



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

**Decision and Reasons**

**Referred application**

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IRAN

IAA reference: IAA19/07700

Date and time of decision: 3 February 2020 15:35:00

G Ma, 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 an Iranian national who fears harm on the bases of his participation in the 2009 post presidential election protests and for being a failed asylum seeker. On 26 April 2017 he lodged an application for a safe haven enterprise visa (SHEV). On 19 December 2019 a delegate of the Minister for Home Affairs (the delegate) refused to grant 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). No further information has been obtained or received.

### Applicant's claims for protection

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3. The applicant's claims can be summarised as follows:
  - He participated in the 2009 post presidential election protests in Tehran.
  - In early 2010, about five or six months after the 2009 presidential election was held, he was admitted to [a university] in Markazi Province. His roommate was a follower of the regime and a strict Muslim. They were good friends and shared a lot in common, but he had to be careful with his political or religious ideas. His roommate was a basij but did not look to be a bad guy, so he always tried not to say or do something about Islam or the government that this roommate did not like.
  - On one occasion, his roommate was talking about the presidential election and they had an argument about this.
  - A couple of days later, an admin staff of the University asked him to see the Security Office of the University. He was detained for three days and he was interrogated, hit on the back of his neck and kicked off the chair.
  - After he was released, he went back to the student's dormitory where he had a room, and found out that his roommate had left. This made him think that it was his roommate who had reported him.
  - He was busy studying for the final exams when he was summoned again to attend a meeting in the Security Office of the University. He was concerned and afraid of getting arrested again. When he went to the Security Office, there was a person with a full beard sitting behind his desk. In the beginning, the person started asking him about his studies in the university, but then he changed the topic and started asking questions about his involvement in the election protests. He denied any participation and claimed that he loved his country and the government. He was scared and started talking good about the Islamic regime. But the person did not let him talk for too long, and he showed him a few photos of him while attending the protests. He was scared. In the end, that person said he was temporarily free to go, and added that he could not attend classes anymore and he had been expelled. He started crying and begging him to let him continue his studies.
  - A couple of days later, he returned home in Tehran. In Tehran, he started selling [goods] in a stand next to a shopping centre near his home.

- One day, a car stopped next to his stand. Two persons got off the car and came to him; they said they wanted to have a word with him. He got in their car and sat at the back of the car. There were two other people in the car. One of them gave him a blindfold and said he had to wear it. They took him to an unknown place. They questioned him and threatened to make his disappear so that no one would find him. They said he could not attend any meetings where there were more than five people.
- He continued to receive calls from them every now and then. The calls were mostly made by one person. There were also a couple of times when they came to see him. This happened a few months before the presidential election in June 2013.
- A few weeks before the election of President Rouhani, someone called him and said it was urgent and wanted to see him. The person gave him an address and asked him to see him there the next day. He had heard from others that the intelligence was detaining anyone who had a history of political activities. He did not want to be arrested again. He had heard that many Iranians were fleeing to Australia. He discussed the matter with his parents.
- He left Iran for Australia [in] June 2013.
- He fears harm from the authorities on the bases of his political views and activity. He also fears harm because he left Iran without the Intelligence's permission and sought asylum overseas. He fears being accused by the authorities for being a spy and involving in anti-government campaigns overseas because he had gone overseas.

### **Refugee assessment**

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4. 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**

5. 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.

6. On the basis of a copy of the applicant's Iranian passport, Iranian birth certificate and national ID card, I accept that the applicant is a national of Iran from Tehran. I also accept that he is of Shia religion and Persian ethnicity.

