

0806698 [2008] RRTA 513 (31 December 2008)

DECISION RECORD

RRT CASE NUMBER: 0806698

DIAC REFERENCE: CLF2008/124620 CLF2008/124921

COUNTRY OF REFERENCE: Iran

TRIBUNAL MEMBER: Ms Philippa McIntosh

DATE: 31 December 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, claims to be Identity 1 arrived in Australia. He 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 by letter.
3. The delegate refused the visa application on the basis that the applicant was not a person to whom Australia had 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 Part 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 hearing was conducted with the assistance of an interpreter in the Farsi (Persian) and English languages.
21. The applicant was represented in relation to the review by his registered migration agent, who did not attend the Tribunal hearing.

Claims and evidence regarding the applicant's identity

22. To the DIAC the applicant claimed that his name was Identity 1. He claimed that he had arrived in Australia by ship, two or three weeks before presenting himself to police. He had paid a smuggler approximately thousands of dollars to arrange his travel to Australia. People on the ship had blindfolded him. When they took the blindfold off he was in a dead-end street and they said he could go. He claimed he did not know what city he was in but then was told it was City 1. He claimed he had lost his passport and had been sleeping in a park since his arrival.
23. The DIAC placed him in immigration detention and, according to a DIAC Minute, concluded that his real name was Identity 2, an Iranian national. The grounds for that conclusion were as follows:
24. A search of his belongings revealed a receipt in the name Identity 2. Searches of DIAC records showed that a person in this name was granted a visa in City 2, and that this person arrived in Australia. The above visa application and supporting documents were obtained from City 2. The photograph attached to the application was a "positive match" to the applicant, as was the photograph from a specified Iranian passport. That passport contained visas for other countries. The photographs from these visas were a "positive match" to the applicant. His parents' details on the visa application were the same as those provided by him during the initial interview at the immigration detention centre with a DIAC officer. (The Tribunal also notes that DIAC records from City 2 show that the visa applicant provided evidence of funds and his employment details. Those records note that he had unused visas in his passport and had been to Country 1 some years earlier and "recently" to Country 2 and Country 3).
25. Documents among his property included local Australian maps and hostel business cards. A DIAC officer spoke with a hostel manager, who confirmed that a person with

the name of Identity 2 had stayed at the hostel twice and had provided a passport (a copy of which had not been taken) on checking in. The applicant also had a receipt for a camera. According to the author of the Minute, this camera was in his possession. The warrant on the camera was in the name of Identity 2. An investigation by the State Seaports revealed that the only ship to arrive in City 1 from City 3 during the period the applicant claimed to have arrived in a ship's container was a liquid gas tanker, a type of ship which did not have any containers on board.

The applicant's claims to the DIAC

26. The applicant claimed that he had used the internet in Iran to gain access to a number of controversial religious books and the Bible
27. He claimed that one year his home was searched by people from the intelligence services. They seized computer software and books as well as industrial alcohol. He was taken to a building and held there for a number of days without charge. He was then sent to jail for "keeping un-Islamic DVDs", for having alcohol, and for "keeping un-Islamic books that are against religion". He was imprisoned for "[period of time]", for the first couple of months he was in solitary confinement. He was told that if he confessed his guilt the charges would be reduced and he would be released. He refused and was transferred to a lower security part of the prison. He found this difficult to recall, and had nightmares about it. He claimed that because "they could not get a confession or information from me, the magistrate finally sentenced me to suffer [a number of] lashes". This caused him severe pain. He was then released on a good behaviour bond, and was warned that he would be imprisoned again for a longer period if he tried to leave the country or did anything else wrong.
28. He claimed that after this he believed himself to be "under constant surveillance". He was frightened because he was on a government blacklist. As he believed his life was in danger he contacted a people smuggler. He and his relative drove to the port of City 4 in Iran. He was blindfolded, put on board a ship the same day and travelled on it for a number of hours to City 3. He was told to stay in one place and someone would find him. He was told to give this person his passport and to pay him substantial amount of money His parents had helped to raise this money. He remained in City 3 for several hours and was taken to another boat. He was kept in a dark cabin and blindfolded with his hands tied. The journey took a number of days. On reaching the destination his hands were untied and he was taken to a street and told he was in City 1.
29. He claimed that he had been unable to contact his family as no one answered the telephone.
30. He claimed that he would not have left his family or undertaken such a risky journey if he had not been afraid. He had not brought any personal documents with him because of the risk of being caught trying to escape. He had only brought some religious work that was stored electronically.
31. He claimed that he feared arrest, torture and further charges in Iran, because he was accused of possessing and distributing anti-Islamic literature and of possessing alcohol.
32. In response to information about his identity discussed with him during the DIAC interview relating to his protection visa application, he claimed that before he left the

