

0803337 [2008] RRTA 339 (27 August 2008)

DECISION RECORD

RRT CASE NUMBER: 0803337

DIAC REFERENCE(S): CLF2008/43806

COUNTRY OF REFERENCE: Iran

TRIBUNAL MEMBER: John Cipolla

DATE DECISION SIGNED: 27 August 2008

PLACE OF DECISION: Sydney

DECISION: The Tribunal affirms the decision not to grant the applicant a Protection (Class XA) visa.

STATEMENT OF DECISION AND REASONS

APPLICATION FOR REVIEW

1. This is an application for review of a decision made by a delegate of the Minister for Immigration and Citizenship to refuse to grant the applicant a Protection (Class XA) visa under s.65 of the *Migration Act 1958* (the Act).
2. The applicant, who claims to be a citizen of Iran, arrived in Australia and applied to the Department of Immigration and Citizenship for a Protection (Class XA) visa. The delegate decided to refuse to grant the visa and notified the applicant of the decision and his review rights.
3. The delegate refused the visa application on the basis that the applicant is not a person to whom Australia has protection obligations under the Refugees Convention.
4. The applicant applied to the Tribunal for review of the delegate's decision.
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 applicant has 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. 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'

9. 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.

10. 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.
11. 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.
12. There are four key elements to the Convention definition. First, an applicant must be outside his or her country.
13. 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.
14. 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.
15. 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.
16. 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.
17. 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.

18. 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

19. The Tribunal has before it the Department's file relating to the applicant. 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.
20. The applicant appeared before the Tribunal to give evidence and present arguments. The Tribunal also received oral evidence from a witness. The Tribunal hearing was conducted with the assistance of an interpreter in the Farsi (Persian) and English languages.
21. The applicant applied for a protection (Class XA) visa. The applicant submitted a form B and form C, and the form C encapsulated his claims for protection. The application indicated that the applicant was born in Iran. The applicant claimed to be a Christian. The applicant was an Iranian citizen, and the application form indicates that he departed from Iran as the holder of an Iranian passport, and the holder of a temporary visa. The application indicates that the applicant lived at one address from the time of his birth until the time of his departure. The applicant had a number of years of education. The applicant worked in Iran as a tradesperson until the time of his departure. In terms of his claims the applicant in answering the relevant questions in the form C stated that:

"I left that country because of war, civil unrest, oppression, persecution for religious beliefs and differences of opinion, tyranny, poverty, unstable social and political situation and terrorism, injustice, and violation of human rights by the Islamic Fundamental regime. Radical and biased Muslims.

Because of my strong faith in Christ, Jesus and being a witness of the Lord, imprisonment, torture, persecution and death awaits me if I ever go back to my country.

The Iranian radical Islamic regime and all the Islamic terrorist groups, such as Hezbollah and Baseej. Also fundamental Muslim people.

The Iranian clerical and radical authorities won't tolerate anyone who converts to Christianity from a Muslim background and unfortunately I come from a Muslim background. However, personally I never embraced Islam as my religion.

About [number] years ago I attended church service with a Christian friend of mine who was an Armenian, Iranian in [city]. As I said before, the radical Muslims do not tolerate anyone to convert to Christianity from a Muslim background. When they noticed that I was going to church they arrested me and took me to Islamic military base and interrogated me and then put me in jail for [duration] and made a court case for me, that I never, attended because I ran out of my country. A copy of my court case warning letter has been provided to you. A second and a third warning letter has been sent to my family while I was in Australia. Now having been baptised in the name of the Father, the Son and the Holy Spirit and being a member of the [congregation], how can they protect me if I ever go back to my country?"

DEPARTMENTAL DECISION

22. The Department rejected the applicant's visa application. The Departmental delegate noted that:

"The applicant claims that his problems with the Iranian authorities stems from when he attended a church service with a Christian friend in [applicant's home city] [number] years ago for which he was interrogated and detained for [duration]. However, the applicant failed to provide any details of this incident, such as dates, time and place when it occurred, the details of his interrogation. I am also unable to accept that he was detained by the Iranian authorities, as I note that the applicant has made no claims with regard to any specific charges against him, nor provided any details of his detention or why he was released. I consider that he would have provided more detailed information and some evidence to support his claims if he had been actively associated with Christianity."

The applicant further claims that since coming to Australia he has converted to Christianity for which he will be targeted by the Iranian authorities. Again, he failed to provide any details of his conversion to Christianity or if he is involved in any religious activities. It is also unclear how the Iranian authorities will come to know about the conversion to Christianity. Due to the lack of substantiating evidence, I am not satisfied that the applicant has been detained as claimed.

...Further, I note that the applicant arrived in Australia on [date] and he did not apply for a protection visa until [date]. I do not accept that this behaviour reflects that of a person who holds a deep and genuine fear of persecution on return to his country of origin. I consider that a person in fear of persecution would have claimed asylum at the earliest possible opportunity, given that he had already come into the adverse attention of the authorities due to his religious beliefs and was aware of the restrictions on religious practices in Iran.

