



Australian Government
Immigration Assessment Authority

Decision and Reasons

Referred application

IRAN

IAA reference: IAA20/08258

Date and time of decision: 11 June 2020 18:20:00

J Bishop, 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 now [age] years old and claims to be a national of Iran. He identifies as Persian and arrived in Australia [in] April 2013¹.
2. On 3 July 2017 the applicant lodged an application for a Safe Haven Enterprise Visa (SHEV). On 16 April 2020 the delegate refused the applicant's visa. The delegate determined the applicant did not face a real chance of serious harm or a real risk of significant harm now or in the foreseeable future in Iran.

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) (the review material).
4. Section 473DB of the Act provides that, subject to Part 7AA, the IAA must review decisions by considering the review material without accepting or requesting new information and without interviewing the applicant. Section 473DC provides that the IAA may obtain new information – defined to mean information that was not before the delegate when the decision was made and I consider may be relevant – but it does not have a duty to get, request or accept any new information, whether the IAA is requested to do so by an applicant, or in any other circumstances. If I get or accept new information, I must not, pursuant to s.473DD of the Act, consider that new information unless I am satisfied that there are exceptional circumstances to justify its consideration. In relation to new information given to the IAA by the applicant I must also be satisfied that it:
 - was not, and could not have been provided before the delegate's decision was made; or
 - is credible personal information which was not previously known and had it been known may have affected the consideration of the applicant's claims.
5. The applicant's representative provided IAA submissions dated 12 May 2020 that argued errors in the delegate's decision based on information that was before him and I have had regard to those submissions.
6. The applicant's submissions to the IAA did raise new information about a part of the delegate's decision using the same country information citations in the same words and in the same order as another decision for a different applicant. It was submitted that the last paragraph of the section should be specific to the assessment of each case but used the exact words in both cases. It was submitted that the delegate's decision was not specific to the applicant and was therefore invalid. The role of the IAA is to review the delegate's decision. I am required to make findings of fact afresh based on the information before me and apply those facts to the relevant legislation. The delegate's assessment of the applicant's - or another person's - claims is irrelevant to my assessment in this particular case. I am of the view that the new information has no probative value. I am not satisfied there are exceptional circumstances to justify considering this new information and I have not had regard to it.

¹ The delegate's decision stated the applicant arrived in March 2013 but the information before me indicates he arrived in April 2013.

7. The applicant's representative submitted to the IAA that the delegate indicated a few times during the SHEV interview that he would contact the pastor to obtain evidence about the applicant's interest in Christianity but no reference to that contact was made in the delegate's decision. And, there is no evidence before me to indicate that the delegate did contact the pastor after the SHEV interview. I have listened to the applicant's SHEV interview which he attended with his representative. It was explained to him at the beginning of that interview that it was his responsibility to raise all his claims for protection and to provide evidence to support those claims. The applicant provided further information after his SHEV interview and he continues to be represented. His representative has taken the opportunity to provide written legal submissions to the IAA which I have had regard to. Despite submitting that the delegate did not appear to contact the pastor, the applicant has not taken the opportunity to provide further evidence about his involvement with his church and/or request that the IAA exercise its discretion and invite the applicant and/or anyone else to an interview. Based on all the information before me, I have decided not to exercise my discretion to invite the applicant or anyone else to provide further information whether at an interview or otherwise.
8. The applicant's representative referred to the section 57 letter the delegate sent to the applicant after his SHEV interview inviting him to respond to information received in 2016 about the applicant being part of a drug dealing group. The applicant provided a written response and denied having any involvement in – or awareness of - drug dealing activities. The applicant's representative submitted to the IAA that the allegations are irrelevant to the applicant's case and I accept that submission.
9. On 3 June 2020 I wrote to the applicant. The letter relevantly stated:

...The following information was provided to the IAA. I do not consider the information relevant to your application for a protection visa and have not drawn any adverse inferences from it. Nevertheless the information is part of the review material before me and you are invited to comment on it if you wish to do so.

