



**Australian Government**  

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**Immigration Assessment Authority**

**Decision and Reasons**

**Referred application**

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IRAN

IAA reference: IAA20/08810

Date and time of decision: 21 January 2021 10:25:00

J Jennings, Reviewer

**Decision**

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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

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### Visa application

1. The referred applicant (the applicant) claims to be a citizen of Iran. He applied for a protection visa on 27 September 201. A delegate of the Minister for Immigration refused to grant the visa on 14 December 2020.

### 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. On 15 January 2021 the applicant contacted the IAA by telephone in a conference call with the representative who assisted him at the protection visa interview in September 2020. The applicant stated he had not received any correspondence from the IAA; he was advised that on 17 December 2020 the IAA sent him a letter acknowledging the referral of his case. This correspondence was sent by both email and post to addresses he confirmed were correct. A further copy was sent to the applicant by email on the same day.
4. The representative asked for the applicant's IAA reference number so that he could send a submission and appointment of representative form. He was advised that as the case was at that stage at day 29 a decision could be made at any time and he advised he understood and would act quickly. To date no submission or appointment of representative form has been received.

### Applicant's claims for protection

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5. The applicant's claims can be summarised as follows:
  - The applicant is an Iranian citizen. He was born and grew up in Tehran, Iran.
  - In 2004 he commenced military service. He gained his superior's trust and was tasked with driving a vehicle to a place where he was instructed to leave it and return some hours later and then drive the vehicle back to Tehran. He came to discover he was delivering alcohol.
  - In 2005 he had a car accident when delivering alcohol. The alcohol was detected and he was arrested and detained. He was subsequently sentenced and imprisoned. The applicant has provided a copy of a court document in support of this claim. He was released in December 2008 and discharged from his military service.
  - After his discharge he applied for a passport.
  - After his military service he agreed to be involved in further alcohol smuggling ventures.
  - The applicant felt his life had been ruined by those who involved him in alcohol smuggling and he wrote curses about them and a senior military officer on a wall at the garrison.
  - About a month later some men came and took him into detention. He was detained in an unofficial place of detention managed by the Islamic Revolutionary Guards (IRGC). He was regularly bashed and tortured while detained.

- The applicant was taken on occasions to hospital for treatment. On these occasions he was able to have contact with his family. On one occasion he engaged in a ruse to fake an exit permit and leave the hospital and escape custody.
  - The applicant made arrangements to depart Iran and departed the same day he escaped from custody. He was initially deported back to Iran from [Country]. At the airport in Tehran he bribed an official and was able to board another flight to [Country] and from there came to Australia.
  - The applicant's details were released in the data breach in February 2014. Around this time his father stopped taking his telephone calls.
  - The applicant was born into a Muslim family but when in detention he began to dislike Islam.
  - The applicant has converted to Christianity in Australia and was baptised in March 2018. He has provided his baptism certificate and photographs of his baptism. He fears harm in Iran for reason of his conversion.
  - The applicant fears should he return to Iran he would face further imprisonment and torture. He also fears harm as a result of the data breach.
6. In January 2019 the applicant was charged with offences in Australia. At the protection visa interview he advised the incident was an accident and that he was sorry for it. The delegate stated the applicant was fined, required to pay compensation, make a donation to the court and write letters of apology. The applicant advised he had completed these requirements and that the matter was finalised. The applicant has not made any protection claims in regard to this matter nor is it apparent any arise or that this has any relevance to his protection claims and I have not considered this matter further.

