

0800670 [2008] RRTA 147 (1 May 2008)

DECISION RECORD

RRT CASE NUMBER: 0800670

COUNTRY OF REFERENCE: Iran

TRIBUNAL MEMBER: Jennifer Ellis

DATE DECISION SIGNED: 1 May 2008

PLACE OF DECISION: Melbourne

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 and third named applicants satisfy s.36(2)(b)(i) of the Migration Act, being the dependants of the first named applicant.

STATEMENT OF DECISION AND REASONS

APPLICATION FOR REVIEW

1. 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).
2. The applicants, who claim to be citizens of Iran, 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.
3. The delegate refused the visa application on the basis that the first named applicant is not a person to whom Australia has protection obligations under the Refugees Convention.
4. The applicants applied to the Tribunal for review of the delegate's decisions.
5. 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.

RELEVANT LAW

6. 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.
7. 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 the 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).
8. 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.
9. 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'

10. 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.

11. 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.
12. 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.
13. There are four key elements to the Convention definition. First, an applicant must be outside his or her country.
14. 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.
15. 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.
16. 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.
17. 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.

18. 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.
19. 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

20. 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.
21. The included applicants are the children of the first named applicant. Their claims for a protection visa are that they are the dependent children of the first named applicant.
22. The first named applicant appeared before the Tribunal to give evidence and present arguments. The Tribunal also received oral evidence from Person 1 of a Christian Organisation. The Tribunal hearing was conducted with the assistance of an interpreter in the Farsi (Persian) and Korean and English languages.
23. The applicants were represented in relation to the review. The representative attended the Tribunal hearing.
24. The first named applicant was born in City A, Iran. She completed many years of education. In her statutory declaration accompanying her protection visa application, she explained that she had always felt a strong connection with God but in later life she began to have a problem with practicing her belief in God through Shar'ia law. In the early 2000s she was briefly detained after an incident and her experience whilst detained made her realise that in Islam women had no power over themselves. She felt Islam was taking her away from God and she turned towards Christianity because it shared prophets with Islam and because she had in the past a school friend who had been Christian. It was very difficult to find information about Christianity in Iran due to heavy censorship and it was not possible to partake in Christian activities as conversion was punishable by death. She realized that she needed to leave Iran in order to be able to do this.
25. Since arriving in Australia she had researched three different Christian groups and had been given instruction by The Church of Jesus Christ of the Latter-Day Saints. She also had a friend who had instructed her about the Uniting Church. She said that she could not return to Iran because she would be in danger and would not be allowed to openly practice her faith.
26. She submitted a letter from Person 2, of a Religious Organisation IIII which stated that she first came into contact with the Church in the early 2000s and had met with the Church's missionaries several times.
27. The Tribunal received a further statutory declaration made by the first named applicant together with an extensive legal submission from her representative.
28. In her statutory declaration the first named applicant stated that she spent about several months learning about Faith I but became concerned about some of its beliefs. She had also

been learning about the Christian religion from her friend, Person 4, who gave her a copy of the Bible in Farsi. She started attending Church several weeks earlier and attended regularly. She was baptised on a date specified and stated that it was very significant to be baptised on that day because it was such a holy and sacred day. She said she was genuinely committed to the Christian religion and had lost her faith in Islam because of the harsh application and interpretation of Shar'ia law and the way it treated women in Iran.

29. [Information deleted s.431]. She stated that women in Iran suffer discrimination and that Shar'ia law means they are often trapped in abusive relationships and badly treated and the State condones this behaviour.
30. The first named applicant went on to describe how she used to study political books particularly from an academic called Dr Ali Shariati whose books were now banned in Iran. [Information deleted s.431] She later received threatening telephone calls about her activities and she was scared she would be arrested. She detailed incidents that had occurred to her in the early 2000s in which she was threatened with being summoned to the revolutionary court if she did not stop speaking out against the government. As a result of these threats she had sought refuge in Australia.
31. In the accompanying legal submission, the applicants' representative stated that the first named applicant feared persecution for reasons of religion (as a Christian convert); her membership of a social group (that of Iranian women) and her actual and imputed political opinion. The other applicants claim was based on the fact that they were the dependent children of the first named applicant. It was submitted that the situation for converts to Christianity from Islam in Iran was very serious and that they could be subject to arrest, attack or the death penalty. It was submitted that the applicant also had a well founded fear of persecution because of her actual and imputed political opinion and because of her membership of a particular social group namely Iranian women. Reference was made to country information which supported these claims. It was stated that she was at risk of persecution from both the Iranian State and from other fundamentalist Moslems and that the State would not protect her from religious based persecution.
32. The Tribunal received a statutory declaration made by Person 1 in which he stated that the first named applicant had first come to his Church several weeks earlier having attended another religious Organisation previously. He met with her regularly for several weeks and was impressed by her enthusiasm to learn the Bible and her genuine faith in Jesus Christ. After several weeks he was satisfied of her genuine desire to be baptised and of her commitment to the church. He described the baptism ceremony. He stated that she was involved in all aspects of the church and attended English classes and she attended with her children. He had no doubt as to the genuineness of her commitment to Christianity.
33. Prior to the hearing the Tribunal received a report from Person 3, medical professional. In that report Person 4 stated that the first named applicant had sought counselling regarding her medical condition.