...I find it reasonable to assume that he would have applied for Australia's protection as soon as possible and practicable after his arrival in Australia had he really feared that he faced Convention-related religious persecution from the authorities on return to his country. I find that his only reason for applying for a protection visa was to further extend his stay in Australia.

I find that the applicant is not a Christian convert or is associated with Christianity even remotely. Based on the quotations above, it is abundantly clear that it is Christian converts who experience surveillance and detention. There is no evidence before me which indicates that the applicant has converted to Christianity and there is no evidence to indicate that he will. Furthermore, there is no claim or evidence of practicing Christianity in Iran. Therefore, I am not satisfied that the applicant had been detained or will be targeted on the basis of his religion or due to the conversion to Christianity.

In considering conduct in Australia in relation to an applicant's claims to fear persecution, regard must be given to the provisions of Subsection 91R(3) of the Migration Act 1958. Subsection 91R(3) provides that in determining whether the person has a well-founded fear of being persecuted for one or more of the Convention reasons, any conduct engaged in by the person in Australia must be disregarded unless the person satisfies the Minister that he or she engaged in the conduct otherwise than for the purpose of strengthening the person's claim to be a refugee under the Convention.

Even if I accept his claims on a face value, I find that the applicant's involvement in Christianity has only been recent. From his statement of claims it appears that the applicant has developed interest for Christianity some time in [year] onwards. On the basis of the limited information provided by the applicant and for the reasons above, I cannot be satisfied, that any practice of Christianity which he may now be involved has been commenced other than for the purpose of attempting to establish and/or strengthen his refugee claims.

As there is no objective evidence to indicate that the applicant is a genuine, committed Christian, nor that the applicant's profile would be of any interest to the Iranian authorities, I am not satisfied that he will be persecuted for reasons of religious association or any other Convention reasons if he returns to Iran now, or in the reasonably foreseeable future.

Furthermore, there is no objective evidence to indicate that the applicant holds a profile that would attract adverse attention from the authorities if he were to return to Iran. Rather, the evidence is to the contrary. Information provided by the applicant shows that his passport was issued to him in his own name in Iran, where he was born and has been living and working until his latest departure for Australia in [year]. And he used the same passport to leave Iran legally without any difficulty. The fact that he was allowed to go, indicates that the authorities did not consider him of any adverse interest. If the applicant feared that he was of adverse interest to the authorities, he does not explain why he applied for a passport in his true identity and departed legally without any difficulty.

...Therefore, based on the citations above, it is unlikely that the applicant would have been allowed to depart Iran if he was a person of interest. I find that the applicant is not of significant adverse interest to the authorities.

Overall, I consider the lack of detail in the application does not support the credibility of the claims or the bona fides of the applicant's claims to need protection. From the available information, I do not consider that the applicant has suffered Convention-based persecution in the past or is likely to suffer persecution were he to return to Iran."

REVIEW HEARING

23. The Tribunal conducted a Review Hearing and the applicant gave evidence to the Tribunal with the assistance of an accredited Farsi interpreter.
24. The Tribunal asked the applicant whether he had completed the form B and form C that he submitted to the Department of Immigration in support of his claims for refugee protection. The applicant stated that a friend of his "Mr A", completed the forms for him. He added that he had a fear of giving Mr A all the information pertaining to his claims at the time of lodgement as he did not know Mr A very well.
25. The Tribunal asked the applicant whether the form B and C submitted was a true and correct account of his claims for protection. The applicant advised that they were a brief summary of his claims, that the information was true and correct, but it was an abridged version of his claims and that he would need to give the Tribunal more information. The Tribunal assured the applicant that he would be given every opportunity to do so, during the course of the Hearing. Once again, the Tribunal asked the applicant whether the claims contained in form C were an accurate albeit brief summary of his claims for protection, and he confirmed that they were. The Tribunal also made reference to those substantive claims for the applicant's

benefit and the applicant confirmed that they were a brief summary of his claims for protection and were true and correct.