ship he was given a passport by the smugglers. He had thought it was his own passport, which he had given them before embarking. He had used that passport to buy a camera and to register with hotel check-in staff. He had not realised it was in a name other than his own. He speculated that the owner of the passport must have arrived in Australia earlier and it was that person's passport that had been given to the applicant by the smugglers. He was unable to explain how, if so, the smugglers could have obtained the passport if they had handed it to him before he disembarked from the ship.

33. The Tribunal hearing
34. The applicant told the Tribunal that his legal representative was not present because that representative had told him he not been paid. The applicant said that he did not know who was supposed to pay his legal representative. He said that "[his] god" was his real representative.
35. The applicant told the Tribunal he had no further documents he wished to submit in evidence.
36. He stated that his family were in Iran. As to where he had been living in the years before he left Iran, he said he had lived at a single address, in City 2. The Tribunal asked him if he had ever lived at any other address in the street.
37. He said that he had been living with his family at the above residence and that they were still living there now.
38. He said that his family's source of income came from his parents' retirement income. His father used to work in a factory, it had closed down around many years ago, when the applicant was a teenager.
39. The applicant gave his age and year of birth.
40. The Tribunal asked him for his religion and he said he was Christian "at the moment". As to when he considered himself to have become a Christian, for example by being baptised, he said he had not been baptised and that his teacher had said he could be a Christian without being baptised. This teacher was a convert from Islam and was based at a Church in City 1. The applicant claimed he himself had been going to this church for a couple of months (no evidence was submitted in support of this claim). He said he could not go to church in City 2.
41. The Tribunal asked him if he had ever tried to attend any churches in City 2. He initially said he had not heard about these churches. He had heard that converts were killed in Iran. The Tribunal asked him if he was saying he did not know of the existence of any churches in City 2. He responded that he knew their locations and "a few times" had gone to a church and asked what he should do to become a Christian. He did not know if it conducted services in Farsi, but claimed a man there had spoken to him in Farsi. This man had told him it would be dangerous for the applicant and for the church if he went there. The applicant went on to say that he had gone to that church to ask that question on one occasion before he went to jail, and once or twice after he left jail. As to why he had returned to the church, he said it was because he thought the person did not have the right information, so he had asked other people. Their answer was the

same. He said he had not told the DIAC he had gone to church a few times in Iran because "they didn't ask me so I didn't tell them".

42. Of his education history, he said that he had had problems at school so had left after "a few years" or "one year". As to how old he had been when he left, he said he had left school a couple of years before his military service. Throughout that period he had run his own business. He had not undertaken any tertiary education.
43. Of his employment history, he said he had run his own business, as a sole trader. That business involved computers. He had resumed operating this business after completing his military service, running it for a number of years. He stated that he self-taught himself as he was interested in computer technology.
44. The Tribunal asked him how he had earned an income after he stopped running that business, to which his response was not coherent. The Tribunal asked him if the business had stopped running when he went to prison, and he responded that he had resumed running it until he came to Australia. He claimed he had never been employed in any other capacity in Iran. The Tribunal asked him why he had written on the protection visa application form that he had a different job. He responded that that was not a job but was unpaid work experience while he was at school. The Tribunal asked him why, if it was unpaid, he had included on the protection visa form his monthly salary. He said this was not the case. The Tribunal asked him why he had also written that he was unemployed until commencing his military service. He made no response to this query. The Tribunal asked him if he could explain why his employment history set out on the application form was so different to his employment history given orally. He responded that he had a break when he left school. They asked him what he did and he explained. The Tribunal told him that this response was difficult to follow and asked him if he was saying that the information on the application form was not correct. He responded that some "small things" were not correct, and that might be the fault of the interpreter. The Tribunal asked him to explain clearly why on the form he had not stated that he ran a business before commencing his military service. In response he claimed that he had "told them". The Tribunal put to him that it could infer he had not been truthful about this employment history.
45. The Tribunal told him that if the information on the protection visa form was correct, he had been self-employed for some years. He responded he was not sure of the dates. He claimed that his solicitor and the interpreter had written in the months without getting that information from the applicant. However he added that those dates sounded "about right". The Tribunal then confirmed with him that he was claiming that he was in prison and self employed at the same time.
46. The Tribunal asked him when he had first obtained a passport. He said that his first passport was issued in early 2000s. When it expired he applied for a new one, which was issued 3 or 4 years later. It was this passport he had had with him to come to Australia. As to why he had got the first passport he said he used it as identification as he had no driver's licence. The Tribunal asked him if he had ever travelled outside Iran before his trip to Australia. He said he had not.
47. Noting his claim that he had had a number of items at his home that the authorities had found and that he had been imprisoned as a result, the Tribunal asked him for details.