*Health conditions*

7. The applicant said at the arrival interview that he was exempted from compulsory military service in Iran because his right ear was not formed properly and he had trouble hearing.
8. The applicant provided a copy of an outpatient prescription and discharge summary issued by the [Hospital] dated [August] 2019 to the department. These documents state that the applicant was admitted to the hospital [in] August 2019, he presented with suicidal ideation, and he was discharged on the same day. In an email dated [August] 2019 regarding the rescheduling of the SHEV interview from 28 August 2019 to 4 September 2019, the applicant's representative informed the department about the applicant's mental health conditions, and advised that the applicant was under tremendous stress that day and he advised the applicant to see his doctor immediately. At the SHEV interview on 4 September 2019, the applicant said that he has been seeing a psychologist for two years and he has been taking medication for his depression.
9. At the SHEV interview, the applicant was invited to provide further medical evidence, such as a letter from his doctor or his psychologist regarding his health condition, if he wished to do so. He was informed that any additional information that he provided to the department before a decision is made on his application would be considered. He said he had a lot of medical reports and could send them to the department. No further medical evidence was provided to the department following the SHEV interview.
10. I accept that the applicant has mental health issues, he suffers from depression, he has been seeing a psychologist and taking medicine for the last two years and he was admitted to the hospital with suicidal ideation [in] August 2019. I also accept that his ear was not formed properly.
11. However, there is nothing in the medical evidence before me which suggests that the applicant was unfit to participate in the SHEV interview on 4 September 2019 due to his health conditions. At the beginning of the SHEV interview, the interviewer asked whether he has any health condition that might affect his ability to participate in that interview, and he responded 'stress and mental anxiety... is a concern'. He was informed that he could request a break at any time during the interview, and he should let the interviewer know immediately if he could not understand the interpreter. There was nothing to indicate that he had any hearing problems during the SHEV interview. He was assisted by his representative at that interview. On several occasions during that interview, his representative assisted in providing additional information and clarifying some of the evidence. Towards the end of the interview, his representative submitted that the applicant was under stress, and stress made him decide to say yes right away without thinking. Having listened to the audio recording of the SHEV interview, I am satisfied that the applicant was able to hear and understand the questions properly, and he was able to respond to the questions posed and provide argument in support of his case. I do not consider that his health conditions impacted on him adversely throughout the SHEV interview. I do not accept that he said yes right away without thinking due to stress, anxiety or depression. I am satisfied that he was able to fully participate in that interview.

12. Although the applicant has not expressly claimed to fear harm on the basis of his health conditions, I have nonetheless considered this issue as I have accepted above that he suffers from health conditions and the delegate expressly considered this issue. There is nothing to indicate that the applicant suffered any past harm because of problems relating to his ear, or that his ear requires ongoing treatment. I have considered the country information before me regarding the availability of health services in Iran, and I am not satisfied that he will not be able to access mental health services or medication. There is nothing before me to indicate, and I am not satisfied that he will face a real chance of persecution from the authorities or anyone because of his health conditions.

*Past harm, views, political activities, profile*

13. The applicant claims that he participated in the 2009 post presidential election protests (the 2009 protests). His evidence at the SHEV interview was that he attended the protests in 2009, when he was around [age] years old. He said he attended the 2009 protests on several occasions along with millions of other people who believed there was election fraud. He said he did not have a role as a leader, and he was only doing the same thing like all other protesters, such as chanting slogans and carrying green ribbon. He said that he participated in the 2009 protests because he cast his vote with hope, and later on he found out they have cheated on voting, people were angry about this situation and did not anticipate or accept the outcome of the election. He said that his brother shared the same ideas but did not participate in the protests, and he attended the protests by himself.
14. Country information<sup>1</sup> indicates that the day after the 12 June 2009 presidential election results were announced, up to three million supporters of reformist candidate Mir Hossein Mousavi poured onto on Tehran's streets to protest the official verdict that conservative candidate Mahmoud Ahmadinejad had won in a landslide. This political movement is known as the 'Green Movement'. The Green Movement evolved in the next six months following the disputed election from a mass group of angry voters to a nation-wide force peacefully demanding the democratic rights originally sought in the 1979 revolution. Protesters used national commemorations and public holidays as opportunities to rally on the streets of major cities, chanting slogans that challenged both the system and the Supreme Leader. In response, the government unleashed security forces including Islamic Revolutionary Guards Corps (IRGC), Basij units and plain-clothed paramilitary forces.
15. By early 2010, the government had succeeded in quashing public displays of opposition. Security forces arrested hundreds of demonstrators and beat and harassed thousands more during and after the Green Movement protests, some of whom died in prison. Hundreds if not thousands of people had been detained. The authorities executed some oppositionists. Others associated with the movement fled Iran. Iranian courts reportedly handed down sentences *in absentia* to a small number of those who fled. Following the 2009 protests, there were 'severe crackdowns... with many reporters, bloggers and lawyers working on rights issues being convicted of crimes against the government'. In the fall of 2009, more than 100 of the Green Movement's most important leaders, activists and theorists appeared in show trials, and were forced to confess on television to several crimes against the nation. The regime also shut down newspapers, magazines and websites close to the Green Movement. Since the 2009 protests, the majority of the opposition is 'in exile, in prison, under house

