



Australian Government

Immigration Assessment Authority

Decision and Reasons

Referred application

IRAN

IAA reference: IAA18/04775

Date and time of decision: 4 September 2018 18:23:00

L Hill, 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 a citizen of Iran. He arrived in Australia in July 2013 and applied for a Safe Haven Enterprise Visa (protection visa) in 23 August 2017. A delegate of the Minister for Immigration and Border Protection (the delegate) refused to grant the visa on 12 April 2018.

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) (the referred materials).
3. I have obtained the following country information:
 - Encyclopaedia Iranica, 'BAKTĪĀRĪ TRIBE', 15 December 1988, CXBB8A1DA327.
 - Minorities at Risk Project, Assessment for Bakhtiari in Iran' 2003, 31 December 2003.
 - Department of Foreign Affairs and Trade (DFAT), "DFAT Country Information Report: Iran", 7 June 2018
4. The first two reports contain information on the Baktiari ethnic group. At the protection visa interview, the applicant made reference to his tribe being a sub division of this ethnic group, as an explanation for some aspects of his claims. The delegate did not consider this information in her decision, and I consider the new information is necessary to assess the applicant's claims against s.36(2) of the Act. I am satisfied there are exceptional circumstances to justify the consideration of this new information. The third report contains information on the situation for Arabs and returnees to Iran. It has been prepared specifically for the purpose of protection status determination and updates the DFAT report on Iran published on 21 April 2016 which was before, and relied upon by, the delegate. I am satisfied there are exceptional circumstances to justify consideration this new information.
5. On 11 May 2018, the applicant's representative emailed the IAA. Attached to the email was a submission relating to the applicant. The submission contains discussion and legal argument on why the applicant does not agree with the delegate's decision. To the extent that the discussion reiterates and addresses the claims made by the applicant to the delegate, I do not consider these parts of the submission to be new information and I have noted it.
6. Included in the submission were new claims. In summary he now contends that:
 - His wife's family (his wife's brother) moved to Tehran about six months ago (November/December 2017).
 - He only came to know this information about two months ago (February/March 2018) during a conversation with his mother.
 - His fear of being subjected to honour-related violence now extends to Tehran.
7. These new claims were not before the delegate. They are new information. The applicant stated he became aware of the new information after the protection visa interview in approximately February/March 2018. At least five months passed between the protection visa interview and the delegate's decision, yet this information was not provided to the Minister

before the delegate made her decision. It has been contended that the new information should be considered because it could not have been previously provided to the Department as the applicant “could only respond to the delegate’s findings in the decision after receiving the decision and seeking pro-bono legal advice” and it is “essential to any meaningful assessment of refoulement”. The applicant was assisted represented at the protection visa interview by the same community legal organisation that has now assisted the applicant to provide this new information and I find the applicant’s argument that as he was unable to provide this information until after receiving the decision and seeking pro-bono legal advice to be baseless. It is credible that his wife’s brother has moved to Tehran, but or the reasons given below, the issue of whether the applicant faces a real chance or risk of serious harm or significant harm in Tehran does not arise. Having regard to all the circumstances, I am not satisfied the requirements of s.473DD(b) of the Act are met and there are exceptional circumstances to justify the consideration of this new information.

