



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

**Decision and Reasons**

**Referred application**

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IRAN

IAA reference: IAA19/07016

Date and time of decision: 26 September 2019 11:15:00

G Deal, Reviewer

**Decision**

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

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

## Background to the review

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### Visa application

1. The applicant (the applicant) claims to be an Arab Ahwazi of Baha'i faith from Iran. [In] July 2017 he arrived by boat in Australia. On 20 January 2017 he 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 16 August 2019 a delegate of the Minister for Immigration (the delegate) refused to grant the visa. While the delegate accepted the applicant was an Ahwazi Arab and a member of a trade union and involved in union activities in Iran, he did not accept the applicant had ever been formally charged or was in a leadership role, in this regard, or that he otherwise had a profile of interest to authorities. The delegate also did not accept that the applicant had left Iran on a fake passport or that he had converted to the Baha'i faith while in Australia. Overall, the delegate found the applicant did not meet the relevant definition of refugee, did not face a real risk of significant harm and was not 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) (review material).
4. There is information in the review material that indicates the applicant may have engaged in certain dishonest conduct in the past. While this may be relevant to some other criteria for the visa over which the IAA has no jurisdiction (relating to character), I do not consider it relevant to the review of whether the applicant is a person to whom Australia has protection obligations and I have disregarded it.
5. On 11 September 2019 the IAA received a submission from the applicant's migration agents. It contains new information. In a pre-interview submission lodged with the Department the applicant's migration agents said that although the applicant had no involvement in cultural, religious and sporting activities of the [Australian city 1] Ahwazi community, the mere fact of his residence in [Australian city 1] coupled with his ethnicity (Ahwazi Arab) made him a prime candidate for membership or affiliation in the eyes of the Iranian authorities. In the IAA submission they assert that the activities of the [Australian city 1] Ahwazi community, including marching [in] the [Australian city 1] 2014 Australia day parade, takes on a new meaning following the Australian Prime Minister's announcement in late August that he will support for the US-led military effort to keep the Strait of Hormuz open. In support of this his migration agents have provided an article detailing the Prime Minister's announcement, a vague footnote to a publication but no copy or link, [social media] screenshots and links for a prominent members of the Ahwazi diaspora including for one who lives in [Australian city 1] (who is also a former political prisoner of Iran) photos of [a sporting] Club (which the prominent member in [Australian city 1] supports) and [social media] posts and links to videos (dated about 2013 and 2014) showing the Ahwazi community marching in the Australia day parade and protesting elsewhere. This is all new information. They submit this information was not provided earlier because prior to Australia's recent announcement, the information was peripheral to the applicant's circumstances, but they submit it has now taken on a new significance. The applicant has not claimed involvement in any of the groups, protests or activities detailed in the submission, or that he is in any of the videos or photos or that he

personally knows the prominent Ahwazi Arab in the [social media] posts. In the SHEV interview he said he had no interest in seeking independence or engaging in protests in relation to Ahwazi Arabs and he has not said he did so while in Iran (only participating in two workers' strikes in Iran) or Australia. On the material I also note there is nothing that I can discern specifically linking "[Australian city 1] Ahwazi community" with the parade and protests featured in the photos and links. In these circumstances and in the absence of any further supporting information I consider that to assert this information is material would be to "draw a long bow", and I am not satisfied that it is. As an aside I also note that in the SHEV interview the applicant said he increasingly spent less time in [Australian city 1] as he frequently travelled to [Australian city 2] where he has a [business]. I am not satisfied exceptional circumstances exist to justify consideration of the information.

6. A copy of an article published after the delegate's decision about the detention of three Australian citizens in Iran was also provided. It briefly discusses their detention on suspicion of spying for another country after they had taken images of military and restricted areas while in Iran. While one of the detainees is an academic who specialises in Middle Eastern politics none are Iranian nationals, or previously from Iran or returning asylum seekers. I am not satisfied this information is material to the applicant's central claims for protection. I am not satisfied exceptional circumstances exist to justify its consideration.

