



Australian Government
Immigration Assessment Authority

Decision and Reasons

Referred application

IRAN

IAA reference: IAA19/06872

Date and time of decision: 27 August 2019 19:24:00

G Deal, 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 applicant (the applicant) claims to be an Arab from Khuzestan Province, Iran. [In] July 2013 he arrived by boat in Australia. On 16 July 2017 the applicant lodged an application for a Safe Haven Enterprise Visa (SHEV application) with the Department of Immigration, now part of the Department of Home Affairs.
2. On 12 July 2019 a delegate of the Minister for Immigration (the delegate) refused to grant the visa. While accepting the applicant was an atheist with certain political views and that his father was somewhat politically active in his youth and that the applicant may suffer discrimination due to his Ahwazi Arab ethnicity, the delegate did not accept any harm suffered would amount to serious harm or significant harm on account of this and was not satisfied the applicant was a person in respect of whom Australia had protection obligations.

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). No further information has been obtained or received.

Applicant's claims for protection

4. The applicant's claims can be summarised as follows:
 - He is an atheist and an Ahwazi Arab of about [years] of age from Khuzestran Province, Iran. While in Iran he lived in the family home where adult [siblings] and his parents continue to reside.
 - His father is a well-known political dissident who fights for Arabs' rights. He was imprisoned almost 40 years ago for his activism and has been monitored, interrogated and detained by authorities multiple times since. He was forced to change his name and could not get a government job because of this. The applicant and his siblings were questioned by the Etela'at and asked whether they supported Nation of Arabs, Al Ahwazi and the Green Revolution. He believes the authorities suspect he shares his father's anti-government and pro-Arab political opinions. They have asked his father about the applicant's whereabouts since he has been in Australia.
 - He was discriminated against in Iran because of his ethnicity, including while undertaking military service.
 - He met his wife in Australia and married her in about 2016.
 - He has earrings, a 'Western' hairstyle and tattoos. He has made anti-Islam and anti-regime [social media] posts since being in Australia and feels compelled to express these views. He has no passport and documents. He will not be able to find a job (or only menial work) or have a dog or a wife or family because of his ethnicity. He sought asylum in a Western country and has been in Australia for some six years.

Factual findings

5. The applicant has consistently claimed to be an Arab from Khuzestan Province in Iran (an "Ahwazi Arab"¹), and an Iranian national and based on this and his documentary evidence I accept this to be the case and that he is about [years] of age. The applicant claims he does not have his passport and documents. The applicant has consistently said he disposed of his passport on his way to Australia and I accept this aspect of his claim but he has otherwise indicated he has his National Identity Card and Birth Certificate in Australia and I do not accept he does not have documents.
6. While I have found the heart of most of the applicant's claims mostly consistent his claims have generally lacked detail. I have also found he has at times sought to exaggerate or embellish on these in an effort to strengthen his claims for protection. This has been particularly evident in relation to certain claims whose seriousness and significance has evolved throughout the visa application process.

Atheist

7. The applicant claims he is an atheist. In his arrival interview the applicant said his parents were Muslim but he had no faith. In his visa application he stated he was an atheist and had turned away from Islam since being in Australia. He said he despised religious censorship indicating that not being able to wear a t-shirt or have a tattoo in Iran were examples of this. It was in Australia that he stopped believing in god. He said he could be executed or stoned to death for this in Iran. In the SHEV interview he was questioned in more detail about this. He said that at about 17 or 18 years of age he started to listen to heavy metal music which talks about not believing in religion. The Islamic republic destroyed their town and everyone was protesting and he decided he was born a Muslim but he chose not to believe it anymore. When asked if there was anything more to it, other than not believing in god he said "no". He indicated he was not hostile toward religion, just neutral; he did not approve and he did not disapprove. He did not discuss these views with his parents as it upset his mother. His family were not very religious. His father drank alcohol but did his obligation prayers. He also said that his wife was a Muslim and that they had an Islamic marriage at a Mullah's house in [year]. When asked how he felt about being married in an Islamic ceremony he said it was good, indicating it made his wife happy. He said his wife sometimes asks him to pray but he just tells her to and that they essentially agree to disagree. The applicant comes from a Muslim family that is not particularly pious, he has more recently married in Australia in a Muslim ceremony (albeit at his wife's request) and I find the applicant's evidence in relation to his claimed atheistic views lacking in detail and unconvincing. I do not accept the applicant is an atheist. I consider he is apathetic toward religion. On the evidence, including that he comes from a family that is not particularly devout and that his wife asks him to pray but he does not, I am willing to accept he is a non-practising Muslim.