The Department received information in 2016 that you were living with seven other illegal maritime arrivals and you:

- *were in receipt of Centrelink benefits while working cash in hand as a [Occupation 1] earning \$[amount] per week;*
- *sold drugs from your residence and outside your residence; and*
- *earned money from prostituting yourself from your residence to other males...*

10. On 5 June 2020 the applicant provided a statutory declaration dated 5 June 2020 which reiterated information that was before the delegate and provided new information. The applicant stated that he has never been involved in any criminal behaviour or offences. He did share a house with four other illegal maritime arrivals but never shared a house with seven people. He did receive Centrelink benefits when he had no other source of income until the end of 2017. He never worked as a [Occupation 1] in Australia. He has never been involved in selling drugs and he has never prostituted himself to other males or females. He has never been involved in any illegal sexual activities. The applicant stated that he strongly asserts the information is incorrect and has no basis. I am of the view that the 2016 allegations about the applicant's purported illegal activities are completely irrelevant to his claims for protection and have no probative value. I am not satisfied there are exceptional circumstances to justify considering any of the new information provided by the applicant in response to the IAA's letter and I have not had regard to it.

Applicant's claims for protection

11. The applicant's claims to fear harm in Iran because he:
- dislikes Islam and hasn't practised the faith since he was about 14 years old
 - was harassed, detained and accused of false allegations by the Basij
 - has an interest in Christianity and intends to continue practising the Christian faith
 - would be returning as a failed asylum seeker from a western country

Factual findings

12. The applicant provided, amongst other identity documents, his Iranian driver's licence, national identity card and birth certificate. He provided translations for his birth certificate, driver's licence and national identity card. I accept the applicant is who he claims to be and is an Iranian citizen. I find the receiving country is Iran.
13. The applicant said he left Iran at the Khomeini airport using a genuine Iranian passport. He obtained the passport about six months before he left Iran. He told the delegate he was scanned at the airport to see if he had drugs or 'something like that' in his stomach but was then allowed to leave. I accept the applicant left Iran using a genuine Iranian passport via the airport.

The applicant's family

14. The applicant's evidence is that his mother, [and number of siblings] continue to live in Iran. He had two other [siblings] who died and his father died when he was about [age] years old. He is the youngest child and was raised in Tehran with his parents and siblings. In his SHEV application he indicated that he contacts his mother once or twice a month. I accept the applicant has numerous siblings and his mother living in Iran and that he remains in contact with his mother.
15. The applicant's written evidence was that his eldest brother H is a drug addict. H never married and lived with the applicant and their mother in the family home. His brother HS is a drug addict. HS was married for about 25 years but his wife divorced him in 2011 and he returned to live in the family home. His brother N is single and also a drug addict. His brother R is divorced and used to live in the family home with his three children. The applicant claimed his brothers fought with each other almost every day. They harassed the applicant's mother and when the applicant defended her they severely bashed him. During the SHEV interview the applicant confirmed his three older brothers are drug addicts. One of his other brothers was a drug addict but got clean and the other brother abuses drugs but isn't drawn into it.
16. During the SHEV interview the applicant said the police would come to their home in relation to his brothers' drug use and his brothers had served prison terms. But the applicant lived his own life in Iran and had no problems from the Iranian authorities because of his association with his brothers.
17. The applicant was [age] years old when he left Iran and had lived with at least one of his drug addicted brothers since he was born. Despite the applicant's ongoing and continuous exposure to their addiction he was unable to tell the delegate what drug or drugs his brothers were addicted to. And, when the delegate asked if the drugs made his brothers go faster or slower he responded that their moods were constantly changing. He said he was not close to his brothers and he could see by looking at them that they were addicts. When the delegate asked the

applicant if his brothers were drug dealers he responded 'not in mass quantities'. His brothers had bonds and businesses. I find it implausible that if the applicant's brothers were drug addicts as claimed - and had gone to prison numerous times - that he would not know at least one of the drugs that his brothers were addicted to or taking. Overall, I found the applicant's evidence about his brothers' drug addiction unconvincing. I am prepared to accept the applicant's brothers used, and use, drugs. However, I am not satisfied the police came to the applicant's home because of his brothers' drug use and/or that his brothers served prison terms. Nor am I satisfied that the applicant's brothers ever beat, harassed or harmed the applicant.