#### **Applicant's claims for protection**

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7. The applicant's claims can be summarised as follows:
  - He is an Ahwazi Arab born in Khuzestan. His father [and adult siblings] reside in Abadan, Khuzestan.
  - As a student his father protested for Ahwazi Arab rights although he is no longer involved in such activities although the authorities continue to keep an eye on him.
  - While attending school he was arrested by the *Basij*, briefly detained and taken to court and slapped and released for fraternising with female students at a nearby school.
  - He completed his military service from 2003 to 2005.
  - He joined a workers' union in 2007 and was the point of contact between the union and his colleagues.
  - He worked in Mahshar until 2008 and then worked in Abadan [until] 2009. He was involved in a strike over unpaid wages in about 2008 and briefly detained by authorities in connection with this. He was blacklisted from working in that area and had to move to find another job.
  - He moved to Kerman where he initially worked in [a workplace] until about June 2010. He worked at a [second workplace] in the area until about 2013. While at the [second workplace] he represented unpaid staff and was involved in a strike over unpaid wages in about May 2013. After striking he did not return to work. Authorities went to his dorm room looking for him and confiscated some items including his laptop and books. They also went to his parents' house and took his father to the police station to question him about the applicant stating that the applicant was in a dangerous situation because of his involvement in the strikes and that he had encouraged others not to go to work and it was near the election.

- He feared for his safety at this time and fled to his cousin's place in Tehran. His cousin helped him get a fake passport and he illegally fled Iran from the Tehran Airport bound for Australia in June 2013.
- A summons in connection with his 2013 union activities has been sent to his family home.
- Since being in Australia he no longer follows Islam and has researched the Baha'i faith and genuinely wants to convert to the Baha'i faith. The authorities will assume he has converted and he will be executed and his family will disown him if they find out.
- He will be imputed with anti-regime, pro-Ahwaz separatism political opinions. He is a failed asylum seeker from the West. He left Iran illegally on a fake passport and will be arrested and charged on his return, possibly even as a spy for the West. He has spent considerable time in Australia.

### Factual findings

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8. The applicant claims the uncertainty of his situation has caused him stress, which he is susceptible to, and a lot of time has passed which may have affected his ability to remember things. Some six years have passed since he first arrived in Australia and in the circumstances I accept the applicant may be stressed and that this might, at times, compromise his recall of specific dates and other more specific information in interviews. I note he has not provided any supporting information in relation to the state of his mental health, like a letter from a doctor or mental health practitioner, or said he attends counselling or takes medication in this regard. I have listened to his arrival and SHEV interviews and he was able to respond to most questions in detail and at no point said he was unable to continue because of stress or problems with his memory. I do not accept stress or the passing of time as an explanation for any significant inconsistencies in his narrative concerning his central claims for protection, in particular in relation to events that he claims led to him fearing for his life and fleeing Iran.

### Basij

9. The applicant claims that while at school he was briefly detained by the *Basij* for fraternising with girls in a nearby school. This was mentioned in both of his interviews and given the applicant's detailed and spontaneous responses to the delegate's questions in the SHEV interview I accept this claim. I also note the applicant last attended school some [years] ago and there is nothing before me linking this with claimed events in about 2008 and 2013, and I do not accept it is linked to these later events.

### Ahwazi Arab

10. Based on the applicant's evidence, including his documentary evidence, I accept he is an "Ahwazi Arab" from Abadan, Khuzestan, Iran and that his family including [a number of siblings] continue to reside there.<sup>1</sup> I note however, the applicant has not specified any instances of harm specifically in relation to his ethnicity. When asked in the SHEV interview if as an Ahwazi Arab he would be treated differently, the applicant indicated that because he had been involved in the 2008 strike he had to move for work. In his visa application he said he had not been involved in any groups that advocated for the rights of Arabs. In his SHEV interview

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<sup>1</sup> Ceasefire Centre for Civilian Rights (United Kingdom), Centre for Supporters of Human Rights (United Kingdom), Minority Rights Group International (United Kingdom) (CCCR CSHR MRGI), 'Rights Denied: Violations against ethnic and religious minorities in Iran', 13 March 2018, CIS7B83941441.

after broadly indicating the Ahwazi Arabs were discriminated against by the authorities he said he was not personally interested in seeking independence or engaging in protests like his father. He said his father used to be involved in such protests, especially as a student, but was not anymore and given the spontaneity of his responses and that he also mentioned his father was involved in protests a “long time ago” in his arrival interview I am willing to accept this. His father is about [age] and on the evidence, he has not been involved in protest activities for decades and I do not accept his father is of genuine and on-going interest to the authorities in this regard.

