



Australian Government
Immigration Assessment Authority

Decision and Reasons

Referred application

IRAN

IAA reference: IAA17/03311

Date and time of decision: 13 April 2018 15:13:00

Matthew Currie, Reviewer

Decision

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

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

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

Background to the review

Visa application

1. The referred applicant (the applicant) claims to be a Iranian citizen of Farsi (Persian) ethnicity. He arrived in Australia in March 2013. In March 2016 he lodged an application for a Temporary Protection Visa (TPV). A delegate of the Minister for Immigration and Border Protection refused to grant the visa in August 2017 on the grounds that Australia did not owe protection obligations to the applicant. On 4 August 2017 the matter was referred to the Immigration Assessment Authority (IAA).

Information before the IAA

2. I have had regard to the material given by the Secretary under s.473CB of the *Migration Act 1958* (the Act). A migration agent, acting on behalf of the applicant has sent two emails to the IAA in the months following the delegate's decision. The emails contained a range of documents including a five page legal submission written by the migration agent on the applicant's behalf. The submission argues against the findings of the applicant's decision. I have had regard to the argument in the submission.
3. The remainder of the documents are described below. I note that neither the applicant, nor the agent has provided to the IAA any reason why these documents have been provided to the IAA. However, since they all relate to the applicant's central claim to have converted to Christianity, a claim which was not accepted by the delegate, I infer they are offered as further evidence of his conversion to the Christian Faith.
 - A Baptism Certificate in the applicant's name, indicating he was baptised in October 2013. The Certificate was not before the delegate. It is new information. Noting that it was given to the applicant in 2013 at the time of his baptism I am not satisfied that it could not have been provided to the Minister before the date of the delegate's decision. The applicant had stated to the delegate at interview in 2017 that he was baptised in 2013. This document evidences that claim. I accept that the certificate is genuine, and therefore contains credible personal information, about the applicant's 2013 baptism. However, while the certificate itself was not before the delegate, I am not satisfied that it contained information which was not previously known, or that it may have affected the consideration of the applicant's claims, since the delegate did not disbelieve the applicant had been baptised; rather he found that the applicant's conversion Christianity was itself not genuine, and was merely a pretence intended to enhance his claim for protection in Australia. As neither limb of s.473DD(b) is met, I am prevented from considering the new information.
 - A document titled 'Old Support letters'. The document contains three letters which assert that the applicant has, since his arrival in Australia, been a regular attendee at three separate Christian Churches. The letters were not before the delegate; they are new information. The letters were written prior to the date of the delegate's decision. The letters, like the Baptism certificate, appear to have been offered as evidence of the applicant's conversion to Christianity. It is unclear why they were not provided to the Minister prior to the delegate decision (since they were prepared then) and I am not satisfied that they could not have been. These letters are marked with the letterhead of three Christian churches and appear genuine; I accept that they contain credible personal information. However, I am not satisfied that they may have affected the consideration of the applicant's claims, since the delegate did not dispute that the

applicant attended regular Christian services in Australia and the letters say no more than that. As with the Baptism Certificate, the delegate found that the applicant's attendance at Christian services was pretence and that his Christianity was not genuine. As neither limb of s.473DD(b) is met, I am prevented from considering the new information.

