



Australian Government
Immigration Assessment Authority

Decision and Reasons

Referred application

IRAN

IAA reference: IAA20/07816

Date and time of decision: 26 February 2020 14:57:00

R Mikhail, 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) claims to be a citizen of Iran. On 11 July 2017 he lodged an application for a Safe Haven Enterprise Visa (application for protection). On 28 January 2020 a delegate of the Minister for Immigration 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. On 19 February 2020 the IAA received a new statement from the applicant. The statement refers to claims already raised before the delegate and argument in relation to the delegate's decision and the protection visa interview process. I do not consider the statement to include new information.

Applicant's claims for protection

4. The applicant's claims can be summarised as follows:
 - He is from Kermanshah Province and is of Kurdish ethnicity. He fears serious harm because of his ethnicity and because he is from a Kurdish area near the border of Iraq.
 - He was born into a Sunni Muslim family but no longer believes in Islam.
 - His father died when he was very young after being arrested.
 - He participated in protests against the government and was subsequently arrested and accused of working for the Komala Party and was made to sign a good behaviour agreement. Afterwards he was pressured to give the authorities information about political groups which he refused. As a consequence they closed his [business] and he was prevented from opening a new one.
 - He was also a member of a local political group who organised some protests. If he returns he will not be able to express his political views.
 - He also fears harm in Iran as a failed asylum seeker from a western country whose personal details were inadvertently released on the internet by the Department of Home Affairs in 2014.
 - Since he left Iran the authorities have approached his family seeking his whereabouts.

Refugee assessment

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 copies of a number of identity documents from Iran including his national identity card and birth certificate and provided a credible account of his life in Iran. I am satisfied that he is a citizen of Iran and that Iran is the receiving country for the purpose of this assessment.
8. I accept that the applicant is of Kurdish ethnicity and have given weight to the fact that he demonstrated fluency in the Kurdish language during his protection visa interview and country information before me also indicates that most of Iran's Kurds reside in the north-west of the country, including in Kermanshah where the applicant resided.

Claims in respect of the protection visa interview

9. In his statement to the IAA the applicant has claimed that he was not prepared for his protection visa interview which was held on 9 December 2019. He claims that at the time of the interview he was homeless and living in his car and had lost his job and had no income support. He came straight to the interview from living in his car and was dishevelled and uncomfortable from the heat and his mental health was poor. He claims the case officer should have considered his vulnerability when considering how he answered her questions. When he received the email from the Department of Home Affairs (the Department) inviting him to the interview he did not read it because he had so many other worries at the time in relation to being homeless and unemployed and cannot read English and just looked at the date and time. He also did not have any legal assistance after his application for protection was prepared in 2017. He assumed the interview was an appointment in relation to being given temporary shelter and when he was told it was his protection visa interview he was really stressed and felt he could not contradict the case officer and has to go along with it as it may have had bad implications for his visa if he did not. This is why he did not ask for the interview to be rescheduled.
10. I have listened to the recording of the protection visa interview and I note the applicant did express confusion and questioned the delegate about the purpose of the interview at the beginning as he said he had been having a lot of other problems. The delegate confirmed to him that the interview was in relation to his application for protection. He told her he had read

the email he had received from the Department about it but not the attached information as he did not have time.

