



**Australian Government**  
**Immigration Assessment Authority**

**Decision and Reasons**

**Referred application**

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IRAN

IAA reference: IAA19/06260

Date and time of decision: 8 April 2019 10:27:00

J McLeod, Reviewer

**Decision**

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The IAA affirms the decision not to grant the referred applicant a protection visa.

*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

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### Visa application

1. The referred applicant (the applicant) claims to be an Iranian national who fears he will be harmed by Iranian authorities for his anti-Islamic and anti-Iranian regime political opinion and his atheist lifestyle. He applicant arrived in Australia [in] July 2013 and lodged an application for a Temporary Protection Visa (TPV) on 21 March 2017. He underwent a TPV interview in October 2017 with one departmental officer and on 15 January 2019, another departmental officer (the delegate of the Minister for Immigration, herein referred to as 'the delegate') refused to grant the visa. The delegate had numerous concerns with the applicant's credibility and was ultimately not satisfied that the applicant would face a real chance of persecution or real risk of significant harm in Iran.

### Information before the IAA

2. I have had regard to the material given by the Secretary under s.473CB of the *Migration Act 1958* (the Act) ('the review material' or 'referred material').
3. On 8 and 14 February 2019 the IAA received a submission from the applicant's representative with seven attachments, and a further document detailing the applicant's claimed work history.
4. In part, the submission and attachments reiterate claims and re-submit information already provided to the delegate, draw attention to relevant departmental policy, and raise arguments in response to the delegate's decision. To that extent, I am satisfied it is not new information and have had regard to it.
5. It was claimed to the delegate that the applicant had been politically active in Australia, posting anti-regime material on his publicly viewable Facebook pages. However no evidence of this was provided and the delegate found only two publicly viewable Facebook pages for the applicant (which were included in the review material), and which were absent any kind of political or anti-regime posts. The applicant has now provided the IAA with new information being purported screenshots of his Facebook posts and comments, which he claims were publicly available during the TPV process. This includes:
  - A post [in] December 2013 with seven 'likes' (and one comment) displaying a quote from [a named person] going to the applicant's claimed atheist profile;
  - A post from [January] 2014 displaying a quote [details deleted];
  - A post from [April] 2016 with four 'likes' (and 1 comment) referencing the Green Movement and making other anti-regime/ anti-clergy [statements];
  - The sharing of a post [in] October 2016 displaying anti-religious, and anti-Khamenei sentiment;
  - A comment made four years ago with three 'likes' highlighting the quote "[deleted]".
6. This Facebook activity was purportedly carried out well before the decision was made, and even before the TPV application was lodged, dating from December 2013 – October 2016. No

explanation has been provided as to why this evidence could not have been provided before the delegate's decision was made. I take into account that on 4 August 2016 in a letter inviting the applicant to apply for a protection visa, he was advised by the department that it was his responsibility to raise his claims for protection and provide sufficient evidence to establish his claims. This was reiterated to him in the TPV interview in the presence of his representative, who is the same representative who has made the submission and given this new information to the IAA. It was also explained at the end of the TPV interview that any additional information provided to the department before a decision was made would be considered. I am not satisfied on the evidence that this Facebook information could not have been provided before the decision was made, almost 18 months later.