- An 11 page collection of images from the applicant's Facebook page. The images depict news articles that he has shared on Facebook which are asserted to evidence his conversion to Christianity, and his commitment to his new faith. All of the articles were 'shared' by the applicant in 2015 and 2016. None of the images were before the delegate. They are new information. Given that they were 'shared' by the applicant in 2015/2016 on his personal Facebook account I am not satisfied that they could not have been provided to the Minister before the date of the delegate's decision. These articles are not written in English and I am unable to understand them or determine their exact character. I note that some of the articles contain overtly Christian symbology, such as a Cross, or a Church, however as they are untranslated I cannot determine their relevance to the applicant's claims. As they were published on his Facebook page I am satisfied that they contain credible personal information which may have affected consideration of the applicants claims. However, as noted above, the applicant has not explained why these have been submitted and has not outlined any exceptional circumstances which might justify their consideration. No exceptional circumstances are apparent to me and so I am prevented from considering the new information.
- A document containing two pictures of the applicant, said to have been taken in 2014. The pictures show a tattoo on applicant's forearm. The tattoo depicts Jesus Christ's death on the Cross, and is said to evidence the applicant's genuine conversion to Christianity. Given that the applicant dates the photo to 2014, I am not satisfied that it could not have been provided to the minister before the date of the delegates decision. As the image is of a tattoo on the applicant's own body, I accept that it is credible personal information which may have affected the consideration of the applicant's claims. Nevertheless, as noted above the applicant has not outlined any exceptional circumstances to justify consideration of the images, and none are apparent to me. Thus I am prevented from considering them.
- A Statutory Declaration signed by nine members of [a] Church in [Australia]. The Statutory Declaration was signed on 20 August 2017 and could not have been provided to the Minister before the delegate's decision and so s.473DD(b) is met. Having reviewed the content of the Statutory Declaration, I observe that it reasserts that the applicant has attended Christian services since his arrival in Australia, indicates that he has 'shown great commitment' to Church activities and also asserts that the signatories are 'certain that [the applicant's] faith in Jesus Christ is genuine'. Having considered the Statutory Declaration, I conclude that it was written at the behest of the applicant, after the delegate found the applicant's Christianity was not a genuinely held belief. The applicant has not outlined any exceptional circumstances to justify the consideration of the Statutory Declaration and none is apparent to me. Thus, I am prevented from considering the Statutory Declaration.
- A 2015 Country information Report from the UK Home Office titled - *Country Information and Guidance Iran: Christians and Christian Converts*. This document was not before the delegate (Though I note that an earlier version of the report was, and is before me); it is new information. The country information report was published before the date of the delegate's decision. I am not satisfied that it could not have been provided to the Minister prior to the date of the delegate's decision. The report outlines the treatment of Christian converts in Iran by the Government. I am not satisfied that

the report contains credible personal information in the relevant sense. As neither limb of s.473DD is met, I am prevented from considering the report.

4. A second email was received from the Agent. The email included two further documents to the IAA as follows:

- A copy of a Marriage Certificate [in] December 2017 which indicates that on that date, the applicant married G2 in a Christian wedding ceremony in [Australia]. As the marriage occurred in December 2017, I accept that the certificate could not have been provided to the Minister before the date of the delegate's decision. The applicant has not indicated the relevance of the marriage certificate to his claims or outlined any exceptional circumstances which might justify consideration of the Marriage Certificate. None are apparent to me, and so I am prevented from considering it.
- The applicant has also provided a copy of a letter from the (then) Department of Immigration and Border Protection (the Department) dated April 2016. The letter is written to G2, and indicates that she was granted a Temporary Protection Visa (subclass 785) by the Department in April 2016. Given the letter was addressed to his now wife, I assume it has been in her possession since around April 2016 when it was sent to her. The applicant mentioned his wife (then girlfriend) during his March 2017 Protection Visa interview and so I conclude that he has been in a relationship with her since at least the time of the interview. The applicant has not explained why he did not or could not provide the letter to the delegate. Given these circumstances the applicant has not satisfied me that he could not have provided the letter to the Minister before the date of the delegate's decision. I am not satisfied that the letter contains 'credible personal information' in the relevant sense since the information in it does not relate to the applicant, but rather relates solely to his now wife and so neither limb of s.473DD(b) is met.
- In any case, no explanation has been provided as to why the letter has been submitted to the IAA and no exceptional circumstances have been outlined by the applicant that might justify considering the letter. None are apparent to me and so I am prevented from considering the letter.

5. I have considered whether the Marriage Certificate and the letter from the Department give rise to an issue as to whether the applicant satisfies the criteria for the grant of a protection visa on the grounds that he is a member of the same family unit as G2, his now wife. However, s.91WB(2) clearly indicates that as the applicant did not apply for his protection visa before the date that G2's Temporary Protection Visa was granted he is ineligible to be granted a Visa on the basis of family membership.

Applicant's claims for protection

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

- The applicant is an Iranian citizen of Farsi (Persian) ethnicity. He was born on [date of birth] and lived in Tehran until 2013, when he departed for Australia. Before his departure he operated his own [business].
- The applicant lived for a time in a predominately Armenian quarter of Tehran. He became friendly with a Christian woman (G1), who later became his girlfriend. She introduced him to Christianity. She gave him a bible.

