



Australian Government
Immigration Assessment Authority

Decision and Reasons

Referred application

IRAN
IAA reference: IAA19/07200

Date and time of decision: 22 October 2019 14:47:00
S McNeill, Reviewer

Decision

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

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

Background to the review

Visa application

1. The referred applicant (the applicant) is a national of Iran. On 1 September 2016 he lodged an application for a Safe Haven Enterprise visa (SHEV application).
2. On 18 September 2019 a delegate of the Minister for Immigration (the delegate) refused to grant the visa.

Information before the IAA

3. I have had regard to the material given by the Secretary under s.473CB of the *Migration Act 1958* (the Act).
4. On 8 October 2019 the IAA received a submission from the applicant's new representative in support of his claims. The submission mostly contains legal argument rather than information, and which I have noted. It also reiterates his claims for protection.
5. The submission includes a quote from a 2014 article by the International Campaign for Human Rights in Iran (ICHR) from Iran's Prosecutor General and Spokesperson for the Iranian Judiciary Gholamhossein Mohseni Ejehi who states all Iranians are allowed to return home but that those who have committed a crime and leave the country (Iran), or if he commits a crime against the state abroad, as soon as he returns he will be arrested.' (A hyperlink to source of this document is included in the footnote.) The representative states the applicant submits the Iranian authorities keep a close eye on activities of Iranians abroad and he has heard from other Iranians here in Australia that the Iranian Embassy in Canberra documents all political activities against the Iranian regime. The applicant did not claim to have been involved in any political activities or protests against the Iranian government in Australia. This claim and country information is new information.
6. The representative has not identified this as new information contrary to the requirements of the IAA Practice Direction for Applicants, Representatives and Authorised Recipients of 17 December 2018. A copy of this was emailed through to the applicant on 24 September 2019. Under the Practice Direction, for new information to be considered it must firstly be identified and then an explanation must be provided in writing as to why firstly, the information could not have been given to the Department before the decision was made, or, secondly, the information is credible personal information which was not previously known and may have affected the consideration of the applicant's claims had it been known. No written explanation addressing the requirements of s.473DD(b) has been provided and none are apparent to me. Given the late timing of this new claim I have significant doubts as to its credibility.
7. The applicant was represented by a different registered migration agent in preparing his SHEV application and at his SHEV interview. The applicant's main claim was that he had converted to Sunni Islam. There was no reference to his involvement in political activities or protests against the Iranian government in Canberra or Australia. Prior to his SHEV interview and during his SHEV interview the applicant was advised that it was his responsibility to put forward all his claims for protection and supporting evidence prior to a decision being. I am satisfied he had the opportunity to raise this claim earlier. Furthermore the details surrounding this claim are lacking in substance, he has not stated when he participated in these political activities. I note this new country information pre-dates the delegate's decision by over five years. There was

substantial country information from reputable sources relied on by the delegate regarding the treatment of returning Iranians who had sought asylum, the majority with a more recent publication date. Taking everything into consideration, I am not satisfied there are exceptional circumstances to justify considering this new information.

8. I have also obtained new country information on the treatment of Ahwazi Arab Sunni converts in Iran that was not before the delegate and which I consider is relevant. This is the UK Home Office Country Policy and Information Note - Iran: Ahwazis and Ahwazi political groups¹ from 11 January 2019.¹ This report is a far more comprehensive and up to date than that relied on by the delegate in the review material. It is also contains information from a wide range of reputable sources. I am satisfied there are exceptional circumstances for considering this new information.

Applicant's claims for protection

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

- He was born [in] Ahwaz, Khuzestan, Iran and is of Arab ethnicity.
- He was a child when he left Iran; it was his father's decision. He only learned the reasons for his father's decision to leave Iran after he arrived in Australia.
- He cannot accept Shia Islam as it is practiced in Iran. He has adopted the Sunni faith.
- In Iran he would be persecuted because of this.

Refugee assessment

10. 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

11. 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

¹ 'Country Policy and Information Note - Iran: Ahwazis and Ahwazi political groups', UK Home Office, 11 January 2019, 20190117152034.

