



Australian Government

Immigration Assessment Authority

Decision and Reasons

Referred application

IRAN

IAA reference: IAA18/04716

Date and time of decision: 3 August 2018 11:03:00

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 April 2013. In September 2016, he lodged an application for a Safe Haven Enterprise Visa (SHEV).
2. In April 2018, a delegate of the Minister for Immigration and Border Protection refused to grant the visa on the grounds that Australia did not owe protection obligations to the applicant. The delegate found that the applicant's principal claim of converting to Christianity in Australia was not credible. On 10 Apr 2018, the matter was referred to the Immigration Assessment Authority (IAA).

Information before the IAA

3. I have had regard to the material given by the Secretary under s.473CB of the *Migration Act 1958* (the Act).
4. On 30 May 2018 a migration agent, acting on behalf of the applicant, sent an email to the IAA. The email contained four attached documents. The first was an administrative appointment form and was not relevant to the applicant's claims. The remaining three documents were character references written on behalf of the applicant. I note one of the letters is an almost exact copy of an earlier letter submitted written on 5 November 2017 and submitted to the department prior to the date of the s.65 decision (the only difference between these two letters is the date the letter was written. But, as the applicant has submitted this second letter as further evidence in support of his claims I will treat it as such). The character references were all written in early May 2018, after the date of the delegate's decision. They were not before the delegate, they are new information.
5. The character references were written by associates of the applicant from [Church 1] in [Australia]. Two of the references were written by office holders within the church, and the third appears to have been written by another parishioner. The letters indicate that the applicant had been associated with [Church 1] since around 2014 and was known in Church circles from 2013, as he had earlier claimed.
6. I note that each of the character references states (in its own terms) that the author considers the applicant to be a genuine and enthusiastic Christian believer. These are assertions of belief, rather than a statement of fact. The purpose of these statements is, I presume, to encourage the IAA reviewer (me) to draw a similar conclusion about the genuineness of the applicant's claimed conversion.
7. I observe that the information in the Character references does not add any new details to the applicant's claim. He had already asserted his involvement with [Church 1] commenced in 2014 and that he had first become interested in Christianity in 2013, soon after he arrived in Australia. Nevertheless, I accept that the information is credible personal information in the relevant sense and that it may have affected the consideration of the applicant's claims and so s.473DD(b)(ii) is met.
8. I note that the authors of the character references all claim to have known the applicant and to have interacted with him closely for a number of years. No explanation has been offered as to why these character references could not have been obtained earlier, or why they are

offered now although I infer they are offered to refute the delegate's finding that the applicant was not a genuine Christian. I am not persuaded that an adverse finding by the delegate about a particular claim, on its own gives rise to exceptional circumstances to provide new evidence in support of the claim. I am not persuaded that there any exceptional circumstances to consider the information now. As such, s.473DD(a) is not met, and I am prevented from considering the information.

Applicant's claims for protection

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

- The applicant is an Iranian citizen of Persian ethnicity. He was born on [date]. He was born into a Shia Muslim family and was raised as a Shia Muslim.
- Whilst he was completing his compulsory military service, the applicant met and became friendly with adherents of other faiths, including Christians, Sunni's and Baha'i. He saw how differently these people were treated, and this led him to have doubts about this own religion, he became disaffected with Islam. He was not devout, and eventually ceased to practise Islam. He became a critic of Islam in Iran having formed the view that all religions were the same; merely businesses aimed at extracting money from their followers.
- His religious views led him to flout the normal mores and constraints of Iranian society. The applicant shared his doubts openly with friends and family. He refused to participate in prayers at work and as a consequence lost his job. Because of his opinions, the applicant received special attention from the Basij militia. The Basij would raid to his home once or twice per month in order to obtain incriminating evidence against him. They started to harass his family.
- On one occasion, as he passed through a Basij checkpoint. The Basij were able to smell whisky on his breath, and the applicant was detained. He was taken to a local mosque (Basij HQ) and beaten severely resulting in his losing consciousness. When he awoke his father was present and the applicant was taken home.
- On another occasion, he was walking in the street with his girlfriend. He was approached by the Basij and was questioned. He was taken to Basij Station. They beat him. Eventually he was released in to the custody of his parents.
- On another occasion, he was having dinner with a friend of the Baha'i faith when he was approached by the Basij. He was harassed and informed that as he was associating with a Baha'i he would have to undergo ritual cleansing. The same thing happened on a separate occasion when he was out for dinner with a Jewish friend.
- Once he was walking in the street when a man on a motorcycle approached him. The man threatened to rape the applicant, his mother and his sister if he did cease espousing his opinions and return to the normal practise of his faith.
- The applicant departed Iran in 2013. After his arrival in Australia, he was exposed to Christianity. Over a period of time, he came to admire the Christians he met, and converted to Christianity. He was baptised in 2015. He says he has found peace in his new religion and would feel compelled to proselytise if he returned to Iran.
- The applicant fears returning to Iran that he would be discovered as a Christian and would be detained, and probably killed. Furthermore, the applicant fears that if he