Initially he was in prison for a couple of months, where his photograph was taken and prison card issued, after which he was transferred to another jail.

48. The Tribunal asked him if any other incriminating items had been found at his home apart from the religious works. In response he said that the authorities seized his personal articles like clothes and stationary
49. As to where and when he had got each of these items, he said that they were on his computer, not in hard copy. He had told the authorities he had just been working on the internet and did not know they were there. There were DVDs, which included mainstream Western movies with love scenes in them. The alcohol was from a chemist. It was for medical use. It was legal for chemists to sell it but not legal to have it at home.
50. As to how much he had read of the Bible and the religious works, he said that the man at his current church had told him to read the New Testament and he had read about 30% of the Bible. He has not read the other religious works in his possession.
51. The Tribunal told him that it must disregard any activities he had undertaken in Australia if it was of the view that they were undertaken in order to strengthen his refugee claims. He indicated that he understood this but said that all his claims were genuine, and that he would not use Jesus Christ in that way.
52. Invited to do so by the Tribunal, in basic terms the applicant described the death of Jesus Christ as it is described in the Bible.
53. As to what had prompted the authorities to raid his home, he said that perhaps it was because he had upgraded someone's computer and they had not liked some of the material he had provided with it such as various folders containing movies. Maybe someone reported this and told the authorities.
54. The Tribunal asked him if what he was doing in his business was illegal and he said it was not. As to why, therefore, the authorities might raid his home, he said that for example a friend might introduce their friend to him and the latter person would bring in their computer. Normally they would tell him to load whatever he had, for example "stuff for their kids, or movies". Maybe someone had not liked what he had loaded. He said that alternatively in an internet chat room there was a spot where friends could talk together, so maybe he could make friends with someone without the other's knowledge, and this person might ask for his biographical details. The Tribunal asked him what all of this had to do with the raid and he responded that "maybe someone I did a job for was from the government".
55. The Tribunal asked him if he had ever been taken before a court. He said he was questioned a few times and was taken to court, but this happened at the end of the process. "First they bash you" and then one goes to a court at the end. The final court he had gone to was in City 2. He had been in two or three different courts in total. He had gone to court twice. He said that he did not know the purpose of these court hearings. As to whether he was sentenced, he claimed that they said he had been in jail would have been incarcerated longer if he went back to unIslamic books or an interest in Christianity.

