



Australian Government
Immigration Assessment Authority

Decision and Reasons

Referred application

IRAN

IAA reference: IAA17/02796

Date and time of decision: 15 January 2018 13:42:00

Susannah McNeill, Reviewer

Decision

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

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

Any references appearing in square brackets indicate that information has been omitted from this decision pursuant to section 473EC(2) of the Migration Act 1958 and replaced with generic information which does not allow the identification of 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] October 2016 he lodged an application for a Temporary Protection Visa (protection visa application). He claims to fear persecution in Iran 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's conversion to Christianity was genuine.

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 23 June 2017 the IAA received an email from the applicant's new representative advising of his appointment. The email also included a support letter from members and worshippers of the [Church 1]. This is new information. The letter has been signed by 22 member/worshippers/pastors of the church community. The letter provides a summary of the applicant's claims, a summarised history of his conversion to Christianity and his attendance at church in Australia. The letter also makes reference to Open Doors Australia and provides a website address. Although the letter is undated I conclude that it was written after the delegate's decision as the authors request a reconsideration of the applicant's visa application. In that respect it was not and could not have been provided prior to the delegate's decision being made. The letter on its face appears to corroborate the applicant's claimed conversion to Christianity, and ongoing pursuit of the faith. No reasons however have been provided as to why a similar support letter could not have been provided prior to the decision being made and no exceptional circumstances have been identified. The applicant's attendance at the [Church 1] and his participation in church social gatherings was discussed at his protection visa (PV) interview. In light of the above, I am not satisfied there are exceptional circumstances to justify considering the new information.
5. On 27 June 2017 the IAA received a submission from the applicant's representative along with a copy of the support letter received on 23 June 2017 and discussed above, various photos of the applicant and a letter from the Pastor who acted as a religious referee and gave evidence on the applicant's behalf at his PV interview on [in] May 2017.
6. The representative's 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, which I have noted. It also in part reiterates the applicant's claims made to the delegate.
7. The representative has also stated the applicant 'is a loud and active person who is known for his positive, loud and trendy style who has converted to Christianity and adopted (*the*) Australian way of life. He further notes someone like the applicant 'would have been reported to the Iranian government by now while he is quite active in social media and his promotion of (*the*) Christian faith may also be detected by the Iranian government forces checking Iranian's (*sic*) [F]acebook.' This description of the applicant's character and the assertion that he promotes his Christian faith on Facebook and that this will be detected by the Iranian authorities is new

information. The applicant's Facebook activity was discussed in his PV interview when talking about the risk's associated with his wife's visits to Iran now she was married to a Christian. I am of the view a description of the applicant's character and the fact of his Facebook activity could have been provided prior to the decision being made, noting in particular their centrality to his claim to be at risk of harm, and would have been put forward had it been true. The applicant has not satisfied me that the information could not have been provided to the delegate or that it is credible personal information which was not previously known and had it been known may have affected the consideration of the applicant's claims. Furthermore, I am not satisfied there are exceptional circumstances to justify considering this information.