Evidence at the hearing

34. Person 1 told the Tribunal that he had been a Minister in Australia for several years. He had been ordained in Country C and transferred to Australia. Whilst working in Australia he had baptised many people including the first named applicant. He had first met her a few months earlier when she visited his Church. Although English was a second language for both of

them they were able to converse with each other in English. He saw her regularly in the congregation and she often underwent Bible study with him. He said that there were no 'requirements' for baptism. He agreed with the Tribunal that to be baptised not long after commencing Bible study was very quick and normally a person would attend Church for several months before being baptised. However he stated that she had already been studying the Bible for many months before she attended his church and that what was most important was that she had a belief in God which he was sure she had. He said three quarters of his Church were people of Nationally C and they usually had no knowledge of Christianity before they attended his Church so they took longer to be baptised. He clarified the comment in his statutory declaration to Religious Organisation II and stated that he meant to refer to Religious Organisation III. She regularly attended Bible classes, English classes and Church. He said that she was not just going through the motions in order to convert to Christianity to stay in Australia but had a good knowledge of Christianity and questioned him about various aspects of the religion during Bible study classes.

35. The first named applicant told the Tribunal that she was currently studying English. She had lived with a relative when she first came to Australia but they now lived apart and she did not see him/her often. She said that her relative was not particularly religious and that he/she knew of her conversion to Christianity. Neither she nor her relative had told her family in Iran of her conversion and she believed they would disown her if they knew. Her husband knew and was sympathetic of her views. She contacted her family in Iran regularly, usually over the internet. She said that certain members of her family in Iran were very religious. Her interest in Christianity first occurred due to her friendship with Person 5 at school whose family was Christian. She said that she was a child at the time of the Islamic Revolution and at first she had believed it would improve the lives of Iranians but later realised that it had brought about very harsh laws. She had to change the way she dressed as a result of the Revolution and said that the religious laws became harsher and harsher. As she got older she realised that Shar'ia was very harsh and that there was no regard for females under that law.
36. The Tribunal asked her why she did not become an atheist rather than converting to Christianity and she replied that religion had always been important to her and that she had been attracted to the personality and character of Jesus Christ. She regarded him as a messenger of peace, liberty and joy and he had treated his disciples and other people with kindness. When she was in Iran it was very hard to obtain a Bible but she read articles about Christianity and over many years had been separating herself from Islam. She wanted to study Christianity deeply and could not do that in Iran She was too scared to try and attend Church in Iran. She came to Australia to study Christianity and because of her political beliefs and the fact that Iran's regime was very harsh to women. She said that she had received threatening telephone calls and lived in fear. She felt that she had been denied advanced study because of her political beliefs and had also been rejected for government.
37. A short time after her arrival in Australia she met some people from Religious Organisation I and spent several months in contact with them. However she was also looking into other Churches and was concerned when they told her that she should only read their holy book. Her friend took her to a Christian Church and then she discovered a Uniting Church near her children's school and went to Church one Sunday. She started attending the Church regularly. She underwent Bible classes with Person 4 in which they would discuss various chapters of the Bible together. She used a dictionary whenever they had any difficulty communicating. [Information deleted s.431]. She said that Easter was when Christ was resurrected from the dead and whoever believed in Him would be saved and gain eternal live. She described her

baptism ceremony and said that she did not ask her relative to attend because he/she did not really support her. He/she had lived in Australia for many years and had migrated here from Country D. She said that her children would be free to choose their religion for themselves.