7. I also have concerns about the veracity of the information given as the applicant is not visibly identifiable in the photo attached to the posts and overall it is questionable as to whether the standalone posts given actually derive from an active Facebook page. While the applicant claims the Facebook activity was publicly viewable during the TPV process still no evidence has been given to support that this is the case. I note the very few number of 'likes' and comments this activity attracted; overall there is little evidence of any interest in the activity. It is not apparent to me that the public or even the applicant's entire Facebook friends group can see the posts, share and commenting activity. I am not satisfied his online activities have ever been open to a public audience and given the information indicates the applicant has averaged one post/share/comment per year since his arrival in Australia almost six years ago, I find it to be of little probative value to the applicant's claim of having been publicly and actively expressing his political and religious views.
8. The applicant has not satisfied me as to the matters in s.473DD(b)(i) or (ii). Nor are there any apparent exceptional circumstances to justify consideration of this new information. I am also not satisfied that s.473DD(a) is met.
9. The applicant's representative asserts that the document detailing the applicant's claimed work history originates from [an authority] and proves that the applicant worked in the claimed profession. I am satisfied that this is credible personal information in the relevant sense and that s.473DD(b) is met. However as noted above, the applicant was told of the importance of providing evidence to support his claims and he was clearly put on notice about the TPV interviewer's doubts as to his work history. The interviewer directly asked him what evidence he had about his job and he responded that there was many different types of evidence he could provide and gave some examples, but this evidence was never provided. I have otherwise accepted that the applicant was working in [occupation] before he left Iran and this document gives no insight into the applicant's claimed political profile, his atheism or his claimed marriage. Nor does it appear to serve any other corroborative or probative value. No contextual information has been provided about how this work record was obtained. No exceptional circumstances have been pointed out to me and none are apparent to me. I am not satisfied there are exceptional circumstances to justify considering this new information.
10. The other attachments are extracts of country information reports published by LandInfo (2013) and Refworld (2014) on human rights issues and post-2009 election issues, and an extract from a report entitled 'The Soft War and Cyber Tactics in Iran' published in 2017 with relevant highlights about Facebook activity. However it all pre-dates the decision by between one and five years and no explanation has been provided as to why it could not have been provided before the decision was made. Nor has it been explained how this information is credible personal information. I find that it is not; it is general country information. As above, no exceptional circumstances have been identified and none are apparent to me. I am not satisfied there are exceptional circumstances to justify considering this new information.

## Applicant's claims for protection

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

- He is an Iranian citizen born in Tehran in [year deleted]. He is of Persian ethnicity, does not believe in Islam or follow any religion and is divorced.
- He believes in the principles of liberal thinking and democracy. As a progressive Iranian young man, he always believed the Iranian regime was a theocratic dictatorship. There is no democracy and no legitimacy in the Islamic establishment.
- Driven by his strong anti-Islamic regime opinions, he actively took part in the 2009 post-presidential election demonstrations. He filmed the protests and protestors, hoping he was recording history (the toppling of the regime). He had three or four mini DVDs with 20 to 30 minutes of recording, and some footage on his mobile phone. He showed the recordings to his family and friends. He was also filmed by a friend during the protests. He is clearly visible in the video recordings as a demonstrator chanting slogans against the regime and the supreme leader whom he calls the Grand Dictator.
- Almost one and a half years before he fled Iran, he got married. He spoke openly to his wife about his anti-religion and anti-regime ideas and also showed her the video footage. Almost 11 months into the marriage he discovered his wife was having an affair. He confronted her and she left home taking his personal documents (passport, driver's licence and military service card), the DVDs<sup>1</sup> containing the footage and cash. She refused to return them and the tension escalated. He made official complaints with the authorities and she retaliated by threatening if he did not withdraw his complaint, she would report him to the intelligence authorities as an anti-Islam political dissident and would give them the DVDs. He believed she would act on these threats; he had no choice but to flee Iran.
- He quickly re-applied for his identity documents and left Iran.
- A few weeks after arriving in Australia his parents' house was visited by plain clothed officials enquiring about him and his whereabouts. This incident confirmed to him that his ex-wife had reported him to Ettela'at. There were no further visits and he believes this is because he left the country.
- He still has strong opinions against the religion of Islam and the Islamic dictatorship of Iran. Whilst living in Australia, he published some political posts on his Facebook page which may have been noticed by the Iranian Cyber Army.
- He fears being harmed by Ettela'at agents and other Islamic authorities upon his return. He fears his ex-wife has already reported his political activities and anti-religious beliefs to the Islamic authorities and even though his divorce was ordered in absentia in 2015 his complaint against his ex-wife is still with the court so the risk of facing Ettela'at upon return to Iran is very real to him. The Iranian regime does not show any leniency towards political dissidents.

