



Australian Government

Immigration Assessment Authority

Decision and Reasons

Referred application

IRAN

IAA reference: IAA19/06453

Date and time of decision: 16 April 2019 10:21:00

R Mikhail, 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. On 14 March 2017 he lodged an application for a Temporary Protection Visa (application for protection). On 5 March 2019 a delegate for the Minister for Immigration and Border Protection (the delegate) refused the grant of the visa.

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)(review material).
3. The IAA has received a submission (though referred to as a “statement”) on behalf of the applicant. In part, the submission includes claims and evidence already before the delegate and legal argument and elaboration on claims that the applicant raised before the delegate which I do not consider to be new information.
4. The submission also includes further detail about the applicant’s original claims in relation to his military service and the incident in 2009. Given this information is merely minor elaboration I do not consider it to be new information.
5. The submission also claims that the applicant’s atheist beliefs are well known to many people including Iranians living in Australia. I consider this to be new information as it was not raised before the delegate. I am not satisfied this information could not have been provided to the delegate as the applicant referred to his atheist beliefs in his application for protection and during the protection visa interview. Further, beyond this mere assertion, no further detail has been provided as to who the “many people” are that came to know of his atheist beliefs in Iran and Australia and how they came to know of this. Further, this claim appears at odds with the applicant’s claim during the protection visa interview that this is something that is very difficult to talk about in Iran and no further explanation has been provided to reconcile this with his new claims. I am not satisfied there are exceptional circumstances to justify considering this information.
6. Also provided to the IAA were copies of the applicant’s telephone bills in Australia allegedly indicating calls to his family in Iran on a number that allegedly used to belong to him in Iran and is still under his name but is used by his father in Iran. Also provided was a copy of an invoice from Iran allegedly for that mobile account holder. These documents have been provided in support of the submission that the lawyer, of the woman who was attacked in 2009, was able to contact the applicant’s family through the applicant’s former Iranian mobile number. I find these documents to be new information. The Iranian phone account invoice has not been translated. Given this I cannot identify who is the account holder and the relevant phone number from this document in order to match it with the applicant’s Australian phone records. The Australian phone records are in respect of periods in 2017 and 2018 and no reasons have been given for why this information could not have been provided to the delegate, particularly given the delegate raised concerns about this aspect of the applicant’s claims during the protection visa interview and questioned how this women’s lawyer was able to get the applicant’s contact details and a decision was not made on this matter until approximately five months after the protection visa interview. Further, this evidence is of little probative value in relation to the applicant’s claim that the girl’s lawyer contacted his family

but rather is just evidence of his family's alleged contact details in Iran. In the circumstances, I am not satisfied there are exceptional circumstances to justify considering these documents.