- 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.
12. There is no issue as to the nationality of the applicant. I accept that the applicant is a national of Iran and that Iran is the receiving country for the purpose of this review.
 13. I am satisfied the applicant is of Ahwazi ethnicity who originates from Ahwaz in Khuzestan. The applicant has been consistent in this regard (entry interview of 4 August 2013, SHEV application and interview) and his documentary evidence including his birth certificate indicates this. The applicant also spoke in Arabic at his SHEV interview on 2 July 2019.
 14. The applicant claimed to have no knowledge of the reasons his father decided to leave Iran until after his arrival in Australia. He claimed that since arriving in Australia he has rejected Shia Islam and adopted the Sunni faith.
 15. At his SHEV interview the applicant stated he was currently working full time in a [company] and also had a second job working in a [shop]. He left school in Australia at the age of [age] after completing years 11 and 12 in [Australia]. He was living with his parents and [sibling] and had done so always whilst in Australia. At home he spoke Arabic with his family and had done so in Iran but at school Persian was obligatory.
 16. The applicant stated that when they departed Iran his father told them they were going on holiday. In Iran the family had lived with his grandfather and two married [uncles] and their families in the same house with approximately [number] people. In Iran his father [worked]. The delegate noted he had lived in Australia for six years and asked whether his father had told him why they had left Iran. The applicant stated a little bit, his father had mentioned he had converted to Sunni Islam and in Iran they didn't like Sunnis. Asked whether his father or family members had any problems with the authorities or police in Iran, the applicant said he was aware of any problems.
 17. Asked when he spoke to family members in Iran whether they talked about problems over there, the applicant said what he heard now was the Iranian government put lots of pressure on the people from Ahwaz. The economic situation in Iran was very tight and inflation was high. His family in Iran managed but it was very difficult. They didn't tell him whether they had problems with the police.
 18. The applicant stated he didn't remember experiencing any discrimination at school when he was in Ahwaz. The teaching and learning was conducted in Farsi and there were no lessons in Arabic. At school the students were a mixture of Arabs and Persians and his neighbourhood was majority Arabs. The applicant confirmed he was an Ahwazi Arab; he didn't have much information about Ahwazi Arabs only that the Iranian people invaded Ahwaz in 1925. He didn't know if any of his family members were involved in demonstrations or political action in Iran in regards to Ahwazi Arabs and he was not a member of any Ahwazi political or cultural organisation in Iran because he was little. He had not been involved in any Ahwazi groups in Australia because he was busy with his study and work.
 19. I have accepted the applicant is of Ahwazi Arab ethnicity. Estimates vary as to the numbers of Ahwazi Arabs in Iran. According to DFAT between one and half and three million Arabs live in Iran, based predominantly in the south-western provinces of Khuzestan (which borders Iraq),

Bushehr, and Hormozgan.² The United Nations and People Organisation (UNPO) estimate there are between five to seven million Ahwazi Arabs and they are one of the largest minority groups in Iran.³ DFAT assesses that, although the experience of different groups is not uniform, both official and societal discrimination against ethnic minorities does occur. Ethnic minorities report political and socioeconomic discrimination, particularly in relation to economic aid, business licenses, university admissions, job opportunities, permission to publish books, and housing and land rights. Human rights organisations claim that the government's application of the death penalty disproportionately affects ethnic minorities.⁴