38. The Tribunal raised section 91R(3) of the Act with her and explained that it had to disregard her conduct in Australia in converting to Christianity unless it was satisfied that she had engaged in the conduct otherwise then for the purpose of strengthening her claim to be a refugee.
39. The first named applicant replied that she converted for herself and not for anything else. She had asked the Minister if she was qualified to be baptised and he had told her she was. She had not told her family in Iran because they would desert her.
40. The Tribunal asked her what she thought would happen to her if she returned to Iran. She stated that her conversion to Christianity was against the law in Iran and she would face imprisonment or even capital punishment. She believed other people would inform the authorities that she had converted. She said she was not able to attend Church in Iran because there was no Church close to where she lived and she would have been arrested had she tried to attend it. She said she came to Australia to find refuge and in Iran there was no freedom of speech and no respect for women.
41. At the conclusion of the hearing the applicants' representative made submissions on their behalf.

Independent country information

Christians and converts to Christianity in Iran

42. In September 2002 the post advised that, based on further enquiries, it appeared that conversions from Islam were increasingly being tolerated by Iranian authorities. Some "modern" churches like the Pentecostal community (Assemblies of God) and other evangelical churches were "very active" in proselytising. They were very active among members of traditional Christian churches (Armenians) but also welcomed interested Muslims to their community. The post was aware of three 'active' Christian churches which were baptising a substantial number of people (estimated in excess of 200 for 2001). The post noted that a leader of one of these churches, who "didn't dare to carry out baptisms for the last ten years, has recently resumed that practice" Overall, even Muslim converts seemed to be able to function reasonably well in Iranian society, "without much fear of persecution". Muslims "routinely" attended church services, often out of curiosity. Many subsequently registered for and attended Bible classes. The tolerance in 2002 toward Christians and proselytising could mark "a genuine improvement in human rights" in Iran The post did not know of any recent arrests or sentences on the basis purely of proselytising or apostasy, but opined that those who changed their faith remained "vulnerable to a change in the domestic political climate, and their conversion could be used subsequently to prosecute them if they attracted negative attention from authorities for other reasons" (2002, "Assembly of God Church", Country Information Report, DFAT, CIR No. 294/02, 19 August, CX67771).
43. DFAT Report 00228, "RRT Information Request: IRN 15703", 12 February 2003 confirmed in 2003 that there had been no deterioration in the situation for Christians in Iran, but warned that the situation for converts who publicly expressed their conversion could be "more complex" than that for other Christians.

44. This relatively benign situation changed in 2004, at least for Christians from one church in Iran, with possible implications for others. In May DFAT advised that the Post had spoken with a Reverend from that church in Tehran, who had said that there had been increased harassment of church groups in “regional cities” of Iran since the February 2004 elections. He expected that “some authorities would be emboldened” by the conservatives’ victory in those elections and that the church expected “some increased interference in their activities”. He said that the church was an evangelical one and that around 80% of its members were converts from Islam, who expected to be targeted “if there was any particular hardening of the authorities’ attitudes” (2004, DFAT Report 294, 17 May). Other sources agreed that conservatives were the victors in the parliamentary elections held in Iran in early 2004 and that since then there had been a reversal of some aspects of the social liberalisation which had taken place over the previous years (Haeri, S “Iran: Authorities step up repression against the population”, http://www.iran-press-service.com/ips/articles-2004/august/iran_repression_2804.shtml, 2 August 2004, CX99642).

45. Also in 2004, DFAT advised that:

There have been no executions of Christian converts for the crime of apostasy since 1994. The crime of apostasy - conversion from Islam to another religion, in most cases, Christianity - remains punishable by death. In recent years, it has been rare for the authorities to bring charges against Christian converts on religious grounds; if a legal case is brought against a convert, it will usually be on the pretext of some other criminal charge. If a Christian convert keeps a low profile, he will usually be safe. However, in the case of evangelical Christians, proselytising is a fundamental aspect of religious practice and members therefore come to the attention of the authorities... the election of reformist president Khatami and the domination of the majles by reformists led to easing of restrictions on Christians and other religious minorities. However, in recent months, there has been pressure on the evangelical churches. On 9 September, about 80 members of the Assembly of God in Karaj were arrested. A reverend Hamid Pourmand remains in custody. (DIMIA country information service 2004, country information report no. 74/04 - executions for converting to Christianity, (sourced from DFAT advice of 26 October), 27 October).