18. The delegate asked the applicant about the financial situation in Iran and he responded that they were rather poor and struggled financially. Everyone had to make their own way and provide for their own needs. He never asked his mother for anything. I accept the applicant - who lived with his mother in the family home - was able to support himself in Iran.

The applicant's religion

19. The applicant indicated in his arrival interview in 2013 and in his statutory declaration dated 21 June 2017 (the 2017 statutory declaration) that he had no religion. During the arrival interview he said he was born into a Muslim family but did not believe it. His written evidence was that from a very young age he disliked Islam and had not attended Islamic ceremonies since he was about 14 years old. His house was beside a mosque which was the base for the local Basij. He had to tolerate the noises from the mosque and the Basij had gatherings most nights. The applicant said he complained about the noise several times and 'disputed with them' once. He said 'they' didn't care about 'it' and invited him to attend the ceremonies at the mosque but the applicant refused. During the SHEV interview the applicant said he needed his sleep. He would complain about the mosque noise and express his anger to the people who ran the mosque, who were part of the organisers of the mosque or ceremonies or who stood outside the mosque. I accept the applicant does not believe in Islam and does not practise the religion. On the applicant's own evidence he had lived next to the mosque - and the noise that the mosque generated - his entire life. I do not know when the applicant started complaining to the mosque about the noise or how many times he complained. His evidence about who he complained to was general. I find it implausible that a person who has lived beside a mosque his entire life would - at some point in time - start complaining about the noise because it interrupted his sleep. I accept the applicant lived next to a mosque but I am not satisfied, based on the evidence before me, that he ever complained about the noise or expressed his anger to the mosque organisers or persons who stood outside. Nor do I accept the applicant was invited into the mosque when he purportedly complained.
20. The applicant provided a second statutory declaration dated 12 December 2019 (2019 statutory declaration) stating that about two months ago he gained an interest in Christianity. He broke up with his girlfriend after about three years together in August 2019 and he was hurt and depressed. He hated himself and didn't want to see anyone. His friend M invited him to church and he attended [Church 1] in late September 2019. He first attended the church to improve his mental health. He continued to attend because his attitude and mental condition improved. Everyone at the church was welcoming and treated him like they had known him for years. He attends Sunday services and bible studies every Tuesday. He likes Christianity and has learned about Jesus and Jesus' message for humanity. He likes the importance of love and affection in Christianity.
21. The applicant stated that he has not been baptised but he likes Christianity and loves Jesus. He wants to learn more about the faith and is 'sure' he will follow Christianity for the rest of his life. He is not following Christianity for the purpose of strengthening his claims for protection. He

believes he was supposed to break up with his girlfriend to come to Jesus at this stage in his life. The more he learns the more attracted he is to the faith. The applicant stated that if he returns to Iran he will not be able to openly practise Christianity. He will have to practise his religion with other Christians and his life will be put at risk. He will be convicted of apostasy and sentenced to long-term imprisonment or even killed.

