



Australian Government

Immigration Assessment Authority

Decision and Reasons

Referred application

IRAN

IAA reference: IAA17/03651

Date and time of decision: 15 June 2018 16:04:00

M Currie, Reviewer

Decision

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

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

Background to the review

Visa application

1. The referred applicant (the applicant) claims to be an Iranian citizen of mixed Azari (Turkish) and Farsi (Persian) ethnicity. He arrived in Australia in September 2012. In December 2016, he lodged an application for a Safe Haven Enterprise Visa (SHEV). A delegate of the Minister for Immigration and Border Protection decided under s.65 of the *Migration Act 1958* (the Act) to refuse to grant the visa in September 2017 on the grounds that Australia did not owe protection obligations to the applicant.
2. In the s.65 decision the delegate did not accept the applicant's principal claims, notably that he would be imputed with anti-regime political opinion, or that in the weeks leading up to his September 2017 Protection Visa Interview that the applicant had become a sincere (though unbaptised) convert to Catholicism.
3. On 27 September 2017, the matter was referred to the Immigration Assessment Authority (IAA).

Information before the IAA

4. I have had regard to the material given by the Secretary under s.473CB of the Act.
5. A migration agent, acting on behalf of the applicant sent an email to the IAA on 19 October 2017. The email contained an attachment in the PDF File format. The PDF document consisted of a five page legal submission prepared by the migration agent, and a single page letter from a Catholic Priest (the letter to the IAA). The legal submission argues against the findings of the delegate. I have considered this argument in the decision.
6. The letter to the IAA is dated 13 October 2017 and was not before the delegate. It is new information. It states that on 11 August 2017 (the day of his Protection Visa Interview) the applicant made contact with church representatives and that he first met the priest [in] August 2017. On that date, the applicant expressed a desire to become a Christian to the Priest, who informed him of the requirement to attend the Church's '*Rite of Christian Initiation for Adults (RCIA)*' course which may take many months or years to complete. The letter outlines that since his first meeting with the Priest; the applicant has been a regular attendee at [a church in a suburb], has attended some meetings with its RCIA Team and has attended a social function under the auspices of [a group] where he served meals to the homeless.
7. The letter to the IAA post-dates the s.65 decision by approximately three weeks. It purports to outline material changes in the applicant's circumstances which occurred after the date of the decision (his commencement of RCIA). I am satisfied that the letter could not have been provided to the Minister before the date of the decision, and so s.473DD(b) is met.
8. I observe that the applicant had made claims to the delegate based on his conversion to Christianity and that during the applicant's Protection Visa interview the delegate expressed scepticism about the applicant's Christian claims and specifically requested that he obtain further evidence to support them. Considering that the letter outlines a material change in the applicant's personal circumstances, and the delegate's clear request for further evidence, I am satisfied that there are exceptional circumstances to justify considering the letter to the IAA and so s.473DD(a) is met. I have considered the letter.

9. The legal submission argues that if the IAA makes adverse credibility findings against the applicant, on the basis of a claim which was accepted by the delegate, the IAA should conduct an interview with the applicant. I am not persuaded that an interview is called for in this case. Under s.473BA the IAA's task is to conduct a *de novo* review of the applicant's claims 'on the papers' that is efficient, quick and free from bias, and I am not bound by the delegate's findings. As noted below, there have been many inconsistencies in the applicant's evidence and these have been queried by the delegate. I observe that the applicant has had multiple opportunities to put forward his case, and to address the concerns about his evidence, including a post interview submission, and submissions to the IAA. I have made adverse credibility findings against the applicant (for the reasons set out below) which were not made by the delegate but I am not persuaded that there is any need to obtain further information from the applicant and I decline to invite him to a further interview.
10. For the sake of clarity I note that the applicant's representative sent a legal submission to the Department immediately after the applicant's Protection Visa Interview and that this (the Departmental legal submission) is included in the materials before me, and I have had regard to it.

