

071183981 [2007] RRTA 85 (30 April 2007)

DECISION RECORD

RRT CASE NUMBER: 071183981

DIAC REFERENCE(S): CLF2006/120777

COUNTRY OF REFERENCE: Iran

TRIBUNAL MEMBER: Samuel Blay

DATE DECISION SIGNED: 30 April 2007

PLACE OF DECISION: Sydney

DECISION: The Tribunal remits the matter for reconsideration with the direction that the applicants satisfy s.36(2)(a) of the Migration Act, being persons to whom Australia has protection obligations under the Refugees Convention.

STATEMENT OF DECISION AND REASONS

APPLICATION FOR REVIEW

This is an application for review of decisions made by a delegate of the Minister for Immigration and Citizenship to refuse to grant the applicants Protection (Class XA) visas under s.65 of the *Migration Act 1958* (the Act).

The applicants who are a mother and her son are citizens of Iran. They arrived in Australia and applied to the Department of Immigration and Citizenship for Protection (Class XA) visas. The delegate decided to refuse to grant the visas and notified the applicants of the decision and their review rights by letter.

The delegate refused the visa application on the basis that the applicants are not persons to whom Australia has protection obligations under the Refugees Convention. The applicants applied to the Tribunal for review of the delegate's decisions.

The Tribunal finds that the delegate's decision is an RRT-reviewable decision under s.411(1)(c) of the Act. The Tribunal finds that the applicants have made a valid application for review under s.412 of the Act.

No specific claims were made by or on behalf of the second named applicant who is a minor. All the substantive claims in the application have been made by the first named applicant. For the sake of convenience, the Tribunal will therefore refer to the applicants as 'the applicant' for the purposes of this decision.

RELEVANT LAW

Under s.65(1) a visa may be granted only if the decision maker is satisfied that the prescribed criteria for the visa have been satisfied. In general, the relevant criteria for the grant of a protection visa are those in force when the visa application was lodged although some statutory qualifications enacted since then may also be relevant.

Section 36(2)(a) of the Act provides that a criterion for a protection visa is that the applicant for the visa is a non-citizen in Australia to whom the Minister is satisfied Australia has protection obligations under 1951 Convention Relating to the Status of Refugees as amended by the 1967 Protocol relating to the Status of Refugees (together, the Refugees Convention, or the Convention).

Section 36(2)(b) provides as an alternative criterion that the applicant is a non-citizen in Australia who is the spouse or a dependant of a non-citizen (i) to whom Australia has protection obligations under the Convention and (ii) who holds a protection visa.

Further criteria for the grant of a Protection (Class XA) visa are set out in Parts 785 and 866 of Schedule 2 to the Migration Regulations 1994.

Definition of ‘refugee’

Australia is a party to the Refugees Convention and generally speaking, has protection obligations to people who are refugees as defined in Article 1 of the Convention. Article 1A(2) relevantly defines a refugee as any person who:

owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence, is unable or, owing to such fear, is unwilling to return to it.

The High Court has considered this definition in a number of cases, notably *Chan Yee Kin v MIEA* (1989) 169 CLR 379, *Applicant A v MIEA* (1997) 190 CLR 225, *MIEA v Guo* (1997) 191 CLR 559, *Chen Shi Hai v MIMA* (2000) 201 CLR 293, *MIMA v Haji Ibrahim* (2000) 204 CLR 1, *MIMA v Khawar* (2002) 210 CLR 1, *MIMA v Respondents S152/2003* (2004) 222 CLR 1 and *Applicant S v MIMA* (2004) 217 CLR 387.

Sections 91R and 91S of the Act qualify some aspects of Article 1A(2) for the purposes of the application of the Act and the regulations to a particular person.

There are four key elements to the Convention definition. First, an applicant must be outside his or her country.