46. Another 2004 report observed that the rising number of Muslim-born Iranians who converted to Christianity was a relatively new phenomenon in Iran. Issa Dibaj, the son of the murdered convert Hassan Dibaj, who now lived in the U.K., and reportedly said as follows:

"There is another Christian minority that people know little about, these are Iranians who are born as Muslims and then later become Christians," Dibaj said. "Their number is growing day by day. [There] may be around 100,000 [of them], but no one really knows the exact number." ...

The government has refrained from executing people for this in recent years, nevertheless it has taken measure to curb proselytizing by Christians. Some churches have been closed and reports say the authorities are putting pressure on evangelicals not to recruit Muslims or to allow them to attend services. ... Dibaj said in spite of the restrictions, he sees a growing interest in Christianity ... (Esfandiari, G. 2004, “Iran: a look at the Islamic Republic's Christian Minority”, Radio Free Europe/Radio Liberty (RFE/RL), Prague, Czech Republic, 24 December, CX113969).

47. In connection with the well publicized court proceedings in 2005 against an Iranian convert, the authorities were aware of international concern about their treatment of him, resulting in abandoning the preliminary hearings against him (Baker, B. G. 2005, ‘IRAN: Iran Changes Venue for Apostasy Trial: Convert pastor to be tried in southern Iran’, Compass Direct, 30

April). In April 2005 Compass reported (Baker, B. 2005, "Iranian Convert Christian Faces Death Penalty" 23 April) that Pourmand had been on trial before an Islamic court in Tehran, facing the death penalty for deserting Islam and proselytizing:

... During the past 12 months, top government officials have publicly warned the Iranian populace against a number of "foreign religions" targeting the country with illegal propaganda. Christianity, Sufism and Zoroastrianism were denounced as specific threats to Iran's national security.

Interviewed last week on a ski slope north of Tehran, one Iranian engineer in his 20s told London's Guardian newspaper, "We are born Muslims because our parents and grandparents are Muslims. But if you gave a choice to most young people here today, I think they would choose to be Christians or Zoroastrians."

Dozens of evangelical Christians have been arrested this past year in ongoing police crackdowns in major cities, as well as in the provinces of northern Iran. Although most of these Christians were released after several weeks of harsh mistreatment and interrogation, they remain under threat and police surveillance.

48. A recent report from Compass Direct, Iran's Secret Police Arrest Long-Time Convert Christian held under interrogation in northern Iran for past three weeks by Barbara G. Baker 22 May 2006 notes:

An Iranian Christian who converted from Islam 33 years ago is under arrest and interrogation in northern Iran, where secret police have held him incommunicado for the past three weeks.

Ali Kaboli, 51, was taken into custody on May 2 from his workshop in Gorgan, capital of Iran's northern province of Golestan. With the exception of one brief telephone call, he has been refused contact with any visitors.

To date no charges have been filed against Kaboli, who has been threatened in the past with legal prosecution for holding "illegal" religious meetings in his home. He could also be charged for converting to Christianity, which under Iran's apostasy laws calls for the death penalty.

Since Kaboli's arrest three weeks ago, a number of the Christians attending Kaboli's house-church have been called in by the police and questioned, one by one.

A carpenter by trade, Kaboli has for decades hosted house church meetings in his home, which was once burned down by unidentified arsonists. Much of his spare time has been spent as an itinerant evangelist, leading small meetings for worship, Bible study and discipleship in various towns and cities along the Caspian Sea coast.

He has been threatened, arrested and interrogated numerous times for his Christian activities. Twelve years ago, he received verbal threats that he was an apostate who should be killed.

More than once local police have ordered him for months to stay within the city limits of Gorgan and sign in daily at police headquarters.

"Everyone knew that his house was under control [police surveillance] for many years," an Iranian Christian now living abroad said. "They even pushed him to leave the country about three years ago, but he told them he preferred to stay inside the country, even if it meant living in an Iranian jail."

“He loves Jesus very much,” said an Iranian pastor who has known Kaboli since his conversion to Christ as a teenager in Tehran. Another Christian added: “And he is very bold.”

Relentless Intimidation

According to outside observers close to the mushrooming Protestant house church movement inside Iran, local authorities and police interrogators in the Golestan and Mazandaran provinces of northern Iran have been “notoriously difficult” for their tough stance against converts to Christianity.