Applicant's claims for protection

11. The applicant's claims can be summarised as follows:
 - The applicant is an Iranian Citizen of mixed Azari (Turkish) and Farsi (Persian) ethnicity. He was born [in date] and is a Muslim by birth.
 - Throughout his life in Iran, the applicant claims to have suffered from routine harassment by the authorities for a range of reasons including his appearance, attire and relationships.
 - For most of his working life, the applicant was employed as [an occupation], in his father's [business]. Later he started a [company] on his own account and established contracts with a range of customers.
 - The applicant had a contract to supply [goods] to a firm which was a subcontractor for the [government]. The firm ceased to pay for the goods (cheque with insufficient funds) he provided them and when he persisted in demanding payment sent agents who beat and intimidated the applicant. The dispute was worth [amount] Toman (unit of Iranian currency).
 - The subcontractor sent men to intimidate the applicant at his place of business. He was assaulted and required treatment in hospital.
 - The applicant attempted to go to court in order to obtain legal support for his claim, but was advised that the firm had lodged a prior complaint against him and accused him of submitting cheques which bounced. He was detained for a month, tortured and only released after his father provided surety.
 - After his release, the applicant fled Iran. He departed legally on his own passport, via the airport, and came to Australia.
 - Approximately two weeks prior to his protection visa interview, the applicant began to explore Christianity, after thinking about the matter for around a year. He attended a Catholic Church, spoke to the local Priest and has commenced upon the pathway to conversion.

- The applicant fears returning to Iran because he would face harm arising from his previous difficulties with the authorities and because of his new Christian faith, and because he would be imputed with an anti-regime political opinion due to his attempt to claim asylum in Australia.

Identity

12. 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 his Compulsory Military Service Completion Card (with translation). These documents establish the applicant's identity to my satisfaction. I accept that he is an Iranian citizen of mixed ethnicity who was born [in date]. For the purposes of this decision, I find that Iran is his receiving country.
13. I note that when he first arrived in Australia in 2012 the applicant described himself as married (his wife remained in Iran), though he did not offer any documentary proof at that time. He now says that he is divorced and has an Australian girlfriend. I accept that the applicant was married and is now divorced. In any case, this has no bearing on his claims for protection.

Refugee assessment

14. 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

15. 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.

Low-level harassment

16. The applicant has asserted that whilst in Iran he was subjected to routine harassment including being questioned on the street about his attire and why he and his then wife were in each

other's company. The applicant has been very brief, and vague about these issues. His statements amount to no more than a single sentence during his Protection Visa Interview, and similarly brief comments in his Entry Interview.

17. The Department of Foreign Affairs and Trade (DFAT) reports that Iranian authorities can take a heavy-handed approach when they periodically enforce standards of Islamic conduct in the community, including Islamic dress and public displays of affection with non-family members of the opposite sex¹. Iran also remains sensitive to perceived 'western' influences². Nevertheless, the applicant has not founded any claims for protection on these issues, nor has he outlined any specific incidents or circumstances where such harassment harmed him, or resulted in his persecution.
18. I am willing to accept that the applicant, like all Iranians, was subjected to low levels of scrutiny for these issues and pressure to conform to societal expectations. However, I am not satisfied that he would suffer a real chance of any harm, and certainly not any serious harm, arising from this issue if returned to Iran.

Financial and legal difficulties, imputed political opinion

19. The applicant claims that when he was in Iran he worked as [an occupation], in his father's [business] from the age of [age] until his departure for Australia, except for his two years of compulsory military service between 2004 and 2006. At some stage, the applicant also commenced trading on his own account as a wholesale [goods] supplier and went into business on his own. He established contracts with a number of other firms who would onwards supply [goods] to retail customers.
20. One of his client firms was a subcontractor for the Iranian [government]. The applicant had a contract with them to supply [goods], which the subcontractor would then supply to the [government], and to other official clients. The applicant claims that around late 2011, this firm paid him with a cheque which failed to clear (bounced). The applicant followed up with the subcontractor but claims he was asked to return in a week by which time the issue would be resolved. When he returned the next week, another manager told him to come back again later. The applicant claims that he went to the firm three times in total to seek redress for the bounced cheque since it was for a substantial amount of money ([amount] Toman). After the third time he went to the subcontractor in order to obtain his money, he claims 'agents' from the subcontractor came to his place of business, argued with him, beat him and tried to intimidate him into silence. He was beaten badly [and] had to attend hospital afterwards.
21. After he recovered, the applicant decided to pursue the matter formally; he attempted to lodge a complaint at the local court, only to find that the subcontractor had already lodged a complaint against him, alleging that it was he (the applicant) who had provided the cheque which would not clear, and that it was he who owed the money. The applicant was detained by the courts and was held in [Prison], in Tehran for a month. He was only released after his father put the family home up as a surety for his bail.
22. After his release the applicant started making plans to depart, and after confirming with a local government office that he was not on a 'black list' and that he would be able to depart, left Iran on his own passport via the Tehran International Airport, and made his way to Australia. He says that after his departure, 'agents' from the firm continued to apply pressure to his family and harassed them. On one occasion, they arranged for the authorities to ransack the

