



Australian Government

Immigration Assessment Authority

Decision and Reasons

Referred application

IRAN

IAA reference: IAA18/04825

Date and time of decision: 23 November 2018 13:38:00

M Simmons, 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 a 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 national of Kurdish ethnicity. On 23 March 2017 he lodged an application for a safe haven enterprise visa. A delegate of the Minister for Immigration and Border Protection refused to grant that visa on 24 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).
3. Three reference letters were provide to the IAA; one additional letter from the same reverend who submitted three letters to the delegate, one from a church minister and one from a friend and former co-parishioner of the applicant. These were all produced in the weeks after the delegate's decision. The issue of the genuineness of the applicant's religious conversion was squarely in issue before the delegate and the applicant was reminded on the need to provide all relevant information prior to the delegate making her decision. It is unclear why these additional letters of support were not sought earlier.
4. The reverend's letter offers little additional detail beyond that contained in the three letters he has already provided. It contains a number of anecdotes and analogies which are not directly relevant to the applicant or his application. It does not comment on any events or developments which postdate the delegate's decision, and sheds scarce additional detail on the basis for the reverend's opinions of the applicant's faith.
5. The minister who authored the second letter indicates that he only recently appointed to the role of minister applicant's church. Its purpose appears to be to account for the applicant's inability to name the pastor of his church by explaining that role was until recently vacant. The letter was written more than 5 weeks after the interview with the delegate where the applicant was questioned about the church pastor, and a week after the delegate made her decision.
6. The third letter from the applicant's friend notes that he has known the applicant since November 2015. The letter has been written in support of the applicant and again it's not apparent why it could not have been sought earlier or the views of this friend could not have been conveyed to the delegate prior to her decision. The friend notes that he stopped attending the same church as the applicant around 18 months ago as he formed his own Christian group, though he stays in contact with his previous congregation. Beyond stating they remain in contact, given this friend's evidence is that he and the applicant no longer belong to the same congregation, it is unclear on what basis he asserts the applicant regularly attends church, is serious about his faith and is a genuine believer. No exceptional circumstances seeking to justify my consideration of these letters have been advanced, nor am I satisfied that any otherwise arise. The requirements of s.473DD(a) are not met, I have not had regard to the three reference letters.
7. The applicant's legal representative provided written submissions to the IAA dated 17 May 2018. To the extent these submissions contain legal argument and discuss the findings of the delegate I consider that they do not constitute new information.

8. On 7 June 2018 the Australian Department of Foreign Affairs and Trade (DFAT) released an updated Country Information Report on Iran.¹ This report postdates the delegate's decision and contains more recent details on the situation for returnees and persons who leave Islam. It is a report prepared specifically for the purposes of protection determination in Australia and updates the report relied upon by the delegate. I am satisfied that there are exceptional circumstances which justify consideration of this information.

Applicant's claims for protection

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

- His family are Kurdish. He faced harassment and discrimination in Iran because of his ethnicity, including limited employment opportunities.
- He was born a Shia Muslim, his parents are strict practising Muslims.
- When he was a child his older brother was executed for being against the Iranian authorities. During the Iran/Iraq war he was suspected of being aligned to the Mojahedin-e Khalq.
- Whilst on leave during military service the applicant was caught eating in public during Ramadan. He was subject to 10 lashes as punishment.
- After he was lashed he became disillusioned with Islam and stopped practising. He was roughly [age] years old at the time.
- Whilst in Australia, he began attending church with some of his friends. He has since converted to Christianity and was baptised in April 2016.
- Were he to return to Iran he fears harm due to his conversion to Christianity, because he requested asylum in Australia, due to his ethnicity and for being perceived as opposed to the Iranian government.

Factual findings

Identity and background

10. The applicant's claims as to his identity and nationality have been consistent since his arrival in Australia. He had conducted interviews in Farsi and English and has submitted copies and translations of Iranian identity documents including his birth record and national identity card. I am satisfied that the applicant is ethnically Kurdish as claimed. He claims to originate from Ilam and that his family continue to reside there. Information before me indicates that there is a sizeable Kurdish population in that province.²
11. I accept the applicant's nationality and identity are as claimed and find Iran to be the receiving country for the purpose of the application.