22. During the SHEV interview the applicant said he is fascinated with the message of compassion by Jesus Christ to his children and that is an area he would like to explore more. After the break-up with his girlfriend he believed that no one deserved compassion and he was consumed with hatred until he went to church. At church he 'experienced' that there are still people who are worthy and noble. He has had contact with the pastor and provided the delegate with the pastor's card. The card had the pastor's name at the top, the name of the church with a cross, an address and a Gmail account. The card appeared to have no features that would make it difficult to reproduce but I accept it is genuine. The applicant reiterated that he is attending bible studies each Tuesday and that he has been attending church for about two months. He has developed a faith in Jesus Christ and his compassion. He gets a positive 'vibe' and aspires to become a better person.
23. The delegate asked the applicant why he became involved in Christianity now, given he has been in Australia for about seven years and had ample opportunities to do so before. The applicant said he was immature and the breakup became a driving force for him to need spirituality. The delegate put to the applicant that he might find it difficult to be satisfied that he is going to continue to practise Christianity given his involvement with the religion has been so recent. The applicant responded that the compassion and grace he has experienced is something that he would like to cherish for the rest of his life. He described grace as being grateful for everything god has provided. He said that the presence of Jesus Christ is everywhere in all aspects of his life and all around us.
24. The delegate put to the applicant that he had concerns about his reasons for being interested in Christianity and how recent that interest was. The applicant and his representative were provided a short break and, after the break, the delegate asked the applicant if he wanted to respond to the delegate's concerns. The applicant said that he understood where the delegate was 'coming from' and the doubts he might have. But, if he wanted to use Christianity to claim protection he could have done so seven years ago but it never occurred to him to do that. He said the main trigger was the recent break-up with his ex-girlfriend. The delegate asked the applicant if he would continue to practise Christianity if he returned to Iran and he responded that he wouldn't be able to because it is unthinkable in Iran to abandon Islam for another religion. His representative submitted that the applicant is thinking about being baptised and has a good connection with the pastor of the church. If he returns to Iran he will be unable to practise his religion in the open and would be at risk of being arrested by the Iranian authorities.
25. The applicant's representative submitted to the IAA that the applicant gained an interest in Christianity after a relationship breakup. He was depressed at the time and his Christian friends introduced him to the religion. He had no control over his relationship breakup or being depressed. It just happened and the time of conversion is irrelevant. He submitted that the delegate's decision stated the applicant had little knowledge of Christianity but, during the applicant's SHEV interview, the delegate didn't ask any knowledge-based questions to test the applicant's knowledge of the bible and/or Christianity.
26. Apart from the applicant's evidence, no other evidence has been provided to support his claim of being in a relationship for a period of three years and/or of being depressed after that relationship broke down. Likewise, apart from the applicant's evidence and the contact card for

the pastor, no other evidence has been provided to support his claim of attending church and/or bible classes on a regular basis since about September 2019.

27. Based on the scant evidence before me, I am not satisfied the applicant has attended church on Sunday and/or bible class on Tuesday on a regular basis since late September 2019. I am not satisfied the applicant had or continues to have a genuine interest in Christianity and/or that he intends to practise the Christian religion now or in the reasonably foreseeable future. I am not satisfied the applicant considers himself a Christian and/or that he would practise the Christian religion if he returned to Iran.

Applicant being harassed by the Basij

28. The applicant's written evidence was that the Iranian authorities constantly harassed him. On one occasion, when he was about [age] years old, he had 'some drink' with some friends when the Iranian authorities approached them and smelt their mouth. They were taken into custody overnight for allegedly drinking alcohol and taken to court the following day. The court acquitted them because they were too young and had a 'clean' criminal record. The applicant didn't mention being arrested for drinking, staying in custody overnight and being taken to court the following day in his arrival interview. When he was asked during that interview if he had ever been arrested or detained and/or charged with an offence he responded no. And, elsewhere in his written evidence he stated that the Basij accused him of drinking which he had not done. The applicant's evidence is not consistent and I am not satisfied he was ever taken into custody for drinking alcohol, taken to court the following day and acquitted because of his age and having no criminal record.
29. During the applicant's arrival interview he stated that he left Iran because he did not accept Islam, he did not believe in Islam and he had problems with the Muslims. When the officer asked if anything had happened to him personally he responded that his house was next to a mosque and the Basij discovered that he did not believe in Islam. The Basij caught him and took him to the mosque. He was not taken to a police station. He was severely punished and they took a statement from him. The statement accused him of drinking alcohol, disgracing Islam, swearing at Islam/the mosque and disrespecting the mosque. He never did any of the things written on the statement but he was forced to put his fingerprint on the paper. He was detained for about three hours in and around January/February 2013 and was released when his mother and 'a lot of people' came and told the Basij he had not done what he was accused of. The Basij kept the statement/letter and threatened to present it to the Iranian government if the applicant even thought about complaining. The officer asked the applicant if he had any other reasons for leaving Iran and he responded no. He said he didn't go home for about two months because he knew the Basij were looking for him and he knew 'this' was going to happen and eventually it did.
30. The applicant's written evidence stated that he met his girlfriend when he was about [age] years old (around 2010/2011) and they dated regularly until an incident occurred around February 2013. He and his girlfriend were walking on a street near their neighbourhood on a Thursday night when the Basij stopped them. Some of the Basij recognised the applicant because he lived next door to their mosque base. The Basij asked the applicant and his girlfriend questions about their relationship and realised they were not married or engaged. The applicant and his girlfriend were taken to the Basij base located in the mosque next to the applicant's home and separated. The applicant was taken into a small room, severely beaten and tortured. He was accused of insulting Islam and having altercations with the Basij. The applicant told them he had done nothing wrong and the Basij did not listen and kept beating him. The applicant was left alone in the room and he called his mother. He told his mother that he had been caught by the Basij and