Applicant’s claims for protection

8. The applicant’s claims can be summarised as follows:

- The applicant he was born in Masjedsoleiman (Masjed Soleyman) in Khuzestan Province in Iran. He is of Arab ethnicity.
- As an Arab he was discriminated against and treated badly by the Persian community. He had difficulties finding ongoing fulltime employment. It was common for a job to be passed from father to son. When his father retired he was denied the opportunity to take his job.
- For a significant period of the applicant’s adult life he has been an addict. Because of this and his immoral behaviour such as his hair being too long he was arrested on at least 20 occasions by the authorities and taken to court on at least 10 occasions. In around 2009/2010, the applicant commenced attending and participating in Narcotics Anonymous (NA) meetings and his involvement in this group led to his sobriety.
- In or around early 2012, his relatives came to his family home and wanted to drink alcohol inside. He told them that if they wanted to drink that they had to use different glasses and go into the courtyard. He did not want them drinking inside in case it tempted him to try alcohol and drugs again. His relatives became very upset and started to fight with him. They also smashed the windows of the family home, furniture and household items.
- Because of his various issues in Iran, he made arrangements to depart Iran and travel to Australia. In June 2013, he departed Iran with his wife and son.
- Since his arrival in Australia the applicant has separated from his wife and converted to Christianity. He has also continued to regularly attended and participated in meetings and maintained his sobriety.
- The applicant fears on return to Iran he will be harmed including subjected to an honour killing by his wife’s family because he and his wife have separated. He also fears he will be arrested, detained, harassed and/or harmed by the Iranian authorities because he will be returning as a failed asylum seeker, Ahwazi Arab and Christian convert.

Refugee assessment

9. 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

10. 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.
11. The applicant has provided copies of his Iranian Birth Certificate, Compulsory Military Service Discharge Card, Full Driving Licence and National Identity Card. I accept he was born in Masjedsoleiman (Masjed Soleyman) in Khuzestan Province in Iran, and an Iranian national. I am satisfied Iran is the receiving country for the purpose of this assessment.
12. In the protection visa statement, the applicant claimed that he feared he will be harmed by the Iranian authorities because he is an “Ahwazi Arab”. He stated that as an Arab, in the past when living in Iran, he was discriminated against and treated badly by the Persian community.
13. The applicant claimed, as an Arab, he had difficulties finding ongoing fulltime employment. He stated in Iran it was common for a job to be passed down from father to son, however when his father retired from his job with [Company 1], he was denied the opportunity to take this role. He believes there were many reasons why he was not able to but believes it was in part because of this Arab ethnicity.
14. At the protection visa interview, when the delegate asked the applicant whether he identified himself as an “Ahwazi Arab”, he stated that his tribe is considered a sub division of the Bakhtiari tribe and this is why he speaks fluent Farsi. He stated that when he was a child, his father got a job at [Company 1] and this led to his family moving from Masjed Soleyman to Ahwaz. He stated because he grew up in Ahwaz he became fluent in Arabic.
15. The applicant’s evidence that his first language is Farsi and his family are Shia Muslims is consistent with the information on the “Baktiari tribe” in the Encyclopaedia Iranica that

Bakhtiaris are Shi'ites and speak the Lori dialect of Persian. It further states that in Khuzestan Province, Bakhtiari tribes are concentrated primarily in the eastern part of the province in the cities of Andekah and Masjed Soleyman, where the applicant was born.