56. Asked whether he had been given any documents by the court about charges against him or any other matter, he said he had not. He claimed however that at the beginning of his sentence he had tried to show he was a good person and had told them he knew computers. They had transferred him to a computer room in a different jail, a room in which prisoners were divided by age. He had worked for them in that section for a few months. It was a boring job but was "a good environment". He confirmed that the situation in the second prison was reasonably good "compared to other prisons" but that there were some tough people there.
57. As to the reason for his release from prison, he said that he had to make an undertaking that he would not have alcohol in his home or anything illegal, would have no interest in other religions, and would not send or copy these things for anyone. He should send no political books to anyone. The Tribunal told him it understood that the Iranian authorities were extremely sensitive about the role of bloggers in Iran and asked him if that was why they were so concerned about him. He said he did not know, but that they tried to fill the criticism of officials. The government watched people like him.
58. The Tribunal asked him if, after his release, he had avoided all the things he had been warned about. He responded that he had followed his own interest in Christianity and had invited other people to read the truth. He had sent them documents and left it to them to decide if they were interested. As to what documents he meant, he said that on his blog he had a subject about the Bible and the Qur'an and about history. The Tribunal invited him to open up his blog so that the Tribunal could see it. He readily did this, opening the website. He told the Tribunal that there was religious and political material on it.
59. The Tribunal asked him if, after his release, he had had any further direct contact with members of the security forces. In response he said that he had been detained and questioned again. The Tribunal asked him why he had not mentioned this at any point in his claims before (having only stated that he believed he was under surveillance from a neighbouring property). He responded that he had not been asked, and agreed that he had only stated that he was under surveillance.
60. Invited to tell the Tribunal what had happened to him during the second period of detention, he said that in fact he was not picked up again, but that they had come to knock on his door a few times. The main problem was that he was worried about being picked up again so had to limit his business. The most recent time they had knocked on his door was about a few months after his release from detention. After that his neighbour was always at home with the lights off, so he thought that his neighbour was watching him.
61. The Tribunal put to him that, according to this account, he had remained in Iran for a few years after the most recent visit by the authorities without any further contact with them in relation to the above problems. The Tribunal asked him why, given that, he had decided to leave Iran when he did. He responded that it was not long since his release from detention. The Tribunal reminded him of his earlier claim that he had been released a number of years. He agreed that this was correct. He also agreed that the most recent visit by the authorities to his home was a few months after the year he was released. The Tribunal told him that it appeared from this that he had left to run a few years after that, to which he responded that he was not sure.

The applicant told the Tribunal that if it did not believe he was in jail it could ask Person 1 [identifying information deleted: s431]. He claimed that Person 1 had been in jail when he was. The Tribunal asked him if Person 1 knew that the applicant had been in jail. The applicant appeared to indicate that he did not, saying that he could write to him describing the environment in the prison and ask him to confirm that the applicant must have been there. The Tribunal told him that it was not proposing to seek any information from Person 1 and that it was up to the applicant that he wished to contact him. The applicant indicated that he understood this.

62. As to why the applicant had left Iran when he did, he said that he had been very careful about who he chatted with and had not accepted jobs from anybody unless he knew them. He asked the Tribunal how long he could live like that. The Tribunal asked him why he could not just have run his business in the normal way, rather than introducing unsolicited political or religious material onto people's computers. He responded that he did not know. He made a folder and put thousands of books in it. The Tribunal invited him to explain clearly why he could not just do the work necessary for the running of his business, as other people in his field did, without bringing religious or political elements into the work. He responded that in Iran people asked him to put onto their computers whatever he could, for example movies. The Tribunal suggested to him that it was still his choice what material he added to other people's computers. He responded that then he would "have to assess their thinking". The Tribunal asked him why, if he felt this would be problematic, he could simply opt not to put any unsolicited material onto people's computers. He responded "how can I refuse?". The Tribunal asked him why he could not simply say that it was the policy of his business to operate in this way. In response he said that he liked the Bible and that if someone asked him if he had read a religious book he would tell them.
63. The Tribunal told him that, having listened to his account, it appeared that there had been no particular development or incident that had led to his decision to leave Iran when he did, but that things had just built up in his mind. He responded that if he returned to Iran he would be sentenced to prison for continuing his activities. The Tribunal asked him why, if the Iranian authorities did not know before he left about any such activities, they might know now. He responded that they might know now but he did not know.
64. He added that he would also get six months in jail for losing his passport.
65. He made a further claim. That before the hearing a member of the basij had told his family that they were "in a situation like Ebrahim" and that it looked like their son had "done more activities" [The basiji are a volunteer paramilitary force, engaged in activities including law enforcement, emergency management, public religious ceremony organizing, morals policing and suppressing of dissident gatherings - Molavi, A., *The Soul of Iran*, W.W. Norton, (2005), p.88, 316-318]. He said that he had not told his solicitor this news because he had had no opportunity to do so. He went on to say that the basij member had said that the applicant was someone they could kill. His family had told him they had received a letter requiring him to attend court. A relative had told the applicant he could get the letter from their parents and send it to the applicant. The applicant then claimed that there had been a few of these letters. He said he could not be sure he could get any of these letters and submit them but would try.

