



Australian Government

Immigration Assessment Authority

Decision and Reasons

Referred application

IRAN

IAA reference: IAA20/08453

Date and time of decision: 3 July 2020 15:41:00

L Hill, 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. He arrived in Australia in July 2013 and applied for a Safe Haven Enterprise Visa (protection visa) on 13 September 2017. A delegate of the Minister for Immigration (the delegate) refused to grant the visa on 27 May 2020.

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) (referred material).
3. The IAA received an email from the applicant's representative on 21 June 2020. It enclosed a submission (IAA submission) and supporting material. The IAA submission contains discussion on why the applicant does not agree with the delegate's decision and highlights aspects of the applicant's claims which they believe were not considered by the Department. It also refers to country information which was before the delegate. This is not new information and I have considered it in this review.
4. A Judicial Correspondence letter dated [December] 2019 and The I.R. of Iran Judiciary letter (referred to as a police report by the representative) dated [December] 2019 have been provided. They were not before the delegate. They are new information. They pre-date the delegate's decision by at least five months. It has not been explained, nor is it apparent, why this information was not provided to the Department before the delegate made her decision, particularly given that the applicant referred to the events to which these documents relate at the protection visa interview. Nonetheless, these documents are purported to have been provided by a third party and relate to an event involving the applicant's family in Iran and if genuine, have the potential to corroborate core aspects of the applicant's claims. I am satisfied there are exceptional circumstances to justify the consideration of this new information and that s.473DD(b)(ii) of the Act is met.

Applicant's claims for protection

5. The applicant's claims can be summarised as follows:
 - He was born in Kermanshah, Kermanshah Province in Iran. He is a citizen of Iran. He is of Kurdish ethnicity. He is an atheist.
 - In approximately 2007, he was arrested and detained for two days by the Iranian authorities because they believed he had been involved in [a] celebration.
 - In approximately 2008/2009, he was arrested and detained by the Basij because he was overheard making a comment about the treatment of a girl by the authorities.
 - In 2009, he attended two protests against the re-election of President Ahmadinejad. He was arrested by the Iranian authorities. He was detained for one month in an interrogation centre. He was released after the payment of bail.
 - On release, the Iranian authorities forced him to cease his studies at [University 1] in [County 1] and ordered him to go and complete his compulsory military service.

- Prior to attending his compulsory military service, and when attending the [University 1] in [County 1], he started a discussion group for atheists. They would meet and discuss issues and ideas freely. In 2012, after completing his compulsory military service, he moved to Tehran and reconnected with some of his friends from this group.
 - In February 2013, he invited his co-worker, A to attend one of the atheist group meetings. A accepted and went with him. The next day after the meeting, he was talking to A about the meeting. He did not know at the time, but a friend of A's who worked for the Basij and Ettelaat overheard their conversation.
 - Later that night the door of his home was kicked in. Three men entered and swore at him. They called him a non-believer. He realised one of the men was A's friend. They physically assaulted and handcuffed him. He was taken to an interrogation centre where they continued to physically assault him. They later allowed him to call his father. His father then arrived and provided the documents for his parent's home as security for his release.
 - Approximately three days later, the authorities attended his home and served his brother with a notice for him to attend court in two weeks. He was scared. He knew his passport would be suspended within two weeks because a similar thing had happened to his friend who was also a member of the atheist group. He made arrangements to leave.
 - In March 2013, he departed legally through the international airport in Tehran.
 - Since his arrival in Australia, he has attended some atheist group meetings. He is also a part of a number of [social media] pages and groups that discuss atheism. He regularly posts and makes comments in these groups.
 - Since his departure from Iran, the Iranian authorities have visited his parent's house and asked for his whereabouts. They also searched their house to find evidence of his whereabouts. In approximately 2016, his parents had to move from their house in Kermanshah to Karaj because the authorities had seized the family house because it had been provided as security for his release and guarantee for his attendance at court.
6. The applicant has claimed that on return he will be harmed including being arrested, detained, imprisoned and tortured by the Iranian authorities because he is an atheist, his past involvement in atheist group and meetings, his activities in Australia, his departure while on bail and non-attendance at court and because he has sought asylum and spent time in Australia. He will also be a risk of further harm because he is Kurdish.