### **Workers’ strikes**

11. The applicant claims he is wanted by the authorities because of his union activities including involvement in workers’ strikes in 2008 and 2013 and that he has an outstanding summons or warrant in this regard.
12. The applicant’s claim he joined the workers union in 2007 has been highly consistent and detailed and I accept this. In his SHEV interview he clarified that he was with the union for one year while working in Mahshar (where he worked from June 2007 to June 2008 before moving to Abadan) and that there were no problems during this period which given the spontaneity of his responses in the SHEV interview, and the detail provided, I accept. He has variously said he answered colleagues’ questions about their rights and was the point of contact between them and the union during this period, which I also accept was the case while he was in Mahshar.
13. Given the broad consistency, and the spontaneous and detailed responses he provided in the SHEV interview, I accept the applicant participated in a strike in 2008 while in Abadan and a second strike in May 2013 while in Kerman, along with many other staff.
14. In the applicant’s visa application and pre-interview submission he claimed he was arrested by the police and detained by them for two days following the 2008 strike, along with many other workers who also participated. However when questioned about this in the SHEV interview he clarified that officers from the security department at his former employer detained them at their office near the [workplace] and that the police merely came to that office and made a report and they were released that night, which given the spontaneity of his responses in the SHEV interview and the detail provided, I accept. It follows that I do not accept he was detained by the police for two nights. In his visa application and pre-interview submission the applicant said he was not formally charged in connection with the 2008 strike or receive any documentation like a letter in this regard, which he has consistently stated and I accept. He claims that after the 2008 strike he lost his job which is consistent with the country information before me which indicates workers who strike can lose their jobs and I accept that he did.<sup>2</sup> He also said that he was blacklisted from the area as all the oil refineries were connected and under control of the government because they had government contracts. I find this aspect of his claim an unsupported exaggeration I do not accept it. I consider it more plausible he moved to Kerman as there was a greater prospect of securing employment; the country information before me generally indicates a higher unemployment rate in Khuzestan than in Kerman.<sup>3</sup>
15. The applicant claims the 2013 strike lasted [for a number] days and each day the workers gathered in front of their manager’s room and when people from the security department

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<sup>2</sup> Department of Foreign Affairs and Trade (DFAT), ‘DFAT Country Information Report – Iran’, 7 June 2018, CIS7B839411226.

<sup>3</sup> CCCR CSHR MRGI, ‘Rights Denied: Violations against ethnic and religious minorities in Iran’, 13 March 2018, CIS7B83941441.

were sent to tell them to scatter and return to work they would scatter but not return to work. After the three days he did not return to his dorm room at the industrial town close to the [workplace] where workers lived. He was told people from the security department looked for him in his dorm room and took some of his possessions. He was scared and did not return and remained at his friend's place. He heard workers were still on strike and that the company was attempting to negotiate a deal with them. He fled to Tehran to stay with his cousin. Given the detail provided and that I consider it plausible I am willing to accept officers from his former employer's security department went to his dorm room looking for him and took his possessions from the room when it was apparent he was not returning and that they may have gone to his parents' house looking for him and asking him to return as he stated in his arrival interview. In the circumstances I consider it plausible they may have done this to tie up loose ends since it appeared he was not returning.