66. Noting his claim that he left Iran via City 4, the Tribunal advised him of information on the basis of which it could infer that he had not been of any interest to the Iranian authorities when he left Iran. That information was that it was very difficult to obtain a passport and leave Iran if one was politically suspect or was wanted by the authorities for any reason. Checking was thorough. His passport had been issued after his release from prison. On the basis of all this the Tribunal could infer that the Iranian authorities had no interest in him. The Tribunal advised him that he could respond orally to this information or in writing after the hearing. He chose to respond orally and immediately, saying only that he did not know this information about passport issue.

67. The Tribunal gave him a letter at the hearing under the provisions of s.424A of the Act, inviting him to comment on or respond to information that the Tribunal considered would, subject to any comments or response he made, be the reason, or a part of the reason, for affirming the decision under review. The particulars of the information were:

According to DIAC records, a search of your belongings revealed a receipt in the name [Identity 2]. Searches of DIAC records showed that a person in this name, born [date], was granted a [type] visa in City 2 on [date], and that this person arrived in Australia on [date]. The above [type] visa application and supporting documents were obtained from City 2. The photograph attached to the application was a "positive match" to you, as was the photograph from Iranian passport [passport no.]. That passport contained visas for [names of countries]. The photographs from these visas were a "positive match" to you. Your parents' details on the visa application were the same as those provided by you during your initial interview at the immigration detention centre with a DIAC officer.

The Tribunal also notes that DIAC records from City 2 show that the [type] visa applicant [Identity 2] provided evidence of funds and of employment as a [occupation]. Those records show that he had [no. and type of] visas" in his passport and had been [country] [no. of] years earlier and "recently" to [name of countries].

Among your property were [type of] business cards. Its manager confirmed to DIAC that a Identity 2 had stayed at this [place] twice and had provided a passport on checking in.

You also had a receipt for a camera bought at [shop name] on [date]. This camera was in your possession. The warranty on the camera was in the name [Identity 2].

An investigation by [State] Seaports revealed that the only ship to arrive in City 1 from City 3 during the period you claimed to have arrived in a ship's container was a liquid gas tanker, a type of ship which did not have any containers on board.

This information is relevant to the review because the Tribunal could infer from this evidence that your name is [Identity 2], that you have openly and legally travelled in and out of Iran during a period when you claim you were either detained or at risk of detention, that you left Iran for Australia legally and openly because you were of no interest to the Iranian authorities, and that you entered Australia, using your own passport, by plane.

The Tribunal could further infer that you have not been truthful about your identity, about your reasons for leaving Iran, or about your entry to Australia. The Tribunal could therefore infer that you were not subject to persecution in Iran and that you do not fear Convention-related persecution there if you return.

68. He was invited to give comments or respond to the above information in writing. He provided a statutory declaration through his solicitor, a summary of which is set out as follows:

69. a) He denied that he was Identity 2.

70. b) He was unable to explain how a photograph resembling him had come to be in the passport of the above-named person. He had given photographs of himself to the smuggler before departing for Australia and assumed that the smuggler had put the photograph in the passport.
71. c) He was unable to explain how a photograph resembling him had come to appear as "part of visas" contained in this passport. He had given photographs of himself to the smuggler before departing for Australia and assumed that the smuggler was responsible for this.
72. d) He had not travelled to [list of] countries.
73. e) He had never lodged an application abroad for a visa to come to Australia and was unable to explain how a photograph resembling him had come to be attached to a visa application
74. f) He could not explain how his parents' residential address had come to be included on the application for the visa.
75. g) He had never applied for a visa to visit country 1
76. h) He had never applied to visit Country 2 and 3 and had no interest in doing so.
77. i) Shortly after his arrival in Australia, he was provided with a passport that he used to get accommodation and to buy a camera. That was why records relating to get accommodation and the camera were recorded in the name of Identity 2.
78. j) He maintained that he had been put in a container on a ship bound for Australia. He said he was unable to describe the type of ship.
79. k) He claimed that he was trying to obtain evidence about his true identity but was having a lot of difficulty as the Iranian authorities were "refusing to release this information". (He provided no details as to what steps he was taking to get such information, who he had approached for it, or the nature of the information).
80. The Tribunal wrote him a further letter, again under the provisions of s.424A of the Act. The particulars of the information on which he was invited to comment were as follows:

During the hearing you referred to your web log at [website] You indicated that, on your release from detention in [year] you used this web log to pass on information to other Iranians. That information was about Christianity and, by implication, dissident political views.

