



Australian Government
Immigration Assessment Authority

Decision and Reasons

Referred application

IRAN

IAA reference: IAA18/05304

Date and time of decision: 31 January 2019 19:45:00

T Hennessy, Reviewer

Decision

The IAA remits the decision for reconsideration with the direction that:

- the referred applicant is a refugee within the meaning of s.5H(1) of the *Migration Act 1958*.

Any references appearing in square brackets indicate that information has been omitted from this decision pursuant to section 473EC(2) of the Migration Act 1958 and replaced with generic information which does not allow the identification of a referred applicant, or their relative or other dependant.

Background to the review

Visa application

1. The referred applicant (the applicant) claims to be an Ahwazi Arab from Iran. He arrived in Australia [in] February 2013. The applicant made an application for a Safe Haven Enterprise Visa (SHEV) on 18 August 2017.
2. On 11 July 2018 a delegate of the Minister for Immigration (the delegate) refused to grant the visa. The delegate was not satisfied that that there was a real chance or real risk the applicant would suffer serious harm or significant harm due to his ethnicity, conversion from Shia Muslim to Sunni Muslim, being a non-practising Muslim, social activism and participation in protests in Australia, or being a failed asylum seeker from a western country.

Information before the IAA

3. I have had regard to the material given by the Secretary under s.473CB of the *Migration Act 1958* (the Act).
4. The IAA received submissions from [the migration agency] on 2 August 2018 and 14 November 2018. To the extent that these submissions engage in argument on the basis of information that was before the delegate I have had regard to them.
5. The submission received on 2 August 2018 included a seven page statement and a number of annexures. The annexures included a letter from the [office bearer] of the [Ahwazi Organisation 1] dated [in] July 2018, a letter from the [Ahwazi Organisation 2] dated [in] July 2018, a letter from the [Ahwazi Organisation 3] dated [in] July 2018 and 56 pages of untranslated screen shots from the applicant's personal [social media] page and the [social media] page that he has operated since 2014 regarding [Ahwazi people]. This is new information that was not before the delegate.
6. The one page submission received on 14 November 2018 clarified that the applicant operates [social media] pages for his personal use and political activism and notes that the names of the pages are spelt in the Arabic language/script on [social media].
7. I note that on page six of the 2 August 2018 statement the representative has sought to rely on an article which was not before the delegate, "German Intelligence Accuses Iranian Embassy of Spying on Opponents" published by *Ashwarq Al-Awsat* on 25 July 2018. The IAA's Practice Direction directs that if reference is made to new information, such as country information reports or media articles, a copy or extract parts of that information must be provided, and lists of hyperlinks are not acceptable. Neither a copy of nor extracts from the *Ashwarq Al-Awsat* article have been provided. A hyperlink is listed but a hyperlink does not provide the IAA with the information on which the applicant seeks to rely. As the Practice Direction has not been complied with I have not accepted this new information.
8. The letters from the [office bearer] of the [Ahwazi Organisation 1], the [Ahwazi Organisation 2] and [Ahwazi Organisation 3] confirm that the applicant is a political and cultural activist and support his application for asylum in Australia. The representative would like the IAA to consider this new information, which was not before the delegate. It is submitted that there are exceptional circumstances to justify considering the new information because it did not exist at the time of the decision. It is also submitted that this new information could not be provided at the time of the decision because it provides a response to the department's

reason to refuse the applicant's case that he had no political profile in Iran and would suffer harm in that respect, and that the information lends credibility to the applicant's claims about having come to the attention of the Iranian authorities in both Iran and Australia and he would likely suffer harm if returned. It is also submitted that this new information demonstrates the real risk of harm faced by the applicant should he be returned to Iran and demonstrates that credible sources (Ahwazi human rights organisations) believe so, and that this demonstrates that Australia has obligations to protect the applicant. I note that the same representative assisted the applicant with the SHEV application, SHEV interview and this review. I also note that the letters provided to the IAA were all obtained shortly after the delegate's decision and that, insofar as they only came into existence at that time, they could not have been provided to the delegate. However, the delegate made the applicant and his representative aware of the need to provide documentation in support of his SHEV application claims, including at the SHEV interview after which some two months passed without any further submissions being provided to the delegate. The new letters now provided to the IAA address matters which were always squarely at the heart of the applicant's claims rather than matters which had never been raised until the receipt of the delegate's decision. Given this, and in the absence of a satisfactory explanation for why these letters were not provided to the delegate, the credibility of such documents is placed in doubt. Taking all of this in its entirety, I am not satisfied that there are exceptional circumstances to justify considering this new information.

9. In relation to the screen shots from [social media] pages in which the applicant is involved, the representative has submitted that the majority of the posts made on these pages relate to the Ahwazi cause. The representative has submitted that this is supplementary information to the evidence already provided and it is provided as the decision maker failed to consider the applicant's social media activism since arriving in Australia as political activity that could give him a political profile. I note, however, and as has already been discussed above, that the delegate had made the applicant aware of the need to provide evidence to substantiate his claims to protection and that it was the responsibility of the applicant to provide this information to the delegate before a decision was made if he wanted such evidence considered. From the dates on the [social media] posts it is not apparent that they could not have been provided to the delegate. It may be that the applicant has posted information of this kind on [social media], however the information in question is in a language other than English and no translation has not been provided that would allow me to properly assess its content. Moreover, and in the absence of a reasonable explanation for why this information was not provided to the delegate, doubts are raised about the claims which have been made regarding the significance of this new information. Taking all of this in its entirety, I am not satisfied that there are exceptional circumstances to justify considering this new information.
10. I have obtained the Australian Department of Foreign Affairs and Trade (DFAT) report issued on 7 June 2018 that provides updated country information on Iran.¹ The 2018 report was published a month before the delegate's decision but the delegate had regard only to the previous DFAT country information report dated 21 April 2016.² As the June 2018 DFAT report provides more up-to-date information about Iran I am satisfied that there are exceptional circumstances to justify considering it as new information for the purposes of s.473DD(a) of the Act.

