



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

**Decision and Reasons**

**Referred application**

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IRAN  
IAA reference: IAA19/07220

Date and time of decision: 30 October 2019 10:28:00  
R Mikhail, 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 referred applicant (the applicant) claims to be a citizen of Iran. On 30 January 2017 he lodged an application for a Temporary Protection Visa (application for protection). On 24 September 2019 a delegate of the Minister for Immigration (the delegate) refused the grant of the visa.

### Information before the IAA

2. I have had regard to the material given by the Secretary under s.473CB of the *Migration Act 1958* (the Act) (review material).
3. No further information has been obtained or received.

### Applicant's claims for protection

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4. The applicant's claims can be summarised as follows:
  - He is a citizen of Iran.
  - He grew up in a Muslim family but now considers himself an atheist and has shared his atheist beliefs on [social media] in Iran and Australia.
  - On one occasion he was detained by the Iranian authorities and accused of [an offence] when he was talking to his girlfriend on the street.
  - In Iran he had a dispute with his former employer over religion and his employer accused him of being an apostate. His former employer, who is well connected in the Iranian government, took the applicant's work computer which had anti-Islamic images on it and has prepared a case against him.
  - In Australia, the applicant read about Christianity and attended church but could not relate to it.
  - He is in a de-facto relationship with a [Country 1] citizen in Australia and they have a child together and he fears harm in Iran due to their relationship. His partner, who was born in [Country 2], has also renounced Islam.

### Refugee assessment

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5. 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

6. 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.
7. The applicant has provided a number of identity documents from Iran that confirm his claimed identity and which I accept. I am satisfied that Iran is the receiving country for the purpose of this assessment.

#### **Claims in relation to former workplace**

8. In his application for protection, the applicant claimed that he worked for a company called [Company 1]) which was owned by “[Mr A]”. Mr [A] was a religious person and had close ties to the office of the Supreme Leader of Iran. One day they were chatting about Islam and they disagreed on some issues. Mr [A] became angry and accused the applicant of being a non-believer and demanded that the applicant show him proof of his point of view. He asked if the applicant believed in God and the applicant said no and then Mr [A] slapped him in the face and called him a non-believer and said he would kill him and accused him of being an apostate. The applicant left the office straightaway and did not return as he was too scared. The next day Mr [A] and their [senior colleague] checked all his files and pictures that he had stored in his work computer and they found lots of pictures that made fun of the Koran and Islam. His colleague told the applicant that Mr [A] collected all that information and will use it against him. He was not safe anymore in his home city. For a while he was too scared to leave the house and was scared Mr [A] would find him and was living in fear until one day he applied for a job in [City 1] and got accepted. On the third day of his new work, the owner of the company told him that he had found out some things about the applicant from his previous job and did not want him to work there and asked him to leave right away. He felt hopeless and decided to escape Iran to save his life. Mr [A] is still looking for him and has accused him of being an infidel and knows that he is in Australia. Mr [A] will be notified of his return if he goes back to Iran as he knows many people in offices in Iran. During the protection visa interview he further noted that after leaving [Company 1] he received a call from the company’s lawyer who said that Mr [A] was preparing a file against him and the best thing for him to do would be to leave the country.
9. Although the applicant has not provided documentary evidence of his work for [Company 1] I have taken into account the level of detail he provided during the protection visa interview about this company which he appeared to provide in a natural and convincing manner. I accept that he worked for this company as a designer.
10. The applicant provided photos allegedly of Mr [A] with Ministers of the Iranian government. It is not evident where these photos came from nor is there any corroboration that they are photos of Mr [A] and government officials. However, as I have accepted that the applicant

worked for this company I accept the photos are as alleged by the applicant and that Mr [A] owned the [Company 1] and had links to Iranian government officials.