Second, an applicant must fear persecution. Under s.91R(1) of the Act persecution must involve “serious harm” to the applicant (s.91R(1)(b)), and systematic and discriminatory conduct (s.91R(1)(c)). The expression “serious harm” includes, for example, a threat to life or liberty, significant physical harassment or ill-treatment, or significant economic hardship or denial of access to basic services or denial of capacity to earn a livelihood, where such hardship or denial threatens the applicant’s capacity to subsist: s.91R(2) of the Act. The High Court has explained that persecution may be directed against a person as an individual or as a member of a group. The persecution must have an official quality, in the sense that it is official, or officially tolerated or uncontrollable by the authorities of the country of nationality. However, the threat of harm need

not be the product of government policy; it may be enough that the government has failed or is unable to protect the applicant from persecution.

Further, persecution implies an element of motivation on the part of those who persecute for the infliction of harm. People are persecuted for something perceived about them or attributed to them by their persecutors. However the motivation need not be one of enmity, malignity or other antipathy towards the victim on the part of the persecutor.

Third, the persecution which the applicant fears must be for one or more of the reasons enumerated in the Convention definition - race, religion, nationality, membership of a particular social group or political opinion. The phrase "for reasons of" serves to identify the motivation for the infliction of the persecution. The persecution feared need not be *solely* attributable to a Convention reason. However, persecution for multiple motivations will not satisfy the relevant test unless a Convention reason or reasons constitute at least the essential and significant motivation for the persecution feared: s.91R(1)(a) of the Act.

Fourth, an applicant's fear of persecution for a Convention reason must be a "well-founded" fear. This adds an objective requirement to the requirement that an applicant must in fact hold such a fear. A person has a "well-founded fear" of persecution under the Convention if they have genuine fear founded upon a "real chance" of persecution for a Convention stipulated reason. A fear is well-founded where there is a real substantial basis for it but not if it is merely assumed or based on mere speculation. A "real chance" is one that is not remote or insubstantial or a far-fetched possibility. A person can have a well-founded fear of persecution even though the possibility of the persecution occurring is well below 50 per cent.

In addition, an applicant must be unable, or unwilling because of his or her fear, to avail himself or herself of the protection of his or her country or countries of nationality or, if stateless, unable, or unwilling because of his or her fear, to return to his or her country of former habitual residence.

Whether an applicant is a person to whom Australia has protection obligations is to be assessed upon the facts as they exist when the decision is made and requires a consideration of the matter in relation to the reasonably foreseeable future.

CLAIMS AND EVIDENCE

The Tribunal has before it the Department's file relating to the applicants. The Tribunal also has had regard to the material referred to in the delegate's decision, and other material available to it from a range of sources.

Claims made in the primary application

In a statement that accompanied her primary application, the applicant claimed that she comes from a religious Muslim family and that she was basically dissatisfied with Islam. After reading about other religions, she developed an interest in Christianity. However, in Iran she could not attend a Christian church or mix with non-Muslims as she was not able to disclose her interest in Christianity. She also noted that for Muslims, "it is a great sin to convert to other religions and the punishment is death". She could not talk openly about her interest in Christianity and that in any case all her family and friends are Muslims and were not likely to support her interest in Christianity.

She also claimed that she kept silent and "suffered quietly". Her husband was transferred to Australia when he found work in a particular occupation. She therefore saw an opportunity to put her Christian beliefs and interest into practice. Her husband came to Australia a number of months before she herself arrived in Australia on a holiday visa. She claimed that on her arrival in Australia, she realised the big differences between Iran as a Muslim country and Australia as a Christian country. This strengthened her resolve and interest in Christianity. She took to Christianity and learned about Christian beliefs without any fear or restrictions. She has subsequently become a convert to Christianity and fears that if she returns to Iran, she would be arrested and killed, and her son taken away from her and raised as a Muslim.

The decision of the delegate

As noted earlier, the delegate of the Minister considered the applicant's claims and subsequently refused to grant a visa. In his decision, the delegate took account of Iranian government actions and rhetoric and accepted that "the available country information confirms that religious minorities in Iran face practical difficulties in practising their faith freely." The delegate further noted as follows:

Christians are amongst those religious minorities that face harassment and discrimination. It is also clear that government forces are responsible for and nurture the prevailing negative attitudes of elements of the majority Shiite population to religious minorities. The country

information also indicates that the Muslim converting to Christianity or any other minority religion can expect to be exposed to serious danger including lengthy periods of imprisonment and loss of life. I accept that the country information regarding these matters is accurate.”