¹ Department of Foreign Affairs and Trade (DFAT), Country Information Report: Iran April 2016", CIS38A8012677, 3.74

² DFAT, Country Information Report: Iran April 2016", CIS38A8012677, 3.74 – 3.80

family home in order to seize the firm's cheque which had bounced, and which was the applicant's principle evidence of the firm's wrongdoing. He claims that that his parents became scared and fled the family home in order to live in a different town to escape the constant harassment. Later his father was imprisoned due to the applicant's flight, whilst on bail. These events are cited by the applicant as the reasons he fled Iran, and as the principle reason he fears to return. He claims that these events would result in him being imputed with anti-regime political opinion, since his dispute is with the Iranian [government].

23. As evidence of his claims the applicant has provided copies of two Iranian documents (with certified translations):
 - The first is an Iranian Subpoena dated [in] March 2017. The subpoena is issued in the Applicant's name and indicates that he has 10 days to submit himself to the Iranian Criminal Court or he would be subject to Arrest.
 - The second document is a document titled 'Legal Proceeding' and is addressed to the applicant's father. It is also dated [in] March 2017. The legal proceedings document indicates that the applicant's father had offered his residential property in Tehran as collateral for the applicant [in] May 2012, and that if the applicant did not submit himself to the authorities in response to the Subpoena, then the collateral (the residential property) would be auctioned, and the proceeds would be confiscated by the Government.
24. These documents tend to confirm that the applicant is involved legal proceedings in Iran which have resulted from unspecified events which occurred in 2012.
25. The applicant has reported consistently that he left Iran in late August 2012 via the Tehran International Airport, on a passport issued in his name (now stolen). In his SHEV application, he indicated that his passport was issued in [2012], and that he obtained it legally and it was genuine.
26. Since his arrival in Australia, the applicant has provided several different accounts of these events and a range of information which bears on the truthfulness of his claims. Some of the material he has provided is contradictory and suggests that the applicant has not been entirely candid when reporting the details of the events.
27. In the Statement of Claims which accompanied his SHEV application of November 2016, the applicant characterised his difficulties as being the result of difficulties that he had with a 'Government Department', but when questioned about this at his Protection Visa Interview, he said that his difficulties were actually with a firm which was a 'subcontractor' to the [government].
28. In his SHEV application he dated the visit and fight with the firm's agents to approximately one month prior to his departure from Iran, later in the same statement he claimed that '*a few weeks later*' he went to the courts to lodge his complaint and was arrested and held '*for two days*'. At his Protection Visa Interview, he said that he was held for a month, and later that he was held for approximately 20 days. I observe that each of these versions is significantly at odds with the others.
29. During his Protection Visa Interview of August 2017, when asked about the torture he received whilst detained the applicant described his torture as 'awful food', and 'insults', being unable to shower and denied medical attention for his wounds from the fight.