was detained in the mosque. The Basij returned with a piece of paper accusing the applicant of disgracing Islam and the prophet Mohammad, insulting Islam and the Basij, drinking alcohol and other things. The applicant had not done what he was accused of and refused to sign it. The Basij put his fingerprint on the statement by force. Before the applicant was released the Basij told him to attend the mosque regularly and appear at their base whenever they called. He was warned not to tell anyone about the incident and was threatened with being taken to court and convicted of the allegations listed in the statement. The applicant stated that his girlfriend broke up with him after the incident and he knew the Basij would not leave him alone. He decided to stay at his sister's place for a while and a few days after the incident the Iranian authorities came to his parents' home asking about the applicant. A couple of days later the Iranian authorities came to his parents' house again and left a message for the applicant to appear at their head office. The applicant consulted with friends and decided to flee Iran. He organised his trip within a couple of months and left Iran [in] April 2013. When he was in immigration detention in Australia his mother told him the Iranian authorities had come to his house again looking for him. He is certain the Basij have opened a judicial file against him based on the statement with his fingerprint on it.

31. During the applicant's SHEV interview he said he had been going out with his girlfriend for about three to four months when the incident happened. The delegate put to the applicant that he said in his statement that he had known his girlfriend since he was [age] and he responded that he provided rough dates and left Iran when he was [age]. The applicant turned [age] in October 2010 and left Iran in April 2013 when he was [age] years old and turning [age] that year. If he met his girlfriend when he was around [age] years of age then he would have known her for around two years when the incident happened. I do not accept the difference in the applicant's evidence can be attributed to him providing 'rough' dates.
32. During the SHEV interview the delegate put to the applicant that his understanding is that the Basij do get young people to sign something if they are detained and then their parents come and get them and that is it. The delegate asked the applicant why this incident was more significant for him and he responded that what the delegate had said was 'spot on' and 'exactly right' and that was what happened to his girlfriend. However, the Basij's dealing with the applicant was different. He was taken to a small room, beaten and accused of drinking and insulting Islam. The applicant's representative submitted that there is a difference between an undertaking and an allegation.
33. The delegate asked the applicant if there had been further contact from the Basij and he responded that members of the Basij came to his house three times asking about him. The delegate put to the applicant that the Basij would know he had left Iran and he responded that he was in Iran when the Basij came the first two times and had left when they came the third time. He said his mother told them she didn't know where the applicant was.
34. The applicant's evidence during his arrival interview was that the Basij took him to the mosque and beat him because they discovered he did not believe in Islam. However, his written evidence was that the Basij took him and his girlfriend to the mosque because they were walking together on a street near his home when the Basij stop them and found out they were not married or engaged. And, during his arrival interview the applicant failed to mention the Basij were coming to his home looking for him after the incident. During the applicant's SHEV interview he said he obtained his passport six or seven months before he left Iran because he was planning to go to [Country 1] with some friends for a holiday. He had no issues obtaining his passport and collected it himself from the police. He had no intention to leave Iran permanently at that time. However, during the applicant's arrival interview he said he started making arrangements to travel to

Australia about six months before he left. He confirmed during that interview that he bought tickets and obtained a genuine passport in early 2013.