16. The Encyclopaedia Iranica, also reports that the Bakhtiari were nomadic pastoralists until the twentieth century, when some moved into either agriculture or industry. However, according to the Minorities at Risk Project, developed by the University of Maryland, those Bakhtiari who moved away from nomadic life have tended to become assimilated into the Iranian culture and are no longer considered Bakhtiaris by the general population.
17. The IAA submission did not seek to dispute the delegate's findings that the applicant is a Ahwazi Arab, and in light of the country information regarding the assimilation of Bakhtiaris into Iranian culture, the applicant's evidence that since the age of seven he has spent the majority of his life residing in areas in Ahwaz, in Khuzestan Province and his statements at his entry interview and in the protection visa application that his ethnic group is Arab, I am satisfied that the applicant considers and perceives himself to be of Arab, rather than Bakhtiari ethnicity.
18. I accept that in the past the applicant had difficulties obtaining ongoing fulltime employment in Iran. I accept that after his father retired from [Company 1] he was not given the opportunity to fulfil his father's role. Country information published by ACCORD refers to reports from Amnesty and Human Rights Watch that Iranian Arabs are have alleged that the government systematically discriminates against them, particularly in relation to employment, housing, access to political office and the exercise of cultural civil and political rights.
19. However, I do not accept that he was not given the opportunity to fulfil his father's role because of his ethnicity. At the protection visa interview, when the applicant was asked why he believed he was not given the opportunity to replace his father, he stated "I couldn't get a government job [and] one reason was my drug addiction, there [also] could have been so many reasons... [also] because of my family's surname". He was asked how his father with the same surname was able to secure employment. He stated that his father had been working in the industry with English companies prior to the revolution and then the revolution and the war occurred and his father was offered the job at [Company 1] in [another country]. The applicant's father appears to have secured the job at [Company 1] because of his past work experience and in spite of his ethnicity, and in contrast to the applicant's various explanations; I consider he was not given the opportunity to fulfil his father's role because he was simply not qualified to.
20. As noted, DFAT and ACCORD have in the past reported that there is a high level of societal discrimination against Arabs and that this can lead to unfair day-to-day treatment, such as in employment and access to housing and services. It was assessed that such discrimination was usually a result of patronage, nepotism and favouritism reflecting social attitudes rather than official or state-directed policies. DFAT has also reported that the Arab community had long expressed concerns about economic marginalisation, and discrimination in education, employment, politics, and culture and that Arab community representatives' had complained that Iranian Arabs are systematically excluded from employment in agricultural, ship-building, manufacturing, and petrochemical industries, industries and from opportunities to work in local government. Overall, DFAT assesses that members of ethnic minority groups, such as Arabs faced a moderate risk of official and societal discrimination, and this may take the form of denial of access to employment and housing, but is unlikely in most cases to include violence on the grounds of ethnicity alone.

21. The country information before me suggests that it is members of minorities who speak out against violations of political, cultural and linguistic rights face arbitrary arrest, torture and other ill-treatment. Treatment of Arabs by the state can be unpredictable, and according to the prevailing political environment, they may unexpectedly face increased adverse attention. DFAT's view is that most Iranian Arabs do not come to the attention of authorities and are subject to only low levels of adverse attention, although the risk increases dramatically for Arabs who attempt to publicly assert their Arab identity or cultural or political rights. DFAT recently observed that Arabs of Khuzestan are more politically active than Arabs in other areas and subsequently face greater pressure from authorities with most of those arrested being prominent activists, although human rights organisations have expressed concern that many were targeted for their perceived political opinions, for peacefully expressing dissent, or for openly exhibiting their Arab identity and culture.
22. Apart from the applicant's claims regarding his difficulties in obtaining employment, the applicant has not claimed that either himself or his family have ever been targeted by the authorities on the basis of his ethnicity. There is also no evidence before me indicating that the applicant or his family have been involved in any activities asserting their Arab identity or cultural and political rights. I accept that in the past the applicant had difficulties obtaining employment at times, and that ethnicity may have been a factor on occasion, however the evidence indicates that the applicant has been employed in a number of different roles in the construction industry for a significant period of time including during his period of addiction. He has not claimed to have been discrimination in other areas such as education or housing. The applicant's family including his mother and a number of siblings remaining living in Iran. Considering the applicant's particular circumstances, while I accept the applicant may experience sporadic instances of discrimination, I am not satisfied this would be at a level that would threaten his capacity to subsist or otherwise amount to serious harm. Nor am I satisfied there is otherwise a real chance of him being physically harmed on account of his ethnicity on his return to Iran now or in the reasonably foreseeable future.
23. I accept for a significant period of the applicant's adult life he has been an addict. I accept arising from the applicant's drug and alcohol addictions and his immoral behaviour such as his hair being too long he was arrested on at least 20 occasions by the authorities and taken to court on at least 10 occasions over the applicant's [several] years of addiction. I accept while detained by the authorities he was harassed and physically assaulted. I accept when he did attend court he paid a fine to avoid being lashed. I accept that on one occasion in 1993, he was arrested by the police and taken to the police station for his use of illegal substances. I accept the next day he attended court and was sentenced to 50 lashes. I accept sometime after finishing military service, he was arrested by police for being drunk in public. I accept while detained by the police his movements were restricted and he lost control of his bladder, and on this basis physically assaulted by the police. I accept that in around 2007 or 2008, the applicant was buying drugs when he was physically assaulted by unknown men. The applicant's evidence regarding his various interactions with authorities arising from his addictions and immoral behaviour has been generally consistent throughout his interactions with the Department and plausible when considered against the DFAT report that the Iranian authorities take a strong stand towards the consumption of alcohol in public and the use of illicit drugs. Furthermore, at the protection visa interview, the applicant spoke at length about his past conduct and addictions and the affect that such circumstances had on his life, and I found his evidence to be spontaneous and convincing.
24. I accept that in around 2009/2010, the applicant commenced attending and participating in Narcotics Anonymous (NA) meetings and his involvement in this group led to his sobriety. I accept since his arrival in Australia he has continued to regularly attend and participate in