7. Also included in the submission were links to media reports about the detention of a female human rights lawyer in Iran by Amnesty International published on 11 March 2019 and the Guardian published on 16 August 2018. Also cited was a Wikipedia page about "Sattar Beheshti" who is an Iranian blogger who died in custody after complaining of torture whilst in custody. This information has been provided in response to the delegate's concern that the woman who the applicant assisted would be able to take legal action in relation to her treatment by the Basij. Although the article by Amnesty International post-dates the delegate's decision, I note the Guardian article about the same lawyer did not. I further note that the delegate raised concerns during the protection visa interview about the whether it was possible to lodge complaints against a commander of the Basij and the applicant noted that there were lawyers in prisons for taking on certain cases and referred to the lawyer in the above two articles. Although the delegate advised him that he could provide information about such lawyers later, the applicant did not provide this information. This is despite the delegate stating at the end of the protection visa interview that she will consider any further information he provides prior to a decision being made and that it was approximately five months between the protection visa interview and the delegate's decision and the applicant was represented by the same migration agent who prepared this submission to the IAA. I am not satisfied information about the arrest of this lawyer could not have been provided earlier to the delegate. Although it is arguable that the information is credible personal information about these individuals in Iran which was not previously known to the delegate, but I find the above reports of little relevance in addressing the delegate's concern about the possibility of being able to complain against treatment by the Basij in the domestic courts in Iran. The articles about the lawyer noted that she had been arrested in relation to her defence work of women arrested for protesting against Iran's forced hijab (veiling) laws and in the blogger's case, it merely mentions that he wrote a letter to the head of the prison where he was being detained noting that he had been arrested by "FATA" and beaten and tortured and if anything happens the police are responsible. In the circumstances, I am not satisfied there are exceptional circumstances to justify considering these reports.
8. The submission also refers to "One more link about targeting lawyers" and then merely refers to "Narges Mohammadi Iran Human Right Activist" and "Iran human rights website" without providing an actual link to that information or full source for that information or extract. I am satisfied this is new information but I am not satisfied this accords with the requirements of the IAA Practice Direction published on 1 December 2018 in that a copy or an extract of that information or a clearly identifiable source has not been provided. Pursuant to ss.473DC(2) and 473FB(5) of the Act I have decided not to accept this information.
9. The submission also refers to an extract in a report published by the Austrian Centre for Country of Origin and Asylum Research and Documentation on the treatment of atheists in Iran dated 12 June 2017. It refers to a paragraph quoting an article in the British press which stated that being an atheist in Iran is punishable by death. I am satisfied this is new information. The submission states that the delegate accepted that the applicant was atheist but then states that this claim in his statement was ignored by the delegate despite being "a very strong point to seek protection". However, in her decision, the delegate assessed whether the applicant would be harmed in Iran for his religious opinion. Further, this report pre-dates the delegate's decision and, given the applicant continues to be represented by the same migration at both the primary and review stage, I am not satisfied this report could not have been provided to the delegate. Further, other sources that were before the delegate also provides such information on atheism in Iran and the above report also quotes a number of sources of

information on this topic that were before the delegate. I find the above report adds very little to the information that was before the delegate on the treatment of atheists in Iran. In the circumstances, I am not satisfied there are exceptional circumstances to justify considering this report.

10. The submission also notes the applicant is currently obtaining a psychologist report that would be sent to the IAA but I note that no such report has been received by the IAA to date.

Applicant's claims for protection

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

- He is an Iranian citizen born in Tehran.
- He does not believe in any religion and has views against the Iranian regime.
- His father was studying in [Country 1] when the revolution in Iran occurred so he had to return to Iran to protect his family. All of their relatives were working with the old regime so they were targeted and some prosecuted. His father obtained a job in the government but was targeted and his loyalty questioned as he had links to the old regime and lost his job and works [in Occupation 1].
- He was accepted into a course [at] university as he was keen to have his own [business] as he knew he could not get a job in government due to his family connections.
- He was admitted to military service after graduating from university and served in the [police].
- In 2009, during his military service, he witnessed a woman being dragged away by the Basij during one of the presidential election protests. He went to help her but was in uniform so was attacked and detained for one week. After his release he was investigated for two months and his military service was suspended. He was eventually encouraged to seek a medical exemption from military service on the basis of his [medical condition] which was granted to him.
- After this he wanted to pursue a PHD but his application to do the PHD was rejected and he was denied employment and he found out he had been blacklisted by the government. He became depressed and could not study or get any government work or a government loan. His brother was also prevented from gaining government employment.
- He also felt like an infidel and the situation in Iran was getting out of control and no one could speak up and try to resist the regime.
- He decided to leave Iran and left legally in June 2013 using his own passport which was subsequently taken by the people smuggler.
- The applicant had anxiety and depression in Iran and sought psychological treatment in Australia.
- In 2017 his family was contacted by the lawyer on behalf of the woman he assisted in 2009 in order for the applicant to be a witness in respect of a complaint she lodged about that incident.

Refugee assessment

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

Well-founded fear of persecution

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

2009 incident and blacklist

15. Having considered the evidence before me I am not satisfied the applicant is a credible witness.
16. The applicant has claimed that he completed an associate degree in [year] and then a bachelor degree in [year]. He claims he enrolled in compulsory military service [and] in his application for protection he indicated that his military service started in February 2009 and ended in December 2009. During his protection visa interview he claimed that he served in the police as part of his military service.
17. The applicant has provided copies of [Course 1] with a translation which indicates he completed it in [year] and which I accept. Of note, he has not provided a translation of his bachelor degree but I am willing to accept that he completed it in [year].
18. I have given weight to the fact that the applicant has not provided any documents to substantiate the alleged dates of his military service. Although he has provided a photo of himself in uniform and although it is plausible that it is evidence that he worked as a police officer in Iran, it is not directly supportive of his claim that he did so as part of his military service.

