



Australian Government
Immigration Assessment Authority

Decision and Reasons

Referred application

IRAN

IAA reference: IAA17/03992

Date and time of decision: 18 July 2018 08:48:00

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 Persian ethnicity. He arrived in Australia in July 2013. In May 2017, 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 November 2017 on the grounds that Australia did not owe protection obligations to the applicant. On 28 November 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). No further information has been obtained or received.

Applicant's claims for protection

3. The applicant's claims can be summarised as follows:
 - The applicant is an Iranian citizen who was born in Tehran on [date]. He lived his entire life in Tehran before coming to Australia, except for a short period of compulsory military training.
 - Growing up in Iran the applicant was part of a strict Muslim family and was himself, Muslim. However, around [age] he stopped practicing his religion, since he did not actually believe in Islam.
 - On two occasions in Iran, the applicant was arrested for the public consumption of alcohol. On both occasions the applicant was mistreated and then brought before an Iranian court, convicted of an offence and punished with a fine, and with lashes.
 - After the second occasion, the Iranian Judge informed the applicant that, if he was caught with alcohol for a third time, he would be executed.
 - The applicant fears returning to Iran, as he believes that he would be face harm because of his two previous alcohol convictions. He fears he would be detained, tortured and killed.
 - Since his arrival in Australia, the applicant has accepted Christianity and been baptised. He fears that if returned to Iran he would face execution as an apostate.

Factual findings

4. 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 his Iranian Drivers Licence (and translation). These documents establish the applicant's identity to my satisfaction. I accept that he is an Iranian citizen of Persian ethnicity who was born on [date]. For the purposes of this decision, I find that Iran is his receiving country.

Non-practising Muslim, Christianity

5. The applicant was raised in Iran, in a mainstream Shia Muslim family. He characterised his religious feelings as a child to be quiet normal and routine; he says whilst he was a Muslim, as a child his knowledge of religion was slight. Whilst his attendance was compulsory, he said he enjoyed attending Mosque with his father. However, as he grew older he began to feel dissatisfied with Islam. He says that by the time he was [a teenager], he had noticed that Islamic practise and rituals in Iran tended to focus on punishment and violence. He says religious ceremonies in Iran routinely concluded with exhortations of death to various parties. These elements of Islam led him to turn away from the faith of his birth. The applicant says, by the time he was [a teenager] he started to refuse to attend the mosque, and as he was of an age, his father could not compel his attendance any longer.
6. The applicant claims that since his arrival in Australia he has become an adherent of Christianity. He says he commenced attending services around August 2016, about a year before his Protection Visa Interview (August 2017). He says he was baptised in February 2017. He says that he attends Church at [Church 1] every week and Bible classes [on] Tuesday's and Thursday evenings after work when he could. The applicant claims that Christianity has had a very positive affect on his life, by making him a happier more sociable person. He says that since his conversion that he has become kinder and more loving to others, he says he is less distressed and depressed than he was formerly. In support of his claims, the applicant has submitted a copy of a baptism certificate from [Church 1] in [Australia] which indicates that he was baptised on [date] of February 2017.
7. In the Protection Visa Interview, the applicant gave an account of his conversion to Christianity. He said that after he moved to [a city in Australia] that he was initially placed in hotel with other asylum seekers. He said that whilst at the hotel, he was visited by a Christian pastor named [Mr A]. He says that [Mr A] was very caring and generous to the applicant and to other asylums seekers at the Hotel. He shared his time and meals and assisted all of the asylum seekers in many ways. [Mr A] invited the asylum seekers to church and so the applicant decided to attend. When the applicant eventually moved into his own home, [Mr A] gifted him a range of household items. The applicant indicated that [Mr A] was motivated by his Christianity. The applicant claims that [Mr A]'s generosity had a profound effect on him and greatly influenced him since [Mr A] seemed to do these things without any expectation of payment or reward. He says that after meeting [Mr A], he was interested in becoming Christian, but did not know any churches which would cater to Farsi speakers, and so did not peruse the matter for some years.
8. During the interview the applicant was able to recite the 'Lord's Prayer' and when asked about his favourite verse, he was able to relate the parable of the lost sheep being found by the Shepard, to his own sense of being 'found' and reborn as a Christian. He said that to him, the parable was emblematic of his own life and journey from being Muslim in Iran, to being Christian in Australia.
9. The applicant contrasted the teachings of Christianity (which he characterised as focusing on love and kindness) with that of Islam (which focused on violence, threats and punishment). He said he found this change to be particularly important in his decision to convert. During interview, the applicant was able to provide answers to all of the delegate's questions about his Christianity. He was able to outline a brief and basic

level of Christian doctrine which included the importance of the bible and centrality of Jesus to Christianity. The applicant said that he considered it his duty for Christians to evangelise to non-Christians. He said that he had attempted to evangelise to his father, which had caused some difficulties and resulted in his father no longer speaking with him. He says that knowledge of his conversion was widespread in his local neighbourhood in Iran and he believes that his father is chiefly feeling embarrassment that his son has converted to Christianity because his brother's (the applicant's uncles) tease him about being the father of a convert.

