

**071543239 [2007] RRTA 335 (17 December 2007)**

**DECISION RECORD**

**RRT CASE NUMBER:** 071543239

**COUNTRY OF REFERENCE:** Iran

**TRIBUNAL MEMBER:** Wendy Boddison

**DATE DECISION SIGNED:** 17 December 2007

**PLACE OF DECISION:** Melbourne

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

## **STATEMENT OF DECISION AND REASONS**

### **APPLICATION FOR REVIEW**

This is an application for review of 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).

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 by letter.

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.

The applicant applied to the Tribunal for review of the delegate's decision.

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**

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

Section 36(2)(a) of the Act provides that a criterion for a protection visa is that the applicant for the visa is a non-citizen in Australia to whom the Minister is satisfied Australia has protection obligations under 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).

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

#### **Definition of 'refugee'**

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

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

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

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

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

Second, an applicant must fear persecution. Under s.91R(1) of the Act persecution must involve “serious harm” to the applicant (s.91R(1)(b)), and systematic and discriminatory conduct (s.91R(1)(c)). The expression “serious harm” includes, for example, a threat to life or liberty, significant physical harassment or ill-treatment, or significant economic hardship or denial of access to basic services or denial of capacity to earn a livelihood, where such hardship or denial threatens the applicant’s capacity to subsist: s.91R(2) of the Act. The High Court has explained that persecution may be directed against a person as an individual or as a member of a group. The persecution must have an official quality, in the sense that it is official, or officially tolerated or uncontrollable by the authorities of the country of nationality. However, the threat of harm need not be the product of government policy; it may be enough that the government has failed or is unable to protect the applicant from persecution.

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

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

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

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

stateless, unable, or unwilling because of his or her fear, to return to his or her country of former habitual residence.

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

## **CLAIMS AND EVIDENCE**

The Tribunal had before it the Department's file relating to the applicant. The Tribunal also had regard to the material referred to in the delegate's decision, and other material available to it from a range of sources. The applicant appeared before the Tribunal to give evidence and present arguments. The Tribunal also received oral evidence from a religious minister. The Tribunal hearings were conducted with the assistance of an interpreter in the Farsi (Persian) and English languages. The applicant was represented in relation to the review by his registered migration agent who attended the Tribunal hearings.

The applicant is a Muslim who was born in Town A, Iran. He completed many years of education and was a skilled professional. From the early 2000s he worked as an official with a company. In a statement accompanying his protection visa application, he explained that initially he was in a specific position and after several years he was promoted. Having been involved in secret group activities during his studies at university, he became a member of a union, in a specific position. The pressures of so-called Islamic government in Iran on hardworking company staff, was increasing and they faced various problems, such as wage payments. Towards the early 2000s, protests against the government increased and spread to other cities and became a national concern. Most employees of the company, including various staff, went on strike, which put great pressure on all over the country.

In the same year when the government targeted the leadership of a union some company officials were arrested by the order of a Government Official, Person U. Some of the arrested officials were later released, which coincided with the workers' strike, however more activists were arrested. The workers' campaign was still continuing and although workers were successful to some extent, an official of the union and some of the workers were still in prison. The union office was closed and the workers' requests were still ignored. The Islamic government was attempting to intimidate the workers and suppress the unrest among them. The applicant participated in the strikes and was arrested with some other union activists. They were taken into custody and kept there for several days where he was mistreated. Later the applicant was transferred to different place and could not have any visitors for several weeks. He was questioned a few times during this period and finally tried by a Court of Iran and sentenced to several years of imprisonment and transferred into custody in Town B. After a few months the applicant was released temporarily on bail through his Sibling 1's efforts. He had been hiding in his Sibling 1's house since then. With his Sibling 1's assistance, the applicant paid many thousands of US dollars to a trafficker who arranged for him to come to Australia.

The applicant provided to the Department:

[Information about the applicant's documentation amended in accordance with s.431 as it may identify the applicant].

- an original and translation of a court ruling, in relation to the applicant;

- an original and translation of an acceptance of bail document, in relation to the applicant;
- a summons issued to the applicant's Sibling 1 in relation to the bail placed by them;
- an acceptance of bail bond (surety) dated;
- a letter on transport companies letterhead, addressed to the applicant, requesting that he attend at the security office; and
- a letter to an official, notifying a government department of the applicant's redundancy and discharge orders.