26. The Tribunal asked the applicant whether he was born in Iran, and he confirmed that he was, and he advised that he was a Muslim, but was now a Christian.
27. The applicant advised the Tribunal that his parents and siblings were all Muslim.
28. The Tribunal asked the applicant whether he had ever practised his Muslim religion, and he advised that he had not practiced as a Muslim and that he did not attend the Mosque or say his obligatory prayers. The applicant stated that he had nothing to do with his Muslim religion and did not believe in it. He added that he was very happy going to church now, that he believed in his current Christian religion, and stated that even if he was not recognised as a refugee he was much happier now.
29. The Tribunal noted that the applicant claims to have attended a church service with a friend in his home city at an Armenian church several years ago, and asked the applicant whether this was correct. The applicant stated that it was, however, he stated that he was not allowed to go inside the church as a Muslim would not be allowed in. The applicant advised that a friend, Mr B, an Armenian Christian, that introduced him to Christianity, provided him with a bible and a CD, which contained bible stories.
30. The Tribunal asked the applicant why he decided to attend a Christian church at this point in his life. The applicant stated that he was in a square in his home city and got to know Mr B, the Armenian who took him to the Armenian church. The applicant stated that even before he met Mr B he read Christian books as he was interested in them. He advised that Mr B gave him his phone number and told him that if he had time that he goes to church and he could meet the applicant and bring him along to church. The applicant stated that Mr B provided him with a bible in Farsi and a CD of bible stories. Mr B escorted him to the church but he did not go inside. The applicant stated that he fell in love with Jesus Christ and wanted to study the bible. The applicant stated that he waited outside the church, and that he did this on several occasions.
31. The Tribunal asked the applicant for details of the church, the denomination, the name of the church and the exact location of the church the suburb and residential address. The applicant advised that [details of the church deleted in accordance with s.431 as it may identify the applicant] that he had forgotten the name of. The applicant advised that the church was located in his home city.
32. The Tribunal asked the applicant what language the Armenian church services were conducted in, and he advised that they were conducted in a language that he did not understand, and he reiterated that he did not see inside the church. He also advised that Mr B spoke Farsi with him. The applicant once again reiterated that he stayed outside the church, and that this service was conducted in a language that he did not understand. The applicant stated that it was like the Jewish people who have their own language. The applicant conceded that the language could have been Armenian but he was not sure. The applicant confirmed that the bible and the CD that Mr B gave him were in Farsi.
33. The Tribunal noted that the applicant claimed in his application that the authorities noticed that he was going to church and arrested him. The Tribunal noted that it was unclear what he meant by this, whether it was on the first occasion that he went to the church that he came to

the attention of the authorities, or through regular attendance. The applicant stated that he was arrested in the vicinity of the church. He stated that he attended the church several times, and was not able to attend after this due to his arrest.

34. The Tribunal asked the applicant to pinpoint with the best of his memory the date of his arrest, and the applicant after a period of deliberation concluded that it was several years ago. The Tribunal asked him what season the arrest took place in to assist with his recollection, and he stated the season.
35. The Tribunal asked the applicant who arrested him, and he advised that plain clothes police arrested him, known as the Basiji.
36. The Tribunal asked for more circumstances surrounding the arrest and why he was arrested. The applicant stated that the Basiji called him, and he was asked why he was standing outside a Christian church. He was told that he had been observed outside the church on several occasions. The arresting officer asked why a Muslim was standing outside a Christian church and the applicant, because he was fearful of admitting his Christianity, attempted to deflect the questioning.
37. The Tribunal noted that the applicant claimed that he had been released after a short period of time in detention, and asked the applicant why he was released. The applicant stated that during the detention he was hit in the face, that his wrist was grabbed, that he was forcibly taken to various places, he was forced to take his clothes off except his underpants, he was constantly beaten and asked who his contacts were, and why he had been standing outside a Christian church. The applicant advised that he was kicked, beaten and punched. The applicant stated that he was asked for details of his identity, he was asked who he was hanging around with and told his captors that he had no contacts. The applicant said that he was the subject of a court hearing and the applicant claims to have said to his captors that he believed in Jesus who was a prophet as well. The applicant claims to have been abused and that his release was affected when his father attended and provided a guarantee.
38. The Tribunal asked the applicant why he was released if he was of interest to the authorities. The applicant stated that he did not provide them with any evidence to corroborate their assertions, and there was no documentary evidence to convict him. The applicant claimed that the only evidence they had was the fact that he was in the vicinity of the church. The applicant was advised that he would be the subject of further scrutiny in relation to his Christian contacts. The applicant stated that his father wept and pleaded with his captors not to hurt the applicant. The Tribunal asked the applicant whether he required any medical assistance upon his release, and he stated that he had scars and he was not able to sleep for some days after his release.
39. The Tribunal noted that the applicant had submitted a document to the Department of Immigration purporting to be a warning letter from the Iranian authorities. The Tribunal asked the applicant why the warning letter was issued and how it was issued. The applicant stated that it was issued by the prosecution office in Iran because he needed to give them information about his Christian contacts, and that the warning letter was issued to him by post.
40. The Tribunal noted that the applicant purported to attend the Armenian church services in a particular year, but did not leave Iran until several years later, and the Tribunal sought an explanation as to why this delay occurred. The applicant stated that he attended the church

for a few months, that he was issued with a warning letter in the same year, that he was issued with a passport in the following year, and did not depart until some times later. The applicant stated that during this period of time he lived in the outer suburbs of his home city.