Six months ago, another Muslim convert to Christianity was stabbed to death in nearby Gonbad-e-Kavus, 60 miles from Gorgan. The body of Ghorban Dordi Tourani, 53, was thrown in front of his home a few hours after he was arrested from his home on November 22, 2005.

Since last year’s election of Iranian President Mahmoud Ahmadinejad, Iranian authorities have ratcheted up their pressures against the handful of remaining Protestant congregations still allowed to meet in official church buildings.

Nearly two years ago, local Protestant denominations had been ordered to cut their ties with any house church groups meeting throughout the country. Government officials warned that such fellowships were holding “illegal religious meetings” and would be duly prosecuted.

Since then, church leaders have been under relentless intimidation to compromise with government investigators by providing the names of their members, particularly any who are converts from Islam.

“So they must either give the police these names, or resign from pastoral ministry – or give up and leave the country,” one Iranian Christian told Compass. “Well actually,” he continued, “there is a fourth alternative: they can go to prison.”

It was lay pastor Hamid Pourmand’s refusal to compromise his Christian faith that landed him in jail in September 2004. Another long-term convert from Islam, the former army colonel is serving a three-year jail term at Tehran’s Evin Prison for allegedly “concealing” his conversion to Christianity from the Iranian military.

49. US Department of State International Religious Freedom Report 2007- Iran 14 September, 2007 states:

On December 19, 2006, the U.N. General Assembly passed a resolution condemning the human rights situation in Iran. The resolution follows similar U.N. statements since 2001 that decry the Government's harsh treatment of non-Shi'a Muslims. In March 2006 the U.N. General Assembly adopted Resolution 60/171 expressing serious concern about the continued discrimination and human rights violations against religious minorities by the Government. Also, in March 2006 the U.N. Special Rapporteur (UNSR) on Freedom of Religion or Belief issued a statement of concern about the treatment of the Bahá'í community in the country.

...

Christians--particularly evangelicals--continued to be subject to harassment and close surveillance. During the reporting period, the Government vigilantly enforced its prohibition on proselytizing by evangelical Christians by closely monitoring their activities, discouraging Muslims from entering church premises, closing their

churches, and arresting Christian converts. Members of evangelical congregations are required to carry membership cards, photocopies of which must be provided to the authorities. Worshippers are subject to identity checks by authorities posted outside congregation centers. The Government restricted meetings for evangelical services to Sundays, and church officials are ordered to inform the Ministry of Information and Islamic Guidance before admitting new members.

On September 26, 2006, authorities arrested evangelical Christians Fereshteh Dibaj and Reza Montazami at their home in the northeastern part of the country. Dibaj and Montazami operated an independent church in Mashhad. The Information Ministry held the couple for 10 days without bringing any charges, and agents confiscated their home computer and other belongings. They were released on October 5, 2006.

On July 24, 2006, authorities arrested Issa Motamedi Mojdehi, a Muslim convert to Christianity, following his attempt to register the birth of his son. Charges of drug trafficking were brought against him, which Christian groups said was an attempt to punish him for his conversion.

On May 2, 2006, a Muslim convert to Christianity, Ali Kaboli, was taken into custody in Gorgan, after several years of police surveillance, and threatened with prosecution if he did not leave the country. He was interrogated and was held incommunicado before being released on June 12, 2006.

On November 22, 2005, a Muslim convert to Christianity, Ghorban Tori, was kidnapped from his house in the northeast and killed. His body was later returned to his house. Tori was a pastor at an independent house church of converted Christians. After the killing, security officials searched his house for Bibles and banned Christian books in Persian. In the previous week, according to some sources, the Ministry of Intelligence and Security arrested and tortured 10 Christians in several cities.

In 2004 sources reported 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. The Government released many of those arrested, including the pastor and his family, after 6 weeks in detention.

In 2004 security officials raided the annual general conference of the country's Assemblies of God Church, arresting approximately 80 religious leaders gathered at the church's denominational center in Karaj. Assemblies of God Pastor Hamid Pourmand, a former Muslim who converted to Christianity nearly 25 years ago and who led a congregation in Bushehr, was the only detainee not released. In late January 2005 he was tried in a military court on charges of espionage, and on February 16, 2005, he was found guilty and sentenced to 3 years. Pourmand, who was a noncommissioned officer, was discharged from the army and forfeited his entire income, pension, and housing for his family. A website documenting persecution of Christians reported that Pourmand was released on July 20, 2006.

