

0802231 [2008] RRTA 275 (30 July 2008)

DECISION RECORD

RRT CASE NUMBER: 0802231

DIAC REFERENCE: CLF2007/188403

COUNTRY OF REFERENCE: Iran

TRIBUNAL MEMBER: Ms Philippa McIntosh

DATE DECISION SIGNED: 30 July 2008

PLACE OF DECISION: Sydney

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

STATEMENT OF DECISION AND REASONS

APPLICATION FOR REVIEW

1. This is an application for review of decisions made by a delegate of the Minister for Immigration and Citizenship to refuse to grant the applicants Protection (Class XA) visas under s.65 of the *Migration Act 1958* (the Act).
2. The applicants (husband and wife), who claim to be citizens of Iran, arrived in Australia and applied to the Department of Immigration and Citizenship for Protection (Class XA) visas. The delegate decided to refuse to grant the visas and notified the applicants of the decision and their review rights by letter.
3. The delegate refused the visa application on the basis that the applicants were not persons to whom Australia had protection obligations under the Refugees Convention.
4. The applicants applied to the Tribunal for review of the delegate's decisions.
5. The Tribunal finds that the delegate's decision is an RRT-reviewable decision under s.411(1)(c) of the Act. The Tribunal finds that the applicants have made a valid application for review under s.412 of the Act.

RELEVANT LAW

6. Under s.65(1) a visa may be granted only if the decision maker is satisfied that the prescribed criteria for the visa have been satisfied. In general, the relevant criteria for the grant of a protection visa are those in force when the visa application was lodged although some statutory qualifications enacted since then may also be relevant.
7. Section 36(2)(a) of the Act provides that a criterion for a protection visa is that the applicant for the visa is a non-citizen in Australia to whom the Minister is satisfied Australia has protection obligations under the 1951 Convention Relating to the Status of Refugees as amended by the 1967 Protocol Relating to the Status of Refugees (together, the Refugees Convention, or the Convention).
8. Section 36(2)(b) provides as an alternative criterion that the applicant is a non-citizen in Australia who is the spouse or a dependant of a non-citizen (i) to whom Australia has protection obligations under the Convention and (ii) who holds a protection visa.
9. Further criteria for the grant of a Protection (Class XA) visa are set out in Parts 785 and 866 of Schedule 2 to the Migration Regulations 1994.

Definition of 'refugee'

10. Australia is a party to the Refugees Convention and generally speaking, has protection obligations to people who are refugees as defined in Article 1 of the Convention. Article 1A(2) relevantly defines a refugee as any person who:
owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being

outside the country of his former habitual residence, is unable or, owing to such fear, is unwilling to return to it.

11. The High Court has considered this definition in a number of cases, notably *Chan Yee Kin v MIEA* (1989) 169 CLR 379, *Applicant A v MIEA* (1997) 190 CLR 225, *MIEA v Guo* (1997) 191 CLR 559, *Chen Shi Hai v MIMA* (2000) 201 CLR 293, *MIMA v Haji Ibrahim* (2000) 204 CLR 1, *MIMA v Khawar* (2002) 210 CLR 1, *MIMA v Respondents S152/2003* (2004) 222 CLR 1 and *Applicant S v MIMA* (2004) 217 CLR 387.
12. Sections 91R and 91S of the Act qualify some aspects of Article 1A(2) for the purposes of the application of the Act and the regulations to a particular person.
13. There are four key elements to the Convention definition. First, an applicant must be outside his or her country.
14. Second, an applicant must fear persecution. Under s.91R(1) of the Act persecution must involve “serious harm” to the applicant (s.91R(1)(b)), and systematic and discriminatory conduct (s.91R(1)(c)). The expression “serious harm” includes, for example, a threat to life or liberty, significant physical harassment or ill-treatment, or significant economic hardship or denial of access to basic services or denial of capacity to earn a livelihood, where such hardship or denial threatens the applicant’s capacity to subsist: s.91R(2) of the Act. The High Court has explained that persecution may be directed against a person as an individual or as a member of a group. The persecution must have an official quality, in the sense that it is official, or officially tolerated or uncontrollable by the authorities of the country of nationality. However, the threat of harm need not be the product of government policy; it may be enough that the government has failed or is unable to protect the applicant from persecution.
15. Further, persecution implies an element of motivation on the part of those who persecute for the infliction of harm. People are persecuted for something perceived about them or attributed to them by their persecutors. However the motivation need not be one of enmity, malignity or other antipathy towards the victim on the part of the persecutor.
16. Third, the persecution which the applicant fears must be for one or more of the reasons enumerated in the Convention definition - race, religion, nationality, membership of a particular social group or political opinion. The phrase “for reasons of” serves to identify the motivation for the infliction of the persecution. The persecution feared need not be *solely* attributable to a Convention reason. However, persecution for multiple motivations will not satisfy the relevant test unless a Convention reason or reasons constitute at least the essential and significant motivation for the persecution feared: s.91R(1)(a) of the Act.
17. Fourth, an applicant’s fear of persecution for a Convention reason must be a “well-founded” fear. This adds an objective requirement to the requirement that an applicant must in fact hold such a fear. A person has a “well-founded fear” of persecution under the Convention if they have genuine fear founded upon a “real chance” of persecution for a Convention stipulated reason. A fear is well-founded where there is a real substantial basis for it but not if it is merely assumed or based on mere speculation. A “real chance” is one that is not remote or insubstantial or a far-fetched possibility. A

person can have a well-founded fear of persecution even though the possibility of the persecution occurring is well below 50 per cent.

18. In addition, an applicant must be unable, or unwilling because of his or her fear, to avail himself or herself of the protection of his or her country or countries of nationality or, if stateless, unable, or unwilling because of his or her fear, to return to his or her country of former habitual residence.
19. Whether an applicant is a person to whom Australia has protection obligations is to be assessed upon the facts as they exist when the decision is made and requires a consideration of the matter in relation to the reasonably foreseeable future.

CLAIMS AND EVIDENCE

20. The Tribunal has before it the Department's file relating to the applicants. The Tribunal also has had regard to the material referred to in the delegate's decision, and other material available to it from a range of sources.
21. The applicant wife appeared before the Tribunal to give evidence and present arguments. The applicant husband was present but was too unwell to give oral evidence. The Tribunal also received oral evidence from two witnesses. The hearing was conducted with the assistance of an interpreter in the Farsi (Persian) and English languages. The applicant wife told the Tribunal that she had no difficulty understanding this interpreter, and no objection to using her services for any reason of which she wanted the Tribunal to be aware.
22. The applicants were represented in relation to the review by their registered migration agent.
23. In their application to the DIAC, the applicants, who are husband and wife, each made their own claims to be a refugee. The applicant wife, claimed to have converted from Islam to Christianity. Details of their claims were provided to the DIAC and further details were provided to this Tribunal.
24. The applicants had a married child in Australia, as well as several children in Iran. They had another child in the Country A.
25. The applicant husband was the owner of a business in Iran. He and the applicant wife had been living in city A for many years before their arrival in Australia.
26. In statutory declarations provided to the DIAC each gave an account of their problems with the authorities which they attributed to the applicant wife's interest in Christianity.
27. The applicant wife stated that she and her husband had both been widowed, and after marrying had had children together. Her husband had children from his first marriage and she also had a child from her first marriage. All her siblings lived in City A.
28. She stated that she was Christian. She said that she and her husband had lived in a suburb of City A. There were a number of Christian churches in it.
29. She said that some years ago a friend in City B had introduced her to the Bible and given her a Christian book and video.