meetings and maintained his sobriety. I accept that in maintaining his sobriety he adheres to the "The Twelve Steps". The applicant's evidence regarding his path to sobriety and the description and impact that his adherence to the Twelve Steps has had on him was detailed and compelling.

25. The country information in the referred materials indicates that it has been NA which has thrived in Iran since the 1990, and I agree with the delegate that it is more plausible that the applicant attended NA's and not Alcoholic Anonymous (AA) meetings in Iran (as noted in his protection visa statement), albeit the distinction is insignificant given the information that both groups adhere to the "The Twelve Steps".
26. It was reported in the article "The crescent and the needle, the remarkable rise of NA in Iran" that after the United States, the most weekly meetings and the largest population in the NA fellowship was Iran. In 2003, Iran voted NA the top non-government organisation in the country and wanted to give the fellowship an award. In May of 2005, a branch office of NA World Services was opened in Iran. The Assistant Executive Director of the NA World Services Office is quoted as explaining how the NA in Iran so effectively deals with its greatest challenge, that of avoiding conflict with the politics of Islamic fundamentalism: "NA in Iran has done an amazing job of demonstrating that they are not a religious program. They are not in conflict with any of the precepts of Islam. They do a remarkable job of keeping politics out of NA and focusing on their primary purpose to carry the NA message of recovery to the addict who is still suffering. Even though they have grown faster than anyplace in the world, they continue to make an unprecedented effort to carry that message".
27. Given the widespread acceptance of NA in Iran, including by the authorities, and the efforts of the organisation to stress that the program is in no way based on religion, I do not accept the representative's contentions that if the applicant relapses into drug and alcohol addiction on return he will be unable to participate in NA/AA meetings and the 12 Step Program "as a religious practice". I am satisfied that if the applicant wishes to continue attending NA meetings and/or adhere to the NA ideals or the 12 Step program on return he would be able to do so.
28. In light of the information before me, I am not satisfied that the applicant's attendance at NA/AA meetings in Iran or Australia and/or his adherence to the ideals of NA/AA or the 12 Step program, he would come to the adverse attention of the authorities on return. I am not satisfied that the applicant faces a real chance of harm on these bases on his return to Iran now or in the reasonably foreseeable future. Furthermore, on the evidence before me, for at least eight years the applicant has adhered to his sobriety and has continued to attend meetings and adhere to the ideals of NA/AA and while I accept there is always a possibility that the applicant may relapse on return, I am satisfied that given the applicant's particular circumstances including his period of sobriety there is less than a remote chance he would relapse on return.
29. The applicant claimed that in or around early 2012, his relatives (his wife is his first cousin) came to his family home and wanted to drink alcohol inside. He told that if they want to drink that had to use different glasses and go into the courtyard. He did not want them drinking inside in case it tempted him to try alcohol and drugs again. His relatives became very upset and started to fight with him. They also smashed the windows of the family home, furniture and household items. At the protection visa interview, the applicant was asked whether he had reported the event involving his relative's to the police, he stated he didn't because they were family. The applicant did not mention this event at his entry interview; however I am prepared

to accept that it occurred given the consistency of his evidence between his protection visa statement and interview.