## **Factual findings**

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### *Application*

7. The applicant completed his protection visa application and accompanying statement of claims in September 2017 with the assistance of his then representative who was a legal practitioner. The forms state the application was completed with the assistance of a Farsi interpreter and that the applicant's statement and other documents were read back to him in his own language.
8. A protection visa interview was conducted in July 2020. The interview was suspended by the delegate because of interpreting issues. A further interview was scheduled in September 2020 and prior to that interview the applicant, with the assistance of another representative appointed on 1 August 2020, lodged a further statement providing clarification, an Independent Report on interpretation issues in the July 2020 interview, and other documents. At the September 2020 interview the representative made a number of comments as to the accuracy of the protection visa application information and cautioned the delegate against making findings based on this information, particularly in regard to credibility, without giving the applicant the opportunity to correct information. The delegate advised this was one of the purposes of the further interview.
9. At the September 2020 protection visa interview it was stated the applicant was rushed when completing his application and that some of the information included in the application and statement was not correct. I note the Department of Home Affairs wrote to the applicant on 8

September 2017 and 21 September 2017 giving him notice to lodge his visa application by 1 October 2017. The application was lodged on 27 September 2017. But it is not apparent why this application would have been rushed as claimed, noting the Form 956 appointing that representative is dated 19 September 2016, some 12 months earlier and after the applicant received the first invitation to apply dated 2 August 2016. This was followed up with a further invitation to apply dated 9 June 2017.

10. The applicant submitted a further statement in September 2020 seeking to clarify/correct information previously provided, particularly in regard to dates. I accept that accurate recall from memory of dates over time may be difficult for applicants and I take into account the applicant's claim that he lost some documents in a fire when he was [in detention]. I have concerns as to the contention the application was rushed however I have had regard to his later clarifications.

#### *Identity*

11. The applicant has consistently claimed to be an Iranian citizen. The applicant has provided documents in support of his claimed identity and nationality. I accept the applicant's identity and nationality as stated and that Iran is the receiving country for the purpose of this review.

#### *Experience in Iran*

12. The applicant claimed to have commenced military service in 2004, had the accident in September 2005 after which he was arrested and then convicted and imprisoned until October 2008, then returned to his military service which he completed in March 2009.
13. The applicant has provided a copy of his military conscription card which stated he served from 22 June 2004 to 22 March 2009. This time frame is a period of 57 months. The card advised his "actual duration of service" was 27 months. The card does not indicate how the applicant was occupied in the other 30 months of this period.
14. I have considered if the claimed prison term may account for the other 30 months between 22 June 2004 to 22 March 2009 that was not spent in "actual" military service. But this claimed period of imprisonment stated to be from September 2005 to October 2008 amounts to 37 months and I am concerned that it is not possible for the applicant to have completed 27 months military service and to have served a 37 month prison sentence between the period 22 June 2004 to 22 March 2009. There is an overlap of seven months, and I do not accept the military would count any period of imprisonment in the stated 27 months of military service.
15. I note the applicant's concern as to his accurate recall of dates but these dates have been given by him in his September 2020 statement which was provided expressly to clarify and correct information given earlier and after his representative "made it clear to [him] that it is crucial .... [to provide] true and precise evidence". That his account of his claimed period of imprisonment is discordant with the information on the military card he has provided is of significant concern.
16. The military card records the applicant's rank as Second Lieutenant at the time of the completion of his service and I am surprised he was recorded with an officer rank in the light of the claimed conviction and three year sentence during the tenure of his service. This adds to my concerns as to the claimed conviction and imprisonment.
17. Additionally, I am concerned that the claimed imprisonment for the alcohol possession differs from the account given by the applicant when he was interviewed by an immigration officer at

an Arrival Entry interview conducted on 10 January 2013. At that interview the applicant's account was that three or four years earlier he had been arrested for being in possession of alcohol and was told if he was caught a second time they would act on the court order of five years. There is a significant difference in these accounts. The matter of discrepancies with the Arrival Entry interview account was put to the applicant by the delegate and in response he stated that at the time of that interview he was fearful, did not have any confidence in the process and did not know what to say. I have difficulty with this explanation: it is not apparent why he would have disclosed this matter at the Arrival Entry interview and not also disclosed the prison sentence he is now claiming he served. He disclosed the claimed conviction and court order of five years, despite the claim of being fearful and unsure of the process or what to say, but specifically stated he was told if he was caught a second time they would act on the court order. I do not accept that he would not have disclosed the term of imprisonment at the Arrival Entry interview, if true.

