



Australian Government
Immigration Assessment Authority

Decision and Reasons

Referred application

IRAN

IAA reference: IAA20/08811

Date and time of decision: 29 January 2021 14:51:00

S Kamandi, Reviewer

Decision

The IAA remits the decision for reconsideration with the direction that:

- the referred applicant is a refugee within the meaning of s.5H(1) of the *Migration Act 1958*.

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 a national of Iran. He arrived in Australia in May 2013 and on 7 August 2017 made a Safe Haven Enterprise Visa (SHEV) application.
2. On 14 December 2020, a delegate of the Minister for Immigration (the delegate) refused to grant the visa on the basis that the applicant was not a person in respect of whom Australia owed protection obligations. The delegate did not accept the applicant's claim that he was of any interest to the authorities at the time of his departure in 2009. The delegate was also not satisfied that the applicant's claimed conversion to the Baha'i faith in Australia was genuine or that he faced a real chance of serious harm or was at a real risk of significant harm on the basis of his religious views or his non-practise of Islam.

Information before the IAA

3. I have had regard to the material given by the Secretary under s.473CB of the *Migration Act 1958* (the Act).
4. On 20 January 2021, the Immigration Assessment Authority (IAA) received an email from the applicant's representative attaching a submission and a letter from the Baha'i Council for [Region] dated 4 January 2021. The submission express disagreement with the delegate's findings and conclusion that the applicant's conversion to the Baha'i faith is not genuine. The submission also identifies the letter from the Baha'i Council for [Region] as new information and puts forward arguments regarding the requirements under s.473DD of the Act. I do not consider the submission to contain new information and have had regard to in assessing the applicant's claims and in my consideration of s.473DD of the Act.
5. On 21 January 2021, the IAA wrote to the applicant inviting him to provide the IAA with further information in support of his claimed approval of membership of the Baha'i faith by the National Assembly. This included information from [Mr A], the Secretary of the Spiritual Assembly of the Baha'is of [Location 1] and [Mr B], identified a senior member of [Location 1] Local Assembly, who the applicant indicated had confirmed his membership approval by the National Assembly.
6. On 28 January 2021, the IAA received an email from the applicant's representative attaching a letter from the National Spiritual Assembly of the Baha'is of Australia incorporated dated [January] 2021 and email communication between the applicant and [Mr A] and [Mr B] on 27 and 28 of January 2021. On 29 January 2021, the IAA also received [Mr A]'s letter of recommendation for approval of the applicant's declaration of faith to the National Assembly dated 3 October 2020.
7. The letters from the Baha'i Council for [Region] dated 4 January 2021, the National Spiritual Assembly of the Baha'is of Australia incorporated dated [January] 2021 and email communication between the applicant and [Mr A] and [Mr B] on 27 and 28 January 2021 all post-date the delegate's decision and are new information. Although the letter from [Mr A] to the National Assembly dated [October] 2020 pre-dates the delegate's decision, it was not before the delegate and is also new information. The letter signed by [Mr A] as the secretary of the [Location 1] Spiritual Assembly dated 3 October 2020, confirms the applicant's declaration of the Baha'i faith [in] September 2016 and in recommending for the applicant's

declaration to be approved by the National Assembly, refers to the applicant's acceptable conduct, his sustained interest and engagement with the Baha'i faith since 2014 and attests to his ongoing involvement and understanding of the faith. The letter from the Baha'i Council for [Region] dated 4 January 2021 congratulates the applicant on his acceptance of Baha'u'llah and wishes him a joyous lifetime of service to the cause. The letter from the National Spiritual Assembly of the Baha'is of Australia incorporated dated [January] 2021 welcomes the applicant as a member of the Baha'i faith and encloses the applicant's Baha'i faith membership card. The letter indicates that a summary by the Universal House of Justice, the international governing body of the faith, which can be used as a practical guide to spiritual growth, has been enclosed. It also indicates that the applicant's name has been added to a mailing list for "the Australian Baha'is" quarterly publications and invites the applicant to attend the House of Worship at Ingleside in Sydney. The email communication between the applicant and [Mr A] and [Mr B] also welcomes the applicant into the community and informs him that the National Assembly of the Baha'is of Australia has accepted his declaration and that the applicant is considered as a member of the Baha'i faith in Australia.