20. Like other ethnic minorities, the Arab community has long expressed concerns about economic marginalisation, and discrimination in education, employment, politics, and culture despite Article 19 of the Iranian Constitution which provides that all people of Iran, whatever the ethnic group or tribe they belong to enjoy equal rights. Whilst the south western provinces have rich gas and oil reserves and significant agricultural, ship building, manufacturing, and petrochemical industries, Arab community representatives complain that Iranian Arabs are systematically excluded from employment in these industries and from opportunities to work in the local government. The residents of the south-western provinces suffer from high levels of air and water pollution.⁵ Ahwaz has been described as the most polluted city in the world by the World Health Organisation (WHO).⁶ Khuzestan is characterised by high pollution which makes the local inhabitants' daily life difficult; the water is undrinkable there is a high prevalence of electricity shortages and Ahwazi Arabs do not enjoy the benefits of the oil industry in the area. There is a kind of disintegration in the area.⁷ Despite Khuzestan being the site of 90 per cent of Iran's oil wealth, its natural resources are diverted to other parts of Iran; it has the highest rates of poverty and has been deliberately neglected and underdeveloped by the government. A very large number of Ahwazi Arabs live in informal housing settlements, often as a result of displacement, lacking functioning sewage systems, electricity, clinics, schools and other basic services.⁸
21. I accept that Ahwazi Arabs are subject to discrimination. The applicant departed Iran at [age]. Other than note it was obligatory for him to be taught in Persian the applicant could not articulate any specific discrimination he had experienced in Iran. I note he lived in a share house with his extended family and that his father was gainfully [employed]. The applicant attended school up until his departure. His relatives in Iran have not come to the adverse attention of the authorities. I accept his relatives are enduring a tight economic situation but this is across all of Iran.⁹ I note DFAT has assessed that most Arab Iranians do not come to the attention of authorities and are subject to only low levels of attention by the state. However, this risk increases dramatically for Arabs who attempt to public assert cultural or political rights. The risk of attracting the interest of authorities is dependent upon being perceived as a

² Department of Foreign Affairs and Trade (DFAT), "DFAT Country Information Report - Iran", 7 June 2018, CIS7B839411226, 3.7.

³ 'Country Policy and Information Note - Iran: Ahwazis and Ahwazi political groups', UK Home Office, 11 January 2019, 20190117152034, [3.3.1], p. 10.

⁴ Department of Foreign Affairs and Trade (DFAT), "DFAT Country Information Report - Iran", 7 June 2018, CIS7B839411226, 3.1-3.3.

⁵ Ibid 3.1 and 3.7.

⁶ 'The Struggle for Arabistan Tensions and Militancy in Iran's Khuzestan Province', Jamestown Foundation, 23 January 2014, CX317491.

⁷ Issues concerning persons of ethnic minorities, Kurds and Ahwazi Arabs', Danish Immigration Service and Danish Refugee Council, 01 February 2018, CIS7B83941872, p.15.

⁸ 'Country Policy and Information Note - Iran: Ahwazis and Ahwazi political groups', UK Home Office, 11 January 2019, 20190117152034, [5.2.5], p. 15 – 16.

⁹ Department of Foreign Affairs and Trade (DFAT), "DFAT Country Information Report - Iran", 7 June 2018, CIS7B839411226, 2.10-2.12.

threat to the Islamic Republic's constitutional underpinnings or territorial integrity.¹⁰ The applicant was not politically active in Iran and the evidence before me indicates he has not been politically active or involved in Ahwazi groups in Australia. Whilst I accept the applicant is sympathetic to the Ahwazi cause, I find that he has been more focused on his studies and work in Australia. I am not satisfied the applicant is inclined towards political or cultural activism. Based on the applicant's profile and the country information before me, whilst I accept the applicant may be subject to discrimination as an Ahwazi Arab I am not satisfied there is a real chance the applicant will be subject to serious harm on his return to Iran on account of his Ahwazi Arab ethnicity.

22. The applicant claimed to have converted to Sunni Islam and feared harm on this basis. At his SHEV interview the applicant stated in Australia he attended Eid celebrations with [friends]; people came to their house or they went to theirs. He had observed Ramadan and fasted this year. They had celebrated the Eid al Fitr celebrations at their house. He was too busy to take part in fund raising for the Arab cause in Australia. In Iran he had not been interested in a religious path; he attended mosque about once a year. He did not pray. He was not aware of the different Muslim sects in Iran but when they came to Australia his father told him that being a Sunni was better.
23. The applicant again stated he was not religious in Iran. Asked what had made him become religious now, the applicant said he saw his parents pray. Asked what the Sunni religion meant to him, the applicant said from what he heard from his father the Sunni denomination was better. That was all. He attended mosque [maybe] once a year; the last time he attended was after the incident in New Zealand when people were killed at a mosque. He attended just to pray. He observed Ramadan. He had not told his family in Iran he was a Sunni. Asked whether he could explain the fundamental differences between Shia and Sunni, the applicant said he didn't know. Again he stated his father had said the Sunni denomination was better but he himself was not religious as he was busy with his studies and work.
24. Asked what he had studied about the Sunni sect of Islam, the applicant stated he did not. Asked if he knew any differences between the two sects such as the way they prayed or when, the applicant said the only thing he knew was before praying Sunnis needed to do their ablutions but Shias did not. He did not know the name of the spiritual leader in [his city]. Asked when he knew his beliefs had changed, the applicant stated he was not religious anyway. Asked about what branch of Islam his family in Iran were at the moment, the applicant said he did not know and they didn't talk about it.
25. The applicant stated he had [social media] but he did not write about anything to show his support or beliefs in the Sunni religion and he did not write any pro Ahwazi comments. Asked who apart from his family members knew he was Sunni, the applicant said he didn't know. Asked why he feared returning to Iran, the applicant said whatever happened to his father would happen to him; he would be killed or detained because Iranians don't like Sunnis.
26. At the end of his interview the applicant's former representative stated the applicant was very busy working, his parents weren't working, his [sibling] was at school and he didn't have time to think about anything else. Previously he had been studying [but] had given it up for his second job and had no time for anything else.
27. The applicant is currently [age] years old and arrived in Australia just after turning [a certain age]. I accept that prior to departing Iran he was not aware of his father's reasons for departing