- Over a period of time the applicant became familiar with the tenets of Christian faith. He developed a sincere belief in Christianity. He visited a Christian church on several occasions, but was recognised as a Muslim by the local priest. He was told not to come back.
- In 2010 the applicant got a tattoo on his back. Several months later he was arrested by the Basij at a party. He was questioned; the Basij noticed the applicant's tattoo. He was taken into custody and held for three days. He was beaten and threatened.
- Around September 2012, the applicant had a second encounter with the Basij. This incident developed into a pushing and shouting, when again, a member of the Basij noticed the applicant's tattoo. He was detained for four days. During this time he was beaten and threatened.
- In December 2012 the applicant had a final encounter with the Basij whilst he and his girlfriend were walking in a park. When some members of the Basij started to harass them, the applicant was beaten. He lost his temper and started to use offensive language about the Basij, Islam, and the Supreme Leader of Iran.
- In fear after this outburst, the applicant decided to flee Iran. He departed in December 2012. After his arrival in Australia the applicant formally adopted Christianity as his religion and was baptised. He regularly attends Christian services in Australia.
- The applicant fears that if returned to Iran, he would be subjected to harassment by the authorities since he has renounced Islam and formally adopted Christianity. He also fears a resumption of the harassment he received from the authorities due to his tattoo.

Factual findings

7. Since his arrival in Australia the applicant has provided Australian authorities with copies of a number of documents in order to establish his identity. These documents include an Iranian Birth Certificate (and translation), an Iranian National Identity Card (with translation) and copy of the biographical data page from his expired Iranian Passport. These documents establish the applicant's identity to my satisfaction. I accept that he is Iranian citizen of Farsi (Persian) ethnicity who was born in the Tehran on [date of birth]. For the purposes of this decision, I find that Iran is his receiving country.
8. The applicant has claimed that he lived in Tehran throughout his life, prior to his departure for Australia. He worked in a [business], and eventually opened his own shop with financial backing from his father. He lived for some time in the Armenian quarter of Tehran. As a consequence he became friendly with many ethnically Armenian Christians.
9. He developed a friendship with G1 who eventually became his girlfriend. She was an ethnically Armenian Christian. Whilst he knew her, she introduced him to the tenets of Christianity.

Conversion to Christianity

10. The applicant has not stated when he met G1, though has indicated he met her while he was in high school. Whilst I have no specific information about high school in Iran, I conclude that this period of time could be said to cover the applicant's teenage years (i.e. roughly [age range] between 1999 and 2006). She introduced him to the basic tenets of Christianity.

11. The applicant has explained that he was drawn to G1 because of her approach and outlook on life, which she attributed to her Christian faith. The applicant has indicated that he was friendly with other Armenian Christians during this time and that they also appeared to him to have a different approach to life than the Muslims of his acquaintance. In particular the applicant was impressed with the Christian attitude of forgiveness for sin, which he contrasts with the Islamic approach to dealing with sin, punishment.
12. Over time, the applicant and G1's relationship developed and so did his appreciation for Christianity. One St Valentine's Day (year unspecified) she gave him a Persian language edition of the Bible. The applicant accepted the gift, and kept it hidden because he understood that if G1 were thought to have proselytised to him it would cause trouble for her. He claims to have read the Bible in secret.
13. As he was reading the Bible he would question G1 and would have her explain to him her own interpretation of Christian teachings. Gradually he learned the basic elements of Christian theology, and came to adopt them in his day to day life.
14. One day, G1 took him to a Christian Church service, held at the Christian church she regularly attended. He claims the service had a profound effect on him. He asked G1 if he could accompany her to church regularly, but she refused to take the risk. Several weeks later, he returned to the Church on his own and prayed. As before, he claims that being in the church was profound. As he was getting up to depart, the priest at the church approached him and questioned him about his identity, and why he was in the church. When the priest discovered he was a Muslim, he became agitated and advised the applicant not to return, otherwise he would be forced to report him.
15. Afterwards the applicant was upset and embarrassed. He was angry at the Iranian regime for his lack of a basic right to choose his own faith. He claims that in his heart that he was a convert to Christianity.
16. I am troubled by some aspects of the applicant's account. I find that his narrative about events in Iran to be unpersuasive and rife with symbolic imagery that I found unconvincing. I observe that he did not make any mention of Christianity or church attendance in his 2013 Entry Interview and that at that time he asserted that his religion was Shia Islam. I note that the applicant's submission to IAA explains that in 2013 he was advised to be brief about his motives for departing Iran, and that he was yet to be baptised in the Christian faith, and so in his own mind he was not yet a Christian. Nevertheless I acknowledge that during his visa interview, the applicant faced lengthy questioning by the delegate about his faith and his conversion and that the applicant was able to provide answers that were consistent with Christian theology and which outlined the elements of Christianity which attracted him. I also observe that in 2013 he did indicate that his Girlfriend at the time was G1, that she was Armenian and that she was his then partner. I am willing to accept that the applicant had some exposure to Christianity in Iran through living in an Armenian district, and that his Girlfriend at the time was Christian. I am also willing to accept that he visited a Christian church in Iran and that he may have developed an interest in Christianity. However, I conclude that the applicant has exaggerated some elements of these claims, in order to enhance his claim for protection in Australia and I do not accept that the applicant was a secret Christian at the time of his departure or that he could be fairly said to have been the member of a Christian community at that time.
17. After he arrived in Australia the applicant claims he continued to investigate Christianity. He commenced worshipping at a Christian Church and was baptised soon after his release from

immigration detention. He has attended regular Christian services since his arrival. I accept these claims.