19. The applicant claims that, as a result of the incident in 2009, he was detained for a week and claims he was released because the prison was full and he was in a different situation to the other prisoners. He claims his military service was suspended whilst he remained under investigation for two months. He then claims he did not know what to do and was in an unknown state and after eight months he applied to do a PhD.
20. I found the applicant's oral evidence about the investigation into his conduct and the subsequent events to be overly vague. During the protection visa interview, when asked by the delegate about the outcome of the investigation the applicant gave a vague response and referred to the questions the authorities asked him about the incident. When asked by the delegate if there were any ongoing charges against him, the applicant claimed they did not tell him anything officially. I find it difficult to believe that he would not have been advised of anything official by the military after allegedly being detained and under investigation for two months.
21. I have also given weight to the fact that the applicant has not provided any supporting evidence in relation to the investigation and his alleged military service suspension. In an email to the delegate on 7 June 2018, the applicant's representative stated that, as the applicant was exempted from military service on medical grounds he is not in a position to get documents to prove his service was suspended or cancelled. I find it difficult to believe that, had the applicant been subject to an investigation during his military service and his military service had consequently been suspended, that there would be no official documents issued to the applicant in this regard. It is also submitted that the applicant is unable to get any evidence as it is impossible to approach government authorities in Iran and get an extract of the "actual incident" and, because the Basij was involved, such reports would be classified. I do not find this convincing and note that no country information has been provided in support of the assertion that such documents would be classified because the incident involved the Basij.
22. The applicant claimed that, during his military service suspension, he was coming and going and did not know what to do for [a number of] months and eventually one of the military commanders told him that he could go and get an exemption on medical grounds. He noted that, because of [medical condition], he [has issues]. The commander told him that he could "come out" of the suspension on medical grounds and the applicant claimed they wanted him out of the military so he applied for the medical exemption and was granted it on these grounds.
23. The applicant provided his military exemption card and accredited translation. It appears that the card was issued [in] January 2013 and that the grounds for exemption were noted as "Medical – Article 42 Section 20". Country information indicates that the Iranian authorities can grant an individual exemption from military service for medical reasons.¹
24. Nonetheless, I find it very difficult to believe that there was no clear outcome of the investigation into the applicant's conduct. I also find it very difficult to believe that the applicant would be encouraged to apply for a medical exemption from the military after being subject to an investigation for misconduct, particularly as country information before me indicates that the Iranian military imposes a number of penalties and for other offences in relation to military service, such as in respect of draft evaders, which include prosecution, extended service and the loss of social benefits and legal rights.² Although the military exemption card is evidence that he was granted an exemption from military service on medical

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

² Ibid.

grounds it is not credible evidence of his claimed narrative of how and why he was granted this exemption in relation to the incident in 2009.

25. During the protection visa interview the applicant indicated that he was denied government employment after this incident but the fact that he claims to have applied for government employment does not correspond with this claim in his statement that he knew from the outset he could not get a government job due to his family connections to the former regime.
26. The applicant has claimed that he left Iran as he feared he would be arrested at any time as a result of this incident but I note that he remained in Iran for another four years without being subject to any further investigation or arrest.
27. I also find the applicant's oral evidence about how he got his passport problematic. During the protection visa interview the applicant claimed that he applied for his passport himself approximately three months before he received it and he received it two weeks before he departed Iran in June 2013. He initially claimed that, when he departed through the Tehran airport, he told the Iranian authorities that he was going to visit [two countries] as a tourist. He then later claimed that he had a big problem getting a passport and had to lie and said that he wanted to go to Mecca and Haj to get a passport but did not explain why he had a problem getting the passport and why he had to lie, particularly given he had been exempted from military service.³
28. Given my concerns with the applicant's evidence and taking into account his military service card which indicates that he was exempted from military service on medical grounds, I do not accept the applicant ever conducted military service and I am satisfied that he was exempt from the outset on medical grounds.
29. The photo the applicant provided of him in uniform further indicates that he has not been truthful about his employment history in Iran as it strongly suggests that he was employed with the Iranian government as a police officer at some point.
30. I do not accept the applicant's claim that he conducted his military service as a police officer nor that, during the 2009 presidential election demonstrations, he went to the aid of a woman who was being dragged away by the Basij. I do not accept that he was subsequently detained and investigated and suspended from military service and encouraged to leave his military service. I do not accept that he was subsequently placed on a blacklist and prevented from enrolling in a PhD or that he, or his brother, were prevented from obtaining government/employment for these reasons.
31. I am not satisfied the applicant has a well-founded fear of persecution in respect of these claims.