The Tribunal has examined the web log. According to it the first entry was in [date], and the first entries relating to political or religious matters were posted in late [date], after the Department of Immigration refused your protection visa application.

This information is relevant to the review because the Tribunal could infer from this:

- a) that you did not have a web log containing religious or political material in [year],
- b) that you added such material in late [year] in order to strengthen your claim to be a refugee,
- c) that you have not been truthful when you say you had an interest in Christianity in Iran,

d) that any problems you had with the Iranian authorities were unrelated to your religious or political views.

His response to this letter was included in the statutory declaration submitted with the assistance of his solicitor. In it he agreed that this particular weblog had not been started until recently. Dissident material was not posted on his weblog previously. Information was not posted on it for some time after his arrival in Australia because he did not have ready access to a computer and was having to make other adjustments. He made no further comment.

81. Evidence from other sources

82. Passports/exit from Iran

83. The UK Home Office observes that security officials at the airport in City 2 possess lists of suspected or wanted persons and it is not unusual that passengers are prevented from leaving and told to refer to the security department. In general, the security checks at City 2 airport are still very strict and it is doubtful that anyone with a security record and convictions in Iran for political offences would be able to leave the country legally by air (Home Office UK Border Agency 2008, Country of Origin Information Report - Iran, 15 August, para. 18.02).

84. Of passports, the UK Home Office (2008) at 31.01 quotes a CIRB report of 3 April 2006:

“Passport features and procedures

“In a 2 February 2006 telephone interview, an official at the Embassy for Iran in Ottawa provided the following information about Iranian passports. Depending upon the volume of demand, it takes approximately one month to obtain a passport after the application has been made. Passports are valid for five years. In order to obtain a passport, it is important for the applicant to have a birth certificate. The applicant must apply for and pick up their passport in person.”

The report continued:

“...The Iranian police force, the Law Enforcement Forces (LEF), is the passport issuing authority in Iran and has nine passport offices in Tehran as well as forty-nine others in cities across the country (ibid.). To apply for a passport, individuals over the age of 18 years old must appear in person at the LEF passport office, complete and submit an application form and present the required identification documentation (ibid.). ... obtaining a passport was more complicated for certain individuals, namely those who had ‘matters to settle with the Iranian authorities’”

85. At 31.02 of the UK Home Office report (2008) it was noted that another report from the CIRB observed that, in a March 2006 telephone interview, an official at the Embassy for Iran in Ottawa said that Iranians who wished to travel abroad must apply for an exit permit. After verification of the applicant’s background, an exit permit was stamped in the applicant’s passport indicating that the applicant was permitted to leave the country.

86. According to the March 2006 Travel Information Manual published by the International Air Transport Association, exit permits are required for nationals of Iran, who must obtain a passport endorsed with an exit permit from the police department. Similarly, the August 2005 US Department of State Consular Information Sheet for Iran noted that this was so.

87. In March 2006 an official from the Office of the United Nations High Commissioner for Refugees stated (UK Home Office 2008, 31.03-04) that the Government required exit permits for citizens who were “politically suspect” The CIRB noted that “Verification of passports and documentation at departure points at land borders and airports is carried out in the last phase of [the] exit procedure. This means that in airports, after the tickets are checked and the luggage is delivered to the airline and before getting into the waiting area for departure, the passports shall be checked by a Disciplinary Forces officer who verifies in [the] NAJA [law enforcement] database whether the passport is fake and whether the person standing in front of the officer is the same person whose name and photo appears on the passport. ... “A report published in 2000 by the Danish Immigration Service provides comprehensive information on the series of checkpoints that individuals exiting the country from Mehrabad International Airport (Tehran) are required to pass through. It notes that

Once a passenger reaches the passport inspection booth, he gives his passport to the two passport inspectors. ... In the case of Iranian nationals, the information contained in the passport is checked against data stored in a computer system to which the inspectors have access. The data stored in the computer system cover both Iranian nationals and persons permitted to reside in Iran.

According to the passport inspectors and the Iranian police (LEF), this system indicates whether an individual passenger has any unsettled matters with the Iranian authorities. If so, the person concerned is refused permission to leave Iran. However, a person may be permitted to leave the country even if he has an outstanding matter. In such cases he must present a written order from a judge. Whether an exit permit will be granted depends on the nature of the individual case.