¹ DFAT, "DFAT Country Information Report – Iran", 7 June 2018, CIS7B839411226

² DFAT, "DFAT Country Information Report – Iran", 21 April 2016, CIS38A8012677

Applicant's claims for protection

11. The applicant's claims can be summarised as follows:

- He was born in Ahwaz, Iran, on [date].
- He is an Ahwazi Arab. He was born into a Shia Muslim family. Approximately three years before he arrived in Australia he converted from Shia to Sunni because he believed it better represented his identity as an Ahwazi Arab.
- He suffered discrimination in Iran because of his ethnicity, including difficulty accessing employment.
- In Iran he witnessed the difficulties and hardship faced by Ahwazi people at the hands of the Iranian authorities, including discrimination, lack of employment opportunities, theft of land and inability to learn the Arabic language.
- In Iran he was involved in cultural activities in which he would wear traditional clothing and discuss the violation of the rights of Arab people by the Iranian authorities.
- He also distributed pamphlets to raise awareness among the people of Ahwaz of the long-term violation of their rights and theft of their land. He was involved in teaching Arabic and encouraged Arabic people to abandon the use of the Persian language and start using their own language.
- He believes that he was followed by the Etelaat on several occasions due to his political activities. He was able to get away from them on each occasion.
- He was living in constant fear so he decided to escape Iran and the Iranian authorities. He sold his house and all of his belongings and left Iran a few days later.
- He departed Iran legally via the Tehran Imam Khomeini International Airport in December 2012 using his own passport. He was concerned that he may be apprehended or arrested due to his political activities so he placed money in his passport and gave it to an immigration officer. The immigration officer took the money, stamped his passport and said "you are lucky".
- He arrived in Australia in February 2013. Since he has been in Australia he has been active in the Ahwazi Arab community, including participation in anti-Iranian regime protests and posting photographs and comments on social media. He has many followers on social media.
- He is concerned that his [social media] and [messaging] accounts are being monitored by the Iranian authorities.
- His father is supportive of the current Iranian regime and has told the applicant he will kill him if he returns to Iran with his current mindset.
- He cannot change his mindset as he has a strong opinion that the Iranian regime is causing injustice to the people of Ahwaz and that they need to become independent.
- He is a fervent advocate of the rights of the Ahwazi people in terms of their traditional and cultural clothing, language and events.
- He fears he will be detained and arrested on return to Iran for his political activities in Iran and Australia, and possibly killed.
- He fears he will also be persecuted because of his religion. He is worried that he will not be able to practise his Sunni faith freely in Iran.

- He also fears that he will be persecuted because he sought asylum in a western country.
- He cannot relocate within Iran because the state is his persecutor and he will not be safe anywhere.

Refugee assessment

12. Section 5H(1) of the Act provides that a person is a refugee if, in a case where the person has a nationality, he or she is outside the country of his or her nationality and, owing to a well-founded fear of persecution, is unable or unwilling to avail himself or herself of the protection of that country; or in a case where the person does not have a nationality—is outside the country of his or her former habitual residence and owing to a well-founded fear of persecution, is unable or unwilling to return to it.

Well-founded fear of persecution

13. Under s.5J of the Act ‘well-founded fear of persecution’ involves a number of components which include that:
- the person fears persecution and there is a real chance that the person would be persecuted
 - the real chance of persecution relates to all areas of the receiving country
 - the persecution involves serious harm and systematic and discriminatory conduct
 - the essential and significant reason (or reasons) for the persecution is race, religion, nationality, membership of a particular social group or political opinion
 - the person does not have a well-founded fear of persecution if effective protection measures are available to the person, and
 - the person does not have a well-founded fear of persecution if they could take reasonable steps to modify their behaviour, other than certain types of modification.
14. On the basis of the identity documents and other evidence provided in connection with his visa application, I accept that the applicant was born in Iran and that he is a citizen of Iran. I find that Iran is his receiving country.

Bribe of immigration official

15. The applicant claims to have bribed an immigration officer at Imam Khomeini International Airport to ensure he could depart Iran by placing money inside his passport.
16. Country information indicates that, notwithstanding the pervasiveness of bribes in Iran, it is doubtful that the applicant would have been able to depart the country by way of the single payment of a bribe if he had been wanted by the Iranian authorities, given the sophisticated nature of border controls that are in place.³
17. There is no evidence before me that the applicant was a person of interest to Iranian authorities at the time he left Iran. I did not find his claim that he bribed an immigration officer to ensure his departure from Iran to be credible. Taking these factors and country

³ DFAT, “DFAT Country Information Report – Iran”, 7 June 2018, CIS7B839411226, p. 50

information into account, I do not accept that the applicant bribed an immigration officer to facilitate his departure from Iran.

