



Australian Government
Immigration Assessment Authority

Decision and Reasons

Referred application

IRAN

IAA reference: IAA20/07814

Date and time of decision: 24 February 2020 11:17:00

I Sheek, Reviewer

Decision

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

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

Background to the review

Visa application

1. The referred applicant (the applicant) is an Iranian national from [Town 1 in] Khuzestan province. He departed Iran [in] March 2013 and arrived in Australia [later in] March 2013. On 29 May 2017 he lodged an application for a protection visa (PV).
2. On 23 January 2020 a delegate of the Minister for Immigration and Border Protection (the delegate) refused to grant the visa. The delegate accepted that the applicant was of Ahwazi Arab ethnicity and had attended protests in Iran. The delegate did not accept that the applicant was of any interest to the Iranian authorities because of his political views or activities. The delegate concluded that the applicant would not face serious harm in Iran due to his ethnic background, being a failed asylum seeker or for any other reason.

Information before the IAA

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

Applicant's claims for protection

4. After his arrival in Australia the applicant was interviewed by an officer of the then Department of Immigration and Border Protection (now part of the Department of Home Affairs) on 17 April 2013. A statutory declaration dated 22 April 2017 was lodged with his PV application. On 22 October 2019 the applicant attended an interview ("the PV interview") with the delegate. The applicant claims:
 - He is of Arab ethnicity. Ahwazi Arabs are discriminated against, persecuted and repressed by the Iranian government. Although the Khuzestan province is rich in oil and food it is all taken and goes to Tehran Esfahan;
 - He participated in protests in [Town 1] and other parts of the Ahwaz region. He was known to the authorities and as a result could not get a job;
 - He was threatened by the Iranian Intelligence Service after attending a demonstration and fled the country;
 - If he returns to Iran he will be arrested and executed due to his political activities as well as for seeking asylum overseas.

Factual findings

5. The applicant's evidence regarding his family, education and work history has been consistent and I am satisfied that it is as stated. Based on the information provided in his arrival and PV interviews and identity documents, I find that the applicant's background is as follows: he was born on [date] in [Town 1], Khuzestan province, Iran and is an Iranian national. He is of Arab ethnicity and Muslim (Shia) faith. He has never married. He has [specified family members]. His mother is deceased; his father, stepmother and siblings reside in Iran. He completed [specified] schooling. He undertook compulsory military service [between specified dates]. Following this, he was employed on a casual basis in [a specified]

industry and later as [an Occupation 1]. He has not undertaken paid employment in Australia.

6. The applicant is an Ahwazi Arab. He has stated that Arabs in Iran are discriminated against by the Iranian government and the province of Khuzestan is poorly treated, with food and crops being taken to other areas as well as diversion of the Karun River. The applicant has provided no examples of harm that he personally has suffered due to his ethnicity other than in his statutory declaration, where he stated that he had been subject to racist slurs from Persian children, when he was at school. I accept that this occurred.
7. In his arrival interview the applicant advised that he had left Iran due to the poor treatment of Arabs, in addition to the lack of freedoms in Iran, for instance he was not able to walk on the street with a girlfriend. The applicant was asked "Have you or any members of your family been associated or involved with any political group or organisation?" and "Were you or any members of your family involved in any activities or protests against the government?". He answered No to both questions.
8. In his statutory declaration the applicant states that from the age of [age range] he became politically active and would attend demonstrations with Ahwazi Arabs seeking independence. The government was aware of his attendance and he was unable to obtain work. Shortly before leaving Iran he received a number of telephone calls from the Intelligence Service. When he received these calls he would hang up. A man "in civilian clothes" came to the applicant's home and told his family that the applicant would receive a phone call the next day and he must answer it. The man did not identify who he was or where he was from. The following day the applicant answered the expected call. It was the Intelligence Service. They told him that he had no licence to carry the Ahwazi flag or attend demonstrations. If he did it again he would regret it. He took steps to depart Iran.
9. At the PV interview the applicant again stated that he had attended demonstrations relating to Ahwazi independence for the last two or three years that he lived in Iran. He attended between five and seven events in this time. He was not involved in the organisation of these events, he would get a phone calling telling him the time and place. The applicant advised that the last demonstration he attended was around a month prior to his departure from Iran. There were about 1,000 protesters there. The applicant and two other protesters burned a large picture of Ayatollah Khamenei. The authorities arrived after about 45 minutes and shot over the crowd's heads then into the crowd "to scare us". People were arrested but the applicant was not. Less than a week after this the government called his family two or three times. When asked what the callers said the applicant responded "We are from the secret services". They also showed his family a photo of him burning the picture. His family then called him because he wasn't home. He slept in the jungle for one night then at a friend's place for two nights. Then he went to stay with his uncle until he left Iran.
10. As can be seen from the two versions of the narrative set out at paragraphs 8 and 9 above, there has been a significant difference in the applicant's story, regarding his being sought by the Iranian authorities. At the PV interview the applicant claimed that he had no interactions with the authorities until the last demonstration in February 2013. He was unable to explain how the authorities had been able to identify him from the photo taken during the demonstration. Due to the marked difference in evidence I do not accept that either version is correct. I prefer the applicant's initial evidence, as provided in 2013, that he was not politically active in any way in Iran. I conclude that his more recent claims of political activism, burning the Supreme Leader's photograph and being sought by the Intelligence Services, are fabrications.

