



Australian Government
Immigration Assessment Authority

Decision and Reasons

Referred application

IRAN

IAA reference: IAA20/08470

Date and time of decision: 8 July 2020 14:31:00

S MacKenzie, 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] May 2013 as an unauthorised maritime arrival. On 13 July 2017 the applicant lodged a valid application for a Class XE Subclass 790 Safe Haven Enterprise visa (SHEV).
2. A delegate of the Minister for Immigration (the delegate) refused to grant the visa on 28 May 2020, on the basis that the applicant did not face a real chance of serious harm or a real risk of significant harm upon return to 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). No further information has been obtained or received.

Applicant's claims for protection

4. The applicant's claims can be summarised as follows:
 - He was born as a Shia Muslim and is a national of Iran;
 - In Iran, he came to the adverse attention of the Iranian authorities for being in public with his girlfriend, due to his appearance, and because he participated in post-election demonstrations;
 - Just prior to his departure from Iran in 2013, he again came to the adverse attention of the Iranian authorities related to his involvement in creating anti-regime propaganda;
 - After his departure from Iran, the authorities continued to search for him and harassed his family;
 - In Australia, he converted his religion to Christianity;
 - If returned to Iran, the applicant fears he will face harm in connection with past events in Iran, due to his political opinion, due to his religious conversion and related activities in Australia, and due to his profile as a returning asylum seeker.

Refugee assessment

5. Section 5H(1) of the Act provides that a person is a refugee if, in a case where the person has a nationality, he or she is outside the country of his or her nationality and, owing to a well-founded fear of persecution, is unable or unwilling to avail himself or herself of the protection of that country; or in a case where the person does not have a nationality—is outside the country of his or her former habitual residence and owing to a well-founded fear of persecution, is unable or unwilling to return to it.

Well-founded fear of persecution

6. Under s.5J of the Act 'well-founded fear of persecution' involves a number of components which include that:

- the person fears persecution and there is a real chance that the person would be persecuted
 - the real chance of persecution relates to all areas of the receiving country
 - the persecution involves serious harm and systematic and discriminatory conduct
 - the essential and significant reason (or reasons) for the persecution is race, religion, nationality, membership of a particular social group or political opinion
 - the person does not have a well-founded fear of persecution if effective protection measures are available to the person, and
 - the person does not have a well-founded fear of persecution if they could take reasonable steps to modify their behaviour, other than certain types of modification.
7. Since his arrival in Australia, the applicant has consistently claimed to be an Iranian citizen from Ahwaz. He has submitted a number of identity documents including a copy of his Iranian passport. On the evidence before me, I accept that the applicant is a national of Iran and that his identity is as claimed. I find Iran to be the receiving country for the purpose of this decision.
8. The applicant initially set out written protection claims about events in Iran and Australia in a statement dated 3 July 2017 (SHEV statement). Those claims can be summarised as follows:
- He was arrested a number of times in Iran by the cultural ethics patrol and the police because of the clothes he wore, his hairstyle, and because he was out with girls. He cannot remember how many times he was arrested or for how long he was detained each occasion. On one occasion, during high school, he was taken to the headquarters of Sepah and beaten;
 - In 2009, he attended a post-election demonstration. He had voted for opposition candidate Mir-Hossein Mousavi and was angry about the outcome of the election. Many knew it was rigged. He saw his brother being chased by the police and when he attempted to intervene he was pepper sprayed. He was then caught attempting to run away. He was arrested and again taken to Sepah headquarters where he saw his brother and cousin who had also been arrested. He was detained for approximately two days during which time he was slapped and kicked. He was then transferred to a police station where he was released on bail with the assistance of his uncle who had a friend in the police force;
 - In 2011 or 2012, he permitted his friends to use the computers in his [shop] to create CDs that contained interviews with Mousavi, who was under house arrest. He had previously [got] the [shop] in 2002 or 2003. The Mousavi interviews encouraged people to speak out and fight against the government in power. The applicant and his friends knew that many people were disappearing at the hands of the government and they wanted to do something to speak out against it. His friends distributed the CDs in central Ahwaz;
 - In around 2012, he noticed many Basij in the area. They were agents of the government. He saw them in front of his shop but they never entered. He feared they would report him to the government because of the assistance he provided in creating the anti-government propaganda;
 - In around 2012 or 2013, around two to three months before he left Iran, three unidentified men in plain clothes raided his shop while he was not there. He suspects the Basij may have reported him and that the men may have been from the Ettela'at (Ministry of Intelligence and Security). He does not know how they knew his address but suspects it could have come from an informant;