Political activism and ethnicity

8. The applicant claims his father is a well-known political dissident fighting for Arab rights and is still of interest to the authorities because of this. He claims he is imputed to hold his father's political views and to have had involvement in the Nation of Arabs, Al Ahwazi and the Green Revolution and to be of on-going interest to the authorities.

¹ Department of Foreign Affairs and Trade (DFAT), 'DFAT Country Information Report Iran April 2016', 21 April 2016, CIS38A8012677.

9. The applicant claims his father protested and was detained for several years some 40 years ago because of this. I accept this claim given the detail provided and the consistency of this aspect of the claim. I also note the country information before me² indicates that there were mass demonstrations, and many civilians were killed and detained by the authorities during the revolution which saw the downfall of the Monarchy and the establishment of the Islamic Republic in 1979. At that time ethnic minorities, including Arabs, revolted against the Islamic Republic but their demands for recognition were not met.
10. The applicant claims his father was unable to work in any government jobs and had to change his name after his release from detention some 40 years ago. The applicant indicated that his father is now retired, but prior to this that he ran his own [business] but he has provided little further detail in relation to this claim and I do not accept his father could not be employed in the Government because of his activities and imprisonment. While I accept his father changed the family name I do not accept this was because of his protest activities and incarceration some 40 years ago. The applicant's father's birth certificate indicates his father changed his surname from "B" to "E" in 1966, some 53 years ago when his father was about nine years of age. I also note the country information indicates that the government requires all citizens to adopt names it deems acceptable, which are kept on a list maintained by the civil registry.³
11. For the reasons detailed below, I do not accept the applicant's father is a well-known political dissident, who has continued to be monitored, harassed, detained or otherwise harmed by the authorities more recently, or that the authorities have questioned the applicant or that the applicant is wanted by the authorities because of this.
12. The applicant's evidence about his father's political activity initially lacked specificity and significant details were only provided later on in the process. He mentioned his father's political activities and imprisonment some 40 years ago in his visa application. He also said that his father was monitored by the regime and had to sign and signal his commitment to behave from time to time. His father was warned his children should also comply with the regime's wishes. In the SHEV interview when questioned in more detail he mentioned, for the first time, that his father was in the "Arab Nation". He said his father was fighting to have the Arabic language recognised. When asked if his father had experienced any other problems other than monitoring he said his father went to prison every now and again and was interrogated by authorities. When asked if his father had experienced any other problems the applicant said that he had not. He also said, for the first time, and only when the interviewing officer indicated the applicant's claims may be insufficient to warrant protection, that when his father was interrogated the authorities would ask about the applicant. In contrast, in his post-interview submission he said that after the Green Movement demonstrations in 2009 his father was arrested by the Etela'at and that he was still very much under suspicion despite the long period since his release. He was questioned for two to three days. He also said, for the first time, that he and his siblings were also questioned by the Etela'at and asked whether they supported the Nation of Arabs, Al-Ahwazi and the Green Revolution. He said he believes he has a record and is under suspicion because he is imputed to share his father's political views. His father is called by them and they ask where the applicant is. I note the applicant's father's political activities and harassment were squarely at issue in the SHEV interview and the interviewing officer was careful to provide the applicant with a number of opportunities to detail these. Given the lack of detail and the late mention of significant aspects I do not accept the applicant's father was or is in the "Arab Nation", went to prison every now and again and

² DFAT 'DFAT Country Information Report - Iran', 7 June 2018, CIS7B839411226; US Department of State, 'Iran 2016 Human Rights Report', 3 March 2017, OGD95BE926964; Ozum Yesiltas, Tallinn University, 'Contested Notions of National Identity, Ethnic Movements and Democratisation in Iran', 1 January 2016, CIS38A80123751.

