



Australian Government
Immigration Assessment Authority

Decision and Reasons

Referred application

IRAN

IAA reference: IAA19/06351

Date and time of decision: 2 April 2019 13:33:00

J Stuckey, Reviewer

Decision

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

Visa application

1. The referred applicant (the applicant) claims to be a citizen of Iran. [In] August 2012 the applicant arrived in Australia as an unauthorised maritime arrival and on 15 May 2017 he lodged an application for a Safe Haven Enterprise Visa (SHEV).
2. On 7 February 2019 a delegate of the Minister for Immigration (the delegate) refused to grant the visa.

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) (the review material). No further information has been obtained or received.

Applicant's claims for protection

4. The applicant's claims can be summarised as follows:
 - He was born in [year deleted] in Ahvaz, Iran. He was born into a Shia Muslim family but did not practise Islam and is now an atheist. In Australia he has explored Christianity but has not converted.
 - He suffers from anxiety and stress, his memory is not clear and he becomes confused in stressful situations.
 - In 2011 the applicant was caught with alcohol by the Basij. He was detained for seven days during which time he was questioned, assaulted and humiliated. One guard told him that if he had oral sex with him he would let him go but he refused. At one stage he thought he was going to be raped. On the sixth day, he was lashed 80 times. His father paid a bribe and he was released. He also paid a fine.
 - In 2012 the applicant was at home with his flat mate, R and their respective girlfriends were visiting. There was a knock at the door and when they realised it was the Basij the applicant escaped over the balcony and went to a friend's house. The Basij found alcohol, sex videos, anti-religious and anti-regime material in the flat. R told them it belonged to the applicant and was released. A few days later the applicant left for Australia.
 - In 2013 the applicant shared Christian and anti-regime posts on [social media].
 - The applicant fears that if he returns to Iran he will be recognised by authorities at the airport, arrested, detained, tortured, punished and likely killed for:
 - having sacrilegious materials;
 - having material against Khomeini;
 - possessing pornographic material;
 - consuming alcohol;
 - apostasy/blasphemy/attending a church in Australia;
 - supporting the Monarchist movement of Iran; and

- seeking asylum in a Western country.

Factual findings

5. The applicant has submitted copies of Iranian identity documents, including a national identity card and an Iranian birth certificate. On the basis of these and consistent evidence, I accept his identity and nationality as claimed.

Mental Health

6. The applicant claims that he suffers from anxiety and stress which affects his memory. In his SHEV application he stated, "Sometimes my memory is not clear and I sometimes feel confused especially in stressful situations. My memory doesn't work properly a lot of the time... I have enrolled with [an agency] to seek counselling and also have been referred to a psychologist by my treating doctor. I saw a mental health doctor in Iran when I was about [age] or [age] years old ago as I stopped eating and was completely withdrawn and would not leave my room after seeing a young pedestrian killed in the street in an accident. Sometimes I have nightmares about the boat journey to Australia." The applicant has not provided any medical reports or other evidence to support this claim.
7. At the SHEV interview the delegate asked the applicant whether he was on any medication, had seen a doctor, or enrolled in counselling. The applicant stated that he hadn't seen a doctor because he didn't want to be on medication. He explained that his father had passed away three or four months prior to the interview and he had been more stressed during this time. He tried to keep busy and distracted through exercising and working out but didn't want to go to see a doctor about his mental health issues. He claimed that before his father passed away he kept busy by working for [name deleted] but had stopped working when his father died. He said he hadn't enrolled in counselling because he was at work every day and didn't have time.
8. I accept that the applicant would have been emotionally affected by the passing of his father and I also accept that he may have experienced stress associated with the visa application process. However, I do not accept that he is suffering from a mental condition. The fact that the applicant indicated in his SHEV application that he would enrol in counselling yet didn't follow through with it, even after his father passed away, indicates to me that he did not have a genuine intention to seek counselling and had included this information in his claim for the purposes of supporting his application. The excuse provided at the interview, that he was too busy to attend counselling, is unconvincing given he hadn't been working for the few months prior to the interview and did not provide any explanation of how he was busy. Having regard to these factors, combined with the fact that there is no medical report or other evidence to confirm the applicant's claimed mental ill health, I am not satisfied the applicant does, in fact, suffer from a mental illness.