The delegate however, also noted that these “adverse circumstances” are not sufficient condition in their own right upon which to accept the applicant’s request for protection at face value. He explained that it is necessary to examine the applicant’s claims and personal circumstances in relation to the country information in order to make an assessment of the applicant’s risk of facing Convention harm. After a consideration of the applicant’s personal circumstances, the delegate concluded that:

There is no substance to any of the applicant’s claims and that the claims have been fabricated for the sole purpose of bolstering the applicant’s chances of engaging Australia’s protection obligations.

Central to the delegate’s finding was his view that

The claims provided by the applicant are sparse, lacking in detail, quite vague, unsupported in any way and incapable of independent verification.

The delegate also noted that the applicant provided no evidence to support any of her claims.

The applicant’s spouse is a Muslim. The delegate took note of this and raised an issue as to why her spouse has not provided a signed statement confirming any of the applicant’s claims including that he is supportive of her interest in becoming a Christian. In these circumstances, the delegate found that it is “wholly implausible” that the applicant was in fact a Christian who had the support of her husband in applying to remain in Australia. The delegate further noted that the applicant has not “identified a commitment to any particular denomination of Christianity” in that she has not attended a Christian religious service in Australia. The delegate considered that these matters undermined the applicant’s credibility regarding her claims.

Pre-hearing submission on behalf of the applicant

In pre-hearing submissions made to this Tribunal, the applicant’s agent and solicitor responded to queries and concerns raised by the delegate in his decision. In particular, the agent took issue

with the delegate's view that the applicant's statements and claims lacked detail and were vague and unsupported. The agent pointed to the detailed statement made by the applicant and argued that the delegate's views were based on "a lack of knowledge and insight" in relation to the situation in Iran. The agent also took issue with the delegate's observation that the applicant's husband had not been included in the application and has not provided a statement in relation to the applicant's claims. The agent argued that the application was by the applicant and not her husband and that she did not necessarily require a statement from her husband as she was in Australia on a holiday visa. More important, the agent argued as follows:

It is not clear why the delegate was expecting to receive a signed statement from [the applicant's] husband. The delegate never asked for such a statement and we are not aware that such a statement from [the applicant's] husband is vital evidence for the delegate to believe that [the applicant's] claim is a genuine claim.

The agent concluded her argument by saying that the applicant's husband is "more than happy to attend any hearing to answer any questions that the RRT may have in relation to his wife's claim."

In relation to the delegate's observation that the applicant has neither committed to any Christian denomination, nor attended any church in Australia, the agent argued on behalf of the applicant that her conversion to Christianity and subsequent application occurred only about six weeks after her arrival in Australia. She did not know enough about Australia and the suburb where she lived. Her English was also limited. As a result she was limited in terms of her knowledge of where to attend church and which denomination to attend or to commit to. It was argued that after she lodged her application, it then became a matter of finding the most suitable church to attend. It was argued that the delegate overlooked the fact that the applicant was familiar with the principles of Christianity and that this was more important than whether she attended a particular church or not. It was finally argued that in any case, since submitting her application, the applicant has become a member of the Anglican Church.

The applicant's agent also took issue with the delegate's view that the applicant experienced no difficulty and had not been subject to persecution in Iran in the past as a result of her Christian faith. The agent argued that the applicant never claimed that she was monitored or persecuted by the Islamic authorities in relation to her interest in Christianity. It was argued that it is on record

that the applicant had kept her interest in Christianity a secret while in Iran. She had therefore not attracted the adverse interest of the authorities or her family and in-laws in Iran.