50. DFAT REPORT 595 24 January 2007 states:

A. The situation for Christians remains similar to that reported in CX70351 and CX73314. However, there have since been unconfirmed reports of persecution of Christians in Iran. Overall, the situation for Christians associated with established churches has not improved, and may have deteriorated for Christians associated with evangelical churches.

Christianity itself is not illegal in Iran and there is a seat in the Majlis (Iran's parliament) reserved for Iran's approximately 30,000 Assyrians and 100,000

Armenians, who are predominantly Christian. The seat is seen as de facto representation for Christians in the Iranian Parliament. We believe the number of Christians in Iran is growing. The situation for evangelical churches in Iran may have deteriorated since the election of President Mahmoud Ahmadinejad in June 2005. To our knowledge, this has not been the case for established (non-evangelical) churches associated with Assyrians and Armenians.

Apostasy remains illegal in Iran and apostates may be subject to harassment, discrimination, arrest, imprisonment and execution (though we are not aware of any executions in recent years). We are aware of an unconfirmed report that an Iranian man was jailed in Rasht in August 2006 for apostasy. In general, the Iranian authorities tend not to seek out such specific violators, though if such a violation is brought to their attention they may act, possibly outside the judicial system. The authorities continue to pressure evangelical churches not to recruit or admit Muslims. Proselytising remains unacceptable in Iran and those who participate in it can expect to be the subject of attention from the authorities.

On 10 December 2006, Iranian secret police arrested nine leading members of evangelical churches in several locations in Iran, including Tehran. Our latest information (23 January 2006) is that one remains under arrest and face charges that include 'endangering the national security of Iran'. In November 2005, a Muslim convert to Christianity was stabbed to death in Gonbad-e Kavus. His family allege that after his death, Iranian secret police raided his house searching for Bibles.

B. The information provided in the reports and this update applies to any Christian church or group in Iran.

C. We are aware of reports that proselytising occasionally occurs in Iran, but it is rare. This is likely to be because of the anticipated response of authorities. We are not aware of any specific law against proselytising, but anyone caught doing so would likely be arrested. We would expect them at a minimum to be questioned or harassed, and it is possible that they would be imprisoned.

D. This would depend on whether the person was previously a Muslim. Christianity is not illegal in Iran and authorities do not target people with connections to Christian groups ipso facto. If the person in question was not previously a Muslim (ie they converted to Christianity from a faith other than Islam), they are unlikely to face problems. However, conversion to another faith from Islam is illegal in Iran and carries the death penalty (although we are not aware of it being applied for apostasy in recent years). If a person is known to be an apostate, it is possible they would be harassed or imprisoned by the state. It is also possible they would suffer in other ways, such as loss of employment. There is no risk particularly associated with Australia: the threat from being known to be associated with an Australian church group is no greater (nor any less) than one based in Iran.

51. IRAN: Iran authorities lash man for having Bible in car - report
http://www.iranfocus.com/modules/news/article.php?story_id=12109, accessed on 14 August, 2007 states:

Iranian authorities in Tehran lashed a man on his back earlier this year for having a Bible in his car, an Iranian Christian group said in a report on its website on Friday.

The man was only identified by the initials A. Sh.

On 5 May, the man, driving his vehicle, was involved in a road accident with a car belonging to security guards for a government official in Tehran.

A Bible and a video of Jesus Christ were found in the man's possession upon inspection of his vehicle by the state security forces (SSF).

A. Sh. admitted to being Christian, prompting the security agents to beat him up, the report said. He was arrested and taken to a holding cell in Detention Centre 102.

During interrogation security agents accused the man of converting from Islam to Christianity, a practice banned under Iran's strict theocratic laws.

He was subsequently subjected to lashes on the back and underwent physical and psychological torture, the report added.

He was released two days later after his family made bail.

52. Christian couple flogged for attending “secret sermon” in Iran , Iran Focus, 14 October, 2007, http://www.iranfocus.com/modules/news/article.php?story_id=12780, accessed on 16 October, 2007 states:

A Christian couple were flogged in Iran for participating in an “underground Church”, an Iranian Christian group said in a report on its website earlier this week.

The unnamed couple were arrested on September 21, 2005, the report said, adding that a Revolutionary Court reviewed their case in July 2007.

Even though the couple had decided to marry seven years ago, the country’s marriage laws - which prohibit the union of ex-Muslims and members of other religious minorities – prevented them from obtaining a certificate of marriage.