30. Near the applicant wife's home there was an Armenian Christian woman, Person 1. The two women had visited each other. The applicant's child also used to talk with this woman about Christianity. The applicant had many Christian friends, and they often talked about the Bible and Christianity.
31. She claimed that around the mid 2000s, some Pasdaran forced their way into the family home. At the time the applicants had relatives visiting. The Pasdaran asked about a picture of Jesus on the wall and accused her of going to her Christian friend's home. They asked why, if she was not a Christian, she had put this picture of Jesus on the wall. She had said it was a gift. This led to further questions. They searched the house and took a Bible, picture and video about the story of Jesus. The applicants were ordered to go for questioning at the Komiteh some days later. They complied. They were terrified. They were taken into separate rooms. She was accused of being a Christian and ordered to write down the contact details of her Christian friends. Her interrogator wanted to know where she was going each week. She denied she was Christian but said she had Christian friends. She refused to provide any names. Her interrogator told her, her husband had named her Christian friends but she thought this was a trick and did not give any names. After their failure to return home her child arrived and asked to see them. They were ordered to give a property deed as guarantee for their temporary release. After the interrogation she and her husband were put in the same room. She was told she must not visit her friends or be visited by them. If she did not comply action would be taken against them. Her husband was warned that they must move to a non-Christian area. He told the people at the Komiteh that if he sold his house he would lose a lot of money. They told him to sell it because he and his wife must pay for creating this problem. After some hours at the Komiteh the couple was released. The items confiscated were not returned.
32. She stated that after this she did not visit her Christian friends in the city. She rang them from a public phone to tell them what had happened. She went to stay with her Christian friend in City B for a period of time. She feared the return of the Komiteh. After returning from City B she talked with Christian friends when she saw them in the park but did not visit them at their homes or vice versa.
33. She stated that when her child was married the Komiteh turned up at the house during the wedding party, saying they had the power to check anything they wanted and that they thought it might be a ceremony for someone to become a Christian. When they found it was a wedding they accused her of arranging this marriage to send her child out of Iran, saying that it was arranged by her Christian friends. She said this made no sense as her child-in-law was a Moslem.
34. She claimed that some months later men from the Komiteh came to her home and accused her of meeting Christian friends in the park and studying the Bible. They took her to the Komiteh and questioned her. She was told that she had failed to accept the warning to sell their property and move out of the area. During her interrogation she was struck with a stick. She was told they would do "worse things" to her if she continued meeting Christians or encouraging her children to become Christians. She was again questioned. She refused to sign a document saying she had no Christian friends and refused to agree to stop meeting Christians in the park, although she denied doing this, saying she just met neighbours there and had to be polite. She was released after some hours. This was very frightening for her. She required medical treatment for her injury.

35. She stated that days later the Komiteh came to her husband's business. Subsequently they did this once or twice a year and then would take him away for questioning. He had to shut the business when he was being interrogated at the Komiteh. This affected him psychologically and he would stay at home for one or two days afterwards on each occasion. These closures affected his business and his reputation, which was very important in City A.
36. She stated she was so depressed that she was prescribed medication.
37. She said that a telephone caller had told her that her husband had been in an accident, and a few weeks later a telephone caller told her that her child had been in a car accident. Neither of these assertions was true and she suspected that the Komiteh were responsible.
38. The Komiteh came to their home again and took the title deeds of their properties. Some of her children employed a lawyer to go to court and get the deeds back. Finally she and her husband sold some of the properties very cheaply, rather than risking losing everything if the authorities confiscated them again.
39. The Komiteh searched their home, confiscating their satellite dish and making them pay a fine. She claimed that many people in the city had a satellite dish and the authorities did not confiscate all of them or fine the owners. She thought they had singled her and her husband out because of their suspicions about their religious beliefs.
40. She stated that her husband went out to buy some milk but did not come home. When she went to look for him she was told the Komiteh had taken him from the queue. Some hours later he came home. He told her he had been arrested and taken to the central Komiteh. He was asked why they had not moved to another area as he had been instructed. He was threatened that they could harm the couple's children if he did not obey.
41. The Komiteh subsequently came and searched the house again, finding nothing, and again making threats.
42. In a recent year they came again but the applicants did not open the door, instead leaving through a back door and went to the home of some relatives. She rang her neighbours and was told that the Komiteh had left, so the couple returned home later that evening. On the following day their child drove them to City C as they already had visas and were planning on travelling to Australia. They remained there and never returned to City A. They then left Iran.
43. She stated that her child was looking after their house. Their Christian neighbours were aware of the situation and were keeping an eye on them. The applicant wife's child had recently gone to work in Country A. She and her husband were worried about their child if the Komiteh returned, so were planning to send them to Country A to stay with that sibling. Their child had cut off the phone at home and used a mobile phone or e-mail.
44. Of her religious beliefs, the applicant wife wrote that she had believed what was written in the Bible and had felt that the Christians she knew were very good people. She stated that since arriving in Australia she had been going to the Persian church each Sunday.

with her child. Her child had become a Christian after arriving in Australia. The applicant wife expressed her own strong belief in the Christian faith, and her intention to be baptised in Australia.

45. She stated that she and her husband feared returning to Iran because of the pressure and threats from the Komiteh. She feared being killed because she was a Christian. She had been very depressed. She said that also she would be unable to freely practise her religion in Iran. She had denied she was Christian and had been persecuted, so if it was discovered she was Christian their treatment of her would be much more severe. They did not accept Moslems changing their religion. They feared anyone becoming a Christian in case others followed their example.
46. The applicant husband's passport was issued in the mid 2000s He had previously travelled twice outside Iran, on both occasions to Country A.
47. The applicant husband wrote that he agreed with the details provided by his wife in her statutory declaration. He added further information. This was that the couple lived in an area in which there were many Christians. His wife talked to the neighbours, as many women did in the area. He said that the Komiteh came to their house and accused his wife of being a Christian. He was present during this exchange. They took away a picture of Jesus which had been on the wall, a book and video. The applicant husband had denied that he or his wife were Christian. He was accused of allowing her and his children to go to church to become Christians and that he should stop allowing this. That was why they were ordered to report to the Komiteh for what was described as an "investigation". It was very stressful and upsetting to have to go there. They attended at the appointed time and he was questioned, in a room separate to his wife, about his wife's activities. He denied she was a Christian. He was told in a threatening manner to sell their property and move to a non-Christian area. On other occasions he was taken to the Komiteh central office and kept there and questioned about his wife. His child got title deeds to their property to secure their release. The Komiteh also came to his child's wedding and accused him and his wife of "organising a wedding with a Christian for [child] to leave Iran". They came to his business once or twice a year to take him for questioning. This affected his business because others wondered why he had a problem with the Komiteh. His health deteriorated. He had several medical conditions. He had to stay home after returning from the Komiteh. He was sick and depressed, and his memory was affected by the illness.
48. The Komiteh searched the house again but found no religious books this time. However they confiscated all his property title deeds. His children went to court to get them back. He decided to sell the business quickly rather than risk the Komiteh taking the deeds and keeping them. He accepted a low offer.
49. He claimed that since arriving in Australia his wife had been attending the Iranian church with their child. His wife was a Christian, having become interested in Christianity in City A and having had many friends who were Christian. Their child became a Christian since coming to Australia.
50. He stated that he was worried about returning to Iran because he believed the government would make more problems for him. Now that they knew or suspected his wife was a Christian, they would put more pressure on him. He feared that his health

was not good enough to bear what they would do. They had already told him they would put more pressure on him if his wife or children became Christian.

51. In the DIAC decision the delegate's conclusion was that the applicant wife had attended church services in Australia for the purpose of strengthening her claims to be a refugee. She was not satisfied that the applicant wife was of any interest to the Iranian authorities at the time she left Iran and was not satisfied that she would be of any interest to the authorities for a Convention-related reason in the reasonably foreseeable future if she were to return.
52. In evidence to this Tribunal the applicant wife submitted a further statutory declaration. She provided some further details about the manner in which her interest in Christianity had developed since around the mid 1990s in Iran through a Christian friend from City B. She also stated that sometimes she had gone to church in City A. However Armenians did not trust Moslems to come to their services with them so she went simply to light candles. She also stated that her husband had not initially been happy about her interest in Christianity, but had seen that she had greatly benefited from it. She said that, apart from him, only some of her children knew that she was a Christian. She had not told anyone else in her family because they might have a bad reaction and consequently behave badly towards her children who were still in Iran.
53. She went on to say that during her interview with DIAC she had been provided with an interpreter from Afghanistan who could not understand her properly. Her child had tried to help her understand what the interpreter was saying but the case officer thought that the child was pressuring her. The case officer had also asked her to pray but she was not prepared to do so after having answered just a couple of questions, and this was also not part of the usual religious ritual and she had to be emotionally at peace to pray. She stated that the case officer was also "very confusing in her questioning style". She said that she was under great stress, because of her past problems with the Komiteh, because she was scared and because her husband was currently very sick. She said that sometimes she had problems answering questions clearly because of these factors.
54. She clarified that she and her husband had moved from one street in City A to a nearby street, in each of which there were many Armenian Christian residents. The Komiteh often patrolled this area, more often than in other parts of the city. In this area women often did not wear proper hejab, and also Armenian Christians made alcohol and sold it to Moslems, which was not allowed. Both these things led the Komiteh to patrol.
55. She also stated that she feared that people working for the Iranian government might be taking note of who was attending her church in Australia.
56. She described the day of her baptism. She described her positive feelings with regard to being baptised and the importance of the baptism to her. Also submitted was a certified copy of her baptism certificate. A copy of a letter from the Pastor was submitted in which he stated that the applicant wife was attending the Persian congregation at the church. She had become a Christian and had been baptised. He stated that she had already been very interested in Christian teachings in Iran but because of restrictions on religious freedom in Iran could only fully explore Christianity in Australia. She had been coming to the church regularly and had done a short course for "seekers and new believers".