returned to Iran, his father, who is dissatisfied with his religious conversion, may kill him.

Factual findings

10. Since his arrival in Australia the applicant has provided Australian authorities with copies of documents in order to establish his identity. These documents include an Iranian Birth Certificate, an Iranian National Identity card (and accredited translations). These documents establish the applicant's identity to my satisfaction. I accept that he is an Iranian citizen who was born in Tehran, Iran on [date]. For the purposes of this decision, I find that Iran is his receiving country.

Religious convictions in Iran and harassment

11. The applicant has indicated that in Iran during his two years of compulsory military service he was exposed to persons of different faiths, including Sunni's, Christians and Baha'i. He witnessed the unequal treatment of these persons by the Shia Muslims, and became disenchanted with his faith. He began to think critically about Islam. Ultimately, he came to the conclusion that all religions were fake and that they were essentially scams, or businesses which were operated in order to extract money from believers. He says that he ceased to practise his Shia faith, (though he always maintained his faith in God).
12. After he finished his military service the applicant returned to Tehran and began to espouse his feelings about religion to family, friends, colleagues and other people he came across. He says he was outspoken in his criticism of Islam and regularly spoke against it in public during 'group meetings'.
13. He was outspoken about his beliefs. He says that as a consequence of his unwillingness to participate in workplace prayers, and his outspoken views on Islam he was dismissed by his employer, [Company 1].
14. He claims that on one occasion he was walking in the street with his then girlfriend, when he was approached by the Basij. He says that he and his girlfriend were questioned, and when it became apparent to the Basij that they were not related, they were detained and taken to a 'station' where they were beaten. The Basij called the applicant's parents and he was released into their company. No charges were laid.
15. On another occasion, the applicant says he was spending time in the home of a friend. He says he was consuming alcohol. He says he caught a pool taxi to his home and the taxi dropped him off approximately five minutes' walk from his home. On the way, he had to pass through a Basij Checkpoint. Whilst doing so, he says the Basij smelled the alcohol on his breath. He says that the Basij detained him and took him to a 'Station' where he was beaten. He says that after his initial beating he was taken before a Basij commander who he tried to reason with. However, the Commander was unwilling to discuss the applicant's views, and ordered that he be beaten again. The applicant says that he was tortured by being hung upside down for around 30 to 40 minutes resulting in him becoming unconscious. When he awoke, his father was present, having been called by the Basij. His father took him home. He did not go to the hospital, but was cared for by his cousin who he says is a Nurse.
16. After he had come to the attention of the Basij, the applicant claims that the organisation started to harass him, and to harass his family. This included;