Conversion from Shia to Sunni

18. The applicant was born into a Shia family and at the time of his entry interview in February 2013 he stated that his religion was Shia. However, when he lodged his SHEV application in August 2017 he identified as Sunni. In the SHEV application the applicant explained that he converted to Sunni because it is part of his Arab identity. He noted that during one of the demonstrations that he attended [at a location] he held [a specified] flag to express his pride in Sunni Islam.
19. During the SHEV interview the applicant stated that he practised his religion when he lived in Iran but he did not attend mosque. He stated that about three years before he came to Australia he decided to convert to Sunni and that it “was within me” but he could not talk about it, and he only told friends in Ahwaz of his conversion. He explained that after he arrived in Australia he had no fear of the authorities so he started to spread the word among his Arab friends that the Iranian regime had misled them and “played with our faith”. He expressed the view that the Shia faith was created by Persians to cause divisions amongst people and create a religion different from the Arabs because they hate Arabs. The applicant stated that he practised his faith and attended Friday prayers when he lived in [two Australian cities] but does not practise in [town name], his current place of residence. In response to a question about his social media profile the applicant advised that he has two [social media] profiles and they concern political, rather than religious, activities. The applicant stated that he is “not that religious” and his concerns about the state of Iran are more political in nature. When asked to identify the different beliefs between Shia and Sunni the applicant responded that the two faiths have different ways of praying, including how hands are placed, and that Shias pray three times a day and Sunnis pray five times a day.
20. I found the applicant’s explanation of his conversion to be plausible; it is closely linked to his Arab identity, political views and rejection of Persian influence and the current Iranian regime. Although the applicant does not currently attend a public place of worship in [his current town], does not regard himself as very religious and did not demonstrated an in-depth understanding of the difference between the Shia and Sunni faiths during the SHEV interview, he continues to identify and present as a Sunni Muslim. Notwithstanding his current non-attendance at a mosque and lack of demonstrated detailed knowledge of the differences between the Shia and Sunni faiths, I accept the applicant’s claim that he has converted from Shia to Sunni Muslim. I also accept that his conversion occurred while he was in Iran and that he became more public about his Sunni faith after he arrived in Australia as he felt more able to freely express his religious views in this country.

Ethnicity and political opinion

21. I accept that the applicant is Ahwazi Arab as claimed. I base this finding on his address history in Iran, identity documents, use of Arabic interpreters during the entry and SHEV interviews, and the consistency of his claim to be an Ahwazi Arab.
22. The applicant claims to have experienced discrimination in Iran due to his ethnicity. During the entry interview the applicant asserted that the Iranian Government is “against Arabs” and claimed that his work history shows that he has had to shift from one job to another many times because he is Arab. He claimed that Arab people are too scared to complain because if they do “they will kill us”.

23. During his entry interview the applicant provided a summary of his employment history. It shows that he worked for [number] employers in the [specified] industry from 1997 to 2008. He then worked for various employers in different jobs – “whatever was available” – from 2008 to 2012, including [various fields of] work, and noted that this work was irregular in nature. During the SHEV interview the applicant advised that his trade is [deleted].
24. Country information indicates that members of ethnic minority groups, such as Arabs, face a moderate risk of official and societal discrimination in Iran⁴. This may take the form of denial of access to employment and housing.
25. Although he claims to have had difficulty accessing employment in Iran due to his ethnicity the applicant has not provided any specific examples of discrimination that he has experienced in a work environment or of having missed out on employment opportunities due to his ethnicity. Although some of his employment may have been short-term in nature there is no evidence that this was due to his ethnicity, and may instead be attributable to the broader issue of high levels of unemployment in Iran. According to country information, approximately half of the Iranian workforce is in irregular employment and government figures are likely to understate the true employment rate as the government considers anyone who works for an hour a week to be employed.⁵
26. Although the applicant had an intermittent work history in the four year period up to the time that he left Iran in 2012, there is no indication that he was without work for extended periods of time. He has not provided any other examples of instances in which he experienced discrimination during his life in Iran due to his Arab ethnicity. In the absence of compelling evidence I do not accept the applicant personally experienced discrimination in Iran due to his Arab ethnicity.
27. During his entry interview the applicant claimed that he left Iran because he did not feel safe due to his ethnicity. He stated that Arab people fear that if they complain about their situation they will be killed. The applicant noted that he had witnessed the disappearance of many young people. He did not know what happened to them but was told they had been arrested and killed. He also commented that in Iran he could not say anything against the government or the situation of Arab people because his father had been a member of the Basij in the past. He stated that he did not participate in political issues in Iran but did talk to other Arab people about their situation and how they are victims.
28. However, in his subsequent SHEV application the applicant claimed that he was involved in many cultural activities and propaganda in Iran, during which he wore traditional clothing and discussed the violation of the rights of Arab people by the Iranian authorities. He also claimed to be involved in the distribution of pamphlets to raise awareness among the people of Ahwaz about the long-term violation of their rights and theft of their land. The applicant claimed to be actively involved in teaching Arabic and encouraging Arabic people to abandon the use of the Persian language and start using their own language. He advised that in approximately 2011 he and a friend travelled to [Country 1] to look for work. They were unsuccessful and returned to Ahwaz but brought some Arabic books back with them, which were regarded as prohibited political books in Iran. One week after his return to Ahwaz he attended an Arabic cultural event. The Etelaat stormed the event and arrested a few of the attendees. When he saw the Etelaat he immediately left the venue. He heard that many of his friends had been arrested by the Etelaat at the event. He later made another trip to

⁴ DFAT, “DFAT Country Information Report – Iran”, 7 June 2018, CIS7BB39411226, p. 9

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[Country 1] in the hope of finding work. He was again unsuccessful and returned to Ahwaz. On his return his mother told him that some people she did not know had been looking for him. He believed that his friends told the authorities about him and his involvement in prohibited activities while under pressure and threats of torture. He has volunteered no explanation for why it would have been the case that he would have been allowed to travel to [Country 1] (an Arab and Sunni Muslim) country by the Iranian authorities if he was suspected of involvement in Ahwazi Arab nationalism.