Some months later the Tribunal received a further Statutory Declaration made by the applicant in which he provided some additional information about his background and schooling. He also provided further details regarding his employment. He explained that when he went to live in Town C in the late 1970s he worked in his Sibling 2's business during the day and studied at night. When he was studying at University he became aware of the problems and pressures that many students faced because of the student militia and an organisation called Harafat. Harafat was a government security organisation within the university, which closely monitored students for anti-government attitudes. The applicant learned that there was no freedom in Iran – anyone who criticised the regime or acted in any way differently to the strict Sharia law was likely to be brutally dealt with and opposed. He became politically active during his time at university in the early 1990s and attended discussions about students who had been detained and strategies to handle the Harafat. During his time at his university he became concerned about injustice, repression and lack of human rights but he was not politically active because he was struggling to study and earn enough to survive. In the mid 1990s he graduated with a degree and he went to work at the Company H. He did not get involved in any political activities at this time. He knew that if you were accused of doing something in violation of Sharia law you could be easily executed. In the early 2000s he commenced employment with the company. He corrected a number of mistakes in his previous application and provided details of his family members.

The applicant first joined the union in the early 2000s. This was not a simple thing and only a small percentage of the company workers were members. The applicant had previously known by an official who trusted him and encouraged him to become involved. The applicant agreed to become a union member – he described the process of joining the union. He gave his union card and some other documents related to the union protest to his Sibling 1 and told him/her to destroy them due to the dangers of him further being implicated in union activities. The applicant's performed a specific role. The applicant knew the dangers of being involved in the union and initially did not want to be involved because he was scared. However, a strong sense of injustice had built up in him about the mistreatment of the workers. His union involvement was very dangerous because the Iranian authorities were very hostile toward union activity, refused to recognise unions and outlawed them. The regime saw unionism as counter-revolutionary and as posing a serious political threat to the regime. Any group or anyone seen as a threat to the regime or the authority of the Mullahs needed to tread very carefully. This meant that many of the union activities were undertaken discretely and members tried to keep their membership secret.

The applicant described his arrest and imprisonment. He was accused of being active in activities against the regime and of insulting the Ayatollahs and the Islamic religion of the regime. He was tortured but did not confess to being a member of the union. He was taken before court a few weeks after being taken into custody. At no time did he confess to being a member of the union or to his union activities. Several weeks after his trial, he was sentenced to several years' imprisonment and ordered to pay a fine. He was then transferred to a different location and after a further few months was released on bail. He appealed his case to a court and was granted bail pending his appeal. When he was released he went to live at his Sibling 1's house in Northern Iran. He did not return home because he wanted to flee from Iran and was concerned that he might be placed under surveillance. Sibling 1 knew someone who was a people smuggler who arranged for him to leave Iran. The applicant responded to a number of findings in the delegate's decision.

A few days later, the Tribunal received a letter from the applicant's advisors in which they submitted he had a well-founded fear of persecution for reasons of his actual and or political opinion as a supporter or member of an illegal trade union and as a political opponent of the regime and for reasons of his membership of a particular social group, being trade unionists, and for reasons of his religion, namely that he was viewed as an infidel for engaging in trade union practices, which were seen contrary to Sharia law and an insult to the Supreme Leader.

The Tribunal received a further Statutory Declaration made by the applicant. He corrected some dates in his initial statement. He claimed that in relation to his fear of returning to Iran he would face even worse brutality because he fled on bail without permission from the authorities. This would heighten the suspicions about his activities in opposition to the regime.

He also advised that he planned to be baptised as a Christian at Church K this year. He had decided to formally denounce Islam and become a Christian because he had lost faith in Islam and had for some time wanted to become a Christian. For many years in Iran he was secretly involved in the Armenian Church but it was too dangerous for him to convert his religion. A few months after he arrived in Australia he found a church with which he felt comfortable and had been attending regularly. He feared that if he was forced back to Iran he would not be able to practice his Christian faith without the risk of his blood being shed by the regime.

#### *Evidence at the Hearing*

The applicant had five siblings residing in Iran and he was not in contact with them because of the situation and what has happened. He was asked whether he had contacted them at all since he had been in Australia, and he said through a friend he had sent them emails and they had sent emails back. He was asked whether they had told him if anything further had happened in Iran which would make him concerned about returning there. He said they had told him the situation was getting worse. There were arrests recently, a political activist, like Person T who was an official of the transport union in Iran. The documents that he had provided to the Department were sent via DHL – hidden inside magazines – by his Sibling 1. They arrived before his interview with the delegate.

The applicant was employed in the transport company in the early 2000s. He was initially in a specific position and then was promoted. There were many people employed by the transport company. He worked in a specific area of the company. He joined the union in the early 2000s. He was referred by an active member who verified that he was of good character

and he filled in a form. The member who referred him was somebody he knew and when he worked at Company H, this friend was a customer of the business. His friend had been a member of the union since it started up. The union actually started in the late 1960s before the Revolution. After the Revolution it was not so active, and then in the early 2000s it started to become active. Probably a year later it became very active because there were a lot of problems with companies refusing to pay fringe-benefits and accommodation and they fired workers without reason. In the early 2000s the security forces ransacked the office of the union and Person T was beaten by them and they destroyed documents and destroyed things in the office.