8. I am satisfied that the information provided to the IAA contain credible personal information which was not previously known, and had it been known, the information may have affected the consideration of the applicant's claims regarding his conversion to the Baha'i faith. Given the nature of the information which is in support of and corroborative of the applicant's central claim that he has converted to the Bahai faith in Australia and has had ongoing and sustained involvement with the Baha'i local spiritual assemblies in [Location 2] and [Location 1], I am also satisfied that there are exceptional circumstances to justify considering the new information.

Applicant's claims for protection

9. The applicant's claims can be summarised as follows:
 - The applicant was born and resided in Karaj in Iran and is of Persian ethnicity.
 - The applicant started to research other religions while at university in the years between [year range]. He read books on Christianity and notes on the Baha'i religion.
 - Prior to leaving Iran in 2009, the applicant was working in a [a certain] role at a [Workplace]. He would sometimes have conversations with customers expressing his disillusionment with Islam and the Iranian regime. He also expressed his curiosity for the teachings of other religions, particularly those of the Baha'i faith.
 - During one of these conversations, a customer by the name of [Mr C], overheard the applicant and became angry. They had a verbal argument and he was accused of questioning Islam and preaching other religions.
 - Later the applicant learnt that [Mr C] was [an] officer of a near-by [facility] and was in a position of authority.
 - A few weeks after the incident with [Mr C], two men came to the [Workplace] and took the applicant to the police station. He was detained and interrogated about his religious beliefs and then released. The applicant became frightened and could not trust his colleagues.
 - Some weeks after the incident, the applicant's brother informed him that three men had come to their house, searched the house and took away the applicant's computer and some books he had on the Baha'i faith.

- The applicant became frightened and went to his friend’s house in [Village], outside of Karaj. He stayed with his friend for about a month and made arrangements to depart the country.
- The applicant departed Iran for [Country 1] on his own passport and on a student visa. His brother bribed a person he knew at the airport for the applicant not to encounter any problems at the airport.
- The applicant hoped to return to Iran, but after the 2009 Green revolution, he did not return. He remained in [Country 1] until December 2012 when he travelled to [Country 2]. He remained in [Country 2] until May 2013 and then travelled to Australia.
- Since his departure from Iran in 2009, his family have faced difficulties. People have gone to the [Workplace] asking about him.
- The applicant has converted to the Baha’i faith in Australia and wishes to practise his faith publicly. Baha’is are persecuted in Iran. He fears harm for reasons of his conversion and as an apostate returning to Iran.

Refugee assessment

10. Section 5H(1) of the Act provides that a person is a refugee if, in a case where the person has a nationality, he or she is outside the country of his or her nationality and, owing to a well-founded fear of persecution, is unable or unwilling to avail himself or herself of the protection of that country; or in a case where the person does not have a nationality—is outside the country of his or her former habitual residence and owing to a well-founded fear of persecution, is unable or unwilling to return to it.

Well-founded fear of persecution

11. 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.
12. The applicant has consistently claimed to be a national of Iran. He has provided documents to support his identity and nationality, including a copy and English translation of his Iranian Birth Certificate. I accept that the applicant is a national of Iran and that Iran is the receiving country for the purposes of this review.