11. The delegate asked the applicant whether he had been politically active since arriving in Australia. After initially indicating that he had attended demonstrations in Australia the applicant corrected this statement and said that he had wanted to but had been unable to. The applicant submitted a letter from the Ahwaz Community in Australia. This was not included in the review material. After enquiries with the Department the IAA was informed that the delegate had not taken a copy of the document. At the PV interview the delegate had indicated that the letter said the applicant was part of the community and asked what it meant to him to be part of the community. The applicant responded "this is my community, my family". When asked what he does as part of this group, the applicant responded "just gather". I am satisfied that the applicant engages in social and community activities as part of the Ahwaz Community in Australia group. He has not been engaged in any political activism in Australia.

Refugee assessment

12. 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

13. 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.
14. I have found that the applicant is an Iranian national. It follows that Iran is his receiving country. I have considered whether the applicant would be considered to be a political activist or imputed with a political opinion adverse to the State on return to Iran. I have found that he did not express any interest in political activities against the state prior to his departure from Iran in 2013 and has not done so in Australia. There is no credible evidence before me to indicate the applicant participated in any pro-Ahwazi protest activities prior to leaving Iran, or will participate or have any interest in participating in any activities in which he would be perceived to be opposed to the Iranian government or its policies on return. I conclude that he would not do so. I am not satisfied that he faces a real chance of harm on this basis.

15. The applicant is of Ahwazi Arab ethnicity. Country information indicates that Arabs make up around 2% of the population of Iran.¹ Ethnic minority groups are subjected to societal as well as official discrimination, including restrictions in access to employment and housing.² Like other ethnic minorities, the Arab community has long expressed concerns about economic marginalisation, and discrimination in education, employment, politics, and culture.³ I accept that the applicant may be subject to societal as well as official discrimination, including restrictions in access to employment, housing and services due to patronage, nepotism and favouritism.⁴ I note that the applicant's father works for the Iranian [specified government] Department, and the applicant undertook a number of jobs before departing Iran at [age], including in [a specified industry] and as [an Occupation 1]. Although the applicant stated in his arrival interview that in the [number] years since completing his military service he had been unable to find a job, this is not consistent with his stated work history and I do not accept it. The applicant has not claimed to have ever been refused employment due to his ethnicity. The latest DFAT report notes that unemployment is causing economic difficulty and social unrest, with unemployment in some sectors of the population as high as 60 per cent. Approximately half of the Iranian workforce is in irregular employment.⁵ The material before me does not however support the conclusion that the applicant would be denied access to any employment or that he would be unable to subsist because of his ethnicity.
16. I have accepted that the applicant was subject to racist slurs when he was at school. I am not of the view that such actions, although regrettable, constitute serious harm. In terms of whether the applicant faces a real chance of serious harm from the State on the basis of his ethnicity, the country information supports that Ahwazi Arabs who call for recognition of their cultural rights or who have been involved in peaceful protests have been persecuted.⁶ This has led to arrests, imprisonment and in some cases execution. In the absence however of any public assertion of cultural or political rights, the review material does not support a finding that Ahwazi Arabs face a real chance of serious harm from the Iranian authorities. The applicant does not face a real chance of serious harm of the basis of his ethnicity.
17. The applicant has also claimed that he would be imprisoned and hanged on return due to his seeking asylum in Australia. According to DFAT, Iranian authorities pay little attention to failed asylum seekers on their return to Iran. Iranians have left the country in large numbers since the 1979 revolution, and authorities accept that many will seek to live and work overseas for economic reasons. Those with an existing high profile may face a higher risk of coming to official attention on return to Iran, particularly political activists.⁷ There is nothing before me to indicate that the applicant will be considered to be a political activist on return to Iran and I have found he will not. I am not satisfied that the applicant faces a real chance of harm on return to Iran because he has sought asylum in a Western country.