Events in Iran

9. The applicant claims that in 2011 he went to an address in Iran to buy some liquor. He phoned the liquor vendor from his car and the vendor brought a bottle of whiskey out to the applicant in a plastic bag and the applicant paid him approximately \$25. The applicant made a "U turn" to go back onto the freeway and just before he entered the freeway he was stopped by the three Basij officers who were parked in an unmarked car. When the Basij officers searched his car they saw the alcohol he was ordered into the backseat of the Basij car and taken to their [headquarters]. When the applicant got the Basij headquarters he was put into a small cell for

24 hours without food or water. On the second day he was questioned about where he got the alcohol from and he provided the vendor's details. While the applicant was detained the officers kicked and slapped him – he said the violence and harassment was constant and that he was often kicked in the shins and kneed in the leg. He claims that during the third night he was ordered to take his clothes off and told to dance. He told the officers he didn't know how to dance and they kicked and punched him. He was then made to mop and clean the toilet wearing only his underpants. He claims that on the fourth night he was told to remove his clothes again and one of the officers told him that if he had sex with him he would be released. The applicant refused and he was then told if he gave the officer oral sex he would be released. Again the applicant refused. Later, an officer urinated into a bucket and held it up to the applicant, pushed his head towards the bucket and told him to drink it. The applicant was kicked and made to face the window. His left hand was handcuffed to one of the metal bars while another officer tried to handcuff his right hand. The applicant was told to look at the bars and, at this point, he said he was certain he was going to be raped. He smashed the glass of the window with the base of his hand, cutting a vein in his wrist which would not stop bleeding. The applicant was taken to a medical centre and treated before being returned to detention. The applicant claims he was told by an officer that if he made trouble he would say he was cursing Khomeini, for which the punishment was death. On the sixth day the applicant was told that the officers had a court order for him to receive 80 lashes. He was bound to a wooden chair and whipped with a rubber baton 80 times which made his back bleed. The applicant was released the next day after his father paid a bribe and his car was returned to him two weeks later after he paid a large fine.

10. The applicant provided a similar account of this event at his arrival interview conducted in 2012 although at that time he claimed that he was in gaol for one month (not six days as he later asserted). When this anomaly was put to the applicant at the SHEV interview he explained that his car had been detained for three weeks and confirmed that he had only been detained for five or six days. The applicant has consistently claimed that he came to the attention of the Iranian authorities for the use of alcohol in Iran and country information confirms that alcohol use is, indeed, illegal.¹ I am willing to accept that as a young man in Iran the applicant came to the attention of the authorities in 2011 for possessing alcohol. That said, I do not accept it was in the circumstances claimed. There are inconsistencies in relation to the context in which he was apprehended. The applicant claimed at the interview that he was twice picked up for having alcohol, later admitting that the second incident was untrue. He also claimed at the arrival interview that he was caught drinking outside with friends and that his friends were also arrested. It is difficult to ascertain from the description provided at the arrival interview whether this arrest related to the first incident or of the second, made-up incident. Either way, his versions of the arrest are inconsistent and I consider that if the applicant was genuine in his claim that he had been caught drinking outside with friends then he would have raised this during the SHEV application process. I accept that he was apprehended, on his own, in his car in 2011 after purchasing alcohol. I do not accept that he was apprehended for drinking alcohol in public with his friends.
11. At the SHEV interview the applicant confirmed that he was never taken before the court and was not charged with an offence. The delegate accepted the claim in its entirety – that he was arrested, detained, tortured and given 80 lashes for alcohol possession.
12. The description in the SHEV application of the applicant's treatment in detention was detailed and, on its face, plausible. DFAT's 2018 Report on Iran² states that despite legal protections,

¹ Department of Foreign Affairs and Trade (DFAT), "Country Information Report", 7 June 2018, CIS7B839411226.

² Ibid.

human rights organisations report that torture and other ill-treatment of detainees remains common in Iranian detention facilities, especially as a means to force confessions during interrogation. It further states that international sources report that commonly reported methods of torture and abuse include, among other things, threats of rape, sexual humiliation, and severe and repeated beatings. DFAT's report also indicates that alcohol use in Iran is frowned upon and severely punished. In the circumstances I am willing to accept that the applicant was mistreated in detention.