Family links to former regime

32. As I am not satisfied the applicant is a credible witness, I also have concerns about his claim that his relatives were connected with the former regime of Iran and were targeted and prosecuted and that his father was subsequently targeted and questioned for these reasons whilst working for the Iranian government and eventually lost his job. Even if these things occurred, the applicant has stated that he knew he could not get a government job and lived in fear that they would be targeted due to his family connections but has not claimed that he was subsequently targeted or harassed by the Iranian authorities for these reasons and, when

³ Ibid.

asked why he feared return to Iran during the protection visa interview, he did not refer to this issue. I also note his alleged claim that he could not get a government job appears at odds with evidence that he provided that he worked as a police officer in Iran. I am not satisfied he faces a real chance of harm in Iran from the Iranian authorities or any other group or person in relation any alleged family links to the former regime in Iran.

Religious and Political Opinion

33. The applicant has consistently claimed that he does not believe in a religion but believes in the presence of God. In his application for protection he indicated that he was Shia Muslim but then in his statement he claimed that he felt like an infidel in Iran and during the protection visa interview said he did not want to live a big lie when asked what his religion was. He claimed that people cannot talk freely about these things in Iran and that you are considered Muslim if your father is a Muslim. He also noted that his parents also did not believe in religion.
34. I accept that the applicant was born into a Shia Muslim family but that he and his parents no longer believe in any religion. In doing so, I have considered country information before me which indicates that many Iranians also have a secular attitude, rejecting all religions, Islam included.⁴
35. Amnesty International mentions in its February 2015 Report 2014/15 that atheists “remained at risk of persecution, including arrest, imprisonment and possible execution”.⁵ In its 2018 report, the Australian Department of Foreign Affairs and Trade (DFAT) notes that in practice, government policy and legislation heavily favours the majority Shia population, leading to pervasive structural discrimination against non-Shia Muslims and religious minorities and under Iranian law, a Muslim who leaves his or her faith or converts to another religion can be charged with apostasy but this is not an everyday occurrence in Iran and death sentences for apostasy and blasphemy are rare.⁶ In its 2016 report DFAT assessed that it is 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 such as Ashura or Muharram– and thus it would generally be unlikely that it would become known that a person was no longer faithful to Shia Islam. Perceived apostates are only likely to come to the attention of Iranian authorities through public manifestations of their new faith, attempts at proselytization, attendance at a house church or via informants. Atheists are also unlikely to come to the attention of security authorities unless they seek to publicise their views and its more recent 2018 report has not indicated a change in this assessment.⁷ Other country information sources before me indicate that many Iranians do not attend mosque regularly and do not perform their daily prayers and, for this reason, not attending mosque would not necessarily arouse any suspicion.⁸ I am not satisfied on the evidence that the applicant will promote his religious views in public in Iran and I am satisfied he will not do so due to a lack of interest rather than a fear of persecution. He has claimed that he and his family no longer believe in religion but has not claimed they have come to any harm because they have not engaged in public manifestations of Shia Islam. I am not satisfied there is a real chance the

⁴ Austrian Centre for Country of Origin and Asylum Research and Documentation (ACCORD, “Iran: Freedom of Religion; Treatment of Religious and Ethnic Minorities COI Compilation September 2015”, 1 September 2015, CISEC96CF13622 (the ACCORD report in the delegate’s decision was incorrectly referenced to the DFAT 2016 report)

