when he was [young] when he was about [age] years old. He was unemployed and would go to the [shops] with his friends. He enrolled in [school] to try and finish his education but did not continue. His neighbourhood of [Tehran] was rough; there were criminals, fighting and people abusing alcohol. His father was a very strict Muslim and prevented him from hanging out with criminals and going down the wrong path. His friends were not criminals but they knew some criminal friends and there was a chance he would go down that path. He started working with his brother K who owned a [shop]. He was [injured] when he was about [age] to [age] years old and because of this he had a military service exemption.
13. Whilst working in his brother's [shop] he found a friend V who was [of a certain ethnicity]. They developed a friendship and the applicant realised V was treating him differently from his other friends. V was kind to him and they built up a strong relationship. V was not a Muslim. He talked about Christianity and Jesus and after a while he gave him a bible as a gift and told him he could find the answers to his questions in it. Although he was born a Shia Muslim, the applicant said his father had forced him to go to mosque and the religious assemblies where he saw unpleasant things including people self-flagellating and he didn't like it. His father was also violent towards his [mother]. His father stopped forcing him to go to mosque when he started working. His father had become involved with the Basij during the Iran- Iraq war and afterwards had remained part of the Basij at their local Mosque. His father would be involved in the checkpoint they had in their area every [particular day of the week] checking for immoral behaviour such as drinking. When the applicant stopped going to mosque, his father still encouraged him to take part and put pressure on him to say his prayers at home and read the Koran. His father would wake him early. Despite this pressure the applicant remained at home as he had no money to move out and his father would not let him.
14. Despite no longer believing in Islam the applicant said he still believed in God. After reading V's bible he compared it to the Koran which had lots of violence like his family experience but he did not see this in the Bible. He compared his father and the people involved in the assemblies with V and his cousin who were Christians. Islam had been forced on him and he had a bad experience from religion; he didn't want another religion at the time but was only interested in investigating other religions. What V was telling and explaining to him made him more curious; the God who had been presented to him at the mosque was different from the one explained in Christianity and this made him curious to find out more. The applicant confirmed he did not become a Christian in Iran but was only investigating it.
15. The delegate referred to the applicant's statutory declaration of [July] 2016 where he had mentioned his father had beaten him and burned his bible, that he was beaten by the Basij and tried to go to [Country 1]. The applicant confirmed the events had happened. Asked how he got in contact with the house church, the applicant said he hadn't known they existed in Iran. He had initially asked V to take him to his church but V had told him this was not possible as cameras had been installed in the church and the authorities monitored it. V introduced him to a house church. Asked whether he thought it might get him into trouble if he went there, the applicant said he believed if he got caught he would just sign and paper and get released, he

didn't know it would be a serious threat. Despite his father and being beaten by the local Basij he wanted to defend himself and have his own religion and his own life.

16. The applicant said he attended the house church [a number of times] in almost a year. [A Father] led the service and he became friends with a number of them. He did not know how the authorities found out about the group. He had left his mobile by mistake as he had been charging it. After the incident V told him it was very dangerous for him and he left within the week. The applicant said he was still in contact with his family. The delegate put to the applicant that if the authorities had followed up, if there were any charges or a summons, his family would know; the applicant said his family had moved house since he left for Australia. Told his father was associated with the Basij they could find him through his father, the applicant said they hadn't pursued him through his father but his mobile had been left behind. He had not maintained contact with the other house church participants, their numbers were on his phone and he had not been able to locate them through Facebook. He could not remember their surnames and Facebook was monitored in Iran. Sometimes people didn't upload their profile or photos.
17. [In] December 2012 the applicant participated in an "arrival entry" (arrival) interview. Asked about his religion, the applicant stated he had no religion. Asked why he left Iran 'in a couple of sentences', the applicant said his life was in danger because of his religion. He wanted to choose his religion and he 'came here to be helped for that.' No further explanation was provided nor did the interviewer seek further details. At the end of his arrival interview, asked what he thought would happen if he returned to Iran, the applicant said he would be executed as he 'intended to change his religion.'
18. I consider the applicant has been consistent in his claim that he was born into a strict Muslim family but no longer believed in Islam whilst in Iran. The applicant responded to questions in a direct and confident manner. I accept the applicant became interested in Christianity in Iran through his friend V. I consider it plausible that he took part in a house church which was raided. Whilst I find it somewhat convenient to his claims that the applicant left his phone charging and forgot to take it when he ran, I do not consider this implausible. Based on his own evidence the applicant was only interested in investigating Christianity whilst in Iran and was not a Christian convert. Given his father's alleged connection to the Basij and the lack of follow up by the authorities with regards to the applicant following the raid, I am not satisfied the applicant was of ongoing interest to the authorities at the time he departed Iran or shortly after because of his participation at an house church gathering in 2012 which was subsequently raided.