18. The Court Verdict document refers to the sentence involving a period of imprisonment for three years and the additional punishment of 39 lashes, reduced from 50 lashes. He was asked at the July 2020 protection visa interview if he was mistreated during this first period of imprisonment/detention or if he sustained any injuries and he stated he did not; he did not recount receiving any lashes. I am surprised the applicant did not refer to the sentence of lashes at either of the protection visa interviews; while he did refer to flogging in the September 2017 statement of claims this is the statement which is stated to contain inaccuracies. That he did not recount the significant punishment of lashes at either of the protection visa interviews is of concern.
19. The significant variation in the Arrival Entry interview account and the applicant's later account of the first interaction with Iranian officials over the possession/smuggling of alcohol is of real concern and I do not accept that fear or not being sure what to say explains the omission of the claimed imprisonment at that interview if he was imprisoned as claimed. This considered together with my other concerns brings the veracity of the applicant's claims into doubt. I note the court document, which from the copy provided is a simple text document with no apparent security features beyond a wet stamp, but taking into account the advice that paper-based documents such as the court document provided are relatively easy to obtain through fraudulent means this document does not overcome my concerns.<sup>1</sup>
20. I do not accept the applicant smuggled alcohol or was arrested in possession of alcohol and was convicted and sentenced to prison, or lashes, or other punishment or that he was imprisoned for three years, or any period, as a result. I do not accept the applicant's claims.
21. The applicant claimed to have had a second interaction with the authorities and to have been detained in unofficial place of detention managed by the IRGC before escaping their custody and leaving Iran in 2012. The IRGC is the pre-eminent security and military agency in Iran and has the power to investigate cases and to arrest and detain individuals and maintains its own detention facilities.<sup>2</sup>
22. There is a significant variation in the timing of the second interaction with the authorities as given by the applicant in his application and that given in the September 2020 statement. In essence the claim is that the applicant wrote on the wall at the garrison and came to attention for doing so. He was then detained in an unofficial place of detention managed by the IRGC and beaten regularly and intermittently taken to hospital for treatment and then returned to

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<sup>1</sup> Department of Foreign Affairs and Trade (DFAT), "Country Information Report – Iran", 13 April 2020, 20200414083132

<sup>2</sup> *ibid*

the unofficial place of detention. The variations are that he was arrested in 2011 (protection visa application statement of claims) or April 2009 (September 2020 statement). At the September 2020 interview he stated he was detained for three years and four months before his escape from custody in November 2012, which accords more closely to the April 2009 date than the 2011 date.

23. I note this claim was not advanced at the Arrival Entry interview which was conducted in January 2013, only a few months after the claimed escape. I have already discussed the applicant's explanation for the omission of information at that interview and similar to my earlier finding and for the same reasons I do not accept he would have failed to mention this very substantial claim at that interview if true. Furthermore this does not explain why at the Arrival Entry interview he gave an account of his employment at [a] Company from 2009 to 2012, which conflicts with the detention claim.
24. Additionally, I find a number of aspects about his account of this detention and escape to be implausible or far-fetched:
- That he was held for more than three years indicates a high level of interest in the applicant by the authorities and he claimed when he attended hospital he was accompanied by an escort, yet he was allowed access to his family on the occasions he was receiving treatment in hospital thus allowing him to plan his escape with his family.
  - That he was able and allowed to wear civilian clothing while in hospital in the light of the claim he was of such significant interest he was held in an unofficial prison over an extended period of time and accompanied to hospital by escort, thus allowing him to escape prison while wearing a civilian shirt given to him by his family.
  - That he was able to access a blank exit permit document and complete this by forging a signature and then simply waking out of the hospital undetected, despite the claim he was of such a significant security concern he was accompanied by escort on his visits to hospital.
  - That he was given copies of medical reports relating to his treatment during his period as a detainee of the IRGC in an unofficial place of detention.
25. While these aspects discussed above are of concern I have particular concern as to the applicant's ability to be issued a passport at the time he claims he was held in a place of detention managed by the IRGC. The copy of the passport provided shows it was issued on 10 July 2012. The IRGC have the power to impose travel bans without recourse to the judiciary and it is difficult to accept they would allow someone who was of such interest he had been in their custody for three years to be issued a passport and allowed to leave the country.<sup>3</sup> Nor do I accept such a person would not have been detected on return to Iran as deportee from another country.
26. The applicant claims to have avoided detection from the authorities at the airport after return from [Country] by bribing an official to allow him to remain in the transit area and then arranging further travel back to [Country] within a few hours. Iran maintains sophisticated security measures at the international airports and noting the applicant would have been returning as deported person it is difficult to accept he did not come to attention.<sup>4</sup> I have difficulty accepting that by chance he made contact with an official who accepted a bribe and