12. In support of his claimed marriage and divorce, the applicant provided what he purports are copies of his shenasname recording his wife's details and the claimed date of their marriage; their divorce order; and photographs of him and his ex-wife taken when they were together. He also provided purported copies of the complaint he lodged with police [in] January 2013

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<sup>1</sup> At the TPV interview references were also made to 'CDs'. I accept the terms 'DVDs' and 'CDs' were used interchangeably in the TPV interview to refer to the same item, being items containing video footage or video evidence purportedly taken by, and showing, the applicant.

regarding the theft of certain items, a letter from the police dated [in] January 2013 requesting his attendance to follow-up on the complaint; and a letter from the police dated 14 January 2013 requiring the applicant to attend – by judge’s order – another meeting with police to finalise the investigation. He also provided photographs of him in his [occupation] in Iran, to support his claims that he had a good job in Iran and had not left Iran for reasons of job insecurity or economic reasons.

### **Factual findings**

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13. The applicant has consistently claimed to be an Iranian national and while I have some concerns about some of the documentary evidence he has provided, I accept he comes from Tehran, Iran and that Iran is the receiving country in this review.
14. The applicant’s central claim for protection is that evidence of his political dissidence in the 2009 post-election protests has fallen into the hands of the Iranian authorities. He claims that after his marriage broke down, around January 2013, his wife stole personal belongings from him including inter alia, some identity documents and DVDs containing video footage of the post-election protests in 2009, some of which he filmed and some of which he featured in, visibly and audibly demonstrating against the clergy and the broader political regime. He claims that he lodged a complaint against her with the police and she then revealed she had the video evidence in her possession and threatened to provide it to the authorities if he continued with his complaint. He claims he believed she would do so, so he replaced his identity documents and left Iran. He claims the authorities’ visit to his parents a few weeks later confirms that she did.
15. The delegate found none of this to be credible, weighing heavily the applicant’s failure to mention in his Entry interview that: he had ever had a spouse or partner in Iran; his fear of being harmed due to his political activity; and anything about the DVDs’ existence or of their being given to the Iranian authorities. The delegate also heavily weighed inconsistencies in the applicant’s residential history and gave no weight to the documentary evidence, citing the frequency of forgery and production of fraudulent documents in Iran and found the photographs of the applicant with a woman and in a workplace to be unpersuasive evidence of his marital status and his possession of a good job just before leaving Iran. The delegate did not accept the applicant was ever married, that the Iranian authorities have any DVDs or protest footage of him, or that he is of any interest to them on account of his political opinion. For the same and some additional reasons, I share most of these findings.
16. I have significant concerns about the significant variation between what the applicant said in his Entry interview, around two weeks after his arrival in Australia in 2013, and the claims raised in his TPV application lodged in March 2017. In July 2013 the applicant stated he left Iran because, due to his not having a religion and not praying and his lack of a ‘[training] certificate’ (which he stated [was] not offered in Iran), he was told he could not continue working for his company, and he finished working there in approximately 2010. He also said that in general there is no freedom and no job security in Iran but he confirmed that nothing specific apart from his work issue had happened to make him leave Iran. When asked what he thought would happen if he returned to Iran, he replied *“I don’t know”*. When asked if he would have problems on return he replied *“Maybe”*. He said the police would cause problems *“because in Iran if you drink 3x you get death penalty, if you go with your girlfriend there will be problems, if you go out with your dog they will arrest you. At least in Tehran it is like that”*. He later said the Basij impacted his daily life in Iran as *“they are everywhere, as I said if you go with your girlfriend they will arrest us, at night they establish a search point to see if there is anyone*

*drunk and see if you are praying*". He did mention he had protested against the government as a Mousavi supporter in 2009, but confirmed he was not arrested.