16. However for the reasons that follow, I do not accept the applicant represented the workers or held, or was perceived as holding, a leadership role, or that he was wanted by the police or "Herasat" (representatives of the Ministry of Intelligence and State Security) officials or authorities in relation to his union activities when he left Iran in 2013, or that he has an outstanding warrant or summons in this regard:

- In a pre-interview submission the applicant's migration agents submitted that the officers from within the security department of the companies that the applicant had previously referred to actually formed part of the *Herasat*. They state that the applicant said the companies he worked for were large and had government contracts and that *Herasat* officials had offices in private companies of a certain size as well as state organisations, schools and universities and ultimately reported to the Supreme Leader. On the evidence, including the belated raising of this significant aspect I do not accept they were the *Herasat*. Previously the applicant's evidence in his statement of claims accompanying his SHEV application clearly described them as "security from the company" and "they sent people from the security department" who told them to return to work, and "the security department of the [workplace] came to my room and were looking for me...searched my belongings". Moreover, the applicant had the assistance of migration agents (who also assisted him with his pre-interview submission) and an accredited translator who "accurately and completely interpreted the contents" of the applicant's statement of claims accompanying his SHEV application. In his SHEV interview when describing the people who went to his dorm looking for him he said they were in plain clothes and that he guessed they would either be the police or the security department of the workplace. The country information before me also indicates the *Herasat* are concerned with intelligence activities rather than, for example, telling workers to return to work.<sup>4</sup>
- On the applicant's evidence I find the claim he played a leadership role or was perceived as such, whether formally or informally, in the union or the strikes lacking contextual detail and unsubstantiated and I do not accept that this was the case. In his arrival interview when describing the 2013 strike the applicant merely said he was a "kind of spokesman" and "was representing everyone". In the SHEV interview when asked if he were with the union for long he said "no" he was for about a year while working in Mahshar and had no problems during that period, which I accept. Further, in his visa application other than stating in relation to the 2013 strike "I was a representative of all

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<sup>4</sup> Center for Human Rights in Iran, President Hassan Rouhani, 21 August 2013; United Kingdom Home Office, 'Country Information and Guidance - Iran: Christians and Christian Converts', December 2015, Version 2.0; Austrian Centre for Country of Origin and Asylum Research and Documentation, 'Iran: Political Opposition Groups, Security Forces, Selected Human Rights Issues, Rule of Law: COI Compilation' July 2015.

of the staff who didn't get paid and because I had been working as a supervisor of some [occupation] I had to take action" he states in relation to the 2008 strike "I was involved in a strike that all of us employees decided to participate in" and in relation to the 2013 strike "everyday everyone was complaining and going to the manager and we were all talking together about doing something like a strike to complain and take action". When specifically asked in the SHEV interview about his role in connection with the strikes the applicant said he did not have a formal role but indicated that he and a few others were able to read so he was able to help in this way and "we would organise with everybody ok we go and strike tomorrow and inform others ...to get together and gather at a particular place at a particular time [sic]".

- The applicant's evidence indicates others who continued on with the 2013 strike after he had left, were not arrested but that instead, their employer attempted to negotiate a deal with them.
- I have found the applicant's claim in relation to the authorities' questioning of his father after the 2013 strike increasingly exaggerated and do not accept plain clothed police officers went to his parents' house twice looking for the applicant, or took his father for questioning about the applicant's whereabouts. For example, initially the applicant said in the arrival interview that officers from the security department told his father the applicant had to return. Then in his visa application and pre-interview submission he said they took his father to the police station and questioned him about the applicant and told him the applicant was in a dangerous position. Then in the SHEV interview the applicant indicated it was plain clothed police officers who had gone to his parents' house and that they had visited twice, not just once, taking his father for questioning the second time. In the circumstances I consider the claim they were trying to establish a link between his father's activities many years prior as a student and the applicant's activities lacking in detail and unsupported and I do not accept it.
- I do not accept the applicant has an outstanding warrant or summons in relation to his involvement in the 2013 strike or otherwise as I find this significant aspect of his claim lacking in detail and unsupported. I note the importance of this detail to his central claim he continues to be wanted by the authorities for his involvement in the strikes and the reason for him fleeing Iran. However, other than briefly mentioning he had an outstanding warrant in his arrival interview the applicant did not include this significant detail in his statement of claims accompanying his visa application or fifty page pre-interview submission. Further, other than stating it related to the 2013 strike he was unable to provide any detail in relation to this, when questioned about it in the SHEV interview. He said this was because he had not personally read it. I do not find this explanation persuasive given the significance of this aspect to his claim and that the evidence before me indicates he is in regular contact with his family in Iran.
- I find the claim the applicant left Iran on a fake passport implausible and unsupported and I do not accept this aspect of his claim. The applicant claims his cousin helped him get a fake passport and that it was issued in the applicant's name, except that the first letter in his first name was changed. The country information before me indicates the authorities at that time were strict on control of documents with one source stating it was not possible to leave on a forged passport.<sup>5</sup> The applicant said in the SHEV interview that he had no problems with authorities when leaving the airport. I also note the applicant's evidence about how he disposed of his fake passport has varied, he has said he threw it in the bin in [Country], then in his visa application he said he gave it to