10. Religious conviction is an inherently private matter. There is no independent measure for judging the sincerity of any person's particular beliefs. I do not wish to impose an arbitrary requirement for the applicant to meet some artificial threshold in order to convince me of his genuineness. However, there are difficulties with the applicant's account of his Christian conversion which raise doubts in my mind about his claims.
11. I note the applicant has not supplied any independent evidence of his attendance at Christian services, or involvement in any of his Christian activities despite being put on notice prior to his Protection Visa Interview (via letter), that he was required to provide evidence in support of his Christian claims. I note the long gap between when he says he first became interested in Christianity and his first steps in actually attending services. I observe that in his written Visa application which he submitted in May 2017, he gave a different account of his first introduction to Christianity. He said that he was introduced to Christianity whilst he was held in immigration detention and had attended services whilst held in detention. Furthermore, I note in the May 2017 Visa application, when he answered Question 33 (Your Religion), he wrote that he was a Shia Muslim, three months after he had been baptised, and approximately 10 months after he says he commenced attending regular church services. Given the importance the applicant placed upon his baptism, and his attendance at Christian services, I find this anomaly to be very surprising and particularly telling.
12. I also observe that whilst the applicant was able to answer questions about Christianity, his answers to questions tended to be superficial and repetitive. As noted, his knowledge of Christian doctrine was basic. I thought his explanation for Christianity making him a better, happier person and more sociable to be superficial. I found his answers to be shallow and insincere. I note that when questioned about the regularity of his attendance at midweek bible classes he indicated that he attended as frequently as work, and his other commitments, (such as Gym attendance) permitted. The applicant's Visa application indicates he has been unemployed since July 2016 (which predates to his first attendance at church services).
13. As it is his principal claim for protection, I have considered the applicant's claims to be a Christian convert very carefully. Overall, I did not find the applicant's account of his conversion to be persuasive. I find that his answers were superficial and unconvincing. There are gaps and anomalies in his account which I find tend to undermine his claims about the importance of Christianity to him personally and the reasons he was interested in Christianity, and when he first commenced attending Christina church services. I am not satisfied the applicant has told the truth about his Christian claims.
14. I am willing to accept that the applicant was a non-practising Muslim whilst he was in Iran. I also am willing to accept that the applicant engaged in some Christian activities in Australia including attending some services, being baptised and bible classes. However, I do not accept that he is a genuine convert to Christianity. I conclude that he has engaged

in all of his Christian activities in Australia for the purpose of strengthening his claims to be a refugee. Having made this finding, I am required, under s.5J(6) of the Act to disregard these activities for the purposes of the refugee assessment.

15. I do not accept that the applicant has attempted to evangelise to his father, or that his father no longer speaks to him as a result of his conversion. I do not accept that the applicant's Christian conversion is widely known in his local neighbourhood. I conclude that he fabricated these elements of his account in order to enhance the appeal of his tale of Christian conversion.