11. The review material indicates that that there was regular contact between the applicant and the Department prior to his protection visa interview and a departmental officer called him on the 4 December 2019 in relation to his scheduled protection visa interview. During that conversation he said he was homeless. In a subsequent conversation with a departmental office, which appears to have been the following day, the applicant said he was waiting to hear from [a business] to find out if he can be employed and he was not interested in looking for other work. He said he had been sleeping on friends' couches and did not have a permanent address and does not have any health concerns and asked the Department to provide him with money and accommodation.
12. I accept that at the time of the interview invitation the applicant may have been consumed with concerns about his personal situation, however, it is clear that details of the interview were provided to him via email and confirmed to him over the phone by a Departmental officer. The applicant claims he did not read the email, in part, because he cannot read English but the attached information about the interview process had been translated to Farsi and the applicant demonstrated a fair knowledge of English during his protection visa interview and has also written to the Department in English.
13. Although the applicant claims he was homeless and had slept in his car and was unemployed at the time of the protection visa interview and he made similar claims just prior to that interview to departmental officers, during the protection visa interview he told the delegate that he was staying with a friend and provided the address for this accommodation and was [working]. Given the discrepancies in his claims on different occasions to departmental officers, I am not convinced he was sleeping in his car at the time of his protection visa interview.
14. I accept that the applicant was not legally represented at the protection visa interview. However, at the protection visa interview the delegate explained that it was his responsibility to raise all his claims for protection and provide evidence and that if his application is refused he may not have the opportunity to provide further information. He was given the opportunity to ask any questions about what was going to happen during the interview and he did not have any questions and nor did he want to add or change anything in his application. The applicant willingly engaged during the interview and responded to the delegate's question without objection. At the end of the interview the delegate also told him that she would consider any further information he provided prior to a decision being made and the applicant said that he had done his best to tell the truth and had given everything to the delegate. I also note that it was nearly two months between the protection visa interview and the delegate's decision which was ample opportunity for the applicant to provide any further information to the delegate, which he did not. I also note that the applicant wrote an email to the Department after receiving the delegate's decision where he noted, among other things, that he had been honest and said the whole truth.
15. The applicant claims his mental health was poor at the time of his protection visa interview. During the protection visa interview the delegate asked the applicant if he had any health issues that would impair him during the interview such as medication he was taking or a medical condition and he said no. However at the end of the interview the applicant did indicate that had has gone through a lot in the last six years. He felt affected psychologically and mentally which affected his memory and limited his ability and referred to the fact that he had not seen his family for the past six years. He indicated that he did consult medical practitioners about his psychological condition but they did not offer him any substantial

assistance and his only hope is to access the education system so he could academically improve himself. He then referred to problems he had experienced in finding a place to stay and was planning on moving to [another city] as he was "exhausted and could not manage his life anymore" and was nervous about everything. There is information in the review material that the applicant has previously made self-harm threats when talking to Departmental staff and as recently as October 2019 but did so after they refused his request for material support.

16. I accept that the applicant was feeling stressed due to his personal circumstances at the time of the protection visa interview, but the applicant did not provide any evidence to the delegate or to the IAA that he was suffering from a mental health condition that would impact his ability to provide evidence about his claims for protection. I note that he openly engaged with the delegate during the interview and was willing to answer her questions. He has claimed that he did not feel comfortable asking for the interview to be rescheduled as he felt that he could not contradict an officer/official but in other correspondence in the review materials it appears he has been willing to ask for material assistance when speaking to Departmental officers on previous occasions. In his statement to the IAA he has only referred to two instances where he claims his evidence was misinterpreted at the protection visa interview but has otherwise claimed that his evidence was consistent. He claims some events occurred many years ago so he could not recall all the details now but I note that he has not provided any further detail or information or evidence in support of his claims to the IAA.
17. Having considered all of the above factors I am satisfied the applicant had an opportunity to present his claims for protection at the protection visa interview and was not impeded for the reasons he has outlined. Given this, I have decided not exercise my discretion pursuant to s.473DC of the Act to seek further information from the applicant.

Father's death

18. The applicant has claimed that his father died when he was very young. His mother told him that his father was arrested on several occasions by the intelligence services during the Iranian revolution and the last time they took his father he died a few days later and this is all he knows about his death. The applicant has been very consistent about this claim since he arrived in Australia and I note that he has not attempted to exaggerate this claim. I accept this occurred. The applicant has not claimed to fear harm in relation to his father's death or that his family came to the adverse attention of the Iranian authorities because of his father. I am not satisfied he will face a real chance of harm in Iran from the Iranian authorities or any other group or person due to his association with his father.