Events in Iran

12. I am willing to accept the applicant's brother was executed during the Iran/Iraq war as claimed for being a suspected Mojahedin-e Khalq (MeK) member and perceived as opposed to the

¹ DFAT, "DFAT Country Information Report Iran", 7 June 2018, CIS7B839411226.

² DFAT, "DFAT Country Information Report Iran", 7 June 2018, CIS7B839411226.

Iranian regime. The MeK is a group committed to the overthrow of the Islamic Republic. Reports before me indicate that during the Iran/Iraq war many members were imprisoned and/or killed. In 1988, Ayatollah Khomeini issued a fatwa that mentioned apostasy as a legitimate reason to execute MeK members, leading to the execution of at least 3000 MEK prisoners.³ In this context it is plausible that someone accused of deserting his army post and suspected of being aligned to the MeK may have been executed, and I accept that applicant's claims regarding his brother.

13. It is plausible that both his brother's profile and his Kurdish ethnicity may have impacted on the applicant's ability to gain some employment as claimed. However, his evidence was that he was able attend school, perform military service and obtain various jobs while residing in Iran. It is not apparent that he or his family were ever denied access to basic services or denied the capacity to subsist, or that any of his relatives who remain in Iran are facing such problems.
14. Given the applicant's evidence that he and his siblings were not devout in their religious practise, I am also willing to accept that the applicant was caught eating during Ramadan and subject to lashes. Iran's Penal Code provide for corporal punishment for several offences including religious based charges.⁴ This incident occurred during the applicant's compulsory military service; his evidence was that he was permitted to complete that service in 2005. That the applicant was able to continue residing in Iran without further incident for roughly eight years after receiving this punishment indicates he was not of ongoing interest because of this event.
15. The statement accompanying his visa application does not suggest a particular event motivated his 2013 departure from Iran. The delegate directly questioned the applicant about why he left Iran when he did, to which he responded it was many things including discrimination, ethics, lack of faith and pressure. I appreciate that there may be a number of factors which may contribute to a decision to relocate, however the applicant's vague response causes me to doubt the extent to which a fear of serious harm caused him to depart Iran when he did. He departed Iran lawfully via a major international airport using an Iranian passport issued in his name. There is no indication that in doing so he took any measures to avoid coming to the attention of the authorities. This suggests he did not consider himself to be of adverse interest to the Iranian authorities when he passed through the airport. Furthermore, there is no suggestion since his departure from Iran that any of his family members have received any adverse attention for the authorities. On the evidence before me I am satisfied the applicant was not of adverse interest to the Iranian authorities for any reason at that time of his departure.

Religious beliefs

16. The applicant submitted a certificate indicating he was baptised [in] April 2016. The baptism was performed by the same reverend who provided three letters of support. The first letter, dated [in] November 2016, states that he baptised the applicant "in September this year". With one exception, the second letter dated [in] March 2018 is identical to the first letter, the difference being that the second letter states that the baptism occurred in April 2016. No explanation accounting for this discrepancy has been provided.
17. At interview the delegate highlighted that the first and second letters were mostly identical. She also noted that had the reverend been observing of the applicant's religious journey as a

³ DFAT,"DFAT Country Information Report Iran", 7 June 2018, CIS7B839411226.

⁴ DFAT,"DFAT Country Information Report Iran", 7 June 2018, CIS7B839411226.

regular attendee at bible studies and church services, she would expect some comment about the development of the applicant's understanding and development as a Christian during the period between the two letters. The applicant did not respond to these concerns either in submissions to the delegate or the IAA.