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<sup>5</sup> Danish Refugee Council, 'Iran: On Conversion to Christianity, Issues concerning Kurds and Post-2009 Election Protestors as well as Legal Issues and Exit Procedures, 1 February 2013, CIS25114.

the smugglers in [Country], in his SHEV interview he said he gave it to [a relative] who was in [Country] with him and when asked why he said [a relative] told him he no longer needed it. On the evidence, including that he had a genuine Iranian passport issued in his name shortly before leaving Iran (a copy of which has been provided), without any problems, and the country information detailed above I consider it more plausible that he left Iran at the Tehran airport on his own genuine passport without being questioned by authorities in connection with an adverse security profile. I note, the country information before me indicates the authorities have imposed travel bans on union leaders in the past, preventing them from leaving Iran.<sup>6</sup> Despite noting that the delegate did not accept in his decision that the applicant left Iran using a fake passport in his submission to the IAA, the applicant has not provided any further details in support of the claim he left using a fake passport.

## **Baha'i**

17. The applicant claims he no longer follows Islam and considers himself to be of the Baha'i faith. He has said he has researched many faiths since being in Australia but befriended some Persians who follow the Baha'i faith in [Australian city 1]. He has attended their offices in [Suburb] and studied the faith for a few years but wants to be sure about the faith before he converts. In his SHEV interview he said he was interested in various faiths including [deleted]. When talking about the faith he said it was "very fitting for the present days", nothing was forced upon you and you were asked to do your own research and decide. They were peaceful and want peace. When asked if he ever joined he said he had not because there were eight books that you have to be well-versed in and so far he had only looked at three and it was too early and he needed to investigate more. He was asked when he last attended the Baha'i office in [Suburb] and he said it was less than a year ago and that because he commutes between [Australian city 1] and [Australian city 2] (where he has opened a [business]) he did not have a lot of time to attend meetings. When asked how the Iranian authorities would know about his Baha'i involvement the applicant said he could not say but that they had spies everywhere. On the evidence the applicant appears to have drifted away from Islam since being in Australia which I find plausible and I am willing to accept he is no longer a practising Muslim. I also accept he befriended some people of Baha'i faith in [Australian city 1] and has studied the faith in the past (but not converted) given the detail and spontaneity of his responses in the SHEV interview. However, I note the applicant has indicated an interest in other faiths as well, and has provided no supporting information such as letter from his Baha'i friends or the Baha'i community attesting to his involvement and based on his own evidence his commitment and active engagement in the faith has been lacking of late. I find the claim he has a genuine and on-going commitment to the Baha'i faith unsupported and I do not accept that he does.
18. I accept the applicant may be identifiable as someone who has sought asylum in Australia and who has been in Australia for some six years.

## **Refugee assessment**

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19. 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

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<sup>6</sup> DFAT, 'DFAT Country Information Report – Iran', 7 June 2018, CIS7B839411226.



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**

20. 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.

21. I accept the applicant is an Ahwazi Arab from Abadan Iran, a national of Iran and that Iran is the receiving country. I accept the applicant was a member of the workers union for a period while in Iran. I also accept he participated in a workers' strike in 2008 and was briefly detained by his employer's security personnel. I accept he participated in a workers' strike in 2013 and that his employer's security personnel may have looked for him his after this but I do not accept the applicant was pursued by the police or other authorities as a perceived leader or otherwise, or that he was of on-going interest to the authorities in connection with this or otherwise when he left Iran in 2013.