The applicant's role in the union was to participate in union activities. [Information about applicant's work history deleted s.431 as it may identify the applicant] He obtained this information from the office, and he would also visit various members at home. How often he met them depended on what was happening. If they had fired some workers for no reason, then they would gather together and spread the news.

[Information about the union's history deleted in accordance with s.431 as it may identify the applicant].

The applicant gathered at one of the areas. He was asked what the government did in response to the strike, and he said the mayor promised to release Person T and the others that had been arrested, but he did not do so. The anti-demonstration guards surrounded the demonstrators. The security forces were very savage during this demonstration. Several hundred workers and officials were arrested. They were released on an undertaking, but some of them were held for up some months. [Information about applicant's work history deleted s.431].

In the early 2000s there were a number of smaller incidents. They stopped the amount of work or decreased the amount of work. Whilst the drivers were still working, they expressed their protests by talking to people and telling them why they were doing this and what their concerns were. They also drove with the headlights on. The union had links with international organisations. In early 2000s, some officials of the union were summoned by the court to answer questions. They were then arrested and taken to prison. The authorities arrested these members to prevent further strikes taking place. Later, security forces ransacked the offices of the union and after, there was a big strike. The workers started striking and protesting in front of different areas. They started from early in the morning and the applicant joined the protest some time later and was distributing pamphlets to people passing by. He was then arrested. He was arrested by the security forces. As far as the applicant was aware, the union had been declared illegal in early 2005. The mayor had come along to try and improve the situation, but then it was decided that the strike was illegal.

The applicant was arrested with other people; many hundreds of people were arrested that day. He was put in a vehicle after his arrest, but he could not see who he was with as he was blindfolded and he was then placed in a single cell and held there for several days. He was then transferred into custody. He did not know at the time where, because he was blindfolded but he found out later. He did not see anybody whilst he was in prison. He was then transferred to a court. He was asked if he was aware whether any other people were held for months, like he was, in prison. He said he could not see other prisoners and did not know who workers were or who had been released. He was unaware of how many workers were still in prison after several months. It was put to him that from the information the Tribunal had, all the workers were released after a few months, except for Person T. He was asked

why, out of all the hundreds of workers that were arrested, he thought he was detained for longer. He said he had no idea and he did not know who was in prison and who was released. He was asked if he was aware of anybody else who received a similar sentence, or any sort of sentences, and he said he later found out that some people – maybe a few people – got a light sentence. He never contacted anyone to do with the union after he got out of prison because he was too scared and he had no number on which to contact them. He was asked why he didn't go to the members' homes, and he said he was too scared. He was asked whether he was concerned to find out what had happened to his colleagues, and he said the union was under surveillance and when the union was shut he was not able to find out anything.

The applicant was dismissed from his employment in the early 2000s. He found out when Sibling 1 told one of the guards in prison. He did not know whether he was suspended before he was dismissed. He was asked whether he knew how many people in his area were terminated, and he said he thought it was a few hundred people, although later some were reinstated. It was put to him that he appeared to have been treated far more severely than any of the other union members that were arrested, as the unionists were generally released after a short period of time and none of them faced prison sentences, and he said he thought it was because he had insulted the religious leaders and had insulted Islam. When he was arrested, they beat him, he lost control of himself and he started swearing and insulting the leader and insulting Islam. This was why he was held for months longer than anybody else. Further, he was badly beaten. He was not taken to hospital, despite his injuries, because the prison was very harsh. They would not take him to hospital as it was a very savage government. The Tribunal explained that the union had published lists of names of people who were imprisoned and people who were suspended and people who were terminated as a result of their involvement in these strikes and that the applicant's name did not appear amongst any of these lists. He said this was because it was a list of members who were old, whereas he had only been employed there a shorter time. Further, as he had explained, his crime was insulting the religious leaders and insulting Islam, he was not being held in prison because of the strike. It was put to him that Person T, the high-profile leader of the union, appeared to have received the same sentence as he had, namely several years in jail. The applicant was unaware that Person T had been sentenced to several years in jail in early 2000s. He said the reason why they would have received a similar sentence, even though the applicant only played a minor role in the union, was because Person T was a very high-profile person and everybody knew of his arrest, whereas the applicant was someone that no-one knew about, and his sentence was related to insulting Islam.

He said on the day he was arrested he insulted the religious Supreme Leader and insulted Islam. He said that Islam was a religion of hate and the regime was forcing people into following the religion and that the leader should not be there, he should go and sit in a mosque and do his prayers. They claim that it was a democratic government, but this was all lies, it was a savage system. Although the press reports indicated many prisoners were transferred to hospital, the applicant said that as far as he knew this did not occur. He was not aware of any hunger strike. He was always kept in a section with single cells. The applicant, when he was released from prison, never tried to see if he could be reinstated into the company as it was his intention to escape as soon as possible. He did not have any contact with anyone from the union after he was released from prison, because he was in hiding. He was released on bail pending his appeal, but he did not know when his appeal would be heard. He confirmed that Sibling 1's property was forfeited because he had failed to appear in court and answer to his bail. His offence was insulting the beliefs and values of the religion and cooperating with a union.