17. Notably, the applicant made no mention in his 2013 interview of his central claim relating to the video (DVD) footage or evidence of his participation in the protests being given to the authorities, nor did he even give any indication that he had ever been married.
18. While the audio recording of the 2013 interview is not available, the applicant openly addressed the omissions in his TPV application. The interviewer also put these omissions to the applicant during the TPV interview, and suggested it appeared his reason for leaving Iran was the lack of economic opportunity and his lack of job security. She put to him that she held concerns about his credibility of this basis. The applicant and his representative responded to these concerns in the TPV interview, and to the delegate's adverse findings in a submission to the IAA. They submitted that the applicant had not been in Australia very long when he underwent his Entry interview and had not been sure of the legal processes. He had not provided much detail about anything because he was anxious about the information not being kept confidentially and reaching the Iranian authorities. The applicant also pointed out that in addition to not mentioning his marriage and his fears relating to the evidence of his political activities, he had also not mentioned anything about his last three years working in Iran before he left, and his representative pointed out that the *"quite irrelevant information about economic opportunities and taking a [training] course never eventuated"* further because they were not actually the applicant's main reasons or motives for leaving. They also quoted from the department's Policy and Advice Manual (PAM3) cautioning about reliance on the Entry interview because *"...applicants may be in a state of shock or anxiety and may not understand the significance of providing information relevant to their protection claims"; "it is unusual for persons to recall the same event in the same way on each occasion"; and "...primary consideration should be given to claims provided in the PV interview as entry interviews are not for the purpose of obtaining details of protection claims or investigating those claims"*.
19. I have considered the responses to the interviewer's concerns and to the delegate's reasoning. However, my overall my concerns about the information given (and not given) in the Entry interview are not alleviated by these explanations, nor any other factors.
20. I note the applicant had been in Australia for around 12 days by the time he was interviewed and there is no evidence to indicate that the applicant was in a state of shock, or that his anxiety around the situation was such that he did not understand the questions asked, and he agreed in the TPV interview that he had been advised to give honest answers. I take into account that the gathering of protection claims is not the primary purpose for the Entry interview and I note also the applicant had been asked to *briefly* explain his reasons for leaving. However I am not satisfied that when asked why he left Iran and could not return, the applicant could not have (even briefly) mentioned what are now his core claims, about his wife giving the authorities evidence of his political activism. Further, the applicant did in fact raise claims against the authorities, about them targeting people who drink, who go out with their girlfriend and/or dog and do not pray, and he also mentioned he was a Mousavi supporter who had protested against the government in 2009. Given this, I find it difficult to accept he was too fearful to mention he fled because the authorities had evidence of him protesting. Also, none of this explains why he would be unwilling to disclose his marital status. I note the applicant provided full details for other family members and I see no reason why he would not have mentioned he had been married. Taking all of these factors and circumstances into account, I do not accept he was too fearful to mention that he was married, or to raise claims about fearing harm for his political opinion in the 2013 interview. In my view, no satisfactory explanation for these omissions has been provided.