³ US Department of State, 'Iran 2016 Human Rights Report', 3 March 2017, OGD95BE926964.

was interrogated by authorities, including after the Green Movement demonstrations in 2009, or that the applicant and his siblings were questioned by the authorities as claimed. I also note the country information before me indicates ethnic groups, such as Arabs, had little to no involvement with the Green Movement.⁴

13. The applicant has not been involved in any political activities himself. In the SHEV interview when the interviewing officer asked the applicant whether he himself had been involved in any political activism he said that he had not. The interviewing officer asked whether there was any other reason he might be imputed with a political opinion or membership of the Ahwazi party other than his father's political past. The applicant said there was not.
14. The applicant left Iran in [year] bound for Australia legally on his own passport without issue. The first time he left Iran he was deported back from [Country 1] to Tehran after being caught smoking on the aeroplane. He spent about two weeks to a month in Tehran when returned. He indicated he had no issues on his return at the airport and while in Tehran. He claims that on the second occasion he believes he had no issues because he said he was travelling to a Muslim country. The country information before me⁵ indicates that the authorities routinely impose travel bans on Iranians, particularly civil and political activists. It reports that without the payment of a bribe or travelling overland, it would be difficult for someone of interest to leave without attracting the authorities' attention. I note the applicant has not claimed to have bribed officials at the airport. I am satisfied he left Iran legally and without issue twice in or around [year] on his passport from Imam Khoumani Airport and that he was not of any interest to authorities when he left, whether in connection with his father or otherwise.
15. The applicant claims to have suffered societal discrimination and official discrimination because he is an Ahwazi Arab.
16. The country information before me indicates Ahwazi Arabs suffer a high level of societal discrimination which unfairly impacts their day-to-day treatment such as employment and access to housing and services.⁶ Ahwazi Arabs are also discriminated against when it comes to appointments to Government posts in Khouzestan Province.⁷ It also notes that Arab activists and protestors who become known to the Iranian authorities may also be severely mistreated by authorities if perceived as a threat to the Islamic Republic.⁸
17. The applicant provided spontaneous and detailed accounts in the SHEV interview when questioned further about the discrimination he claims to have suffered while in the military service. For example, he said that on one occasion a leader, who normally spoke to everyone else politely, spoke abruptly and dismissively to him. He believed this was because of his accent. On the evidence I accept the applicant was spoken to disrespectfully by leaders in the military service and based on his detailed accounts of these incidents and the country information detailed above I accept this may have been because of his ethnicity.
18. In his visa application the applicant said that he was discriminated against by society at large who ostracised him because of his ethnicity. People would hear his Arabic accent and were not interested in talking to him. He spoke more Farsi and as a consequence his Arabic has

⁴ Ozum Yesiltas, Tallinn University, 'Contested Notions of National Identity, Ethnic Movements and Democratisation in Iran', 1 January 2016, CIS38A80123751.

⁵ DFAT, 'DFAT Country Information Report Iran April 2016', 21 April 2016, CIS38A8012677; DFAT 'DFAT Country Information Report - Iran', 7 June 2018, CIS7B839411226.

⁶ DFAT, 'DFAT Country Information Report Iran April 2016', 21 April 2016, CIS38A8012677.

⁷ Middle East Eye, 'Iran's Ahwazi Arab minority: dissent against 'discrimination'', 28 February 2015, CXBD6A0DE2098.