The applicant first became involved in the Christian church after completing his compulsory military service, in the late 1980s. During his compulsory military service he was involved in the war between Iran and Iraq. At that time Muslim people were killing one another. He said a lot of friends killed and he thought that it could not be a good religion if it involved killing one another. They were brothers in religion, but they still fought one another, which made him have doubts about Islam. He could see that the security forces used religion to oppress the people. He had a Christian friend, Person Y, who obtained alcohol for the applicant and gradually they started to discuss their beliefs in religion. Person Y told him about Christianity and gave him a Bible which was in Farsi. Before he was given the Bible he did not know much about Christianity. His friend attended the Armenian Church. The applicant read the Bible and kept it at his home. He lived alone. He would sometimes go to the church with his friend, but he would do this discreetly as he was scared that he would get into trouble. He went occasionally, once in awhile. The applicant had not regularly attended the mosque before this. He had gone to the mosque during his military service because it was compulsory and then he did not go to the mosque again until he joined the transport company as it was also compulsory there to attend prayers. He did not observe Ramadan or take part in the Festival of Ashura.

The applicant went to church in Iran to try and learn more about Christianity. He said the people who went to church sat nicely and looked caringly at one another, whereas when he went to the mosques, even the mullahs looked at each other like they were enemies. The applicant was asked whether he regarded himself as a Christian then, and he said that he would have liked to be, but he had not learnt enough about Christianity and needed to do more Christian prayers. He was attracted to Christianity because it was a peaceful religion and a religion of freedom. His children could be whatever they wanted to be if he was a Christian. In Islam you were forced to follow the religion or you would be killed. He went to the Armenian Church in Iran because he did not know about any other of the churches. The applicant had been attending church in Australia since a few months after he arrived in Australia. He had to find a place to go to church and find a church that he felt happy with. He ended up going to the Church K, even though it was not close to his home, because he met somebody who took him to that church. He did not go to the Armenian Church because he could not understand the language. The applicant attended Bible studies and went to church regularly. The applicant had a Farsi Bible in Australia. The applicant would like to be baptised, but had not been baptised yet because he would like to study the Bible some more before he was baptised. The Bible classes that he attended were in English, but there was somebody there who could interpret for him. He understood that being baptised signified being cleansed and that you were able to then take in the beliefs, but he understood that he needed to know more. Baptism was cleaning the body and soul and was a symbol that you were totally devoted to Christianity and to the new religion. If you had not been baptised, you still had some of the previous religion in your body.

The applicant said that his family knew that he was not really attracted to Islam, and Sibling 1 knew that he went to church in Iran. He/she was older and he/she was not happy about the fact that he went to church and told him that if he continued to do this, Mohammad would punish him. The applicant did not go to church in Australia at Easter-time as this was during the period that he was looking for a church. He said Easter was important to the Christian religion as it was the time that Jesus was crucified so that Christians could be nice to each other. Three days after he was crucified Jesus went to heaven, but that really meant that he became alive in everyone's heart. If a person had found Christ, they were a clean and good person and people could see it in their face and in their soul. Jesus was the only messenger

and prophet who was not like the others who were after women or wealth. Although Jesus was tempted and people tried to confuse him, he did not commit sins, and Jesus was the son of God. The applicant planned to be baptised later because he wanted to be knowledgeable about Christianity before he was baptised and this was the time period that the church suggested would be appropriate. The applicant never had any problems going to church in Iran because he went there secretly. He would be severely punished if people knew that he had converted from Islam to Christianity. He was asked whether he was accused of being a convert when he insulted the religion and their leader. He said they accused him of not being a Muslim and of being an infidel, but they did not know that he had changed his religion. He never responded to them as he was unable to speak and just listened to what they were saying. Whilst he was in prison, he did not undertake his Islamic prayers. He said they might have known that he did not pray, but in prison they did not really care about that. The guards did not pray whilst they were in prison. As far as he was aware, no-one other than his family members knew of his interest in Christianity. Christianity was a good religion, whereas Islam was a very harsh religion. He was asked why he chose to convert to Christianity rather than leaving Islam and having no religion. He responded that someone like him needed to have beliefs to calm them down and to give him comfort. He did not find this comfort in a mosque, but in church he found relief and he felt calm when he went to church.