30. In his Protection Visa Interview, the applicant gave conflicting accounts about the living arrangements of his family after his departure. First he said that they had continued to live in the family home since his departure from Iran, but later he said that fearing harm from the state, they had fled, returning to their ancestral [village], returning only occasionally to Tehran (though they were living in Tehran at the time of the Interview).
31. Many of the inconsistencies in the applicants various accounts were raised by the delegate during the applicant's Protection Visa Interview. They were further addressed by the applicant's representative in a post interview legal submission to the Department. The legal submission to the department also purports to provide a final version of these events whereby the fight occurred approximately a month prior to the applicant's departure from Iran, and that '*shortly thereafter*' he went to lodge a complaint at the court, and that he was held applicant was held for 3 weeks in detention, and that he departed Iran a week after he was released. Various reasons were offered to account for the discrepancies in the applicant's accounts including:
- The applicant was very stressed and emotional prior to his departure and finds it difficult to recollect this period of his life.
 - He had a lack of familiarity with the Australian Immigration process.
 - The date that the applicant's father provided the surety (i.e. [date] May 2012) was incorrectly listed on the legal documents he has submitted.
 - Fear of Iranian authorities arising from his difficult dealings with the regime which resulted in his being afraid to be open and honest with Australian authorities.
 - Being required to articulate his claim via an interpreter, resulting in the accuracy of his evidence being impeded.
 - The passage of time between these events and the applicant being interviewed about them (August 2017).
 - Differences between the calendar (Solar Hijri) used in Iran and that used in Australia (Gregorian).
32. I have carefully considered all of the information provided by the applicant in relation to these events, and the various explanations provided in the Departmental legal submission to account for the inconsistencies in his accounts. I am not persuaded that the applicant is telling the truth and I find his account about the other firm bouncing cheques to be fanciful. I find the reasons offered in the Departmental legal submission for his accounts to be contradictory, noting that they variously imply that the applicant has been deliberately misleading (because he was afraid); accidentally misleading (misquoted by the interpreter); provided factual incorrect explanations due to error (arising from the different calendars and/or the passage of time); or that Iranian authorities records which he has provided were themselves inaccurate. I have not found these reasons to be persuasive and I am not satisfied that the applicant is telling the truth.
33. I conclude the best explanation of the circumstances and which accounts for the various evidence, is that the applicant provide cheques which bounced sometime around late 2011 or early 2012. I conclude that the applicant was brought before the Iranian courts and charged with financial offences, resulting in a brief period of detention for approximately two days, until his father posted bail. Whilst I accept that awful food, insults, being unable to shower and denied medical care are difficult conditions; I do not accept that in the circumstances the applicant describes, such treatment amounts to torture.

34. As he was able to provide a reasonable explanation for the events of the fight, I am willing to accept that the applicant was beaten around this period of time in the circumstances he describes. However, I do not accept that beating was at the behest, or on behalf of the Iranian regime or the [government department], rather, I conclude the applicant was most probably beaten because he owed money to his creditors due to his submitting cheques which did not clear.
35. I do not accept that the applicant's family has been subjected to harassment as he claims. I do not accept that they went into hiding soon after his departure, preferring his earlier evidence that they still lived in the family home. I am willing to accept that the applicant's father has been involved in ongoing legal proceedings arising from his decision to post bail for his son (the applicant) in 2012 and that there is some likelihood that the family home has since been lost due to it being used for collateral for the applicant's bail. I do not accept that the applicant's father was imprisoned and I find that the episode of 'ransacking' that the applicant describes is most probably a lawfully conducted search warrant.
36. Country information before me indicates that it is unlikely that a person could leave Iran whilst the subject of an arrest warrant, though only some crimes result in in confiscation or blacklisting of passports³. I accept that prior to his departure the applicant attended a local Government office in order to check whether he would be stopped at the airport, and finding that he would not, departed Iran for Australia.
37. I conclude the applicant has mischaracterised much of his evidence in order to suggest that he was being persecuted by the Iranian State, including his assertion that he was suffering harassment from a 'Government Department'. I do not accept this claim. On his own later evidence, he was in a financial dispute with a 'subcontractor' and faced charges in Iran. For the same reasons I do not accept that the applicant would be imputed with anti-regime political opinion if returned to Iran.
38. Nevertheless, the applicant's particular circumstances indicate that he departed Iran whilst he was the subject of ongoing legal proceedings related to his irregular financial dealings. Evidence before me indicates that if returned to Iran he would likely be arrested in connection with these legal proceedings and would be processed under Iranian law for financial crimes committed in 2011/12.
39. Country information before me indicates that in Iran, the judiciary, whilst nominally independent, may be influenced by the Government and that it is unlikely that judges are free from external pressure at all times, and may self-censor. There are credible NGO and media reports, as well as reports from trusted sources, that bribery of judges occurs and that there is endemic corruption in the judicial system, which is not strongly policed. The legal quality of the judiciary is also subject to criticism⁴.
40. When dealing with political cases or during times of social unrest, the judiciary has shown a high tolerance for security authorities bypassing the legal system. There have been a significant number of credible NGO and media reports concerning show trials, arbitrary arrest and forced confessions. In addition, detainees, including but not limited to political detainees, may be denied adequate access to a lawyer. Foreign-based advocacy groups regularly make credible