The agent concluded her arguments on behalf of the applicant as follows:

If she returned to Iran, she would be persecuted and harmed by Islamic government authorities because of her change of religion. [The applicant] believes that she would tell the message of Jesus and Christianity to other people. Therefore, she will be active in doing it wherever she is, otherwise she doesn't think she has fulfilled her duty as a Christian. [The applicant] has told her family about her change of religion and her family has been very angry with her and rejected her and her in-laws have threatened to get her divorced from her husband if she does not stop practising Christianity.

Other information and evidence

In support of the applicant's claims, several internet-based sources were provided to the Tribunal indicating the threats posed to Christian minority groups in Iran. Several of the documents pointed to the kidnapping and persecution of Christian converts who have left the Islamic religion in recent times in Iran.

The applicant also submitted two certificates awarded to her in recognition of her completion of a named Bible correspondence course. The applicant further provided the name of the Reverend Minister associated with her church as a witness who could be contacted by the Tribunal.

Tribunal Hearing

The applicant appeared before the Tribunal to give evidence and present arguments. She was accompanied by her husband as her 'support person'. The Tribunal hearing was conducted with the assistance of an interpreter in the Farsi (Persian) and English languages.

The applicant was represented in relation to the review by her registered migration agent.

In her oral testimony before the Tribunal, the applicant said that the main reason for not wanting to return to Iran is because of the change in her religious beliefs. She said that her religion is not accepted in Iran and that there is no freedom to choose one's own religion in the country. She repeated the claims in her written statement that she was born into an Islamic family and that change of religion was considered a very serious issue in both her family and her country. By changing her religion, she feels psychologically free but she has also lost a lot in her country.

She claimed that she was not able to return to Iran because the change in her religion could result in her death.

The applicant also claimed that she would like to live in a society where she feels free and is able to raise her child without any religious inhibitions. She said if she returns she would be killed.

She further claimed that the situation in Iran is very tense and that the authorities are against all religions except Islam and that they are even harder against converts. She claimed that if a person admits to being an atheist they are treated better than a person saying that they have converted to Christianity.

She told the Tribunal that since arriving in Australia she has contacted several churches and that she has eventually found an Anglican church. She is now able to attend church regularly with her son. She said there is a minister from her church who is now ready to provide testimony about her Christian activities in the church.

The Tribunal spoke to the applicant about her background in Iran. She said that before coming to Australia she worked in a specialist field in a city in Iran. She claimed that she started working in the late 1990s and worked there until she left the country. She also said that she has three siblings and that all her family members are in Iran.

The applicant claimed that all her family members are Muslims as are her in-laws. As noted earlier, the applicant attended the hearing with her husband and son. In view of the fact that the applicant's husband is still a Muslim, the Tribunal considered it appropriate to request that the applicant's husband leaves the Tribunal hearing in order to enable the applicant to express any reservations or views she may have about Islam without fear of offending her husband. The husband left the proceedings. The applicant continued with her testimony.

The Tribunal asked the applicant when she first became interested in Christianity. She repeated her claims that she first took an interest in Christianity when she was studying at the university. She said she found out about Christianity through the internet and through friends. She also read a number of books on religions and compared other religions with Islam. It was then that she developed an interest in Christianity.

She claimed that in spite of her interest, she had no one to discuss Christian issues with. She felt she could not contact anybody because she did not know where to go to find out more about Christianity. She however knew that if she could leave Iran she could practise Christianity based on what she had read on the Internet.

She was therefore very pleased when her husband found work in Australia. The Tribunal asked the applicant when she converted to Christianity. She said she converted on a specific date. The Tribunal noted to the applicant that she has completed a correspondence course in Bible studies. The Tribunal then asked the applicant if she spoke or read any English. She said she spoke and read a bit of English. The Tribunal asked her how she was able to complete a bible course without English language skills. She said that the course is conducted in the Farsi language. She said as a result she was able to follow and study the course.

The Tribunal spoke to the applicant about church attendance. She said she attends church twice a week on Sundays and Fridays. She also said that when she first arrived in Australia her husband assisted her to go to a named religious organisation where she started attending their services. She claimed she could not understand most of what they said during their service, but that someone in that organisation directed her to a church where they conducted the service in the Farsi language.