11. Nonetheless, I have concerns with the credibility of the remainder of the applicant's claims in relation to the alleged argument he had with Mr [A] about Islam and the repercussions of that.
12. Although the applicant claims Mr [A] took his computer the day after he left the company and claims he was very scared after this incident and was too afraid to leave the house, he claims that he then went and worked for another company which was only 10km from [Company 1]. This does not suggest someone who is in fear for themselves. Furthermore, during the protection visa interview he claimed that Mr [A] only asked to open the applicant's computer when he found out the applicant had gone to work for another company which does not reflect his alleged anger over their argument but rather the fact the applicant was now working for another company. The applicant claims that, after working for a few days in the new company, his new employer told him that he had found out that he had worked for Mr [A] and he could not afford to be on Mr [A]'s "bad side" and told the applicant he could not work there anymore. I do not find this corroborative of the applicant's claim that Mr [A] is pursuing a case against him over their argument. During the protection visa interview, the applicant claimed that he then stayed with a cousin in [Location 1] as it was not safe for him to return home. Again, I find this difficult to believe given he had just taken a new job only 10km away from [Company 1] and Mr [A] had been aware of the applicant's new employment and no harm had come to him.
13. During the protection visa interview the applicant claimed that, a couple months after coming to Australia, he contacted an old colleague at [Company 1] who told the applicant that his computer was still next to Mr [A]'s desk and that Mr [A] knew that he was in Australia and had said that he will get the applicant back. Again, this is not evidence of the applicant's claim that Mr [A] has pursued him due to his religious opinion. The applicant claims that he does not have the phone number of the company lawyer to see if something is still going on and does not know if Mr [A] had done anything with the file he was preparing against the applicant. However, the applicant has claimed that he has been in touch with former colleagues from [Company 1] after arriving in Australia who gave him updates about the situation so I am not convinced of this explanation. There is no other credible evidence before me that Mr [A] has done anything to pursue the applicant for apostasy or any other reason since he left [Company 1].
14. As evidence in support of his claims, the applicant provided screenshots from his [social media] page of posts that he shared in 2012 which have not been translated. The applicant explained that one image was of a former version of the Iranian flag which is no longer accepted by the Islamic Republic and what appears to be a derogatory image of an Imam. Having considered this and the nature of the other images in the posts, I am willing to accept these posts are critical of religion and the Iranian regime. I accept that he shared these posts in 2012 but there is no other evidence before me to corroborate the fact that he did so whilst employed with the [Company 1] as he has not provided any supporting documentary evidence of when he started and ended his employment there.
15. During the applicant's Irregular Maritime Arrival and Entry Interview held in May 2013 (entry interview), when asked why he left Iran, he referred to having an argument about religion with Mr [A] and being threatened by him but he did not claim he had been physically slapped by Mr [A] or that Mr [A] had accessed his computer or that the applicant moved to another area to avoid harm. When this concern was put to the applicant for comment by the delegate, he said that he felt fearful of the interpreter at his entry interview who had a beard and reminded him

of the Iranian authorities and that is why he was scared to talk to him and did not say everything. Further, when he did raise his claims apparently the interpreter's face was not happy and he apparently asked him several times "What else? What else?... Is that it? Is that it?" I do not find this explanation convincing as the applicant had already revealed claims about the dispute over Islam he had with his boss and omitting the information about his computer being taken and his relocation would have made little difference in relation to his alleged fear of the interpreter. I am also not convinced the applicant would be in fear of saying anything further about his claims because the interpreter had frowned and asked him if he had anything else to say.

16. In his application for protection the applicant also claimed that he was very scared "they" will find him any day and, when in Iran, stopped contact with his family and friends and became depressed and did not leave the house and his anxiety was so bad that he visited a doctor who referred him to see a psychiatrist. The applicant has not provided any supporting evidence of the alleged mental health issues he was suffering in Iran due to his fear for his safety.
17. On the evidence before me, I accept that the applicant worked for [Company 1] and for Mr [A] but I do not accept that they had a heated argument about Islam and do not accept that Mr [A] slapped or threatened the applicant. I accept that the applicant left this company but not for the reasons he has claimed. I do not accept that the applicant accessed controversial items and [social media] on his work computer when he worked for [Company 1] or that these items were subsequently accessed by Mr [A]. I do not accept that Mr [A] has pursued a case against the applicant for apostasy or for any other reason after he left the company. I do not accept that the applicant went into hiding in Iran in fear of Mr [A] or the Iranian authorities just before he departed Iran.
18. I am not satisfied the applicant has a well-founded fear of persecution in Iran in respect of these claims.

#### **Fear of harm as an Atheist**

19. The applicant has also claimed that he was born into a Muslim family but he is a non-Muslim and does not believe in the Koran and fears harm in Iran for this reason.
20. During the protection visa interview he said that he grew up in a Muslim family but there was no pressure to pray at home. He claims he became an atheist after reading about religion on the internet. He found much of Islam did not make sense to him. During the protection visa interview, he described in detail the various books he reads about Islam and the concerns he had about Islam which I found convincing. I accept the above claims and that the applicant is now an atheist.
21. The applicant's de-facto partner provided a statutory declaration to the delegate where she also claimed that she was born into Islam and became a non-believer. I accept this as plausible but note there is no evidence to indicate that the Iranian authorities are aware of this or that there is a real chance they will become aware of this in the reasonable foreseeable future.
22. The applicant provided additional screenshots of his [social media] page showing posts that he shared between 2013 and 2019. Many of these posts have not been translated but a number of them are in English and many have been shared from a page called "[deleted]" which I am satisfied are clearly critical of Islam and religion in general. I accept that he has shared this information on [social media].