⁵ ACCORD, “Iran: Freedom of Religion; Treatment of Religious and Ethnic Minorities COI Compilation September 2015”, 1 September 2015, CISEC96CF13622

⁶ DFAT, “DFAT Country Information Report – Iran”, 7 June 2018, CIS7B839411226

⁷ DFAT, “DFAT Country Information Report Iran April 2016”, 21 April 2016, CIS38A8012677

⁸ Danish Immigration Service, “Update on the Situation for Christian Converts in Iran”, June 2014, CIS28931; ACCORD, “Iran: Freedom of Religion; Treatment of Religious and Ethnic Minorities COI Compilation September 2015”, 1 September 2015, CISEC96CF13622

applicant's lack of belief in Islam will come to the adverse attention of the community or Iranian authorities in Iran because he will not engage in public manifestations of the Shia faith.

36. One report before me indicates that Christian converts can lose their Iranian government employment if found out.⁹ A senior research fellow in Iranian studies at a university in Germany stated that applicants for certain jobs (including in the public media or the military) are asked about their religious affiliation and way of practicing Islam during their job interviews. If, however, such a person insists on saying that they do not practice the Islamic precepts, they may reduce their chances of being accepted for the job but they would not face any further harm.¹⁰ Although there is some evidence before me that the applicant worked as a police officer in Iran, he has not claimed that he will seek work with the Iranian government again if he were to return to Iran. Even if he were unable to apply for government jobs for this reason, I do not consider this to amount to serious harm.
37. The applicant has stated that Islam became a ruling tool for the new Iranian regime and people are forced to follow the rules and the law that they did not even approve of. He claims no one is able to speak up or try to resist the regime. I accept that the applicant has a political opinion against the Iranian regime and I note country information before me which indicates that the Iranian authorities continue to routinely suppress free speech and punish public criticism of the regime. I am not satisfied on the evidence that he has promoted his political opinion in Iran or in Australia, despite having the opportunity to do so here. I am not satisfied he will publicly promote his political opinion if he were to return to Iran and I am not satisfied this is due to a fear of persecution.
38. I am not satisfied the applicant has a well-founded fear of persecution in Iran because of his political and/or religious views.

Mental Health

39. During the applicant's arrival interview he claimed that he had depression and anxiety in Iran due to the incident in 2009. During the end of the protection visa interview the applicant's representative also claimed that the applicant had attended two sessions of psychological treatment in Australia and he has been suffering from depression and anxiety due to what he has been through.
40. The applicant provided a letter from a clinical psychologist dated [June] 2018. It indicates the applicant was referred to her [November] 2015 for psychological treatment by his General Practitioner. It states he met the criteria for post-traumatic stress disorder (PTSD) and adjustment disorder with depression and anxiety. It notes that he was able to develop skills for better management of his anxiety and depressive symptoms. The letter appears to be written in the past tense in that the applicant was treated after his referral in 2015 and it is not evident from the letter that he still meets the criteria for the above diagnosis or is still receiving psychological treatment. This is further supported by his representative's claim that he only attended two "psychological treatments". This brief letter also does not corroborate the applicant's claim that he was suffering from these conditions a result of his experiences in Iran.
41. I have not accepted that 2009 incident took place and, on the evidence before me, I do not accept that the applicant suffered from anxiety and depression in Iran.

⁹ Danish Immigration Service, "Update on the Situation for Christian Converts in Iran", June 2014, CIS28931

¹⁰ ACCORD, "Iran: Freedom of Religion; Treatment of Religious and Ethnic Minorities COI Compilation September 2015", 1 September 2015, CISEC96CF13622

42. Although I accept the applicant was treated for PTSD and adjustment disorder with depression and anxiety in 2015, I am not satisfied on the evidence that he is still undergoing treatment for these conditions or that there is a real chance he will require further psychological treatment for these issues in the reasonable foreseeable future if he were to return to Iran.

Failed asylum seeker

43. The delegate also considered whether the applicant would face harm on return to Iran as a failed asylum seeker.

44. I accept that the applicant departed Iran legally on his own passport which was then taken by the people smuggler on his way to Australia.