Alcohol consumption

16. In his Visa application the applicant claims that whilst he was in Iran he was twice detained and charged by police for consuming alcohol:
 - On the first occasion, he and some friends went to a public park and took some alcohol with them. Whilst they were preparing their drinks (but before consumption) the applicant was approached by an unknown man, armed with a Kalashnikov assault rifle who ordered the applicant and his friends to raise their hands. The applicant says that at this stage, two of his friends made a run for it and the man started firing his weapon at them. The applicant and his remaining friends were taken to the Basij office where they were beaten. Later they were transferred to a Tehran Police station and charged. The next morning they were taken before court, and sentenced to 81 lashes, and a 3000 Rial fine. No date has been given for these events.
 - On the second occasion, the applicant and a friend decided to have a beer after work. They had parked a vehicle on the side of a highway 'close to a jungle'. They noticed that several people had observed their consumption of alcohol, which the applicant identified as members of the Basij. He says that he and his friend decided to move, and so got back in their car, and drove to a more secluded area of the highway to continue drinking the beer. Soon after, an Iranian police vehicle stopped nearby, and the applicant and his friend were arrested. Again he was beaten, charged, taken before a court and sentenced to a fine and a further 81 lashes.
17. During his second court hearing, the applicant was advised by a judge that, as this was his second conviction for consumption of alcohol in Iran, any future conviction would result in his being executed, as this was a mandatory punishment under Iranian law. During his Protection Visa Interview, the applicant indicated that this event occurred around 40 days prior to his departure from Iran. Based on information in the applicant's Visa application this would date the event to around early May 2013.
18. The applicant says that following the Judges warning he became very scared. He decided that he wanted to leave depart Iran. He says he commenced to make arrangements to depart Iran. He sold his car and his [tools] and borrowed some money from his family in order to pay for his passage to Australia. Approximately 10 days prior to his departure, the applicant renewed his passport through normal channels in Iran. He says he departed Iran legally, via Imam Khomeini International Airport, on his passport. He says he did not face any particular problems upon departure.
19. These events were the applicant's principal reasons for departing Iran. He says he fears on return to Iran that he would be harmed. He suggests that these drinking episodes were the result of his unwillingness to follow the strictures of Islamic life in Iran, since he no longer believed in Islam.

20. The public consumption of alcohol is illegal in Iran. Article 265 of the new Islamic Penal Code clearly states that the punishment for alcohol consumption is 80 lashes, regardless of whether consumption caused drunkenness or not. The old Penal Code had an additional article which stated that when a man is flogged on two separate occasions for alcohol consumption, he is sentenced to death the third time he is arrested for drinking alcohol. The article has been removed in the new Islamic Penal Code. Non-Muslims will only receive the punishment if alcohol is consumed in public¹. The new penal code was signed into law in 2013 and into force in Iran on 12 June 2013². Under the new code, the punishment is 80 lashes³.
21. While media reports suggest that punishment for alcohol consumption is carried out, the use of alcohol still remains relatively widespread in Iran. The use and manufacture of alcohol among recognised religious minorities in their own gatherings is tolerated and there is some leakage of supplies into the wider community. Iranians who wish to obtain alcohol can do so relatively easily and alcohol smuggling is widespread. According to a report by the World Health Organisation in 2014, Iran has the 19th highest alcohol consumption in the world, with an annual average of 25 litres per individual. In 2013, the Police Chief said Iran had 200,000 alcoholics though experts quoted in the media suggested the figure was much higher. In 2014 and 2015, the Health Ministry launched a number of alcohol treatment and rehabilitation centres throughout the country⁴.
22. On the evidence cited above, the law in Iran is designed to promote abstinence, not to discriminate against any particular group. During the applicant's Protection Visa Interview, the delegate put it to him that the laws in Iran regarding alcohol consumption were, in fact, laws of general application. Both the applicant and his representative (who was present at the interview) agreed with this proposition.
23. In his Visa application, the applicant says that his drinking is linked to his status as a non-practising Muslim and suggests that he believes a person '*has the right to choose his/her belief*'. In the broadest sense, this is argument suggesting that his alcohol consumption has religious and political motivations (i.e. refugee grounds). I am not persuaded by this assertion. In neither of the incidents which the applicant has claimed is there any discernible element where political principle or religious conviction was a factor in his decision to consume alcohol. Quite the opposite, the two incidents which the applicant claims, on their face, would seem to purely social engagements. When asked at interview to cite an occasion where he might consume alcohol if returned to Iran, the applicant indicated that he thought he might consume alcohol at a celebration with friends. This is not a political or religious motivation.
24. Having considered the matter, I am not persuaded that the applicant's consumption of alcohol had any political or religious motivations. Rather I conclude that this argument has been manufactured in order to imply a refugee nexus between what the applicant concedes is a breach of a law of general application.