41. The Tribunal asked the applicant whether he continued to practice his Christian beliefs after attending the Armenian church. The applicant stated that he continued to read the bible and listen to the CD that had been provided to him by Mr B.
42. The Tribunal asked the applicant whether he had been arrested at any other time. The applicant reiterated that he was arrested outside the church and detained for a short period of time. He stated that he was also detained on several other occasions. This happened in the following year after the first arrest. The applicant stated that he was driving his vehicle and was being followed and signalled to pull over. He was then taken to an unknown location and once again pressed to provide details of his Christian contacts. He was detained briefly on each of these occasions. The Tribunal once again asked the applicant why he was released on these occasions, and the applicant stated that the interrogators wanted to know who he had contact with in the Christian world and that he had not divulged any details to them.
43. The Tribunal noted that it found it difficult to believe that a person that had not cooperated with security police investigation and interrogation would be allowed to leave custody. The applicant stated that he was allowed to leave custody he believed, so that the authorities could follow him and establish who he was having contact with.
44. The Tribunal asked the applicant what his occupation in Iran was, and he confirmed that he had been a tradesperson in Iran.
45. The Tribunal noted that the applicant had provided a letter from Pastor X of a local church in Australia to the Department of Immigration which indicated that he had been attending the church since a particular date. The Tribunal noted that the applicant had made an amendment to this date, amending it to an earlier date and initialling the amendment in pencil. The Tribunal asked why the applicant amended the letter from the Pastor. The applicant stated he did this because the first date was the date of his baptism, and that he had been attending the church earlier.
46. The Tribunal noted that the application submitted by the applicant indicated that he had worked in Iran up until the time of his departure and whether this was correct. The applicant confirmed that it was, and the Tribunal asked the applicant whether his arrest and detention had acted as an impediment to him working, and he stated that it had not.
47. The Tribunal noted that the applicant claims that upon receipt of the warning letter he fled the country. The Tribunal noted that the warning letter was issued in a particular year and that he did not depart the country until several years later and asked the applicant to explain this anomaly. The applicant stated that when he obtained his passport he wanted to go to Country N. He purchased a ticket to travel to Country N. He attended the airport, and immigration officials would not let him pass through immigration and that he did not travel to Country N on this basis. The Tribunal asked whether the airline refunded any of the applicant's ticket costs, and he said that it was mostly refunded to him. The applicant stated that during this attempt he became aware that he was of interest to the authorities. The applicant further advised that he wanted to go to Country N to allow things to settle down in Iran.

48. The Tribunal noted that the applicant had travelled to Australia as the holder of a temporary visa, and explained the nature of this visa to the applicant. The applicant stated that he did not prepare the documents in relation to this visa application, and that his father undertook that preparation. His father obtained the visa for him and possibly did it by providing false documents to the Department so that the applicant was able to leave Iran.
49. The Tribunal asked the applicant why he chose Australia as a destination. The applicant stated that it was impossible to get a visa for the United States, and he had known people who had travelled to Australia and obtained refugee protection, and the applicant also believed that his skills would increase the prospect of him finding employment in Australia.
50. The Tribunal asked the applicant whether he pursued his Christianity in Iran until the time of his departure. The applicant stated that he did 100%, that he would read the bible, and that he would listen to the CD, and that he would talk about the life of Jesus and Mary and John the Baptist.
51. The Tribunal noted that the applicant was a member of a local church, and asked him how long he had been a member of this church. The applicant stated that he had become a member of this church soon after the time of his arrival in Australia. The Tribunal noted that an earlier letter provided to the Department from a Pastor of this church indicated that he had attended since a specific date, however a later letter provided to the Tribunal indicated he had been attending some time earlier. The applicant believed that he had been attending for a period of time.
52. The Tribunal asked the applicant how often he went to church and he stated one day a week. He claimed that sometimes he attended more than once a week and that he had attended a number of church conferences.
53. The Tribunal asked the applicant what the mission statement of his church was. The applicant stated that it was to guide people to God and Jesus Christ, show them the way of life, and he added that since he had been in Australia the church population had increased substantially.
54. The Tribunal asked the applicant what the beliefs of his church were. The applicant stated that it was to worship Jesus Christ, to say prayers every day, to worship and pray from the heart, to explain about Jesus Christ and his Apostles, to talk about the goodness of the bible and the love of Jesus Christ.
55. The Tribunal asked who had started this local church and the applicant stated that he did not know. The Tribunal asked who the senior pastors of the church were and he stated the names and that services were conducted in various locations.
56. The Tribunal asked the applicant what times the services were conducted and he stated the times. He also added that there were conferences, and that services ran on a specific time.
57. The Tribunal asked the applicant what a connect group was within the context of the church. The applicant stated that he did not know what the Tribunal was talking about and did not have a knowledge of a connect group.
58. The Tribunal asked whether the church has assistance for hearing impaired congregation members, and whether they had interpreting services. The applicant confirmed that they did but that these church services were conducted only in English.