21. As flagged above, another concern relates to the fact that the applicant has not given clear evidence as to his claimed residential history. In his TPV application he gave a single address covering the period from 2006 – 2013 with no indication that he had moved out of this address, but in the TPV interview he stated he had moved into his own place after completing his studies (which I note was in [year deleted]). The address he gave in the TPV application (which he now claims was his family home) is also different to the address he gave for his family home during the Entry interview. When inconsistencies about his residential history were put to the applicant at the TPV interview, his representative disputed this, stating the applicant had lived in the same address from 2006 – 2013, but that he “gave it back” when he felt threatened by his ex-wife. However in the submission to the IAA, there are further contradictions as the representative stated the applicant had just given his parents’ address for the 2006 – 2013 period rather than “also detailing the home he lived in for eight months with his ex-wife during their brief relationship together.” This does not accord with the applicant’s claim at the TPV interview that he had moved into his own place after finishing his university studies, which I note was in [year deleted]. I find these to be significant discrepancies and I do not accept they are explained by the tendency for young, recently married couples of their culture to still identify their permanent address as their parents’ home, as the representative also submitted. I am not satisfied that any satisfactory explanation has been provided which reconciles these differences. I find these issues further undermine the applicant’s claim to have been married and to have lived with his wife.
22. The applicant’s evidence around the existence of the footage, the wife’s theft and the consequences of this are also unpersuasive. While I accept he attended the protests, beyond the applicant’s claims, there is no evidence to support that the applicant recorded the protests, or was captured in anyone else’s footage, nor that he had shown the footage to anyone else, or kept it in the years following. He claims that although his wife moved out and stole some of his belongings in January 2013, he hadn’t realised the DVDs containing the protest evidence was among the items stolen until she threatened him, trying to make him withdraw his complaint. At the TPV interview the applicant blamed his “own personal blindness” for not realising at the time but he had not expected her to do something like this. He was questioned about where he kept the CDs/DVDs in his house and he stated they were in the library, in the drawer and bookshelf and were not locked up. I consider it implausible that the applicant would openly keep this incriminating DVD footage openly in his home, and further, that after finding out his wife had stolen from him, he would not have thought to check that these DVDs were still safe.
23. There are also some inconsistencies and anomalies in the applicant’s evidence around these events. For example while the applicant claimed in the TPV interview that he lodged the complaint with the police that same night, the documentary evidence indicates the police report was not lodged until a couple of days later. I also note that in the TPV interview the applicant’s evidence waived as to whether he lodged the police complaint before or after confronting his wife about the theft and recovering his laptop and watches.
24. The applicant’s evidence has also waived as to whether his ex-wife had given the authorities the DVDs before he left Iran or afterwards. On the one hand, he stated in the TPV interview that he thought she had given it to them “maybe one or two months before” but when it was put to him that he left the country on his own passport without issue, indicating he was not of adverse interest to authorities when he left, he agreed and suggested they mustn’t have started investigating it or he would have been banned from leaving the country. He later stated he didn’t know exactly when she had handed it in, but that it “it was after January”. Further, whereas the applicant’s evidence in his TPV application about the authorities’ enquiring about him was that plain clothed officers had visited his parents and asked about him, in the TPV

interview he added they went to both his place, and his parents' place for inspections. I have concerns about the applicant's apparent speculation as to when the evidence may have been given to the authorities, about the plausibility of the suggestion that they may have had the evidence for some time before they started investigating it, and about the progressive addition of detail from an enquiry with his parents to inspections of two properties. I further have concerns about the fact that no information has been provided about how the authorities explained their reason for their visit or what other questions apart from the applicant's whereabouts were asked. There is no clear evidence to indicate even what the officers were investigating. Overall, I am not satisfied on the evidence that the authorities were given any such incriminating material, or that they visited the applicant's house or his parents' house following his departure.

25. The applicant claims his wife twice failed to appear in court in response to the allegations he lodged against her, but as there is no evidence of her being subject to any arrest warrant or facing repercussions for her non-attendance, I have difficulty accepting this. Further, while the applicant claims the case he lodged against his wife is still open he has given no evidence to support this and it has now been more than six years since the complaint was lodged and the applicant has had any engagement on the matter. I therefore have difficulty accepting that the case would still be open.
26. I note the shenasname and divorce order, the police documents, and the photographs depicting an applicant with a woman. The applicant claims his divorce was ordered in absentia in 2015, and that his family had informed him of this. However he has given no contextual information to explain how they knew and noting the divorce order states it was issued in August 2016 on the applicant's request, I have some concerns about how he was able to obtain a copy of this order, from Australia. I have noted also, my concerns about the applicant's lodgement of the complaint with police, and I share the delegate's concerns about documentation in Iran, noting country information supporting that forgeries and the fraudulent issuance of documents is common. I also find the photographs to be unpersuasive evidence of a marital relationship.
27. I am prepared to accept the applicant was working in [occupation] when he left Iran but taking into account all the relevant factors, particularly that I have not accepted the applicant's explanations about why he did not mention in his Entry interview that he had ever been married or mentioned his fears arising from his political activities and the DVD evidence, and the other concerns I have noted above regarding the documentary evidence and the scenario overall, I do not find these claims to be credible. I do not accept the applicant filmed or was filmed in the 2009 protests, or that he was ever married and endured a marriage breakdown. Nor it follows, do I accept any of the claimed consequences which flowed from these events.