³ Department of Foreign Affairs and Trade (DFAT), Country Information Report: Iran April 2016", CIS38A8012677, 5.29

⁴ DFAT, Country Information Report: Iran April 2016", CIS38A8012677, 5.17

allegations of trials being held without the presence of a defence lawyer, or without sufficient pre-trial access to a lawyer⁵.

41. Lashes and amputations are prescribed punishments for a range of crimes under Iran's Penal Code. Sentences of lashes are regularly carried out in public. There have also been credible reports—including from semi-official media—of amputations (generally the hand or fingers on charges for theft) being carried out in public in recent years, but in much smaller numbers. The Penal Code, depending on the crime, gives discretion on the number of lashes or prescribes a certain number of lashes as punishment for certain crimes⁶.
42. Iran applies the death sentence for numerous crimes, including murder, drug trafficking and certain sexual offences. Religious crimes can also result in the death penalty. These include *moharebeh* ('enmity against God') and *fisad-fil-arz* ('corruption on earth'). Executions are sometimes carried out in public⁷. On the evidence before me, whatever the extent of the applicant's unlawful activities, he would not face charges for murder, drug trafficking or sexual offences.
43. I note that the weight of evidence indicates that whilst there are some problems with the Iranian judiciary, these tend to arise only in cases which are politically or religiously sensitive or which affect national security issues. Such cases may be tried in special Revolutionary, or Clerical courts⁸. The evidence before me indicates the applicant was subpoenaed by the Iranian Criminal Court. For the reasons outlined above, I am not persuaded that the applicant's case would be treated as politically or religiously sensitive or would be regarded as affecting national security of the Iranian State, rather on the evidence before me the applicant's case relates to routine financial irregularities.
44. Overall, I have not found the applicant to be a credible witness. I conclude the applicant has fabricated, mischaracterised and exaggerated large portions of his account of events in Iran in order to depict himself as the victim of persecution, rather than providing an accurate account of his circumstances in Iran, including his financial difficulties. If returned to Iran, the applicant may face penalties for breaching bail conditions set in 2012. He may also be penalised for his financial irregularities including a threat to his liberty as a result. I have not accepted the applicant's account of the risks he faces, and have found that he has not provided an honest and detailed account of the financial irregularities which led to his arrest in Iran and that he has attempted to mislead Australian authorities, suggesting the charges against him were fabricated. As a consequence of the applicant's misleading evidence, I have no information before me as to the extent or significance of his financial irregularities and therefore cannot be satisfied he would face lashes or amputation as a punishment if returned to Iran. I am not persuaded that the application of Iranian law to the applicant would amount to systematic or discriminatory conduct or persecution since it would be due to the non-discriminatory application of a generally applicable law. It follows from my findings that I am not satisfied that the applicant has a well-founded fear of persecution for reasons of race, religion, nationality, membership of a particular social group or political opinion.

Christianity

45. Approximately two thirds of the way through his August 2017 Protection Visa Interview, the applicant was asked if he had any other claims for protection. At that point, the applicant

⁵ DFAT, Country Information Report: Iran April 2016", CIS38A8012677, 5.18

⁶ DFAT, Country Information Report: Iran April 2016", CIS38A8012677, 4.17 - 4.18

⁷ DFAT, Country Information Report: Iran April 2016", CIS38A8012677, 4.7

⁸ DFAT, Country Information Report: Iran April 2016", CIS38A8012677, 5.13 – 5.15

indicated to the delegate that he 'turned away from his religion' and had recently commenced attending Church services.