- Raids on his house “*once or twice per month*” and surveillance. The applicant believes that the raids were conducted in order to discover incriminating evidence against him in order to allow the Basij to lay charges against him.
 - The surveillance he claims was often intrusive. He says that on one occasion he was having dinner in a restaurant with a friend who was an ex-colleague from his military service. The friend was a member of the Baha’i faith. The applicant says that he was approached by members of the Basij and was informed that since he was eating with a Baha’i he would be required to undergo a ritual cleaning ceremony (Ghusl). This caused severe embarrassment and humiliation for the applicant.
 - At his Protection Visa Interview, the applicant indicated a second event like this occurred when he dined with another friend who was Jewish.
 - The applicant claims that on one occasion he was riding in a Taxi when, a motorcyclist stopped the vehicle in the middle of the street in order to speak to the applicant. The motorcyclist searched the applicant and was in communication with other, unknown persons, by phone. The motorcyclist threatened that unless the applicant ‘kept his mouth closed’ about his views, then he would be punished. He says that the motorcyclist threatened to rape his mother, his sister and the applicant himself if his behaviour did not improve.
17. In order to prevent further harassment, the applicant says he made an appointment to see the local Basij Commander, who had earlier ordered him to be beaten (para. 15 above). The applicant says that during this appointment he tried to convince the Basij Commander of the sincerity of his beliefs and asked him to prevent the Basij from harassing him. The Commander advised the applicant that in order to stop having problems the applicant needed to cease his criticisms of Islam, and to return to his faith. After the meeting, the applicant realised that he had no future in Iran and, after consulting with his mother decided to depart. The applicant departed Iran legally, on a valid Iranian passport in his own name via the Tehran International Airport. He did not face any particular problems on his departure.
18. Country information before me indicates Iranian security forces are conspicuous in many aspects of Iranian life¹. The *Sazman-e basij-e mostaz’afin* (‘The Organisation for Mobilisation of the Oppressed’, usually referred to as ‘Basij’) is a volunteer paramilitary organisation operating under the command of the IRGC. It has a wide range of duties, particularly internal security, law enforcement and occasionally, moral policing².
19. The Basij can patrol the streets and conduct checkpoints, particularly when there is a heightened security atmosphere or after large events. However, credible sources have told DFAT that the Basij is presently less visible on the streets than was previously the case –for example in 2009. Sources also report that the Basij is less assertive and generally more respectful in its interactions with Iranians. However, Basij members often receive little formal training and can operate without orders or objectives, resulting in unpredictable interactions with civilians³.
20. Some elements of the Iranian security forces, particularly the IRGC and the Basij, are tasked with monitoring politically-active groups and individuals. Monitoring is also done by the Ministry of Intelligence and Security. Authorities can take a heavy-handed approach to enforcing security if they judge this to be necessary. There can also be occasional morality

¹ Department of Foreign Affairs and Trade (DFAT), “Country Information Report: Iran April 2016”, CIS38A8012677, 5.2

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

³ DFAT, “Country Information Report: Iran April 2016”, CIS38A8012677, 5.8

campaigns to enforce standards of Islamic conduct in which some elements of the security forces are involved⁴.

21. DFAT reports that in Iran, pre-marital and extra-marital relations are common and unmarried couples appearing together in public is very common, particularly in the middle and upper classes. DFAT assesses that the authorities generally turn a blind eye to such couples, in part because – if questioned – such couples may suggest they have a religiously-sanctioned temporary marriage. While there are reports of contracts being signed or papers issued for temporary marriages, DFAT has been advised that temporary marriages do not require formal documentation. If such couple are arrested they would usually be taken to a police station, where parents or guardians are summoned. They are usually released after making a written statement and can sometimes be required to pay a fine⁵.
22. I have considered the applicant evidence about his life in Iran. There are some problems with the evidence he has provided since his arrival in Australia. The applicant gave a different account of his reasons for leaving Iran in 2013. This difference is acknowledged by the applicant himself in his SHEV application and was discussed during his Protection Visa Interview. In 2013, the applicant did suggest he had religious issues in Iran, but the focus of his decision to leave was on his unwillingness to live in Iran, rather than on any harassment. At that time when questioned about any arrests or detention he suffered in Iran, the applicant declared that he had only had a single encounter resulting in detention, when he had been briefly detained after being caught associating with his girlfriend.
23. There are other issues with the applicant's claims. I note that throughout his time in Australia, the applicant has outlined his past employment in Iran to Australian authorities twice. The first time, during his entry interview, and the second time, during in his SHEV application when answering the employment question (Q.84). On both occasions, he has indicated that he worked as a [Occupation 1] between 2004 and 2005; was in the military between 2005 and 2007; and worked in [another industry] between 2007, when he left the military and 2013 when he departed for Australia. He has not outlined at any time a period of employment with a [Company 1]. In his SHEV application when he discussed this incident, he did not mention when it occurred. Whilst the [Occupation 1] job he held in 2004/05 was in [a certain] industry, on his own evidence this period of employment as a [Occupation 1] clearly occurred before his military service and therefore cannot be the job he says he had at [Company 1] which he clearly indicates he commenced "*sometime after my military service*". Given that the applicant he has outlined his employment details on multiple occasions and on each occasion has failed to identify work at [Company 1], I have considerable doubt he is telling the truth about this episode. I conclude he has fabricated his claimed employment (and dismissal on religious grounds from) [Company 1].
24. I note that at interview, the applicant was unable to outline to the delegate when he was detained and tortured by the Basij, other than by first stating it occurred a year prior to his departure, later by saying it was 18 months prior. Like the interviewer at his Protection Visa Interview, I am incredulous that the applicant was not able to provide a date for this incident, which surely must be one of the most significant events in his life. When asked why he was unable to provide a date, he said that the '*structure*' of his mind was not to be able to remember things. The applicant has not put forward any other information about the '*structure*' of his mind. Later during the same interview he said he could remember important things.