29. In the SHEV application the applicant outlined several instances in which he believes he was followed by the Etelaat due to his pro-Arab activities. He claimed that, on one occasion while driving his motorbike, a vehicle followed him and its occupants shouted at him to stop. He went off road and drove into the desert as he was scared he would be shot at. The applicant did not specify when this incident occurred.
30. The applicant advised that approximately three days after that incident he was birdwatching at a nearby lake and noticed an undercover Etelaat vehicle parked close by. He did not identify when this incident occurred or how he knew the vehicle belonged to the Etelaat. The applicant claimed that two officers came running towards him and one of them had a gun. He escaped on his motorbike. After staying at his parents' house he moved to another village, [named], where he lived in hiding for approximately seven months. The applicant claimed that, during his stay in the village, he befriended many people from Ahwaz and started advocating for their rights as Ahwazi Arabs and to raise awareness about the position of Ahwazi people under the Iranian government. He bought land in the village and started to build a house, however a person from the village council who worked with the Etelaat told him he did not have the licence to build the house and expressed concern about his influence on the young people who used to come to him every night. The applicant did not explain how he knew that the person worked for the Etelaat. After a while the council contacted him again and said it would demolish his house. By that time he feared his name had reached Etelaat. The applicant claimed that he was living in constant fear of the authorities and decided to escape Iran. He sold all of his belongings and a few days later he left Iran to travel to Australia.
31. I found the applicant's evidence about being targeted and pursued by the Etelaat in Iran to be vague and lacking in detail. I am not convinced that the applicant was describing actual lived experiences; he did not provide a clear timeline of his encounters with the Etelaat or explain why he was certain that he was being targeted. As such I do not accept that he was of interest to the Etelaat before he left Iran.
32. In the SHEV application the applicant claimed that after he was released from immigration detention in Australia he started mingling with fellow Ahwazis. He started sharing political and religious posts on [social media] and [his messaging service], including posts about the history of Ahwaz, the violation of the rights of Ahwaz people by the Iranian government and the treatment of Ahwaz people by the Etelaat. As many people from Ahwaz do not have access to [social media] he also distributed these materials over the phone.
33. The applicant stated that in Australia he has participated in peaceful demonstrations against the Iranian government. He opened a public [social media] page ('[named]') several years ago which seeks to promote the interests of Ahwazi people and has more than [number] followers. The page is public and can be accessed by anyone, and members of the page can be easily identified. He also has a personal [social media] page on which he posts political messages.

34. The applicant claimed that he has received threats on [messaging service] from someone claiming to have his followers' names. The person claims that the applicant and his followers will be beheaded on arrival in Iran. In approximately February 2017 he received a [messaging service] message from someone asking when he would be returning to Iran. He replied to the person that he would only be back when Ahwaz becomes its own country. The person then sent a picture of the location where he was almost arrested in Ahwaz. This suggests that the person knows about the applicant's activities in Iran.
35. The applicant states that he fears returning to Iran because he knows he will be arrested on arrival. At the very least he believes he will be detained, imprisoned, tortured and suffer inhuman and degrading treatment at the hands of the Etelaat and other authorities.
36. The applicant states that he fears his [social media] and [messaging] accounts are being monitored by the Iranian authorities because he is very active on social media and has many followers. He believes he will be stopped at the airport on return to Iran and thoroughly investigated as he would have been identified at demonstrations that he took part [at a location] in Australia. It is very likely they will find out about his online political activities. As political activists suffer a lot at the hands of Iranian authorities he believes that he will most certainly be killed.
37. The applicant also fears harm by his father, who supports the current Iranian regime and has told the applicant he will kill him if he returns to Iran with his current mindset. The applicant states that he cannot change his mindset because he strongly believes that the Iranian regime is causing injustice to the people of Ahwaz and that they need to become independent. He regards himself as an advocate for the rights of the Ahwazi people in relation to their traditional and cultural clothing, language and events.
38. In a statement included with the SHEV application the applicant's representative stated that the applicant has participated in peaceful demonstrations [at a location] in Australia for the last three years. He noted that the applicant has a very deep-rooted political opinion about the Iranian regime and its harsh treatment of Ahwazi people and those who are politically active. The representative submitted that the applicant did not start being active online by posting and sharing political content on [his messaging service] and [social media] in order to strengthen his protection claims but rather because he felt safe to do so in Australia because his position in Australia enabled him to help fellow Ahwazi people in Iran through peaceful demonstrations. The representative reiterated the applicant's concerns that his online activities are being monitored by Iranian authorities due to his political involvement, that he has been identified at demonstrations and that he will suffer harm if returned to Iran as a result. He fears he will be persecuted because of his political opinion about Iran's authoritarian regime run by the Islamic clergy and his opposition to the unfair treatment that people from Ahwaz are subject to. The representative noted that the applicant had already come to the attention of the Etelaat while in Iran for advocating for the rights of the Ahwazi people.
39. The applicant included untranslated screen shots of his claimed online activity as supporting documents in his SHEV application, including one with a man holding [a specified] flag and one with a group of men [at a named location], two of whom are in traditional Arab clothing. There is no clear indication that the applicant is pictured in any of these photographs. I have compared the photograph of the applicant in the written record of entry interview with the photographs included in the [social media] screen shots provided. Several of the [social media] photographs feature a man who bears a resemblance to the applicant, however as he is wearing sunglasses and Arab headwear it is difficult to be confident that the man featured