35. The Basij organisation is supervised by the Islamic Revolutionary Guards Corps (IRGC) and is one of the primary enforcers of internal security and moral codes.² I accept the applicant doesn't believe in Islam and/or practise the religion. However, the applicant has given inconsistent evidence about the circumstances of him being taken and detained by the Basijat the mosque and, on his own evidence, he didn't do any of the things he was purportedly accused of doing. Based on all the evidence before me, I am not satisfied the applicant ever came to the attention of the Basij for anything. I am not satisfied he was ever taken to the mosque, beaten and threatened as claimed. I am not satisfied the Basij ever came to his house looking for him either before or after the applicant left Iran.

What would happen if the applicant returned to Iran?

36. The applicant's written evidence is that he will be arrested and detained as soon as he returns to Iran. He will be convicted of the allegations in his statement, tortured, imprisoned for a long period of time or even executed. I was not satisfied the applicant was taken and detained by the Basijas claimed and I do not accept the applicant will be arrested and detained upon his return to Iran. I do not accept the applicant will be convicted of allegations in his purported statement, tortured, imprisoned and/or executed.

Refugee assessment

37. 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

38. 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.

² DFAT Country Information Report Iran, 14 April 2020

39. I was not satisfied the applicant had or continues to have a genuine interest in Christianity and/or that he intends to practise the Christian religion now or in the reasonably foreseeable future. I was not satisfied the applicant considers himself a Christian and/or that he would practise the Christian religion if he returned to Iran.
40. I have accepted the applicant did not, and does not, believe in Islam and no longer practises the Muslim faith. Under Iranian law a Muslim who leaves his or her faith can be charged with apostasy and most Islamic judges in Iran agree that apostasy should be a capital crime. However, DFAT considers³ it is highly unlikely that the Iranian government would monitor Iranian for their religious observance, for example whether someone attended the mosque. Likewise, DFAT assesses⁴ that it would be unlikely that it would become known that a person was no longer faithful to Islam. The applicant has not practised the Muslim faith since he was about 14 years old and I was not satisfied he ever came to the attention of the Basij for any of his claimed reasons; including being a non-believer and/or non-practising Muslim. The applicant has not claimed and there is no evidence before me to indicate that he was ever of adverse attention to anybody else because he didn't believe in Islam or practice the religion. I am not satisfied the applicant faces a real chance of any harm in Iran because he doesn't believe or practise the Muslim faith now or in the reasonably foreseeable future.
41. The applicant no longer has a passport and in order for him to return to Iran he would need to obtain documentation to facilitate his travel. While officials provide assistance to Iranians who wish to voluntarily return, Iranian overseas missions will not issue travel documents to an Iranian whom a foreign government wishes to return to Iran involuntarily.⁵ Iran and Australia signed a Memorandum of Understanding on Consular Matters on 19 March 2018 to facilitate the return of Iranians who arrived after that date and who have no legal right to stay in Australia.⁶ However, the applicant does not fall into this category and I am satisfied there is no real chance the applicant will be returned to Iran involuntarily.
42. The applicant claims the Basij will arrest and torture him because he will be perceived to be a traitor for fleeing Iran and seeking asylum in a western country. He claims the Iranian authorities will consider his actions as confirmation of what he was alleged to have done.
43. If the applicant did return to Iran in the foreseeable future, after having spent a period of time in a western country, then it would only be on a voluntary basis, using a temporary travel document issued by the Iranian authorities. DFAT's assessment is that Iranian authorities pay little attention to failed asylum seekers on their return and have little interest in prosecuting failed asylum seekers for activities conducted outside Iran, including in relation to protection claims.⁷ Those who return on temporary travel documents are questioned by the Immigration Police at the airport about the circumstances of their departure and the reasons for travelling on a temporary travel document. This questioning takes between 30 minutes and one hour but can take longer if the returnee gives evasive answers or is suspected of having a criminal history. Arrests and mistreatment are not common during this process. I accept the applicant would be questioned by the Iranian Immigration Police if he returned to Iran on temporary travel documents. The applicant indicated in his SHEV application that he has never been charged and/or convicted of an offence in any country. And, given my findings as outlined in detail above, the applicant does not have an adverse profile with the Iranian authorities. I am not satisfied the