¹⁰ DFAT, "DFAT Country Information Report Iran", 21 April 2016, CIS38A8012677, 3.13 and 3.19.

Iran. I find the applicant was not overtly religious in Iran and attended mosque approximately once a year. I accept the applicant observes Ramadan. I accept the applicant has converted to the Sunni sect of Islam like his father. Country information indicates there is a trend of Arab conversion to Sunni Islam and that it is increasingly popular among young Ahwazis.¹¹

28. I find the applicant demonstrated a very limited understanding of his conversion other than his father had said it was better. Other than state how differently Sunnis and Shias prayed I do not think the applicant has spent much time considering the significance of his conversion or that he is interested in doing so giving his lack of religiosity. I do not consider religion to be a central factor in his life. Whilst I acknowledge the applicant has been busy with his studies and work, I consider if he were truly interested in the practise of Sunni Islam or Islam in general he would make time to regularly attend mosque and learn more about the Sunni sect. Nevertheless I accept the applicant identifies as a Sunni Muslim.
29. In Iran, 98 per cent of Iranians are Muslim - Shia Islam is the official religion and 90 to 95 per cent of the population is Shia and only approximately five to 10 per cent are Sunni.¹² Approximately 70 per cent of Ahwazi Arabs are Shia Muslims and 25 per cent are Sunni.¹³ Iran is a theocracy and with the exception of the Holy See, mixes religion and state more completely than any other country in the world. Article 4 of the Constitution requires that all of the country's laws and regulations be based on Shi'a Islamic principles. In practice, government policy and legislation heavily favours the majority Shia population, leaving to pervasive structural discrimination against non-Shia Muslims and religious minorities. The Ministry of Culture and Islamic Guidance, and the Ministry of Intelligence and Security monitor their religious activities.¹⁴ Although Sunni Muslims are provided 'full respect' and free religious practice by the Iranian constitution,¹⁵ Sunnis report experiencing official discrimination.¹⁶ Other reports indicate Sunni Arabs are not allowed to practice their faith publically or construct Sunni mosques.¹⁷ Authorities also periodically close Sunni mosques or prevent Sunnis from gathering for congregational prayers. In August 2017, security forces beat and detained 13 Arabs for performing a Sunni congregational prayer in public. The following month in September 2017 more than 25 Arabs were detained during Eid-al-Adha to prevent them from organising marches and celebrations.¹⁸
30. As already noted there is a trend of Arab conversion to Sunni Islam. The Danish Immigration Service Report of 2018 suggests Shiite Ahwazis are becoming Sunni and in this way getting closer to Saudi-Wahhabism. They do not feel represented in the wider Iranian society and the Iranian government is concerned about this development.¹⁹ The perceived crackdown on the Arab identity of the region is leading a growing number of Ahwazi youth to switch to the Sunni

¹¹ 'The Struggle for Arabistan Tensions and Militancy in Iran's Khuzestan Province', Jamestown Foundation, 23 January 2014, CX317491; 'Rights Denied: Violations against ethnic and religious minorities in Iran', Ceasefire Centre for Civilian Rights, Minority Rights Group International, Centre for Supporters of Human Rights, 13 March 2018, CIS7B83941441, p.24; 'Shiites on the rise in Sunni Gaza, Sunnis on the rise in Shiite Iran', Al Arabiya (TV), 14 April 2011, CX317492.