8. The 10 photos the applicant has provided were not in the referred material and are new information. There are three photos of the applicant's wedding including a photo of the applicant and his wife, the Pastor who gave evidence and his wife, which took place at the [Church 1] [in] May 2016. There is one photo of the applicant with a group of churchgoers taken at [Church 2] at his friend's baptism in February 2014. There is a photo of the applicant and four other young men at a '[particular church activity]' with his church group dated [June] 2014. There are three photos of the applicant and the pastor with their respective wives at home eating dinner and playing cards; two are dated in April 2016 and one in February 2017. There is a photo of the applicant with [a number of] other [individuals] from his [church] dated [July] 2015. The last photo is of the applicant and 10 friends again at [a particular church activity] with his church group dated [June] 2016. All photos pre-date the delegate's decision. No reasons have been provided as to why they could not have been provided prior to the decision being made. The photos appear genuine, un-staged, cover a significant period of time of three and half years, and show the applicant in different social situations with his Christian fellowship. The photos present as credible personal information, some of which corroborate aspects of his claims. Although the applicant was represented by a different migration agent before the department, his involvement with the church community including his marriage were discussed at his PV interview and I consider the applicant was on notice and had the opportunity to provide these photos prior to the decision being made. Taking everything into account, I am not satisfied there are exceptional circumstances to justify considering this new information.
9. Lastly, there is a letter dated [June] 2017 forwarded by the applicant from the pastor who acted as the applicant's religious referee before the delegate. This is new information. The letter mostly disputes the delegate's findings based on her interpretation of the Pastor's own evidence he presented at the PV interview and to that extent it may be considered as argument rather than information, which I have noted. The Pastor has stated that when asked late in the interview, if he knew that the applicant had attended Bible studies in Iran, [a number of times] a week on [particular days of the week at particular times of day] he was 'so exhausted mentally and emotionally' that he had to respond that he couldn't recall the applicant telling him about these things. 'Upon reflection after the event, [he] remembered that [the applicant] *had* spoken of Bible studies in Iran and that his Bible study leader had been arrested, shortly before [he] had fled the country.' Under the pressure he felt during the interview, it being the first occasion to be involved in such a process and that the interview went longer (almost one hour) than the 15 to 20 minutes he had been advised by the representative it would go for, and the way the question was put to him with so much detail, he just couldn't recall the applicant speaking with him about these Bible studies. This is new information. The delegate in her decision noted the Pastor 'was not aware that the applicant had attended biblical studies classes for two years [a number of times] a week in Iran' and this formed part of her finding that the applicant was not a genuine Christian. The Pastor's explanation of why he had not recalled the applicant telling him about his experience in Iran initially and his reasons for not doing so is new information. The letter itself post-dates the delegate's decision and in that sense could not have been provided to the delegate. However, I consider the Pastor could have explained this discrepancy prior to the

delegate's decision being made, even if he was stressed at the interview itself. Furthermore, I consider it of limited probative value and I am not satisfied that had it been known may have affected the consideration of the applicant's claims.

10. Secondly, the Pastor has provided further character background of the applicant in response to the delegate's finding that the applicant's lack of biblical knowledge as evidence of fabrication of his claims, despite the Pastor having stated his knowledge was 'reasonable' and not untypical of his generation; that many Christian young adults that he knew 'did not have great Biblical knowledge. Here the Pastor has repeated what he stated in his oral evidence at the applicant's PV interview. He then goes on to state the applicant is 'not academic. He is bright, enthusiastic, engaging, task focused and a hard worker, he is not given to academic pursuits. On the many occasions he has spent with him in conversation'; he has 'discovered that [the applicant] learns visually and through the spoken word rather than the written word. For example, [the applicant] will watch a movie about Jesus many times over, but will spend little time reading, much less studying the Gospel accounts of the life of Jesus.' Whilst his comments are a direct response to the delegate's concerns as to the applicant's 'biblical knowledge and engagement with the Bible'; his personal opinion as to the applicant's character in respect of the methods he retains biblical knowledge is not, in my opinion, indicative of the genuineness of the applicant's Christian faith.
11. I am not satisfied there are exceptional circumstances to justify considering this new information.

Applicant's claims for protection

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

- He was born a Shia Muslim in [Town 1], Kerman province in Iran in [birth date].
- After quitting university in 2007, he started selling [goods] and services with his brother A. His friends including S who he played [team sport] with used to visit him at his shop.
- S introduced him to a friend called R. R was an educated, well-mannered, respectable man in his [age] and he liked him so his friendship with R started in early 2011.
- He used to hang out with S and R. One night in about February 2011 R invited them to dinner. R recited biblical verses and mentioned facts about Jesus Christ which intrigued him. After returning home that night he could not stop thinking about these comments.
- About one month later R invited him to his house. R spoke more about Christianity as a religion and a few things Jesus had said in the bible. He told him he was interested in Christianity.
- A few nights later R invited him to his house. He gave him a copy of the Bible. There were a few other people in the house and he realised R was leading a bible study group.
- He was not a strong practising Muslim when he met R and had strong reservations about Islam, many aspects of the religion seemed unreasonable and meaningless. He came to a contrary conclusion when reading the Bible, thinking about the life of Jesus, his miracles, his divine way of spreading love and kindness. At time he had difficulties understanding the true meaning of biblical verses but unlike the Quran he never challenged the reasonableness of what was stated in the holy bible.
- He attended bible study sessions at R's house every [particular days of the week] for almost two years and gained a basic understanding of Christian beliefs.