¹ Department of Foreign Affairs and Trade (DFAT), "Country Information Report: Iran April 2016", CIS38A8012677, 3.84

² Austrian Centre for Country of Origin and Asylum Research and Documentation (ACCORD), "Iran: Political Opposition Groups, Security Forces, Selected Human Rights Issues, Rule of Law: COI Compilation", Austrian Centre for Country of Origin and Asylum Research and Documentation (ACCORD), 01 July 2015, CISEC96CF12768, p.19

³ ACCORD, "Iran: Political Opposition Groups, Security Forces, Selected Human Rights Issues, Rule of Law: COI Compilation", Austrian Centre for Country of Origin and Asylum Research and Documentation (ACCORD), 01 July 2015, CISEC96CF12768, p.19

⁴ DFAT, "Country Information Report: Iran April 2016", CIS38A8012677, 3.85

25. In any case, like the delegate, I have some doubts about the truthfulness of the applicant's claims. I note for example that there are very implausible elements in both incidents.
- In the first incident, I found that the applicant's assertion that his arresting officer to have fired an assault rifle at the applicant's fleeing friends, in a park in Tehran, before they had consumed any alcohol to be extremely farfetched. I conclude that the applicant invented this aspect of his claim and it leads me to doubt the rest of the incident occurred.
 - I found the applicant's description of the second incident to be equally fantastic. On that occasion, the applicant asserts that he and his friend continued to consume alcohol, even after they had been observed by members of the Basij. In the circumstances he claims, seems to me to be a very unlikely decision by the applicant.
26. Some of the applicant's statements during his Entry Interview in 2013 bear directly on these claims. During that Interview, the applicant did mention several breaches of Iranian alcohol law, but he said that he had only been charged on a single occasion, and it had occurred *'about ten years ago'*.
27. Whilst the delegate did not put this contradiction to the applicant directly, I note that prior to his 2013 Entry Interview the applicant was advised that his statements during the interview should be truthful and that if *"the information you give at any future interview is different from what you tell me now, this could raise doubts about the reliability of what you have said"*. The clear inference from this statement is that the applicant knew, before his entry interview, that if he later changed his evidence materially, that his contradictory claims, may result in an adverse credibility finding.
28. At the commencement of his 2017 Protection Visa Interview, the applicant was advised that *"all of the information you provided will be considered as part of your protection Visa application"*, and that it was the applicant's responsibility to provide evidence in support of his claims. There is no suggestion in this statement that the information considered would be limited to information provided in his visa application or afterwards. On its face, a plain reading of the phrase *"all of the information you have provided"* would include all the information the applicant has provided to Australian authorities. In any case, I consider the applicant was aware that departmental records would be regarded as relevant to consideration of the applicant's case, especially when they contain factual claims by the applicant which have some bearing on his claims for protection.
29. I also note that at the Protection Visa Interview, that the applicant was asked directly whether he wished to change any of his previous evidence. In response, the applicant cited several minor *'typo's'* in his written application, but indicated that otherwise, he did not wish to change any of his previous evidence. He did not retract his earlier claim that he had been charged on a single occasion, about ten years earlier. Furthermore, the applicant signed a *Declaration of Truth* as part of his Visa application which included his written promise not to give false or misleading information and acknowledgement that doing so may lead to the denial of a Visa being granted. I conclude he was aware that not telling the truth would result in him being denied a protection Visa in Australia.
30. I have considered whether it would be unreasonable to consider the applicant's earlier statements to the Department without seeking further information from him. The material from the Entry Interview is before me (and was before the delegate). The task

of the IAA is to make a *de novo* assessment of the applicant's claims for protection and as such, I am not bound by the delegate or by previous departmental decisions. I note that the applicant was represented throughout his primary Visa application process. I have listened to the applicant's Entry Interview carefully. I can discern no evidence that the applicant was unduly stressed or anxious during the interview or any other reason which might indicate that his evidence then was given under duress, or was not factual or was otherwise impaired. In fact, my observation is that the applicant was calm, and collected throughout and was able to articulate his statements clearly. In any case, the evidence provided by the applicant in 2013 was not an omission, or an absence of detail about his claims which could be explained by such factors. Rather it was a clear unambiguous statement by the applicant that contradicts his later claims. The claim in question is not minor or unimportant, or a secondary issue. It relates directly the applicant's principal reason to have fled Iran. The evidence before me indicates that the applicant was advised in 2013 of the requirement to be truthful, and this was reiterated to him in 2017. He was aware that all the information he had provided would be used to assess his claims. In 2017, he was given an opportunity to revise, or retract his earlier statement, and declined to do so.