Political Activism

19. The applicant claims that he will be persecuted in Iran by the Iranian authorities because of his political opinion against the government of Iran.
20. In his statement of claims attached to his application for protection (statement of claims), the applicant claimed that after completing his military service he worked in retail and opened a few shops and participated in some protests against human rights violations in Iran and the authorities viewed this as acts against the Iranian government. He claimed there was a protest one night in 2009 and the police were coming after people and he was arrested along with four of his friends on the street. The authorities accused him of working for the Komala party as he is of Kurdish ethnicity. During the protection visa interview he also claimed to have had two relatives who used to work for this party and the authorities also used this link to accuse him of being a member of this party. He had to go to court and sign a good behaviour agreement and

was told that if he was caught again he will face a lot of problems. The agreement stated that he could not participate in any political party or any protests against the government. He was not charged with any offence. Following this, the Iranian intelligence kept asking him to provide them with names and information about people who are in anti-Iranian government groups. The “[Agency 1]” is in [a named city] where the intelligence unit works and they asked him to work for them by writing reports on who was working for political groups. Every week they approached him and he continued to refuse to work for them. They kept harassing him to work for them as a spy but he kept refusing. Every week they would come to his [business] and harass him and eventually closed they his [business] and did not give him a licence to reopen the [business]. He believes they did this because he refused to work for them. In the same statement the applicant also claimed that he was a member of an informal local group that discussed social problems and organised a few protests and he also participated in protests which promoted human rights issues and civil rights. The applicant also claimed that if he were to return to Iran he would want to continue participating in protests but he would be persecuted and would not be able to express his political views.

21. I note the applicant raised similar claims during his Irregular Maritime Arrival and Induction Interview (Entry Interview) shortly after he arrived in Australia in June 2013. Nonetheless, I found his statement of claims very general and, when discussing the above claims, during his protection visa interview I also found the applicant’s evidence very vague and lacking in detail. He has also not provided any supporting evidence in relation to his claims.
22. For example, when asked by the delegate for further detail about the political group he claimed he belonged to, he said they lived in a small town and most of them knew each other and participated in demonstrations. He first said there were about 40 to 50 people who attended but then later stated it was a small group of 10 to 15 people. When the delegate asked him what the aims of the group were he said they were involved in political and religious discussions and would raise awareness among the young. When asked by the delegate how they raised awareness he said they were enlightening them about their rights and explaining how the authorities were committing cruelty. When questioned by the delegate about the protests he said they had a group through social media trying to “organise something” but when asked by the delegate if when he attended these protests he said he did not have the courage to but would just pass on the message to other people like a media campaign.
23. Furthermore, during the protection visa interview the applicant claimed that, after he was released from detention he had to go to the Etalaat office every week to sign in and would do that at the police station which he stated was “in the corner of the city”. When asked again by the delegate where that police station was, he said it is not the city and does not even know the name of the street. His evasive response to these questions is of concern given he claims he attended this office weekly to sign in.
24. In his statement to the IAA, the applicant now claims that he did not say that he had to sign every week with the Etalaat but rather said that he had to attend the intelligence office weekly for around a month and the frequency lessened. He believes this was not interpreted by the interpreter who had told him at the beginning of the interview that he was sleepy. The applicant also claims the interpreter’s English was not good. The applicant also claims that he did not say the intelligence office was in the corner of the city but rather was 2km outside the city on Kermanshah road and believes the interpreter was to blame again.
25. I am not convinced that the interpreter was to blame. I note that the applicant speaks English relatively well and was able to communicate with the delegate in English at times and even now claims he was able to notice that the interpreter’s English was not good. He claims that,

because the interpreter was Kurdish he did not tell the delegate about his concerns with the interpreter as he did not want to be disrespectful to him in the interview. However I note that he also did not raise any concerns privately with the delegate after the interview and in the nearly two months between the interview and the delegate's decision. He has also not provided any supporting evidence that these claims were interpreted incorrectly by the interpreter at the interview.