13. I do, however, have some reservations as to whether the applicant was lashed 80 times with a rubber baton prior to his release. He has not provided evidence of the lashes (e.g. photograph of scars) and stated that he had some scarring in the past but said he was not sure if it is still visible. Claiming that he was lashed 80 times is a significant aspect of the claim and I find it difficult to conceive that he would be unaware as to whether any evidence of this treatment (scarring) exists, especially given how straightforward it would be to confirm such matters.
14. The applicant provided a number of different versions of how he was released from detention. On one occasion he claimed that his father paid bribes but later said that he was released because if he had been taken to court the officers would have been taken to task for their treatment of him and they didn't want that. Although the applicant claimed in his SHEV application that the lashings were court ordered (even though he hadn't been to court), at the SHEV interview he confirmed that he wasn't taken to court or charged or convicted. I accept that the applicant was mistreated whilst in detention, but not to the extent claimed. I have had regard to the fact he was consistent in his claim that he wasn't taken to court and I accept that he was released without being charged, taken to court or paying a bribe. At the SHEV interview he indicated that after he was released he did not face any trouble with the authorities, other than being stopped at normal checkpoints where his car registration was checked. There were no apparent further repercussions from the incident. The applicant claims that he was involved in a second incident with the Basij (the second incident) about one year later. He claims that in 2012 he was at his flat which he leased in his own name and shared with a friend, R. He and R were at home one day and their girlfriends were visiting (they were hiding their relationships from their families and they had to act as if they were married in front of neighbours). The applicant heard a knock at the door and when they looked through the peephole they realised it was the authorities. The applicant said that he knew he would be tortured so he escaped over the first floor balcony. He claims that the police discovered alcohol, sex videos, a prohibited book and sacrilegious material belonging to R in the flat. The applicant's girlfriend and R's girlfriend were taken by police but later released. R was released the following day after he had told the authorities that the applicant's name was on the lease and that the prohibited items found in the apartment belonged to the applicant. The applicant found out about this from another friend and arranged via a people smuggler to leave Iran. He left three or four days later.
15. The applicant took part in an arrival interview on 6 December 2012. Although the applicant gave a somewhat consistent account of the first incident with the Basij in 2011, his version of the second incident was significantly different to his later versions - he said that he had been caught with alcohol for a second time, detained for a month, and received another 80 lashes. In his SHEV application the applicant acknowledged that he had raised an untrue claim in the arrival interview, stating that he felt confused when telling the story because, he said, "It was true events mixed with untrue events". As stated, I have not accepted that the applicant suffers from a mental illness. However, I am mindful of the nature and context of the arrival interview and I am willing to accept that he may have been stressed at the time. I have also had regard to the difficulties that asylum seekers may face and the caution needed when relying on interviews conducted soon after arrival, as discussed in *MZZJO v MIBP* [2014] FCAFC