18. I have some concerns with the reverend's letters. Part of the letter does not appear to be particular to the applicant. For example the reverend provides an account of the religious instruction he has provided to various Iranians interested in Christianity, noting in October 2014 the group became so large it outgrew his house and so he decided to begin a church for them. He notes the applicant began attending a year previously (which would be November 2015 on the basis of the first letter), that he has been a regular attendee of the church, that he completed a six week course on Christian beliefs and has been baptised - although varying dates are given for this event - and that since then he has spoken of the changes Jesus is making in his life. The letters provide no other real detail about the applicant's connection to the church but concludes that it is the author's belief that the applicant has come sincerely to the Christian faith. The reverend also indicates that he asked the applicant why he left Iran and recounts events which the applicant seemingly reported to him.
19. Although the first and second letters from the reverend refer to the applicant completing a six week course, they make no reference to him attending bible study. The applicant's evidence at the March 2018 interview was the he had attended bible studies for seven to eight months before informing the reverend he would like to be baptised, which appears to have occurred in either April or September 2016. I am concerned that if the applicant was attending bible studies at the reverend's house this was not mentioned in the first two letters he wrote. The applicant also indicated that at the time of the interview he was attending Sunday services at church and bible studies of a Friday at the reverend's house. This attendance was affirmed by the third letter from the reverend dated [in] March 2018. It is also notable that despite the first and second letter being produced many months apart, there is no comment on the applicant's religious development during that period in the opinion of the reverend.
20. In the third letter the reverend indicates that he encouraged the applicant and other Iranians to come before church to study the Bible with another leader in the church who was proficient in their Persian language, Farsi. I note that in previous letter it is stated that the reverend asked an Iranian friend to help translate the bible studies sessions and he did not suggest that the applicant was studying with another leader. The reverend indicates that after some time the applicant approached him about pursuing baptism. He states that his friend, who appears to be the Iranian church leader, had already expressed the view that the applicant was a sincere believer of the Christian faith and that he then satisfied himself that the applicant was a sincere believer through a personal interview.
21. The applicant has provided little detail about what initially spurred his interest in Christianity. In his visa application he states that he first went to church with some friends because they were all new arrivals and the church supported asylum seekers by giving them items they need. At the interview with the delegate he stated that before 2016 he went to a church with some of his friends who were already attending.
22. The applicant was requested by the delegate on various occasions to provide examples of Biblical verses or parables that resonated with him. While he was able to recite some biblical teachings, he struggled to explain why they were significant to him or the messages that he took away from them. He offered some comparisons between Christianity and Islam, however these were brief and lacking in detail. For example, the applicant stated that Christianity has no force or bloodshed unlike Islam, and that it is a religion of love and kindness.

23. His responses did not evidence a personal connection with the theology of the faith he claims to have been interested in for around three years. While I appreciate religious beliefs are personal and subjective, the brevity and generalised nature of the applicant's responses support a conclusion that he was not conveying his own understanding of a faith which he sincerely follows. I do not consider the applicant demonstrated a level of understanding of Christianity commensurate with someone who claims to have been regularly attending church since at least early 2016, or to have been attending bible studies for seven or eight months prior to his baptism as claimed.
24. I can accept that through his dealings with the applicant over time the reverend has formed a view that the applicant has sincerely adopted the Christian faith. However, having regard to the concerns I have identified with the reverend's letters and weighing up the applicant's own evidence on his religious beliefs, cumulatively I am not satisfied of the sincerity of the applicant's beliefs. I do not accept that the applicant is a genuine follower of Christianity, nor am I satisfied that he would seek to practise the Christian faith in Iran should he return there in the reasonably foreseeable future.
25. The applicant indicated that while in Iran his parents were devout in their practise of Islam, he and his siblings were not. He stated he did not pray regularly and his parents never forced him to do so. His evidence is that he has consistently held a belief in God, however after being lashed for eating in public during Ramadan, which I accept occurred, he became disillusioned with Islam. In the reverend's letter dated [in] March 2018 it is asserted that the applicant had ceased believing in Islam long before leaving Iran. However, I note that after arriving in Australia, a number of years after he was lashed, the applicant gave his religion as Shia.
26. I accept that the applicant was not devout in his practise of the Islamic faith and that he became disillusioned after being lashed. However given my doubts in relation to other claims concerning the applicant's religious beliefs, I am not satisfied that the applicant has in fact renounced Islam as claimed. There is evidence before me that the applicant has been involved in some Christian activities and at the interview with the delegate he discussed aspects of Islam that he did not like. While I do not accept he has abandoned Islam, I am satisfied that he is not strictly adherent to that faith and that he was not devout in his practise while in Iran.

Returning asylum seeker

27. I accept that were the applicant to return to Iran he would do so after having requested asylum in Australia. Country information indicates that Iranian overseas missions will not issue travel documents to Iranian nationals whom a foreign government wishes to return involuntarily to Iran. The Australian government has reached an agreement with the Iranian authorities to facilitate the return of Iranians who arrived in Australia after 19 March 2018.⁵ As the applicant arrived in Australia in 2013 those arrangements do not apply to him. I am not satisfied the applicant will be involuntarily returned to Iran from Australia and any return to that country would be on a voluntary basis.