The Tribunal put it to the applicant that it is not plausible that her husband who is a Muslim would have accommodated her Christian beliefs and encouraged her to attend church services. She said her husband has been very accommodating and that it was her husband who first assisted her to go to the religious organisation.

The Tribunal drew the applicant's attention to the fact that the delegate's decision record does not contain any information relating to her attendance of any church services when she arrived in Australia. The applicant responded by saying that in completing her application and her primary statement, she did not know that she had to specify that she had been attending any specific church in Australia.

The Tribunal then tested the applicant's knowledge of Christianity. The Tribunal asked the applicant about the Ten Commandments. She seemed to know the Commandments and was able

to demonstrate a reasonable familiarity with them as she was with other sections of the Bible and specific sections of the Gospel according to St John.

The Tribunal noted to the applicant that based on what she has said in her testimony, the Tribunal accepts that she is a Christian. The Tribunal noted however that the issue is not whether she is a Christian or not. The Tribunal noted to her that the issue is whether she, as a Christian faces persecution in Iran because of her religious beliefs. The Tribunal then noted to her that under Clause 13, Article 1 of the Iranian Constitution, the rights of religious minorities, including Christians, are protected. The Tribunal also noted that there are several churches in Iran. She responded by saying that even though there are several churches in Iran, Christians face persecution. The Tribunal responded to the applicant that the issue which is of importance in her application is whether she faces persecution because of her Christianity. The Tribunal noted to her that based on the country information, Christians are generally not subjected to persecution as such in Iran. The Tribunal related to the applicant that what is prohibited in Iran is not the practice of other religions, but proselytising as such.

The applicant told the Tribunal that converting to Christianity raises numerous difficulties for her in that she faces isolation and persecution at the hands of her in-laws and government authorities.

FINDINGS AND REASONS

The applicant claims that she has well-founded fear of persecution for her religious beliefs if she returns to Iran. The substance of her claim is that she was born and brought up as a Muslim. However, over the years and in particular since her arrival in Australia, she has developed an interest in and a commitment to Christianity and has subsequently converted to Christianity. She therefore fears that she would be subject to persecution on her return to Iran.

The claims as they stand raise a number of issues. The first is whether the applicant is indeed a Christian. The second is whether Iran has a record of persecuting Christians such as the applicant. The third, is whether the applicant, having converted to Christianity indeed faces the risk of persecution should she return to Iran. Finally, as the decision will soon demonstrate, there are Christian organisations in Iran. This would seem to suggest that the state of Iran as such does not necessarily persecute Christian organisations as such. The issue however, arises as to

whether the applicant faces persecution, not at the hands of the State, but at the hands of other non-State agencies including her own family and her in-laws.

Is the applicant a Christian?

Since the applicant claims to fear persecution because of her Christian beliefs, the threshold question that arises is whether the applicant is indeed a Christian. The Tribunal is mindful of the fact that in her primary application, the applicant made claims of her commitment to Christianity without the benefit of any corroborating or supporting information. This is what lends weight to the findings of the delegate in his decision. However, the Tribunal has had the benefit of more information. At the hearing the applicant was able to demonstrate a reasonable familiarity with basic Christian beliefs. The Tribunal notes that the applicant was easily able to recite the Ten Commandments and quite easily pointed to specific sections of the bible to indicate her familiarity with the Gospel. The Tribunal also takes note of other information that comprises the applicant's certificate from her bible studies group and her willingness to call on her local priest as one of her witnesses.

The Tribunal regards the applicant's situation as unusual because of the Islamic background of her husband. However, the Tribunal regards it as important that the husband appeared at the hearing with his wife, prepared apparently to provide testimony, if needed, in support of his wife's new found faith. The Tribunal also regards it as important that in the applicant's testimony she indicated that it was her husband who first introduced her to a named religious organisation when she arrived in Australia. While it is unusual on the face of it to have an Islamic spouse easily willing to assist his wife to convert to Christianity, the Tribunal does not regard it as undermining the applicant's claim. On the contrary, the Tribunal regards it as supportive of the applicant's assertions that she has converted to Christianity with the support of her husband.