59. The Tribunal asked the applicant to name some of the free courses run by the church that he had attended. He advised that he had not attended any courses. He advised that his friend Mr A gave him lessons pertaining to the bible. The applicant also added that when a service was completed new people would meet and have coffee. The Tribunal asked about the church prayer meetings. The applicant stated that there are meetings on other days of the week.
60. The Tribunal asked whether the applicant had attended any church conferences. The applicant stated that he had and they were attended by many people and that he had been to several conferences where they talked about the life of Jesus Christ. The Tribunal asked whether the applicant had attended any special conferences run by the church and he advised that he was not aware of them or had not attended.
61. The Tribunal advised the applicant that it was going to ask him some questions about his Christianity. The Tribunal asked the applicant what he believed sin was. The applicant stated when you have done something wrong, you have committed a sin. The Tribunal asked for some examples of the sin, and the applicant stated that a sin is telling a lie or cheating and lying to people.
62. The Tribunal asked the applicant what his favourite story from the Old Testament was, and the applicant stated that he had only read the New Testament. The Tribunal noted that its perusal of the local church's website indicated that the local church believed all of the contents of the bible to be the word of God and studied it comprehensively. The Tribunal asked the applicant whether the local church referred to the Old Testament as well, and he confirmed that the church did refer to the Old Testament. The Tribunal asked the applicant what his favourite Old Testament story was, and he stated that he liked the story of David. The Tribunal asked him to relate the story. The applicant stated that David was a king, he had come from God, he was given inspiration from God and manifestations from God. God helped him to be victorious in war. Jesus provided support to him and believed he was a good king. The Tribunal asked the applicant whether he knew who Goliath was and he stated that he had heard the name, but did not know or could not explain.
63. The Tribunal asked the applicant to tell it about the story of Noah. The applicant stated that the story comes from the old times before Jesus. That Noah would lead and advise people and show them the way. That he would tell them not to do certain things and to believe in Jesus Christ and that he would lead them down the path.
64. The Tribunal asked the applicant to convey the story of Moses. He stated that Moses hit a sea with his cane, that he was in Egypt, and that there was a Pharaoh, who was prejudicial against the Jewish people. Moses escaped from Egypt, the applicant also stated that Pharaohs worshiped false idols. He further advised that Moses became a shepherd. The Tribunal asked the applicant who God gave the 10 Commandments to, and he advised that it was Moses. The Tribunal asked the applicant what the 10 Commandments were, and he stated that he did not understand and did not know. The Tribunal asked the applicant what the Ascension into Heaven was, and he advised when a person goes to God.
65. The Tribunal asked the applicant what his favourite story from the New Testament was and he advised that John was good and Peter was good too. He stated that he liked Peter's story and provided a sample of it. He stated that when Jesus was approaching his death he would tell the 12 Apostles that before the rooster crowed in the morning one of them would deny knowing Jesus. But Jesus forgave Peter for this. He stated that Peter was the only Apostle

that betrayed Jesus Christ. He also stated that Peter carried on the word of Jesus and the work of Jesus after his death.

66. The Tribunal asked the applicant who Judas was, and he stated that Judas was the Jews.
67. The Tribunal asked the applicant to name five miracles of Jesus on earth. The applicant stated there were many miracles. He made a paralysed person walk. He healed an officer's eyes, He healed the blind. He healed an old woman. The Tribunal asked the applicant to recite his knowledge of the miracle of the loaves and fishes. The applicant stated when Jesus was having meals with his Apostles. He would divide bread amongst them and they would also have wine. The Tribunal asked the applicant who Mary Magdalene was, and he advised that it was Jesus' mother. The Tribunal asked the applicant who Jesus' father was, and he advised Joseph. The Tribunal asked where Jesus was born and the applicant stated in Bethlehem in Israel. The Tribunal asked who God was, and the applicant stated that God is the one who makes people happy, gives them life.
68. The applicant added that the 12 Apostles were all sinners and they were forgiven and able to show people the right way.
69. The Tribunal asked the applicant what the Holy Trinity was, and the applicant stated that a person has to be baptised for them to become clean. The Tribunal asked what baptism was, and the applicant stated that you become clean and you become a Christian. The Tribunal asked the applicant what the symbolic meaning of baptism was, and the applicant stated the John baptised Jesus to show to the people that the water from God clears you. Baptism converts you to Christianity.
70. The Tribunal confirmed whether the applicant was fully understanding the interpreter and had fully understood her interpreting during the course of the Hearing. The applicant confirmed that he understood the interpreter 100%.
71. The Tribunal asked the applicant what he feared would happen to him if he returned to Iran and why. The applicant stated that he loved Jesus, that he was a Christian, and that he would face persecution due to his Christianity.
72. The Tribunal took evidence from a witness at hearing, Pastor X from the local church who provided a letter of support for the applicant. Pastor X stated that he wished to confirm the contents of his letter that the applicant had been attending the church for some times, was baptised and regularly attended weekend services. Further, that the applicant was a genuine follower of Jesus Christ and of the Christian faith, and that the Department should consider the applicant's case again.
73. At the hearing the Tribunal received three testimonials, one is undated, stating that the applicant had attended the church for many months, and was a kind and polite individual. Another one indicating that the applicant had attended the church for several months and that he was a warm hearted individual. The writer noted that the applicant was building important ties to the community, improving his English skills, and was a committed Christian that faced persecution in a Muslim state.
74. The Tribunal also received a statutory declaration from a third person stating that he was a bible study leader at the church and that the applicant had been an active member of the church and was a genuine follower of Christ. The writer also believed that the applicant

would face persecution in Iran if he went back there, and that the applicant believed that Islam was a forced religion and strongly believed in Jesus Christ.