Difficulties with the Basij

18. During 2010 the applicant went on holiday to Thailand. Whilst there he got a large tattoo on his back. He claims that after his return the tattoo was the cause of many problems. Several months after his return, he was attending a birthday party. Members of the Basij came and broke up the party, claiming it was un-Islamic. The applicant and other party attendees were questioned. During questioning the applicant's tattoo was observed by a member of the Basij. When the tattoo was noticed the Basij beat him and started to assume that he was an apostate, they suggested he was a devil worshipper. Whilst the other partygoer's were released with a warning, the applicant was held for three days. During this time he was regularly beaten and questioned. He was accused of apostasy, since tattoos were declared to be un-Islamic by the Basij and were forbidden. They threatened that they would remove the tattoo with acid. After three days, he signed an undertaking that he would remove the tattoo and was released.
19. On another occasion, the applicant was travelling in a car with G1. They came to a Basij checkpoint and were questioned about their relationship. G1 was questioned about her dress and appearance, but was able to explain to that her attire was acceptable, since she was a Christian. Whilst this reduced the amount of interest in G1, it led to an increase in interest in the applicant who was questioned about the nature of his relationship with a Christian girl. The applicant and G1 were insulted by the Basij. This resulted in some pushing and shoving. During the encounter the Basij saw the applicant's tattoo. He was arrested and detained. He was held in custody for four days in isolation, during which he was beaten at least twice per day, including with metal cables. When he was released, he was forced to walk home naked from the waste up, so that people could see his tattoo. This was particularly humiliating. During this detention his nose was broken.
20. In December 2012, the applicant was walking with G1 in a park in Tehran. He was approached by several members of the Basij who he knew; they started harassing him and questioning the nature of his relationship to G1. The applicant and G1 walked away, and entered a shop. As they departed the shop, they became aware that the Basij personnel had followed them, and waited for them outside the shop. They were harassed again. He was severely beaten. During this incident, the applicant became very angry. He started to swear, and used derogatory terms about the Basij, the Government, Islam and the Supreme leader. This incident drew a large crowd. The Basij were astonished at the language he used, and he was not arrested. The Basij members said to him that they '*did not see a future*' for him in Iran. After this incident the applicant became afraid. He decided to flee Iran.
21. In mid-December 2012 he arranged travel to [another country via various cities]. The applicant departed Iran legally, on his own passport.
22. Country information before me indicates that For Iranians, interaction with the security forces is unpredictable, and can be influenced by the prevailing political environment and individual personalities¹. The Basij are a volunteer paramilitary force in Iran which operates under the command of the Iranian Revolutionary Guard Corp. It has a wide range of duties, particularly internal security, law enforcement and occasionally, moral policing. According to Jane's Sentinel Security Assessment of April 2014, Iran claims that the Basij number about 12.6

¹ Department of Foreign Affairs and Trade (DFAT), Country Information Report: Iran April 2016", CIS38A8012677, 5.4

million, but in reality, the number of Basij volunteers of military age that can be mobilised is much smaller, probably up to 1.5 million². The Basij can patrol the streets and conduct checkpoints, particularly when there is a heightened security atmosphere or after large events. Basij members often receive little formal training and can operate without orders or objectives, resulting in unpredictable interactions with civilians. Basij are normally identified by their iconic scarves³. Basij members are deployed locally across cities in Iran⁴. They can be attached to local mosques in Iran, and can become involved in a person's attendance at religious services⁵. However, as of 2016 the Department of Foreign Affairs and Trade (DFAT) reports that the Basij is presently less visible on the streets than was previously the case – for example in 2009 and that the Basij is less assertive and generally more respectful in its interactions with Iranians⁶