26. Furthermore, I have also given weight to the fact that the applicant did not claim to have to report weekly to the Etalaat office in his statement of claims but merely said they would approach him weekly asking him to work for them and would come to his [business] to harass him.
27. During the protection visa interview the applicant claimed that two of his relatives had been previously involved with the Komala party when they were quite young but now they were not doing anything and had quit. He claimed that the authorities were also trying to link him to this party because of his relatives' previous involvement. I note that during his Entry Interview he also stated two of his [relatives] belonged to the Komala party. I consider his claim about his relative's past activities with this party to be plausible. However, I have given weight to the fact that he also did not refer to his claim that he had been accused of being a member of the Komala party because of his relatives' previous membership in his statement of claims and only raised this during the protection visa interview after the delegate asked him if any of his family had links to Kurdish political groups and I find the evolution of this claim also to be of concern.
28. In his statement of claims the applicant said that it was the "[Agency 1]" office that used to ask him to work for them and provide them with information on political groups and because he refused they would harass him at his [business] and eventually they closed it and did not give him a licence to re-open it. Country information before me indicates that there is a unit within the Law Enforcement Forces in Iran called the "Edareyeh Amaken Omumi" (Public Establishments Office), which is concerned with the type of music people listen to, the interaction of people of the opposite sex in public places and various forms of perceived lewd behaviour but does not indicate that it is involved in intelligence gathering in relation to anti-regime activity.¹
29. During the protection visa interview the applicant said that he has been using social media such as [two sites] to express his political opinion against the Iranian authorities but did not provide any supporting evidence of this. When asked by the delegate if he was a member of any political group in Australia he said "we are powerless here we cannot do much here" which I found unconvincing. When asked if he had been associated with any Kurdish groups since coming to Australia he said that he had so many financial problems and then said that prior to experiencing homelessness he had been a member of Kurdish groups in Australia only on social media but again did not provide any supporting evidence or detail of this. When asked by the delegate if he had attended any protests or demonstrations in Australia he merely referred to one protest he attended at [a local institution] in relation to the proposed privatisation of that institution in 2018. He did not refer to attending any protests in respect of opposition to the Iranian regime and claimed he did not have the time to search for any despite living in Australia for over six years.
30. The applicant also claimed his [social media account] is under a fake name as is his email. This is because he fears that the authorities will find his profile and discover who he is and to protect his family. However during the protection visa interview he said that he is known as

¹ UK Home Office, "Iran January 2013", 16 January 2013, 3863

“[an Anglicised name]” on [social media account] which is his nickname. When the delegate asked why he was called that, he said his name is Muslim and he does not believe in that religion so he preferred to change his name and this name was easier and did not refer to having a pseudonym on social media due to fear of the Iranian authorities.

31. I am not satisfied the concerns I have noted above can be attributed to the applicant’s stressed state over his personal circumstances at the time of the protection visa interview. Despite claiming he was not ready for the protection visa interview, he has not provided any further credible detail or evidence to the IAA in relation to his protection claims.
32. On the evidence before me I accept that the applicant has political views against the Iranian regime but I do not accept that he was involved in any political activities in Iran. I also do not accept that he came to the adverse attention of the Iranian authorities for these activities or because he is Kurdish and/or his relatives used to be members of the Komala party. I do not accept that he had his business shut down and [business] licence not renewed by the Iranian authorities for any of these reasons. I also do not accept that the applicant has been involved in any political activities, online or otherwise, against the Iranian regime whilst living in Australia.
33. As I have not accepted that he was ever of adverse interest to the Iranian authorities because his relatives were former members of the Komala party, I am not satisfied he will face a real chance of harm in Iran from the Iranian authorities or any other group or person for this reason.
34. Although I have accepted that he has a political opinion against the Iranian government, on the basis of my findings above, I am not satisfied there is a real chance he will express those views publicly if he were to return to Iran and I am not satisfied this is due to a fear of persecution but rather a lack of interest. I am not satisfied the applicant will face a real chance of harm in Iran from the Iranian authorities or any other group or person because of his political opinion.