## **Refugee assessment**

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28. 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

29. 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.

30. Although I have not accepted the applicant took and kept video footage of the protests I accept he, like many others in Iran, participated in some post-election demonstrations in Tehran during 2009. Country information in the review material supports that the 2009 Presidential election results were hotly contested and millions of Iranians joined the public outcry and the resulting massive street demonstrations commonly referred to as the 'Green Movement'. DFAT (2016) reported that thousands of Green Movement demonstrators who participated in protests in 2009 and 2010 were detained, beaten and harassed by security forces. It is estimated that hundreds fled Iran as an immediate result of the crackdown and hundreds more in subsequent years. DFAT (2016) stated that high profile activists and members of the Green Movement continue to face monitoring and harassment and lower profile activists have also been detained, harmed and prosecuted for expressing political beliefs, including for participating in political rallies. DFAT assessed that most lower profile activists arrested in the 2009 and 2010 protests and subsequently released are unlikely to face serious on-going harassment, and should normally be able to go about their daily lives unmolested. DFAT (2018) noted that Iran courts reportedly handed down sentences in absentia to a small number of those who fled Iran. DFAT (2016) noted some reports of persons who fled but then returned later on being subject to mistreatment but noted they were unable to independently verify these reports. Overall, DFAT has assessed that, whilst the regime remains highly sensitive to the movement, labelling it as 'sedition', people who were actively involved in the movement remain at some risk, depending on their degree of involvement, of on-going official attention.

31. It has now been nine years since the applicant participated in these 2009 demonstrations. DFAT (2018) reported that the end of the Ahmadinejad presidency in 2013 took away much of the movement's purpose and momentum. The Green Movement did not play an active role in the subsequent elections, and has had very little profile inside Iran in the years since. As noted above, neither the movement nor its supporter base played a significant role in the 2017-18 protests. In 2018 DFAT assessed that given the period of time that has elapsed, it would be highly unlikely that those arrested at the time for simply participating in the protests would remain imprisoned, or would face continuing surveillance or harassment, including being prevented from accessing employment in either the public or private sector. Nevertheless, the 2009-10 protests represented the most significant challenge to the authority of the Islamic Republic in the Ayatollah Khamenei era. Given the sensitivity of the government to such

challenges, DFAT assesses it likely that those who had a more active organisational role in the movement and therefore have a higher profile are more likely to face continuing official attention and possible harassment.