#### *Conversion to Christianity in Australia*

19. The applicant claimed since had been in Australia he had attended [Church 1] in [State 1] and was baptised [in] October 2013. Included with his PV application was his baptism certificate from [Church 1] confirming the applicant's baptism [in] October 2013 and a brief one paragraph letter dated [April] 2016 confirming the applicant joined the [Church 1] community three years prior, had been regularly attending since, that he had been baptised [in] October 2013 and that he was an active member of the congregation and that he provided practical assistance [for] different Persian community events at the church. The letter is signed by [a] pastor for the church and [an] Associate Pastor. The applicant provided a more detailed letter to the Department prior to his PV interview from [Church 1]. This letter is dated [March] 2017. In addition to confirming they have known the applicant since around February 2013, his baptism in October 2013, his involvement in [church activities]; the letter also stated the applicant had attended bible study groups. It further stated the applicant's presence [at the

church] was encouraging for other members and through their conversations with the applicant 'we have been able to learn more about his commitment to Jesus Christ and the Christian Faith. During his presence at this church, we have observed his strong desire in participating in our pray groups to pray for others.' The letter is again signed by the same two pastors. I give these letters and the baptism certificate significant weight; there is no evidence to doubt their veracity and they provide strong confirmation from church leaders that the applicant has been involved with the church for four years, which I consider a not insignificant period of time, on a regular basis and actively volunteering his time but also confirmation of the importance the applicant places on prayer sessions as discussed below. The delegate was of the view the letters did not provide evidence of the applicant's nature of commitment nor any evaluation of the applicant's Christian faith. I disagree with the delegate in this regard. I am of the view the letter provides clear evidence of his commitment to the church and his Christian faith on a number of levels, firstly, his desire to gain more religious knowledge through his participation and involvement in bible study groups, his desire to be part of the Church community through his constant and ongoing involvement in church catering; and lastly, the importance he places on communal prayer.

20. I note the delegate concluded the applicant was able to demonstrate knowledge of Christian theology and the Bible that was consistent with his claimed level of involvement in Christianity. The applicant was not questioned at length about his knowledge of Christianity; however to the extent that he was, I am of the view he was confident in responding to questions about Christianity, his connection with various aspects of the Bible he was familiar with and how its teachings had positively impacted on his life. The applicant said being a Christian had brought him some happiness, in the past he did not smile but since becoming familiar with Christianity he was a happier person and it had brought peace to his life. The applicant talked about the importance of his attendance at church, the nice and kind people he had met comparing it to the religious assemblies in Iran. Gradually God had changed him as a person, the way he spoke and behaved. The applicant described the emotional impact the Church services have on him, the singing and the importance of prayer sessions for him. The applicant was also involved in leading [certain] prayer sessions. The applicant was able to convincingly explain why to him praying in a group of people was more powerful than praying alone. In general, the applicant provided his testimony in a convincing and persuasive manner.
21. The applicant said he had told his family about his Christianity. Asked why he had done this, he stated he wanted to help his [other family members] become Christians. Asked by the delegate if this was working, the applicant said it was very difficult in Iran. If they left Iran it would be easier but over the telephone it was very difficult to explain the bible. He believed his mother had told his father. Asked why he asked his mother to tell his father, the applicant said he was now in another country and felt safe to do so because his father could not reach him. He wanted his father to know given he had tried so hard to impose another religion on him but finally God had introduced Christianity to him. At the beginning he hated his father but since God had touched his heart he prayed for his father and all the people who had hurt him.
22. Told by the delegate it was quite well known Iranian asylum seekers in particular in the UK were turning to Christianity in order to create an asylum claim, the applicant responded that his investigation had begun in Iran and what had happened to him there made him escape and he had continued his search and finally found God. He had wanted to know his God and had wanted to find God.