Refugee assessment

7. 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

8. 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.
9. The applicant has provided copies of his Iranian Birth Certificate, National Identity Card, Driver Licence, Passport (biographical details page) and Compulsory Military Service Discharge Card. I accept he was born in Kermanshah, and is an Iranian citizen. I am satisfied Iran is the receiving country for the purpose of this assessment.
 10. During the protection visa interview the applicant appeared to refer to some past mental health problems. He indicated he had tried to commit suicide back home (Iran) two to three times. He has in the past been depressed when he had been unable to obtain work. At the commencement of the protection visa interview, the applicant was specifically asked whether he was suffering from any health issues. He indicated he was not. No medical information has been provided about the applicant's health conditions including the details of what his health conditions were or what assistance he sought. I do not accept that he has any mental health issues or that such issues explain the concerns I have with the applicant's claims discussed below.
 11. At the applicant's 'arrival interview' (referred to as the 'entry interview' in protection visa statement) which was conducted approximately three weeks after his arrival in Australia, he indicated that on one occasion seven to eight years ago (2005/2006), he was detained for one day by the Iranian authorities because he was dressed inappropriately. On another occasion five years ago (2008), he was detained for two days by the authorities because he was in his car with his girlfriend. His car was also confiscated for 25 days. As discussed below, he made mention of several different past interactions with the authorities in his protection visa statement and interview, however he made no mention of these events. No documents or evidence relating to these events have provided and I am not satisfied on the brief details provided that these events are true. I do not accept these claims.
 12. The applicant claimed that in approximately 2007, he was arrested and detained for two days by the Iranian authorities because they believed he had been involved in [a] celebration held in the streets. While detained he was physically assaulted. He was taken to court where he was made to pay a fine. The applicant made no mention of this event at his arrival interview; rather he specifically stated that he had never been officially charge for any offences in Iran. Other than the applicant's assertions, no documents or evidence such as any court documents or fine receipt have been provided, and I am not satisfied on the nebulous details that he has provided this event is credible. I do not accept this claim.
 13. In contrast to the above, at the arrival interview and in his protection visa statement and interview, the applicant has consistently claimed and I accept that in approximately 2008/2009 he was detained by the Basij because he was overheard making a comment about the

treatment of a girl by the authorities. He was taken to [a] Detention Centre where he was held in a room along with other people. He was physically assaulted. After four days he was allowed to call his father who attended the centre, showed his employee id and he was released.

14. The applicant claimed and I also accept that in 2009, he attended a protest, along with many other students at his university. The protest was against the re-election of President Ahmadinejad. He and other students believed that the Iranian government had lied to them and that their votes had been manipulated. The Iranian authorities attended the university and started to arrest and physically assault the protestors. He escaped. He then went and attended a second protest in the city ([County 1]). The Iranian authorities including the police and Basij also attended this protest. Along with other protestors, he was physically assaulted. He has consistently made the claims regarding his participation in two protests in 2009 throughout his interactions with the Department including at his arrival interview, and these aspects of his claims are cogent with the information in reports published by DFAT and the Iran Human Rights Documentation Centre that in 2009 hundreds of thousands of Iranians attended protests which indicates that thousands of Iranians including students were involved in protesting against the official claims that Mahmoud Ahmadinejad won the 2009 presidential election. The protests in 2009 and 2010 saw thousands detained and beaten and harassed by Iranian security forces.
15. I do not accept however that the applicant was a supporter and volunteer for Mousavi's campaign or that arising from his attendance at the second protest he was detained. In contrast to the above, these aspects of his claims have varied and were unconvincing. In the arrival interview, while the applicant made mention of his attendance at a student uprising in 2009, he stated that he had been only detained for three days. Nor did he make mention of having ever volunteered for any political groups or organisations including Mousavi's campaign at. In contrast, in his protection visa statement, he stated that he had been both a supporter and volunteer for Mousavi's campaign and arising from his attendance at a 2009 protest he had been detained for one month in an interrogation centre. While detained he was physically assaulted and spent two weeks in solitary confinement. He went on to reiterate these aspects of his claims at the protection visa interview however he further added that during his one month detention he was questioned about the leaders of the protest and released when they found out he was not connected to the head of the protest. There are no further details before me about the nature of the applicant's role or his support to the Mousavi campaign and he has not provided any documents or evidence to substantiate these aspects of his claims. Nor have any documents relating to his detention for one month or his release such as receipt for payment of bail or bail conditions have been forthcoming.
16. I also do not accept the applicant's new claims made at the protection visa interview, that when he was released from detention in 2009, the authorities forced him to cease his studies at [University 1] in [County 1] and ordered him to go and complete his compulsory military service where he was mistreated by his commanders because of his activities in 2009. The details of the applicant's Compulsory Military Service Discharge Card state that he commenced his military service in March 2011. This is at least one and a half years after he claimed to have been detained in 2009, and I find it difficult to accept that given this timeframe that there was any connection between his detention or activities in 2009 and his requirement to undertake military service or his mistreatment. Furthermore, I also note that contrary to his claims that he was forced to cease his studies, his protection visa application states that he completed his course at [University 1] in 2009, and I am of the view this further undermines these aspects of his claims.
17. I have accepted that on one occasion in approximately 2008/2009, the applicant was detained by the Basij. He was held for four days before being released when his father attended and