...

With regard to entry procedures, the 2000 report, citing a ‘high-ranking airport official,’ noted that upon deplaning, all passengers are checked through ‘passport control’ In particular, records of Iranian nationals are verified to determine whether they ‘have any outstanding business with the Iranian authorities’ If found to be the case and an individual is flagged for a ‘matter to settle with the authorities,’ then said individual would face one of two actions: arrest or passport confiscation In either case, the Iranian national would need to settle the matter in question with [the] authorities before he or she can be freed or retrieve his or her passport.”

88. Bloggers in Iran

89. According to a recent report, the Iranian blogosphere reflected unexpectedly harsh critiques denouncing the government of the Islamic republic, from reformists who reviled it to conservatives who supported it. But what the government chose to filter out was not entirely predictable. Overall, a new study by the Berkman Center for Internet and Society at Harvard Law School showed that Iran's blogosphere mirrored the "erratic, fickle and often startling qualities of life in the Islamic republic itself". The rules of what was permissible fluctuated with maddening imprecision, so people tested the limits. The researchers' general conclusion was that, "despite periodic persecution", many Iranians were able to use blogs to express "viewpoints challenging the ruling ideology of the Islamic Republic." The study found, for instance, that fewer than a quarter of blogs pushing for change, including those written by expatriates, were blocked. In addition, conservatives of all stripes maintained a lively debate about Iran's president. "Arguing about stuff, arguing about public affairs, is taking root in the blogosphere on the conservative side, on the reformist side, all over", according to John Kelly, the founder of a New York company that took part in the study and created the

software that helped researchers group blogs together by subject and social networks. "We don't know if the government is not trying or not able to block as much as we thought," said Kelly, who wrote the study with the director of the project at Berkman. "They may allow a certain amount of online discourse to be there because it seems to underline the legitimacy of the system". Iran seemed to handpick which blogs it blocked, but researchers admitted that Iran's filtering policy and techniques remained opaque. "Our sense is that the government in Iran doesn't see the blogosphere as bad as a whole," Kelly said, noting that Iranian exiles had alleged that the government organized and paid bloggers to put out the party line. "What they are trying to do is to promote more young religious voices, to pile as many conservatives into the network as they can" (MacFarquhar, N. 2008, "Bloggers in Iran push limits of government tolerance", International Herald Tribune, 6 April, <http://www.ihf.com/articles/2008/04/06/news/blogs.php>.)

FINDINGS AND REASONS

90. The applicant claims to be a citizen of Iran. He speaks Farsi, the main language of Iran, and shows a ready familiarity with life in Iran. He claims not to be in possession of his own passport. That issue is discussed below. However even if he were not the holder of an Iranian passport, the Tribunal would be satisfied that he was a citizen of Iran His claims to have a well-founded fear of Convention-related persecution are therefore considered in relation to Iran.
91. The Tribunal considers the material located by the DIAC, and put to the applicant in writing by the Tribunal, to be highly compelling and persuasive as evidence of the applicant's identity. It considers the applicant's explanation as to how his photograph came to be in a passport in the name of Identity 2, and how the applicant came to be in possession of that passport in Australia, to be vague, illogical and unpersuasive.
92. On the basis of that material the Tribunal is satisfied that the applicant's real name is Identity 2, that he was granted a passport in Iran through normal, legal, processes, and that he was granted an Australian visa in City 2. The Tribunal is satisfied that he openly and legally travelled in and out of Iran by plane before departing for Australia, that he left Iran for Australia legally and openly using his own passport, and that he entered Australia, using his own passport, by plane.
93. As the applicant denies all this to be the case, the Tribunal is satisfied that he has not been truthful about his identity, his departure from Iran or his entry to Australia.
94. As to his claims about his reasons for leaving Iran, the Tribunal has before it no evidence beyond his own assertions that his home was ever raided by Iranian intelligence officers, or that he was ever detained by Iranian authorities, ill treated, taken before any court, imprisoned or subsequently has been of any interest to the Iranian authorities. There is a great deal of evidence for other sources that individuals do face such treatment in Iran for expressing dissident political views or breaching the laws in relation to social behaviour. However it does not follow that the applicant was subjected to this treatment and, in the absence of any supporting evidence beyond his assertions, his general credibility becomes crucial in enabling the Tribunal to be satisfied one way or the other.