13. The applicant has consistently claimed, and I accept, that he was born and resided in Karaj in his family home until his departure from Iran in February 2009. I accept that his father passed away and that his mother, two brothers and his sister all reside in Karaj. The applicant's evidence as indicated in his SHEV application is that he finished high school in Karaj in [Year], attended [University] from [Year] to [Year], and that from [Year] to February 2009, up until his departure for [Country 1], he worked [at] [Workplace]. His SHEV statement indicates that he was a business partner and he described the [Workplace] as a family business during the SHEV interview. At the SHEV interview, the applicant stated that his brothers continue to work at the [Workplace]. The applicant also stated that he remained in [Country 1] from February 2009 until December 2012 on a student visa and that he was financially supported by his savings that were being sent to him from Iran and that he also worked in the last two years of his stay to pay for his expenses. The applicant's evidence is that he travelled to [Country 2] in December 2012 with a view to travel to Australia and arrived in Australia in May 2013. I accept the applicant's evidence regarding his family, his education and employment history and that he departed Iran for [Country 1] legally using his own passport and on a student visa where he remained for a period of almost four years and then made his journey to Australia which took a further six months.
14. At the SHEV interview the applicant stated that he was born a Muslim and that while as a child he attended mosque, he did not understand things. He stated that he and his family were "moderate" in practising the religion and that his family attended religious gatherings about once a year. The applicant claims he started to question Islam when he was at university. At the SHEV interview he gave evidence to the effect that that as he grew up, he questioned Islam and while he was at university he started thinking about and researching other religions. He referred to having a Christian book and notebooks about the Baha'i faith. He stated that as he was living in a religious country, he felt that there had to be a religion of his choosing for him to follow. When asked what year he started researching the Baha'i faith, the applicant said maybe in 2006, 2007 or 2008, and that his research was not to decide about religion but just to research. He also stated that his research was "very normal" as it was difficult to find resources. When asked about the materials he read to broaden his knowledge of other religions, the applicant referred to books on Christianity and notes on the Baha'i faith and that they were not official resources but just for general knowledge. When asked where he obtained the material from, the applicant referred to some people giving out Bibles and notes on the Baha'i faith at the inqilab square. He said that he was given a Bible in the Persian language and notes on the Baha'i faith which he read and that invoked his interest in the religion. He claimed that he was handed the Bible during a period where people were handing out information and disappearing and that it was like "fashion" that came about and then disappeared. When asked if Bibles are readily available in Iran, the applicant stated that he did not know and that he was given a book and when he opened it, he realised that it was the Bible. The delegate referred to his evidence in his SHEV statement indicating that he had books about the Baha'i faith and asked him to talk about the books. The applicant stated that he read notes on the life of Baha'u'llah, they were limited notes, not deep research but about the religion's general beliefs.
15. Like the delegate, I found the applicant's answers to questions about his research into other religions in Iran unconvincing. Country information¹ indicates that although the official religion

¹Department of Foreign Affairs and Trade (DFAT), "DFAT Country Information Report – Iran", 14 April 2020, 20200414083132. Austrian Centre for Country of Origin and Asylum Research and Documentation (ACCORD), "Iran: COI Compilation", 1 July 2018, 20190326122102; 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.

of Iran is Shia Islam, secularism is widespread, particularly in the major cities and among younger and wealthier Iranians. While many Iranians see Islam as part of their identity, many have moved from institutionalised religion and view religion as a private matter. It is highly unlikely that the authorities would monitor religious observance by Iranians with the more secular group of Iranians not paying attention to all religious rituals. While I am willing to accept that, like many Iranians, the applicant and his family may not have strictly followed the Islamic religion and that he felt disillusioned with the religion and Iranian regime and may have thought about other religions, I am not at all convinced that he ventured into researching other religions, was handed a Bible or notes on the Baha'i religion by people conducting this in public at inqilab square, particularly given the country information cited below regarding the prohibitions placed on minority religions to disseminate religious literature.