23. The use of Tattoos in Iran can be problematic as they are perceived by conservatives to be 'western'. However, the DFAT is unaware of any recent, specific report of people being targeted by security forces solely for having a tattoo. However, it is possible that a person with a visible tattoo could come to the attention of security forces and result in low-level harassment. While DFAT is not aware of specific penalties that could be imposed for having a tattoo, it is likely that such penalties would be similar to those imposed for dress or hair styles that are deemed 'improper'. In these circumstances, the usual penalty is a warning or fine. DFAT believes it unlikely that authorities would maintain an interest in someone who had previously come to their attention for having a tattoo, unless the tattoo gave evidence of another crime (e.g. related to national security). Despite these issues, tattoos are increasingly common in Iran, particularly among young persons⁷.
24. DFAT reports that the Iranian government of the day may be criticised robustly, both in public (for example, during conversations on the street and in workplaces) and online (for example, on social media). Media organisations represent different political views and do so forcefully, provided they do not cross understood 'red lines', which include respect for the Supreme Leader, the constitutional and territorial foundations of the Islamic Republic and the place of Shia Islam in Iran⁸.
25. Having considered the evidence, I accept that the applicant may have come to the attention of the Basij for having a tattoo on his back in the circumstances he describes and that this resulted in his detention, and mistreatment on two occasions in 2010 and 2012. I accept that during these periods of detention he may have been encouraged to remove his tattoo, and been threatened that if he did not, the Basij would do it for him with acid. Noting the local character of Basij deployment, I also accept that he, and his Christian girlfriend may have come to the attention of the Basij in his neighbourhood and that this might have caused him some difficulties, such as being harassed in a park.
26. However, I am not satisfied that he applicant is entirely telling the truth about the incident in the park. I would expect that if, as the applicant claims, he publically insulted Islam, the Government and the Supreme leader to members of the Basij he would have been detained. Whilst I am willing to accept that he was harassed by the Basij in the park, I conclude that the

² DFAT, Country Information Report: Iran April 2016", CIS38A8012677, 5.8

³ DFAT, Country Information Report: Iran April 2016", CIS38A8012677, 5.10

⁴ DFAT, Country Information Report: Iran April 2016", CIS38A8012677, 5.9

⁵ UK Home Office, "Country Information and Guidance - Iran: Christians and Christian Converts", 01 December 2014, OG180885B47

⁶ DFAT, Country Information Report: Iran April 2016", CIS38A8012677, 5.10.

⁷ DFAT, Country Information Report: Iran April 2016", CIS38A8012677, 3.77

⁸ DFAT, Country Information Report: Iran April 2016", CIS38A8012677, 3.60

applicant has exaggerated his account of this incident in order to enhance his claims for protection in Iran.

Refugee assessment

27. 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

28. 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.

29. At the time of his arrival, the applicant stated he left Iran due to the difficulties he experienced with the Basij, and not his nascent Christian convictions. However, in his SHEV application the applicant lists his religious conversion as the chief reason he fears to return to Iran.

Conversion to Christianity

30. The applicant fears that if he was returned to Iran he would face persecution arising from his conversion to Christianity, since he would be deemed to be an apostate by the Iranian regime.

31. The delegate did not accept that the applicant’s conversion to Christianity was genuine and found that the applicant's attendance at Christian church services in Australia was done with the purpose of enhancing his chances of obtaining a Protection Visa in Australia. Whilst I also have some doubts about the applicant's claims about events in Iran and I have concluded that he has exaggerated some of those claims, I do not agree with the delegate’s reasoning for finding that the applicant’s conversion was not genuine.

32. Since his arrival in Australia, the applicant has been a regular attendee at several Christian churches and has lived a Christian lifestyle. He espouses Christian beliefs, and was able to explain the basis for his belief; he has outlined the elements of Christianity that attracted him

to his new faith and why he favoured Christianity over the religion of his birth (Islam). Whilst religious conviction is inherently a personal matter and can be difficult to fully articulate, I observe that the applicant's commitment to Christianity would appear to be more than mere words, since he has been a full participant in the community life of his church.