80. I have also had regard to the fact that the arrival interview was conducted over the phone. There is no audio recording of the interview and I have not had the benefit of listening to the applicant's verbal account of events or to hear the interview in its entirety. However, even with all of this in mind, I find the applicant's failure to mention his reason for leaving Iran at this stage (which he does not dispute) is at odds with his claim that he genuinely considers that the authorities were after him when he left and I do not accept that his state of mind (stress/confusion) during the interview explains the significant inconsistencies, especially given this event occurred just prior to leaving Iran and was said to be the catalyst for his departure. By his own admission the claim that he was detained and lashed a second time for having alcohol was untrue, casting doubt over the credibility of the second incident.
16. At the arrival interview the applicant stated that after he was detained and lashed for a second time the authorities came to his apartment. He said that he saw them through the peephole and escaped. He described his escape in a similar way to the description provided later in his SHEV application and at the SHEV interview. I take it that this is what the applicant means as a 'true event' when he described how he became confused between true events mixed with untrue events. However, I have serious concerns that any of the events concerning the authorities coming to the applicant's apartment are true.
 17. In his SHEV application the applicant stated, "I rented a flat with my friend R but the lease was in my name only". At the SHEV interview he said that the prohibited items in R's room included R's computer, stating R was political and anti-regime and would do characters and cartoons on his computer. He said R had lots of things on there. He confirmed that they lived in a two bedroom flat and that R paid rent. The applicant claims that after he ran away from his apartment and had escaped "immediate danger", his friend, S, picked him up and took him to his shop and then drove him to his village, an hour and twenty minutes away. S contacted R's family (who S had met previously) who asked S why his friend (the applicant) had alcohol, sex videos, sacrilegious material and a prohibited book in his unit. Apparently R's family told the police that R did not live there and that those items belonged to the applicant. S informed the applicant, "This stuff in your house is serious, the government will not let you off". S put the applicant in touch with a people smuggler and the applicant left Iran three or four days later.
 18. When the delegate asked why the authorities wouldn't find out that the items found in R's room, including his computer, would belong to R, he said that R was not staying in the apartment permanently but would come and visit – he said that there was just a bed and a lap top in his bedroom. He said that R came over just two or three times a week when he wanted to have sex with his girlfriend. This on its face is somewhat incompatible with his claim that the authorities found many items in the apartment belonging to R, including alcohol, sex videos, sacrilegious material about Khomeini and a book against the regime. I consider it implausible that they would not be able to identify that the laptop belonged to R. I also find it surprising that R and the two girlfriends did not appear to suffer any adverse consequences despite being at home in the apartment when the authorities located the prohibited material. I also note that the applicant has not provided any evidence of the lease arrangements to support his assertion that he was the only person on the lease.
 19. The applicant has offered no reason for the visit from the authorities. He claimed that he had encountered no ongoing trouble from the police since his detention a year earlier. He did mention that he and R had to keep their girlfriends secret from the neighbours but did not assert that this was the reason for the alleged visit from the authorities.
 20. I have had regard to the fact that, by his own admission, the applicant gave an untrue account of these events at the arrival interview and failed to mention this was the reason he left Iran,

even though it occurred just three or four days prior to his departure. I have also had regard to the fact that there is no evidence to support the fact that the lease was in the applicant's name only, the improbability of the authorities assuming the confiscated items such as R's computer belonged to the applicant and not his flat-mate, and the apparent absence of any adverse consequences for R and the girlfriends despite being in the apartment when the authorities found the prohibited material. In all of the circumstances I am not satisfied that this second incident occurred.

21. During the SHEV interview the delegate asked the applicant if his family had faced any trouble with the authorities. The applicant said that the authorities asked his family about him a few times but indicated that it had been a while since they had done this. He was vague about when this occurred, stating that the first time was "a while" after he left and that the authorities continued to come two or three more times to investigate. He did not specify when this was except that it has been "a while" since they came. When the delegate asked what it was that they wanted to know, he said they would ask his family to turn him in. It is true that if these events occurred the applicant would not have first knowledge of them or what precisely took place. However, they are not insignificant matters, and if true have serious consequences for the applicant. As such, the applicant's inability to provide anything other than the vaguest of accounts is I consider telling. Further, I consider that if the applicant's family had been repeatedly contacted by the authorities, the applicant would have referred to this in his SHEV application. Having found that the applicant was not of any ongoing interest to the authorities following his detention 2011, and rejected that the second incident occurred, and I am not satisfied that the applicant was of any interest to the authorities when he left Iran. I do not accept that the authorities questioned the applicant's family about his whereabouts.
22. At the SHEV interview the delegate asked about the applicant's passport and he claimed, for the first time, that his passport had been tampered with, stating his date of birth and his father's name were changed. He said he paid his people smuggler to tamper with it as he had problems and he wanted to "get out" without any stress or problems. He said he paid "a few times as much" as what other people paid the people smuggler because the smuggler knew he would have problems leaving. He explained to the delegate that he didn't want to get into the details of how it was done, stating it was something he paid someone else to do. The delegate said she found it difficult to believe he could leave on a tampered passport given the technology used in Iran and the applicant stated that the technology has gone 'so high' that it could be done. He said he had no trouble leaving the airport in Iran on this passport.
23. I do not accept that the applicant left Iran on a tampered or fraudulent passport. Firstly, I do not accept that he believed he was on any kind of black list given he was not of interest to the Iranian authorities. Secondly, the applicant provided quite a lot of detail about his passport in his SHEV application (e.g. he referred to the blacklist, how he'd previously managed to get a passport because he had done his military service, how he had left Iran via the airport and had travelled to Iran via [another country]) but at no point did he claim that he had left on a tampered/fraudulent passport and had departed Iran illegally. I also consider that the fact that the applicant was elusive about the details of the tampering was not because he had left those details up to the people smuggler but because the claim had no basis in fact. Country information also indicates that although not impossible, it is extremely difficult to leave Iran via the airport in Tehran in such a manner. DFAT's 2013 report on Iran³ states that, at that time, passport control checks were sophisticated in Iran. DFAT's more recent 2018 report⁴ also states that all Iranian passports have been biometric since February 2011 and that "Iranian