30. The event occurred at least a year prior to his departure and he has not made any claims of fearing harm on return on this basis and I am not satisfied on the information before me that he will suffer any repercussions on return because of this incident, or that he would face a real chance of any harm on this basis.
31. The applicant's last interactions with the authorities occurred at least 5 to 6 years prior to his departure. His evidence is that he left Iran legally using his passport in 2013. The applicant has not claimed that he departed from Iran via Tehran's international airport through bribery and corruption. I am satisfied the applicant left Iran legally using his own genuine passport. I do not accept the applicant was of interest to the authorities when he departed Iran.
32. At the protection visa interview, when the applicant was asked why he feared returning to Iran, he stated that had "something had happened here regarding my wife and [this won't] look nice back in Iran". He was asked to explain this issue further. He stated that his separation from his wife is not honourable. It was the second time he had separated from his wife and as his wife is his cousin it will create problems for him on return. His family will not accept their separation and because he has brought dishonour to the family they will possibly try to kill him on return. He was asked whether he could relocate to another area of Iran such as Tehran to avoid the issues with his family. He stated not at all.
33. In the protection visa statement, the applicant stated that he had separated from his wife; however he made no mention that he had brought dishonour to his family and/or feared he would be harm on return. The applicant was assisted by a legal practitioner and interpreter to prepare his statement. At the protection visa interview, the applicant stated that he had approximately six interviews which went for approximately six to seven hours with his representative. At the beginning of the protection visa interview, the applicant was specifically asked whether there was anything in his application that he wished to add or change in his protection visa application; he stated "no there is nothing". The new claims were not provided until the conclusion of the interview, after the applicant had a break to speak to his representative.
34. Having regard to all the evidence, including the absence of these claims from his protection visa statement, the level of assistance he was provided with to prepare this statement, the delay in the provision of the claims until the conclusion of the protection visa interview and the country information in the Finnish Immigration Service report that honour violence victims are mostly women, I am not satisfied the applicant has been a truthful witness regarding these aspects of his claims. I do not accept that arising from the applicant's separation from his wife he fears he will be harmed by his and/or his wife's family on return.
35. At the protection visa interview, the applicant expressed his distress at the thought of returning to Iran without his son. I accept that if the applicant returns to Iran he may return without his son and that this would be distressing for him however I am not satisfied that this situation is the result of any systematic or discriminatory conduct.
36. In the protection visa statement, the applicant claimed that he had converted to Christianity. He stated that after arriving [at Detention Centre 1], a Christian pastor spoke to him and his family and they started to attend church services on [at Detention Centre 1]. After they were released from immigration detention, he started attending AA meetings held in a church and this further drew him to Christianity. He stated after attending a church over a few years he

decided it was time to fully commit himself to Christianity and [in] August 2016 he was baptised at [Church 1]. A copy of a Certificate of Baptism from [Church 1] in Australia dated [August] 2016 was provided in support.