57. In a submission by their migration adviser, the applicants' claims were summarised and the Tribunal was referred to evidence from sources including the US Department of State, Amnesty International and the UK Home Office. In brief these sources stated that conversion from Islam to another religion was not acceptable in Iran and apostates who proselytised were likely to face execution. Proselytising of Moslems by non-Moslems was illegal, although there were no reported instances of the death penalty being applied recently. The government of Iran did not ensure the right of citizens to change their religion. A report from the Swiss Refugee Council stated that as long as converts exercised their faith unnoticed by the Iranian authorities they were not at risk. However if they attracted attention they would have to "reckon with trenchant measures by the government". The Tribunal was also referred to evidence that the crime of apostasy, which was not currently codified in Iran's penal code, may shortly be codified. The Institute on Religion and Public policy stated on 5 February 2008 that the Iranian Parliament was reviewing a draft penal code that for the first time in Iranian history legislated the death penalty for apostasy. It was submitted that there was no religious freedom in Iran and that Christian converts from Islam were persecuted by the government and as apostates could face the death penalty. Since the change of government in Iran the situation had worsened for Christian converts and they could face the death penalty, arbitrary arrest and imprisonment. It was submitted that the applicants had already faced treatment amounting to persecution and that this would recur if they returned. It was also submitted that the applicant wife's baptism in Australia was not undertaken for the purposes of strengthening her claims to be a refugee, and that the applicants would be unable to relocate within Iran so as to avoid further persecution, because their fear of harm stemmed from the Iranian government.
58. The Tribunal hearing
59. The applicant wife told the Tribunal in her oral evidence that her child had arrived in Australia some years earlier. They had been granted an Australian visa on the basis of the marriage. The spouse had no religion but their child was a Christian.
60. As to the Christians with whom the child had regularly discussed religion with in Iran, she said this was Person 1, and that the child mainly went to Person 1's place to talk. Person 1 had come once to the applicant home, and the applicant wife had gone once to Person 1's home. They had only met on those two occasions.
61. The applicant wife stated that she had gone from Person 1's house to a church on one occasion, having been taken by Person 1. The language spoken in the church was Armenian. The applicant wife had never attended church in Iran with her child. She did not know if her child had ever gone to church in Iran, and just knew they had visited Person 1.
62. Of her written claim that over the years the applicant wife had talked with her Christian friend Person 2, from City B, and later with Christian friends in City A, about Christianity, she said they had not prayed together and that these were just very occasional, casual, conversations. The situation in Iran made that necessary.
63. The Tribunal questioned the applicant wife about her contact with Person 1. She said that she had not seen her for a number of years because of Person 1's problems. In the intervening period the applicant wife had only discussed Christianity with Person 2.

64. Apart from the above visit to a church with Person 1, the applicant wife had gone to churches every now and then just to light candles and to pray. There were no church services at those times, and she did not claim ever to have attended any church service in Iran. She said that going to church was not "pleasant in the eyes of others", and she had gone with fear.
65. As to when she had first started saying Christian prayers on a regular basis, she said this was five or six years ago. As to whether she had been saying any particular prayer, she readily recited the Lord's prayer. She said that Person 2 had taught her that prayer in Farsi. She explained that Person 2, a Farsi speaker, had been sent to an English place as a child and there had become a Christian.
66. The Tribunal asked her to name the Armenian churches she had visited in City A in order to light candles. She responded that there were a number of churches in her area. She had gone to one church, but a woman there had told her she could not light candles as there had been a fire. She had also once gone to another church to light candles. She agreed that the Armenian churches in Iran discouraged Moslems from visiting them because of the congregation's fear of attracting harassment by the authorities. As to why, therefore, this woman had not discouraged her from visiting the church, she said she did not know, and that the woman had just told her to light candles in another church.
67. The Tribunal discussed with her problems that had apparently arisen during the DIAC interview. Invited to state what problems she had had during that interview, she said that the interpreter came from an Afghan background and was not able to render correctly what she had said. The Tribunal noted that, according to a note on the DIAC file, she had said she had some problems with the first interpreter, so after a break a telephone interpreter was used. She agreed, confirming it was the on-site interpreter with whom she had had difficulties. The Tribunal told her that, according to the interpreting agency, the on-site interpreter used on that day was of Iranian and not Afghan background. In response she insisted that they were of Afghan background.
68. The Tribunal noted that she had written that some pasdaran forced their way into the family home. At that time she had relatives visiting. She said there had been a number of people there, including her sibling and her husband's relatives. She could not recall if her child in Australia was there. She agreed that she and the child had discussed it since but she remained unsure if they were present. Some of her other children were there.
69. The Tribunal asked her why, if she did not want her relatives (apart from her husband, and some of her children) to know of her interest in Christianity, she had let them see a picture of Jesus on her wall. In response she said that she had given her heart to Christianity in Iran and had immense love and interest in it, but could not express it there. The picture of Jesus was among other pictures. The relatives laughed about it and asked her if she had become a Christian, to which she responded that a friend had given it to her. Her behaviour had not aroused any suspicion. Jesus Christ was seen as a prophet by Moslems, although it was true that Moslems would not normally have a picture of Jesus on the wall. As to why if so she had left the picture there, knowing these relatives were going to visit, she responded that they had turned up unexpectedly, as people did. The Tribunal suggested to her that therefore she must have known that people could see that picture anytime. She said that she and her husband did not socialise much or have guests - just at this time of year. She had just felt it was

important, despite fearing a backlash against her children by her relatives, who she described as very religious.

70. Invited to describe the first visit of the pasdaran in detail, she said that some men had come in daylight. She had protested, asking why they were there. The men had said they knew she had become a Christian and had Christian friends and had converted. She denied all this. They asked her why in that case there was a picture of Jesus Christ on the wall. She told them it was a friend's gift. She said that the men used harsh language. They did not sit down. They searched all the rooms in the house, and found a Bible and a film of the life of Jesus Christ. They addressed themselves mainly to her, and a little to her husband. They did not talk to the relatives present. She could not recall how long they were at the house. They ordered her and her husband to go to the Komiteh some days later.
71. The Tribunal asked her what their intention had been for the future when she and her husband applied for visas. She responded that they had intended to save themselves by applying for protection visas. As to whether they had made this plan with their child in Australia, she said they were too scared to talk about it on the telephone and had just decided it themselves.
72. Noting that she had been having many problems with the Komiteh before that, the Tribunal asked her why they had delayed leaving Iran until some weeks later. She responded that in that period they had had many problems. Her husband had had medical problems and she was also suffering from "emotional conditions". The airline required that the doctor provide clearance that her husband's condition was under control, and the medical checks had caused the delay.
73. She stated that her child was at the applicants' home. After they left she had had to cancel the telephone as there were many silent calls coming there. She had then left the house and was staying with another of her children. No one was living at the family home now. The Tribunal asked her why she had earlier said that one of her children was currently living there. She responded that she had not understood.
74. The applicant wife said that she had no contact with her Christian friends in City A now. She did not have Person 2's telephone number, and thought her child in Australia might have it. As to why she had made no enquiries about the safety of her Christian friends, she said she had rung Person 2 once or twice some months ago. Person 2 had indicated that the City B authorities had taken her in on one occasion since the applicants' departure, and had harmed her in some way. Person 2 was currently under pressure. She had also been taken in by the Komiteh several years ago. As to Person 1, the applicant wife said that she had moved to City C. The applicant wife did not know her situation, whether she had had any problems since the applicants' departure from Iran. The two had had no contact. She did not know if her child in Australia had been in touch with her.
75. The Tribunal asked her why she had become a Christian. She said that she had accepted Jesus Christ and that God had sent his son to the cross. She described her favourite story from the Bible. The Tribunal asked her if there was any particular moment when she had felt she had become a Christian. She said that it was when she had felt Jesus Christ next to her, while she was lighting candles in a church. There had been a violent hail storm and she had prayed that her children would not lose their mother. She said she

had seen that Jesus Christ was there, telling her not to be afraid. She said at that point she had given her heart to him. The Tribunal asked her why, in her opinion, members of her family were so drawn to Christianity. She said that in City A they had been living in a Christian area. They had found the religion attractive and their encounters with Christians there had been very positive. Her husband had had no objection to this development because she had spoken often about the goodness of Christians.