95. The applicant has claimed that he was released from prison on a good behaviour bond, and was warned that he would be imprisoned again for a longer period if he tried to leave the country. On the basis of the detailed evidence contained in the UK Home Office report (2008), the Tribunal is satisfied that for the issue of a passport and an exit permit in Iran the applicant would have had to personally approach Iran's police department. The Tribunal is satisfied that, if the authorities had given him the above warning, had wished to detain or harm him, or indeed had even wished to discriminate against him or harass him on the basis of his claimed past dissident behaviour, they would have delayed or refused passport or exit permit issue. There is nothing to suggest that they did so in this case. The Tribunal also considers reliable the evidence from the UK Home Office that security officials at the airport possess lists of suspected or wanted persons, that it is not unusual that passengers are prevented from leaving and told to refer to the security department, that security checks at City 2 airport are very strict and that it is doubtful that anyone with a security record and convictions in Iran for political offences would be able to leave the country legally by air. The fact that the applicant was able and willing to depart Iran legally by air satisfies the Tribunal that he does not have a security record of convictions in Iran for political offences, and that he had no fear of imprisonment when he left for Australia.
96. In addition, because he has not been truthful about the key issues of his identity, the passport and visa matters referred to above, and his manner of travel and entry to Australia, the Tribunal does not consider the applicant to be a generally credible source of evidence and, without more, does not accept that he was detained in Iran for the reasons he has claimed.
97. The Tribunal is unable to establish the real reason for the applicant's decision to leave Iran. However, on the basis of the evidence from the UK Home Office above, and the view that the applicant is not a generally credible witness, it does not accept that he was subjected to Convention-related persecution in Iran, or that he left Iran because of a fear of persecution. The Tribunal does not accept that he fears any Convention-related persecution there if he returns
98. As to his activities in Australia, 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 conduct otherwise than for the purpose of strengthening his or her claim to be a refugee within the meaning of the Convention.
99. As to the applicant's claims to have visited a church in City 2, to have attended a church in Australia and to be a Christian "at the moment", the Home UK Border Agency (2008) makes clear that Christianity is a recognized religion in Iran and that it is not illegal to be Christian. It highlights, however, that Moslems who have converted to Christianity may attract serious discrimination, as may Christians suspected of proselytising among Moslems. The report does not refer to mere possession of the Bible by Moslems as attracting any harm or any official penalty in Iran. In his oral evidence the applicant showed a level of familiarity with the Bible consistent with having (as he claimed) read some of it, and the Tribunal accepts that he has done this,

although the Tribunal has no evidence beyond his own assertions that he ever visited a church in City 2 or attended church in Australia. In light of the Tribunal's finding that his evidence has not been credible on the key issues referred to above, it does not consider plausible, and does not accept, that the applicant had any real interest in Christianity while in Iran, that he genuinely considers himself to be a Christian now or that he might want to attend church or live as a Christian if he returned to Iran. The Tribunal is not satisfied that any activities relating to Christianity in which he has participated in Australia were done otherwise than for the purpose of strengthening his claims to be a refugee. The Tribunal has therefore disregarded that conduct in determining whether he has a well-founded fear of being persecuted for one or more of the Convention reasons in Iran.

100. With regard to the applicant's weblog, the Tribunal accepts that he created it some months before his arrival in Australia, and that more recently he has added religious and political material to it. The latter was added after his primary application for a protection visa was refused, and the Tribunal considers that it was added for the purpose of strengthening his claims to be a refugee. The Tribunal is not satisfied that any activities relating to the expression or dissemination of dissident political views in which he has participated in Australia were done otherwise than for the purpose of strengthening his claims to be a refugee. The Tribunal has disregarded that conduct in determining whether he has a well-founded fear of being persecuted for one or more of the Convention reasons in Iran.
101. For the reasons set out above the Tribunal finds that the applicant does not have a well-founded fear of Convention-related persecution in Iran.

CONCLUSIONS

102. The Tribunal is not satisfied that the applicant is a person to whom Australia has protection obligations under the Refugees Convention. Therefore he does not satisfy the criterion set out in s.36(2)(a) for a protection visa.

DECISION

103. 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. PRRT38