If he went back to Iran he would want to practise Christianity. In the past he could not attend church freely and he could not discuss with anybody his Christian views; he had to be careful what he said. If he went back he would not be able to go and sit in church and do his prayers. It is important for him to practise his religion in a church because prayers were something that should be shared with other people and it was important to do it with other people so he learns more about the religion. He had not mentioned earlier his Christian activities in Iran because he was afraid that if he did, people might assume that he was jumping from one thing to another in order to be allowed to stay [in Australia]. He was concerned that he might be accused of making up his claims. He said that he did not mention his Christian beliefs at the interview with the delegate because he was not asked. In the interview he was stressed and could not concentrate and forget things.

It was put to the applicant that the Tribunal was surprised that he was able to leave the country, given that he had been convicted of insulting the Supreme Leader and insulting Islam and was on bail at the time. He left Iran on a passport in his own name. He explained that in Iran they tried to let people who had been involved in political activities get out of the country, as then it was less of a headache to the authorities if they were not there causing trouble. The only people they did not want to leave were people like murderers, tax evaders and people involved in money laundering. He was asked whether the offences he committed were political offences. He responded that when he was first arrested it was a political offence because he was involved in the union and involved in the legal opposition to the Islamic Republic. During the process of his arrest, the other things happened and he was bashed. He was considered a political person, but he received a heavier sentence because of the torture and bashings and insults; he insulted Islam and the Supreme Leader. Otherwise he would have been released like the others, in a few months. In Iran there was no freedom of speech and there were no human rights. There were a lot of cases of people even sentenced to death and their sentences were reviewed and they were released and they escaped the country – with bail or without bail. When information leaked out of the country, it was by word of mouth or through journalists or people who escaped themselves. This was different

information to that which came from the government. The Tribunal should be sure that the information it was relying on was the correct information.

The applicant did not know whether the union officials knew that he was imprisoned. It was put to him they would have wondered where he had gone, as he used to meet with union officials. He responded that probably they were given some excuse that the applicant was not involved in political activities, that he had religious problems. The applicant's representative obtained his termination notices that were sent to him in Australia. He had not contacted the union since he has been in Australia. If the applicant had to go back to Iran he did not know what would happen; he would face very severe punishment. He not only ignored a court order, he left the country, and this would be added to his previous charges and things would be much worse. Information that was getting out of the country was mainly word of mouth from journalists. He provided the example of a woman who left, went to Iran and was arrested and put in prison. She was tortured and killed, but the authorities said that she fell down the stairs. Everything that came out of Iran was censored. There was no real news coming out of there.

The applicant's adviser submitted that in Iran the intersection of political and religious issues – the dividing line between them was not readily discernible. They interacted very closely and were inextricably linked. What was religious and what was political was not discernible. Sharia law was imposed and anybody who opposed the bureaucracy was seen as a political opponent as well as a religious opponent. The trade union activity was inherently seen as opposing the religious tenets or basis of the regime. The applicant's evidence was although the inherent political focus was on the trade union, it had moved at some point after he made adverse comments about the leaders, to a more directly religious issue to justify the differential treatment as opposed to other trade unions because of the added religious context. He submitted that there was a strong body of evidence that the applicant was involved with a union and subsequently involved in political activity, arrested and detained. The material evidence outweighed any gaps or concerns the Department might have. The applicant had not come to the Tribunal as someone who had written the text about the union, he had not pretended to be an expert about it. He was someone who had been a member for a short period of time. [Information about applicant's work history deleted s.431 as it may identify the applicant]. The evidence he had given and the knowledge of the demonstration and activities of the union was strikingly consistent with the country information. His account was entirely plausible and he had detailed knowledge of the incidents that he was involved in. He was not part of the leadership and could not be in every place at every time. The assessment of his credibility should be informed properly, by what he knew, not by what he did not know.

In relation to assessing his credibility, the Tribunal should also take into account that the preparation of the initial protection visa application was seriously deficient. For example, question 1 in Part B lists the applicant's name in many places as all the family members. Since moving advisers, the applicant had attempted to rectify errors made in the original application. There appeared to be many gaps in the initial preparation of his application.

The adviser explained that he had been delayed in completing submissions on the applicant's behalf because the Department would not provide him with a copy of the applicant's interview with the delegate.

The Tribunal received a statutory declaration by the applicant. [Information about the applicant's statutory amended in accordance with s.431 as it may identify the applicant]. He

explained that his journey in following the Christian faith had been a long one. He first felt in his heart that he was a Christian shortly after finishing his military service. He joined the congregation at the Church K in the early 2000s and since then had regularly attended Sunday services and Bible classes. He was baptised and welcomed into the membership of Church K and he provided a copy of his certificate of baptism and membership. The day of his baptism was like a second birth, a spiritual rebirth. He felt all his sins had been washed away and that he had a clean heart – it was one of the most important days of his life. Leading up to being baptised he was required by the church to attend regular Bible classes and services to demonstrate his knowledge and faith to the members of the church so they could be sure that he had a genuine commitment to the Christian faith. In the early 2000s two ministers of the church, with whom he had most contact, advised him that he could be baptised in the coming months. They were convinced that he had knowledge and a genuine commitment to Christianity. Since being baptised he continued to attend Bible classes and Sunday services each week. If he was forced back to Iran he would be accused of apostasy and would be executed. He felt that he would have to continue to follow the Christian faith. He was also fearful that his open life in Australia as a Christian would have come to the attention of the Iranian authorities.