¹² DFAT, "DFAT Country Information Report - Iran", 7 June 2018, CIS7B839411226, 3.17; DFAT, "DFAT Country Information Report Iran", 21 April 2016, CIS38A8012677, 2.7.

¹³ 'Country Policy and Information Note - Iran: Ahwazis and Ahwazi political groups', UK Home Office, 11 January 2019, 20190117152034, [3.3], p.12.

¹⁴ DFAT, "DFAT Country Information Report - Iran", 7 June 2018, CIS7B839411226, 3.18.

¹⁵ DFAT, "DFAT Country Information Report Iran", 21 April 2016, CIS38A8012677, 3.30

¹⁶ Ibid 3.20.

¹⁷ 'Country Policy and Information Note - Iran: Ahwazis and Ahwazi political groups', UK Home Office, 11 January 2019, 20190117152034, [5.1.3], p.14.

¹⁸ 'Rights Denied: Violations against ethnic and religious minorities in Iran', Ceasefire Centre for Civilian Rights, Minority Rights Group International, Centre for Supporters of Human Rights, 13 March 2018, CIS7B83941441, p.24.

¹⁹ Issues concerning persons of ethnic minorities, Kurds and Ahwazi Arabs ', Danish Immigration Service and Danish Refugee Council, 01 February 2018, CIS7B83941872, p. 29.

branch of the faith, which some of them view is closer to their Arab roots. Those Ahwazis who are converting to Sunni Islam may be giving the authorities another cause to land them in prison, even though there is no official law that bans changing your sect or religion.²⁰ In 2010 Iranian President Mahmoud Ahmadinejad in a visit to Khuzestan hinted to the quick spread of the Sunni doctrine among the Arabs in the province. Iranian Cleric Mohammad Jawad Adel also warned against the notable rise of Sunnis in Iran, especially on the border areas, describing it as a “very serious issue” and urged the Iranian authorities to strongly confront what he called the “Sunni missionary”.²¹

31. Country information before me indicates the Iranian authorities arrest and detain Shia Muslims who have converted to Sunni Islam. In February 2014, more than 20 Sunni converts were arrested at a Qur’an and Arabic language study group in Ahwaz city. In July 2014 10 Sunni converts were arrested for either preaching or holding congregational evening prayers during Ramadan. In November 2014 16 converts were arrested during a Qur’an class were arrested.²² In December 2014 two Ahwazi Arabs active in preaching Sunni beliefs after converting from Shia Islam were charged with ‘causing corruption on earth’, a charge which carries a possible death penalty in Iran.²³ Again in February 2014, nine Ahwazi Arab men were arrested in Qal’eh Chan’an in Khuzestan for their religious activism after they left their Shia beliefs and converted to Sunni Islam.²⁴
32. The above country information indicates that Sunni converts who are Ahwazi Arabs may be at risk of harm from government authorities if they are open about their conversion to the Sunni faith and they participate in Sunni rituals, prayer groups, and gatherings or actively promulgate or preach the Sunni faith. The applicant does not fit this profile. I accept there is significant discrimination and harassment of Sunnis but given approximately 25 per cent of an estimated two to seven million Ahwazi Arabs in Iran are Sunni, that the applicant is not open about his faith, nor does he actively participate in regular prayer sessions or Sunni rituals, nor does he promote or preach Sunni Islam, I am not satisfied on his return to Iran he would come to the attention of the authorities.
33. I am also not satisfied the applicant would avoid practising or promoting his Sunni faith because of any fear of persecution rather I consider the applicant is not that way inclined given he is not religious and is apathetic to religion in general. While I accept that conversion to Sunni Islam poses a risk of harm in Iran, I am satisfied that the risk is remote and not substantial, particularly in the applicant’s context. Given the applicant is not religious, I am not satisfied the applicant as an Ahwazi Arab will face a real chance of serious harm for reasons of his conversion to Sunni Islam on his return to Iran now or in the reasonably foreseeable future.
34. Although I have accepted the applicant has converted to the Sunni sect of Islam, I like the delegate also consider the applicant is not a regular attendee at mosque or that he is a particularly strong adherent to Islam. Country information indicates that abstaining from Muslim rituals such as not attending mosque would not necessarily arouse any suspicion as