- [A time] before he fled Iran S rang him to say the brother R had been arrested and taken to an unknown place by the authorities. This was because of his proselytising Christianity. S recommended he flee [Town 1] and possibly Iran.
- He discussed the matter with his brother and decided to leave [Town 1] that day for Tehran and [in] March 2013 he flew to [Country 1]. A few days later [a number of] plain clothed men went to his house asked his mother his whereabouts. She said she did not know.
- In [Country 1] he stayed with his friend V who he attended church with regularly. He had Christian discussions with Father R. His dedication to follow the path of Christianity led him to be baptised in [Foreign City 1] [in] April 2013. As his visa was about to expire he decided to seek asylum in Australia.
- Upon arrival in Australia he settled in [Australian Suburb 1] and started attending [Church 2], a [church], in [Australian Suburb 2]. Preferring a more liberal denomination he joined [Church 1] after five to six months. He has been a member of this Church for almost three years and regularly attends church services.
- He also attended bible study at [Church 3] with fellow Iranian Christians for almost six months in 2014.
- He fears persecution in Iran because he has officially renounced Islam and converted to Christianity.

Refugee assessment

13. 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

14. 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.

15. 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 and baptism in [Country 1]

16. The applicant claimed to have become involved in Christianity in Iran in February 2011 through brother R. He attended bible study sessions at brother R's house every [particular days of the week] for almost two years and gained 'a basic understanding of Christian beliefs.' After R's arrest by the authorities the applicant fled Iran [in] March 2013 for [Country 1]. Through his friend V in [Country 1] he started attending church regularly and he reached a greater understanding about Christianity. He was baptised in [Foreign City 1] at [a church in] April 2013. Included with his PV application was a copy of his baptism certificate.
17. At his PV interview on [date] May 2016 the applicant described his religious upbringing to the delegate. He grew up in [Town 1] in the province of Kerman; the area is famous for [a particular reason]. He started at university studying [a certain discipline] but didn't continue and started working when he opened a shop with his brother in 2007. There were no official churches in [Town 1] like in Tehran or Esfahan. Although he was brought up a Muslim, his family was not deeply religious. He didn't prayer every day nor did he attend mosque regularly. His father was not a strong believer although his mother was somewhat religious. When he was young he would attend mosque with his mother a few times but he stopped going as he had no interest and he saw a lot of lies and 'fibs'. He would pray to God in his own way asking that his business be better and to be sent lots of customers.
18. The applicant described how he met R through his friend S and how he had initially been a customer at his shop. R helped him with a number of things and because he was a Christian R was genuinely helping him unlike his Muslim friends who would make promises to him but not stick to them. He had been advised not to talk about the classes in public and only to bring discussions to the group. He did not tell his family about the group especially his mother. He had been aware of the dangers but he never thought it was going to happen to them, he didn't take it very seriously until S called him about brother R. He knew the backgrounds of the other men; [details of other attendants]. Two others were [details of other attendants]. He attended the bible classes at [particular times of day]. There were [a number of] attendees in total. Outside the group he only exchanged numbers with S and R as he only had the class in common with the others.
19. S called him and told him R had been arrested, there were [details of R's arrest]. S told him to be careful. The applicant talked to his brother who he shared a shop with. His brother told him he had got himself into a very dangerous situation and that he better leave for a couple of months until everything was settled. Straightaway he packed his suitcase and went to [Country 1] where he had a friend V. He had never left Iran before and within a day he left. After hearing about R's arrest that afternoon he travelled to Tehran and then flew [out].
20. Asked what made him get baptised in [Country 1], the applicant said it didn't happen straight away. He realised when he was there that his friend V who had been studying there for five years had also become interested in Christianity and had been attending church although he had not converted. He started going with V every [particular day of the week at a particular time]. At church he had got to know a man called [Mr A] and then he heard from his mother that [a number of] men from the authorities had been asking about him and he did not feel safe to return. [Mr A] tried helping him, he told him that if he strongly believed in Jesus he needed to be baptised and make himself pure. He needed to purify his sins, become pure and a newborn person. Asked why he wanted to do that, the applicant said that [Mr A] had told him that if he

genuinely loved Jesus and strongly believed in him then he could be baptised, he was safe and nothing would happen to him. He believed in Jesus and loved to become a Christian. He did not know what happened to brother R, he could be in jail or killed. S had also fled the country, he had heard from his brother that S had gone to [another country]. He had tried to find out about the others in the group, [details of other attendees].