75. The Tribunal duly took into consideration the statutory declaration and two testimonials provided at hearing.
76. The Tribunal conducted a second hearing. At this hearing the Tribunal advised the applicant that it must have regard to section 91R(3) of the Migration Act which requires a decision maker when determining an application for refugee protection to disregard any conduct engaged in by the person in Australia if that conduct was engaged in for the purposes of strengthening their claims for refugee protection.
77. The Tribunal noted that based on the applicants oral evidence at hearing that he had only stood outside a church on several occasions a few years ago and that this had brought him to the attention of the authorities in Iran Further to this that after an alleged short period in detention he was released from detention returned to work and did not depart from Iran until several years later and that this was suggestive of the fact that the applicant was not of adverse interest to the authorities.
78. The Tribunal also noted that the applicant claimed to have become a member of and attended the church congregation in Australia and to have attended church services on a weekly basis as well as attending some church conferences.
79. On the day of the second hearing the applicant provided the Tribunal with a copy of a letter from Pastor Y of another church. The document indicated that the applicant had been attending the second church and attending regular home bible study groups. The Tribunal asked the applicant why there had been no mention made of this church group in his protection visa application that had been submitted, nor any mention at the first hearing before the Tribunal. The applicant advised that he thought that one church would be enough and there was no need to mention a second. The Tribunal stated that it thought it odd that a person claiming a real fear of persecution for a convention based reason would omit a significant detail such as their ongoing attendance at the second church. Once again the applicant stated that he thought there was no need to mention this second church. He further stated that he spoke to Pastor Y (he did not know the Pastors surname) and that he had told the Pastor about the hearing and that Pastor Y advised that he would come along and give evidence on the applicants behalf. The applicant also stated that he lived with one of his witnesses and that this witness had taken him to this church and that Pastor Y had attended their home in order to teach bible studies.
80. The Tribunal advised the applicant about the operation of Section 91R(3) of the Migration Act namely that a decision maker is required to disregard conduct engaged in whilst in Australia if it was engaged in to strengthen a persons claims for protection. The Tribunal suggested that the document from the second church submitted at the second hearing appeared to be an attempt by the applicant to further strengthen his claims.
81. The applicant stated that his conversion to Christianity was genuine and that the Pastor had attended the hearing because he had explained his situation to him. The applicant stated that deep in his heart he believed in Jesus and that he trusted Jesus and that even if the Tribunal did not approve his application he would still maintain these beliefs. The applicant also stated that he believed in God and that he had nothing further to add.

82. Pastor Y gave evidence to the Tribunal. Pastor Y advised that there were a number of young Persian men that had attended the church. He advised that he conducted home bible studies and that he assesses where the attendees are at as far as their religious knowledge base was concerned. Pastor Y stated that he conducted the bible studies at the home that the applicant shared with one of his witnesses and that the applicant participated in these classes. Pastor Y stated that the applicant had in fact only been attending the church on a Sunday for the past few weeks. Pastor Y advised that the teachings of another church and his church were diametrically opposed on a number of grounds and that he had been disseminating this difference to the attendees of the bible study classes and for this reason there may have been a move toward his church away from the other church.
83. Pastor Y stated that he had seen a copy of the applicants Farsi bible and it had a number of bookmarks in it. He described the applicant's study of the bible as serious and as one of genuine interest. He further stated that he had also distributed a number of pictures which told key stories of the bible in illustrated form. Pastor Y advised that one of the applicant's witnesses has a thorough knowledge of English and he uses him to translate at bible classes.
84. The Tribunal also took evidence from a witness who advised that he was a friend of the applicant and that he recently returned to Iran. He advised that the applicant asked him to take a parcel to his parents in Iran and that he dropped it to their house. The witness advised that after visiting the applicants family home he was pulled over by unknown persons and asked questions about the applicant's parents and the applicant. He told them that the applicant was a friend of his who resided in Australia.
85. At the end of the hearing the Tribunal asked the applicant whether he had anything further to say and he stated "you aren't going to go over the bible questions I forgot some on the last occasion?" The Tribunal noted that it had thoroughly tested the applicants claimed knowledge of the bible in the first hearing and could see no reason to go through that evidence again. The applicant had nothing more to add.