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<sup>3</sup> DFAT, "Country Information Report – Iran", 13 April 2020, 20200414083132

<sup>4</sup> Danish Refugee Council, Landinfo (Norway) 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", February 2013, CIS25114

then also obtained his boarding pass and passed this to him. I find his account of his experience at the airport to be far-fetched and not in accord with the country information before me that advises of the strict security maintained at the international airports.

27. Furthermore I find his account that he applied for the passport in March 2009 but that it was not issued until July 2012 to be fanciful. Noting that passport applicants must attend in person when lodging their application I am concerned that the applicant has claimed he applied for the passport in 2009 in an attempt to reconcile the passport application with his claim he was held in custody from April 2009. I do not accept the authorities would take in excess of three years to issue a passport, particularly noting the need for current passport photographs presently stated to be photographs “taken within the last three months”.<sup>5</sup>
28. I accept that the Iranian authorities are sensitive to criticism of senior figures and that writing criticisms of a military commander could attract adverse attention. But I find it difficult to accept that such a matter would not have been taken to court and finalised to a conviction in over three years, particularly as it is claimed there were witnesses. I find aspects of the applicant’s claim to be implausible and considered overall he has not satisfied me that this is a genuine account and I am concerned he has fabricated these claims in an attempt to enhance his protection claims. I take into account the medical reports provided make reference to temporary detention and the Shapour Criminal Investigation Unit of Disciplinary Force, but I have already noted the ease with which documents without security features can be fabricated and I give these documents no weight. I do not accept the applicant wrote messages of abuse on a wall or that he was detained for this, or other reasons in 2009/2011, or that he was held in custody in an unofficial place of detention maintained by the IRCG, or that he was physically mistreated, or that he escaped from this custody, or that he paid bribes to facilitate his second departure from Iran after being deported from [Country]. I reject these claims.
29. I do not accept the applicant was of interest to the authorities in 2012 when he departed Iran. It follows that I do not accept the authorities have made any enquiries about him with his family or harassed them or that his father told him not to contact them around the time of the department’s data breach because of any concern about the Iranian authorities.

### *Religion*

30. In the protection visa application completed in September 2017 the applicant’s religion is stated to be Shia. The applicant claims to have first engaged with Christianity in late 2017 and declaring to be Shia in the protection visa application may not be incompatible with his claims overall. But when asked about this at the protection visa interview the applicant denied saying he was Shia at the time of completing the application but that he stated his parents were Shia. I find it difficult to accept that information that his parents were Shia would be misrepresented in the protection visa application as the applicant being Shia. Furthermore, the question in the protection visa application form is the applicant’s religion; there is no question about the religion of any family members.
31. The claim is that in late 2017 the applicant met an Iranian man who had converted to Christianity and that through this connection he began to engage with the religion. He stated this filled a vacuum he had been feeling. Through this man he met a pastor and began to talk to him about Christianity which made him feel peaceful. In March 2018 he was baptised.