23. The applicant claims he has not done anything else in respect of his atheist activities whilst in Australia other than posting these items on his [social media] page and having discussions with his customers about atheism and other religions such as Buddhism which he was interested in. He initially stated during the protection visa interview that if he was going to convert to another religion it would be Buddhism but then clarified that he was not saying that he was interested in becoming a Buddhist but only wished to know about other religions. I am not satisfied the applicant has an interest in converting to Buddhism and I am not satisfied there is a real chance he will do so in the reasonable foreseeable future.
24. Although country information before me indicates that Iranian government policy and legislation heavily favours the majority Shia population, other reliable sources also indicate that many Iranians have a secular attitude and abstaining from Muslim rituals such as not attending mosque would not necessarily arouse any suspicion as many in Iran do not regularly attend mosques and non-practising Muslims form a large part of the population. 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. Further, although a Muslim who leaves his or her faith or converts to another religion can be charged with apostasy, this is not an everyday occurrence in Iran and death sentences for apostasy and blasphemy are rare. In its 2016 report on Iran, the Australian Department of Foreign Affairs and Trade (DFAT) assessed that it is highly unlikely that the government would monitor religious observance by Iranians such as whether or not a person regularly attends mosque or participates in religious occasions such as Ashura or Muharram and thus it would generally be unlikely that it would become known that a person was no longer faithful to Shia Islam. Perceived apostates are only likely to come to the attention of Iranian authorities through public manifestations of their new faith, attempts at proselytization, attendance at a house church or via informants. Atheists are also unlikely to come to the attention of security authorities unless they seek to publicise their views.<sup>1</sup> DFAT's more recent 2018 report has not indicated a change in this assessment.<sup>2</sup>
25. I have not accepted the applicant's claims that he had argued with his former employer about Islam and that his former employer had accused him of apostasy and was preparing a case against him. Although I accept that he applicant has talked to his Australian customers about atheism and other religions I am not convinced that he was actually trying to proselytise his atheist beliefs as he also talked about discussing other religions such as Buddhism which he also has an interest in. He has not claimed to have engaged in any other public activities in relation to his atheist beliefs other than through his [social media] posts. He also said that, after starting work in Australia, he no longer had time for [social media] and "these sorts of things" which does not suggest someone who is committed to promoting their religious opinion. It is also evident that most of his [social media] posts that he provided to the delegate are sporadic posts that he has shared from other sources. If the applicant were to return to Iran, I am not satisfied there is a real chance he will continue to promote his religious views in public, other than through sporadic [social media] posts, and I am not satisfied he will not do so due to a fear of persecution.
26. During the protection visa interview the applicant also claimed that no one would have known he posted this material on [social media] whilst in Iran because [social media] is censored in

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<sup>1</sup> DFAT, "DFAT Country Information Report Iran April 2016", 21 April 2016, CIS38A8012677; 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

<sup>2</sup> DFAT, "DFAT Country Information Report Iran April 2016", 21 April 2016, CIS38A8012677

Iran and requires special programs to break the filter. This is corroborated by country information before me.<sup>3</sup>

27. There are several reports of Iranians being prosecuted in Iran for their social media posts, including posts made on [social media].<sup>4</sup> The applicant also referred to the 2014 case of Soheil Arabi who was a blogger that was convicted of a number of offences for comments he allegedly posted on several [social media] accounts.<sup>5</sup> Country information before me also indicates that Iranians from across the social and political spectrum are active and enthusiastic users of social media and, as of June 2017, 56.7 million Iranians (70% of the population) were internet users. In 2016 DFAT assessed that the treatment of bloggers by the state is dependent on the prevailing political environment and individual personalities in security forces. The more high profile a blogger is, the more likely that they will become subject to adverse attention if the material they publish crosses red lines. I note the applicant has been posting such material on [social media] since 2012 when he was still in Iran and there is no credible evidence that he has come to the adverse attention of the Iranian authorities for his [social media] activity. As noted he has mostly shared material from other sources sporadically. There is no evidence that he maintains a blog in relation to his religious opinion nor is there evidence before me that he has a significant profile because of his online activities.
28. I am not satisfied the applicant will face a real chance of harm in Iran from any group or person due to the individual or combined factors of having renounced Islam and being an atheist, his [social media] posts or because he is in a relationship with someone who has also renounced Islam.