46. When asked about his motivation for attending the services the applicant stated that when he arrived in Australia he thought Islam was a good religion, but having seen how people in Australia were free and the respect for humanity he came to the conclusion that, in fact, in Iran, religion was used to harass people. He stated that his then girlfriend (an Australian Christian) had introduced him to the idea of Christianity and he had been exploring options and had visited three churches, though he could not name them. One church was in [one suburb], one was in [a second suburb], and the last was in [Suburb 1].
47. Initially the applicant said he had visited each church once, though he later stated that he had been attending Christian church services irregularly for around a year. At first, he said he had gone approximately once every two months, and then said it was twice per month. I note that throughout these discussions the applicant did not describe himself as a Christian, or claim at any time to be a Christian. He merely indicated that he was 'exploring' Christianity. He has not been baptised.
48. As evidence of his claims about exploring Christianity, the applicant later submitted a very brief letter from the Catholic Priest of the [Suburb 1] Church (the letter to the Department). The letter was dated [in] August 2017 (four days after the Protection Visa Interview). The letter to the Department stated that the Priest had noticed [the applicant] attending Mass at the [Suburb 1] Church, and that the Priest had spoken to the applicant, who had expressed a '*genuine interest to know more about the Catholic Faith*'. The letter indicates that the Priest could not offer a character reference on behalf of the applicant, since '*he is not well known to me*'. The applicant's legal submission to the Department puts great weight on the letter to the Department as a demonstration of the applicant's genuine interest in Christianity. However, I am not persuaded that this weight is warranted.
49. Overall, I did not find the applicant's account of his Christian conversion to be convincing. I note that the applicant had described himself as a Shia Muslim in 2012 when he arrived in Australia, and in his December 2016 SHEV application. He did not mention his exploration of Christianity at any time prior to his Protection Visa Interview. I found the Catholic priest's letter to the Department to be a rather feeble endorsement of the applicant's claims and not to be the strong recommendation purported in the Departmental legal submission.
50. The letter to the IAA was written by the same priest. As noted above, this second letter outlines that the applicant first made contact with church representatives on 11 August 2017 (i.e. the date of his Protection Visa Interview) and first met the priest [in] August 2017 (i.e. the date of the letter to the Department). On that date, the applicant expressed a desire to become a Christian to the Priest, who informed him of the requirement to attend the Church's RCIA, which may take many months or years to complete.
51. The letter to the IAA outlines that between [August] 2017 and [October] 2017 the applicant has been a regular attendee at the [Suburb 1] Church, has attended some meetings with the church's RCIA Team and has attended a social function under the auspices of the [group] where he served meals to the homeless.
52. I observe that when questioned, the applicant was unable to describe the importance of Jesus to the practice of Christianity and that he had only recently commenced reading the bible and looking at Christian websites.

53. I do not accept that the applicant had been considering Christianity for up to a year prior to his Protection Visa Interview noting his earlier claim to have visited each of three churches once. As with his other claims, I conclude he has exaggerated his interest in Christianity, including the length of time he has been exploring Christianity, in order to enhance his claims for protection in Australia. I do not wish to impose an arbitrary, or subjective standard about the level of knowledge required of an applicant in order to be a genuine convert to a new faith, but I find that the applicant's inability to articulate the centrality of Jesus to Christianity or to provide any information about him at all, to be a significant factor weighing against the genuineness of the applicant's claimed interest.
54. The evidence before me suggests that the applicant did make some attempts to explore Christianity in the month before his Protection Visa Interview and that he strengthened these efforts after the interview, when he had been put on notice by the delegate of the delegate's concerns. However, on his own evidence, the applicant was not a Christian at the time of his interview, and the letter to the IAA indicates he was not yet a Christian by October 2017 (though he has indicated he wants to become one). Nevertheless, the applicant has not persuaded me that his motivation for this activity rests on religious convictions or was made in good faith. Rather, I conclude the applicant has commenced his exploration of Christianity for the purpose of strengthening his claims for protection in Australia.
55. Section 5J(6) of the act indicates that in determining whether a person has a well-founded fear of persecution, 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. I am not so satisfied and for the purpose of assessing whether the applicant has a well-founded fear of persecution I have disregarded these activities. It follows that I am not satisfied that the applicant has a well-founded fear of persecution on this basis.