21. The applicant participated in an "arrival entry" (arrival) interview [in] June 2013. He stated his religion was question. Asked why he left his country, the applicant stated because of his religion. A friend of his was teaching Christian subjects, he was arrested, a summons was sent to him and after that he ran away. When he got to [Country 1] he received a summons too. Asked whether anything specific happened to him, the applicant stated a friend of his who did the Christian classes, S called and said they were in trouble, he had to go, the police had caught brother R so they thought they would also be in trouble. Asked why he could not return to Iran, the applicant stated because he had converted to Christianity he would be killed as he had been baptised in [Country 1]. He had tried to find work in [Country 1] but had the wrong visa.
22. At his PV interview the applicant clarified what he meant when he stated he had received a summons at his arrival interview. He said that [a number of] days after he had left when he was in [Country 1] [a number of] people in plain clothes came to his house and questioned his mother about him, had he been there he would have been arrested for sure. Asked whether he had been talking about an official legal document, a court summons, the applicant said it was considered like a 'live' summons, it wasn't a letter from a judge.
23. I consider the applicant gave a credible and persuasive account of his experiences in Iran. I accept the applicant became involved in Christianity in Iran and attended bible study sessions for a period of two years prior to departing. A Danish Report in the referred material from 2013, the same year the applicant fled Iran, noted there might be a few hundred thousand hidden converts when the number of ethnic Christians (Armenians and Assyro-Chaldeans) were around 70-80,000, that there are more house churches across the country compared to a decade ago (thousands throughout the nation), that the movement was growing and that it was expected that the authorities kept 'tabs' on the spread of the movement and that they were looking for people who were proselytising.¹ House churches tend to be no more than 10 people – more often five to six people in order to be able to act more discrete and less threatening. More and more people were claiming to be attracted to something different to Islam², and a motive to convert arose in individuals who in Iran were fed up with Islam and needed to believe in something else in its place.³ It further added that house churches are 'really targeted by the regime'.⁴ Given the above information supports the applicant's claims, the clear and concise manner in which he presented his evidence, I accept the applicant was involved in a bible study group in Iran and that following the arrest of his friend R departed Iran. I accept that whilst in [Country 1] he attended a church with his friend V and was baptised in April 2013 and converted to Christianity.

Involvement with Christianity in Australia

24. The applicant claimed that since arriving in Australia he had been attending church. Initially he attended [Church 2] in [Australian Suburb 2]; however, it was a [particular denomination] and he preferred a more liberal denomination under [a different denomination]. He joined [Church 1]

¹ Danish Refugee Council, Landinfo and Danish Immigration Service, "Iran: On Conversion to Christianity, Issues concerning Kurds and Post-2009 Election Protestors as well as Legal Issues and Exit Procedures", 1 February 2013, CIS25114, p.16.

² Ibid p. 18.

³ Ibid p. 17.

⁴ Ibid p. 27.

after six months; he regularly attended church service and had learnt a lot from [Pastor A] and had been a member of their congregation for almost three years. He also attended bible study sessions [on a particular day of the week] at [Church 3] with fellow Iranian Christians for almost six months in 2014.