³ DFAT, "Country Information Report Iran", 23 November 2013, CIS26780.

⁴ DFAT, "Country Information Report", 7 June 2018, CIS7B839411226.

identity documents include sophisticated security features and would be difficult to manufacture for fraudulent use". This information indicates that it is most unlikely that a tampered passport would not have been detected at an airport in Iran.

24. Given my findings above regarding the claimed second incident, I find it difficult to believe that the applicant would pay "a few times as much" for a people smuggler to tamper with his passport or that he would take the risk of leaving Iran illegally. Considering this in combination with the late stage that the applicant raised this claim and the country information before me, I do not accept that the applicant left Iran illegally on a tampered passport.

Religion / [Social media] posts

25. In his SHEV application the applicant claimed that he has never been a 'believer'. He claimed that he was an atheist and did not believe in anything. He said that the reason he had to flee Iran was because of 'the religion'. He said he doesn't believe in God, Mohammad, or Jesus but he doesn't hate anyone and he respects everyone. He said he had explored Christianity and had attended church in Australia but had not converted to Christianity.
26. At the SHEV interview the delegate asked if he practised any religion in Iran and he said "no", and that he only had faith in God, which is at odds with his earlier claim that he did not believe in anything and that he was an atheist. The delegate also asked if he faced any trouble in Iran for not practising or following any religion and he said he wouldn't tell anyone because he didn't want to cause problems for himself.
27. The applicant claims that in 2013 his Muslim friends were encouraging him to return to the mosque and he posted a photo of a [Christian image] in his [social media] account under the name '[name deleted]' to 'show them' he was not going to go back to the mosque. The applicant claimed that he is frightened because of this (and his attendance at church) and stated that if he is returned to Iran he will be accused of apostasy and conversion to Christianity.
28. The applicant provided screenshots of the [social media] posts he had "shared" between April and June in 2013. The shared posts relate to [details deleted]. Of the [shared] posts, only six of them indicate how [much attention] they received. [Details deleted], indicating that the posts were not widely viewed. In his SHEV application the applicant stated that in August 2013 (just after these posts were shared) he had made an earlier application for a protection visa which, he claimed, was found to be invalid.
29. The delegate asked the applicant why he had only shared these posts for a short period of time in 2013 and not before or since, even though he has been active on [social media] since that time, posting information about his social life. The applicant indicated that when he came to Australia he wanted to get everything off his chest – to say how much he hated Islam and the leader and the government. He said he wanted his relatives in Iran to see this. He said the reason he stopped posting such material was because he had a job and had to go to work and he was busy. He said he didn't have time for [social media] and preferred to go out with his friends and his girlfriend. Whilst I accept that the applicant did share the said posts on [social media] in 2013, I do not accept that he stopped posting such material because he was "too busy", noting that he still had time to post other material on [social media] I also do not accept that he wanted people to know that he hated Islam; especially given he has consistently claimed that he respects all religions and beliefs.