The Tribunal is mindful of the delegate's observations that the applicant's husband did not write a statement in support of his wife's application. But the Tribunal accepts the delegate's agent's argument that it is not a requirement in an application for a protection visa to obtain a written statement from one's husband in support of the application. The Tribunal therefore does not place any weight on a statement of this nature which was in any case, not provided. On the contrary, the Tribunal, as noted earlier, regards it as important that the applicant's husband

appeared in person as a support person for his wife during the proceedings. On the evidence as provided, the Tribunal accordingly finds that the applicant is a Christian.

Are Christians subjected to persecution in Iran?

As noted to the applicant in the course of the hearing, the issue is not whether the applicant is a Christian or not. The central issue is whether Iran has a record of persecuting Christians such as the applicant. In the course of the hearing, the applicant's attention was drawn to the Constitution of Iran. The Tribunal notes that in Clause 1 of Article 1 (General Principles of the Constitution of Iran), it is provided that "The form of government of Iran is that of an Islamic Republic."¹ Clause 12 Article 1 also provides that the official religion of Iran is Islam and that "this principle will remain eternally immutable".

However, Clause 13 of Article 1 provides that other religions including the Jewish and Christian Iranians are:

*The only recognised religious minorities who, within the limits of the law, are free to perform their religious rights and ceremonies and to act according to their own canon in matters of personal affairs and religious education.*²

Clause 14 also provides that:

*The government of the Islamic Republic of Iran and all Muslims are duty bound to treat the Muslims in conformity with ethical norms and the principles of Islamic justice and equity, and to respect their human rights.*³

From the provisions of the Constitution, it would seem reasonable to suggest that the rights of religious minorities such as Christians are well protected in Iran.

In spite of Iran's current environment as an Islamic state, Christianity in the country has a long and rich history.⁴ Indeed, current country information from independent sources indicates that there are several Christian organisations in Iran and that the membership of such organisations

¹ The Constitution of the Islamic Republic of Iran, <http://www.iranonline.com/iran/iran-info/Government/constitution-1.html>

² Ibid.

³ Ibid.

⁴ See for instance Massoume Price, A Brief History of Christianity in Iran, The Iran Chamber of Commerce, 2000. http://www.iranchamber.com/religions/history_of_christianity_iran1.php (Accessed-29 April 2007)

now number in excess of 300,000.⁵ The organisations include the Armenian Apostolic Church of Iran; the Arthurian Church of the East of Iran; the Chowdian Catholic Church of Iran; and various Protestant denominations, comprising Presbyterian, and the Anglican Church of Iran.⁶

On the evidence, the Tribunal accordingly finds that the Republic of Iran recognises and accepts Christianity as a religion under its constitution.

A finding that Iran recognises Christianity as a minority religion does not necessarily indicate that Christians are free of persecution in the pursuit of their religious beliefs as part of a religious minority in the country. United States Department of State report on religious freedom in Iran indicates that “The government severely restricts the freedom of religion”.⁷ Whilst the report notes that “the Ministry of Islamic Culture and Guidance and the Ministry of Intelligence and Security monitor religious activity closely”⁸, there is no specific indication that Christians as such face persecution. However, the report notes that “the government pressured Evangelical Christian Groups to compile and submit membership lists of their congregations.”⁹ It is clear from the report that Christians as such do not necessarily suffer persecution because of their religion.