76. The Tribunal asked her why her husband had written in his own statement that she had had many Christian friends in Iran. She responded that she had had many Armenian friends although they had not visited her house. Armenians would not let Moslems visit their house, and vice versa, because everybody was fearful. However in public places she would always say hello and chat with these friends.
77. The Tribunal explained to her, and she indicated that she understood, that a relevant issue to be considered by the Tribunal was aware that she had undertaken Christian activities in Australia for the purpose of being recognized as a refugee.
78. The Tribunal was told that the applicant husband was very unwell. The Tribunal was asked if he could be excised from giving oral evidence. Having had the opportunity to observe him at the beginning of the hearing (he appeared to be very unwell), the Tribunal considered this to be a reasonable request and decided not to take oral evidence from him.
79. Evidence of applicant's child in Australia
80. The witness (who had not been present when the applicant wife gave oral evidence) stated that they were the applicants' child. That child had changed name a year ago by deed poll because that child's beliefs had changed - and claimed that both the original names had come from "Arabic grammar".
81. The witness had married an Australian citizen and had come to Australia on the basis of that marriage. The child's spouse had been granted a protection visa in Australia many years ago and was not religious.
82. The witness stated that they had been baptised. They said that their interest in Christianity and that of the mother had each developed in their own way in Iran. The witness said that since being a teenager they had had a strong interest in theology had developed and had felt that Moslem ideology and practice were contradictory. There were churches close to the family home, the witness had visited one of the churches several times. The witness had not attended church services in Iran however.
83. The witness said that before leaving Iran they had lived in City A. They had married in the mid 2000s, and had stopped living with their parents at that point.
84. As to whether there had been any problems the witness said that there had been, as the pasdaran and komiteh had come to the family home. The witness said it was daytime and that they had been out shopping when they arrived. When they came home they saw that everything had been turned upside down. The pasdaran were still there. They were terrified. The family's relatives were stunned. The witness said that the men were only interested in the parents, especially the mother. The Tribunal asked the witness why they would have only been interested in the parents, rather than the child. The

witness said that they thought the emphasis was on the parents because the witness and the siblings were interested in the church, but the authorities saw their parents as responsible for the family. This approach would put pressure on the whole family. If they had thought their parents were not involved at all, the pasdaran would have oppressed the children. As it was, the pasdaran knew nothing precise.

85. The witness said that they had been doing Bible study with “[Person 1]”, involving religious readings and tests. Each week they had visited Person 1’s home. Person 1 would respond to the doorbell by always first looking from an upstairs window, from which she could see in each direction down the laneway. The witness did not ask her why she routinely did this. However on one occasion the witness was approached by a man who had alighted from a car. He had asked them if they lived at that address. The witness had been scared, as they had heard of security people using unmarked cars. He asked the witness how many evangelical churches were in that area, then followed them, asking if they were a Moslem. The witness said that they were a Moslem. The witness told the Tribunal that they now thought that the authorities had been keeping an eye on Person 1’s house.
86. As to whether the parents had had any further contact with the authorities while they were in Iran, the witness said that after moving out of the home they had remained in Iran for a further year. The witness said they were aware that people from the Komiteh had turned up at the wedding, although only the spouse had been aware at the time of their presence. They had also come to the family home after the wedding.
87. The witness said that to their knowledge their mother had had no contact with Person 1 after the early 2000s. After that time only the witness had had contact with Person 1.
88. The witness went on to say that their friends were not converts from Islam, but Armenians. However there was pressure on people in Iran, and human rights violations there. A friend had been taken to the Information Ministry. Christians were under a great deal of pressure. The authorities said they had to leave or face atrocities. As to whether Person 1 had had any problems with the authorities after the applicants left Iran, the witness said that Person 1 was under a lot of pressure. However the witness did not know what had happened to them since their own arrival in Australia. The churches in Australia with Iranian congregations knew nothing of her.
89. As to the sibling, the witness (who until then had been speaking Farsi, and using an interpreter) spoke to the Tribunal in English, indicating that they wished to give the Tribunal information of which the mother was not aware. The witness said that some months before the most recent Iranian new year, their sibling had told them that the Komiteh had come knocking on the door and asking about the applicants. At first the sibling had told them that the applicants were taking care of their grandmother, but because they were scared of them had then revealed that the applicants had gone to Australia. The witness’s other sibling was in Country A at that time, and the sibling had been very frightened by this incident, as a result of which they had moved to their older sibling’s home.

90. Evidence of Witness 2

91. The witness told the Tribunal that she and the applicant wife were attending the same church. She herself had converted from Islam in the early 1990s, and had arrived in Australia some months earlier from Country B. During that period she had come to know the applicant wife. The Tribunal asked the witness for her opinion as to how much the applicant wife had appeared to know about Christianity at the time they first met. In response she said that the applicant wife had had some knowledge about Christianity and was very eager to learn more. Several days per week they would discuss religion after their classes and read the holy book.
92. The Tribunal told her of evidence that some Iranians claimed to have converted to Christianity in Australia in order to bolster applications for refugee status, and asked her if she wished to express an opinion about the applicant wife in this light. In response she said that the Bible said that God sent people to other countries to enable them to believe in God. She believed that God had sent the applicant wife so she could be baptised. The witness said she had no reason to doubt her and could see that she loved God. All her behaviour attested to that. She also stated that during a previous visit to Australia, the witness had come to know the applicant's child, who had told her of the mother's problems, and had also told her that the sibling had found Jesus Christ. The child in Australia had asked the witness to ring the applicant wife.
93. After the hearing the Tribunal received a report from a registered psychologist with regard to the applicant wife with whom she had had an interview. The applicant wife had spoken of distressing memories relating to the visits by the Komiteh, and her concerns for her children in Iran. She had also talked about the comfort she had gained from Christianity. She expressed grief at leaving her family and her country. The author said that she had "grave concerns" about the applicant wife's mental health, stating that she had the symptoms of Post Traumatic Stress Disorder and depression. A history of the applicant wife's circumstances, given by her to the author, was consistent with that given to the Tribunal and is not repeated here.

Evidence from other sources

94. According to the Department of Foreign Affairs and Trade (1996, Iran: Country Profile for use in Refugee Determination, Islamic Republic of Iran, 1996, DFAT, Refugees, Immigration and Asylum Section, March, paras. 2.3.2, 2.3.17.9, 2.3.6.1, CX109622) while the violent excesses of the past had abated by 1996, a process of attrition continued. Both the Anglican and Catholic churches had had most of their property seized since the 1979 Revolution. With regard to apostasy the report said that it was difficult to make general assessments about the treatment of apostates. Under traditional Muslim law, a Muslim leader must issue a formal decree identifying an apostate and allowing his/her blood to be spilt before that individual could be physically harmed. While it was popularly believed that the penalty for apostasy under Islamic law was death, this seemed open to interpretation. Death sentences for apostasy had traditionally been issued to Baha'is and occasionally Christian converts who had been active in proselytising. However, the majority of religious judges appeared reluctant to deliver an execution order for this "offence" alone. People who did publicly convert away from Islam would however be harassed, possibly imprisoned and threatened with death, if they had been found to be active in proselytising among Moslems.

95. In 2002 and 2003 DFAT had information directly from the Assembly of God Church in Iran which indicated that its members, most of whom were Muslim converts to Christianity, had been able to practise their religion (which included engaging in evangelical activities) without facing persecution. The Church leaders who provided this information indicated that the improvement in the situation for Christian converts was directly related to the reformist administration under President Khatami, who was elected as president of Iran in 1997. However those who had to declare their religion in order to have access to a passport or to do military service often subsequently faced “discrimination”. Telling the truth “could and did result in those holding government jobs being sacked” (2002, “Assembly of God Church”, Country Information Report, DFAT, CIR No. 186/02, 19 June, CX65406). DFAT observed that the last known case relating to prosecution for distribution of Bibles (construed as proselytising) was in 1999 (2002, “Iranian Shipping Industry, Country Information Report, DFAT, CIR No. 293/02, 19 August, CX67717). 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 Moslems 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”. Moslems “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).
96. In 2002 a member of the clergy in the Assemblies of God church in Iran said that while there had been no change in the law (ie. the death sentence was still an option open to judges in cases of apostasy) the practice of law was in reality very different ((2002, “Proselytizing Moslems in Iran”, Country Information Report, DFAT, CIR 346/02, 26 November, CX70351). The same source (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.
97. This relatively benign situation changed in 2004, at least for Christians from one church in Iran, with possible implications for others. DFAT advised that the post had spoken with a Reverend from that church in Tehran, who had said that there had been increased harassment of church groups in “regional cities” of Iran since the February 2004 elections. He expected that “some authorities would be emboldened” by the conservatives’ victory in those elections and that the church expected “some increased