Kurdish Ethnicity

35. The applicant claims that he fears he will be persecuted by the Iranian authorities because of his Kurdish ethnicity and because of his imputed political opinion against the government of Iran. He also claims the Iranian government monitors its people and the Kurdish in particular and those living on the borders of the country. His town is very close to the Iraq-Iran border.
36. During the protection visa interview the applicant claimed that as a Kurd, he experienced discrimination whilst performing compulsory military service in Iran. He said that the military authorities would send minority ethnic groups to the battlefields but not the Persians. They would also send them to the Afghan border and would transfer them from the west, where the Kurds have historical ties, to the east of Iran. He said the authorities would differentiate between the Shias and Sunnis and claimed the Shias would get leave every month whilst the minority groups would get leave every three months.
37. Country information before me indicates that Kurds account for about ten percent of the population in Iran and the majority reside in the north-west of the country, primarily in the provinces of Kurdistan, Kermanshah, Ilam, and West Azerbaijan, bordering Iraq and Turkey. According to the most recent report on Iran by DFAT, no laws in Iran discriminate on the basis of ethnicity but it remains a sensitive political topic. DFAT assesses that, although the experience of different groups is not uniform, both official and societal discrimination against ethnic minorities does occur. Unlike other ethnic minorities, many Kurds harbour strong

separatist tendencies that have occasionally turned violent. International sources report that the government uses security, media and other laws to arrest and prosecute Kurds for exercising freedom of expression and association. The government has reportedly banned Kurdish-language newspapers, journals and books. Authorities have denied Kurdish NGOs registration permits, and brought security charges against persons working with such organisations. NGOs claim this has suppressed legitimate activity. Authorities prohibited most schools from teaching the Kurdish language (although not its use in informal settings).² Amnesty International, Freedom House and the US State Department all note, in their recent annual rights reports, that ethnic minorities in Iran continue to report that they face various forms of discrimination. This ranges from problems with access to employment, housing, and land rights, access to political office, the exercise of cultural, civil and political rights, restrictions on the use of language and permission to publish books.³ Another report notes that because most Kurds are Sunni Muslims and therefore face intersectional discrimination on the basis of both sect and ethnicity.⁴ As noted in a December 2014 article of the Financial Times, the Islamic Revolution of 1979 was followed by “[m]ore than a decade of fighting between Kurdish separatists and central government forces”. After this failed fight for independence, the Kurdish community has been “treated as a security risk by the government”.⁵ A more recent report by the Danish Immigration Service and the Danish Refugee Council noted sources which claimed that the Iranian authorities have military presence in the Kurdish areas and conduct structured surveillance in these areas and their presence had increased lately due to presumed increased extremism among Kurds and the Iraqi Kurdistan independence referendum of 25 September 2017.⁶

38. I accept that the applicant comes from a majority Kurdish province near the Iran/Iraq border and that that the Iranian authorities monitor Kurds including those living in these areas.
39. DFAT assesses that members of ethnic minority groups face a moderate risk of official and societal discrimination, particularly where they are in the minority in the geographic area in which they reside. This may take the form of denial of access to employment and housing, but is unlikely in most cases to include violence on the grounds of ethnicity alone. The risk to members of ethnic minority groups who are involved (or are perceived to be involved) in activism is higher.⁷ This is supported by other sources before me.⁸
40. Country information before me also indicates that religious minorities face a moderate risk of harassment on the grounds of their religious faith while undergoing military service.⁹ A 2015 article by IranWire also refers to discrimination against religious minorities during military

² DFAT, “DFAT Country Information Report – Iran”, 7 June 2018, CIS7B839411226

³ UK Home Office, “Country Policy and Information Note - Iran - Kurds and Kurdish Political Groups”, 30 January 2019, 20190215113243

⁴ Ceasefire Centre for Civilian Rights, Minority Rights Group International, Centre for Supporters of Human Rights, “Rights Denied: Violations against ethnic and religious minorities in Iran”, 13 March 2018, CIS7B83941441

⁵ ACCORD, “Iran: Freedom of Religion; Treatment of Religious and Ethnic Minorities COI Compilation September 2015”, 1 September 2015, CISEC96CF13622