⁸ DFAT, 'DFAT Country Information Report Iran April 2016', 21 April 2016, CIS38A8012677.

diminished. Many people did not accept him and he was unable to socialise. He said even in Australia Iranians discriminated against him. When the applicant was given an opportunity to elaborate on his treatment in Iran in the SHEV interview, after mentioning he could not get a dog, a girlfriend or get married and have a family because of discrimination he said that “it was very hard to explain” and did not elaborate further. I note the applicant worked in various capacities while in Iran. I have found the applicant’s claims in relation to his discrimination by society at large broad-brushed, unsubstantiated and somewhat repetitive. Given his accounts and based on the country information detailed above I am willing to accept non-Arabs may have spoken to him in a derogatory manner but I do not accept his Arabic suffered, that he was ostracised or found it difficult to find work or could not have a girlfriend/wife or a dog because of his ethnicity.

19. The applicant claimed he could not continue his studies because he was an Arab. Yet, he has also consistently claimed to have finished his studies. In the SHEV interview he said that in the military service he was appointed to a higher position, as a [rank], precisely because he had a degree. I am satisfied the applicant completed his tertiary studies in Iran and was not stopped from doing so.
20. The applicant claims he retaliated against the discrimination he suffered while in the military service and this resulted in him having to serve additional time. The country information before me indicates men above the age of 18 must complete between 18 and 24 months of military service in a variety of positions.⁹ There have been significant variations in the length of time the applicant has claimed to have served with the military, ranging from 24 months in his SHEV application to 36 months in his post interview. I also note his Military Service Completion card indicates he served some 22 months. When the interviewing officer asked the applicant why the dates provided varied from the dates in his Military Service Completion card he could not provide an explanation. In the SHEV interview the applicant was asked why he served such a long period. The applicant spoke at length about being spoken to in a dismissive and rude manner by a military leader and how he could not take orders. He was given other opportunities to provide more detail in this regard, but provided little elaboration on the extension of his term of service. I am willing to accept the applicant’s military service may have been extended a little and he may have served 24 months as stated in his visa application but I do not accept the belatedly raised and inconsistent claim in his post interview submission that he served some 36 months.
21. On the evidence, I consider the applicant’s claimed mistreatment by officials and the extension in his length of military service was largely the result of his insubordination and disregard for religious observance rather than his ethnicity. He has broadly consistently claimed to have been briefly detained and flogged for failing to comply with religious observances while in the military which is consistent with the country information before me indicating such punishment can include flogging, and I accept he was flogged as claimed but not that it was because of his ethnicity.¹⁰ In his SHEV interview the applicant said that the military service required you to always say yes to the commander but he did not accept this. The interviewing officer asked whether it would not have been easier to comply and to have finished his military service on time and the applicant said that it probably would have, but that his patience did not allow this. The applicant’s evidence about his mistreatment in the military service is largely consistent with the country information before me, which indicates that conscripts are

⁹ DFAT ‘DFAT Country Information Report - Iran’, 7 June 2018, CIS7B839411226.

¹⁰ 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.

frequently subjected to physical and psychological abuse by senior officers resulting in low morale.¹¹ I do not accept his length of services was extended because of his ethnicity.

Western appearance

22. In the SHEV interview the applicant's migration agent noted the applicant's appearance would bring him adverse attention from the authorities on his return, noting his hair among other things. The interviewing officer noted he could see the applicant had large earrings and tattoos. I accept the applicant has tattoos, hair and earrings as claimed. The applicant indicated he had some of these tattoos prior to completing his military service and while in Iran. He had others done in [Country 2]. He also said one on his arm was of his wife's face. Given they met in about 2014, I surmise he obtained this tattoo while in Australia. The applicant mentioned in the SHEV interview, for the first time, that he was also detained on a number of occasions by authorities in Iran because of his tattoos and that they wanted to use some strange soluble liquid to wipe them off. He did not otherwise elaborate, despite having the opportunity to do so. He conceded the tattoos (which the delegate noted were on the forearm and back) could be covered up by clothing but he said he did not want to cover them up. The applicant did not mention any issues with his tattoos in his visa application despite the fact he clearly has tattoos. I find it surprising he did not mention he was detained on multiple occasions or that the authorities tried to remove them, earlier, given the seriousness and significance of this aspect of his claim. The country information before me¹² indicates it is increasingly common for Iranians to sport Western haircuts and visible tattoos. It notes they may suffer low level harassment from authorities in connection with this such as a fine or warning. Given the lack of detail, the applicant's propensity to exaggerate and based on the country information before me I do not accept he was detained on many occasions because of his tattoos, as claimed.