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<sup>1</sup> Department of Foreign Affairs and Trade (DFAT), "DFAT Country Information Report Iran", 7 June 2018, CIS7B839411226, 3.52, 3.56 – 3.59; Abbas Milani, "The Green Movement", United States Institute of Peace Iran Primer, 1 January 2010, CX303910, "IRN104338.E – Iran: The Green Movement, including its mandate, structure, leadership, activities and treatment of members by authorities; The Green Party (2009 – March 2013)", Immigration and Refugee Board of Canada, 1 March 2013, CIS27383.

arrest or dead'. In 2010, 50 university faculty members who supported or were affiliated with the Green Movement were dismissed or forced to retire.<sup>2</sup>

16. I am prepared to accept that the applicant attended the 2009 protests. He was not a leader and had no organisational role in the movement. He participated in the protests in the same way as the millions of other protesters. His evidence at the SHEV interview was that he did not belong to any political party; he was not involved in any political activities after the 2009 protests; and he did not participate in any way in the June 2013 presidential election which was held about one week before he left Iran, or any other activity or campaign. He has not claimed and there is nothing to suggest that he was beaten, arrested or harmed at the time of the 2009 protests. On the evidence, I find that he participated in the 2009 protests as a low-level participant.
17. However, I do not accept any of the claimed past incidents following the applicant's participation in the 2009 protests. I do not accept that he came to the adverse attention of the authorities or anyone else for reasons relating to his involvement in the 2009 protests, his real or imputed opinion or profile. My reasons follow.
18. The applicant's evidence about his roommate is vague and unconvincing. For instance, he stated in his statement that he and his roommate were good friends and shared a lot in common, for days and nights they were together, and his roommate was a basij. But he seemed unable to give much evidence about his roommate at the SHEV interview, saying that he could not remember how long they had been roommates. When asked further, he said that he was only enrolled at the [University] for one term. It concerns me that he was unable to give evidence about how long they had been roommates if he was only enrolled for one term at that University.
19. No documentary evidence has been provided to substantiate the claims that he was enrolled at [a university] in 2010, or expelled from the university. This was discussed at the SHEV interview. He said he had no evidence that he went to that university, he did not know if he had any enrolment document, he had no document because he did not complete that course, and he had no document to inform him about his expulsion because the security forces would not give any evidence and advised him not to discuss this issue with anyone.
20. I find the applicant's evidence regarding the claimed argument with his roommate and the claimed incidents at the Security Office of the University was vague, rehearsed, lacked detail and unconvincing. At the SHEV interview, when asked what happened during the claimed incident of argument with his roommate, apart from repeating some of the evidence in his written statement and saying they had a confrontation and an argument, he was unable to provide any detail about the argument and what had happened. This is despite the fact that he was being asked open-ended questions.
21. Similarly, his evidence at the SHEV interview about the claimed detention incident and the subsequent incidents was vague and lacked detail. He was unable to give specific evidence about what had happened during these claimed incidents apart from repeating the evidence in his written statement in a rehearsed manner. At times, his oral evidence about these incidents was contradictory. For example, his evidence at the SHEV interview that he could not identify the people who came to his workplace because they blindfolded him so he could not identify them, and the car windows were tinted so he could not see inside the car directly contradict his own evidence in his written statement which suggests that he saw the two

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<sup>2</sup> Ibid.

people who told him they wanted to speak to him, and after he got into their car, one of the two people at the back of the car gave him a blindfold and told him to wear it. Overall, his evidence does not give an impression that he was personally involved in these incidents.