is the applicant, or that he is engaging in protests or similar activities and where those activities occurred. Notwithstanding these concerns I am prepared to accept that the applicant does feature in some of the photographs and that he has participated in some small-scale protests and similar activities in Australia.

40. During the SHEV interview the applicant advised that he is a member of the Ahwazi community in Australia; they help and support each other, talk about political issues and organise events. For example, they gathered to protest [at a location] [in] [2018]. The applicant provided a photograph to the interviewing officer to illustrate his attendance at the protest. It is not clear from the photograph where the protest occurred. The applicant noted that he helped to hold up [the specified] flag during the protest because the [people it represents] are “against Iran” and [their] religion, Sunni, is the “true Islam” and he is proud of that. The applicant believes that the Iranian authorities would have taken a video recording of the protest. He noted that he and his group feel free to express their views in Australia and they are not scared of the Iranian authorities. However, he is “100% sure” he will be killed by the Iranian authorities if returned to Iran, due to his political activities and opinions.
41. During the SHEV interview the applicant advised that he is currently part of two [social media] groups that seek to educate and unite the Ahwazi people. He believes that the Iranian authorities would be aware of his online activity. The applicant also expressed an intention to change his surname [to a new name] to reflect his Arabic nationality and represent his tribe, and acknowledged that although he can speak Farsi he does not like it and is “finished with Persian”.
42. DFAT reports that, like other ethnic minorities, the Arab community has long expressed concerns about economic marginalisation and discrimination in education, employment, politics and culture. Although the applicant’s home region of Khuzestan province is rich in gas and oil reserves, Arab community representatives complain that Arabs are systematically excluded from employment in these industries and from opportunities to work in local government. Violent protests occurred in Ahwaz, the provincial capital of Khuzestan, in 2005 due to reports that the government was planning to implement policies to reduce the number of Arabs in the province. The protests led to the deaths of at least 50 Ahwazi Arabs and the detention of hundreds more. According to DFAT, as of June 2018 at least 37 Ahwazi Arabs had been executed since 2005 following trials that international human rights organisations regard as unfair. DFAT also reported that in April 2015 authorities arrested a large number of Ahwazi Arabs in the lead-up to the tenth anniversary of the 2005 protests. While those arrested included prominent activists, human rights organisations expressed concern that many were targeted for their perceived political opinions, for peacefully expressing dissent, or for openly exhibiting their Arab identity and culture⁶.
43. In the 2016 DFAT country report taken into account by the delegate, DFAT stated that the treatment of Arabs in Iran was unpredictable and, depending on the political environment, Arabs could unexpectedly face increased adverse attention. It assessed that most Arabs were not of adverse interest to the authorities, however the risk increased dramatically for those who publicly assert cultural or political rights. Adverse attention included monitoring, being summonsed for questioning, or arrest.⁷ In a 2017 report, Amnesty International stated that members of minorities in Iran, including Arabs, face arbitrary arrest, torture and grossly unfair trials for speaking out against violations of their political, cultural and linguistic rights.⁸

⁶ DFAT, “DFAT Country Information Report – Iran”, 7 June 2018, CIS7BB39411226, p. 17

⁷ DFAT, “DFAT Country Information Report – Iran”, 21 April 2016, CIS38A8012677, p. 9

⁸ Amnesty International, “Amnesty International Report 2016-2017”, 23 February 2017, NG2A465F54, p. 194