showed his employee id. I have also accepted that on two occasions in 2009, he attended two protests along with many others against the re-election of President Ahmadinejad; however, I have rejected the applicant's claims that he was detained. After these events he went on to complete his compulsory military service between 2011 and 2012 and was able to apply for and was issued a passport by the Iranian government in May 2012. There is no credible evidence before me to suggest that arising from these events he suffered any repercussions or was of any ongoing concern or interest to the Iranian authorities, and I am not satisfied that he was.

18. The applicant claimed and I accept that as a child he was made to engage in the Islam religion. His father was a strong believer in Islam. As a teenager his feelings towards Islam started to change and he began to question Islam and religion in general. He started to research a lot of different religions, but eventually decided that he did not believe in any religion. I accept the applicant is an atheist. These aspects of his claims have been consistently made since his arrival in Australia including at his arrival interview.
19. In summary, the applicant claimed that the reason he decided to leave Iran was because of the authorities came to know that he was an atheist and was involved in an atheist group. He claimed when attending the [University 1] in [County 1] he stated a discussion group for atheists. They would meet once a month, at his place, where they would discuss issues and ideas freely. In 2012, after completing his compulsory military service, he moved to Tehran and reconnected with some of his friends from this group.
20. The applicant claimed in February 2013, he invited his co-worker, A to attend one of the atheist group meetings. A accepted and went with him. The next day after the meeting, he was talking to A about the meeting and what he thought. He did not know at the time, but a friend of A's who worked for the Basij and Ettelaat who was in the shop overheard their conversation. Later that night when he was driving home, he noticed he was being followed by a car. This car parked near his house. Soon after he went inside the door of his home was kicked in. Three men entered and started to swear at him. They called him a non-believer. He realised one the men was his co-worker, A's friend. They physically assaulted and handcuffed him. They put a gun to his neck. They then took him to the interrogation centre where they continued to physically assault him. They poured water over him and would not let him sleep. The next day, his co-worker, A's friend returned. He tried to emotionally blackmail him. He told him that he had brought the problems on by being a non-believer. They threatened to detain him for a while however he was later able to call his father. His father then arrived and provided the documents for his parent's home as security for his release on bail.
21. The applicant claimed approximately three days later, the authorities attended his home and served his brother who was living with him at the time, with a notice for him to attend court in two weeks. He was scared and knew he had less than two weeks to flee Iran. He knew his passport would be suspended within two weeks because a similar thing had happened to his friend who was also a member of the atheist group. He made the arrangements to leave. In March 2013, he departed by Iran.
22. For the reasons discussed below, I am not satisfied that his claims regarding his involvement in an atheist group or activities and the subsequent events he claimed arose on this basis such as his detention, release on bail and the issuance of a notice requiring him to attend court (court notice) are true.
23. The applicant's narration of the events which led to his detention in 2013 has varied. Approximately four weeks after his arrival in Australia, the applicant participated in an arrival

interview. At this interview, along with many other questions, the applicant was asked to provide the reasons why he had left Iran. He referred to being an atheist and that he had been detained by the police, however he stated that it had been his co-worker who had informed the authorities, not his co-worker's friend who worked for the Basij and Ettelaat. He also indicated that he was leaving the shop when stopped by the police, which is again different to his evidence in the protection visa statement and interview that he had been at home when three men kicked his door down. I note that in the protection visa statement, the applicant sought to correct an aspect of his evidence at this arrival interview, that been the absence of the details of his half-sister however he has made no attempt to address the variations in the narration of the events which he claimed led to his decision to leave. Finally, he made no mention of his involvement in any type of atheist groups or activities at the arrival interview or that more importantly that such activities had been the reason for him coming to the attention of the authorities. I am satisfied that the applicant was given the opportunity to provide these claims and had these claims had any credible basis he would have been provided them when he had an opportunity to do so, even if only briefly, at the arrival interview.