In early 2000s the Tribunal received a letter from two religious ministers, ministers of the Church K. They explained that they met the applicant at their church several months previously. He had been studying the basic tenets of the Christian faith in a regular Bible study, undertaken the extensive requirements for baptism and church membership. The applicant respected their wish that he delay his baptism in order for further Bible studies and for it to occur in conjunction with his membership. Membership of the church was based on an interview by two church leaders, the presentation of the prospective member and a written recommendation to a constituted church meeting and a positive vote from the church membership. Acceptance was based upon a genuine profession of faith as a Christian, both in baptism and spoken testimony before the church. The applicant was accepted unanimously and enthusiastically as a baptismal candidate and member. They explained that, as pastors, they had observed the applicant in a credible conversion to Christianity in both word and deed. He engaged in devout prayer and Bible study and was committed to a church community through regular attendance. He was generous in giving of his time and resources and exhibited an open and seeking heart for further learning. He had spoken of his desire to learn more and openly practice his Christian faith. They were concerned that if he returned to Iran he would be denied the opportunity to do this. Other Iranians had informed them that his safety would be at risk because of his conversion.

The Tribunal forwarded to the applicant a copy of his interview tape with the delegate.

#### *Further Hearing*

The applicant stated that since the last hearing he had contacted his cousin to find out what had happened in relation to his employment. He found out that he had received another summons or arrest warrant, which indicated that he, should be arrested on sight. It related to his non-attendance at court and the confiscation of his surety's property. His family in Iran did not know that he had converted to Christianity but they knew that he was interested in Christianity.

To prepare for his baptism he had to study the Bible and understand it more. It would be not possible for him to be baptised in Iran He was not baptised earlier because the church needed to be sure that he was a genuine Christian and that he knew enough about Christian beliefs.

Apart from Church K he was not involved in any other Christian groups or activities. He was not involved in Iranian groups. He saw a few of the members of the church, outside of church and, recently, because he did not have a place to live, he had moved in with one of the church people. His friend acted as his interpreter at church.

In Australia, the church people knew that he had converted to Christianity and he believed that the people within the Iranian community in Australia would also know that he had converted to Christianity as people would have seen him studying the Bible. He understood that people had talked about his conversion in a sarcastic or criticising way. In Iran he would not be able to practice Christianity because he would be considered an apostate and face capital punishment. He was sure that there were Iranian government agents in Australia who were funded by the Iranian government to keep an eye on the Iranian community here and for this reason he believed that the Iranian authorities would have become aware of his conversion. He also outlined the circumstances that occurred to him in his life that led to his Christian conversion including the Iraq-Iran war, which led to the death of his mother and how difficult he found this. These events caused him to lose faith in Islam. He described how he first became interested in Christianity when he attended university and met Christian friends. He also outlined the history of the introduction of Islam to Iran and how the Arabs invaded and forced the Zoroastrians to convert. He described what he believed the differences to be between Christianity and Islam. He said that occasionally when in Iran he went to a Church but he knew that this was a very risky activity and did not go very often. He says that although Australia was a good country he would not give up everything that he had in Iran in order to stay here. He was looking for tranquillity and peace.

A religious minister of Church K gave evidence to the Tribunal that he/she first met the applicant in early 2000s when he attended his/her church with a friend. Since then he/she had seen him on many occasions at church and at Bible study. He/she was one of the people who conducted the Bible study classes. Before a person was baptised they were expected to know the basic tenets of the Christian faith. The church did not expect a complete or full understanding of all matters involved in Christianity. When someone was baptised they also became a member of the church and they had to be interviewed by two church members and recommended. The baptism was a public profession of faith. The applicant asked him/her whether he could be baptised in the early 2000s but he/she felt that he needed more time to study the Bible and he also needed to be interviewed for church membership and the church needed to hold a meeting in relation to his membership and there would not have been sufficient time to do this. Another member of their church translated for him. He/she said she could tell that somebody was genuinely a Christian from the conversation he/she had with them, the way they responded to his/her questions and the questions that they might ask during Bible study. He/she also explained that he/she could see a change that came over people from when they first started taking Bible classes and the way they were responding to questions. He/she could also tell by the prayers that they shared together. The applicant was also required to speak to the congregation so that people could see how he presented in his faith. He/she acknowledged that he/she had come across people who did not appear to be genuine in their Christian faith and the applicant was not one of these. He had been attending regular services and also Bible classes. The fact that he travelled from his home to the Church by public transport was also a demonstration of his commitment. He had also assisted in practical things with the church. He also participated in church meetings and helped with the cleaning up. He/she was aware of a number of people in a similar situation to the applicant and he/she felt that he was very genuine and authentic. He had been questioning and searching the Christian faith. He was open to suggestions from him/her as to

what he should read and what he should do. He had made a real effort to become involved in the church community.