interference in their activities” He said that the church was an evangelical one and that around 80% of its members were converts from Islam, who expected to be targeted “if there was any particular hardening of the authorities’ attitudes” (2004, DFAT Report 294, 17 May). Other sources agreed that conservatives were the victors in the parliamentary elections held in Iran in early 2004 and that since then there had been a reversal of some aspects of the social liberalisation which had taken place over the previous years (Haeri, S, “Iran: Authorities step up repression against the population”, http://www.iran-press-service.com/ips/articles-2004/august/iran_repression_2804.shtml, 2 August 2004, CX99642). DFAT said that in recent months there had been pressure on the evangelical churches. In September about 80 members of the Assembly of God in Karaj were arrested. A reverend Hamid Pourmand remained in custody (US Citizenship and Immigration Service 2002, ‘Iran: Information on Conversion from Islam to Christianity’, 14 November, <http://uscis.gov/graphics/services/asylum/ric/documentation/IRN03002.htm> - accessed 26 October 2004; Doroudi, S. 2002, ‘Apostasy in the legal system of Iran’, Netiran website, sourced from *Iran Daily Newspaper*, Vol. 8, No. 2032, 22 January [http://www.netiran.com/?fn=artd\(751\)](http://www.netiran.com/?fn=artd(751))) – accessed 21 October 2004). This was the biggest crisis for evangelical believers in the country since three Protestant pastors were murdered 10 years ago, another source told Compass (Baker, B. 2004, “Ten pastors remain under arrest”, <http://www.compassdirect.org/en/breaking.php>, 10 September).

98. A 2004 report observes that the rising number of Muslim-born Iranians converting to Christianity was a relatively new phenomenon in Iran. Issa Dibaj, the son of the murdered convert Hassan Dibaj, 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 Moslems 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 Moslems or to allow them to attend services. ... Dibaj said in spite of the restrictions, he sees a growing interest in Christianity: "[Iranians] see that the establishment which came in the name of Islam has brought them only war, rancor, hatred, and killings. At the same time, they see the message of Jesus, which is love. It attracts them through programs they see on satellite or through their Christian friends." ... "People are very curious, very interested. Iranians [are] open and they like to know more about different cultures, ideas, and religions. I had friends who had been prisoners of war in Iraq, at the university they were my best friends, they were very interested [about my faith], and I gave some of them the Bible." (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)

99. In 2005 the Swiss Refugee Council reported that there was no evidence of “group persecution” of the Christian minority in Iran However individual persecution of the newer Christian denominations had been observed. Iranian Moslems who had converted to Christianity were “especially at risk”. The Muslim Iranian public suspected converts of dissident attitudes. This risk was increased when converts undertook missionary activities and other public activities, or held a leading position in a Christian community. There was the added possibility of indirect persecution by fanatical Moslems as, in accordance with Islamic law, converts could be killed by any Muslim. Members of religious minorities were prohibited from missionary activities without exception. Traditional churches observed this ban. They were further

encouraged by the government to deny interested Moslems access to their religious events and to turn away attempts by Moslems to establish contact with their communities. There was, however, a report on baptism of non-Christians in the Armenian Orthodox as well as the Armenian Catholic Church. This appeared to be a rare occurrence and only as a result of active lobbying by the baptismal candidate. However, neither denomination would engage in missionary activities in Iran or abroad. As members of the old Christian communities in Iran differed from Muslim Iranians not only on the basis of their religion but also on the basis of their ethnic origin, there were no reports of conflict between the state authorities and the communities. This religious isolation, imposed by the State and more or less accepted by the traditional Christian communities, was exacerbated by the fact that the denominational groups held religious services in their own language and outsiders rarely had a good command of these languages. Exceptions to the segregation between Moslems and members of traditional Christian communities, such as at funerals, were for the most part authorised, or even ignored, by the authorities. (2005, Iran, CX153188, Swiss Refugee Council, "Iran: Christians in Iran", 18 October).

100. Iranian representatives of the church had expressed concern that authorities may prepare a new massive crackdown on evangelicals (Bos S.J. 2004, "10 Pentecostal Leaders Released in Iran", 13 September, <http://www.bosnewslife.com/article/2/1/5/4/3.aspx>). In 2004 Compass Direct stated that in recently prominent government officials had repeatedly denounced "foreign religions", which they accused of threatening Iran's national security (2004, "Pastor moved to military prison", Compass Direct, 15 November, <http://www.compassdirect.org/en/newsen.php?idelement=3524>, accessed 16 December 2004). *Iran Focus* reported in October 2004 that Hamid Pourmand's home "...had been broken into and ransacked, with all of the family's papers, documents and photographs removed". Days before he was arrested "a top official within the Ministry of Security Intelligence spoke on state television, warning the populace against the many 'foreign religions' active in the country..." (2004, "Iran: concern mounts for jailed Iranian Christian", *Iran Focus*, 7 October, <http://www.iranfocus.com/modules/news/article.php?storyid=456> - accessed 9 November 2004). A later report about Pourmand says that he was convicted by a Tehran military court in 2005 for deceiving the Iranian armed forces about his conversion some 25 years ago, and was to go before a Shari'a court on charges of "apostasy from Islam and proselytising Moslems". 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. This report also indicated a broadening of those groups targeted, saying that

Iran's Islamic regime used trumped-up spying charges in 1988 and 1990 as a pretext to jail, try and execute two other former Moslems for alleged "treason." Since then, another four Protestant church leaders from Muslim or Christian backgrounds have been assassinated under suspicious circumstances. Dozens more have fled the country to escape legal prosecution for apostasy or proselytizing.

The Iranian government strictly proscribes evangelical Christian activities, closing down churches, banning Farsi editions of the Bible and arresting citizens caught worshipping in house-church fellowships.

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 Moslems because our parents and grandparents are Moslems 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.

101. Seven years after Issa Motamedi Mojdehi converted from Islam to Christianity, Iranian secret police had reportedly jailed him for abandoning Islam but officially charged him with illegal drug trafficking. Savama (secret police) officials had told him that his real offence, said to be recorded in his confidential legal file, was "abandoning Islam" Unless he renounced his Christian faith and returned to Islam, officials told him, he would remain in jail and possibly face execution. According to this report an officer warned him that it might take "several executions" before Iranians understood the consequences of apostasy under Islamic law. In the Iranian judicial system, apostasy was listed along with murder and drug trafficking as a capital offence. The jailed man and his wife were members of a local house church group (Baker, B. 2006, "Iran: Iran threatens life of young man for apostasy – report", *Iran Focus*, 11 August, CX159372).
102. The Iranian government routinely used fabricated drug charges as a pretext to jail prisoners of conscience for their political or religious beliefs. Thus it circumvented the guarantees of Article 23 of the Iranian Constitution, which forbade investigation into individuals' beliefs and specified that "no one may be molested or taken to task simply for holding a certain belief." Widespread drug use in Iran gave such accusations surface credibility. In Gorgan a convert was released on bail in June 2006 after six weeks in jail on unspecified charges. Hamid Pourmand remained imprisoned. According to reports, Savama authorities had recently issued arrest warrants in various cities against several other converts to Christianity, demanding they return to Islam (Baker, B.G. 2006, "Iran 'Officially' Charges Ex-Muslim with Drug Trafficking", *Compass*, 9 August, <http://www.christianpersecution.info/news/iran-officially-charges-ex-muslim-with-drug-trafficking/>).
103. Of the growth of secularism in Iran, Katajun Amirpur (who teaches Iranian Studies at Bonn University) observes that there is even a trend towards atheism there. Many Iranians were turning away not only from the political system but also from religion.

'If this is the pure Mohammedan Islam, then we're better off without it': this sentiment can be heard time and again. Surveys show that broad sections of the Iranian population are not only more secular in their attitudes than other populations in the Islamic world, but also more areligious. Today, more people in secularised Turkey perform their obligatory prayers than in the alleged theocracy of Iran Twenty-seven years after the Islamic Revolution, Iran has possibly the most secularised population in the Middle East. Reform politicians blame the conservatives for the negative attitude young people have towards religion. Mohammad Reza Khatami, whose reform programme goes far beyond that of the last president (who is his brother), recently stated openly and frankly that Iranian youth are fleeing from religion because of 'this violent and dictatorial interpretation' This has, in turn, decisive consequences for the concrete shaping of the discourse on the compatibility of democracy and Islam, of democracy and human rights, etc. One of Iran's most respected reformist theologians, Mohammad Mojtahed Shabestari, recently reflected soberly that for years he has written until

his fingers have become raw, laboured over concepts, presented hermeneutic theories, and in this way shown paths towards a reformed Islam. But the events of the last few years have meant that nobody is interested anymore. More and more people appear to be saying to themselves: 'if Islam is not compatible with democracy and human rights, then so be it. But we want democracy and human rights nevertheless.' ... (Amirpur K. 2006, "The future of Iran's reform movement", Iranian challenges, ed. Walter Posch, Chaillot Paper No. 89, Institute for Security Studies, European Union, May, pp. 37-38).