22. As noted above, country information before me indicates that the regime responded to the 2009 protests by dispatching security forces, including the basij and IRGCs, and the government had succeeded in quashing public displays of opposition by early 2010. In 2010, university faculty members who support or are affiliated with the Green Movement were dismissed or forced to retire. In my view, the topic of the 2009 presidential election would have been a highly sensitive issue at the time the applicant claims to have been enrolled at university in 2010. The applicant's evidence at the SHEV interview was that his roommate was a basij and a sepah, and was in charge of these two organisations. His evidence in his statement was that although they were good friends, he has always been careful not to say or do something about Islam or the government that his roommate did not like. In the circumstances, I do not find it believable that the applicant would have confronted or argued with his roommate about the sensitive topic of the 2009 presidential election in 2010.
23. The applicant gave evidence at the SHEV interview that he was identified by the intelligence from the Ministry of Intelligence, the Ministry of Information or the Sepah intelligence as a protester. In view of the above information concerning the authorities' heavy-handed approach to cracking down against protesters in 2009 and 2010, where many were arrested, detained and some were executed, I find it highly implausible that the authorities would have taken no further actions against him after releasing him without charge or sanction following the initial claimed period of detention, other than showing him photographs of him attending the 2009 protests and expelling him from the university, and then visiting and calling him every now and then over the next three years from 2010 to 2013, if he was of adverse interest to the authorities due to his involvement in the 2009 protests.
24. I also have difficulties accepting his claim that the Intelligence took photographs of him from the 2009 protests that were 'close-up' shots, when the evidence is that he was among millions of other protesters and he was a low-level participant. When asked about this at the SHEV interview, he said he did not know, it appeared that every university student participated in the protests but his roommate doxed him in. I find his explanation unpersuasive.
25. I find that the applicant gave inconsistent evidence regarding how he discovered that his roommate had reported him to the Security Office of the University. In his statement, he claimed that after he was released from detention, he went back to the student's dormitory where he had a room, he found out that his roommate had left, and this made him think that it was his roommate who had reported him. This differs from the applicant's evidence at the SHEV interview that he knew his roommate had reported him because when they called him to the Security Office, they asked him to meet with them. This is also different to his later evidence at the SHEV interview that his roommate called him and said 'I have written a report, I have written a letter that you have been humiliating or insulting the leadership...' This is also inconsistent with his evidence at a later stage of the SHEV interview that he was told during the interrogation that his roommate had given a bad report about him so they kept him in detention for three days. I have concerns about the credibility of the applicant's evidence.
26. I have considered whether the above problematic evidence and credibility issues could be explained by the applicant's health conditions, stress, anxiety, passage of time or other external factors. However, I do not accept that these could satisfactorily explain the

problematic evidence. In my view, the applicant would not have claimed in his statement that he thought his roommate had reported him because he found out that his roommate had left the room when he returned, if he had already been told during the interrogation that his roommate had reported him or if his roommate had already told him directly. It concerns me that he was unable to give detail about the claimed incidents when he was asked open questions at the SHEV interview. I consider that he would at least be able to give some detail about what happened if he was personally involved in the claimed incidents.