#### **Christian activities in Australia**

29. During the protection visa interview the applicant claimed that he attended church in Australia and had read the Bible but found the God in the Bible was exactly like the God in Islam and found he could not relate to Christianity either. I accept these claims.
30. The applicant has not claimed to have continued to attend church or explore Christianity and has indicated that he could not relate to Christianity. I am not satisfied there is a real chance the applicant will continue to explore Christianity if he were to return to Iran. There is no evidence before me that the Iranian authorities are aware of these activities in Australia and he has not claimed he has told family and friends in Iran about these activities. I am not satisfied the applicant will face a real chance of harm from any group or person in Iran because he attended church and learnt about Christianity in Australia.

#### **Fear of harm due to de-facto relationship in Australia**

31. I accept that the applicant is in a de-facto relationship with a [Country 1] citizen who he met in Australia. I also accept they have had a child together as the applicant provided his [child's] Australian birth certificate.
32. The applicant's partner provided a statutory declaration to the delegate where she claimed claims they will be accused of adultery by Muslim extremists and the authorities of Iran, the punishment for which is stoning to death. She also claimed their child would be considered as an adulterate by these groups and might be killed.

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<sup>3</sup> DFAT, "DFAT Country Information Report – Iran", 7 June 2018, CIS7B839411226

<sup>4</sup> ACCORD, "Iran: Freedom of Religion; Treatment of Religious and Ethnic Minorities COI Compilation September 2015", 1 September 2015, CISEC96CF13622; DFAT, "DFAT Country Information Report – Iran", 7 June 2018, CIS7B839411226

<sup>5</sup> DFAT, "DFAT Country Information Report Iran April 2016", 21 April 2016, CIS38A8012677

33. If he were to return to Iran, the applicant has not claimed that his partner or child will return with him. There is no credible evidence before me that the Iranian authorities are aware of the applicant's de-facto relationship and child born in Australia.
34. Even if his partner and child were to return to Iran with the applicant, country information before me indicates that pre-marital and extra-marital relations are common in Iran and unmarried couples appearing together in public is very common. In 2016, DFAT assessed that the authorities generally turn a blind eye to such couples, in part because – if questioned – such couples may suggest they have a religiously-sanctioned temporary marriage which do not require formal documentation. If such couples are arrested they would usually be taken to a police station, where parents or guardians are summoned. They are usually released after making a written statement and can sometimes be required to pay a fine.<sup>6</sup> Other sources also confirm that temporary marriages permit sexual relations outside of formal marriage. Sources have commented that, generally, the police do not crack down on such marriages and if no one reports pre-marriage relation to the authorities, the unmarried couples will not be prosecuted by the authorities. The applicant also noted that his mother in Iran wanted to see his [child] which is indication that his family did not object to his de-facto relationship and his [child] and I note he has not raised any claims of fear of harm from his family in this regard. An anonymous legal source advised the Danish Immigration service and Danish Refugee council in 2017 that, previously there was severe persecution of young Iranians who were being questioned on the streets about their relationships and even punished for vulgar and unethical behaviour simply for being seen in the public with a person of the opposite sex without being in a marital relationship, but the more recent approach of the authorities is a soft approach where there is less and less pressure on the Iranian youth especially in major cities like Tehran. A Western embassy also noted that the Iranian society has become more tolerant.<sup>7</sup>
35. I am not satisfied the applicant will face a real chance of harm in Iran from any group or person because he is in a de-facto relationship and/or had a child born out of wedlock.
36. I note the applicant's [child] is not an applicant for protection and the applicant has claimed his [child] is a [Country 1] citizen. Given this, I have not considered the claims raised in relation to harm that may befall him as a child born out of wedlock.

#### **Detention by the Iranian authorities**

37. During the protection visa interview the applicant also referred to an incident where he had been detained by the authorities after being accused of [committing an offence] when he was in fact talking to his girlfriend in the street. He claims he was detained overnight and bashed for half an hour as he authorities kept insisting that he [committed a certain offence] whilst he continued to deny it. The next day he was taken to a judge who released him.
38. The applicant did not claim to have been charged by the authorities nor that he feared harm in Iran from this particular incident but cited it as an example of what the Iranian authorities are capable of when they accuse someone of something even relatively trivial.

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<sup>6</sup> Ibid.