104. A recent report notes that apostasy "has long invited reprisals from the Iranian government, forcing [converts] into absolute secrecy, practicing their new beliefs only in the privacy of their home" The report notes the introduction of legislation mandating the death penalty for apostates, but reports claims by the president of the Institute on Religion and Public Policy that "[i]nternational pressure and attention...has significantly slowed the parliament's progress" in passing the bill. Information is also provided on the different types of apostates recognised under the legislation, including the distinction between the 'innate' apostate (*fetri*), "who has at least one Muslim parent, identifies as a Muslim after puberty, and later renounces Islam"; and the 'parental' apostate (*melli*), "who is a non-Muslim at birth but later embraces Islam, only to renounce it again". According to the report, the "draft code says outright that punishment for an innate apostate is death (Chopra, A. 2008, 'In Iran, Covert Christian Converts Live With Secrecy and Fear', US News and World Report, 8 May <http://www.usnews.com/articles/news/world/2008/05/08/in-iran-covert-christian-converts-live-with-secrecy-and-fear.html> – accessed 23 June 2008).
105. A March 2008 report from *Adnkronos International* (an Italian news agency) notes that the Iranian parliament was to debate the death penalty legislation in its upcoming session (no sources located were able to provide updated information on whether the legislation has been enacted). The report states that "[c]urrently converts, particularly those who have decided to leave the Muslim faith for Evangelical churches, are arrested and then released after some years of detention". The report notes that the legislation "was proposed mainly because of fears of proselytising activities by Evangelical churches particularly through the use of satellite channels", and claims that there "has also been concern over fact that many young people in Iran have abandoned Islam because they're tired of the many restrictions imposed by the faith". Information is provided suggesting that violence toward Christians is often extrajudicial, as since the 1979 Islamic revolution, "at least eight Christians have been killed for their faith. Seven of them were found stabbed to death after they were kidnapped while only one, ...was condemned to death"

In its first session since last week's general elections, the new Iranian parliament is expected to discuss a law that will condemn to death anyone who decides to leave the Muslim faith and convert to other religions.

...Under the proposed law, anyone who is born to Muslim parents and decides to convert to another faith, will face the death penalty. Currently converts, particularly those who have decided to leave the Muslim faith for Evangelical churches, are arrested and then released after some years of detention.

The new legislation, which has caused concern in Iran and abroad, was proposed mainly because of fears of proselytising activities by Evangelical churches particularly through the use of satellite channels. There has also been concern over fact that many young people in Iran have abandoned Islam because they're tired of the many restrictions imposed by the faith.

According to unofficial sources, in the past five years, one million Iranians, particularly young people and women, have abandoned Islam and joined Evangelical churches. This phenomenon has surprised even the missionaries who carry out their activities in secret in Iran.

An Evangelical priest and former Muslim in Iran told Adnkronos International (AKI) that the conversions were “interesting, enthusiastic but very dangerous. The high number of conversions is the reason that the government has decided to make the repression of Christians official with this new law,” said the priest on condition of anonymity. “Often we get to know about a new community that has been formed, after a lot of time, given that the people gather in homes to pray and often with rituals that they invent without any real spiritual guide,” he told AKI. “We find ourselves facing what is more than a conversion to the Christian faith,” he said. “It’s a mass exodus from Islam.”

Since the 1979 Islamic revolution in Iran, at least eight Christians have been killed for their faith. Seven of them were found stabbed to death after they were kidnapped while only one, Seyyed Hossein Soudmand was condemned to death (‘Iran: Parliament to discuss death penalty for converts who leave Islam’ 2008, *Adnkronos International*, 19 March <http://www.adnkronos.com/AKI/English/Religion/?id=1.0.1988866222> – accessed 23 June 2008).

106. The US-based NGO the Institute on Religion and Public Policy (IRPP) reported in February 2008 that the Iranian government had released draft legislation “mandating the death penalty for converts who leave Islam”. The report claims that the legislation “for the first time in Iranian history legislates the death penalty for apostasy”, and quotes the president of the IRPP claiming that the “penal code is gross violation of fundamental and human rights by a regime that has repeatedly abused religious and other minorities” (‘Institute Denounces Draft Iranian Penal Code; Death Sentence Legislated for ‘Apostasy’ 2008, Institute on Religion and Public Policy website, 5 February <http://www.religionandpolicy.org/show.php?p=1.1.2001> – accessed 23 June 2008; Islamic Republic of Iran 2008, ‘Proposed Bill for Islamic Penal Law (Penal Code) – Section Five: Apostasy, Heresy and Witchcraft’, Institute on Religion and Public Policy website, 5 February <http://www.religionandpolicy.org/show.php?p=1.1.2000> – accessed 23 June 2008).
107. Several recent reports sourced from a Christian monitoring group attest to official harassment of Christian converts in Iran, reporting multiple arrests and detention without charge in Shiraz, charges of activities against “our holy religion” and “the country”, and the detention of a house church leader in Tehran:
 - On 21 May a report claimed 12 Christian converts had been arrested in Shiraz over the past ten days, as police “cracked down against known Muslim converts to Christianity”. Four Christians arrested at Shiraz International airport were jailed and “were subjected to hours of interrogation”, with police “questioning them solely ‘just about their faith and house church activities’”, according to an Iranian source quoted by *Compass*. The report states that one of the arrested men remains in prison, and that “[c]onverts from Islam are routinely subjected to both physical and psychological mistreatment while being held for days or weeks, usually in solitary confinement” (‘Iran: Police arrest 12 Christian converts’ 2008, *Compass Direct*, 21 May <http://www.compassdirect.org/en/display.php?page=news&idelement=5386&lang=en&length=short&backpage=archives&critere=Iran&countryname=&rowcur=0> – accessed 23 June 2008).
 - In May *Compass* reported that a Christian convert arrested in Shiraz on 11 May had not been released, although “no known charges” had been laid against him. The report quotes police officials telling family members of the jailed man that “[h]e is not cooperating with us, so he has to stay in our custody”, and *Compass* claims that “[c]onverts from Islam are regularly subjected to harassment, arrest and surveillance in Iran, and the Islamist regime has criminalized attempts by Muslim citizens to change or renounce their religion” (‘Iran: Authorities refuse to release Christian convert’ 2008, *Compass Direct*, 28 May

<http://www.compassdirect.org/en/display.php?page=news&idelement=5392&lang=en&length=short&backpage=archives&critere=Iran&countryname=&rowcur=0> – accessed 23 June 2008).

- A June 2008 report states that “Two Iranian converts to Christianity jailed for the past few weeks have been released by authorities, who demanded valuable property deeds as bail collateral”. According to the report, the two men were charged with “‘activities against our holy religion’, requiring a bail guarantee worth US\$20,000”, and that six other converts had been charged with “activities against the country”. The Compass report also claims that “[t]wo other former Moslems arrested in a Shiraz park on May 13 remain jailed, their location and condition unknown”, and that “[a]nother Christian convert arrested with his wife in late April in the northern city of Amol, in Mazandaran province, was ordered released three days ago, required to post bail with a huge deposit based on the worth of his home” An Iranian pastor living abroad is quoted as stating that “‘This is the pattern they usually follow ... put them in jail for a few weeks, beat them, and put a lot of pressure on them to get information about the other converts” (‘Iran: Two Christian prisoners released on bail’ 2008, *Compass Direct*, 3 June
<http://www.compassdirect.org/en/display.php?page=news&idelement=5404&lang=en&length=short&backpage=index&critere=&countryname=&rowcur=150> – accessed 23 June 2008).
 - In June 2008 *Compass* reported that “Iran continued a wave of arrests against Christians in recent weeks, detaining a Tehran house church leader who was previously held and tortured for religious activity” (‘Iran: Christian arrested without charges’ 2008, *Compass Direct*, 9 June
<http://www.compassdirect.org/en/display.php?page=news&idelement=5421&lang=en&length=short&backpage=archives&critere=&countryname=&rowcur=0> – accessed 23 June 2008).
108. The US Department of State’s 2008 *Country Report on Human Rights Practices* for Iran states that “[t]he authorities became particularly vigilant in recent years in curbing proselytising activities by evangelical Christians. Some unofficial 2004 estimates indicated that there were approximately 100,000 Muslim-born citizens who had converted to Christianity”. Amnesty International’s 2008 report on human rights practices in Iran states that “[i]n September [2007], a couple – a Christian convert who married a Christian woman in an Islamic ceremony – were reportedly flogged in Gohar Dasht in connection with their faith” (US Department of State 2008, *Country Report on Human Rights Practices – Iran*, 11 March; Amnesty International 2008, *State of the World’s Human Rights – Iran*).
109. A May 2008 report from Christian Solidarity Worldwide (CSW) claims that jailed “converts have often been asked to recant their Christian faith and are only released after signing documents obliging them to refrain from evangelistic activities”. According to CSW, religious minorities “who abide within the strict boundaries set for them by the Iranian state are able enjoy relative religious freedom”, but Muslim converts to Christianity face serious human rights abuses (‘Iran: CSW calls for the release of minority leaders amid concerns over deteriorating religious freedom in Iran’ 2008, Christian Solidarity Worldwide website, 30 May
<http://dynamic.csw.org.uk/article.asp?t=press&id=743> – accessed 23 June 2008).