⁴ DFAT, "Country Information Report: Iran April 2016", CIS38A8012677, 2.29

⁵ DFAT, "Country Information Report: Iran April 2016", CIS38A8012677, 3.87

25. The applicant was questioned about the group meetings he claims to have attended. His answers have been inconsistent and vague. He says that these groups of people who gathered together to discuss affairs, but that the group was not affiliated with any particular political or religious movement. He said that the Government went to great lengths to '*vertically and horizontally*' infiltrate such groups, and that he assumed that his group had been infiltrated and that he had been denounced to the Basij by an informer. Later he indicated that the Group he discussed his feelings with was just some of his friends.
26. I found some elements of the applicant's claims to be fanciful. Religion is a contentious issue in Iran. DFAT reports that criticisms of the Islamic foundations of the Iranian Government is not tolerated in Iran and that this is widely understood by Iranians⁶. Given these circumstances, I do not accept that the applicant would have openly espoused his religious doubts and convictions to colleagues and strangers as he asserts. I also do not accept that the applicant would on two occasions attempt to openly argue against religion with a local Basij commander.
27. Overall, I am not persuaded that the applicant is telling the truth about his time in Iran. The applicant has consistently indicated that he held non-conventional religious views in Iran and that he ceased to practise his Muslim faith. I am willing to accept that the applicant was a non-practising Muslim whilst he lived in Iran.
28. However, given the problematic evidence outlined above, I conclude that he has fabricated and exaggerated his account of events there in order to enhance his claims for protection in Australia. I have already indicated that I do not accept his claim about losing employment in [Company 1]. I do not accept that the applicant would have espoused his religious views publically as he claims as such behaviour would draw interest from the Iranian Government and from conservative Iranians. I note that on his own evidence the 'group' he belonged too was merely a group of his friends. I do not accept that such a group was infiltrated by the Government or that the applicant was denounced to the Government, or was subjected to significant surveillance as a result.
29. I do not accept that the 'structure' of the applicants mind prevents him from remembering things as he asserted at interview. He has not put forward any medical information to support this claim, and at other times has suggested he can, and does remember important information. I conclude he fabricated this medical claim at interview in order to explain why he could not provide a date for his claimed torture.
30. Whilst alcohol consumption in Iran is illegal, I found the applicant's account of being detained to be vague and to lack credible details. The evidence before me suggests the punishment for consumption of alcohol is lashes in Iran. Furthermore, I do not accept that the applicant, in the clutches of the Basij and having already suffered a beating at their hands would attempt to 'reason' with the Basij Commander about his religious convictions. I find his failure to articulate when this event occurred with any accuracy seriously undermines his account. I do not accept that he is being truthful. I am not satisfied that this event occurred.
31. Given I have not accepted the applicant was a vocal critic of the regime, or that he was detained and tortured or denounced and surveilled by the Iranian authorities, it follows that I do not accept he was ever subjected to a campaign of harassment by the Government. I do not accept that his house was raided once or twice per month. I do not accept he was ever accosted and threatened on the street by a motorcyclist.

⁶ DFAT, "Country Information Report: Iran April 2016", CIS38A8012677, 3.60

32. I accept that the applicant was stopped with his then girlfriend, and briefly detained, as he has indicated consistently since his arrival in Australia. Open relationships between men and women in Iran are not socially acceptable except where a family relationship exists⁷. Nevertheless, on his own evidence he was released without charge.
33. Having considered all of the applicant's information, I am not satisfied not accept that he was ever of interest to the Iranian authorities, other than on the single brief occasion when he was detained for associating with his girlfriend. I conclude that he was not of interest to the Iranian authorities at the time of his departure from Iran.
34. I accept the applicant's evidence that he departed Iran legally, on a valid Iranian passport issued in his own name.