⁶ Danish Immigration Service and Danish Refugee Council, “Issues concerning persons of ethnic minorities, Kurds and Ahwazi Arabs”, 1 February 2018, CIS7B83941872

⁷ DFAT, “DFAT Country Information Report – Iran”, 7 June 2018, CIS7B839411226

⁸ Austrian Centre for Country of Origin and Asylum Research and Documentation (ACCORD), “Iran - COI Compilation”, 1 July 2018, 20190326122102; UK Home Office, “Country Policy and Information Note - Iran - Kurds and Kurdish Political Groups”, 30 January 2019, 20190215113243; Danish Immigration Service and Danish Refugee Council, “Issues concerning persons of ethnic minorities, Kurds and Ahwazi Arabs”, 1 February 2018, CIS7B83941872

⁹ DFAT, “DFAT Country Information Report – Iran”, 7 June 2018, CIS7B839411226

service and noted many men do not speak up about the abuse and discrimination they experience during their service and the Iranian media does not report on this taboo subject.¹⁰

41. On the basis of the country information before me I accept, as plausible, the applicant's claims about alleged discrimination he faced as a Kurd during his military service.
42. The country information above indicates that the risk of adverse treatment to members of ethnic minority groups who are involved (or are perceived to be involved) in activism is higher and I have not accepted that the applicant was involved in any political activities in Iran or will publicly express his political opinion if he were to return to Iran. Other than the discrimination he claimed he experienced during military service, he has not referred to any other credible incidents of discrimination or harm he experienced due to his Kurdish ethnicity and/or because he is from a Kurdish border area. I am not satisfied there is a real chance if he will be imputed with a political opinion against the Iranian government because of his Kurdish ethnicity and/or because he lives in a Kurdish border area.
43. I am not satisfied the applicant will face a real chance of discrimination or any other harm amounting to serious harm in Iran from the Iranian authorities or any other group or person on the basis of his Kurdish ethnicity and/or because he is from a Kurdish border.

Religious Beliefs

44. I also accept the applicant's claim that he was born a Sunni Muslim as he claims his family are Sunni and have given weight to country information that indicates that most Kurds in Iran are Sunni.¹¹ The applicant states that he never really practised Sunni Islam himself but always believed in God. In his application for protection he indicated that he did not have a religion.
45. During the protection visa interview the applicant claimed that he had attended church in Australia a few times and the last time he attended was a year prior but then referred to himself as a Mormon and that the Mormon church insisted on him being baptised which he referred to as a "new experiment". He is still connected with friends from the church and they have assisted him in trying to resolve his accommodation issues but as a whole he does not believe in religion which he says is the root cause of superstition and is a "brainwashing process". He then said he was not really interested in talking about "these things". I found the applicant's above oral evidence to be quite confusing but I accept that he has attended church in Australia and may have been baptised, in part due to a superficial interest in Christianity and as an "experiment" and because of material support he received from the church but he has clearly stated that he does not believe in religion and has otherwise consistently said that he has no religion. He also indicated he had not been to church for at least a year. I am not satisfied he has genuinely converted to Christianity or that there is a real chance he would do so or identify as a Christian in the reasonable foreseeable future if he were to return to Iran. There is also no credible evidence the Iranian authorities or community in Iran are aware of these activities in Australia and I am not satisfied there is a real chance they will become aware in the reasonable foreseeable future. I am not satisfied the applicant will face a real chance of harm in Iran from the Iranian authorities or any group or person because of his church attendance and friendship with Christians and baptism in Australia.
46. The applicant has not raised any fear of harm in Iran in relation to his non-belief in Islam but I have, nonetheless, considered the risk of harm on this ground below.