16. In his SHEV statement, the applicant claims that he often had conversations with his customers at the [Workplace], many of whom would drop in for a chat. He states that he often expressed his disillusionment with Islam and the regime and his curiosity for teachings of other religions, particularly those of the Baha'i belief. He claims that on one occasion, a customer at the [Workplace], whom he knew as [Mr C], overheard his conversation with another customer. [Mr C] became angry, accused the applicant of being a non-believer. The applicant claims that they had a verbal argument and that he later found out [Mr C] was [an] officer of the nearby [facility]. He claims that a few weeks later two men came to the [Workplace], took him to the police station, interrogated him about his religious beliefs for several hours and then released him. The applicant states that he assumed that [Mr C] used his position of authority to inform on him. He states that he became frightened as he knew what had happened to people in his predicament. He further claims that some weeks later he received a call from his brother that their parent's house was searched, and the applicant's computer and some books were taken away. Following this incident, the applicant claims that he went to a friend's house outside of Karaj city and remained there while he made arrangements to depart the country.
17. At the SHEV interview, in discussing these incidents, the applicant stated that he was talking to a customer about the hardship and forcefulness of Islam, told the customer that he did not trust nor believed in Islam and recalls saying that if he had to choose a religion it would be the Baha'i religion. The applicant stated that after [Mr C], who he described as a "permanent" customer of the [Workplace], heard him saying this, he became angry, accused the applicant of having left Islam and preaching other religions and that apart from a verbal argument, [Mr C] also tried to beat him up. He confirmed that when taken to the police station he was interrogated about his religion and that he was released without being charged and that he departed Iran a few months after this incident. In referring to the search of his parent's house, the applicant stated that he was not sure who the people who searched the house and took away his books were, but his brother told him there were three people in plain clothes. He did not mention his computer being taken away but stated that they came to take him away, but he was at the bank at the time. When asked if there were any arrest warrants or summonses issued, the applicant stated that he did not know. He confirmed that he departed the country using his own passport and on a student visa to [Country 1] and that his brother knew an officer at the airport, whom he bribed, to ensure that the applicant had no issues departing the airport. When asked why in absence of any arrest warrants he felt the need to bribe someone at the airport, the applicant stated that he was accused of changing his religion to the Baha'i religion, there was a possibility of him being taken to prison and that he was aware of people losing their lives due to changing their religion.
18. I have concerns regarding the credibility of the applicant's claims that he openly discussed his views about Islam and preference to change his religion to the Baha'i religion with his customers at the [Workplace] and the subsequent claimed events. The applicant's evidence as

presented in his SHEV statement and at the SHEV interview indicates that he was aware of the Iranian regime's stance on religion and that he was aware of others losing their lives for changing their religion. I find it extremely difficult to accept that knowing this, the applicant would have openly discussed his religious views, expressed his curiosity towards other religions and his preference for the Baha'i religion chatting to customers at the [Workplace].

19. Country information² indicates that Iran is a theocracy with Islamic beliefs and customs enshrined in law. With 99 percent Muslim population, Muslims who leaves their faith or converts to another religion can be charged with apostasy. The 2009 Danish Immigration Services report on human rights for minorities³ indicates that if a private person accuses someone of conversion from Islam, the government must intervene and prosecute the accused where laws concerning apostasy, which includes the death penalty, may be applied arbitrarily. Adherents of non-recognised religions, particularly Baha'is, face widespread official and social discrimination. In 1991, the Supreme Council of the Cultural Revolution issued a determination concluding that Baha'i teachings contradicted the tenants of Islam and instructed that its adherents be expelled from schools, denied employment and position of influence. Baha'is are unable to legally reproduce or distribute religious literature with Baha'i religious sites and cemeteries regularly desecrated or destroyed. The authorities are known to systematically harass, prosecute and imprison Baha'is. Reports attached to the applicant's SHEV application also echo this information.
20. The country information undermines the applicant's evidence that after having been accused of preaching other religions and converting to Baha'i faith, he was simply taken to the police station for interrogation and was not charged nor prosecuted for any offences. Given the gravity of what the applicant claims to have been accused of by a person of authority, I find it difficult to accept that the applicant would not have been dealt with harshly by the authorities, in that he was only interrogated for a few hours and then released without having been charged. While I note his claim that sometime later the authorities came looking for him at his parents' house and confiscated his computer and religious books, his evidence does not suggest that he was further pursued or charged with any offence or that there was an arrest warrant issued for his arrest in the month that he remained at his friend's house outside of the Karaj city and organised for his departure. I find it difficult to accept that if the authorities confiscated religious material from his house, such as a bible or notes on the Baha'i faith, that they would not have taken further action, pursued him or located him.
21. In addition, the applicant's evidence that he was able to depart the country using his own passport and obtained a student visa to travel to [Country 1] is also indicative of the authorities having no adverse interest in him and undermines his claim that he was accused of preaching other religions and converting to the Baha'i faith. The 2009 Danish Immigration Services report on human rights for minorities⁴ indicates that males who had completed their military service are free to travel, unless they have issues with the authorities. People with outstanding arrest warrants, those who have committed a crime and other relevant reasons are placed on lists accessible to immigration officers at the airport and are prevented from departing the country. In relation to bribery, it is noted that given that the information about who can or cannot