Conversion to Christianity

35. The applicant has claimed that after his arrival in Australia, he witnessed numerous examples of kindness and generosity from Christians who provided support to asylum seekers. He said that this generosity and kindness had a great influence on him and led him to explore Christianity for himself. Sometime in 2013, the applicant met a Persian Christian pastor. He says that over time he came to believe in the Christian faith and that he was baptised in 2014 after about seven months of exploring Christianity. He said he was a regular reader of the bible and owned English and Farsi language editions. He said he was familiar with the bible 'to the extent that he understood it' and that learning from the bible was time consuming and difficult.
36. The applicant was able outline several bible stories that he thought were meaningful, stating the story of Saul/Paul's conversion on the road to Damascus held personal meaning for him and was able to provide answers to questions put to him at the Protection Visa Interview about the life and times of Jesus. He was able to give a very brief explanation of Martin Luther and the emergence of Protestant Christianity. He stated that he found the Pentecostal sect of Protestantism to suit him best. He has indicated that the open welcome, love and kindness which were provided to him by Christians when he arrived in Australia were the significant factors in his conversion.
37. As evidence of his claims, the applicant submitted to the department a copy of a Baptism Certificate issued in his name and a letter from the Persian Christian Pastor. The Baptism Certificate indicates that the applicant was baptised [in] September 2014. The Pastor's letter indicates that the Pastor has known the applicant since 2013, and was responsible for his baptism in 2014. The letter describes the applicant as a '*faithful member*' and says he is '*enthusiastic to learn about*' Christianity.
38. Religious conversion is illegal under Iranian law⁸. Country information suggests that a Muslim convert to Christianity who proselytised upon return to Iran (as the applicant claims he would) would come to notice of the authorities in Iran⁹. However, I note that DFAT reports that considers it highly unlikely that the government would monitor religious observance by Iranians¹⁰.

⁷ DFAT, "Country Information Report: Iran April 2016", CIS38A8012677, 3.87

⁸ DFAT, "Country Information Report: Iran April 2016", CIS38A8012677, 3.52

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

¹⁰ *ibid*

39. Religious faith is inherently a matter of personal conviction. I do not wish to apply an arbitrary or artificial standard to the applicant. I have carefully considered the applicants evidence about his path to Christianity, and his religious observance. The evidence before me indicates, and I accept that the applicant has been a regular attendee at Christian services, and has participated in a range of other Christian activities including bible classes. He has a reasonable understanding of the bible and of the story of Jesus.
40. Nevertheless, I was not wholly persuaded by the applicant's Christian claims. His earlier comments in the SHEV application, and which he substantively repeated at his Protection Visa Interview indicated that he was a person who held extremely negative views of organised religion, essentially considering it to be a money making scam. These feelings suggest the applicant would have had to overcome significant internal barriers in order to join another organised religion. To my mind, his answers to questions about his conversion did not indicate any deep or spiritual engagement with Christianity. When he was asked at interview about why he converted and what Christianity meant to him, I thought his answers were vague and superficial. Given his earlier clearly expressed feelings about organised religion, and that he now claims to be an active Christian for almost five years, I would have expected him to be able to articulate his reasons for converting, and his understanding of Christianity more clearly.
41. Overall, I found the applicant's account of his Christian conversion to be unconvincing. I am not satisfied that he is a genuine Christian convert, or that he has any interest in pursuing the Christian faith on return to Iran. I conclude that he has engaged in his Christian activities in Australia for the purpose of strengthening his claim to be a refugee. Given this finding, I am required to disregard the applicant's Christian activities in Australia for the purposes of his refugee assessment.
42. I conclude that if returned to Iran the applicant would do so as a non-practising Muslim.

Refugee assessment

43. 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

44. 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.

Religion

45. I have found that the applicant would return to Iran as a non-practising Muslim and live, largely as he did prior to his departure. The applicant has indicated that he stopped practising his faith by the time his military service had finished, around 2007. I have dismissed his claims to have suffered from harassment and harm arising from his religious claims above. The claims I have allowed resulted from the applicant's breach of normal social customs in Iran.
46. Country information before me indicates that there are a large number of non-practising Muslims in Iran. Academic reports indicate that as far back as 2003 credible reports that more than 70% of the Iranian population does not participate in daily prayers and less than 2% attended Friday mosque¹¹. Another report indicates that mosque attendance in Iran is amongst the lowest in any Muslim country and that less than 30% of Iranians regularly attend mosque¹². More recently, the Danish Immigration Service reports that many Iranians do not attend Mosques¹³. An article from 2013 stated that *'in Iran, the people are leaving the mosques in droves'*¹⁴
47. The weight of evidence suggests that in Iran, a large number of Iranians are non-practising Muslims like the applicant. As such, if the applicant returned to his home country he would be returning to a situation similar to one he departed five years ago, and which he shares with a large percentage of the population in Iran. Given the prevalence of non-practising Muslims in Iran, I am not satisfied that the applicant would face a real chance of harm arising from being a non-practising Muslim if returned to Iran.
48. I am not satisfied the applicant faces a real chance of any harm for reason of religion.