37. At the protection visa interview, he was asked when had he made his commitment to Christianity, he stated "when I was baptised". He stated that he made the decision freely and that no one can be forced to convert. He did it because of the love he felt inside. He wanted to live freely and make his own decisions. He was asked what being a Christian meant to him. He stated he went to church and attended bible study classes and he now believes and knows he is a Christian. He was introduced to the church in [an Australian city] by a pastor named J and by speaking and listening to J and attending classes he made the decision to get baptised. He was asked how he practised his Christian religion. He stated that he had in the past regularly attended church services on a Sunday, by listening and keeping quiet, silence, having good conduct, giving love, studying the publications and reading one paragraph of the bible a day.
38. I accept the applicant underwent a baptismal ceremony with [Church 1] in Australia [in] August 2016. I accept the applicant has attended various Christian church services and bible study sessions since arriving in Australia. I do not accept however on the evidence he has provided that he has any genuine or ongoing interest in Christianity.
39. The applicant was unable to demonstrate a basis understanding of the Christian faith. The applicant was asked to name some of the Books of the New Testament. He was unable to. He stated he had attended bible study sessions but that he had been emotional before the interview and not well. He stated he had forgotten and was a wreck. He stated that issues with his memory had impacted on his ability to answer this question. Interviews can be stressful situations but the applicant's response is nevertheless is difficult to reconcile with his claims that in the past he had read a paragraph of the bible every day, studied Christian publications and had regularly attended church services each Sunday for at least a year prior to his baptism. I am not satisfied that his inability to name a Book of the New Testament is commensurate with his claimed level of engagement with Christianity. There is also no information before me substantiating that at the time he was suffering from any mental health issues or poor memory and I am not satisfied that the inherent contradictions in these aspects of the applicant's evidence can be explained by any reference his emotional state, mental health and/or memory loss. I do not accept that the applicant has undertaken any significant exploration of Christianity.
40. Furthermore, the applicant's evidence was that he has not been to church, that being [Church 1] for some time. He stated that it was due to an invention order. He was asked if he had tried to attend another church. He stated that there is another church in [a suburb] that conducts services in Persian however that church was not of interest to him. He didn't want anyone to know his problems. While I accept that the intervention order would prevent him from attending [Church 1], I am not satisfied that had his interest in Christianity been genuine, his discomfiture would prevent him from attending another Christian church.
41. At the protection visa interview, the applicant was asked if he could provide any references regarding his engagement in the Christian community in Australia. He stated that the delegate could ring pastor, J however he stated that J was unhappy with him. Other than the Certificate of Baptism and the applicant's assertions regarding his attendance at various Christian church services and bible studies since his arrival in Australia, the applicant has not submitted any evidence to substantiate the nature and depth of his involvement with the Christianity. I do not accept that the applicant is an active member of a Christian church or Christian community in Australia.

42. Having regard to the information before me and which I have outlined above, I am not satisfied that the provision of the applicant's sur place claims was for any purpose otherwise than to strengthen his claims for protection. Therefore, in determining whether he has a well-founded fear of persecution, the applicant's conversion to Christianity in Australia must be disregarded: s.5J(6) of the Act. The applicant's evidence was that he didn't have any involvement with Christianity prior to his arrival in Australia and I am not satisfied on the evidence that I can consider that he will engage or have any interest in Christianity or Christian activities on return to Iran and I am not satisfied the applicant faces a real chance of harm on this basis.
43. The applicant claimed that he would face harm on return because he will be returning as a failed asylum seeker after his prolonged residence outside of Iran. The delegate has also considered whether the applicant may face harm on return because he will be returning from a western country. I have found that the applicant departed Iran legally using his own genuine passport. The applicant's evidence is that his passport was taken by the smuggler when he boarded the boat to Australia and I accept that explanation as plausible. I am satisfied that the applicant will be returning to Iran, on a temporary travel document (laissez passers), after his prolonged residence outside of Iran and after asylum application has failed.
44. The information before me indicates that failed asylum seekers are unlikely to be targeted by the Iranian authorities for the sole reason of having applied for asylum overseas. Hossein Abdy, the Head of the Passport and Visa Department at Iran's Ministry of Foreign Affairs, advised the Danish Refugee Council, Landinfo and the Danish Immigration Service during a November 2012 fact-finding mission that it was not a criminal offence in Iran for any Iranian to ask for asylum in another country. An unnamed Western diplomat and expert on Iran advised the Danish Refugee Council and Danish Immigration Service in 2013 that as long as a returnee has not been a member of an opposition political party or involved in political activities in other way, she or he would not face problems upon return to Iran.
45. In 2016, DFAT advised that the fact of claiming asylum whilst abroad was unlikely, in of itself, to be a trigger for mistreatment upon return. It was also reported that regardless of whether a returnee was travelling on a temporary travel document or their ordinary passport, credible sources have advised that returnees will generally only be questioned if they had done something to attract the specific attention of authorities and the vast majority of people questioned would be released after an hour or two. More recently, in 2018, DFAT reported that according to international observers, Iranian authorities pay little attention to failed asylum seekers on their return to Iran, with the authorities accepting that many will seek to live and work overseas for economic reasons. It was also commented that Iranian authorities have little interest in prosecuting failed asylum seekers for activities conducted outside Iran, including in relation to protection claims and it was those with an existing high profile who may face a higher risk of coming to official attention on return to Iran, particularly political activists. DFAT also noted that it not aware of any legislative or social barriers for returnees finding work or accommodation in Iran or any specific barriers to prevent return to a returnee's home region.
46. I have found that the applicant was not of interest to the authorities when he departed Iran. There is no information before me to indicate that he has been involved in any other activities since arriving in Australia that would have brought him to the attention of the Iranian authorities. There is also no independent information before me to suggest that absent any other concerns, Iranians who have spent a prolonged period of time outside of Iran are imputed with an adverse opinion or profile by the Iranian authorities and harmed on return. Having regard to all the evidence before me, I am not satisfied that he will be at risk of attracting the specific attention of the authorities and questioned should he return to Iran.