The report makes a number of comments on conversion from Islam to Christianity. It notes that “conversion of a Muslim to a non-Muslim religion is considered a heresy under the law and is punishable by the death penalty, although it was unclear whether this punishment has been enforced in recent years.”¹⁰ Similarly Christians could not proselytise Muslims without putting their own lives at risk. Evangelical church leaders were subject to pressure from authorities to sign pledges that they will not evangelise Muslims or allow Muslims to actually attend such church services. More importantly, the report goes on to note:

In previous years the government harassed church-goers in Teheran, in particular worshipers of the capital’s Assembly of God congregation. This harassment included conspicuous monitoring outside Christian premises by revolutionary guards to discourage Muslims or converts from entering church

⁵ http://atheism.about.com/library/FAQs/islam/countries/bl_IranOtherChristian.htm (Accessed-29 April 2007)

⁶ Christianity in Iran: <http://www.answers.com/topic/christianity-in-iran> (Accessed-29 April 2007)

⁷ US Department of State, the Bureau of Democracy, Human Rights, and Labor *International Religious Freedom Report 2006* <http://www.state.gov/g/drl/rls/irf/2006/71421.htm> (Accessed-29 April 2007).

⁸ Ibid

⁹ Ibid.

¹⁰ Ibid.

premises as well as demands for the presentation of the identity papers of worshipers inside.¹¹

In 2004, there were reports of the arrest of several dozen Evangelical Christians in the north, including a Christian pastor, his wife, and their two teenage children in Chalous, Mazandaran Province. Many of those arrested were later released and the Pastor and his family were released after six weeks in detention. One press source reported that authorities ordered those jailed to stop meeting for worship and to “stop talking about Jesus”. The Christians continued to be subjected to harassment and close surveillance. Low scale harassment of Armenian Christians were reported.¹²

The report further notes that in November 2005 a Muslim who converted to Christianity was kidnapped from his house and killed. His body was later returned to his house. It is further reported that after the killing, security officials searched his house for bibles and burned Christian books in Persian. The report also notes that the Ministry of Intelligence and Security arrested and tortured 10 Christians in several cities. It also notes further reports of Christian converts being killed.¹³

Whilst it is clear from the evidence that the Constitution of the Islamic Republic of Iran permits other religious practices recognised under the Constitution, it is also the case that Christian converts run the risk of persecution either at the hands of government agencies or other non-State agencies and that there is no indication that government of Iran has done anything to stop such forms of persecution or is willing to stop them. The Tribunal regards it as important that its research did not indicate any instance in which people who were alleged or found to have assaulted Christians who had converted from Islam were either prosecuted or subject to any sanctions before the law. On the evidence, the Tribunal finds that Iranian authorities either condone or are not willing to stop the persecution of Christians and other minorities particularly in instances where such persons have converted from Islam.

Does the applicant face persecution because of her religious beliefs?

The applicant claims that whilst she was in Iran she only harboured intentions and interests in Christianity. She did not practise Christianity as such. She only took to Christianity and indeed

¹¹ Ibid.

¹² Ibid.

¹³ Ibid.

converted on her arrival in Australia. Persons who are outside their countries of origin may become refugees due to changes in circumstances in their home countries or as a result of their own actions. Thus, a well-founded fear of persecution which exists at the time of determination may not have existed at the time a person departed his or her country of nationality. Refugee claims made on the basis of events subsequent to conduct outside the country of nationality are *sur place* in nature.

The concept of refugee *sur place* has been recognized by Australian courts. In the Full Federal Court in *Somaghi v MILGEA*, Gummow J stated:

Article 1A (2) of the Convention, as construed in *Chan*, requires the decision maker, as regards an individual then outside the country of his nationality, to determine whether that person then is unwilling to avail himself or herself of the protection of the country of nationality owing to a well-founded fear of persecution which now exists for, inter alia, reasons of political opinion or membership of a particular social group. It follows that the well-founded fear of persecution which now exists may have arisen at a time when the person in question was already outside the country of nationality.¹⁴

The question then is, does the applicant face persecution on her return to Iran because of her conversion since leaving Iran and arriving in Australia? The Tribunal has already found that there is sufficient evidence to support the argument that the Iranian authorities either condone or are unwilling to intervene in instances where persons have converted from Islam to Christianity. On this basis the Tribunal finds that it is more likely than not that the applicant faces or will face persecution because of her conversion to Christianity on her return to Iran.