44. I found the evidence provided by the applicant about his views of the treatment of Ahwazi Arabs by the Iranian regime to be convincing. Although his evidence about his political activity in Australia has been consistent, the applicant's evidence about the extent of his ethnicity related political activity in Iran has been inconsistent. During the entry interview he indicated that he did not participate in any political issues in Iran due to fear of the authorities but he did meet with Arab friends to talk about their situation. In the SHEV application the applicant claimed that he was involved in many Arab cultural activities in Iran and the distribution of pamphlets to raise awareness of Arab issues, and also claimed to be involved in the teaching and promotion of the Arabic language. During the SHEV interview the applicant stated that in Iran he would gather with friends to talk about their political situation and problems. The applicant explained these discrepancies in his SHEV application and interview; in the application he stated that he was not made aware during the entry interview that the information he provided would be used to assess his claims for protection and the information was not read back to him in Arabic or Farsi. He stated that the interviewing officer asked him to only briefly outline why he came to Australia and expressed concern that he was not given a chance to provide a detailed explanation. He was also concerned about being sent to Manus Island or Nauru at that time. During the SHEV interview the applicant explained that had not been sure what he was going to face in Australia at the time of his entry interview and wanted to see what happened, noting that everything was strange for him at that time, and this is why the information he provided about his activities in Iran differs from his subsequent evidence. I consider the applicant's explanation for these discrepancies and lack of information at the entry interview stage to be plausible. I am also mindful of not placing too much weight on what is said during entry interviews, which generally occur a short time after an applicant's arrival in Australia and before they may feel comfortable about fully disclosing information about their personal circumstances and their past.
45. On the evidence before me it would seem that the applicant was not a prominent activist in Iran and he has become more confident about expressing his political views while he has been in Australia. He has commented that he has felt free to express himself in Australia as he is not afraid of the authorities, and this has extended to increased political activity in the form of participation in protests [at a location] and social media posts.
46. On the evidence before me I am satisfied that the applicant has a genuine and long-term commitment to promoting awareness of the issues faced by Ahwazi Arab people, and that since he has been in Australia he has publically expressed his concerns. I am also satisfied that he will continue to have such a commitment in the future as the level of his commitment and activism has increased while he has been in Australia and he seeks to maintain and further progress his anti-Iranian regime political activity. Taking into account country information about the treatment of Ahwazi Arabs who express political views in opposition to the government, I find that such activity would not be tolerated by the Iranian authorities and may result in the applicant being monitored, questioned, arrested and/or imprisoned if he is returned to Iran. I find that the applicant has a well-founded fear of persecution on the basis of his ethnicity and associated political opinion.
47. In addition to his political activities in Iran and Australia, the applicant has converted from Shia to Sunni Muslim.
48. According to DFAT, approximately 9 per cent of Iranians are Sunni Muslims, and Sunnis are predominantly members of ethnic minority groups, including Arabs. Article 12 of the Iranian Constitution stipulates that other schools of thought within Islam are to be accorded full respect and their followers free to practise their own religious rites. DFAT notes that, despite

these constitutional protections, Sunnis report experiencing official discrimination, including continued underrepresentation in government positions in the provinces where they form a majority, suppression of religious rights, lack of basic government services, and inadequate public funding for infrastructure projects, including for building mosques. DFAT assess that Sunnis face a moderate risk of official discrimination as the structure of the Islamic Republic favours the Shia Muslim majority to the exclusion of others.⁹

49. I have accepted that the applicant converted from Shia to Sunni whilst still in Iran and that he became more open about his Sunni faith after he arrived in Australia. I accept that he was attending Friday prayers when he lived in [two Australian cities] and, although he does not currently attend mosque in [his current town] and has stated that religion is not that important to him (compared to political issues), I accept that he still regards himself as a Sunni Muslim. I accept that the applicant would wish to publically express and practise his Sunni faith if returned to Iran, particularly given that faith's direct connection to his Arab ethnicity and the strengthening of his views about his ethnicity since he has been in Australia. Although he may be able to avoid adverse attention by modifying his behaviour to practice his religion discreetly, I find that this would involve a modification that cannot be required under s.5J(3)(c)(i).
50. The applicant was not a prominent activist in Iran. His conversion to being a Sunni Muslim appears to have been low key due to fear of how it may be viewed by the Iranian authorities, and he only told a few friends about the conversion. He has been more open about his conversion during his time in Australia and now confidently identifies as a Sunni. As outlined above, country information indicates that Ahwazi Arabs who assert themselves politically face a real chance of harm from the authorities if they ever come to their attention. I consider the applicant's conversion from Shia to Sunni heightens his risk when considered in conjunction with his political activities. I accept the chance of the applicant being detained or arrested on arrival in Iran is not remote, and I accept that the detention would involve harm because torture and other physical mistreatment are known to be practised in Iran.¹⁰ I am satisfied that the nature of the harm that the applicant may face amounts to serious harm because it includes significant physical harassment and ill-treatment. I accept the essential and significant reasons for the persecution would be his ethnicity, political opinion and religion, and that it would involve systemic and discriminatory conduct.
51. I have considered whether the applicant could take reasonable steps to modify his behaviour to avoid a real chance of persecution. I consider that such steps would require him to conceal his ethnicity and political and religious views. I find that this amounts to modification of behaviour that cannot be required under s.5J(3)(c)(i) of the Act. I find that the applicant cannot be expected to conceal his political opinions to avoid the real chance of persecution.
52. I have considered whether the applicant can access effective protection in Iran. As the Iranian authorities are the agent of harm, and there is no information that the applicant can seek protection from any other non-state agents in Iran, I am not satisfied that effective protection measures are available to him, and I further find that he faces a real chance of prosecution in all areas of Iran.
53. Based on the evidence and country information before me I find that the applicant has a well-founded fear of persecution on the basis of his ethnicity, political opinion and religion. Given

⁹ DFAT, "DFAT Country Information Report – Iran", 7 June 2018, CIS7BB39411226, p. 20

¹⁰ DFAT, "DFAT Country Information Report – Iran", 7 June 2018, CIS7BB39411226, p. 41

this finding, I have found it unnecessary to consider his other claims, or other issues addressed by the delegate.

Refugee: conclusion

54. The applicant meets the requirements of the definition of refugee in s.5H(1).

Decision

The IAA remits the decision for reconsideration with the direction that:

- the referred applicant is a refugee within the meaning of s.5H(1) of the *Migration Act 1958*.