<sup>7</sup> Mohammad H. Nayyeri, "Gender Inequality and Discrimination: The Case of Iranian Women", Iran Human Rights Documentation Centre, 1 March 2013, CIS25511; International Campaign for Human Rights in Iran, "Officials Seek to Confront Iran's Increasingly Popular "White Marriages"", 6 June 2016, CX6A26A6E4922; Danish Refugee Council and Danish Immigration Service, "Iran: Relations outside of marriage in Iran and marriages without the acceptance of the family", 1 February 2018, CIS7B83941639

39. I accept that the above incident occurred and have taken into account country information before me that indicates that ill-treatment of detainees remains common in Iranian detention facilities. However, I find the applicant was not charged with any offence and I am not satisfied that he remained of adverse interest to the Iranian authorities after this incident. I am not satisfied he will face a real chance of harm in Iran from the Iranian authorities or any other group or person as a result of this incident.

#### **Failed asylum seeker from a western country**

40. In her decision, the delegate also considered whether the applicant would be harmed in Iran as a failed asylum seeker from a western country.

41. Country information before me indicates that Iranian overseas missions will not issue travel documents to an Iranian whom a foreign government wishes to return involuntarily to Iran.<sup>8</sup> In its 2018 report, DFAT indicated that it reached an agreement with the Iranian government to facilitate the return of Iranians who arrived after 19 March 2018,<sup>9</sup> however the applicant does not fall within this category. If the applicant were to return to Iran, I am satisfied it would only be on a voluntary basis.

42. Country information before me indicates that it is not a criminal offence in Iran for any Iranian to ask for asylum in another country and Iranian authorities have little interest in prosecuting failed asylum seekers for activities conducted outside Iran, including in relation to protection claims.<sup>10</sup> 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. In cases where an Iranian diplomatic mission has issued temporary travel documents, authorities will be forewarned of the person's imminent return. Authorities will usually question them on return only if they have already come to official attention, such as by committing a crime in Iran before departing.<sup>11</sup> I am not satisfied, on the information before me, that the Iranian authorities impute failed asylum seekers from western countries with a political opinion against the Iranian government. I have also taken into account that the applicant departed Iran legally on his own genuine passport.

43. There are few very recent reports before me that allege mistreatment of failed asylum seekers on return to Iran. There are two 2017 articles which refer to the sentencing to prison of an asylum seeker on return to Iran but it notes that he had been arrested for an offence prior to his departure from Iran and was related to a political activist with little other detail about the case provided. A 2015 article by the Guardian refers to the return of two Iranian asylum seekers from Papua New Guinea who, after return, were forced to surrender their documents and were told to report to police though no further details about their circumstances were provided. Other recent articles refer to the arrest of returning political activists, artists, PHD students, and journalists or those who had been previously convicted of an offence and fled the country. Even taking into account the applicant's [social media] activity, I am not satisfied he has a profile such that there is a real chance he will attract the adverse attention of the Iranian authorities on his return for any reason.

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<sup>8</sup> Danish Immigration Service, "Human Rights Situation for Minorities, Women and Converts, and Entry and Exit Procedures, ID Cards, Summons and Reporting, etc.", 1 April 2009, CIS17329; DFAT, "DFAT Country Information Report – Iran", 7 June 2018, CIS7B839411226

<sup>9</sup> DFAT, "DFAT Country Information Report – Iran", 7 June 2018, CIS7B839411226

<sup>10</sup> Danish Refugee Council, Landinfo and Danish Immigration Service, "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; DFAT, "DFAT Country Information Report – Iran", 7 June 2018, CIS7B839411226

<sup>11</sup> DFAT, "DFAT Country Information Report – Iran", 7 June 2018, CIS7B839411226

44. I am not satisfied the applicant will face a real chance of harm from the Iranian authorities or any other group or person due to being a failed asylum seeker from a western country.
45. Having considered the applicant's claims individually and cumulatively, I am not satisfied he will face a real chance of harm in Iran.

#### **Refugee: conclusion**

46. 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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47. 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**

48. 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.

49. I have not accepted that the applicant had an argument about religion with his former employer, Mr [A], or that Mr [A] subsequently accessed controversial items on the applicant's work computer or that he is pursuing a case against the applicant for apostasy or anything else. I am not satisfied the applicant will face a real risk of significant harm in Iran from any group or person in relation to these claims.

50. I have found the applicant will not face a real chance of harm in Iran in regards to his other claims. Consequently he will also not face a real risk of any harm in Iran.<sup>12</sup> I am not satisfied the applicant will face a real risk of significant harm in Iran.

#### **Complementary protection: conclusion**

51. 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).

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<sup>12</sup> *MIAC v SZQRB* (2013) 210 FCR 505.

## **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.