²⁰ 'Country Policy and Information Note - Iran: Ahwazis and Ahwazi political groups', UK Home Office, 11 January 2019, 20190117152034,

²¹ 'Shiites on the rise in Sunni Gaza, Sunnis on the rise in Shiite Iran', Al Arabiya (TV), 14 April 2011, CX317492.

²² 'Rights Denied: Violations against ethnic and religious minorities in Iran', Ceasefire Centre for Civilian Rights, Minority Rights Group International, Centre for Supporters of Human Rights, 13 March 2018, CIS7B83941441, p.24; 'Another Sunni convert is arrested in Ahwaz, southwestern Iran', Human Rights Activists News Agency (HRANA), 14 March 2014, CX318957.

²³ 'Two Sunni converts may face death penalty in Iran after being charged with ‘causing corruption on earth’', International Campaign for Sunni Prisoners in Iran, 12 December 2014, CX1B9ECAB9070.

²⁴ 'Iran: Nine Ahwazi Arab men arrested after converting to Sunni Islam', International Campaign for Sunni Prisoners in Iran, 03 February 2014, CX1B9ECAB9077.

many in Iran do not regularly attend mosque.²⁵ The level of mosque attendance has decreased significantly during the post-revolution period.²⁶ There is a great diversity of attitudes and treatments of persons who hold non-mainstream religious views, depending on level of education and other factors. In general, ordinary Iranian citizens seem to be fairly tolerant, and, when left without interference from authorities, more curious about digressing religious belief and practice than condemning. Many Iranians also have a secular attitude, rejecting all religions, Islam included. At the same time, a growing number of people appear to be looking for an alternative to the official version of Islam and many are interested in new religions, Buddhism or Christian messages. The general impression is that Iranian citizens appear to be ashamed and embarrassed of religious discrimination and persecution.²⁷ Islam plays a smaller role in public life today than it did a decade ago and the power of the clerics has waned.²⁸ Non-practising Muslims form a large part of the population of Iran's cities. They lead normal daily lives and are rarely called upon to answer direct questions about Muslim religious practice and are rarely pressured to observe Muslim precepts. Abstaining from Muslim rituals such as not attending mosque would not necessarily arouse any suspicion as many in Iran do not regularly attend mosques.²⁹ Given the above country information and the applicant's indifference towards religion in general, despite being a Sunni convert or a Ahwazi Arab Sunni convert, I am not satisfied on the evidence before me that the applicant faces a real chance of any harm if he were to seldom attend mosque and or his low level practise of Sunni Islam in general.

35. The applicant has consistently claimed that he departed Iran on genuine Iranian passport. I accept the applicant no longer has a valid Iranian passport. I accept the applicant has spent over almost six years in Australia, a western country and that he has sought asylum. Based on the country information set out in the delegate's decision I accept that the applicant may be seen as a failed asylum seeker returning from a western country. I note the applicant was not of any adverse interest to the authorities when he departed Iran. There is nothing before me to indicate that he has been involved in any activities since arriving in Australia that have brought him to the adverse attention of the Iranian authorities.
36. I am conscious of the various reports before the delegate which identify cases in which failed asylum seekers have been arrested on their return to Iran.³⁰ However, those reports generally reference cases involving individuals such as political protestors, students, journalists or political campaign workers with pre-existing profiles in Iran and/or profiles abroad indicating involvement in activism against the Iranian regime. I do not consider the applicant to have such a profile.

²⁵ 'Update on the Situation for Christian Converts in Iran', Danish Immigration Service, 01 June 2014, CIS28931, p. 12.

²⁶ The Revival of Nationalism and Secularism in Modern Iran', Pejman Abdolmohammadi, LSE Middle East Centre, 01 November 2015, CISEC96CF14725, p.11.

²⁷ 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, p.15.

²⁸ Ibid p.30.

²⁹ Ibid p. 31.