31. Overall, I am satisfied that the applicant was aware that all of the information he had provided to the Department would be used to assess his claims, including his statements he made soon after his arrival and that he knew material changes to his earlier statements could result in an adverse credibility finding against him. The applicant's evidence in 2013 was materially different to his claims in his written Visa application of 2017. It casts significant doubt on his later claims for protection.
32. Having carefully weighed all of the applicant's evidence, I conclude that the applicant is not telling the truth about these claims. I do not accept that the applicant was charged twice for his consumption of alcohol. As a consequence I do not accept that the applicants advised by an Iranian judge that he would be executed if he was caught a third time in the lead up to his departure from Iran. I conclude that he has fabricated these aspects of his account in order to enhance his claims for protection. In any case, this clause has been removed from the Iranian penal code.
33. I am willing to accept that the applicant faced a single charge for alcohol consumption, around 2003, around 10 years prior to his arrival interview. I accept he received lashes and a fine. However, my findings indicate he did not have further difficulties between 2003 and the time of his departure. I note that on the applicant's own evidence he was able to depart Iran legally and was able to renew his passport in the weeks leading up to his departure through normal channels. He said he had no particular difficulties at the airport.
34. Country information indicates that Iranian immigration controls are sophisticated and that a person who was subject to an outstanding warrant for arrest would not go undetected at the main airports⁵. Given these circumstances, I conclude that the applicant was not of any interest to the authorities at the time of his departure.

Refugee assessment

35. 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

⁵ DFAT, "Country Information Report: Iran April 2016", CIS38A8012677, 5.29

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

36. 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.
37. Like the delegate, I have not accepted that the applicant’s principal claims (Christian conversion, threats from judge, recent alcohol consumption) are factual. I do not accept that the applicant was of interest to the authorities in Iran at any time after 2003. I am prohibited from considering his Christian claims.
38. I have found that the applicant is a non-practising Muslim. Under Iranian law, a Muslim who leaves his or her faith or converts to another religion or atheism can be charged with apostasy. While cases of apostasy are rare, Muslim-born converts to Christianity, Baha’is, Muslims who challenge the prevailing interpretation of Islam, and others who espouse unconventional religious beliefs have been charged with apostasy in the past. Apostasy charges have also been applied against political opponents of the regime⁶.
39. 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 Prophet⁷. The last known time the death penalty was carried out for apostasy was in 1990⁸.

⁶ DFAT, “Country Information Report: Iran April 2016”, CIS38A8012677, 3.52

⁷ DFAT, “Country Information Report: Iran April 2016”, CIS38A8012677, 3.53

⁸ DFAT, “Country Information Report: Iran April 2016”, CIS38A8012677, 3.54

40. 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 Islam⁹. The Danish immigration service has reported that many people in Iran do not attend mosques¹⁰. Other reporting indicates that less than 30% of Iranians attend mosque regularly¹¹. Some reports suggest that the figure is even lower, with one source, suggesting that more than 70% of the population does not perform their daily prayers and that less than 2% attend Friday mosque¹².
41. The applicant claims that he became a non-practising Muslim religion [as a teenager] [approximately] 12 years prior to his departure from Iran. He has not outlined any instances of harm, discrimination or persecution arising from his 12 years as a non-practising Muslim in Iran. I conclude that, if returned to Iran, the applicant would live, as a non-practising Muslim in the same way he did previously.
42. Given the low attendance rates at religious services in Iran generally, the lack of monitoring of religious attendance, and the applicant's 12 prior years of unhindered apostasy, I am not satisfied that the applicant's status as a non-practising Muslim would be detected, or be an issue of concern if he returned to Iran.
43. I am not satisfied that the applicant faces a real chance of any harm for reason of religion.
44. I have found that the applicant was convicted in Iran of consuming alcohol around 2003. During interview, the applicant suggested he might consume alcohol at unspecified celebrations in Iran if returned to that country. I found his claim in this regard to be disingenuous given he claims to fear the death penalty would be imposed on him if caught. The applicant has not indicated he consumed alcohol in Iran regularly or at any time after his conviction, which I have concluded occurred over 15 years ago. I conclude he merely invented the claim that he would consume alcohol if returned to Iran in order to enhance his claim to be a refugee. I do not accept that if returned to Iran, the applicant would consume alcohol. Whilst alcohol consumption in Iran is illegal, the evidence before me suggests he has not been involved in alcohol consumption for many years and that he was not of interest to the authorities in the lead up to his departure. Given the passage of time, I am not satisfied that he would be of interest now, almost five years later.