Failed asylum seeker from a western country

56. The applicant's legal submission to the department argues that, as he has attempted to claim asylum in Australia, he should be considered to be a member of the particular social group of 'failed asylum seekers from a western country', and would face harm on this basis.
57. Country information indicates that Iranian authorities are sensitive to 'Western' influence and can take a heavy-handed approach when they periodically enforce standards of Islamic conduct⁹. Tattoos, western clothing and 'spiky' hairstyles have been singled out as problematic in the past¹⁰. However, millions of Iranians travel to and from Iran each year without difficulty, including the large Iranian diaspora and Iranians with citizenship or residence abroad, including in North America, Europe and Asia as well as regional countries, such as the United Arab Emirates. While direct connections from Iran are limited, Iranians generally are able to travel onto third countries freely¹¹.
58. DFAT reporting indicates that Iranian border authorities regularly accept Iranians with valid Iranian travel documents returned involuntarily or even those without documentation if persuaded they are Iranian. Iranian overseas missions will not issue travel documents to an Iranian whom a foreign government wishes to return involuntarily to Iran. Officials provide assistance to Iranians who wish to voluntarily return to Iran, even if they left irregularly. Strong anecdotal evidence suggests that officials do not attempt to prosecute a voluntary returnee—

⁹ DFAT, Country Information Report: Iran April 2016", CIS38A8012677, 3.74

¹⁰ DFAT, Country Information Report: Iran April 2016", CIS38A8012677, 3.75 -3.80

¹¹ DFAT, Country Information Report: Iran April 2016", CIS38A8012677, 5.28

largely because most failed asylum seekers leave Iran legally (i.e. regular departure through airports or with passports)¹².

59. I have already found that the applicant departed Iran legally, as he himself has asserted. Given the prevalence of international travel for Iranians, I am not satisfied that he would face a real chance of any harm arising from his time spent in Australia or as a failed asylum seeker from a western country.

Refugee: conclusion

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

Complementary protection assessment

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

Real risk of significant harm

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

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

63. I have found above that if returned to Iran, the applicant will undergo judicial processes associated with his financial irregularities in 2011/12. The evidence before me suggests he will be arrested and face charges; he may also face penalties associated with a breach of bail. On the evidence before me the punishment the applicant would likely face would be punishment arising from lawful sanctions under generally applicable Iranian law.

64. Multiple reports indicate prisons in Iran are generally overcrowded, and can lack reasonable facilities¹³. The practice of 'prison-in-exile', whereby a prisoner is sent to a prison far away from their home can also occur for security reasons (i.e. so it is difficult for the prisoner to communicate with their local community) as well as an extra punishment¹⁴. The granting of rights to prisoners is highly variable, depending on the individual circumstances facing the prisoner, including the prison in which they are in (and the officials that manage that prison), and the prevailing political conditions, including as these pertain to the specific category of the

¹² DFAT, Country Information Report: Iran April 2016", CIS38A8012677, 5.33

¹³ DFAT, Country Information Report: Iran April 2016", CIS38A8012677, 5.20

¹⁴ DFAT, Country Information Report: Iran April 2016", CIS38A8012677, 5.21

prisoner (for example, whether there is a broader crackdown against the ethnic or religious minority of which the prisoner is a member)¹⁵.