Refugee assessment

28. 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

⁵ DFAT, "DFAT Country Information Report Iran", 7 June 2018, CIS7B839411226.

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

29. 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.

Kurdish, previous adverse attention

30. International sources reported to DFAT that the Iranian government uses security, media and other laws to arrest and prosecute Kurds for exercising freedom of expression and association.⁶ Kurds who seek to assert cultural or political rights might face adverse attention from Iranian authorities. While most Kurds either do not come to the attention of authorities or are subject to only low levels of adverse attention by the state, those that attempt to publicly assert cultural or political rights have an increased risk of coming to the attention of the state.⁷ The Austrian Centre for Country of Origin & Asylum Research and Documentation collated various sources in its September 2015 report noticing instances of violence and arrest against Kurdish political activists.⁸

31. The applicant’s evidence to the delegate was that no members of his family are involved in any Kurdish political or separatist activities, and there is no suggestion that they have sought to publically assert Kurdish cultural rights. It was claimed his brother was suspected of being involved in the MeK, and accused of being opposed to the authorities, but he did not indicate that his brother was actually involved in separatist activities. It is not apparent that any of his family members have been subject of targeted harm for any reason, including their ethnicity or any imputed political profile. This is notwithstanding that the brother’s profile in light of his execution and that the applicant was subject to lashings for a religious crime.

32. DFAT reported in 2016 that Kurds face a high level of societal discrimination, in the form of limitations on access to employment, housing and services and I accept that the applicant may

⁶ DFAT, “DFAT Country Information Report Iran”, 7 June 2018, CIS7B839411226.

⁷ United States Department of State, “Iran – Country Reports on Human Rights Practices 2016”, 3 March 2017, OGD95BE926964.

⁸ ACCORD, “Iran: Freedom of Religion; Treatment of Religious and Ethnic Minorities: COI Compilation”, 1 September 2015, CISEC96CF13622.

face such treatment upon return.⁹ More recently DFAT noted that ethnic minorities in Iran face political and socioeconomic discrimination, including in relation to economic aid, business licenses, university admissions, job opportunities, permission to publish books, and housing and land rights.¹⁰

33. There is no evidence before me to indicate he would not be able to access housing or essential services were he to return to Iran, noting it is not apparent he was ever denied such access while residing in that country. The applicant's immediate family continues to reside in Iran. His siblings are mostly self-employed, though some are employed. The applicant has also demonstrated an ability to secure employment in Iran and Australia. While I accept that he may face instances of discrimination in the future in obtaining employment, I am not satisfied his capacity to subsist will be threatened or that such discrimination may otherwise give rise to significant harm.
34. I am not satisfied that were the applicant to return to Iran, he applicant faces a real chance of treatment amounting to serious harm for reasons of his ethnicity. This is even when considering his family's profile due to his brother's execution and that he was previously lashed for non-compliance with religious laws.

Religion

35. I accept the applicant attended church and underwent a baptism ceremony in Australia. I have not accepted that he is a sincere follower of the Christian faith. I am satisfied that his church attendance was not solely for the purpose of enhancing his claim to be a refugee, as he indicated we went because of the support they offered to new arrivals and to socialise with friends. However, I consider that his baptism was undertaken solely to strengthen his refugee claims. The applicant has not presented a plausible alternate explanation for this conduct and I am not satisfied one arises on the material before me. I have disregarded this conduct from my refugee assessment in accordance with s.5J(6).
36. It has been submitted that the applicant would be perceived an apostate in Iran. The applicant has not explained how the Iranian authorities may come to know of his church attendance in Australia, I am not satisfied on the information before me that there is a real chance of that occurring. Country information before me does not support a conclusion that a person may be of interest in Iran due to historical overseas Christian activities. There are reports before me suggesting that converts to Christianity who engage in public worship or practise, or who seek to proselytise, may come to the adverse interest of the Iranian authorities.¹¹ As I have found the applicant is not sincerely adherent to Christianity, I do not accept he would seek or wish to engage in any Christian worship or practise were he to return to Iran, or that he would seek to proselytise. As such he would not need to modify his behaviour in any way to avoid a chance of harm.
37. I have accepted that the applicant was lashed more than 10 year ago for eating during Ramadan. After receiving this punishment there is no indication that he was of any ongoing interest because of this incident, and I am satisfied he would not be targeted for harm because of this past misdemeanour were he to return to Iran. Otherwise, there is no suggestion that the applicant or his family ever came to the adverse attention of the Iranian authorities

⁹ DFAT, "DFAT Country Information Report Iran April 2016", 21 April 2016, CIS38A8012677.