24. Other than the applicant's assertions regarding his detention, release on bail and requirement to attend court, no documents or evidence such as the notice to attend court (court notice) or documents relating to his bail have been provided. At the protection visa interview, he was asked if he had a copy of any of the documents relating to these aspects of his claims. He reiterated that he had received a court notice three days after he was released but he had nothing with him. He indicated that the court notice may be at his parent's home in Iran however about a month ago this home was broken into and all the documents including the ownership papers for his parent's home were taken. He indicated that he would speak to his parents and asked them if they had a copy of the court notice, but this event happened nearly ten years ago, and they may not have it. He stated he would provide it by email to the Department. At the conclusion of the protection visa interview, he reiterated that he would ask his parents for the court notice but as he had mentioned earlier his parent's home had been robbed and documents taken.
25. No documentation or evidence to support these aspects of the applicant's claims including the court notice was provided to the Department prior to the delegate making her decision. However, two documents including a copy of a 'police report' has since been provided to the IAA. It has been contended that the police report confirms that a "break-in incident" occurred at the applicant's parent's home [in] December 2019 and his mother reported this incident to the police and that this supports the applicant's claims that after this event his court documents were lost.
26. I have considered these two documents, that being the Judicial Correspondence letter (judicial letter) dated [December] 2019 and The I.R. of Iran Judiciary letter (police report) dated [December] 2019. The police report details that his mother has declared to the Iranian authorities that there had been a theft of documents from her home and vehicle however it makes no mention of the theft of any documents relating to the applicant including a court notice. Furthermore, it states that his mother had declared that the theft took place at a home owned by his mother and father in Kermanshah in 2019. However, the applicant's own evidence in his protection visa statement and interview was that in 2016, at least three years before this theft, his parents moved from Kermanshah to Karaj because the authorities had seized their home in Kermanshah. The authorities had done this because it had been provided as security for his release from detention and as a guarantee for his attendance at court, and he had not attended as required. The applicant has not claimed and nor is there any evidence before me to suggest that his parents owned more than one property in Kermanshah. Finally, these documents make no mention of the applicant. Nor do they suggest that the theft has any

connection to him or his past experiences in Iran or that arising from this event documents relating to the applicant including court documents have been lost.

27. In light of the foregoing, I am not satisfied that these two documents have any probative value in the consideration of the applicant's explanation regarding his inability to provide a copy of the court notice or any other documents or evidence to corroborate his claims regarding his detention, release on bail or the requirement to attend court . To be clear, I do not accept that as contended by the representative in the IAA submission that these two documents support the applicant's explanation relating to the connection between the theft of documents from his parent's home in 2019 and his inability to provide any court documents in support of his claims including because they were taken or lost.
28. The applicant's claims that he was detained, released on bail and then received a notice to attend court are significant claims, and it remains that to date no corroborative documents or evidence have been provided. The sources in the referred material such as the joint report from the Danish Immigration Service, the Norwegian LANDINFO and Danish Refugee Council indicates that if a person departs the country while on bail, he or she may be tried in absentia. At least seven years have passed since the applicant departed Iran and he has not claimed to have received subsequent communication from the Court or the Iranian authorities about his non-attendance at court or that he has been tried in absentia, and I am of the view that this raises further doubts about the credibility of these aspects of the applicant's claims and his reasons for leaving Iran.
29. Finally, in contrast to the delegate, I found the applicant's evidence at the protection visa interview in relation to these aspects of his claims to be unconvincing and not reflective of a lived experience. It was not presented in a spontaneous manner, it appeared to be rehearsed and aspects of his evidence were inherently contradictory. For example, his evidence that he had taken some time before he had asked his co-worker to join the atheist group but had only done so because he had known him for two years and trusted him I find difficult to reconcile with his later evidence that he would have an open conversation with his co-worker about the atheist group and the meeting they had attended in front of others including people he did not know well. I also found the reasons he provided as to why he was targeted by the Iranian authorities that being because the officer who had overheard his conversation may had wanted power, promotion, fame, or money to be unpersuasive.
30. I am not satisfied that applicant has been a truthful witness regarding these aspects of his claims. I do not accept the events in 2013 which the applicant claimed led to his departure from Iran are true. I do not accept the applicant's claims that he started or was ever involved in any type of atheist group or activities in Iran. Nor do I accept that the subsequent events that he claimed arose on these bases are true, including his detention, release on bail and the request to attend court or that such events led to him making the arrangements to depart Iran. I am satisfied that the applicant has contrived these aspects of his claims to enhance his claims for protection.
31. The applicant departed Iran legally using his own Iranian passport. As discussed above, I have rejected the applicant's claims regarding his interactions with the Iranian authorities in 2013 including his detention, release on bail and the request to attend court. I have also found that he did not suffer any repercussions and was not of any ongoing concern or interest to the Iranian authorities after the events in 2008 and 2009. He was able to depart Iran without encountering any issues or difficulties. He stated that bribery was not involved. There is no other credible evidence before me to indicate why the Iranian authorities or its forces would have had an interest in him at the time of his departure. I am satisfied the applicant departed