### ***Independent country information***

[Information about the union history deleted in accordance with s.431 as it may identify the applicant].

#### *Christians and converts to Christianity in Iran*

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

DFAT Report 00228, “RRT Information Request: IRN 15703”, 12 February 2003 confirmed in 2003 that there had been no deterioration in the situation for Christians in Iran, but warned that the situation for converts who publicly expressed their conversion could be “more complex” than that for other Christians.

This relatively benign situation changed in 2004, at least for Christians from one church in Iran, with possible implications for others. In May DFAT advised that the Post had spoken with a Reverend from that church in Tehran, who had said that there had been increased harassment of church groups in “regional cities” of Iran since the February 2004 elections. He expected that “some authorities would be emboldened” by the conservatives’ victory in those elections and that the church expected “some increased interference in their activities” He said that the church was an evangelical one and that around 80% of its members were converts from Islam, who expected to be targeted “if there was any particular hardening of the authorities’ attitudes” (2004, DFAT Report 294, 17 May). Other sources agreed that conservatives were the victors in the parliamentary elections held in Iran in early 2004 and that since then there had been a reversal of some aspects of the social liberalisation which had taken place over the previous years (Haeri, S. “Iran: Authorities step up repression against the population”, [http://www.iran-press-service.com/ips/articles-2004/august/iran\\_repression\\_2804.shtml](http://www.iran-press-service.com/ips/articles-2004/august/iran_repression_2804.shtml), 2 August 2004, CX99642).

Also in 2004, DFAT advised that:

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

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

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

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

In connection with the well publicized court proceedings in 2005 against an Iranian convert, the authorities were aware of international concern about their treatment of him, resulting in abandoning the preliminary hearings against him (Baker, B. G. 2005, 'IRAN: Iran Changes Venue for Apostasy Trial: Convert pastor to be tried in southern Iran', *Compass Direct*, 30 April). In April 2005 *Compass* reported (Baker, B. 2005, "Iranian Convert Christian Faces Death Penalty" 23 April) that Pourmand had been on trial before an Islamic court in Tehran, facing the death penalty for deserting Islam and proselytizing:

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

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

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

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

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

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

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

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

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

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

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

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

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

### **Relentless Intimidation**

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

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

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



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

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

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

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

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

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

...

Christians--particularly evangelicals--continued to be subject to harassment and close surveillance. During the reporting period, the Government vigilantly enforced its prohibition on proselytizing by evangelical Christians by closely monitoring their activities, discouraging Muslims from entering church premises, closing their churches, and arresting Christian converts. Members of evangelical congregations are required to carry membership cards, photocopies of which must be provided to the authorities. Worshippers are subject to identity checks by authorities posted outside congregation centers. The Government restricted meetings for evangelical services to Sundays, and church officials are ordered to inform the Ministry of Information and Islamic Guidance before admitting new members.

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

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

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

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

In 2004 sources reported the arrest of several dozen evangelical Christians in the north, including a Christian pastor, his wife, and their two teenage children in Chalous, Mazandaran Province. The Government released many of those arrested, including the pastor and his family, after 6 weeks in detention.

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

DFAT REPORT 595 24 January 2007 states:

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

Christianity itself is not illegal in Iran and there is a seat in the Majlis (Iran's parliament) reserved for Iran's approximately 30,000 Assyrians and 100,000 Armenians, who are predominantly Christian. The seat is seen as de facto representation for Christians in the Iranian Parliament. We believe the number of Christians in Iran is growing. The situation for evangelical churches in Iran may have deteriorated since the election of President Mahmoud Ahmadinejad in June 2005. To our knowledge, this has not been the case for established (non-evangelical) churches associated with Assyrians and Armenians.

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

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

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

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

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

**IRAN: Iran authorities lash man for having Bible in car - report**

[http://www.iranfocus.com/modules/news/article.php?story\\_id=12109](http://www.iranfocus.com/modules/news/article.php?story_id=12109), accessed on 14 August, 2007 states:

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

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

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

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

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

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

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

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

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

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

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

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

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

## **FINDINGS AND REASONS**

The applicant claimed that he worked for a company and was a member of the union. He participated in union activities culminating in his participation in a number of strikes and demonstrations. He was arrested in early 2000s and sentenced to several years’ imprisonment. Some months after he was sentenced he was temporarily released on bail pending appeal. The applicant also claimed that whilst in Iran he became interested in Christianity and had denounced Islam. In Australia he attended the Church K and was baptised there and became a member of the church. If he was to return to Iran he would be punished for being an apostate and he would not be able to practice his religion in Iran.