² DFAT, "DFAT Country Information Report – Iran", 14 April 2020, 20200414083132.ACCORD, "Iran: COI Compilation", 1 July 2018, 20190326122102; 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.

³ 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.

⁴ 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.

depart the country is entered in the computer system with immigration police having no influence, bribery was considered not possible. However, in the event of bribery it is noted that a lot of airport staff would have to be bribed given the several checkpoints at the airport. Given the applicant's claim that he was accused of preaching other religions and converting to the Baha'i religion, I find it difficult to accept that a person of his claimed interest would not have been placed on the list or that he would have been able to circumvent the authorities at the airport with his brother bribing an officer at the airport. Furthermore, I note that the applicant was granted a student visa to travel to [Country 1] which again undermines his claim that he was of any interest to the authorities due to his religious views or otherwise.

22. At the SHEV interview the applicant was asked if his family had been harassed or threatened after his departure in 2009. Although not noted in his SHEV statement, the applicant stated that for a couple of years his family faced difficulties. He stated that "they" came to the [Workplace] looking for him on several occasions, maybe thinking that he was still in Iran, and that his family were harassed in front of their neighbours. Given that the applicant left Iran on a student visa and using his own genuine passport, I am of the view that the authorities would have been aware that he had left Iran in 2009. I find the applicant's evidence that the authorities would have visited the [Workplace] for a couple years after his departure and asking about his whereabouts difficult to believe, particularly given that the applicant's evidence does not suggest that there was any arrest warrants or summonses issued and the authorities would have been aware that he was not in Iran. I do not accept that the authorities visited the [Workplace] or asked his family members about the applicant after his departure. I note the applicant's evidence is that his brothers continue to operate the business after his departure with his family remaining in their family home.
23. Overall, I found the applicant's evidence regarding his research of other religions while in Iran and the incidents claimed to have occurred after an argument with [an] officer at the [Workplace], which he claims to have led to his departure in 2009, unconvincing. While I accept that the applicant was not practising Islam, felt disillusioned with Islam and the Iranian regime and disagreed with Islam being forced on him, I am not satisfied that the applicant was researching other religions, was given material on Christianity or the Baha'i faith or that he discussed his religious views and curiosity about other religions with others at his place of employment leading to the authorities interest in him. I am not satisfied that the applicant was of any interest or had an adverse profile with the authorities based on his religious views as claimed or otherwise.
24. The applicant's SHEV statement indicates that he has converted to the Baha'i faith. At the SHEV interview held in August 2020, he was asked if he had formally converted to Baha'i faith. The applicant stated that he had applied to be registered about four or five years ago and is waiting to be accepted. He also indicated that it usually takes a long time for Iranians to be accepted as a member and he believed this may be because the Baha'i community want to ensure that "it is for real".
25. Country information⁵ indicates that Baha'is believe Baha'u'llah, meaning glory of God, is seen as the messenger of God. The most holy book of the Baha'i faith is the Kitab-i-Aqdas, the book of laws written by Baha'u'llah which covers topics including laws and principles for personal conduct and the governance of society, as well as mystical writings dealing with the progress of the soul and its journey towards God. Baha'is believe that all religions of the world are in

⁵ Baha'i International Community, The (BIC), "The Baha'is - Questions and Answers", 1 January 2014, CX1B9ECAB7569; British Broadcasting Corporation (BBC), "Becoming a Bahá'í", 22 September 2009, CX1B9ECAB7565; Australian Baha'is, "How to join", 1 January 2014, CX1B9ECAB7577.