[Social media] posts

23. The applicant claims he made anti-Islam and anti-regime posts to his [social media] profile while in Australia. He first mentioned this claim after returning from a break in the SHEV interview. In April 2019 after the SHEV interview, the applicant provided the Department with screenshots of about 15 [social media] posts. No English translations were provided but some posts have images that could be described as disrespectful to the Islamic faith and regime. The posts appear to comprise articles or images authored by others that the applicant has simply shared on his profile. Most of the posts provided were made in 2015. One post was made in 2017. No more recent posts have been provided. There are few "likes" on his profile in relation to these posts. I accept he made the [social media] posts described above. When the applicant was asked in the SHEV interview if he could delete them he said that he could but he preferred not to because he liked them. He also indicated at that point in the interview that the authorities had asked for him and it was probably because they had seen the posts. In a post interview submission he said the posts severely criticised and insulted Islam.

24. Section 5J(6) of the Act states that in determining whether a person has a well-founded fear of persecution 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 purposes of strengthening their claim to be a refugee. The applicant's evidence in relation to his views on Islam, the Iranian government and the regime has lacked detail and given he does not otherwise personally have a political profile I am not persuaded that these are genuinely

¹¹ DFAT 'DFAT Country Information Report - Iran', 7 June 2018, CIS7B839411226.

¹² DFAT, 'DFAT Country Information Report Iran April 2016', 21 April 2016, CIS38A8012677.

strongly held views. For example, in his SHEV interview in relation to his posts he largely talked about being viewed as a spy by the Iranian authorities because of the posts. After noting the Iranian authorities do not have the capacity to monitor all this type of activity and that the posts are unlikely to be of any interest the interviewing officer invited the applicant to provide more information in relation to this claim so that it could be considered. In his post interview submission the applicant merely said he strongly opposed the way Islam was practised in Iran and that these views have become stronger since being in Australia, where people are not indoctrinated constantly by the Government. Given the lack of convincing detail in relation to his beliefs and the limited nature of his posts, including that none have been made for more than two years, I am not satisfied the applicant has engaged in this conduct otherwise than for the purpose of strengthening his claims to be a refugee.

Failed asylum seeker

25. I accept the applicant will be identifiable as someone who has attempted to seek asylum in a Western country. I accept he has been in Australia for some six years.

Refugee assessment

26. 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

27. 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.
28. I accept the applicant is an Ahwazi Arab from Khouzestan Province, Iran, an Iranian national and that Iran is the receiving country. I accept he was spoken to in a derogatory manner by non-Arabs in Iran in the past. I accept the applicant’s father was involved in protests and imprisoned for several years by authorities almost 40 years ago but I do not accept he was detained again or continues to be of genuine interest to authorities. I do not accept the applicant was wanted by authorities when he left Iran in [year], whether in connection with his

father or otherwise. I accept he is a non-practising Muslim, has a Western hairstyle, earrings and visible tattoos. I accept the applicant has shared anti-Islam and anti-regime material on his [social media] profile.