Iran legally using his own Iranian passport and was not of interest or concern to the Iranian authorities for any reason at the time of his departure through the international airport in Tehran in 2013.

32. In the protection visa statement, the applicant claimed that since his arrival in Australia when he was living in Sydney, he attended some atheist group meetings. He found these groups on website, “[web address deleted]”. Since moving to Melbourne, he has also attended a get-together for atheism. He would like to go more often but hasn’t been able to because he works and studies. He is also a part of a number of [social media] pages and groups that discuss atheism. He regularly posts and makes comments in these groups. However, he has not posted on social media or his own [social media] pages about atheism or the Iranian government as he does not want to put his family in danger or jeopardise his brother’s future.
33. At the protection visa interview, the applicant was asked about his activities in Australia and whether he was a member of any groups or organisations. He reiterated his claims that he had attended [some] groups in Sydney and Melbourne, however he added that being an atheist is not a religion, there is no church, it’s a belief inside. They do not follow the orders of others. He was asked to describe his social media posts. He stated he shares stories, which do not last for more than 24 hours. He shares information from other political activist pages and BBC etc. He shares pages of political activists to raise awareness.
34. Other than the applicant’s assertions regarding his activities in Australia, he has not provided any documents or evidence to substantiate these claims such as printouts of his social media comments or posts or the details of the [groups] he attended. The applicant was made aware prior to and at the protection visa interview that it was his responsibility to provide all his claims for protection, and while I have considered his evidence that his social media posts (stories) do not last more than 24 hours, I find it difficult to accept that given the significance of these events to his claims for protection he would not have taken at least a screen shot/photograph of his social media activities or sought to substantiate his attendance at [the] groups such as by providing letters from other attendees. He has not.
35. Furthermore, the applicant’s evidence about the extent of his social media activities has varied and was unconvincing. In his protection visa statement, he stated that he had not posted on social media on his own [social media] page because he did not want to put his family in danger or jeopardise his brother’s further. In contrast, at the protection visa interview, he indicated that he did share political activist information on his own [social media] page, that being stories, albeit which disappear after 24 hours. He also suggested that after his brother started to raise his voice as a citizen and shared posts, he became comfortable to share posts as well.
36. I am not satisfied that the applicant has been a truthful witness in relation to these aspects of his claims. In contrast to the delegate, I do not accept that since the applicant’s arrival in Australia he has attended or participated in any atheist groups or meetings. Nor do I accept that he has posted, commented or shared posts, comments or stories about atheism or any political or anti-Iranian government content on any social media platforms. I am satisfied that the applicant has contrived these aspects of his claims to enhance his claims for protection.
37. The applicant claimed since departing Iran, his parents has informed him that on a number of occasions the authorities have visited their house and asked for his whereabouts. They also searched the house to find evidence of his whereabouts. They would cause damage to the home and its contents. On one occasion they physically assault his mother. Their house was also broken into and damaged. Approximately one year ago (2016), his parents had to move from their house in Kermanshah to Karaj. The authorities had seized the family home because

it had been provided as security for his release and guarantee for his attendance at court. Since his parents have moved to Karaj, the authorities have stopped harassing them. His father has told him his name is now on a blacklist.