27. For all of the above reasons, I do not accept the claimed past incidents occurred. I do not accept that he had an argument or confrontation with his roommate, or that his roommate reported him, or that he was called, visited, detained, questioned, threatened, interrogated, kicked, hit, monitored or otherwise harmed by the authorities or anyone for reasons relating to his participation in the 2009 protests, his views, political opinion, profile or for any other reasons. I do not accept that the authorities or anyone have any photograph of him while he attended the protests, or that he was expelled from the University for the reasons claimed. As such, I find that there is no real chance of him being harmed on the bases of the claimed past incidents now or in the reasonably foreseeable future if he returns to Iran.
28. The information<sup>3</sup> before me indicates that the end of the Ahmadinejad presidency in 2013 took away much of the movement's purpose and momentum. The Green Movement did not play an active role in the subsequent elections, and has had very little profile inside Iran in the years since. DFAT assesses it is likely that those who had a more active organisational role in the movement and therefore have a higher profile are more likely to face continuing official attention and possible harassment. But it would be highly unlikely that those arrested at the time for simply participating in the protests would remain imprisoned, or would face continuing surveillance or harassment, including being prevented from accessing employment in either the public or private sector.
29. I have found that the applicant was a low profile participant in the 2009 protests along with millions of other protesters. The 2009 protests was the only political activity that he was involved in. He did not belong to any group or political party. It has now been over a decade since the applicant participated in the 2009 protests. I have rejected the claimed incidents following the 2009 protests. He has never been involved in any anti-government campaign or activities in Australia. He has not expressed any interest or desire in expressing his views or opinion or to participate in any political activities upon return. I consider that he would not express his views, opinion or be involved in political activities upon return to Iran not due to fear of harm, but because he lacks interest or commitment to do so.
30. The applicant's evidence at the SHEV interview was that his parents and brother are still living at the same address in Iran. He has been in contact with all of them once every two to three days and his evidence is that his family members are well. He has not claimed that the authorities have approached his family members asking about him. There is no credible information before me to suggest that the applicant is, or there is a real chance that he will be, of interest to the authorities, the regime or anyone now on the bases of his participation in the 2009 protests, or his real or imputed views, political opinion or profile.
31. Based on the information before me, I am not satisfied there is a real chance of him being arrested, interrogated, imprisoned, harassed or otherwise harmed by the regime, the authorities or anyone on the bases of his participation in the 2009 protests, his actual or

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<sup>3</sup> Ibid.

perceived political opinion, his accepted profile, now, over six years since he left Iran in 2013, or in the reasonably foreseeable future if he returns to Iran.

*Failed asylum seeker, returnee*

32. Country information<sup>4</sup> indicates that Iran has historically refused to issue travel documents to allow the involuntary return of its citizens from abroad. Under a more recent Memorandum of Understanding, Iran has agreed to facilitate the return of the Iranians who arrived after 19 March 2018 and have no legal right to stay in Australia. As the applicant arrived before this date, I consider that if he were to return to Iran, it would only be on a voluntary basis. The International Organisation for Migration (IOM) runs a program to assist voluntary returnees to Iran, and the Iranian authorities cooperate with the IOM in this regard. Millions of Iranians travel in and out of Iran each year without difficulty. Voluntary returnees do not attract much interest from authorities amongst the large regular international movements of Iranians. Although some country information<sup>5</sup> before me published in 2009 and 2013 indicated that failed asylum seekers may be questioned by the authorities on arrival in Iran if were returned on a *Laissez-passer*, I give weight to the DFAT 2018 and 2016 reports which are more recent. DFAT states that authorities will usually question a voluntary returnee on return only if they have already come to official attention, such as by committing a crime in Iran before departure. Iranian authorities pay little attention to failed asylum seekers on their return to Iran. Iranians have left Iran in large numbers since the 1979 revolution, and the authorities accept that many Iranians will seek to live and work overseas for economic reasons. It is also reported that the Iranian authorities have little interest in prosecuting failed asylum seekers for activities conducted outside Iran, including in relation to protection claims. Those with an existing high profile, such as political activists, may face a higher risk of coming to official attention upon return. DFAT also states that it is not aware of any legislative or social barriers to voluntary returnees finding work, shelter or to return to their home region.
33. The applicant left Iran legally on his own passport. He was a low-level participant in the 2009 protests. I have rejected the claimed past incidents. I have not accepted that he is or was of adverse interest to the regime or the authorities for reasons relating to his participation in the 2009 protests, his views, profile, or for any other reasons. I do not accept that he left Iran without the Intelligence's permission. The applicant's evidence at the SHEV interview was that he has never been involved in any anti-government campaign or activities in Australia. Recent country information indicates that the Iranian authorities have little interest in failed asylum seekers and voluntary returnees. I do not accept that being a returnee failed asylum seeker who has spent time in Australia, would be imputed as having been involved in anti-government campaigns overseas, spying or espionage, or would otherwise give rise to a real chance of the applicant being arrested, detained or otherwise harmed by the authorities.
34. On the evidence before me, I am not satisfied there is a real chance that the applicant will face harm for being a returnee failed asylum seeker who lived in Australia, now or in the reasonably foreseeable future.
35. Having considered the applicant's claims singularly and cumulatively, I am not satisfied that he has a well-founded fear of persecution.