¹⁰ DFAT, "DFAT Country Information Report Iran", 7 June 2018, CIS7B839411226.

¹¹ DFAT, "DFAT Country Information Report Iran", 7 June 2018, CIS7B839411226; ACCORD, "Iran: Freedom of Religion; Treatment of Religious and Ethnic Minorities: COI Compilation", 1 September 2015, CISEC96CF13622; United States Department of State, "Iran – Country Reports on Human Rights Practices 2016", 3 March 2017, OGD95BE926964.

because of their religious practise or attitudes, noting his siblings who are not strictly adherent to Islam continue to reside in his home area. This is generally consistent with country information, which indicates that non-practising Muslims form a large part of the population of Iran's cities, lead normal daily lives and are rarely pressured to observe Muslim precepts.¹² DFAT considers it is unlikely that the government would monitor religious observance such as whether a person regularly attends mosque or participates in religious occasions. As such it would be unlikely for it to become known that a person was no longer faithful to Shia Islam.¹³ There are some reports that disclosure of non-practising status may impact on a person's employment prospects including if they are seeking to obtain employment with a government agency.¹⁴ I note that the applicant successfully secured employment while in Iran and there is no indication that any of his relatives have faced any difficulty in this regard on religious grounds. There is no indication that he experienced any harm for failure to observe the Muslim faith while in Iran and I am not satisfied there is a real chance he would experience any harm for this reason in the foreseeable future were he to return to that country.

Returning asylum seeker

38. The material before me does not suggest a real chance of harm should the authorities come to know the applicant previously sought asylum in a western country or spent time in a western country. The Danish Refugee Council and Danish Immigration Service have previously assessed that provided a returnee has not been member of an oppositional political party or involved in political activities abroad in other ways, she or he would not face problems upon return to Iran.¹⁵ These views are consistent with DFAT's assessment that failed asylum seekers are unlikely to be targeted by the Iranian authorities for the sole reason of having applied for asylum overseas.¹⁶ Millions of Iranians travel into and out of Iran each year without difficulty, including the large Iranian diaspora residing in North America and Europe.¹⁷
39. DFAT has reported over time that Iranian authorities have little interest in prosecuting failed asylum seekers for activities conducted outside Iran, including in relation to protection claims.¹⁸ Reports indicate that persons who have engaged in anti-regime activism overseas, or who have a known anti-regime profile in Iran, may be subject to arbitrary arrest, detention and mistreatment upon return to Iran.¹⁹ However there is no indication the applicant has become politically engaged while in Australia and I am not satisfied he has otherwise engaged in any conduct that would be of interest to the Iranian authorities while in Australia. This is not withstanding his Kurdish ethnicity, his church activities in Australia, and the previous historical occasions when he and his brother attracted adverse interest from the Iranian authorities.

¹² ACCORD, "Iran: Freedom of Religion; Treatment of Religious and Ethnic Minorities: COI Compilation", 1 September 2015, CISEC96CF13622.

¹³ DFAT, "DFAT Country Information Report Iran", 7 June 2018, CIS7B839411226.

¹⁴ ACCORD, "Iran: Freedom of Religion; Treatment of Religious and Ethnic Minorities: COI Compilation", 1 September 2015, CISEC96CF13622.

¹⁵ Danish Refugee Council and Danish Immigration Service, "Iranian Kurds: On Conditions for Iranian Kurdish Parties in Iran and KRI, Activities in the Kurdish Area of Iran, Conditions in Border Area and Situation of Returnees from KRI to Iran", September 2013, CIS26587.

¹⁶ DFAT, "DFAT Country Information Report Iran", 7 June 2018, CIS7B839411226; UK Home Office, "Country Information and Guidance – Iran: Illegal Exit", 20 July 2016, OGD7C848D28.

¹⁷ 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", 1 February 2013, CIS25114; DFAT, "DFAT Country Information Report Iran", 7 June 2018, CIS7B839411226.

¹⁸ DFAT, "DFAT Country Information Report Iran April 2016", 21 April 2016, CIS38A8012677; DFAT, "DFAT Country Information Report Iran", 7 June 2018, CIS7B839411226.