essence stages of the ongoing revelation of the one religion with the purpose to guide and educate the human race. The laws of personal life include, among others, daily prayer, observance of a period of fasting, the education of children, abstention from partisan politics, and the obligation to engage in a trade or profession. Other moral and ethical principles include prohibition against backbiting, extramarital sex, gambling, and the nonmedical use of alcohol or drugs. Baha'is gather in study circles to explore Baha'u'llah's teaching in a participatory manner. There are also activities for service, observance of Baha'i holy days and other events to which all are welcome. Informal gatherings provide an open setting for asking questions and learning more about the faith. In Australia, anyone can become a Baha'i. The Australian Baha'i community welcomes new members and people who wish to become members sign a "declaration card" for administration purposes which is then forwarded to the local assembly. The local assembly meet with the individual and answers any questions.

26. In relation to his engagement with the Baha'i faith in Australia, the applicant stated that he started with the group in [Location 2] and that he joined the [Location 1] group after he moved within the area. He stated that he had been attending weekly sessions with a group of about four or five Iranians for about four years. He also indicated that apart from the weekly sessions, they had other events such as celebrations and general activities, usually for the new year holiday. The applicant stated that he enjoyed the weekly sessions, where he engages with the group to not only discuss religion but also other topics. He also stated that attending the sessions gave him a good feeling, in that it was not like Islam where everyone is forced to follow the rules but that they make decisions as a group.
27. In relation to his knowledge and understanding of the Baha'i faith, the applicant was asked about the key beliefs of the faith. The applicant referred to believing in one God, believing in all other religions and that all people are the same and equality between men and woman. He also mentioned some of the ethical principles of the faith such as the religion bringing people together and the role/importance of education. While the applicant was not asked about how he practised the religion, he referred to the 12 fundamentals of the faith and provided some information in this regard.
28. Following the SHEV interview, the delegate was provided with a letter from the secretary of the spiritual assembly of the Baha'is of [Location 1], [Mr A], dated 15 September 2020. The letter indicates that the applicant has declared his belief in the Baha'i faith and considers himself a practising Baha'i, but his status has not been confirmed by the National Spiritual Assembly. Apart from including general information about the process of how individuals and the National Assembly embark on what is a multi-year process to confirm and verify the new believer, in relation to the applicant the letter indicates that the applicant signed a card applying for enrolment [in] September 2016 and has been a regular attendee of study groups. It is noted that the applicant is not eligible to attend all Baha'i meetings, but has attended some open gatherings, such as Holy Day celebrations and devotional gatherings, with his work schedule preventing him from attending all gatherings. The letter also indicates that while the applicant is not a registered member of the Australian Baha'i Community, it is legitimate for him to continue to put his Baha'i beliefs into practise.
29. On 29 October 2020, the delegate contacted [Mr A] by phone to discuss the content of his letter referred to above. As noted in the delegate's decision, [Mr A] indicated that he was aware of the applicant's attendance at the weekly study classes. While [Mr A] indicated that he had last seen the applicant about four or five years ago, in late 2016, and that due to the applicant's work schedule, the applicant is not terribly involved in a lot of their events, he confirmed the applicant's regular attendance at weekly sessions and stated that he was not made aware of any issues or concerns regarding the applicant's participation at the study

groups, as he was made aware of regarding another participant. He also indicated that a positive recommendation had been made to the National Assembly for the applicant's acceptance into the community, although the recommendation did not mean that the applicant would be accepted by the National Assembly.