*Concerns put forward to applicant in accordance with s.57 of the Act*

23. Following the applicant's PV interview the delegate wrote to the applicant [in] May 2017 advising the Department had information that may lead her to believe that at least three individuals with whom he travelled with by boat to Australia were known to him in Iran and may have travelled with him together from Iran to [Country 3] to [Country 4], or at least have been reunited with him in [Country 4], where his travel to Australia was arranged through a smuggler known to him as '[Mr A]'. These individuals provided various reasons for departing Iran, none of which were related to his claims. This information casts doubt upon his claim that his departure from Iran was prompted by the raid on a house church gathering [a number of] days before he left but suggests his trip was prearranged together with these other individuals, rather than being decided suddenly because of an immediate threat to him. This information appears to contradict that given at his entry (arrival) interview that he did not know anyone on the boat prior to boarding and that he travelled from Iran to [Country 3] and [Country 4] alone. The delegate provided specifics of the similarities between the applicant's information and those of three other individuals 'A, T and R'.
24. The delegate stated firstly, that it appeared all individuals attended [School 1] at the same time and were studying the same school year. Secondly, the applicant attended [School 2] from 2002 to 2003 where he completed [a certain grade] and 'R' attended this school in 2002. Thirdly, the applicant upon arrival in [Country 4] like 'T' was told to go to '[Town 1]'. Like R and A, he stayed at a small town called [Town 2]. Like R and T, he flew to [Town 3]. Like R and A, his journey to Australia was arranged by '[Mr A]'. Fourthly, all four travelled to Australia on [a boat] and, lastly, they lived at the same address in Australia in 2013.
25. The applicant's representative's response of [May] 2017 is in the referred material. In this the applicant stated he did not know the three individuals in Iran but befriended them in [Country 4] in 2012. He was not aware they actually attended [School 1] in 2000, the school was quite big with [a number of] students studying in different shifts (morning and afternoon). A, T and R were not in his friendship circle. The applicant's trip was organised by [Mr A] but he also assisted other individuals other than himself, R and A. They stayed in the same location as they were instructed to do so. This is where their friendship began and having the same smuggler and following his instructions does not conclude the men were known to each other. The men realised they belonged to the same area in Tehran, they started to communicate with each other in [Country 4] and this led to their friendship. They stayed together in the detention centre in Australia and as they were friends and could trust each other they decided to share accommodation together upon their release.
26. In relation to why he answered 'no' when asked whether there was anyone onboard his boat who he knew prior to boarding, the applicant contended the question was not explained to him and the thought it was in relation to the relative, family members and friends he knew in Iran. The applicant's representative also advised after listening to the audio recording of the interview the question was somehow twisted by the interpreter. Finally the applicant stated that his travel to Australia was not pre-arranged, it occurred following the raid and he did not know A, T and R before departing Iran.
27. The arrival interview transcripts and recordings of these three individuals were in the referred material and I have considered this material in conjunction with the submission discussed above. I accept the applicant's explanation. I am of the view given the number of Iranians exiting Iran around this period, the finite number of people smugglers aiding them and the similar routes travelled both through [Country 3] and then within [Country 4] it is plausible they travelled to the same places, on the same route and were aided by the same smuggler. It

is also understandable why four men from the same background might form a friendship group and seek to stay together initially upon arrival in Australia both in detention and when first released into the community.

28. I also note that none of the men departed Iran on the same date. The applicant himself departed Iran [a date in] October 2012. T departed Iran [on another date in] October 2012 and both A and R departed November 2012. The applicant is [a number of months] older than both R and A; and [a number of years] older than T based on the information contained in their individual arrival transcripts. The dates each individual has provided as to their attendance at [School 1] all invariably differ and are not an exact match. [Details of A, R, T and the applicant removed]. Similarities do exist but they are not such that I am convinced of a prearranged departure by all four individuals or a pre-acquaintance.
29. Whilst I am not satisfied the applicant was of interest to the authorities when he departed Iran, I accept that the applicant began investigating Christianity in Iran and upon his arrival in Australia continued this investigation, firstly whilst in immigration detention and then since February 2013 as an active member of [Church 1]. He was christened in October 2013 and has continued to attend this church on a regular basis for the past four and half years. I am satisfied that the applicant's conversion to Christianity is not for the sole purpose of strengthening his claims for protection. I also do not consider the disclosure of his conversion to his parents is for the sole purpose of strengthening his claims given his stated desire to bring Christianity to his mother and siblings. I note some of the information in the referred material does indicate some asylum seekers do convert to Christianity in the belief it may aid their asylum claims but there are also a large number who convert for other reasons including a heartfelt faith in their new religion, gratitude to Christian groups offering support during perilous and frightening journeys and the increasing interconnectedness of the world.<sup>2</sup> In the applicant's case, he has been consistent in his claims that he was investigating Christianity prior to his arrival in Australia and that he had a problem and could not choose his religion in Iran and I have found him to be a generally credible witness.
30. I accept the applicant, given his long-term and regular attendance at church in Australia will continue to practise his Christian beliefs on return to Iran and that he will seek out a house church or likeminded community in which to worship in Iran given the importance of communal prayer to him. Given his desire to bring Christianity to his mother and siblings and his uncontested statements that he has been active promoting Christianity on social media whilst in Australia and I am satisfied he will seek to promote his beliefs in Iran.
31. According to the 2015 US Department of State Report on International Religious Freedom for Iran Muslim converts to Christianity reportedly continued to face harassment, arrest, and detention. According to UN reports, on April 15, the Shahr Shahr Revolutionary Court upheld the one-year prison sentence and two-year travel ban of 13 Christian converts who were arrested in 2013 at a house church and were charged with "propaganda against the State," "advocating for evangelical Christianity," and "establishing house churches." The authorities often arrested members of house churches on accusations of supporting and accepting assistance from enemy countries. Christians, particularly evangelicals and converts, continued to experience disproportionate levels of arrests and high levels of harassment and surveillance, according to reports from exiled Christians. Many arrests reportedly took place during police raids on religious gatherings, during which the authorities also confiscated religious property. Prison authorities reportedly continued to withhold medical care from prisoners, including