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<sup>5</sup> DFAT, “Country Information Report – Iran”, 13 April 2020, 20200414083132

32. I have significant concerns as to what is seemingly a swift path to conversion to the Christian religion. I acknowledge that such a journey is a personal one but I am concerned that the applicant has taken this step within only a few months. I note he claims to have attended bible studies prior to his baptism although no supporting evidence of such has been provided. But although he did declare in the 2017 application that he could speak English he could not read it and I am concerned as to the level of understanding he could have obtained from such classes over only a few months, such that it lead him to take the significant step of baptism in March 2018.
33. The applicant claims that he began attending a Persian church in late 2019 because he prefers communicating in Farsi. However despite a claimed extended period of attendance at a Persian church the applicant's description at the September 2020 protection visa interview of his attachment to the Christian religion was somewhat limited; he described the religion as saving him and giving him peace and appreciating the beauty of forgiveness. The applicant was able to provide a coherent response to a question about any bible stories related to forgiveness.
34. I have concerns as to the claim the applicant is a genuine convert to the Christian religion. The High Court held that an applicant seeking to rely on conduct engaged in while in Australia, must satisfy the decision maker that the conduct was not engaged in for the sole purpose of strengthening their claim to be a refugee and places an onus on the applicant to show that their conduct was not for the sole purpose of strengthening their claim to be a refugee (that is, it was for purposes other than solely strengthening their refugee claim).<sup>6</sup> But the applicant has failed to so satisfy me. Considered overall, from the information before me and taking account of my finding that the applicant has been willing to fabricate claims regarding his experiences in Iran, I am not satisfied that the applicant has engaged in Christianity, including baptism, otherwise than for the purpose of strengthening his protection claims. I accept that coincidences may occur but I am concerned that the claimed engagement in Christianity largely coincides with the applicant's protection visa application and has not been motivated by a genuine attachment to the faith but rather to raise protection claims.
35. I have taken into account the stated regular attendance at services and the baptism certificate and photographs and his responses at interview but this does not negate my very serious concern that his involvement in the church and his conversion to Christianity has been contrived to strengthen his protection claims. I accept that the applicant has been baptised but I am not satisfied that he is a genuine adherent of the Christian faith.

## Refugee assessment

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36. 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.

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<sup>6</sup> High Court in *Minister for Immigration and Citizenship v SZJGV; Minister for Immigration and Citizenship v SZJXO*



## Well-founded fear of persecution

37. 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.
38. Under s.5J(6) of the Act, in determining whether a person has a well-founded fear of persecution, any conduct engaged in by the person in Australia must be disregarded unless I can be satisfied that the person engaged in the conduct otherwise than for the purpose of strengthening their claim to be a refugee. As already noted I am not satisfied that the applicant engaged in Christianity, including baptism, otherwise than for the purpose of strengthening his claims to be a refugee. I have therefore not considered that conduct in assessing whether he has a well-founded fear of persecution in Iran.
39. I accept that on return to Iran the applicant may not practise Islam. Muslims who renounce Islam are considered apostates but the indications are that those who come to adverse attention and convicted for apostasy are high profile critics of Shia Islam and Islamic scholars or clergy.<sup>7</sup> Notwithstanding the 2017 decision of the Supreme Court to uphold the death sentence in the case of young man for social media posts critical of Islam and the Koran the Department of Foreign Affairs and Trade (DFAT) advises that death sentences in apostasy and blasphemy cases are now rare.<sup>8</sup>
40. Non-practising Muslims now form a large part of the population of urban Iranians and many Iranians do not regularly attend mosque or Friday prayers.<sup>9</sup> In 2014 the Danish Immigration Service reported that “abstaining from Muslim rituals such as not attending mosque...would not necessarily arouse any suspicion as many in Iran do not regularly attend mosques” and the same report quoted an advocacy officer of the United Council of Iranian Churches who “assessed that there are more and more atheists in Iran and that this is more accepted among some Iranians”.<sup>10</sup>
41. I do not accept the applicant would face harm in Iran for reason of not practising Islam.