38. As discussed above, I have rejected the applicant's claims regarding his involvement in atheist groups or activities and his interactions with the Iranian authorities in 2013 including his detention, release on bail and the request to attend court. It follows that I do not accept that as claimed the applicant's parent's home was been seized by the Iranian authorities. I have found that he was not of any ongoing concern or interest to the Iranian authorities after the events in 2008 and 2009 and that he was departed Iran legally using his own Iranian passport and was not of interest or concern to the Iranian authorities at the time. I have rejected the applicant's claims regarding his activities in Australia. Apart from the past experiences discussed above, the applicant has not claimed that he was of interest the Iranian authorities for any other reason and I am not satisfied that he was. I do not accept his name is now on a blacklist. I also do not accept the applicant's claims that the Iranian authorities have visited his parents and sought his whereabouts at any time since his departure. Nor do I accept that any of the subsequent events including the search of his parents' home, the harassment and physical assault of his parents or their move to Karaj that he claimed arose on this basis are true.
39. The applicant has claimed that on return he will be harmed including being arrested, detained, imprisoned, tortured or killed by the Iranian authorities because he is an atheist and because he has sought asylum and spent time in Australia and other matters I have found to be not credible above. He will also be a risk of further harm because he is Kurdish.
40. I have accepted the applicant's claims regarding his past interaction with the Iranian authorities; that being on one occasion in approximately 2008/2009, the applicant was detained by the Basij. He was held for four days before being released when his father attended and showed his employee id. I have also accepted that on two occasions in 2009, he attended two protests along with many others against the re-election of President Ahmadinejad; however, I have rejected the applicant's claims that he was detained. I have concluded that the applicant was not of continuing interest to the Iranian authorities after these events or for any other reason at time of his departure through the international airport in Tehran in 2013.
41. Danish Refugee Council, Landinfo and Danish Immigration Service during a fact-finding mission conducted in 2012, reported that that an unspecified source from an embassy in Tehran had stated that it was wrong to believe that the Iranian authorities were actively pursuing individuals who were part of the protests in the streets in 2009. It further reported that while a great deal of people had been involved in the protests the Iranian authorities would only track individuals who were of interest for other reasons. More recently, DFAT reports have indicated that it is unlikely that people arrested for participating in (but not organising) the Green Movement protest (2009 protests) continue to be subject to adverse attention from the Iranian authorities.
42. There is no credible evidence before me to suggest that he has been a supporter of or involved in any other political activities, organisations or activities in Iran or Australia. Nor has he claimed that he would make a similar comment to that which had led to his arrest in 2008/2009 on return. I am not satisfied that the applicant will be imputed with any type of profile arising from his past circumstances. I do not accept that the applicant will be perceived to have any actual or imputed anti-Iranian government political opinion, or that there is a real chance he will be regarded as someone of interest on these bases should he return to Iran.

43. I have accepted that the applicant is an atheist. Under Iranian law a Muslim who leaves his or her faith or converts to another religion or atheism can be charged with apostasy. The Penal Code does not criminalise apostasy but provisions in Penal Code and Constitution state that sharia applies with most Islamic judges in Iran agreeing that apostasy should be a capital crime. This position has been reported in a number of sources including DFAT and ACCORD reports. However, DFAT also reported that that it is highly unlikely that the government would monitor religious observations 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. It has also assessed that atheists are unlikely to come to the attention of security authorities unless they seek to publicise their views. More recently, DFAT has reported that it is unaware of individuals being prosecuted for atheism.
44. I have rejected the applicant’s claims that he started or was involved in an atheist group or activities in Iran or Australia. He held his atheist beliefs and/or views when residing in Iran; however aside from the claims that I have rejected he has not claimed to have encountered any discrimination or harm on this basis on any other occasion. At the protection visa interview, the applicant indicated that on return he would not express his atheist or anti-Islam views publicly. The IAA submission confirms this aspect of his evidence. On the evidence before me, I do not accept that the applicant will speak openly and freely about his beliefs or views should he return. I am not satisfied the applicant faces a real chance of harm as a person who does not believe in religion or god, as an atheist or on account of his lack belief and/or practise of Islam should he return to Iran. I do not accept that on any of these bases there is a real chance he will face harm.
45. The applicant claimed and I accept that he is of Kurdish ethnicity. He has consistently made this claim throughout his interactions with the Department and it is cogent with the information in the DFAT reports that Kurds are concentrated in the north-western provinces of Kurdistan, Kermanshah, Ilam and West Azerbaijan. At the protection visa interview, the applicant was asked to explain why he feared he would be harmed as a Kurd on return. He indicated that the current Iranian government will not allow the Kurds to have their own freedom, city or language. They are treated like criminals in Iran. They must put their heads down and not question anything. They cannot complain. They are forced to be silent.
46. The Iranian Constitution guarantees equal rights to “all people of Iran, whatever the ethnic group or tribe to which they belong...”. There are no laws that discriminate on the basis of ethnicity, including in relation to access to education, employment and housing. However, many sources including US Department of State, Human Rights Watch, Danish Immigration Service and DFAT indicate that such rights are not enjoyed in practice. Kurds are one of a number of ethnic minority groups in Iran that face discrimination in gaining access to university studies, employment, business licences and economic aid, getting permission to publish books and exercising their civil and political rights. Nonetheless, the 2018 Danish Immigration Service and DFAT reports indicates that generally, Iran does not target Kurds specifically because of their ethnicity or religion. The 2020 DFAT report continues to confirm this position.
47. Notwithstanding this, sources in the referred materials including the report published by the Minority Rights Group International (joint report), Danish Immigration Service and DFAT indicate that like other ethnic minorities, it is Kurds who are politically active who are likely to attract the adverse attention from the authorities. More than most other ethnic minorities, the Kurds have traditionally harboured separatist tendencies (Kurdish militants attempted unsuccessfully to break away from the Islamic Republic after the 1979 revolution). A number of militant groups – including the Kurdistan Free Life Party (PJAK), the Kurdistan Democratic