22. The applicant fears harm as he claims he will be imputed with anti-regime, pro-Ahwaz separatism political opinions and activities. The country information before me<sup>7</sup> states that since the overthrowing of the former Mohammad Reza Shah Pahlavi, a key Western ally in the region at the time, by religious leaders in 1979 and the establishment of the Islamic Republic, Iran has been an authoritarian theocratic republic with a Shia Islamic political system. The past two decades have seen a fierce rivalry play out between those advocating for reform and those committed to the conservative ideals of the Islamic Republic. Around the time the applicant left Iran the current moderate President, Hassan Rouhani, was elected. However recent reports illustrate the internal rivalry between the religious conservative, who control Iran's most powerful security and military organisation the Islamic Revolutionary Guards Corps and reformists (including the current President) which is on-going, fierce and strategic.<sup>8</sup>

23. I accept the applicant is an Ahwazi Arab. The country information before me<sup>9</sup> indicates that the Iranian authorities are highly sensitive to political activism, particularly when perceived to be a threat to the Islamic State and have targeted ethnic minority activists for arrest and prosecution on national security grounds in the past. In this regard violent protests have

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<sup>7</sup> DFAT, 'DFAT Country Information Report – Iran', 7 June 2018, CIS7B839411226; US Department of State, 'US Department of State Human Rights Report 2018 – Iran', 13 March 2019, 20190315162620.

<sup>8</sup> Noah Annan Atlantic Council, 'Tensions in the Persian Gulf Reflect Power Struggle Inside Iran' 22nd July 2019.

<sup>9</sup> DFAT, 'DFAT Country Information Report - Iran, Department of Foreign Affairs and Trade', 7 June 2018, CIS7B839411226; CCCR CSHR MRGI, 'Rights Denied: Violations against ethnic and religious minorities in Iran', 13 March 2018, CIS7B83941441;

erupted in Ahwaz (the capital of Khuzestan where Arabs primarily live and the applicant's family currently reside) in the past leading to the arrest and deaths of a large number of Ahwazi Arabs, mostly prominent activists. It is reported that Ahwazi journalists, academics and authors may also come to the adverse attention of authorities. Khuzestan is also affected by a number of issues, including poor air and water quality, infrastructure and public services, poverty and an 11.7 percent unemployment for men.

24. I accept the applicant was a member of a workers' union for about a year some 12 years ago but that he had no problems during that period and subsequently participated in two workers' strikes while in Iran in 2008 and 2013, respectively. The country information before me<sup>10</sup> indicates workers are only allowed representation by an Islamic labour council or guild which are often criticised for undermining workers' efforts to maintain independent unions that fight for better working conditions. It has been reported that more than 60 workers at a state owned business were arrested in 2018 for striking. The authorities' responses to these types of activities have sometimes been described as heavy handed and it is reported that workers may be dismissed or arrested for such activities. However it is also reported that private sector workers are legally allowed to conduct "peaceful campaigns" within the workplace and that in 2018 workers' strikes in Iran were numerous and widespread. The country information before me also overwhelmingly indicates that it is key leaders and activists, such as the two prominent labour rights activists who were prevented by a travel ban in 2017 from attending a Conference in Geneva, that face a moderate risk of official discrimination including monitoring, harassment, arrest and travel bans.
25. The country information before me indicates that if an individual is detained by Iranian authorities in the abovementioned circumstances they may be harmed.<sup>11</sup>
26. Based on the country information detailed above, Ahwazi Arab activists and other similarly prominent and/or vocal members of that community and key leaders and activists in relation to independent trade unions may be targeted by the Iranian authorities and harmed. However the applicant does not have any of these profiles. The applicant's incident with the *Basij* as a student and his father's political activities were isolated incidents and a long time ago. His union membership was brief and some 12 year ago, he was not charged and did not play a leadership role in the two strikes and has not indicated he would continue to be involved in such activity. He did not participate in protests in Iran in relation to Arab rights, did not do so while in Australia and has said he has no interest in doing so. I also do not accept he was wanted by the authorities for his involvement in the strike or otherwise when he left Iran in 2013. In these circumstances I consider the risk of him being detained or otherwise harmed by authorities in this regard, or imputed with involvement in the Ahwazi community in [Australian city 1], to be remote. The applicant is from Khuzestan where his family continue to reside and he has not said he would not return there. The country information detailed above indicates the region is marred by pollution, poverty and unemployment and a lack of public services, among other things. The applicant has said he had to move from Abadan to Kerman after losing his job after striking in 2008 but he has not otherwise particularised issues he experiences as Ahwazi, despite opportunities to do so. The applicant is a single male [occupation] of about [number] years of age who held a number of jobs while in Iran including in Khuzestan. He has not indicated he is unable to work. Based on the country information