FINDINGS AND REASONS

86. I have seen a copy of the applicant's Iranian passport and accept that the applicant is a citizen of Iran as claimed.
87. The Tribunal acknowledges the difficulties of proof that may be faced by some applicants for refugee protection in Australia. However, issues of credibility can still be relevant when determining an application for refugee protection. Further, while I understand it may, on occasion, be appropriate to extend the benefit of the doubt to an applicant for refugee protection, a decision-maker is not required to accept uncritically any and all allegations made by the applicant (*Randhawa v. MIEA*) (1994) (124ALR265, *Beaumont J.* pg 278). Nor is it essential that a decision maker have rebutting evidence available to them before they can find that a particular factual assertion by an applicant has not been made out (*Selvadurai v. MIEA*) (1994) (34ALD347, at page 348). Thus, the mere fact an applicant claims to fear persecution for a particular reason does not establish either the genuineness of the asserted fear or that it is well-founded or that it is for the reasons claimed. Furthermore, although the concept of the onus of proof is not appropriate to administrative inquiries and decision-making (*Yao-jing Li v. MIMA*) (1997) (74FCR 274, page 288), the relevant facts of the individual case still have to be supplied by the applicant themselves, in as much detail as is necessary to enable the decision maker to establish the relevant facts. Importantly, the

decision-maker is not required to make the applicant's case for them (*Prasad v. MIEA*) (1985) 6FCR155 page 169-170.)

88. Based on the claims the applicant has provided there is no basis upon which the Tribunal can be satisfied that the applicant would have a real fear of being persecuted for his religious beliefs and activities if he was to return to Iran.
89. An important consideration when a person claims to be persecuted for reasons of a religious belief is often whether you accept that the applicant's belief is sincere. It is definitely not fatal to their case merely because they do not appear to have a good knowledge of the religion that they are claiming to have converted to. The dangers involved in the practice of some religions in some countries, may limit their opportunity to gain a detailed knowledge/understanding of a religion in their country of origin. The issue therefore, may be to assess whether the knowledge level of the applicant is consistent with claimed relevant activities and opportunities.
90. The applicant claims to have attended an Armenian Christian church in Iran several years ago. The applicant advised that he was introduced to an Armenian Christian church by a person that he had befriended at a bus stop in his home city. The applicant claims that Mr B, an Armenian Christian, invited him to attend a church, and provided him with a copy of the bible in Farsi and a CD of religious stories. The applicant claims that he was not allowed to enter the Armenian church because he was a Muslim, but that he read the bible, and listened to the bible stories with interest from the time that they were given to him. The applicant further stated at hearing that he had an interest in Christianity prior to this event and had never practiced as a Muslim.
91. The applicant claims to have joined a local Church in Australia from a particular period of time and testimonials provided to the Tribunal indicate that he has attended since at least that time. At the second hearing the applicant provided new testimony that had never been presented to either the Department or the Tribunal at review from another church advising that the applicant had been attending that church since a particular period of time. In order to ascertain whether the applicant had a knowledge of Christianity cognisant with someone who had been studying the bible for several years the Tribunal asked the applicant a number of questions at hearing.
92. The Tribunal confirmed at hearing with the applicant that he had been studying the bible and listening to stories of the bible on a CD for a few years. Further to this that the applicant had been attending a local Church soon after his arrival in Australia, and had been attending bible studies with his friend. He had also been attending a number of bible study conferences and prayer meetings at a local Church according to the supportive testimonials. The new testimonial provided at the second hearing indicated that the applicant had been attending a second Church, and that the Pastor had been convening bible classes at the home the applicant shared with one of his witnesses. One would expect that somebody who had been extensively involved in the study of the bible for this time would have a substantial knowledge of its contents. The applicant's knowledge of the bible was generalised and was not what one would expect of a person who had been reading the text for several years on a regular basis. The applicant was not knowledgeable about key tenets of the bible, such as the definition of the Holy Trinity, the symbolic meaning of baptism, key stories from the Old Testament such as Noah and the Ark or key tenets of behaviour such as the 10 Commandments. The applicant's knowledge of the bible was rudimentary and the

applicant's knowledge base was not one that could be expected of a person who claims to have been involved in the study of the bible for an extended period of time.