33. The delegate found that the applicant faked his religious convictions, and that his attendance at church services has been conducted to strengthen his claims for protection in Australia, but I have reached a different view. By the measures of contemporary Australian society (articulated belief, regular church attendance and engagement in communal activities) he would appear to be a real Christian and, having considered all of the evidence before me, I am willing to accept that his conversion is genuine. Having heard all of the applicant's evidence, and his explanations why he converted to Christianity, I am satisfied that his conduct in Australia, including his conversion, was not engaged in for the purpose of strengthening his claim to be a refugee in Australia, but is indicative of his real convictions.
34. Country information before me indicates that a Muslim who leaves his or her faith or converts to another religion or atheism can be charged with apostasy⁹. The punishment for apostasy is subject to judicial discretion. There is no provision in Iran's Penal Code criminalising the act. Nevertheless, Article 167 of the Iranian Constitution requires judges to apply Shari'a in situations in which the law is silent and Article 220 of the Iranian Penal Code effectively states that crimes punishable under Iranian law are not limited to the ones specified in the Penal Code. According to Article 160 of the Iranian Penal Code, confessions, the testimony of two male witnesses or the 'knowledge of the judge' can each be the basis for a conviction. In the rare instances that they are applied, charges of apostasy have in the past resulted in the death penalty and are often combined along with other crimes related to national security such as waging war against God and the Prophet¹⁰. Since 1999, the United States of America has designated Iran as a "Country of Particular Concern" (CPC) under the International Religious Freedom Act of 1998 for having engaged in or tolerated particularly severe violations of religious freedom¹¹. The UK Home office reported in December 2014 that religious conversion of Muslims is illegal in Iran and that Christians who have converted from Islam are at real risk of persecution in Iran¹².
35. All churchgoers must register with the authorities. Failure of churchgoers to register and attendance at churches by unregistered individuals may subject a church to closure and arrest of its leaders by the authorities¹³. In 2016 the US State Department credibly reported that Christian converts can face lengthy prison sentences in Iran as they are seen as propagandists against the Islamic character of the state¹⁴. Attendance at churches is monitored by the authorities in Iran. If the applicant returned to Iran and openly practised his new faith, it is likely that he would be identified by the Iranian authorities, and would have penalties imposed against him. The alternative, of worshipping in private and keeping his conversation secret, would preclude his full participation in the faith of his choice.
36. DFAT considers it unlikely that individuals will be prosecuted on charges of apostasy. 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

⁹ DFAT, Country Information Report: Iran April 2016", CIS38A8012677, 3.52

¹⁰ DFAT, Country Information Report: Iran April 2016", CIS38A8012677, 3.53

¹¹ US Department of State, "2015 Report on International Religious Freedom - Iran", 10 August 2016, OGD95BE926723

¹² UK Home Office, "Country Information and Guidance - Iran: Christians and Christian Converts", 01 December 2014, OG180885B47, 1.4

¹³ US Department of State, "2015 Report on International Religious Freedom - Iran", 10 August 2016, OGD95BE926723

¹⁴ US Department of State, "2015 Report on International Religious Freedom - Iran", 10 August 2016, OGD95BE926723

via informants¹⁵. DFAT assesses that Iranian authorities will rarely intervene actively to stop Muslims attending churches whilst their attendance is low-key¹⁶.

37. Having considered all of the evidence before me, I am satisfied that if returned to Iran, the applicant would be identified as a Muslim apostate and a convert to Christianity by the authorities in Iran. I am satisfied that the applicant would face a real chance of persecution in the relevant sense if returned to Iran on the basis of his conversation to Christianity.

38. Discrimination against Christians in Iran is pervasive and structural. It is imposed by the State and relates to all areas of Iran. Generally, there is no state protection from such state-directed discrimination¹⁷. As a consequence, the applicant would be unable to obtain effective protection from discrimination by the State if he was returned to Iran. I conclude that if the applicant was returned to Iran, he would be unable to practice his Christian faith openly without suffering from discrimination by the State. S.5J(3)(c)(i) of the Act prohibits requiring a person to renounce a religious conversion, conceal true religious beliefs or to cease the practice of their faith.

Refugee: conclusion

39. I find there is a real chance that the applicant would face persecution if returned to Iran.

40. 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*.

¹⁵ DFAT, Country Information Report: Iran April 2016", CIS38A8012677, 3.54 – 3.55

¹⁶ DFAT, Country Information Report: Iran April 2016", CIS38A8012677, 3.56

¹⁷ DFAT, Country Information Report: Iran April 2016", CIS38A8012677, 5.1

Applicable law

Migration Act 1958

5 (1) Interpretation

...

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

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

...

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

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

but does not include an act or omission:

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

...

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

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

...

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

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

...

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

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

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

...

5H Meaning of refugee

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

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

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

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5J Meaning of well-founded fear of persecution

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

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

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

5K Membership of a particular social group consisting of family

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

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

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

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

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

5L Membership of a particular social group other than family

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

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

5LA Effective protection measures

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

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36 Protection visas – criteria provided for by this Act

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

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

...

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.