30. Although the information in the shared posts is in the Farsi language some translation was provided at the interview and in the SHEV application. I note that the posts were only “shared” and there is no evidence that the applicant provided any personal comments or proffered any personal view in relation to the material he “shared”. I am unwilling to accept his assertion that his posts send a message that he hates Islam.
31. I do not accept that the applicant attended a Christian church in Australia or that he is exploring Christianity. This claim is completely at odds with his claim to be an atheist and his claim that he believes in no God, no Mohammad and no Jesus. Moreover, the applicant has provided no details of where or when or how often he attended a Christian church and has provided no insight into what he knows about Christianity and what has drawn him to explore the faith. His evidence with respect to this claim was extremely vague and unconvincing. I am not satisfied he has any interest in the Christian faith.
32. Although he was born into a Shia Muslim family, I accept the applicant’s claim that he doesn’t practise Islam. He has been consistent in this claim and had provided plausible and detailed accounts of conversations he has had with his family about this issue. I accept that he was a non-practising Muslim in Iran and continues to be a non-practising Muslim. The applicant also claims to be an atheist, despite also claiming that he ‘only has faith in God’ and that he is exploring Christianity (which I have not accepted). In light of the applicant’s other claims I do not accept that he is an atheist.
33. I have also come to the conclusion that the applicant’s [social media] posts, which he described as Christian and anti-regime, were only shared for the sole purpose of enhancing his claim for protection. I note the applicant’s comment that he took part in this activity in Australia because he had the ‘freedom’ to do so. I also note his comment that he didn’t put the posts on [social media] to help his application, but shared them because he loves “those things” and wanted to tell people what he liked. I do not accept he was exploring the Christian faith, and I do not accept that was motivated to share the post regarding the Christian symbol for this reason. In fact, the applicant has not provided any evidence to support his assertion that he “loves” any of the posts he shares. The applicant only shared these posts between April and June in 2013, just prior to lodging his 2013 protection visa application. I have not accepted that the reason he stopped sharing these sorts of posts was because he was too busy and in all of the circumstances I am not satisfied that the applicant engaged in this conduct other than for the purpose of strengthening his claim to be a refugee. I have consequently disregarded this conduct pursuant to s.5J(6) of the Act in determining whether he has a well-founded fear of persecution.

Alcohol

34. As stated above, I accept that the applicant was apprehended in 2011 for possessing alcohol. I accept the applicant’s claim made at his arrival interview - that he is not an alcoholic but he would drink alcohol once a week. I accept that the applicant may continue to drink alcohol on this basis upon return to Iran.

Westernized behaviour

35. The delegate noted that the applicant has been in Australia for over six years and indicated that the applicant claimed in his SHEV interview that during this period of residence in Australia he could have adopted westernised values. I have listened to the SHEV interview and

it is not clear that he was actually making this claim. Even so, the delegate considered this issue and so have I.

Returning asylum seeker

36. The applicant claims that he will be detained at the airport upon return to Iran for a number of reasons, including because he left Iran and sought asylum in a Western country. I accept that the applicant will be returning to Iran having sought asylum in a Western country (Australia). I also accept his assertion that his passport was taken by a people smuggler in Indonesia and, as such, he will be returning without an Iranian passport.

Refugee assessment

37. 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

38. 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.

39. I accept that the applicant was apprehended by the Iranian authorities in 2011 for possessing alcohol and was detained and mistreated but I am not satisfied he was of any continuing interest to the authorities for this offence and I am not satisfied that he faces a real chance of harm on this basis. I accept that the applicant drank alcohol on a weekly basis in Iran and may continue to do so upon return. As discussed, the penalty for using alcohol in Iran is severe, regardless of whether the consumption caused drunkenness or not. That said, DFAT’s most recent report⁵ states that local and international observers report widespread use of alcohol across Iranian society and that Iranians wishing to obtain and consume alcohol can do so relatively easily. DFAT indicated that the rate of alcohol consumption is high in Iran. Media reports of prosecutions for alcohol consumption exist, but these are not common and DFAT

⁵ Ibid.

understands that police do not usually seek to investigate actively or entrap individuals consuming alcohol in their own homes, but will act if the activity comes to public attention or if instructed to crack down on it. I have not accepted that the applicant drank alcohol in public, or was apprehended for drinking in public, in Iran and I note that he has provided no indication of an interest in, or an intention to drink publically in the future. Whilst I accept that the applicant was apprehended in Iran in 2011 after police found alcohol in his car, I note that he continued to live in Iran for another 12 months without experiencing any adverse attention (that I have accepted) from the authorities for this reason. Country information strongly suggests that unless the applicant drinks alcohol in public upon return to Iran, the chances of being apprehended by the authorities is remote. In the circumstances I am not satisfied that the applicant faces a real chance of harm, now or in the foreseeable future, should he continue to drink alcohol in private on a weekly basis in Iran.