¹⁰ "Military Service: A Nightmare for Minority Recruits", IranWire, 13 April 2015, CXBD6A0DE4480

¹¹ DFAT, "DFAT Country Information Report – Iran", 7 June 2018, CIS7B839411226

47. In its 2018 report on Iran, DFAT noted that in practice, government policy and legislation heavily favours the majority Shia population, leading to pervasive structural discrimination against non-Shia Muslims and religious minorities and under Iranian law, a Muslim who leaves his or her faith or converts to another religion can be charged with apostasy but this is not an everyday occurrence in Iran and death sentences for apostasy and blasphemy are rare.¹² In its 2016 report on Iran DFAT assessed that it is highly unlikely that the government would monitor religious observance by Iranians – for example, 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 proselytisation, 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 and its more recent 2018 report has not indicated a change in this assessment.¹³ Other country information sources before me indicate that many Iranians do not attend mosque regularly and the Iranian clergy have complained that more than 70% of the population do not perform their daily prayers.¹⁴ Another source notes that several indicators seem to suggest that a significant number of young Iranians do not consider themselves Muslims. Many of them are either becoming atheists or secretly converting to other religions or are non-practising.¹⁵ A 2003 article also noted that numerous surveys have shown that most Iranians under the age of 25—who make up 50 percent of the overall population—consider themselves agnostic and other sources before me refer to the same.¹⁶ The applicant has claimed that he used to practise Islam until he was a teenager but has not referred to previous harm due to his non-belief in Islam since he stopped practising. I am not satisfied on the evidence that there is a real chance the applicant will promote his religious views in public in Iran and I am satisfied he will not do so due to a fear of persecution. I am not satisfied the applicant will face a real chance of harm in Iran from the Iranian authorities or any other group or person because of his non-belief in Islam.

Failed asylum seeker from a western country and data breach

48. The applicant claims that he fears that if he is forced to return to Iran will be persecuted by the Iranian authorities because he sought asylum. In February 2014 the Department inadvertently published a file containing the personal details of asylum seekers in Australian detention including his details (data breach). He is very worried about the fact that his personal details were made publicly available and he thinks the Iranian authorities have access to his information and will easily be able to infer that he has sought asylum in Australia and will also be able to see when he arrived in Australia. As a consequence of this, they will be suspicious of his history and the information he may have provided to the Australian authorities. He fears he will be arrested and severely punished if he were forced to return.

49. The applicant has also claimed that in about mid-2014, a year after he left Iran, the Iranian intelligence services visited his family home looking for him. They took his mother to the police

¹² Ibid.

¹³ DFAT, "DFAT Country Information Report Iran April 2016", 21 April 2016, CIS38A8012677

¹⁴ Gunes Murat Tezcur; Taghi Azadarmaki; Mehri Bahar, "Religious Participation among Muslims: Iranian Exceptionalism", Critique: Critical Middle Eastern Studies, 1 January 2006, CIS21784; Bahman Baktiari, "Iranian Society: A Surprising Picture", in 'The Iranian Revolution at 30', The Middle East Institute, 1 January 2009, CIS17095

¹⁵ Pejman Abdolmohammadi, "The Revival of Nationalism and Secularism in Modern Iran", LSE Middle East Centre, 1 November 2015, CISEC96CF14725

¹⁶ "Iran's Other Religion", Boston Review, 1 June 2003, CX82EDE9415499; "Young Iranians affected by the embargo, tired of political Islam", Asia News IT, 1 April 2015, CXBD6A0DE4714; "Religion: Take it or leave it", The Economist, 1 November 2014, CX1B9ECAB7499; ACCORD, "Iran: Freedom of Religion; Treatment of Religious and Ethnic Minorities COI Compilation September 2015", 1 September 2015, CISEC96CF13622

station to question her and she lied and said she did not know where he was or why he never returned.