29. The country information before me¹³ notes that Iran is a theocracy governed by Shia Islamic principles. Its history is marked by clashes between those committed to the conservative ideals of the Islamic Republic and those fighting for reform.¹⁴ The latter has seen more momentum in recent years with an emerging younger generation that is increasingly critical of the State and Islam.¹⁵ It is reported that there now appears to be strong support for modernist and reformist figures.¹⁶ After the applicant left Iran in [year], a moderate and the current president, Hassan Rouhani, was elected.¹⁷ The Islamic Republic continues to suppress political dissent which sometimes results in human rights abuses against individuals who come to its attention.¹⁸
30. I accept the applicant is a non-practising Muslim. The country information before me¹⁹ indicates that, relevantly, if a person leaves Islam they can be charged with apostasy. Blasphemy or swearing at the prophet is also a crime. Punishment for each can include death. The Iranian government continues to use religiously-based charges against a diverse group of individuals, such as Christian converts. It also reports that apostasy and blasphemy are no longer an everyday occurrence in Iran and that the death penalty for these is now rare. Over the last ten years the influence of Islam has waned in Iran. Abstaining from Muslim rituals such as not attending mosque would not necessarily arouse suspicion; many do not regularly attend. Non-practising Muslims comprise a large part of the population in Iran's cities. They are rarely called upon to answer direct questions or observe Muslim precepts. The applicant claims his views about religion shifted when he was about 17 or 18 years of age and while he claims his views have continued to develop over the years, he remained in Iran for some nine years after this. Other than while in military service there is no credible evidence before me to indicate he was harassed or harmed for his views on religion and Islam while in Iran.
31. The applicant fears harm on account of his ethnicity. The country information before me indicates Ahwazi Arabs have long expressed concerns about economic marginalisation, discrimination in education, employment, politics and culture.²⁰ In this regard the country information reports their region is affected by pollution; Arabs are systematically excluded from employment including in local government; there is a prohibition on speaking or studying Arabic in Iran; unemployment and poverty are significant issues; and Arab activists and protestors have been arrested and severely mistreated, even executed, by authorities in the past (in particular after protests in 2005 and 2015 in the region).²¹ Human rights organisations

¹³ DFAT, 'DFAT Country Information Report - Iran', 7 June 2018, CIS7B839411226; ACCORD, 'Iran: Freedom of Religion; Treatment of Religious and Ethnic Minorities COI Compilation September 2015', 1 September 2015, CISEC96CF13622; US Congressional Research Service, 'Iran: Politics, Human Rights, and US Policy', 1 November 2017, CISED50AD4776.

¹⁴ DFAT, 'DFAT Country Information Report - Iran', 7 June 2018, CIS7B839411226.

¹⁵ DFAT, 'DFAT Country Information Report - Iran', 7 June 2018, CIS7B839411226; ACCORD, 'Iran: Freedom of Religion; Treatment of Religious and Ethnic Minorities COI Compilation September 2015', 1 September 2015, CISEC96CF13622.

¹⁶ US Congressional Research Service, 'Iran: Politics, Human Rights, and US Policy', 1 November 2017, CISED50AD4776.

¹⁷ Ibid.

¹⁸ US Congressional Research Service, 'Iran: Politics, Human Rights, and US Policy', 1 November 2017, CISED50AD4776; US Department of State, 'Iran 2016 Human Rights Report', 3 March 2017, OGD95BE926964.

¹⁹ DFAT, 'DFAT Country Information Report - Iran', 7 June 2018, CIS7B839411226; ACCORD, 'Iran: Freedom of Religion; Treatment of Religious and Ethnic Minorities COI Compilation September 2015', 1 September 2015, CISEC96CF13622.

²⁰ US Congressional Research Service, 'Iran: Politics, Human Rights, and US Policy', 1 November 2017, CISED50AD4776; US Department of State, 'Iran 2016 Human Rights Report', 3 March 2017, OGD95BE926964; DFAT, 'DFAT Country Information Report - Iran', 7 June 2018, CIS7B839411226.