Unsuccessful asylum seeker in a Western Country

49. The delegate has assessed whether the applicant would face harm arising from his status as an unsuccessful asylum seeker who sought asylum in a western country. Whilst the applicant has not specifically put forward this claim, for the sake of completeness, I will address it also.
50. Iranian authorities have been reported to have some sensitivity to the influence of western culture in Iran¹⁵. Nevertheless, I note that many 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 freely¹⁶.

¹¹ The Middle East Institute, "The Iranian Revolution at 30", The Middle East Institute, 01 January 2009, CIS17095, p.80 - 81

¹² Gunes Murat Tezcur; Taghi Azadarmaki; Mehri Bahar, "Religious Participation among Muslims: Iranian Exceptionalism", Critique: Critical Middle Eastern Studies, 01 January 2006, CIS21784

¹³ Danish Immigration Service, Update on the Situation for Christian Converts in Iran, June 2014, CIS28931, p 12

¹⁴ "Turning away from Shia in Iran - 'A Tsunami of Atheism'", Qantara, 07 February 2013, CXC28129415432

¹⁵ DFAT, "Country Information Report: Iran April 2016", CIS38A8012677, 3.74 – 3.80

¹⁶ DFAT, "Country Information Report: Iran April 2016", CIS38A8012677, 5.28

51. 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—largely because most failed asylum seekers leave Iran legally (e.g. regular departure through airports or with passports)¹⁷. Credible sources have told DFAT that returnees 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 two¹⁸. The IOM has reported similar findings¹⁹. In 2013, the head of the Iranian Passport office stated that it is not a criminal offense in Iran for any Iranian to ask for asylum in another country and that approximately 60% of Iranians who have claimed asylum in other countries, travel back and forth between Iran and other countries²⁰.
52. I have accepted the applicant's claim that he departed Iran legally, on a valid Iranian passport issued in his own name. I have concluded above that he was not of any interest to the authorities at the time of his departure from Iran.. Given the passage of time, I am not persuaded that he would be of any interest now, almost five years later. I conclude that the applicant would not be of any interest now. I am not satisfied that the applicant would face a real chance of harm arising from an unsuccessful attempt to claim asylum in Australia.

Refugee: conclusion

53. 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

54. 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

55. 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

¹⁷ DFAT, Country Information Report: Iran April 2016", CIS38A8012677, 5.33

¹⁸ DFAT, Country Information Report: Iran April 2016", CIS38A8012677, 5.34

¹⁹ 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

²⁰ 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

- the person will be subjected to degrading treatment or punishment.
56. I have found above, that the applicant was not of any interest to the Iranian authorities at the time of his departure, and would not be of further interest now. I have accepted that the applicant has engaged in a number of Christian activities in Australia including being baptised, attending services, and bible classes, although I have also concluded that he is not a genuine Christian convert.
 57. Country information indicates that under Iranian law, a Muslim who leaves his or her faith or converts to another religion or atheism can be charged with apostasy²¹. 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 informants²².
 58. I have found that the applicant would return as a non-practising Muslim and as such would not proselytise in Iran. The country information before me does not indicate that the Iranian authorities would know, or care about the activities of the applicant in Australia.
 59. Having considered the evidence before me, I am not satisfied that the applicant would face a real risk of being arbitrarily deprived of his life, having the death penalty carried out on him, or being subjected to torture. I am also not satisfied that the applicant would face a real risk of being subjected to cruel or inhuman treatment or punishment, or degrading treatment or punishment for his Christian activities in Australia if returned to Iran.
 60. I have otherwise found that the applicant would not face a real chance of harm arising from any of his claims including his being a non-practising Muslim, or his unsuccessful attempt to claim asylum in a Western country. As ‘real chance’ and ‘real risk’ have been found to meet the same standard, it follows that the applicant would not face a real risk of significant harm arising from any of these claims if returned to Iran.

Complementary protection: conclusion

61. 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.

²¹ DFAT, “Country Information Report: Iran April 2016”, CIS38A8012677, 3.52

²² DFAT, “Country Information Report: Iran April 2016”, CIS38A8012677, 3.55

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.