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<sup>4</sup> DFAT, "DFAT Country Information Report Iran", 7 June 2018, CIS7B839411226, 5.20 – 5.25, DFAT, "DFAT Country Information Report Iran", 21 April 2016, CIS38A8012677, 5.28 – 5.35.

<sup>5</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. See also UK Home Office, "Country Information and Guidance – Iran: Illegal Exit", 20 July 2016, OGD7C848D28, p.7, which referred to a report published in February 2013 by the Danish Immigration Service.

## Refugee: conclusion

36. 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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37. 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

38. 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.
39. The expressions 'torture', 'cruel or inhuman treatment or punishment' and 'degrading treatment or punishment' are in turn defined in s.5(1) of the Act.
40. I have accepted that the applicant attended the 2009 protests. I have not accepted that he was or is of any adverse interest to the regime, the Security Office of the University, the basij, the sepah, the Intelligence or any other authorities, or anyone for reasons relating to his participation in the 2009 protests, or real or imputed views or political profile, or for any other reason. I have rejected all the claimed past incidents. I have not accepted that the authorities or anyone called, visited, threatened, monitored, harassed, detained or otherwise harmed him, or expelled him from the University for the reasons claimed, or that he left Iran without the authorities' permission. I have found above that he would not, as a matter of fact, express his views or opinion, or involve in political activities upon return not because of fear of harm, but because he lacks interest or commitment to do so. Further, I have found that the applicant will not face a real chance of harm for being a failed asylum seeker returnee who lived in Australia.
41. Given that the 'real risk' test imposes the same standard as the 'real chance' test, for the same reasons as set out above, I find that the applicant does not have a real risk of suffering harm on these bases if he were to return to Iran for the purposes of s.36(2)(aa). I conclude that there are not substantial grounds for believing that, as a necessary and foreseeable consequence of being returned from Australia to Iran, there is a real risk that the applicant will suffer significant harm for these reasons.
42. For the reasons already given, I have found that the applicant will be able to access medical services and medication for his health conditions, and he will not face a real chance of

persecution due to his health conditions. I do not accept that his health conditions will be severely impacted or will deteriorate upon return such that it would constitute a real risk of significant harm. Moreover, any impact or deterioration of his health conditions would be a consequence of his return to Iran, and lacks the requisite subjective intention to inflict or cause the relevant harm as required by the definitions of 'torture', 'cruel or inhuman treatment or punishment' and 'degrading treatment or punishment' in s.5(1) of the Act. Furthermore, any impact or deterioration of his health conditions as a consequence of his removal from Australia to Iran would not involve deliberate conduct by a third party, and therefore, it would not constitute arbitrary deprivation of his life for the purposes of s.36(2A)(a).

43. Considering the applicant's claims individually and in combination, I am not satisfied that there are substantial grounds for believing that, as a necessary and foreseeable consequence of being returned from Australia to Iran, there is a real risk that the applicant will suffer significant harm.

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

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

#### **Decision**

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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:

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***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.