³ DFAT Country Information Report Iran, 14 April 2020

⁴ Ibid

⁵ Ibid

⁶ Ibid

⁷ Ibid

applicant would face a real chance of any harm from being questioned by the Immigration Police on his arrival in Iran.

44. Millions of Iranians travel into and out of Iran each year without difficulty, including the large Iranian diaspora residing in North America and Europe.⁸ Those with an existing high profile may face a higher risk of coming to official attention on return to Iran, particularly political activists.⁹ The applicant has not claimed and there is no evidence before me to indicate that he has ever been involved in political activities or that he intends to become involved in such activities in the future. And, I do not accept the applicant's actions of seeking asylum in a western country confirm the allegations outlined in his purported forced statement are true. Based on the evidence before me, I am not satisfied the applicant will face a real chance of any harm from the Iranian authorities or anyone else for being a failed asylum seeker from a western country now or in the reasonably foreseeable future.
45. Taking into consideration the applicant's claims which I have accepted on a cumulative basis, I am not satisfied he would face a real chance of serious harm amounting to persecution, now or in the reasonably foreseeable future in Iran.

Refugee: conclusion

46. The applicant does not meet the requirements of the definition of refugee in s.5H(1). The applicant does not meet s.36(2)(a).

Complementary protection assessment

47. A criterion for a protection visa is that the applicant is a non-citizen in Australia (other than a person who is a refugee) in respect of whom the Minister (or Reviewer) is satisfied Australia has protection obligations because there are substantial grounds for believing that, as a necessary and foreseeable consequence of the person being removed from Australia to a receiving country, there is a real risk that the person will suffer significant harm.

Real risk of significant harm

48. Under s.36(2A), a person will suffer 'significant harm' if:
- the person will be arbitrarily deprived of his or her life
 - the death penalty will be carried out on the person
 - the person will be subjected to torture
 - the person will be subjected to cruel or inhuman treatment or punishment, or
 - the person will be subjected to degrading treatment or punishment.
49. 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.

⁸ Ibid

⁹ Ibid

Qualifications to the real risk threshold

50. Section 36(2B) provides that there is taken not to be a real risk that a person will suffer significant harm in a country if:
- it would be reasonable for the person to relocate to an area of the country where there would not be a real risk that the person will suffer significant harm
 - the person could obtain, from an authority of the country, protection such that there would not be a real risk that the person will suffer significant harm, or
 - the real risk is one faced by the population of the country generally and is not faced by the person personally.
51. I have accepted that the applicant would be questioned by the Iranian Immigration Police if he returned to Iran on temporary travel documents. But, I was not satisfied the applicant would be returning with an adverse profile and I am not satisfied there is a real risk that the applicant being questioned would amount to suffering significant harm within the meaning of s.5(1) and s.36(2A) upon his return to Iran now or in the foreseeable future.
52. I accepted the applicant would probably be identified as a failed asylum seeker should he choose to return to Iran but I was not satisfied he will face a real chance of any harm for that reason. As the “real risk” test in the complementary protection provisions imposes the same standard as the “real chance” test applicable to the assessment of “well-founded fear”.¹⁰ I also find that the applicant does not face a real risk of any harm for that or any of his other claimed reasons.
53. Considering the applicant’s claims for protection altogether, I am not satisfied that the applicant faces a real risk of significant harm for any reason should he return to Iran now or in the reasonably foreseeable future.

Complementary protection: conclusion

54. 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.

¹⁰ *MIAC v SZQRB* (2013) 210 FCR 505 per Lander and Gordon JJ at [246], Besanko and Jagot JJ at [297], Flick J at [342].

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.