32. I am not satisfied on the evidence before me that the applicant's own role in the demonstrations was anything more than low level and I am not satisfied he has an identifiable political profile. At the TPV interview the applicant was asked if he had been politically involved with any organisations in Iran and the applicant responded that there are no such organisations in Iran which go against the government. The evidence does not suggest the applicant has ever been a member of any organised group or party, or that he played any role in organising any protests or political activities himself. Indeed, at the TPV interview he denied the very existence of any such organisations mobilising against the government. He stated in his Entry interview that he was not arrested for his participation in the protests and he confirmed this in the TPV interview, and also confirmed he had not come to the attention of the authorities at the time. I have not accepted his claims about the authorities looking for him after he left Iran, or that there is video footage of his participation (or his role filming) in the authorities' possession. There is no credible evidence the applicant has ever come to the attention of the authorities in relation to his political activities and views. I am not satisfied that he has.
33. The applicant also claims that he has been politically active in Australia, posting anti-regime material on Facebook. At the TPV interview he also stated he would share other things like music, TV shows against the Iranian regime and materials from the BBC. The interviewer asked his reason for putting these things on Facebook and he responded that it was his personal opinion. He said he started in 2014 because inside Iran no one can do that, and that he put things on Facebook once every three months. While the applicant claims the Facebook activity has been publicly viewable, no evidence of this was given the delegate and as noted in the decision, the delegate's Facebook search located only two pages that could be publicly viewed and these pages were absent any sort of political or anti-regime posts. From the evidence I am able to consider in this review, I am not satisfied that the applicant was as he claimed, active in posting anti-regime material on Facebook.
34. Overall, there is little evidence before me of any strong engagement with political issues. There is no credible evidence in the material I am able to consider to indicate the applicant took any steps to engage in political activities after his participation in the 2009 protests, in Iran or in Australia. Overall, I find the applicant's claims of having strong political opinions and being committed to any particular cause to be unpersuasive and I am not satisfied his claims in this respect are genuine. While I accept the applicant has some anti-regime views, I am not satisfied his views are strongly held or that he is intent on engaging in any political activity (online or otherwise) in Iran; I am not satisfied that he would. Given this, the country information above and that I am not satisfied the applicant has been active on Facebook or that he has ever come to the adverse attention of the Iranian authorities I am not satisfied he would face a real chance of harm for his participation in the 2009 demonstrations, or for anti-regime (including the government and clergy) opinions.
35. The applicant also claims to be atheist and I am prepared to accept this. Country information in the review material indicates that there is held view that atheism establishes apostasy but while it is legally possible for a Muslim to be punished for leaving the faith or turning to atheism, there is little recent evidence of such persons being targeted in Iran. The Austrian Centre for Country of Origin and Asylum Research and Documentation's (ACCORD's) "Iran: Freedom of Religion; Treatment of Religious and Ethnic Minorities COI Compilation" of September 2015 noted that among the sources consulted, little information could be found

on the treatment of atheists. Amnesty International reported said that atheists *“remained at risk of persecution, including arrest, imprisonment and possible execution”* but there are no recent examples of this occurring. ACCORD noted that the Danish Immigration Service’s 2014 fact-finding mission report stated that there is a growing number of atheists in Iran and that this is becoming *“more accepted among some Iranians”*. A senior research fellow in Iranian studies at a university in Germany told ACCORD in August 2015 that *“atheists usually do not express their views in public and are thus able to lead normal lives in Iran without facing any further restrictions.”* An October 2012 article from the German weekly newspaper Die Zeit mentions that *“...while few death sentences for apostasy were carried out in the last ten years, atheists are forced to hide their true beliefs for fear of other consequences such as losing their social benefits or being barred from university entrance.”*

36. In 2016 DFAT stated that perceived converts and apostates are only likely to come to the attention of Iranian authorities through public manifestations of their new faith, attempts at proselytisation, attendance at a house church or via informants. This is consistent with more recent 2018 DFAT reporting which suggests that Iranians who convert to Christianity outside the country are unlikely to face adverse attention from authorities upon return to Iran, provided they have not previously come to the attention of authorities for political activities conducted in Iran, maintain a low profile and do not engage in proselytisation or political activities within the country. Also, reporting indicates that while apostasy remains a punishable crime in Iran, cases are rare. While a case was commuted in 2011 following international pressure the last known application of the death penalty for apostasy was in 1990 and in practice, prosecutions and convictions for apostasy are rare. As noted above, atheism may be said to establish apostasy and as such, I consider the above discussed country information relevant to the applicant’s circumstances.
37. I note in his Entry interview the applicant stated he had been told he could no longer work in his workplace because he did not pray and had no religion, but also on account of needing a further certification. While I note the commentary from Die Zeit above and I am prepared to accept the applicant has experienced some discrimination in his workplace in Iran, I am not satisfied on the evidence that the applicant has been subject to treatment amounting to serious or significant harm in the past on account of his having no religion and an appraisal of country information considered by the delegate also does not suggest this would be case now or in the reasonably foreseeable future.
38. On the evidence I am able to consider, while I accept the applicant has not hidden his atheism in Iran and it has been noticed that he does not pray, I am not satisfied he spoken publicly or otherwise publicised his lack of religious beliefs. I am not satisfied the applicant would, for any reason, wish to publicise his views upon return. Based on the country information and the personal circumstances of the applicant, I am not satisfied there is a real chance of serious harm as a result of the applicant’s atheism.
39. In his Entry interview the applicant mentioned that the authorities target people who drink, who go out with their girlfriend and/or dog and do not pray. However he has never given any indication that he himself was ever targeted for alcohol related reasons, nor for going out with his girlfriend or dog, or for drinking alcohol. Nor has he indicated that he would wish to do these things upon return, or that he fears harm in relation to these matters upon return. As noted above, I am satisfied the applicant was on notice that it was his responsibility to raise claims and provide supporting evidence. These matters were not considered by the delegate and the applicant has raised no concerns about such. I am not satisfied the applicant fears harm on these bases.