40. I do not accept that the authorities came to the applicant's apartment in Iran, just prior to his departure, and found alcohol, sex videos or anti-regime and anti-government material. Nor do I accept that the applicant escaped the authorities and is wanted by the authorities on these grounds. As such, I am not satisfied that that the applicant faces a real chance of harm in this basis.
41. I do not accept that the applicant attended a Christian church in Australia or that he is exploring Christianity and, as such, I do not accept that he will be returning to Iran as a Christian, or will explore Christianity in the reasonably foreseeable future. I am not satisfied that he faces any harm, now or in the foreseeable future, on this basis.
42. I accept that the applicant will be returning to Iran as a non-practising Muslim. Country information indicates that this is not uncommon in Iran and people are "leaving mosques in droves"⁶. DFAT previously reported⁷ that it was highly unlikely that the government would monitor religious observance by Iranians – for example whether or not a person regularly attends mosque or participates in religious occasions –thus it would be generally unlikely that it would become known that a person was no longer faithful to Shia Islam. DFAT's 2018 Report⁸ does not suggest that the situation has changed in Iran. The 2018 Report states that under Iranian law, a Muslim who leaves his or her faith or converts to another religion can be charged with apostasy. Although the Iranian Penal Code does not have specific provisions penalising apostasy, it is a crime punishable under sharia law, which judges may also apply. Whether or not the applicant's religious views and conduct bring him within the concept of apostasy as understood in Iran, country information in the referred material indicates that it is highly unlikely that the government would monitor his religious observance in any event. DFAT further reports that it is unlikely that individuals will be prosecuted on charges of apostasy and that perceived apostates are only likely to come to the attention of the Iranian authorities through public manifestation of their new faith, attempts at proselytization, attendance at a house church or via informants⁹. I am not satisfied the applicant would be regarded as an apostate. There is no evidence that the applicant has ever spoken publically about his views on religion and I am not satisfied that he has an interest or intention to do so in the future. I note that the applicant has not claimed to have experienced harm in the past for being a non-practising Muslim. Overall, having regard to the applicant's past experience, his behaviour and the country information, I am not satisfied that he faces a real chance of any harm for being a non-practising Muslim.

⁶ Qantara, "A Tsunami of Atheism", 7 February 2013, CX304005.

⁷ DFAT, "Country Information Report Iran", 21 April 2016, CIS38A8012677.

⁸ DFAT, "Country Information Report", 7 June 2018, CIS7B839411226.

⁹ DFAT, "Country Information Report Iran", 21 April 2016, CIS38A8012677.