The Tribunal also notes that the applicant's situation is an unusual one. By her own admission her remaining sister and three brothers are still Muslims. Her in-laws are Muslims as is her husband. She has therefore, by her conversion, become the only Christian in an environment in which all her family relations, friends and indeed in-laws are Muslims. The Tribunal regards this situation as critical in the applicant's case. It is important to note the specific social and cultural context from which the applicant has come. As it is clear from the country information, in Iran conversion from Islam to Christianity or indeed to any religion is far from welcome. Indeed, under Islamic law, as indicated earlier, such a conversion is ordinarily punishable by death. The Tribunal notes that whilst there is no indication that the Iranian authorities have in recent times executed anybody in the country because of their conversion, there is ample evidence that several

¹⁴ (1991) 31 FCR 100 at 116.

Christians who have converted have met with some forms of persecution at the hands of non state agencies.

The Tribunal believes that given the fact that the applicant's husband and relatives remain Muslims, it is more likely than not that on her return to Iran the applicant faces the risk of persecution not necessarily at the hands of the government authorities but rather at the hands of her own family and in-laws. In the Tribunal's opinion, such persecution that may confront the applicant will not be stopped by the authorities. The Tribunal accepts the applicant's claims that on her return to Iran as a Christian she will find herself in an environment where she can turn to no one for assistance because her in-laws and her own family would reject her and indeed subject her to varying persecutions without the State being interested in assisting her. In the Tribunal's opinion, the applicant's case of ill-treatment which constitutes serious harm in the sense and as stated under the Act, are well founded. The Tribunal accordingly finds that on the evidence, the applicant has a well founded fear of persecution.

The Tribunal is aware that under s.91(R)(3) of the Act, in determining whether actions taken in Australia are relevant in considering the well foundedness of an applicant's claims to fear persecution, any conduct engaged in by the person in Australia must be disregarded unless the person satisfies the Minister (or the Tribunal on review) that he or she engaged in the conduct otherwise than for the purpose of strengthening his or her claim to be a refugee. Section 91(R)(3) relevantly states as follows:

For the purposes of the application of this Act and the regulations to a particular person:

(a) in determining whether the person has a well-founded fear of being persecuted for one or more of the reasons mentioned in Article 1A(2) of the Refugees Convention as amended by the Refugees Protocol;

disregard any conduct engaged in by the person in Australia unless:

(b) 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 within the meaning of the Refugees Convention as amended by the Refugees Protocol.

It is thus clear from the Act that where an applicant in Australia deliberately engages in an act for the sole purpose of advancing her claim, the Tribunal is to disregard such conduct in the assessment of the claim. The Tribunal notes that in the particular instance of this application,

there is no indication that the applicant deliberately engaged in her Christian activity so as to embellish or enhance her claims for protection. The Tribunal is satisfied that the applicant has a genuine commitment to her religious beliefs and that her arrival in Australia only gave her the opportunity to freely express her faith.

CONCLUSIONS

The Tribunal is satisfied that the first named applicant is a person to whom Australia has protection obligations under the Refugees Convention. Therefore the first named applicant satisfies the criterion set out in s.36(2)(a) for a protection visa and will be entitled to such a visa, provided she satisfies the remaining criteria.

No specific claims were made by or on behalf of the second named applicant. The Tribunal is satisfied that he is the child of the first named applicant for the purposes of s.36(2)(b)(i). The fate of the second named applicant's application therefore depends upon the outcome of his mother's application. He will be entitled to a protection visa provided he satisfies the criterion set out in s.36(2)(b) and the remaining criteria for the visa.

DECISION

The Tribunal remits the matter for reconsideration with the following directions:

- (i) that the first named applicant satisfies s.36(2)(a) of the Migration Act, being a person to whom Australia has protection obligations under the Refugees Convention; and
- (ii) that the second named applicant satisfies s.36(2)(b)(i) of the Migration Act, being dependant of the first named applicant.

<p>I certify that this decision contains no information which might identify the applicant or any relative or dependant of the applicant or that is the subject of a direction pursuant to section 440 of the <i>Migration Act 1958</i>. PRRRNM</p>