45. Country information indicates that Iran has historically refused to issue travel documents (*laissez passers*) to allow the involuntary return of its citizens from abroad. In its 2018 report, DFAT indicated that it reached an agreement with the Iranian government to facilitate the return of Iranians who arrived after 19 March 2018,¹¹ however the applicant does not fall within this category. If the applicant were to return to Iran, I am satisfied it would only be on a voluntary basis.

46. 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.¹² I am also not satisfied on the information before me that the Iranian authorities impute failed asylum seekers from western countries with a political opinion against the Iranian government or Islam.

47. In its 2018 report, DFAT reported that voluntary returnees will only be questioned if they had done something to attract the specific attention of authorities.¹³ The applicant departed Iran legally and I am not satisfied he was of adverse interest to the authorities at the time he departed for any reason. I am not satisfied there is a real chance he will face questioning on return to Iran by the authorities for any reason. I am not satisfied the applicant will face a real chance of harm from the Iranian authorities or any other group or person due to being a failed asylum seeker/from a western country.

Refugee: conclusion

48. 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

49. 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.

¹¹ DFAT, "DFAT Country Information Report – Iran", 7 June 2018, CIS7B839411226

¹² Ibid.

¹³ DFAT, "DFAT Country Information Report – Iran", 7 June 2018, CIS7B839411226; DFAT, "DFAT Country Information Report Iran April 2016", 21 April 2016, CIS38A8012677

Real risk of significant harm

50. 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.

51. For reasons already given, I have not accepted that the applicant conducted military service in Iran as a police officer and was involved in an incident where he came to the aid of a woman girl being dragged away by the Basij during the 2009 protests and was subsequently detained and investigated and blacklisted by the Iranian authorities. I am also not satisfied there is a real risk he will require further mental health treatment in the reasonable foreseeable future due to his past mental health issues. I am not satisfied he faces a real risk of significant harm in Iran for these reasons.

52. I am not satisfied on the evidence that there is a real chance the applicant will publicly promote his religious or political views if he were to return to Iran or that his lack of belief in Islam will come to the adverse attention of the community or Iranian authorities in Iran because he will not engage in public manifestations of the Shia faith. He has also not claimed that he will apply for government jobs on return to Iran where he may have to disclose his religious beliefs. Even if he were unable to apply government employment for this reason I am not satisfied this would amount to significant harm as I am not satisfied it would amount to torture or the death penalty or the arbitrary deprivation of his life or cruel or inhuman or degrading treatment or punishment. I am not satisfied the applicant faces a real risk of significant harm in Iran on the basis of his religious and/or political opinion.

53. For reasons already stated I am not satisfied the applicant will face a real chance of harm in Iran as returning failed asylum seeker/from a western country or due to any possible family links to the former Iranian regime from the Iranian authorities or any other group or person. As real chance equals real risk¹⁴ I am not satisfied the applicant will face a real risk of significant harm in Iran for these reasons.

Complementary protection: conclusion

54. 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.

¹⁴ *MIAC v SZQRB* (2013) 210 FCR 505.

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:
- the person fears being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion; and
 - 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
 - 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:

- conflict with a characteristic that is fundamental to the person's identity or conscience; or
- conceal an innate or immutable characteristic of the person; or
- without limiting paragraph (a) or (b), require the person to do any of the following:
 - 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;
 - conceal his or her true race, ethnicity, nationality or country of origin;
 - alter his or her political beliefs or conceal his or her true political beliefs;
 - conceal a physical, psychological or intellectual disability;
 - enter into or remain in a marriage to which that person is opposed, or accept the forced marriage of a child;
 - 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):

- that reason must be the essential and significant reason, or those reasons must be the essential and significant reasons, for the persecution; and
- the persecution must involve serious harm to the person; and
- 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 threat to the person's life or liberty;
- significant physical harassment of the person;
- significant physical ill-treatment of the person;
- significant economic hardship that threatens the person's capacity to subsist;
- denial of access to basic services, where the denial threatens the person's capacity to subsist;
- 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:

- 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
- disregard any fear of persecution, or any persecution, that:
 - 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.