43. I accept that during his residence in Australia the applicant could have adopted westernised values, including dress and hair-style. DFAT¹⁰ reports that there is a dress code for men and women in Iran and it is aware that some men have claimed to have been discriminated against on the basis of their dress – for example, for having ‘Western-style’ hairstyles or clothing styles, visible tattoos, or visible hair removal (such as plucked or waxed eyebrows). Notwithstanding such reports, DFAT states it is common to see young men fitting all of the above descriptions on Iranian streets, particularly in larger cities such as Tehran. DFAT assesses that where there have been incidents of harassment of men for violating the dress code, it is likely to have been the result of either over-zealous enforcement by individual security authorities in particular locations (particularly outside of major cities), or because the individual has come to the attention of authorities for separate activities, particularly political activism. The applicant has never suggested he has taken part in political activities and I have found that he has no political profile in Iran. He has also made no suggestion that he intends to live outside of a major city. Even if the applicant returns to Iran with western style hair and clothing, based on country information and the applicant’s behaviour, I am satisfied that the chances he will come to the attention of the authorities for this behaviour is remote. I am not satisfied the applicant faces a real chance of harm, now or in the foreseeable future, on these grounds.
44. I have accepted that the applicant will be returning to Iran as an asylum seeker who is no longer in possession of his passport. As such, his return would require temporary travel documents issued by Iranian diplomatic representatives and I accept that if he returns to Iran he may be identified as having sought asylum in Australia.
45. DFAT’s 2018 Country Information Report¹¹ in relation to the treatment of returnees in Iran states that Iran has historically refused to issue travel documents to allow the involuntary return of its citizens from abroad. The exception to this is involuntary returnees who arrived in Australia after 19 March 2018 and have no legal right to stay. The applicant entered Australia well before this date. As such, if the applicant were to return to Iran, I am satisfied it would only be voluntarily. Whilst the applicant may be identified as having sought asylum in Australia, DFAT states that according to international observers, Iranian authorities pay little attention to failed asylum seekers on their return to Iran. International observers report that Iranian authorities have little interest in prosecuting failed asylum seekers for activities conducted outside Iran, including in relation to protection claims.
46. DFAT states that authorities will usually question a voluntary returnee on return only if they have already come to official attention, such as by committing a crime in Iran before departing. Although I accept that the applicant was detained and mistreated for having alcohol in 2011, he was never charged, convicted or taken before a court and there is no evidence that an official record of this incident exists. I also note that he was of no continuing interest to the authorities after he was released from detention. DFAT is not aware of any legislative or social barriers to voluntary returnees finding work or shelter in Iran, or any specific barriers to prevent voluntary returnees from returning to their home region.
47. With respect to the applicant’s particular circumstances, I am not satisfied that he was a person of adverse interest to the authorities at the time of his departure and I have not accepted that his family was questioned about his whereabouts after he left Iran. I have not accepted that he left Iran illegally or that any of the activity he has engaged in since he has been in Australia would attract the attention of the authorities upon return. As such, I consider

¹⁰ DFAT, “Country Information Report”, 7 June 2018, CIS7B839411226.

¹¹ DFAT, “Country Information Report Iran”, 21 April 2016, CIS38A8012677.

the chance of the applicant being questioned upon return, or suffering harm as a result of being a returning asylum seeker is remote, and I am not satisfied that he faces a real chance of any harm on this basis.

48. As such, I am not satisfied that the applicant will face a real chance of any harm now or in the foreseeable future should he return to Iran. The applicant does not have a well-founded fear of persecution within the meaning of s.5J.

Refugee: conclusion

49. 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

50. 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

51. 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.

52. I accept that during a short period in 2013 the applicant shared a number of posts on [social media] relating to [details deleted]. The posts were shared over six years ago and, based on the evidence, were not widely viewed. I consider the chance of the posts coming to the attention of the Iranian authorities to be remote. In any event, the posts were only "shared" messages nearly six years ago and the applicant did not provide any personal comments or proffer any personal view in relation to the material. I do not accept that this activity sends a message that he hates Islam, or prefers Islam over Christianity, or holds any other political view. Even if such views could be inferred by the posts, DFAT reports¹² that Iranians are able to criticise the government of the day robustly, both in public conversation and online in social media. It also states that international observers report that Iranian authorities have little interest in prosecuting failed asylum seekers for activities conducted outside Iran, including posting social media comments critical of the government. DFAT states that heavy internet filtering means most Iranians will never see them and that those with an existing high profile may face a higher risk of coming to official attention on return to Iran, particularly political activists. I do not accept that the applicant had any profile, political or otherwise, in Iran. Overall I do not accept

¹² DFAT, "Country Information Report", 7 June 2018, CIS7B839411226.

that the applicant will come to the attention of the authorities in Iran for his [social media] activity and, even if he does, I am not satisfied that it will give rise to a real risk of any harm, including significant harm, as defined. The applicant has not shared similar posts since 2013 and has given no indication of an intention to do so in the future. I am not satisfied that the applicant faces a real risk of any harm, including significant harm, as defined, for his [social media] activity.

I have not accepted that the applicant faces a real chance of any harm for any of his other claims. As 'real chance' equals 'real risk', I am also not satisfied that there is a real risk that the applicant would face any harm, including significant harm, as defined, on any of these grounds.

Complementary protection: conclusion

53. 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

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

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.