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<sup>2</sup> "European churches say growing flock of Muslim refugees are converting", Guardian (Unlimited) (UK), 6 June 2016, CX6A26A6E4884

some Christians, according to human rights groups. Official reports and the media continued to characterize Christian house churches as "illegal networks" and "Zionist propaganda institutions."<sup>3</sup>

32. According to DFAT under Iranian law, a Muslim who leaves his or her faith or converts to another religion or atheism can be charged with apostasy.<sup>4</sup> Perceived apostates are only likely to come to the attention of Iranian authorities through public manifestations of their new faith, attempts at proselytization, attendance at a house church or via informants.<sup>5</sup> Christians belonging to unregistered churches are at higher risk of adverse attention from officials and face considerable official discrimination. This is in part due to Islamic mores concerning apostasy and deep suspicion of evangelism. Most evangelical churches in Iran are not recognised and therefore cannot openly worship. Instead, some form underground 'house churches', which are illegal.<sup>6</sup>
33. DFAT reports that Iranian security forces are conspicuous in many aspects of Iranian life. An extensive network of police, security and intelligence services exercises effective control over almost all areas of the country.<sup>7</sup> On the evidence before me, I find the applicant, an apostate and a Christian convert, will face a real chance of being subject to monitoring, arrest, being charged and detained for a period of time, for reasons of his beliefs and for the public manifestation of those beliefs.
34. Country information indicates that arbitrary arrest, torture and ill treatment in detention in Iran is common. It is common for detainees to be held incommunicado for days, weeks and even months after arrest.<sup>8</sup> It has been reported by foreign NGOs that a range of different types of torture is used in Iran, including sexual torture, stress positions, use of water, sharp and blunt force trauma, electric shock, prolonged solitary confinement, asphyxiation and chemical torture.<sup>9</sup> Torture is regularly used to extract confessions by security authorities.<sup>10</sup> I am satisfied that the harm the applicant may face is serious harm, I am also satisfied that the essential and significant reason for the harm is his religion, and that it involves systematic and discriminatory conduct.
35. The harm that the applicant feared emanates from the Iranian authorities operating under laws which apply throughout Iran. As such, I find that the real chance of persecution relates to all areas of Iran.
36. As the Iranian government is the agent of harm, I am satisfied that the applicant cannot access effective protection in Iran. I find that effective protection measures are not available and s.5(2) does not apply.
37. I also find that s.5J(3) does not apply as I consider that requiring the applicant to modify his behaviour, by modifying or concealing his Christian beliefs, or cease to be involved in the practice of his Christian faith falls within a kind of modification that an applicant cannot be required to make in s.5J(3)(c)(i).

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<sup>3</sup> "2015 Report on International Religious Freedom - Iran", US Department of State, 10 August 2016, OGD95BE926723

<sup>4</sup> Department of Foreign Affairs and Trade (DFAT), "DFAT Country Information Report Iran", 21 April 2016, CIS38A8012677, 3.52.

<sup>5</sup> Ibid 3.55.

<sup>6</sup> Ibid 3.47.

<sup>7</sup> Ibid 5.2.

<sup>8</sup> Ibid 4.11-4.16.

<sup>9</sup> Ibid 4.12.

<sup>10</sup> Ibid 4.14.

38. Accordingly I am satisfied the applicant has a well-founded fear of persecution in Iran for reason of his religion. Given my findings, it is not necessary for me to consider the remainder of the applicant's claims.

**Refugee: conclusion**

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

**Decision**

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

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

## Applicable law

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

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

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

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

...

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

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

but does not include an act or omission:

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

...

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

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

...

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

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

...

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

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

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

...

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

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

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

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

...

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

...

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

...

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

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

...

*Protection obligations*

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

*Determining nationality*

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