50. 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.¹⁷ In its 2018 report, DFAT stated that it reached an agreement with the Iranian government to facilitate the return of Iranians who arrived after 19 March 2018,¹⁸ however the applicant does not fall within this category as he arrived in Australia in 2013. If the applicant were to return to Iran, I am satisfied it would only be on a voluntary basis.
51. In the delegate's decision she notes that the accessible information that was released on the Department's website in 2014 about asylum seekers in detention included the applicant's name, date of birth, nationality, that he was an irregular maritime arrival and his detention status. It did not indicate that his protection claims were disclosed and I am not satisfied they were.
52. During the protection visa interview the applicant said that after he received a letter from the Department about the data breach he became nervous about his family and referred to the fact that the authorities had approached his family twice looking for him. I have not accepted that the applicant had an adverse profile with the Iranian authorities prior to his departure as he has claimed nor for any other reason. He has claimed he departed Iran legally on his own passport. Even if the Iranian authorities were aware that he was in Australia seeking asylum as a result of the data breach, it did not include information about his protection claims and country information before me indicates that seeking asylum in another country is not a criminal offence in Iran and the Iranian authorities have little interest in prosecuting failed asylum seekers for activities conducted outside Iran, including in relation to protection claims.¹⁹ Given this, I do not accept that the Iranian authorities approached his family in 2014 seeking his whereabouts. I am not satisfied on the evidence the Iranian authorities know or that there is a real chance they will come to know of the nature of his protection claims in the reasonable foreseeable future.
53. The applicant claims that the people smuggler took his passport whilst on route to Australia and I accept this claim. I am satisfied that if the applicant were to voluntarily return to Iran he would have to do so on temporary travel documents.
54. Although some older sources suggest that a person who enters Iran on travel documents issued by an Iranian Embassy may be questioned by airport authorities²⁰ I give more weight to DFAT's more recent report published in 2018 which states that, according to international observers, Iranian authorities pay little attention to failed asylum seekers on their return to Iran and 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 and I am not satisfied the applicant fits this profile.²¹
55. There are few other recent reports before me that allege mistreatment of failed asylum seekers on return to Iran. There are two 2017 articles which refers to the sentencing to prison

¹⁷ DFAT, "DFAT Country Information Report – Iran", 7 June 2018, CIS7B839411226

¹⁸ Ibid.

¹⁹ 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

²⁰ 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

²¹ DFAT, "DFAT Country Information Report – Iran", 7 June 2018, CIS7B839411226

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. I have not accepted that the applicant had an adverse profile with the Iranian authorities prior to his departure for any reason. On the information before me I am also not satisfied that the Iranian authorities impute failed asylum seekers from western countries, including those who are Kurdish from Kurdish border areas, with a political opinion against the Iranian government or Islam. I am not satisfied there is a real chance the applicant will attract the adverse attention of the Iranian authorities on his return for any reason.

56. 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 returning from having resided for a long time in a western country and/or as a result of the data breach or in combination with the fact he is Kurdish from a Kurdish border area.

Other claims raised during Entry Interview

57. During the applicant's Entry Interview, when asked if he had ever been detained by the police or other organisations in Iran, he said he had been arrested for a day or two or a few hours because he went near a school where there were girls. I accept this as plausible but the applicant has not referred to this claim in his application for protection or during the protection visa interview and has not claimed he fears harm from the Iranian authorities if he were to return to Iran on the basis of having been previously detained for these reasons. I am not satisfied he will face a real chance of harm in Iran from the Iranian authorities or any other group or person for these reasons.

Refugee: conclusion

58. 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

59. 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

60. 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.

61. 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.

62. I have not accepted that the applicant was involved in any political activities against the Iranian government in Iran or came to the adverse attention of the Iranian authorities and had his business shut down for these reasons. I am not satisfied he will face a real risk of significant harm in Iran in relation to these claims.

63. Having considered the country information before me and the applicant's circumstances, I am not satisfied he will face a real risk of harm amounting to significant harm in Iran from the Iranian authorities or any other group or person on the basis of his Kurdish ethnicity and/or because he is from a Kurdish area near the Iran/Iraq border.

64. I have found the applicant will not face a real chance of any harm in relation to his other claims. Consequently he will also not face a real risk of any harm in Iran.²² I am not satisfied the applicant will face a real risk of significant harm in Iran.

Complementary protection: conclusion

65. 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.

²² *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.

...

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.