³⁰ "Iranian poet/activist arrested at Tehran airport", Radio Zamaneh (Netherlands), 8 January 2016, CX6A26A6E140; International Campaign for Human Rights in Iran, "New Video: Iranian Expats Face Arrest upon Return to their Homeland", 23 April 2015, CXBD6A0DE5203; Amnesty International, "Amnesty International - Urgent Action UA 125/11 Student activists held in Iran", 6 May 2011, CX264288; Committee to Protect Journalists (CPJ), New York, "Rouhani has yet to deliver on press reforms in Iran", 13 March 2014, CX318970; "Mousavi's campaign worker arrested upon return to Iran", Radio Zamaneh, 16 February 2014, CX318168; "Jailing of returning journalists called part of anti-Rohani plan", Radio Zamaneh, 31 July 2014, CX324017; Amnesty International, "'We are ordered to crush you' Expanding Repression of Dissent in Iran", 1 February 2012, CIS22610; Iran Human Rights, "IRAN The Kurdish asylum seeker Rahim Rostami, charged with 'actions against the nation's security', released on bail", 19 June 2011, CX274950.

37. The reports before me, including DFAT reports dating back to 2007, do not indicate that returnees are harmed for reason of having sought asylum abroad.³¹ As noted above most recently in its 2018 report DFAT stated that according to international observers, Iranian authorities pay little attention to failed asylum seekers on their return to Iran. Iranians have left the country in large numbers since the 1979 revolution, and authorities accept that many will seek to live and work overseas for economic reasons. International observers report that Iranian authorities have little interest in prosecuting failed asylum seekers for activities conducted outside Iran, including in relation to protection claims. This includes posting social media comments critical of the government – heavy internet filtering means most Iranians will never see them and Christian converts.³²
38. Iran currently does not accept involuntary deportees except returnees who arrived in Australia after March 2018.³³ As such, if the applicant were to return Iran, I consider it would be as a voluntary returnee. From DFAT's anecdotal observation at airports, a voluntary returnee does not attract much interest from authorities amongst the large regular international movements of Iranians. Returnees will generally move quickly through airports without official interests. DFAT notes returnees even if traveling on a temporary travel document will only be questioned if they have done something to attract the attention of the authorities such as committing a crime in Iran before departing.³⁴
39. On the evidence before me I am not satisfied the applicant, if he returns to Iran, would attract the adverse attention of the Iranian authorities or is otherwise of interest to the authorities in Iran. I am not satisfied he has done anything to attract the attention of the authorities either in Iran or Australia. I am not satisfied his right to free movement will be limited or that he will be prevented from obtaining a new Iranian passport or that he will be prevented from again leaving the country. I am not satisfied he faces a real chance of any harm as a returning asylum seeker from a western country.
40. I am not satisfied that the applicant has a well-founded fear of persecution on any of these bases.

Refugee: conclusion

41. 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

42. 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.

³¹ DFAT, "CIR No.07/51, "Return of failed asylum seekers", 14 June 2007, CX179204; DFAT, "Response to CIS Request No. IRN11072; Return of failed asylum seekers", 22 December 2010, CX255525; DFAT, "Response to CIS Request No. IRN11738: Iran – Article on returned asylum seekers and people exiting Iran with false documents, 19 April 2011, CX263145; DFAT, "DFAT Country Information Report –Iran", 29 November 2013, CIS26780; DFAT, "DFAT Country Information Report - Iran", 7 June 2018, CIS7B839411226.

³² DFAT, "DFAT Country Information Report - Iran", 7 June 2018, CIS7B839411226, 5.25.

³³ Ibid 5.23.

³⁴ Ibid 5.24.

Real risk of significant harm

43. 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.

44. I accept the applicant is of Ahwazi Arab ethnicity who has originated from Ahwaz, Khuzestan in Iran. I have also concluded the applicant does not face a real chance of serious harm on the basis of his ethnicity. I am also not satisfied he faces a real risk of significant harm on this basis. There is not a real risk he would be subjected to any form of significant harm including cruel, inhuman treatment or degrading treatment or punishment or torture, arbitrary deprivation of life or the death penalty.