40. At the TPV interview the applicant's representative submitted the applicant will be interrogated upon return due to his having been in Australia for such a long time.
41. As current DFAT information indicates that Iran has historically refused to issue travel documents to facilitate the return of involuntary returnees, I find that if the applicant is returned to Iran it would only be on a voluntary basis. In the event of voluntary return, although the evidence indicates he left Iran lawfully using his own genuine passport, I accept he is no longer in possession of his passport and would be issued with temporary travel documents or a *laisser-passe* from an Iranian diplomatic mission to facilitate his travel and return to Iran. I accept that through this process, the authorities will be forewarned of the applicant's imminent return, and that they may surmise he is a failed asylum seekers from Australia/a western country.
42. DFAT states that according to international observers, Iranian authorities pay little attention to failed asylum seekers on their return to Iran and have little interest in prosecuting failed asylum seekers for activities conducted outside Iran, including in relation to protection claims. The authorities will usually only question a voluntary returnee on return if they have already come to official attention, such as by committing a crime in Iran before departing. Sources considered by the delegate note there have been some reports of mistreatment of returnees however an analysis of such cases indicates those returnees were already of interest before departing Iran or were identified as having been critical of the government while abroad.
43. There is no credible evidence before me to indicate that the applicant had an adverse profile with Iranian authorities when he departed Iran or that he was otherwise of any interest to the authorities. I have not accepted that the applicant otherwise has a profile which would attract adverse attention on return.
44. I am not satisfied that the applicant faces a real chance of harm either now or in the reasonably foreseeable future, on the basis of his departure from Iran or several years residence in Australia, nor on the basis of being a failed asylum seeker returning from Australia/a western country, without his passport.

#### **Refugee: conclusion**

45. The applicant does not meet the requirements of the definition of refugee in s.5H(1). The applicant does not meet s.36(2)(a).

#### **Complementary protection assessment**

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46. A criterion for a protection visa is that the applicant is a non-citizen in Australia (other than a person who is a refugee) in respect of whom the Minister (or Reviewer) is satisfied Australia has protection obligations because there are substantial grounds for believing that, as a necessary and foreseeable consequence of the person being removed from Australia to a receiving country, there is a real risk that the person will suffer significant harm.

#### **Real risk of significant harm**

47. Under s.36(2A), a person will suffer 'significant harm' if:
- the person will be arbitrarily deprived of his or her life
  - the death penalty will be carried out on the person

- the person will be subjected to torture
- the person will be subjected to cruel or inhuman treatment or punishment, or
- the person will be subjected to degrading treatment or punishment.

48. I accept the applicant has faced some discrimination in Iran on account of his atheism/having no religion/not praying, but I am not satisfied that the applicant has previously experienced significant harm on account of his non-religious views or that there is a real risk he will in the foreseeable future.

49. I have otherwise found the applicant would not face a real chance of harm from anyone on return. For the same reasons, I am not satisfied he faces a real risk of harm, including significant harm.

#### **Complementary protection: conclusion**

50. There are not substantial grounds for believing that, as a necessary and foreseeable consequence of being returned from Australia to a receiving country, there is a real risk that the applicant will suffer significant harm. The applicant does not meet s.36(2)(aa).

#### **Decision**

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The IAA affirms the decision not to grant the referred applicant a protection visa.

## Applicable law

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### ***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.