Applicable law

Migration Act 1958

5 (1) Interpretation

In this Act, unless the contrary intention appears:

...

bogus document, in relation to a person, means a document that the Minister reasonably suspects is a document that:

- (a) purports to have been, but was not, issued in respect of the person; or
- (b) is counterfeit or has been altered by a person who does not have authority to do so; or
- (c) was obtained because of a false or misleading statement, whether or not made knowingly

...

cruel or inhuman treatment or punishment means an act or omission by which:

- (a) severe pain or suffering, whether physical or mental, is intentionally inflicted on a person; or
- (b) pain or suffering, whether physical or mental, is intentionally inflicted on a person so long as, in all the circumstances, the act or omission could reasonably be regarded as cruel or inhuman in nature;

but does not include an act or omission:

- (c) that is not inconsistent with Article 7 of the Covenant; or
- (d) arising only from, inherent in or incidental to, lawful sanctions that are not inconsistent with the Articles of the Covenant.

...

degrading treatment or punishment means an act or omission that causes, and is intended to cause, extreme humiliation which is unreasonable, but does not include an act or omission:

- (a) that is not inconsistent with Article 7 of the Covenant; or
- (b) that causes, and is intended to cause, extreme humiliation arising only from, inherent in or incidental to, lawful sanctions that are not inconsistent with the Articles of the Covenant.

...

receiving country, in relation to a non-citizen, means:

- (a) a country of which the non-citizen is a national, to be determined solely by reference to the law of the relevant country; or
- (b) if the non-citizen has no country of nationality—a country of his or her former habitual residence, regardless of whether it would be possible to return the non-citizen to the country.

...

torture means an act or omission by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person:

- (a) for the purpose of obtaining from the person or from a third person information or a confession; or
- (b) for the purpose of punishing the person for an act which that person or a third person has committed or is suspected of having committed; or
- (c) for the purpose of intimidating or coercing the person or a third person; or
- (d) for a purpose related to a purpose mentioned in paragraph (a), (b) or (c); or
- (e) for any reason based on discrimination that is inconsistent with the Articles of the Covenant;

but does not include an act or omission arising only from, inherent in or incidental to, lawful sanctions that are not inconsistent with the Articles of the Covenant.

...

5H Meaning of refugee

(1) For the purposes of the application of this Act and the regulations to a particular person in Australia, the person is a refugee if the person:

- (a) in a case where the person has a nationality—is outside the country of his or her nationality and, owing to a well-founded fear of persecution, is unable or unwilling to avail himself or herself of the protection of that country; or
- (b) in a case where the person does not have a nationality—is outside the country of his or her former habitual residence and owing to a well-founded fear of persecution, is unable or unwilling to return to it.

Note: For the meaning of ***well-founded fear of persecution***, see section 5J.

...

5J Meaning of well-founded fear of persecution

- (1) For the purposes of the application of this Act and the regulations to a particular person, the person has a well-founded fear of persecution if:
 - (a) the person fears being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion; and
 - (b) there is a real chance that, if the person returned to the receiving country, the person would be persecuted for one or more of the reasons mentioned in paragraph (a); and
 - (c) the real chance of persecution relates to all areas of a receiving country.

Note: For membership of a particular social group, see sections 5K and 5L.
- (2) A person does not have a well-founded fear of persecution if effective protection measures are available to the person in a receiving country.

Note: For effective protection measures, see section 5LA.
- (3) A person does not have a well-founded fear of persecution if the person could take reasonable steps to modify his or her behaviour so as to avoid a real chance of persecution in a receiving country, other than a modification that would:
 - (a) conflict with a characteristic that is fundamental to the person's identity or conscience; or
 - (b) conceal an innate or immutable characteristic of the person; or
 - (c) without limiting paragraph (a) or (b), require the person to do any of the following:
 - (i) alter his or her religious beliefs, including by renouncing a religious conversion, or conceal his or her true religious beliefs, or cease to be involved in the practice of his or her faith;
 - (ii) conceal his or her true race, ethnicity, nationality or country of origin;
 - (iii) alter his or her political beliefs or conceal his or her true political beliefs;
 - (iv) conceal a physical, psychological or intellectual disability;
 - (v) enter into or remain in a marriage to which that person is opposed, or accept the forced marriage of a child;
 - (vi) alter his or her sexual orientation or gender identity or conceal his or her true sexual orientation, gender identity or intersex status.
- (4) If a person fears persecution for one or more of the reasons mentioned in paragraph (1)(a):
 - (a) that reason must be the essential and significant reason, or those reasons must be the essential and significant reasons, for the persecution; and
 - (b) the persecution must involve serious harm to the person; and
 - (c) the persecution must involve systematic and discriminatory conduct.
- (5) Without limiting what is serious harm for the purposes of paragraph (4)(b), the following are instances of **serious harm** for the purposes of that paragraph:
 - (a) a threat to the person's life or liberty;
 - (b) significant physical harassment of the person;
 - (c) significant physical ill-treatment of the person;
 - (d) significant economic hardship that threatens the person's capacity to subsist;
 - (e) denial of access to basic services, where the denial threatens the person's capacity to subsist;
 - (f) denial of capacity to earn a livelihood of any kind, where the denial threatens the person's capacity to subsist.
- (6) In determining whether the person has a **well-founded fear of persecution** for one or more of the reasons mentioned in paragraph (1)(a), any conduct engaged in by the person in Australia is to be disregarded unless the person satisfies the Minister that the person engaged in the conduct otherwise than for the purpose of strengthening the person's claim to be a refugee.