The applicant at the hearing, when questioned about the company and the activities of the union, was quite knowledgeable about the company and the activities of the union, the people involved in the union, the events that lead up to the worker’s strike. For this reason, the Tribunal accepts that the applicant did work for the company. However, when the applicant was asked to provide evidence regarding his arrest and detention it was vague and lacking in details. Further, his account of his arrest and imprisonment was inconsistent with the country information set out above. The strike activities by the union received widespread publicity [information about the union’s history deleted in accordance with s.431 as it may identify the applicant]. The union published lists of people who had been arrested and people who remained in detention after the bulk of protesters were released. They also published lists of names of worker whose employment was terminated. The applicant’s name did not appear amongst any of those lists. Further, the union, according to these sources continued to be active after the strike and the Tribunal would have expected the applicant to be in contact with the union on his release from prison as they were following up all people who had been imprisoned as a result of their activities with the union. The union was also campaigning to have those workers that were sacked reinstated.

A union official in the early 2000s was sentenced to several years’ imprisonment for acting against national security and further imprisonment for propaganda against the system. [Information about the union’s history deleted in accordance with s.431 as it may identify the applicant]. The Tribunal finds it odd if the applicant had also been imprisoned and received a similar sentence that he had not been mentioned in any publications relating to this strike and that the union had made no efforts to publicise his cause or to free him. Further, it is odd that somebody who is claiming to be a member of the union received a similar sentence as

the high profile leader of the union. The applicant claimed that the reason why he received a greater sentence and was imprisoned for longer was because he had insulted the Supreme Leader and the religion at the time he was arrested. The Tribunal refers to the applicant's own comments in his Statutory Declaration regarding the dangers of insulting the Supreme Leader and Islam and finds that even if he was upset at the time he was arrested, it was far-fetched that he would make the comments that he claims to have made. The applicant when initially asked about why he received a severe sentence said he did not know why and did not provide this explanation. It was only when the matter was raised again and he became aware of Person T's sentence that he provided this explanation. It appeared to the Tribunal to be a late invention to rectify a flaw in his claims. Further, the Tribunal would have also expected, if the applicant's account was accurate, that the union would have taken up his cause and claimed that he had been accused of these religious activities because of his involvement in the union and there would have been a campaign to free the applicant as there was for the leader of the union and the other members of the union who were imprisoned. For all these reasons the Tribunal does not accept that the applicant was arrested as a result of his involvement in the workers' strike and protest, that he was sentenced to a term of imprisonment or that he was released on bail pending appeal. Consequently, the Tribunal does not accept that the applicant's Sibling 1 was his surety and lost his/her house as a result of these activities. The Tribunal does not accept that he was active in the union activities and protests or else he would have known that the union activities continued and they continued to mount active campaigns. The Tribunal finds that the applicant has fabricated this aspect of his claim for refugee status.

The applicant made a late claim that he was interested in Christianity and in Australia had been attending church and had converted from Islam to Christianity. The Tribunal was initially somewhat sceptical about this claim given its view regarding the credibility of his claims regarding the workers' strike and also the late stage it was made. The applicant's advisor criticised the previous advisor for not providing sufficient details of his claims, yet they provided a detailed Statutory Declaration and provided legal submissions, neither of which mentioned the applicant's interest in Christianity or his conversion.

The Tribunal finds, based on the applicant's evidence to the Tribunal and the evidence of the Religious Minister, that he is a genuine convert to Christianity and that he has been baptised at the Church K. The Tribunal refers to the country information set out above and accepts that as a convert from Islam to Christianity, the applicant does face a well-founded fear of persecution if he was to return to Iran. The Tribunal has considered if it would be reasonable for the applicant to relocate to avoid the risk of harm but finds that given the attitude towards apostates, which is consistent throughout Iran, he would be unable to relocate in order to avoid the risk of harm. Therefore, the Tribunal accepts that the applicant does have a well-founded fear of persecution for a convention reason and that he is a refugee within the meaning of the convention.

## **CONCLUSIONS**

The Tribunal is satisfied that the applicant is a person to whom Australia has protection obligations under the Refugees Convention. Therefore the applicant satisfies the criterion set out in s.36(2) for a protection visa.

## **DECISION**

The Tribunal remits the matter for reconsideration with the direction that the applicant satisfies s.36(2)(a) of the Migration Act, being a person to whom Australia has protection obligations under the Refugees Convention.

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. Inward