²¹ US Congressional Research Service, 'Iran: Politics, Human Rights, and US Policy', 1 November 2017, CISED50AD4776; US Department of State, 'Iran 2016 Human Rights Report', 3 March 2017, OGD95BE926964; DFAT, 'DFAT Country Information

have expressed concern that many Ahwazi Arabs are targeted for their perceived political opinion, for peacefully expressing dissent or openly exhibiting their Arab identity or culture; the country information before me overwhelmingly indicates it is the Arab activists and protestors that are targeted.²² Largely consistent with this DFAT assesses that Ahwazi Arabs face a moderate risk of official and societal discrimination which can include denial of access to employment and housing but is unlikely to include violence on the grounds of ethnicity alone. It also notes that groups involved or perceived to be involved in activism face a higher risk of violence. I accept non-Arabs spoke to the applicant in a derogatory manner because of his ethnicity. I do not accept the applicant could not get job, a dog or have a relationship or family while in Iran because of his ethnicity. Aside from his period of military service the applicant was employed in various capacities from the time he left university until his departure from Iran in [year]. I note he worked for his father's [business] in the year prior to his departure from Iran and that his father is now retired. The applicant has also stated that the only jobs he could get in Iran would be menial and that he would not have a chance to use his qualifications. However, in the absence of further detail I consider this brief claim speculative. The applicant has not claimed he wanted to study Arabic in Iran or expressed any desire in this regard. The applicant's family have lived in Khouzestan in the same family home for more than 30 years. I do not accept the applicant's father is a political dissident and/or of genuine on-going interest to the authorities. I do not accept the applicant was wanted by the authorities in connection with his father or otherwise when he left Iran some six years ago.

32. Based on the above, including the country information which indicates non-practising Muslims comprise a large part of the population whose views are rarely questioned and that Ahwazi Arabs, in particular activists, face a moderate risk of discrimination including a denial of access to employment and the applicant and his family's past experiences in Iran, I am satisfied the applicant may be spoken to in a derogatory manner by non-Arabs and initially face challenges finding work but I am not satisfied this would threaten his capacity to subsist or otherwise amount to serious harm. I am not satisfied there is a real chance the applicant will suffer serious harm on account of his and his family's experiences in Iran, his ethnicity and views on religion or because he is a non-practising Muslim.
33. The applicant fears harm on account of his Western appearance. In its 2016 report DFAT²³ noted that Western hairstyles and visible tattoos could be regularly observed in Iran and that they would only result in low level harassment such as a fine or warning. In its more recent 2018 report DFAT²⁴ states the dress code is reportedly more important for women than men. It is common to see men with Western hairstyles and visible tattoos in Iran. Further, where individuals were harassed in this regard DFAT notes it is likely to be because of an over-zealous official or because the individual had already been brought to the authorities' attention, for example, as a political activist. I accept the applicant has some visible tattoos, a Western haircut and earrings. There is no credible evidence before me to indicate the applicant has been detained or mistreated in connection with the tattoos he had while in Iran. I am satisfied the applicant may suffer low level harassment from time to time by over-zealous security forces on account of his appearance but not that this would amount to serious harm.

Report - Iran', 7 June 2018, CIS7B839411226; Unrepresented Nations and Peoples Organization (UNPO), 'Ahwazi Harvard Academic Condemns Socio-Economic Neglect of Arab Community', 27 February 2017, CXC9040663110.

²² Amnesty International, 'Amnesty International Report 2016-2017', 23 February 2017, NG2A465F54; DFAT, DFAT Country Information Report - Iran, 7 June 2018, CIS7B839411226; UNPO 'Ahwazi Harvard Academic Condemns Socio-Economic Neglect of Arab Community', 27 February 2017, CXC9040663110; Ahwaz Monitor, 'Ahwazi Arabs support their football team in courageously national style', 18 March 2017, CXC9040666963; HRW, 'Iran: Sweeping Arrests of Ahwazi Arab Activists', 29 April 2015, CXBD6A0DE5399; Ahwaz Human Rights Organisation, 'Ahwazi: Football Match Results in Arrest of Arab Fans', 23 March 2015, CXBD6A0DE14534.

²³ DFAT, 'DFAT Country Information Report Iran April 2016', 21 April 2016, CIS38A8012677.

²⁴ DFAT, 'DFAT Country Information Report - Iran', 7 June 2018, CIS7B839411226.