110. The US Department of State's *International Religious Freedom Report* for 2007 cites several cases in which converts have been arrested, charged with assorted crimes or threatened with prosecution, held without charge for several weeks, and, in one case, murdered in the last four years (US Department of State 2007, International Religious Freedom Report – Iran, September 14).

Armenian church in Iran

111. There are several branches of the Armenian Church in Iran - the Armenian Orthodox Church, the Armenian Catholic Church and the Armenian Evangelical Church. The latter is the branch of the Church most given to proselytising in Iran. ('Armenian Catholic Church' (undated), *Armeniapedia.org* http://www.armeniapedia.org/index.php?title=Armenian_Catholic_Church – accessed 24 June 2008; Kauffman, R. 2008, 'First person encounters - Inside Iran', *The Christian Century*, 17 June).
112. In 2008 the U.K. Home Office's Border and Immigration Agency's Country of Origin Information Report on Iran (31 January 2008, para. 19.18) states that Armenians have lived in Iran for centuries, mainly in Tehran. The Government appears to be tolerant of groups such as Armenian Christians because they conduct their services in Armenian and thus do not proselytise. There also are Protestant denominations, including evangelical churches. The UN Special Representative (UNSR) reported that Christians are emigrating at an estimated rate of 15,000 to 20,000 per year. It is difficult, however, to obtain a reliable estimate as there is the added complication of mixing ethnicity with religious affiliation. They are concentrated mainly in urban areas, and are legally permitted to practise their religion and instruct their children, but may not proselytise. Muslims. The authorities have become particularly vigilant in recent years in curbing what is perceived as increasing proselytising activities by evangelical Christians, whose services are conducted in Persian.
113. A June 2008 report in *The Christian Century*, a US-based magazine, provides an assessment of the situation for Christians in Iran based on a field trip to the country and interviews with church leaders and members:
- When we visited Archbishop Sebouh Sarkissian of the Armenian Orthodox Church in Iran, he told us that whether the country has religious freedom depends on what is meant by freedom. It also depends on which religious body you're talking about. The Armenian Orthodox Church doesn't pose much of a threat to the government because it is a "national church," identified with an ethnic population. And the Orthodox are not inclined to proselytise. Their church, whose membership is about 100,000, is losing 2,000 to 3,000 members every year to emigration.
- Outside a museum in Isfahan that keeps alive the memory of the Armenian genocide in Turkey, I asked an Armenian student what life is like for him in Iran as a non-Muslim. He responded, "That's a dangerous question" (Kauffman, R. 2008, 'First person encounters – Inside Iran', *The Christian Century*, 17 June).
114. The US Department of State says that, in theory, Armenian Orthodox Christians are a recognised religious minority and as such "are guaranteed freedom to practice their religion", but in practice "members of these recognised minority religious groups have reported government imprisonment, harassment, intimidation, and discrimination based on their religious beliefs". "All non Shi'a religious minorities suffer varying degrees of officially sanctioned discrimination, particularly in the areas of employment, education, and housing" The report notes that, since the election of President Ahmadinejad in

2005, “conservative media have intensified a campaign against non-Muslim religious minorities, and political and religious leaders issued a continual stream of inflammatory statements”. It concludes by stating that “Christians encountered societal and religious discrimination and harassment at the local, provincial, and national levels” (US Department of State 2007, International Religious Freedom Report – Iran, September 14).

Security forces

115. The Pasdaran, or Islamic Revolutionary Guard Corps, was set up “to guard the Revolution and to assist the ruling clerics in the day-to-day enforcement of the government's Islamic codes and morality”. To this end it “maintained an intelligence branch to monitor the regime’s domestic adversaries” and, in addition, organised a large volunteer militia known as the *Basiji*. The task of maintaining internal security passed more into the hands of the *Basiji* in the 1990s (‘Iranian Revolutionary Guard Corps’ 1998, Federation of American Scientists website <http://www.fas.org/irp/world/iran/qods/index.html> - accessed 10 December 2003; ‘Pasdaran’ 2003, Global Security website <http://www.globalsecurity.org/military/world/iran/pasdar.htm> - accessed 11 December 2003).
116. *Komitehs* (morals police, armed neighbourhood committees) sprang up during the revolution and are described as “aggressive irregulars” They appear to have shared the responsibility for enforcing the Islamic code with the *Pasdaran* before being brought “under the official control of the security service” in 1991, which reportedly checked some of their most arbitrary actions and abuses (Ingwerson, M. 1997, ‘Iran’s next revolution? Not by Zeal alone’, *Christian Science Monitor* online edition, 28 August, <http://search.csmonitor.com/durable/1997/08/28/intl/intl.7.html> - accessed 10 December 2003). The *Komitehs* are currently included in the Law Enforcement Forces, an amalgam security force that also includes the national police and the gendarmerie (Immigration and Refugee Board of Canada 1997, *Human Rights in Iran: Update on Selected Issues*, May). The *komitehs* “patrolled residential areas, arrested collaborators, ran people's courts and prisons, and organized demonstrations” (Schmidt, M. 2002, ‘Religious Fundamentalist Regimes: A Lesson from the Iranian Revolution 1978-1979’, *Zabalaza: A Journal of Revolutionary Anarchism*, Number 2, March <http://flag.blackened.net/pipermail/infoshop-news/2002-May/001028.html> - accessed 11 December 2003).
117. The *Basiji* (volunteer militia) were reported to comprise 1 million part-time and 300,000 full-time members (‘Pasdaran’ 2003, Global Security website <http://www.globalsecurity.org/military/world/iran/pasdar.htm> - accessed 11 December 2003). Media reports indicate that the *Basiji* have been particularly active in policing Iran’s Islamic code. They feature in a number of reported raids, many of which mention pornography (‘Iranian militia seize 14,000 satellite dishes’ 2003, *Agence France Press*, 27 September; ‘Iran’s Basij militia make major alcohol, porn haul’ 2002, *Agence France-Presse*, 25 November; ‘Iran police hold porn distribution gang’, *Reuters Limited*, 5 October; ‘Vice on the rise in Iran’ 2002, *BBC News* online, 26 November http://news.bbc.co.uk/2/hi/middle_east/2516513.stm - accessed 12 December 2003).

Returnees to Iran

118. Iranians returning from abroad are sometimes interviewed by the authorities on return (2002, Human Rights: Overview Part 3, U.K. Home Office, October, para. 5.95, CX76576). A press article reports that a returnee “was interrogated by Iranian intelligence officers for up to five hours on arrival before being released” (Shaw, M. 2003, ‘Deported Iranian missing’, *The Age*, 3 September). Another states that inquiries by *The Age* in Tehran revealed that returning Iranians who fled the country *illegally* [my emphasis] are automatically charged with immigration offences and interrogated at length. It is not uncommon for returnees to be held for several days at airport detention cells while their backgrounds are investigated. Political and religious dissidents face further investigation and possible charges in religious courts”. In an earlier article the journalist, who spoke to failed asylum seekers from Australia including one described as a “converted Christian”, was told that since returning home “they had been exiled by their families, their phones had been tapped, their movements monitored and they had been prevented from obtaining work or a passport” (Skelton, R. 2002, “Returnees arrested in Iran”, *The Age*, 29 April, p.5; Skelton, R. 2003, ‘Iranian refugees set to be sent home’, *The Age*, 19 August).
119. DFAT observed in 1996 that it was very difficult to be definitive in assessing who may or may not have an imputed political profile, given the often arbitrary nature of the system and uneven application of the law (DFAT 1996 para. 3.3.1). In its 2003 report the U.N. Working Group on Arbitrary Detention notes that “situations of arbitrary detention [in Iran] were essentially related to infringements of freedom of opinion and expression and many malfunctions in the administration of justice ...” (2003, Letter to EU delegates regarding the EU-Iran human rights dialogue, Human Rights Watch, <http://www.hrw.org/press/2003/10/eu-iran100903.htm>, October, CX86136).