Party of Iran (KDPI) and the Komala Party of Iranian Kurdistan continue to promote Kurdish self-determination and occasionally engage in armed clashes with Iranian security forces, who maintain a large presence in Kurdish areas. The majority of people executed in Iran for belonging to a banned political or militant group are Kurds. However, DFAT concluded that the Kurdish separatist activity in Iran has mostly been at a lower level than that in neighbouring countries, partly due to the fact that Iranian Kurds' living standards tend to be higher than those of neighbouring Kurds. A local Kurdish source told DFAT that, while there is a perception among Kurds that the state deliberately holds them back, there is an acceptance that independence from Iran is not a viable option. Most Kurds, therefore, are committed to working within the Iranian political system to strengthen their rights as citizens and improve economic conditions in Kurdish-majority areas.

48. Overall, DFAT's most contemporary assessment was that Kurds are not specifically targeted for discrimination on the basis of their ethnicity or religion, including in their ability to access government services, and are afforded the same state protections as other ethnic minorities. DFAT further assessed that, like other ethnic minorities, Kurds who are active politically are likely to attract adverse attention from the authorities. Those who advocate for greater rights and autonomy and/or self-determination face a high risk of official harassment, monitoring, imprisonment and mistreatment.
49. The applicant made no mention of any past experiences of discrimination or harm on account of his ethnicity at his arrival interview or in protection visa statement. He was asked at the protection visa interview whether he had experienced any discrimination or harm on this basis in the past. He stated he had when he was in the military but not in public. I accept that the applicant may have faced some discrimination in the past when undertaking his compulsory military training, however aside from this he has not claimed to have been discriminated or harmed because of his ethnicity on any other occasion. Nor has he claimed to have been prevented from practising his culture or that he has faced restrictions or been prevented from accessing government or other services. He is an Iranian citizen who has been able to access and engage in a post-secondary level of education and has been able to gain and maintain consistent employment within [a certain] industry in Iran and I am not satisfied that should he return he would be unable to obtain work of the kind he has in the past. His immediate family including his parents and brother remain residing in Iran. He continues to have regular contact with them. His parents own the property they currently reside in. His brother has completed a tertiary level degree and currently operates his own business. He has not claimed and nor is apparent on the sources in the referred material that he would need to complete any further military service or training on return. He has also not claimed and nor am I satisfied that should he return he could not rely on his immediate family members for accommodation, food, water or support.
50. There is no credible evidence before me to indicate that the applicant or any of his family members have been a supporters of or involved in any political including Kurdish or Kurdish separatist groups, organisations or activities in Iran or Australia, or that he has any intention or desire to do so including asserting his cultural or political rights should he return to Iran. I am not satisfied that the applicant will be imputed with any type of profile arising from his or his families past circumstances. I do not accept that the applicant as a Kurd he will be perceived to have any actual or imputed anti-Iranian government or pro-Kurdish or Kurdish-separatist political opinion or that he will be considered a political activist or dissident, or someone of interest on this basis should he return to Iran.
51. I have had regard to applicant's and representative's contentions however given the contemporary country information regarding the treatment of Kurds and the particular

circumstances of the applicant I am not satisfied that there is a real chance of him being subjected to discrimination or economic harm, or denied the capacity to earn a livelihood, or to access basic services in ways which will threaten his capacity to subsist should he return to Iran. I do not accept that the applicant faces a real chance of harm because of his or his family's background, ethnicity or because of his political opinion should he return to Iran.