45. I accept the applicant is an Ahwazi Arab who has converted to Sunni Islam whilst in Australia but he does not regularly attend mosque and he is not a particularly strong adherent to Sunni faith nor does he seek to promulgate or preach Sunni Islam to others. I am satisfied there is only an extremely remote risk that he would come to the adverse attention of the authorities in Iran for reasons of his conversion to Sunni Islam and there is no real risk he will suffer significant harm for reasons of religion or his low level practise of Islam in general.

46. I accept the applicant as an asylum seeker will be returning to Iran without a passport. I have found the applicant does not face a real chance of any harm on these bases. Given real chance and real risk involve the same standard, I am not satisfied she or her son face a real risk of harm on these bases.

47. For the reasons set out above, on the basis of the same country information and taking in to account his own personal circumstances, I am satisfied there is no real risk that the applicant would suffer significant harm in Iran. Overall I am not satisfied there is a real risk he would be subjected to any form of significant harm including cruel, inhuman treatment or degrading treatment or punishment or torture, arbitrary deprivation of life or the death penalty.

Complementary protection: conclusion

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

Decision

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

Applicable law

Migration Act 1958

5 (1) Interpretation

In this Act, unless the contrary intention appears:

...

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

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

...

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

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

...

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

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

...

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

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

...

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

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

...

5H Meaning of refugee

- (1) For the purposes of the application of this Act and the regulations to a particular person in Australia, the person is a refugee if the person:
 - (a) in a case where the person has a nationality—is outside the country of his or her nationality and, owing to a well-founded fear of persecution, is unable or unwilling to avail himself or herself of the protection of that country; or

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

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

...

5J Meaning of well-founded fear of persecution

- (1) For the purposes of the application of this Act and the regulations to a particular person, the person has a well-founded fear of persecution if:
- the person fears being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion; and
 - there is a real chance that, if the person returned to the receiving country, the person would be persecuted for one or more of the reasons mentioned in paragraph (a); and
 - the real chance of persecution relates to all areas of a receiving country.

Note: For membership of a particular social group, see sections 5K and 5L.

- (2) A person does not have a well-founded fear of persecution if effective protection measures are available to the person in a receiving country.

Note: For effective protection measures, see section 5LA.

- (3) A person does not have a well-founded fear of persecution if the person could take reasonable steps to modify his or her behaviour so as to avoid a real chance of persecution in a receiving country, other than a modification that would:

- conflict with a characteristic that is fundamental to the person's identity or conscience; or
- conceal an innate or immutable characteristic of the person; or
- without limiting paragraph (a) or (b), require the person to do any of the following:
 - alter his or her religious beliefs, including by renouncing a religious conversion, or conceal his or her true religious beliefs, or cease to be involved in the practice of his or her faith;
 - conceal his or her true race, ethnicity, nationality or country of origin;
 - alter his or her political beliefs or conceal his or her true political beliefs;
 - conceal a physical, psychological or intellectual disability;
 - enter into or remain in a marriage to which that person is opposed, or accept the forced marriage of a child;
 - alter his or her sexual orientation or gender identity or conceal his or her true sexual orientation, gender identity or intersex status.

- (4) If a person fears persecution for one or more of the reasons mentioned in paragraph (1)(a):

- that reason must be the essential and significant reason, or those reasons must be the essential and significant reasons, for the persecution; and
- the persecution must involve serious harm to the person; and
- the persecution must involve systematic and discriminatory conduct.

- (5) Without limiting what is serious harm for the purposes of paragraph (4)(b), the following are instances of *serious harm* for the purposes of that paragraph:

- a threat to the person's life or liberty;
- significant physical harassment of the person;
- significant physical ill-treatment of the person;
- significant economic hardship that threatens the person's capacity to subsist;
- denial of access to basic services, where the denial threatens the person's capacity to subsist;
- denial of capacity to earn a livelihood of any kind, where the denial threatens the person's capacity to subsist.

- (6) In determining whether the person has a *well-founded fear of persecution* for one or more of the reasons mentioned in paragraph (1)(a), any conduct engaged in by the person in Australia is to be disregarded unless the person satisfies the Minister that the person engaged in the conduct otherwise than for the purpose of strengthening the person's claim to be a refugee.

5K Membership of a particular social group consisting of family

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

- (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.