FINDINGS AND REASONS

120. The Tribunal is satisfied, and finds, that the applicants are nationals of Iran.
121. A number of factors leave the Tribunal unable to make a finding with confidence that the applicants were not harassed by the authorities in Iran and that the applicant wife does not consider herself to be a Christian now.
122. Firstly, the Tribunal is satisfied that the applicants were living in the predominantly Armenian Christian area of City A before leaving Iran, and that they had done so for many years. The Tribunal considers plausible that, despite the local Armenian Christian community’s general efforts to live separately from the dominant Moslem community, the applicant wife did have some social contact with local Armenians. The Tribunal is also satisfied that there were several Christian churches close to the home of the applicants. In other words, it is not surprising that the applicant wife had some greater social contact with Christians than the vast majority of Moslems in Iran.
123. Secondly, the Tribunal considers plausible the evidence of the applicants’ child in Australia that they themselves developed a genuine interest in Christianity in Iran, and was studying it at the home of a Christian friend. The Tribunal considers reliable the evidence that all Christians’ activities are subject to vetting by the government (2008, CX186543, “Iran: Countries at the Crossroads 2007”, Freedom House, September, <http://freedomhouse.org/modules/publications/ccr/modPrintVersion.cfm?edition=8&ccrpage=37&ccrcountry=158>), and that since around 2004 the government has been increasingly intolerant of proselytising and of conversions from Islam to Christianity.

That is consistent with the child in Australia's oral evidence that Person 1's home was being watched by a plainclothes officer, and that the child in Australia was questioned on one occasion while visiting her.

124. Thirdly, the applicant wife gave a generally credible account of an occasion in which she considered herself to have become particularly drawn to Christianity. The Tribunal accepts that the person with whom she had in-depth discussions about Christianity was a Christian friend in City B. The evidence of Witness 2 was that the applicant wife had had some knowledge about Christianity when the two first met, very shortly after the applicants' arrival in Australia. The Tribunal infers from this that the applicant wife gained that knowledge in Iran. In the Tribunal's view it is not implausible, given that a child with whom she was living at the time was a serious student of Christianity at the time, that the family lived in a predominantly Christian area, and the evidence from the other sources above that in this period there were many Moslems who were attracted to Christianity, that the applicant wife herself was attracted to the religion while in Iran.
125. Fourthly, the applicant wife's oral evidence was consistent with that of her child with regard to the visit by officers to the family home, and the manner in which each described the incident satisfies the Tribunal that it occurred. It has also been claimed that men from the Komiteh appeared at the wedding of the applicants' child, making illogical allegations about the event. The opacity and unpredictability in relation to the actions of members of the security forces in Iran, and the climate of impunity in which they operate, make it difficult for individuals to establish with confidence why they have been singled out. The applicant wife's evidence reflects that she really does not understand why these things have happened to her, nor why the applicants continued to be harassed. For the same reasons it is difficult for the Tribunal to establish this. However, in considering both the plausibility of the account, and whether there was a Convention reason for the harm they claim to have faced, the Tribunal has had regard to the evidence set out in the decision by the Tribunal, differently constituted, regarding the applicants' child-in-law, who was recognized as a refugee in Australia, became an Australian citizen, and married the applicants' child. In this case the Tribunal was satisfied that they had been a supporter of an Iranian opposition group, that the Iranian authorities had seriously harmed their sibling in an effort to get information about them, and that they had a well-founded fear of being persecuted for the reason of their political opinion in Iran. The present Tribunal notes that alleged supporters of such groups have been tortured and executed in Iran (see, for example, 2006, "Iran: Amnesty deeply concerned at death of Iran political prisoner" <http://www.iranfocus.com/modules/news/article.php?storyid=8552>, accessed 12 September 2006, CX161529, 8 September). This person had been visiting Iran (it appears he was travelling on an Australian passport, according to DIAC Movement Details) during the period in which Pasdaran first came to the applicants' home. It may be no more than a coincidence, albeit striking, that they initially visited the family in precisely that period. The Tribunal also notes that no claim has been made that the child's spouse was questioned or detained during it, (although that may be because they were by then a citizen of another country). However, while the applicants have not made any claim that their problems may have arisen from any link with the spouse of their child, the Tribunal considers it possible that the sudden attention focussed on them may have been prompted by that person's presence and that the family's apparent attraction for Christianity, discovered during the search of the house, may simply have led to the ongoing harassment.

126. Having regard to all these factors, the Tribunal is satisfied that the applicant wife was drawn to Christianity at the time she left Iran. The Tribunal is also satisfied that the applicants were the target of some harassment by the Komiteh in recent years. The Tribunal accepts that it was the applicants' fear of further harassment that led to their decision to leave Iran.
127. 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.
128. The Tribunal accepts that the applicant wife has been attending church regularly, and been baptised as a Christian, since her arrival in Australia. As was noted by the delegate, the Pastor who baptised her, is generally reluctant to baptise Iranian converts from Islam because of his concern that some have bolstered protection visa applications through this means. The delegate considered it significant that he had not done so at the time of the DIAC decision. The Tribunal place some weight on the fact that, despite the Pastor's scepticism, he has since decided to baptise the applicant wife. The Tribunal infers from his willingness to do this that he considers her to be a genuine convert. That, coupled with her plausible, understated, description of her interest in Christianity while in Iran, leads the Tribunal to conclude that s.91R(3) does not apply.
129. Having regard to all of the reasons to which I have referred above, I cannot reject the possibility that she is a genuine convert to Christianity. I propose to give her the benefit of the doubt and accept that she is a genuine convert and that the religious activities in which she has participated in Australia have not been engaged in for the purpose of strengthening her claim to be a refugee despite her awareness that they may also have that effect.
130. As to whether being a convert from Islam to Christianity may give rise to a well-founded fear of Convention-related persecution, I am satisfied, in the absence of reliable evidence to the contrary, that the majority of converts from Islam to Christianity continue to attend church and practice their faith largely as they wish in Iran. However I also consider reliable, and accept, the evidence from DFAT that Iranian Moslems who have changed their faith remain "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, DFAT, CX67771). There is evidence that this is occurring, with reports of increased harassment of church groups, the expectation that "some authorities would be emboldened" by the conservatives' political ascendancy, that the church expected "some increased interference in their activities" and that converts from Islam expected to be targeted "if there was any particular hardening of the authorities' attitudes" (DFAT 2004). I am satisfied that the domestic political climate in Iran has shifted, particularly in light of other evidence concerning the crackdown on social freedoms which has occurred following the 2004 parliamentary elections. I am therefore satisfied that the situation for some Muslim converts to Christianity in Iran has changed since the time DFAT provided relatively positive advice about converts in 2002 and 2003.

That is also borne out by the evidence (Compass Direct 2004, Baker (various) 2006), which I consider reliable, that prominent government officials have repeatedly denounced “foreign religions,” which they accuse of threatening Iran’s national security, that pastors have been arrested and interrogated, that several converts from Islam have been detained and harshly treated, or issued with warnings to return to Islam. I am satisfied that these incidents are intended as a warning to other converts.

131. I consider reliable the evidence from the U.S. State Department (2006) that incidents of torture and other degrading treatment, and arbitrary arrest and detention, have increased in Iran. Taking into account the independent evidence signifying a hardening in official attitudes towards Muslim converts to Christianity, and the unpredictability as to how and when the law is applied (Human Rights Watch 2003), I am unable to find that as a convert the applicant wife would be able to practise her religion in Iran without placing herself and her husband at risk of harm, such as continued harassment or detention, serious enough to amount to persecution. In the case of these particular applicants the risk to them of such treatment may well be increased because of their family relationship with an individual suspected of supporting an opposition group. The fact that they have already been subjected to some harassment points to the likelihood of some ongoing harm. It follows that the Tribunal cannot exclude as remote and insubstantial the chance that in the reasonably foreseeable future the applicants will face persecution for at least one of the Convention reasons if they return to Iran. Those reasons are religion, and possibly membership of a particular social group, as family members of a person holding an anti-government political opinion.

132. Therefore the Tribunal finds that they have a well-founded fear of Convention-related persecution in Iran.

CONCLUSIONS

133. The Tribunal is satisfied that the applicants are persons to whom Australia has protection obligations under the Refugees Convention. Therefore they satisfy the criterion set out in s.36(2)(a) for a protection visa and will be entitled to such visas, provided they satisfy the remaining criteria.

DECISION

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

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