52. I accepted that the applicant departed Iran legally using his own Iranian government issued passport, and I accept that he no longer has this passport. According to DFAT, Iran has historically refused to issue travel documents (*laissez passers*) to allow the involuntary return of its citizens from abroad. On 19 March 2018, however, Iran and Australia signed a Memorandum of Understanding (MOU) on Consular Matters that includes an agreement by Iran to facilitate the return of Iranians who arrived after this date and who have no legal right to stay in Australia. In light of this information, I am satisfied that if the applicant were to return to Iran it would only be on a voluntary basis, on a temporary travel document (*laissez passer*), after having spent a substantial period of time in Australia.
53. DFAT has consistently reported that according to international observers, Iranian authorities pay little attention to failed asylum seekers on their return to Iran, with the authorities accepting that many will seek to live and work overseas for economic reasons. Iranian authorities have little interest in prosecuting failed asylum seekers for activities conducted outside Iran, including in relation to protection claims, it was those with an existing high profile who may face a higher risk of coming to official attention on return to Iran, particularly political activists. DFAT was not aware of any legislative or social barriers for voluntary returnees finding work or shelter in Iran or any specific barriers to prevent return to voluntary returnee's home region.
54. Sources such as DFAT and UK Home Office are that Iranians who have left the country on their passports and are returned on a *laissez-passer* will be questioned by the Immigration Police at the airport. This questioning may take few hours, but according to IOM nobody has been arrested when travelling back on a *laissez-passer*. Those who return on a *laissez-passer* are questioned by the Immigration Police at Imam Khomeini International Airport in Tehran about the circumstances of their departure and why they are traveling on a *laissez-passer*. Questioning usually takes between thirty minutes and one hour but may take longer if the returnee is considered evasive in their answers and/or immigration suspect a criminal history on the part of the returnee. Arrest and mistreatment are not common during this process.
55. I accept that if returning on a temporary travel document, the applicant will very likely be questioned by the Iranian authorities at the airport. I have found that the applicant was not of interest or concern to the Iranian authorities for any reason at the time of his departure through the international airport in Tehran in 2013. There is no credible evidence before me to indicate that he has been involved in any activities since arriving in Australia that would have brought him to the attention of the Iranian authorities. I have rejected the applicant's claims that since his departure the Iranian authorities have visited his parent's home and sought his whereabouts and that his name is on a blacklist. There is no credible evidence before me to suggest that he had a criminal background. I have accepted that on one occasion the applicant was arrested and detained and he attended two protests; however I have concluded that the applicant did not suffer any repercussions and was not of continuing interest to the Iranian authorities after these events. I also note he had no issues departing Iran after these events. In light of the foregoing, I am not satisfied that the applicant's past experiences in Iran, which I have accepted, would give rise to any prolonged questioning at the airport. There is also no independent information before me to suggest that absent any other concerns, Iranians who

have spent time outside of Iran in a western country such as Australia even for a prolonged period and sought asylum unsuccessfully are imputed with an adverse opinion or profile.

56. The information before me indicates that the questioning of returnees on temporary travel documents at the airport is not done in a discriminatory manner or that there is a real chance the applicant will be subject to any mistreatment. I am not satisfied that the period of questioning the applicant is very likely to face amounts to serious harm in this case.
57. In light of the information before me, I am not satisfied the applicant, with his history and profile, faces a real chance of serious harm.
58. I am not satisfied the applicant has a well-founded fear of persecution.

Refugee: conclusion

59. 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

60. 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

61. 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.
62. 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.
63. I have accepted that should the applicant return to Iran he may be returning on a temporary travel document and as a result will very likely be questioned by the Iranian authorities for a brief period at the airport. I am not satisfied these measures constitute significant harm as defined. I do not accept there is a real risk of the death penalty, an arbitrary deprivation of life, or torture. Nor does the country information before me indicate that there is an intention to inflict pain or suffering that is cruel or inhuman in nature, severe pain or suffering, or an intention to cause extreme humiliation. I am not satisfied that it amounts to cruel or inhuman treatment or punishment or degrading treatment or punishment as defined. I am not satisfied there is a real risk of significant harm on this basis should he return to Iran.

64. I have otherwise found the applicant does not face a real chance of harm on any or the bases claimed now or in the reasonably foreseeable future. As 'real risk' involves the same standard as 'real chance', I am also not satisfied that the applicant faces a real risk of significant harm.

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.

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.