¹⁹ Amnesty International, "We are ordered to crush you': Expanding Repression of Dissent in Iran", 28 February 2012, CIS22610.

40. I am not satisfied that there is a real chance of serious harm to the applicant were he to return to Iran in the foreseeable future.

Refugee: conclusion

41. 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

42. 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

43. 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.

44. The requirement for there to be a "real risk" of significant harm applies the same standard as the "real chance" test.²⁰ I have concluded for the reasons set out that the applicant does not face a real chance of any harm because he is not strictly adherent to the Islamic faith, because he was previously lashed or because his brother was executed, or for being a returning asylum seeker and having spent time in the west. As such, I am also satisfied that there is not a real risk that he would face harm, including significant harm, for any of these reasons were he to return to Iran.

45. I accept that owing to his Kurdish ethnicity the applicant may face discriminatory treatment were he to return to Iran, including in relation to employment opportunities. I am not satisfied that because of any such treatment he may be denied access to basic services or otherwise unable to meet his essential needs. He did not indicate that while resided in Iran he had essential needs that were unmet due to discriminatory treatment. I am not satisfied on the information before that such treatment constitutes significant harm as defined in s.36(2A). Accordingly I am not satisfied that there is a real risk of significant harm to him due to his Kurdish ethnicity.

46. I have considered the applicant's conduct in Australia, including his attendance at church and that he underwent a baptism ceremony, when considering whether there is a real risk he may experience significant harm. Given I do not accept the applicant is a sincere follower of Christianity, I do not accept that he would seek to practise the Christian faith were he to return to Iran and I do not accept he would engage in any Christian related activities. I am not

²⁰ *MIAC v SZQRB* (2013) 210 FCR 505.

satisfied he faces a real risk of significant harm in Iran for reasons of religion, notwithstanding his participation in a baptism ceremony in Australia. In light of the country information before me, I am not satisfied that church attendance in Australia and participation in a baptism ceremony would constitute conduct that would be of interest to the Iranian authorities. Nor is it apparent how the authorities may come to know of such conduct and I am not satisfied that there is a real risk of this occurring.

47. I do not accept that there is a real risk of significant harm to the applicant for any reason were he to be removed to Iran.

Complementary protection: conclusion

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

Decision

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

Applicable law

Migration Act 1958

5 (1) Interpretation

In this Act, unless the contrary intention appears:

...

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

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

...

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

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

...

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

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

...

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

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

...

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

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

...

5H Meaning of refugee

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

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

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

...

5J Meaning of well-founded fear of persecution

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

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

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

5K Membership of a particular social group consisting of family

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

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

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

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

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

5L Membership of a particular social group other than family

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

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

5LA Effective protection measures

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

...

36 Protection visas – criteria provided for by this Act

...

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

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

...

Protection obligations

- (3) Australia is taken not to have protection obligations in respect of a non-citizen who has not taken all possible steps to avail himself or herself of a right to enter and reside in, whether temporarily or permanently and however that right arose or is expressed, any country apart from Australia, including countries of which the non-citizen is a national.
- (4) However, subsection (3) does not apply in relation to a country in respect of which:
- (a) the non-citizen has a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion; or
 - (b) the Minister has substantial grounds for believing that, as a necessary and foreseeable consequence of the non-citizen availing himself or herself of a right mentioned in subsection (3), there would be a real risk that the non-citizen will suffer significant harm in relation to the country.
- (5) Subsection (3) does not apply in relation to a country if the non-citizen has a well-founded fear that:
- (a) the country will return the non-citizen to another country; and
 - (b) the non-citizen will be persecuted in that other country for reasons of race, religion, nationality, membership of a particular social group or political opinion.
- (5A) Also, subsection (3) does not apply in relation to a country if:
- (a) the non-citizen has a well-founded fear that the country will return the non-citizen to another country; and
 - (b) the Minister has substantial grounds for believing that, as a necessary and foreseeable consequence of the non-citizen availing himself or herself of a right mentioned in subsection (3), there would be a real risk that the non-citizen will suffer significant harm in relation to the other country.

Determining nationality

- (6) For the purposes of subsection (3), the question of whether a non-citizen is a national of a particular country must be determined solely by reference to the law of that country.
- (7) Subsection (6) does not, by implication, affect the interpretation of any other provision of this Act.