Failed asylum seeker from a western country

45. The delegate considered whether the applicant would face a real chance of harm arising from his status as a failed asylum seeker from a Western Country. For the sake of completeness, I will consider it too.
46. Country information before me indicates that millions of Iranian citizens travel overseas every year without difficulty including to a range of non-Muslim countries. Where direct

⁹ DFAT, "Country Information Report: Iran April 2016", CIS38A8012677, 3.55

¹⁰ Danish Immigration Service, 'Update on the Situation for Christian Converts in Iran', June 2014, CIS28931, p.12

¹¹ Gunes Murat Tezcur; Taghi Azadarmaki; Mehri Bahar, "Religious Participation among Muslims: Iranian Exceptionalism", *Critique: Critical Middle Eastern Studies*, 01 January 2006, CIS21784

¹² The Middle East Institute, "The Iranian Revolution at 30", The Middle East Institute, 01 January 2009, CIS17095, p80 - 81

connections do not exist, Iranians are generally able to travel onto third countries freely. The Head of the Passport and Visa Department at Iran's Ministry of Foreign Affairs said in November 2012 it was 'not a criminal offense in Iran for any Iranian to ask for asylum in another country'¹³. Anecdotally, DFAT reporting indicates that a voluntary at Iranian airports do not attract much interest from authorities amongst the large regular international movements of Iranians. Moreover, credible sources have told DFAT that returnees will generally move quickly through airports – usually Tehran Imam Khomeini – without official interest. Where temporary travel documents have been issued by Iranian diplomatic representatives overseas, authorities at the airport will be forewarned about a person's return because of Iran's sophisticated government systems. Irrespective of whether a returnee is travelling on a temporary travel document or their ordinary passport, credible sources have told DFAT that they will generally only be questioned if they had done something to attract the specific attention of authorities. The vast majority of people questioned would be released after an hour or two¹⁴.

47. The applicant departed Iran legally, on a passport issued in his own name. I have found that he was not of any interest to the authorities in Iran, any time after 2003. Country information does not support that the applicant will be face harm (or any interest) from the authorities now, over five years after his departure merely for having spent time in a western country, or for claiming asylum. Given these factors, I am not satisfied that the applicant would face a real chance of harm arising from his status as a failed asylum seeker from a western country.

Refugee: conclusion

48. 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

49. 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

50. 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

¹³ Danish Refugee Council, Landinfo and Danish Immigration Service, "Iran: On Conversion to Christianity, Issues concerning Kurds and Post-2009 Election Protestors as well as Legal Issues and Exit Procedures", Danish Refugee Council, Landinfo and Danish Immigration Service, 01 February 2013, CIS25114, p69

¹⁴ DFAT, "Country Information Report: Iran April 2016", CIS38A8012677, 5.34

- the person will be subjected to cruel or inhuman treatment or punishment, or
- the person will be subjected to degrading treatment or punishment.

51. I have found above that the applicant has engaged in a number of Christian activities whilst in Australia including attending church services, bible classes and being baptised. I have not accepted that he had a genuine interest in Christianity, that he has evangelised on behalf of Christianity, or that he would engage in any Christian activities if returned to Iran.

52. The applicant's Christian activities in Australia were irregular. Country information cited above indicates that the Iranian authorities pay little interest to the religious activity of Iranians, except where they are made publically. The applicant has not sought to publicise the Christian activities he has engaged in Australia and I have not accepted that he has informed his family, or that it is more broadly known outside of his family. There is no evidence before me which suggests that Iranian authorities would be aware of the applicant's activities in Australia. None of the information before me indicates that the applicant intends to publicise his attendance, nor that the Iranian authorities would have any knowledge (or care about) the applicant's attendance at Christian services in Australia. I conclude that his attendance would not become known if he were returned to Iran.

53. On the evidence before me, I am not satisfied that the applicant's Christian activities would result in a real risk of him facing the death penalty, the arbitrary deprivation of his life or torture. I am also not satisfied that they would result in any pain or suffering, severe pain or suffering or extreme humiliation. I am not satisfied that there is a real risk the applicant would face cruel, or inhuman or degrading treatment or punishment.

54. I have accepted that the applicant was convicted of consuming alcohol and around 2003. Excluding his claims which I have dismissed, he did not have any further difficulties arising from this incident after 2003. Evidence cited above indicates that public alcohol consumption is illegal in Iran for all citizens under a law of general application. On the evidence before me, I am not satisfied that the applicant's past consumption of alcohol would result in a real risk of him facing 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 the applicant would face amount to cruel, or inhuman or degrading treatment or punishment.

55. I have otherwise found that the applicant would not face a real chance of harm arising from his status as a failed asylum seeker from a western country, or his status as a non-practising Muslim. As real chance and 'real risk' have been found to meet the same standard, it follows that the applicant does not face a real risk of significant harm arising from these factors.

Complementary protection: conclusion

56. 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.