The report said that the woman was born a Christian in an Assyrian-Iranian family and the man was a convert to Christianity prior to getting married.

FINDINGS AND REASONS

53. The first named applicant claimed that she participated in activities perceived to be anti-government and that this resulted in her being denied educational and employment opportunities and that she was also threatened because of this. She also claimed that whilst in Iran she became interested in Christianity and had renounced Islam. In Australia she was baptised there and became a member of a Church. If she was to return to Iran she claimed that she would be punished for being an apostate and she would not be able to practice her religion in Iran.
54. It is generally accepted that a person can acquire refugee status sur place where he or she has a well-founded fear of persecution as a consequence of events that have happened since he or she left his or her country. However this is subject to s.91R(3) of the Act which provides that any conduct engaged in by the applicant in Australia must be disregarded in determining whether he or she has a well- founded fear of being persecuted for one or more of the Convention reasons unless the applicant satisfies the decision maker that he or she engaged in the otherwise than for the purpose of strengthening his or her claim to be a refugee within the meaning of the Convention.

55. Since the applicant has been in Australia she has been attending Church and was baptised on date specified Although the Tribunal had some concerns about the speed of her baptism, the Tribunal gives great weight to the evidence of Person 1 that he found the applicant to be a genuine and committed Christian. The Tribunal also found the applicant to be a truthful witness in relation to her long held interest in Christianity.
56. In view of this evidence the Tribunal accepts that the applicant has a commitment to Christianity and has genuinely converted from Islam. In making this finding the Tribunal has had regard to s.91R(3) and is satisfied that the applicant was involved in the Church because of a genuine faith in Christianity and not for the purpose of strengthening her refugee claims. On that basis, the Tribunal is satisfied that s.91R(3) of the Migration Act does not apply to the applicant. In view of the independent country information about the treatment of people in Iran who convert from Islam to Christianity the Tribunal finds that the applicant would therefore face more than a remote chance of persecution because of her conversion in Australia should she return to Iran.
57. The Tribunal accepts, therefore, that there is a real chance that, if the applicant returns to Iran now or in the reasonably foreseeable future, she faces a real chance that she would be subjected to persecution for reasons of her religion. The Tribunal considers that this clearly amounts to persecution involving 'serious harm' as required by paragraph 91R(1)(b) of the Act in that it involves a threat to her liberty and significant physical harassment and ill-treatment if not a threat to her life. The Tribunal considers that the essential and significant reason for the persecution which the applicant fears is her religion as required by paragraph 91R(1)(a) of the Act. The Tribunal further considers that the persecution which the applicant fears involves systematic and discriminatory conduct, as required by paragraph 91R(1)(c), in that it is deliberate or intentional and involves her selective harassment for a Convention reason.
58. The Tribunal finds that the applicant is outside her country of nationality, Iran. For reasons given above, the Tribunal finds that the applicant has a well-founded fear of being persecuted for reasons of her religion if she returns to Iran now or in the reasonably foreseeable future. The Tribunal finds that the applicant is unwilling, owing to her fear of persecution, to avail herself of the protection of the Iranian Government.
59. It follows that the Tribunal is satisfied that the applicant is a person to whom Australia has protection obligations under the Refugees Convention as amended by the Refugees Protocol. Consequently the applicant satisfies the criterion set out in paragraph 36(2)(a) of the Act for the grant of a protection visa. The Tribunal has considered if it would be reasonable for the applicant to relocate to avoid the risk of harm but finds that given the attitude towards apostates, which is consistent throughout Iran, she would be unable to relocate in order to avoid the risk of harm. Therefore, the Tribunal accepts that the applicant does have a well-founded fear of persecution for a convention reason and that she is a refugee within the meaning of the convention.

CONCLUSIONS

60. 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.

61. No specific claims were made by or on behalf of the other applicants. The Tribunal is satisfied that they are the dependent children of the first named applicant for the purposes of s.36(2)(b)(i). The fate of their application therefore depends upon the outcome of the first named applicant's application. They will be entitled to protection visas provided they satisfy the criterion set out in s.36(2)(b)(ii) and the remaining criteria for the visa.

DECISION

62. 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 and third named applicants satisfy s.36(2)(b)(i) of the Migration Act, being the dependants of the first named applicant.

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 *Migration Act 1958*.

Sealing Officer's I.D. Iward