65. The applicant's Departmental legal submission argues that the applicant would be tortured if imprisoned in Iran, though all of this argument is based on the presumption that the chief motivation for the applicant's detention would be his imputed political opinion, a claim I have already dismissed. I do not accept that there is a real risk that the applicant would face torture, or, noting the country information that he would face the death penalty or be arbitrarily deprived of his life, if returned to Iran.
66. On his own evidence, the applicant was granted bail after his initial arrest. I conclude that the crimes he is alleged to have committed were not serious enough to warrant mandatory pre-trial detention. Having considered all the evidence before me including the legal argument from the Departmental submission, and the legal submission to the IAA, and for the reasons explained above, I am not satisfied that the applicant will face lashes or amputation as punishment for his financial dealings if returned to Iran. I am also not satisfied that a lawfully imposed sentence, even one which imposes a prison sentence in overcrowded conditions, amounts to a real risk of cruel or inhuman punishment or degrading treatment or punishment in the relevant sense under the Act.
67. I acknowledge that if returned to Iran, the applicant would return having attended a number of Christian services and other Christian activities. However, for the reasons outlined above I do not accept that the applicant is a genuine Christian or has a genuine interest in Christianity, and his Christian activities have been minimal. He described himself as a Shia Muslim as recently as December 2016 and did not attend any Christian activities until mid-2017. I conclude that if returned to Iran he would return as a conforming Shia Muslim, as he was until around mid-2017.
68. Country information suggests that under Iranian law, a Muslim who leaves his or her faith or converts to another religion or atheism can be charged with apostasy¹⁶. However, DFAT considers it unlikely that individuals will be prosecuted on charges of apostasy. DFAT also considers it highly unlikely that the government would monitor religious observance by Iranians – for example, whether or not a person regularly attends mosque or participates in religious occasions such as Ashura or Muharram – and thus it would generally be unlikely that it would become known that a person was no longer faithful to Shia Islam. 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 (see 'Christians', above)¹⁷. As I have found that the applicant is not a genuine convert, it follows that I do not accept he would make public manifestations in support of Christianity, or attempt to proselytise or attend house churches in Iran.
69. On the evidence before me, I am not satisfied that short period the applicant has spent exploring Christianity, or his attendance at Christian churches and other activities will result in him facing any interest from the authorities in Iran. I am not satisfied that he would face the death penalty, the arbitrary deprivation of his life or torture. I am also not satisfied that they would result in an intention to inflict pain or suffering, severe pain or suffering or to cause extreme humiliation. I am not satisfied that he would face cruel, or inhuman or degrading treatment or punishment.

¹⁵ DFAT, Country Information Report: Iran April 2016", CIS38A8012677, 5.22

¹⁶ DFAT, Country Information Report: Iran April 2016", CIS38A8012677, 3.52

¹⁷ DFAT, Country Information Report: Iran April 2016", CIS38A8012677, 3.55

70. I have otherwise found that the applicant would not face a real chance of harm is returned to Iran. As 'real chance' and 'real risk' have been found to meet the same standard, I am not satisfied that the applicant would face a real chance of significant harm.

Complementary protection: conclusion

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

Decision

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

Applicable law

Migration Act 1958

5 (1) Interpretation

In this Act, unless the contrary intention appears:

...

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

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

...

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

- (a) severe pain or suffering, whether physical or mental, is intentionally inflicted on a person; or
- (b) pain or suffering, whether physical or mental, is intentionally inflicted on a person so long as, in all the circumstances, the act or omission could reasonably be regarded as cruel or inhuman in nature; but does not include an act or omission:
 - (c) that is not inconsistent with Article 7 of the Covenant; or
 - (d) arising only from, inherent in or incidental to, lawful sanctions that are not inconsistent with the Articles of the Covenant.

...

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

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

...

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

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

...

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

- (a) for the purpose of obtaining from the person or from a third person information or a confession; or
- (b) for the purpose of punishing the person for an act which that person or a third person has committed or is suspected of having committed; or
- (c) for the purpose of intimidating or coercing the person or a third person; or
- (d) for a purpose related to a purpose mentioned in paragraph (a), (b) or (c); or
- (e) for any reason based on discrimination that is inconsistent with the Articles of the Covenant; but does not include an act or omission arising only from, inherent in or incidental to, lawful sanctions that are not inconsistent with the Articles of the Covenant.

...

5H Meaning of refugee

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

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

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

...

5J Meaning of well-founded fear of persecution

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

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

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

5K Membership of a particular social group consisting of family

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

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

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

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

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

5L Membership of a particular social group other than family

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

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

5LA Effective protection measures

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

...

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.