47. In light of the information before me, I am not satisfied the applicant faces a real chance of harm on return to Iran because he might be identified at the airport as a person who is travelling on a temporary travel document, his return after his prolonged residence outside of Iran and return from a western country, Australia or because he sought asylum, or sought asylum unsuccessfully. I do not accept that on any of these bases he would be considered to be imputed with an adverse opinion or profile by the Iranian authorities and harmed on return. I am not satisfied that the applicant faces a real chance of harm as a returning asylum seeker on a temporary travel document from Australia.

48. I am not satisfied the applicant has a well-founded fear of persecution.

Refugee: conclusion

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

Complementary protection assessment

50. 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

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

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

52. I have considered whether there is a real risk of significant harm as a result of the applicant's activities in Australia, that being that he underwent a baptismal ceremony with [Church 1] in and has attended various Christian church services and bible study sessions in Australia. As discussed above, I have found that the applicant has not undertaken any significant exploration of Christianity or that he is an active member of a Christian church or the Christian community in Australia and I do not accept that the applicant has any genuine or ongoing interest in Christianity. I have also found that the applicant was not of interest to the Iranian authorities when he left Iran. There is nothing before me to indicate that the Iranian authorities would be aware of his involvement in any Christian community or activities in Australia or such activities would be of concern to them or that he would be of adverse interest to them on this basis. I do not accept that he will become a person of interest to the Iranian authorities on the basis of his Christian activities in Australia, and I am not satisfied he will pursue the Christian faith on return to Iran. I am not satisfied he faces a real risk of significant harm on return to Iran on this basis.

53. I have accepted that the applicant may experience sporadic instances of discrimination as an Arab. Having regard to the country information set out above and the applicant's particular circumstances including that the applicant or his family have been involved in any activities asserting their Arab identity or cultural and political rights, and his employment in number of different roles in the construction industry for a significant period of time including during his period of addiction, I am not satisfied any such discriminatory treatment he may experience constitutes significant harm. It does not amount to the death penalty; an arbitrary deprivation of life or torture. It does not constitute pain or suffering that could be considered cruel or inhuman in nature, severe pain or suffering or extreme humiliation. I am not satisfied he faces a real risk of significant harm on return to Iran on this basis.
54. I have otherwise found the applicant does not face a real chance of harm on any or the bases claimed. As 'real risk' involves the same standard as 'real chance', I am also not satisfied that the applicant faces a real risk of significant harm on these bases.

Complementary protection: conclusion

55. 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) of the Act.

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.