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<sup>10</sup> DFAT, 'DFAT Country Information Report – Iran', 7 June 2018, CIS7B839411226; US Department of State, 'US Department of State Human Rights Report 2018 – Iran', 13 March 2019, 20190315162620; OHCHR, 'Statement by Mr. Javaid Rehman, Special Rapporteur, on the situation of human rights in the Islamic Republic of Iran at the 40th session of the Human Rights Council - Item 4', 11 March 2019.

<sup>11</sup> OHCHR, 'Iran: Urgent medical treatment needed for detainees with life-threatening conditions – UN experts', 10th July 2019; DFAT, 'DFAT Country Information Report – Iran', 7 June 2018, CIS7B839411226.

above I accept the applicant may be affected by the pollution, lack of infrastructure and public services and may initially find it difficult to find a job but I do not accept this would threaten his capacity to subsist or otherwise amount to serious harm.

27. The applicant fears being executed or otherwise harmed for his involvement in the Baha'i faith in Australia and failure to adhere Shia Islam. DFAT assesses that those of the Baha'i faith face a high risk of official and societal discrimination in Iran.<sup>12</sup> The country information before me<sup>13</sup> indicates that religiously-based charges of apostasy, for leaving or converting from Islam, and blasphemy, may result in death. It is also reported that this is now rare and the charges are no longer an everyday occurrence. Iranian authorities also reportedly have little interest in prosecuting individuals for activities conducted outside Iran including in relation to religion, such as religious conversions. The country information before me indicates that the Iranian authorities overwhelmingly target religious minorities, Muslim converts, those who proselytise in an effort to convert Muslims and those who publicly challenge the prevailing interpretation of Islam for example, by wearing "un-Islamic dress" in public rather than because of personal Muslim practices or lack thereof.<sup>14</sup> I accept the applicant researched the Baha'i faith while in Australia but the applicant has not converted to the faith, and I do not accept he has a genuine and on-going commitment to the faith and because of this, I do not accept he will practice the faith or proselytise in Iran. In these circumstances I consider the risk the authorities will assume he has converted to Baha'i or that his family will disown him as claimed, to be remote. I accept the applicant is a non-practising Shia Muslim. The country information detailed above does not indicate he would be targeted for mere non-observance. Based on the country information detailed above, the applicant's profile, even taking into account his ethnicity, origins and his and his family's past experiences I am not satisfied the applicant faces a real chance of harm on account of his activities in relation to the Baha'i faith or being a non-practising Muslim.
28. I accept the applicant may be identifiable as someone who sought asylum in Australia and has been in Australia for some six years. He fears being arrested and detained on his return and seen as a spy for the West. The country information before me indicates<sup>15</sup> that historically Iran refused to allow the involuntary return of its citizens but in a Memorandum of Understanding between Iran and Australia on 19 March 2018, Iran agreed to accept the return of Iranians, with no legal right to remain in Australia, arriving after this date. In these circumstances I am satisfied the applicant's return would be on a voluntary basis. Those returning on temporary travel documentation will usually only be questioned by authorities if they have already come to official attention, such as for committing a crime in Iran before departing. It is reported that Iranian authorities pay little attention to failed asylum seekers on their return. DFAT is not aware of any legislative or social barriers to voluntary returnees finding work or shelter in Iran or barriers preventing them from returning to their home region. I do not accept the applicant left Iran illegally and consider he left legally on his own genuine passport which has since expired and he would have to return on temporary travel documentation. He is from Khuzestan where his family continue to live and he has not said he would not return there. I do not accept he was wanted by authorities when he left Iran in 2013 or that he has an outstanding warrant or summons. As detailed above, I do not accept he has a profile of

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<sup>12</sup> DFAT, 'DFAT Country Information Report – Iran', 7 June 2018, CIS7B839411226.