25. Included with his PV application was a reference letter dated [August] 2016 from [Pastor A] who claimed to be on the pastoral team of [Church 1]. [Pastor A] states he has known the applicant for over two years since he began attending the church early 2014 after being invited by a another [Iranian]. The applicant quickly made a number of friends and has attended the church ever since. Prior to attending [Church 1] he had attended [Church 3] for seven to eight months where he went to Bible study regularly. Since attending [Church 1], because of the distance from his home, he had found it difficult to attend bible studies due to work commitments; he had however attended some special bible studies that he had conducted and was always keen to learn. [Pastor A] stated the applicant regularly participated in church [activities] and had been involved in [a particular activity] for two and half years plus after church [dinners]. [In] May this year he performed the marriage ceremony for the applicant and his wife M; he was involved in its preparation and had provided ongoing support following their wedding. He believes the applicant is an authentic Christian, who prays and reads his Bible and works hard to live a Christian life and that he was baptised in [Country 1]. The applicant, when he first introduced his wife M to him, asked him to teach her how to be a follower of Jesus. At the end of the letter [Pastor A] finishes by stating he has 'no doubt in [his] mind the applicant is a genuine Christian'. This letter provides a detailed corroborative background on the applicant's involvement not only in [Church 1] but also his prior attendance at [Church 3].
26. At his PV interview the applicant was overall consistent when presenting evidence of his church attendance in Australia as per his claims. He spoke of his initial attendance at other churches before joining [Church 1] which he usually attended on [a particular night of the week] and then after they had finished praying they went to [eat] dinner together. [Details of church services]. The applicant said he attended regularly other than when he was working or sick. Asked about his attendance at Bible study group, the applicant said he had attended at the Iranian church [but] then he decided to join an English speaking church and they were going to start a bible study group but it hadn't started yet.
27. Asked about his wife and her interest in learning about Christianity, the applicant said he had talked to her about it a lot, they would watch Christian movies together about Jesus and she attended the [Church] activities with him unless she had [other engagements]. He stated his wife genuinely liked being involved and had made lots of good friends who were kind and nice. She was not baptised. Asked whether she was still a Muslim, the applicant stated only that he was trying to make her a Christian. She did not have strong beliefs in Islam, they had talked about Christianity and she had read the Bible and she had been happy to marry in the Church.
28. Asked whether the Bible was important to him, the applicant said he had a bible and it was on his mobile as well. He had read it both at church and at home and he loved the stories. The delegate then questioned the applicant about the books of the New Testament. The applicant stated there were 66 books, 39 from the Old Testament and 27 from the New Testament. He names Matthew, Mark, Luke and John and said he was most reading the New Testament. The delegate questioned the applicant about John; he quoted a number if extracts from it. Asked why he was Christian, the applicant said after becoming involved in bible studies and reading about Christianity, he felt Jesus had touched his heart and it was clearer and purer now and his life had changed for good. The applicant also explained his favourite stories from the Bible; the miracles Jesus had created including making a blind man see, a crippled man walk.

29. Asked about his wife returning to Iran after they married in the church, the applicant said she did not have a problem there; the fact they had been married in a Christian church would not be a problem as the marriage would not be registered in Iran as he was not there. Her Sheneznameh did not indicate she was married.
30. Again the delegate asked the applicant how important going to church was to him as a Christian, the applicant stated so much that he attended every week and loved talking to the people including the priest. Told that his religious referee had said he did not attend every week, the applicant said most of the time he was going, he often came back from work sick or tired because he finished at [a particular time] and he might be late but anyway he went to church. The delegate also put to the applicant that he had said he didn't attend bible studies when it was offered to him because of his work but he had only started working full time recently. The applicant said the timing of the bible studies classes was at [a particular time of day]; he [participated in a separate church activity at that time] and that is why he missed it.
31. The delegate also interviewed the applicant religious referee Pastor '[Pastor A]', the author of the reference letter for the applicant from [Church 1]. [Pastor A] said he had been a Member of the Church for 15 years and on its pastoral team for five years in a 'connect and care role', looking after people who came into the life of the church. Asked whether he was a Minister, he stated they called themselves pastors in the [church], he was not the senior pastor but there were [a number] of them in the team. He had been theologically trained and it was his profession. They did not have a dedicated Persian ministry, the applicant had come to the church through an Iranian friend and [a portion of their] congregation were Asian. It was not unusual that the applicant did not live in their parish. [Pastor A] said that when he had initially met the applicant he had not known he was a Christian; he would not necessarily assume that without knowing a person. The applicant started to engage and relate to the younger members of the congregation and over the course and 18 months ago he came to know about his conversion and baptism in [Country 1]. The [Church] was an open church and some people came all their lives and never made it official. [Pastor A] said he got to know the applicant well during his marriage preparations. He said that regular attendance at church meant that people would attend [on a particular day of the week] and this could mean once every other week or once a month, the applicant attended fortnightly and in the past couple of months six out of eight [services on that day of the week].
32. Asked whether he had thought the applicant had a good knowledge of the Bible, [Pastor A] stated it was not great, he would say 'reasonable.' At best across [churches] people's knowledge of the Bible was at best reasonable which he found distressing and they continued to seek to redress this with those in the applicant's age group. He said the applicant had an average understanding of the Bible, certainly of his teaching he would have a good knowledge but if you were to ask him where to find the story of Moses in the Bible he would not know where to go. A good number of his contemporaries would but then a good number wouldn't. Asked whether the applicant had talked about his experiences in Iran, [Pastor A] said 'no.' He had some knowledge of his experiences in [Country 1]. Asked whether his claim of attending bible studies in Iran for two years was compatible with his knowledge, [Pastor A] said that would help explain why he had come to an understanding he wanted to be baptised in to the Christian faith. The delegate pointed out she would have expected a higher level of knowledge given his two years of study. [Pastor A] said there was much to learn, his own son who had attended bible studies all his life and was the same age would be comparable to the applicant, reasonable but not great. One could have a good understanding of God and his love for one, his life and death and resurrection without knowing the Bible well. The religious retreats these days had speakers who talked about aspects of the faith; however, in his day they would have studied the Bible.