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<sup>7</sup> Austrian Centre for Country of Origin and Asylum Research and Documentation (ACCORD), “Iran – COI Compilation”, 1 July 2018, 20190326122102

<sup>8</sup> DFAT, “Country Information Report – Iran”, 13 April 2020, 20200414083132

<sup>9</sup> DFAT, “Country Information Report – Iran”, 13 April 2020, 20200414083132; Austrian Centre for Country of Origin and Asylum Research and Documentation (ACCORD), “Iran – COI Compilation”, 1 July 2018, 20190326122102

<sup>10</sup> Danish Immigration Service, “Update on the Situation for Christian Converts in Iran”, June 2014, CIS28931

42. The country information does not indicate that returning asylum seekers are harmed because of their asylum claim. Reports of asylum seekers being arrested on return relate to those involved in anti-government activities, either in Iran or during their time abroad<sup>11</sup> and “members of an oppositional political party or involved in political activities in other ways”.<sup>12</sup> The applicant departed Iran lawfully on his own passport and I have found he was not of adverse interest at that time. As such I am not satisfied that there is a real chance he would be harmed on this basis, nor for reason of the data breach.
43. I have considered the applicant’s circumstances as a whole, and I am not satisfied there is a real chance of the applicant suffering persecution in the reasonably foreseeable future in Iran on any of the bases claimed.

### **Refugee: conclusion**

44. 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**

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45. 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**

46. 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.
47. The expressions ‘torture’, ‘cruel or inhuman treatment or punishment’ and ‘degrading treatment or punishment’ are in turn defined in s.5(1) of the Act.
48. In assessing whether the applicant has a well-founded fear of persecution in Iran under the Refugee criterion, I have disregarded conduct engaged in in Australia for the sole purpose of

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<sup>11</sup> Radio Zamaneh, “Iranian poet/activist arrested at Tehran airport”, 8 January 2016, CX6A26A6E140; International Campaign for Human Rights in Iran, “New Video: Iranian Expats Face Arrest upon Return to their Homeland”, 23 April 2015, CXBD6A0DE5203; Radio Zamaneh, “Jailing of returning journalists called part of anti-Rohani plan”, 31 July 2014, CX324017; Committee to Protect Journalists, “Rouhani has yet to deliver on press reforms in Iran”, 13 March 2014, CX318970

<sup>12</sup> 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

strengthening his refugee claim. However, I must have regard to that conduct in assessing his claims for complementary protection.

49. I have considered country information to assess whether his engagement in Christianity in Australia, including baptism, may result in significant harm to the applicant in Iran. The Danish Immigration Service cited a number of sources discussing treatment of returnees who had engaged with Christianity while abroad in its report and the indications are that those who continue to pursue the Christian faith in Iran may come to attention and experience harm.<sup>13</sup> DFAT referenced a “well-placed source” who was not aware of voluntary returnees being prosecuted for converting to Christianity while abroad.<sup>14</sup> Reports of Christians/converts who come to adverse attention indicate that those of interest are those engaged in proselytising.<sup>15</sup>
50. I am not satisfied that the applicant is a genuine convert to Christianity and I do not accept that he would be perceived as such on return to Iran. As already noted DFAT advises apostasy and blasphemy cases are no longer an everyday occurrence in Iran and that death sentences are rare and considers it unlikely that individuals will be prosecuted on charges of apostasy. I am not satisfied that his involvement would be known to the authorities, or that this would raise concern in Iran if known, or that if it was it would be viewed as genuinely converting to Christianity. I am satisfied the applicant would not pursue Christianity in Iran. I am not satisfied the applicant would have any actual or perceived profile as an apostate and I am not satisfied that there is a real risk that he would face significant harm for these reasons.
51. I have otherwise found that there is not a real chance that the applicant faces harm on any of the bases claimed. Noting that the “real risk” test for complementary protection is the same standard as the “real chance” test,<sup>16</sup> and based on the same information, and for the reasons set out above, I am also satisfied that there is not a real risk that he would face significant harm for these reasons.

### **Complementary protection: conclusion**

52. 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**

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

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<sup>13</sup> Danish Immigration Service, “Update on the Situation for Christian Converts in Iran”, June 2014, CIS28931

<sup>14</sup> DFAT, “Country Information Report – Iran”, 13 April 2020, 20200414083132

<sup>15</sup> ACCORD, “Iran: Treatment of atheists by State and non-State actors”, 12 June 2017, CISED50AD4616; Finnish Immigration Service, “Christian Converts in Iran”, 21 August 2015, CISEC96CF14127

<sup>16</sup> *MIAC v SZQRB* (2013) 210 FCR 505

## Applicable law

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### ***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.