30. As indicated above, the IAA has been provided with further information regarding the positive recommendation by the [Location 1] Spiritual Assembly to the National Assembly to accept the applicant as a member of the Baha'i community and the National Assembly's acceptance of that recommendation. The letter of recommendation to the National Assembly signed by [Mr A] and dated [October] 2020, provides details regarding the applicant's engagement with [Location 2] and [Location 1] local spiritual assemblies and confirms that the applicant has engaged with the Baha'i community since 2014, has been a regular attendee of gatherings and spiritual weekly classes and is familiar with the teachings and some laws of the Baha'i faith. The letter also confirms that despite the applicant's work commitments, he has continued his learnings and engagement with the [Location 1] local assembly and that the applicant's conduct, his sustained interest and engagement with the faith and leanings reinforced the assembly's belief that the conditions for his enrolment in the Baha'i community have been met. The letter from the Baha'i Council of [Region] dated 4 January 2021 and the letter from the National Spiritual Assembly of the Baha'i of Australia Incorporated dated [January] 2021 confirms that the applicant's declaration in the Baha'i faith has been approved by the National Assembly and that he is recognised as a member of the Baha'i faith in Australia.
31. In light of the applicant's consistent evidence regarding his ongoing engagement with the Bahai faith in Australia and the supporting evidence provided to the IAA, I am satisfied that the applicant has genuinely converted to the Baha'i faith and has an ongoing commitment to the Baha'i faith. I am also satisfied that his engagement with and conversion to the Baha'i faith is otherwise than for the purpose of strengthening his claims for protection. Accordingly, s. 5J(6) of the Act is not engaged and I am not required to disregard the applicant's conduct in Australia in assessing whether he faces a real chance of serious harm on return.
32. In his SHEV statement, the applicant states that he wishes to publicly practise his faith, but in Iran he will not be able to do so. At the SHEV interview, the applicant stated the authorities in Iran have strong reaction to the Baha'is and that a lot of Baha'is face serious consequences due to their religion. The applicant's representative also referred to country information reports attached to the applicant's SHEV application which indicate that Baha'is in Iran face religious-based persecution, including physical and economic harm and legal restrictions in marriage and property ownership.
33. Country information⁶ indicates that the Baha'i faith is not a recognised religion in Iran, and the Supreme Council of the Cultural Revolution has ruled that Baha'i contradicted the tenets of Islam and that its administrative arrangements were illegal. Baha'is who are open about their faith and who advocate for the community's rights face a high risk of arrest and imprisonment. Iranian State views Baha'is as apostates and defines the Baha'i faith as a political sect. there are reports of harassment, discrimination, arrest and arbitrary detention of Baha'is by the Iranian authorities. Bahai have also been expelled from their jobs, barred from public sector roles and from enrolling in university based on their religious beliefs.

⁶ DFAT, "DFAT Country Information Report – Iran", 14 April 2020, 20200414083132. ACCORD, "Iran: COI Compilation", 1 July 2018, 20190326122102; 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.

34. Given my findings about the applicant's conversion and ongoing engagement with the Baha'i faith in Australia, I am satisfied if returned to Iran, he will continue his engagement with the faith and the Baha'i community. In light of the country information regarding the status of the religion in Iran and the treatment of Baha'is, I am satisfied that the applicant faces a more than a remote chance of adverse attention from the authorities, including the possibility of being arrested and long term imprisonment for being a member of a faith which is declared illegal. I am satisfied that that the harm faced by the applicant would amount to serious harm and find that it would involve systematic and discriminatory conduct carried out by the Iranian authorities against the applicant, as a Baha'i convert, for the essential and significant reason of his religion.
35. In considering whether the applicant could take reasonable steps to modify his behaviour to avoid a real chance of persecution, any such steps would involve concealing his religious beliefs and ceasing to be involved in practice of his religion. This would amount to a modification of behaviour that cannot be required under s 5J(3)(c) of the Act. Therefore, I find that there are no reasonable steps the applicant could take to modify his behaviour such as to avoid the real chance of persecution on return to Iran.
36. I find that the applicant cannot access effective protection in Iran. As the Iranian authorities are the agent of harm, and there is no information that the applicant can seek protection from any other non-state agents in Iran, I am not satisfied that effective protection measures are available to him, and find that he faces a real chance of persecution in all areas in Iran.
37. I am satisfied that the applicant's fear of persecution based on his conversion to the Baha'i faith is well-founded. Given this finding, I do not consider it necessary to address any other claims that arise on the applicant's evidence.

Refugee: conclusion

38. The applicant meets the requirements of the definition of refugee in s.5H(1).

Decision

The IAA remits the decision for reconsideration with the direction that:

- the referred applicant is a refugee within the meaning of s.5H(1) of the *Migration Act 1958*.

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.