Refugee: conclusion

18. 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).

¹ Department of Foreign Affairs and Trade (DFAT), "DFAT Country Information Report - Iran", 7 June 2018, CIS7B839411226; 2.4

² Ibid; 3.6

³ Ibid; 3.7

⁴ DFAT "DFAT Country Information Report Iran", 21 April 2016, CIS38A8012677; 3.11

⁵ DFAT, "DFAT Country Information Report - Iran", 7 June 2018, CIS7B839411226; 2.11

⁶ Danish Immigration Service and the Danish Refugee Council, "Iran: Issues concerning persons of ethnic minorities, Kurds and Ahwazi Arabs", February 2018, CIS7B83941872; p.9 and 10

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

Complementary protection assessment

19. 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

20. 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.
21. 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.
22. I accept that the applicant was subject to societal, cultural and political discrimination in Iran due to his Arab ethnicity and may again face such actions in the future. I am not satisfied that such behaviour or its consequences constitutes significant harm. It does not amount to the death penalty; an arbitrary deprivation of life or torture. Further, on the evidence, it does not amount to pain or suffering, severe pain or suffering or extreme humiliation. I have concluded above that the applicant does not face a real chance of harm due to any actual or imputed political opinion, or due to seeking asylum in Australia. As 'real risk' and 'real chance' involve the application of the same standard,⁸ I am equally not satisfied that the applicant faces a real risk of being killed, seriously injured or facing any other form of significant harm on return for the purposes of s.36(2)(aa) for these reasons.

Complementary protection: conclusion

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

Decision

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

⁸ *MIAC v SZQRB* (2013) 210 FCR 505

Applicable law

Migration Act 1958

5 (1) Interpretation

In this Act, unless the contrary intention appears:

...

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

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

...

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

- (a) severe pain or suffering, whether physical or mental, is intentionally inflicted on a person; or
- (b) pain or suffering, whether physical or mental, is intentionally inflicted on a person so long as, in all the circumstances, the act or omission could reasonably be regarded as cruel or inhuman in nature;

but does not include an act or omission:

- (c) that is not inconsistent with Article 7 of the Covenant; or
- (d) arising only from, inherent in or incidental to, lawful sanctions that are not inconsistent with the Articles of the Covenant.

...

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

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

...

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

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

...

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

- (a) for the purpose of obtaining from the person or from a third person information or a confession; or
- (b) for the purpose of punishing the person for an act which that person or a third person has committed or is suspected of having committed; or
- (c) for the purpose of intimidating or coercing the person or a third person; or
- (d) for a purpose related to a purpose mentioned in paragraph (a), (b) or (c); or
- (e) for any reason based on discrimination that is inconsistent with the Articles of the Covenant;

but does not include an act or omission arising only from, inherent in or incidental to, lawful sanctions that are not inconsistent with the Articles of the Covenant.

...

5H Meaning of refugee

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

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

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

...

5J Meaning of well-founded fear of persecution

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

Note: For membership of a particular social group, see sections 5K and 5L.
- (2) A person does not have a well-founded fear of persecution if effective protection measures are available to the person in a receiving country.

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

5K Membership of a particular social group consisting of family

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

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

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

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

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

5L Membership of a particular social group other than family

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

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

5LA Effective protection measures

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

...

36 Protection visas – criteria provided for by this Act

...

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

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

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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.