34. I accept the applicant will be identifiable as someone who has sought asylum in a Western country and that he has been in Australia for some six years. The applicant fears harm on account of this. The country information before me²⁵ notes that Iran has historically refused to accept involuntary returnees. Under a more recent Memorandum of Understanding with Australia Iran has agreed to facilitate the return of Iranians who arrived after 19 March 2018 and have no legal right to remain in Australia. The applicant arrived prior to this time, and as such I am satisfied that if he were to return to Iran, it would only be on a voluntary basis. Voluntary returnees re-entering on their passport or temporary travel documents issued by Iranian diplomatic representatives do not attract much interest from authorities. They will generally only be questioned if they are already on the authority's radar, for example, because they committed a crime in Iran before they left. It is also reported that the Iranian authorities pay little attention to failed asylum seekers. The authorities accept that many Iranians travel overseas for a number of reasons, including work. In its 2018 report DFAT states it is not aware of any barriers for returnees in terms of finding work, shelter or returning home. The applicant disposed of his passport on the boat travelling to Australia and I accept he will re-enter Iran on a temporary travel document. I do not accept he was wanted by the authorities when he left Iran in [year]. I also note he was forcibly returned to Tehran on his first attempt to leave Iran for Australia and he did not report any issues with Iranian authorities on that occasion. Based on the applicant's profile and the country information detailed above I am not satisfied there is a real chance he will suffer harm on account of being a returning asylum seeker from a Western country who has spent some six years in Australia.
35. Overall, I am not satisfied there is a real chance the applicant will suffer serious harm on account of being a failed asylum seeker, his and his family's experiences in Iran, time in Australia, his ethnicity, views on religion and appearance.
36. I am not satisfied the applicant has a well-founded fear of persecution.

Refugee: conclusion

37. 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

38. 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

39. 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

²⁵ DFAT, DFAT Country Information Report - Iran, 7 June 2018, CIS7B839411226; DFAT, 'DFAT Country Information Report Iran April 2016', 21 April 2016, CIS38A8012677.

- 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.

40. For the reasons already discussed I am satisfied the applicant may be spoken to in a derogatory manner by non-Arabs, initially face challenges finding work and may suffer low level harassment by over-zealous officials, but I am not satisfied that these circumstances would amount to 'significant harm'. The harm does not include the arbitrary deprivation of life, the death penalty, or torture; nor am I satisfied he will be subject to cruel, inhuman or degrading treatment or punishment, as defined.

41. As detailed above, I accept the applicant has shared limited anti-regime and anti-Islamic posts on his [social media] profile. The country information before me indicates that social media networks such as [one example] are blocked in Iran.²⁶ It also reports that the Iranian authorities have little interest in prosecuting failed asylum seekers for activities conducted outside Iran, including relevantly, social media comments critical of the government. In his post interview submission the applicant said that he felt compelled to express his anti-Islamic views; however given its late mention, the limited and dated nature of his posts and his lack of a political profile, I do not accept this to be the case. When discussing his [social media] posts in the SHEV interview the applicant also said he thought the authorities may have seen his posts. However, in the absence of further detail I consider this mere speculation. I do not accept the applicant was wanted by the authorities when he left Iran in [year]. Based on the applicant's profile and the country information detailed above I am not satisfied there is a real risk he will suffer harm on account of his [social media] posts.

42. In considering the applicant's refugee status, I have otherwise concluded that there was no 'real chance' the applicant would suffer harm on his return to Iran for the other reasons claimed. 'Real chance' and 'real risk' involve the same standard.²⁷ For the same reasons, I am also not satisfied the applicant would face a 'real risk' of significant harm.

43. Overall, even considering the applicant's claims cumulatively, I am not satisfied there is a real risk that any harm suffered would amount to 'significant harm' within the meaning of s.36(2A).

Complementary protection: conclusion

44. 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.

²⁶ Center for Human Rights in Iran, 'Guards at the gate', 10 January 2018, CIS7B8394143; DFAT, 'DFAT Country Information Report - Iran', 7 June 2018, CIS7B839411226.

²⁷ *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:
 - (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.