93. One important consideration for the Tribunal is whether the Tribunal accepts that the applicant's conversion to Christianity is sincere. As has been noted above, it is not fatal to an applicant's case, merely because they did not appear to have a good knowledge of the religion they are claiming to have been converted to. That said, the applicant in the present case, appears to have taken up Christian practice in Australia some months after his arrival in the country. The Tribunal finds that the applicant's attendance at the local church and his involvement with the second church has only been engaged in to strengthen his claims for protection.
94. The Tribunal finds that the applicant's limited knowledge of Christianity, given his claimed commitment to the study of the bible leads the Tribunal to find that the applicant, with regard to his claims for protection, is not a witness of truth.
95. The Tribunal also tested the applicant's knowledge of the local church. The applicant was not aware of a number of key aspects of the Church, he gave inaccurate information in relation to the times of church services, and his evidence was inconsistent with the claim to having attended the church on a regular basis. The Tribunal has given consideration to the applicant's claimed practice of Christianity in Australia. The applicant claims to have been attending church services in Australia from several months after his arrival, however documentary evidence suggests that he was attending some times later. The Tribunal has made reference to the letters provided from the local church that confirm his attendance at church services. In addition to this the applicant provided additional testimonials at the second hearing that have not been provided before that time indicating an involvement with the second church. The Tribunal finds that the materialisation of this evidence at a second hearing a few months after the lodgement of his protection visa application is a further attempt to strengthen his claims.
96. The Tribunal considers that whilst the applicant was aware of some aspects of Christianity, his knowledge of the church services and other aspects of Christianity referred to above was generally limited. The Tribunal does not accept that the applicant's level of knowledge, in relation to Christianity, is consistent with his claim to he having attended a church in Australia since some time ago, and to have extensively studied the bible for several years. The Tribunal is of the view that there would have been considerable opportunity for the applicant to discuss aspects of Christianity, having attended church services and private bible studies with friends in Australia. Indeed the evidence of Pastor Y indicated that he had been conducting bible study classes at the applicant's home on a regular basis. In such circumstances, the Tribunal would expect that the applicant would have acquired a significantly greater knowledge of bible readings and the Old and New Testament than that exhibited at the Tribunal hearing.
97. The Tribunal is prepared to accept that the applicant has attended the local church, the second church and religious services for some period. However, in determining whether actions taken in Australia are relevant in considering the well-foundedness of the applicant's claim to fear persecution, regard must be had to the provisions of s.91R(3) of the Migration Act. This provides that in determining whether a person has a well-founded fear of persecution for one or more of the Convention reasons, any conduct engaged in by the person in Australia must be disregarded unless the person satisfies the Tribunal that he/she engaged in the conduct otherwise than for the purpose of strengthening his/her claim to be a refugee.

98. The Tribunal considers that whilst the applicant has attended the local church and the second church services and acquired some basic knowledge of aspects of Christianity, the applicant has done so for no other reason than to strengthen his claim to be a refugee. The Tribunal does not accept that the applicant has genuinely become a Christian in Australia. The Tribunal has found that the applicant is not a Christian and did not practice Christianity in Iran and is not satisfied for the purposes of s.91R(3) that the applicant attended church services in Australia otherwise than for the sole purpose of strengthening his claim to be a refugee. The applicant's knowledge of Christianity and in particular of the bible was rudimentary at best and in some cases was factually incorrect. His knowledge base did not accord with a person who had developed a genuine interest in Christianity several years ago and had vigorously pursued the study of the bible and listened to CD recordings of bible stories since that time. Of particular concern to the Tribunal was the fact that no mention had been made of the applicant's attendance and involvement with the second church until the second hearing. The Tribunal finds that if the applicant held a real fear of persecution in Iran for reasons of religion that in order to convince the Department and the Tribunal at review of the genuineness of his claim he would utilise all the evidence at his disposal in order to do this. The Tribunal's concerns about the truthfulness of the applicant are amplified by the applicant's assertion that he thought that one church would be enough and hence he made no mention of the second church until the second hearing. Furthermore the collation of further evidence in between the hearings appears to be nothing more than an attempt to further strengthen his claims for protection though activity engaged in whilst in Australia. Accordingly, pursuant to s.91R(3), the Tribunal must disregard the applicant's conduct in Australia.
99. The Tribunal does not accept that the applicant developed an interest in Christianity through an Armenian Christian contact in Iran, nor does the Tribunal accept that the applicant was perceived to be a practicing Christian by the Iranian authorities. The Tribunal does not accept that the applicant has ever suffered harm in Iran as a result of his religion or for any other Convention reasons. Nor does the Tribunal accept that if the applicant returns to Iran now or in the reasonably foreseeable future that he will be perceived to be a member of a Christian church, or will be perceived to be a Christian. The Tribunal for these reasons does not give any weight to the testimony provided by the witness at the second hearing. Given that the Tribunal has not accepted that the applicant attended church services in Australia for any other reason than for strengthening his claim to be a refugee, the Tribunal does not accept that he will be a practising Christian in Iran. As the applicant has not claimed any other reason for fearing return to Iran, the Tribunal is not satisfied that the applicant has a well-founded fear of persecution for a Convention-based reason if he returns to Iran.

CONCLUSION

100. Having considered the evidence as a whole, the Tribunal is not satisfied that the applicant is a person to whom Australia has protection obligations under the Refugees Convention. Therefore the applicant does not satisfy the criterion set out in s.36(2)(A) for a protection visa.

DECISION

101. The Tribunal affirms the decision not to grant the applicant a Protection (Class XA) visa.

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. PRRRNP