33. [Pastor A] confirmed he had performed the applicant and his wife M's Christian marriage ceremony, M's mother had come from Iran. Asked whether he was convinced the applicant was a Christian, [Pastor A] said both subjectively and objectively he believed so. A person who is serious about their faith, it is manifested in various ways and subjectively you notice it. Objectively being part of the wider community, coming to church, wanting to know more about the Bible and understand what the Bible teaching was about and wanting his wife to become a Christian. Told about the reports of people converting for the sake of a visa, [Pastor A] stated he was convinced of the applicant's faith. He further mentioned he had counselled the couple early on in their marriage and advised the applicant's a marriage should be a partnership where one does not dominate the other and this was the Christian understanding of marriage in Australia and he believed the applicant had adopted this attitude. Asked whether he had previously provided references for visa matters, [Pastor A] said that this was his first time.
34. I am strongly persuaded by the evidence given by the applicant's religious referee both oral and written. I note [Pastor A] has studied theology and it is his chosen profession, he has known the applicant since early 2014 (four years) and has been in a position to observe the applicant's behaviour in a group setting and in a one on one environment. He has counselled the applicant and his wife both leading up to their marriage and afterwards having also performed the ceremony. Whilst I acknowledge the applicant's knowledge of the Bible might be somewhat lacking I consider his commitment to his faith, his long term involvement with the church on a variety of levels and his desire to seek advice from his church's leaders such as [Pastor A], is evidence of his genuine Christian beliefs. I note the applicant has not been a regular attendee at bible study groups in recent years; however, I accept the reasons for his lack of attendance including his work commitments, the distance he had to travel and that it conflicted with his [other church activities].
35. I have found the applicant to be both consistent in his claims and has generally presented as a credible witness. In responding to the delegate's questioning the applicant was both open and forthcoming with his answers.
36. 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.⁵ I have found the applicant to be a generally credible witness and I have accepted he was involved in Christianity prior to his departure from Iran. I am satisfied that the applicant's conversion to Christianity in [Country 1] and his involvement with a number of Christian churches in Australia including [Church 1], his marriage in in a Christian ceremony, was genuine and not for the sole purpose of strengthening his claims for protection and therefore s.5J(6) does not apply.
37. 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 he places on his attendance at church, his involvement with various church groups on a social level including [various church activities]. Given his desire to bring Christianity to his wife I am satisfied he will seek to promote his beliefs in Iran to others.

⁵ "European churches say growing flock of Muslim refugees are converting", Guardian (Unlimited) (UK), 6 June 2016, CX6A26A6E4884

38. 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.⁶ 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.⁷ 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.⁸
39. 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.⁹ 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.
40. 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.¹⁰ 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.¹¹ Torture is regularly used to extract confessions by security authorities.¹² 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.
41. 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.
42. 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.
43. 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).
44. 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.

⁶ Department of Foreign Affairs and Trade (DFAT), "DFAT Country Information Report Iran", 21 April 2016, CIS38A8012677, 3.52.

⁷ Ibid 3.55.

⁸ Ibid 3.47.

⁹ Ibid 5.2.

¹⁰ Ibid 4.11-4.16.

¹¹ Ibid 4.12.

¹² Ibid 4.14.

Refugee: conclusion

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

Decision

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

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

Applicable law

Migration Act 1958

5 (1) Interpretation

...

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

- purports to have been, but was not, issued in respect of the person; or
- is counterfeit or has been altered by a person who does not have authority to do so; or
- 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:

- severe pain or suffering, whether physical or mental, is intentionally inflicted on a person; or
 - 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:
- that is not inconsistent with Article 7 of the Covenant; or
 - 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:

- that is not inconsistent with Article 7 of the Covenant; or
- 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 country of which the non-citizen is a national, to be determined solely by reference to the law of the relevant country; or
- 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:

- 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.