<sup>13</sup> DFAT, 'DFAT Country Information Report – Iran', 7 June 2018, CIS7B839411226; US Department of State, '2018 Report on International Religious Freedom: Iran', 21 June 2019.

<sup>14</sup> US Department of State, '2018 Report on International Religious Freedom: Iran', 21 June 2019; DFAT, 'DFAT Country Information Report – Iran', 7 June 2018, CIS7B839411226; CCCR CSHR MRGI, 'Rights Denied: Violations against ethnic and religious minorities in Iran', 13 March 2018, CIS7B83941441; United States Commission on International Religious Freedom, '2019 Annual Report Country Reports: Tier 1 Countries (Recommended for CPC Designation): Iran', April 2019.

<sup>15</sup> DFAT, 'DFAT Country Information Report – Iran', 7 June 2018, CIS7B839411226.

interest to the authorities in connection with this ethnicity, religious views or past union and striking activities in Iran or time in Australia, including in [Australian city 1]. Based on the country information detailed above and the applicant's profile I am not satisfied the applicant faces a real chance of serious harm on account of being a failed asylum seeker who has spent a number of years in [Australian city 1], Australia.

29. I am not satisfied the applicant has a well-founded fear of persecution whether because of his ethnicity, religious views, his and his family's experiences in Iran, his time spent in Australia or on account of being a returning asylum seeker from Australia.

#### **Refugee: conclusion**

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

#### **Complementary protection assessment**

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31. 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**

32. 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.

33. For the reasons already discussed I accept the applicant may be affected by the pollution, lack of infrastructure and public services and may initially find it difficult to find a job 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.

34. 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.<sup>16</sup> For the same reasons, I am also not satisfied the applicant would face a 'real risk' of significant harm.

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<sup>16</sup> *MIAC v SZQRB* [2013] 210 FCR 505.

**Complementary protection: conclusion**

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

**Decision**

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

## Applicable law

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### ***Migration Act 1958***

#### **5 (1) Interpretation**

In this Act, unless the contrary intention appears:

...

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

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

...

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

- (a) severe pain or suffering, whether physical or mental, is intentionally inflicted on a person; or
- (b) pain or suffering, whether physical or mental, is intentionally inflicted on a person so long as, in all the circumstances, the act or omission could reasonably be regarded as cruel or inhuman in nature; but does not include an act or omission:
  - (c) that is not inconsistent with Article 7 of the Covenant; or
  - (d) arising only from, inherent in or incidental to, lawful sanctions that are not inconsistent with the Articles of the Covenant.

...

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

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

...

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

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

...

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

- (a) for the purpose of obtaining from the person or from a third person information or a confession; or
- (b) for the purpose of punishing the person for an act which that person or a third person has committed or is suspected of having committed; or
- (c) for the purpose of intimidating or coercing the person or a third person; or
- (d) for a purpose related to a purpose mentioned in paragraph (a), (b) or (c); or
- (e) for any reason based on discrimination that is inconsistent with the Articles of the Covenant; but does not include an act or omission arising only from, inherent in or incidental to, lawful sanctions that are not inconsistent with the Articles of the Covenant.

...

#### **5H Meaning of refugee**

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

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

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

...

### 5J Meaning of well-founded fear of persecution

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

### 5K Membership of a particular social group consisting of family

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

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

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

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

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

#### **5L Membership of a particular social group other than family**

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

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

#### **5LA Effective protection measures**

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

...

#### **36 Protection visas – criteria provided for by this Act**

...

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



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

...

*Protection obligations*

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

*Determining nationality*

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