5K Membership of a particular social group consisting of family

For the purposes of the application of this Act and the regulations to a particular person (the **first person**), in determining whether the first person has a well-founded fear of persecution for the reason of membership of a particular social group that consists of the first person's family:

- (a) disregard any fear of persecution, or any persecution, that any other member or former member (whether alive or dead) of the family has ever experienced, where the reason for the fear or persecution is not a reason mentioned in paragraph 5J(1)(a); and
- (b) disregard any fear of persecution, or any persecution, that:
 - (i) the first person has ever experienced; or

- (ii) any other member or former member (whether alive or dead) of the family has ever experienced;

where it is reasonable to conclude that the fear or persecution would not exist if it were assumed that the fear or persecution mentioned in paragraph (a) had never existed.

Note: Section 5G may be relevant for determining family relationships for the purposes of this section.

5L Membership of a particular social group other than family

For the purposes of the application of this Act and the regulations to a particular person, the person is to be treated as a member of a particular social group (other than the person's family) if:

- (a) a characteristic is shared by each member of the group; and
- (b) the person shares, or is perceived as sharing, the characteristic; and
- (c) any of the following apply:
 - (i) the characteristic is an innate or immutable characteristic;
 - (ii) the characteristic is so fundamental to a member's identity or conscience, the member should not be forced to renounce it;
 - (iii) the characteristic distinguishes the group from society; and
- (d) the characteristic is not a fear of persecution.

5LA Effective protection measures

- (1) For the purposes of the application of this Act and the regulations to a particular person, effective protection measures are available to the person in a receiving country if:
 - (a) protection against persecution could be provided to the person by:
 - (i) the relevant State; or
 - (ii) a party or organisation, including an international organisation, that controls the relevant State or a substantial part of the territory of the relevant State; and
 - (b) the relevant State, party or organisation mentioned in paragraph (a) is willing and able to offer such protection.
- (2) A relevant State, party or organisation mentioned in paragraph (1)(a) is taken to be able to offer protection against persecution to a person if:
 - (a) the person can access the protection; and
 - (b) the protection is durable; and
 - (c) in the case of protection provided by the relevant State—the protection consists of an appropriate criminal law, a reasonably effective police force and an impartial judicial system.

...

36 Protection visas – criteria provided for by this Act

...

- (2) A criterion for a protection visa is that the applicant for the visa is:
 - (a) a non-citizen in Australia in respect of whom the Minister is satisfied Australia has protection obligations because the person is a refugee; or
 - (aa) a non-citizen in Australia (other than a non-citizen mentioned in paragraph (a)) in respect of whom the Minister is satisfied Australia has protection obligations because the Minister has substantial grounds for believing that, as a necessary and foreseeable consequence of the non-citizen being removed from Australia to a receiving country, there is a real risk that the non-citizen will suffer significant harm; or
 - (b) a non-citizen in Australia who is a member of the same family unit as a non-citizen who:
 - (i) is mentioned in paragraph (a); and
 - (ii) holds a protection visa of the same class as that applied for by the applicant; or
 - (c) a non-citizen in Australia who is a member of the same family unit as a non-citizen who:
 - (i) is mentioned in paragraph (aa); and
 - (ii) holds a protection visa of the same class as that applied for by the applicant.
- (2A) A non-citizen will suffer **significant harm** if:
 - (a) the non-citizen will be arbitrarily deprived of his or her life; or
 - (b) the death penalty will be carried out on the non-citizen; or
 - (c) the non-citizen will be subjected to torture; or
 - (d) the non-citizen will be subjected to cruel or inhuman treatment or punishment; or
 - (e) the non-citizen will be subjected to degrading treatment or punishment.

- (2B) However, there is taken not to be a real risk that a non-citizen will suffer significant harm in a country if the Minister is satisfied that:
- (a) it would be reasonable for the non-citizen to relocate to an area of the country where there would not be a real risk that the non-citizen will suffer significant harm; or
 - (b) the non-citizen could obtain, from an authority of the country, protection such that there would not be a real risk that the non-citizen will suffer significant harm; or
 - (c) the real risk is one faced by the population of the country generally and is not faced by the non-citizen personally.

...

Protection obligations

- (3) Australia is taken not to have protection obligations in respect of a non-citizen who has not taken all possible steps to avail himself or herself of a right to enter and reside in, whether temporarily or permanently and however that right arose or is expressed, any country apart from Australia, including countries of which the non-citizen is a national.
- (4) However, subsection (3) does not apply in relation to a country in respect of which:
- (a) the non-citizen has a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion; or
 - (b) the Minister has substantial grounds for believing that, as a necessary and foreseeable consequence of the non-citizen availing himself or herself of a right mentioned in subsection (3), there would be a real risk that the non-citizen will suffer significant harm in relation to the country.
- (5) Subsection (3) does not apply in relation to a country if the non-citizen has a well-founded fear that:
- (a) the country will return the non-citizen to another country; and
 - (b) the non-citizen will be persecuted in that other country for reasons of race, religion, nationality, membership of a particular social group or political opinion.
- (5A) Also, subsection (3) does not apply in relation to a country if:
- (a) the non-citizen has a well-founded fear that the country will return the non-citizen to another country; and
 - (b) the Minister has substantial grounds for believing that, as a necessary and foreseeable consequence of the non-citizen availing himself or herself of a right mentioned in subsection (3), there would be a real risk that the non-citizen will suffer significant harm in relation to the other country.

Determining nationality

- (6) For the purposes of subsection (3), the question of whether a non-citizen is a national of a particular country must be determined solely by reference to the law of that country.
- (7) Subsection (6) does not, by implication, affect the interpretation of any other provision of this Act.