- The shop assistant present during the raid was able to alert the applicant's mother by phone. The applicant was at home with his mother at the time and so left immediately. However, as he was leaving he saw the men arriving at his building and ringing the bell;
- He went up to the roof of the building and to a friend's house for the night. He found out later from his mother that the police (also referred to as 'the Sepah') raided the apartment and took his laptop and some CDs;
- The following morning he went to Shahin Shahr, about a 10 hour drive from Ahwaz, where he stayed for about one month with relatives and friends. His friends suggested he come to Australia;
- He returned to Ahwaz and stayed with friends for about one month. During this time he applied for his passport and made arrangements to leave Iran. He departed in May 2013;
- After he left Iran, the unidentified men (who the applicant also refers to as 'the authorities') went to his house on four or five occasions to ask his mother where he was. Each time they entered the house without permission. During one visit, the men beat his brother when he attempted to prevent them from coming inside. The most recent visit was in 2015 or 2016;
- Since coming to Australia, the applicant shared a number of posts on his [social media site] about people arrested in Iran after being returned from Australia;
- Also since coming to Australia, the applicant has started attending a Christian church. He had never personally agreed with Islam. Since June 2017, his occasional visits became frequent after he had a dream about Jesus that moved him. He now attends church once a week;
- If returned to Iran he would want to continue to practise Christianity as it is an important part of him and he would not want to do so in secret;
- He also fears if returned to Iran he would be seriously harmed by various arms of the Iranian government because of his 'western practices', his 'Christian religion' and his 'political opinions'.

9. In his SHEV statement, the applicant drew attention to his earlier evidence he provided in his 'arrival interview'. I note the arrival interview was conducted in two parts soon after he arrived in Australia on 14 June 2013 and 22 July 2013. The applicant stated that some of the information he had provided in the arrival interview was incorrect and he clarified as follows:

- He made a mistake in the arrival interview when he said he was detained for a period two weeks. As per his SHEV statement, it was only two days;
- When he said in the arrival interview that his friend called an ambulance for him after being pepper sprayed and that the ambulance transported him to Sepah headquarters, this was also a mistake. While he remembers seeing an ambulance he did not get into it. He was confused at the time of the arrival interview. He wasn't sure how much detail to provide and was also struggling to remember what had happened to him;
- It was also a mistake in the arrival interview when he said he was arrested and detained for two days following the raid on his house. As per his SHEV statement, he only found out about the raid from his mother following the event and was never captured by the authorities.

10. On 6 February 2020, the delegate interviewed the applicant in respect of his claims for protection (SHEV interview). I have listened to the audio recording of that interview and considered aspects of the applicant's oral evidence in respect of events in Iran to bear little resemblance to his written claims.
11. Firstly, he indicated that he [got] the [shop] in 1999, whereas in his SHEV statement he indicated it was in around 2002 or 2003.
12. Secondly, he advised the delegate that the security officers came into his shop in around 2012 and harassed him, whereas in his SHEV statement he indicated they never actually entered the shop while he was there.
13. Thirdly, he indicated that his shop was raided around six to seven months, or even up to one year, prior to his departure from Iran, whereas in his SHEV statement he indicated it was around two to three months. He also claimed that he was in Shahin Shahr for around eight to 12 months following the raids but he recorded on his SHEV application form that he was there for around one month between February and March 2013.
14. Fourthly, he advised the delegate that when the authorities raided his shop they took his computer that he had brought from home because the shop did not have computers, whereas in his SHEV statement he indicated his computer was taken when his home was raided.
15. Fifthly, he stated that since his departure from Iran the authorities had visited his home looking for him "once or twice", whereas in his SHEV statement he indicated it was four or five occasions. He also advised the delegate that on the first occasion they entered the house but not on the second, which differed from his written claim that they entered each time. He gave no indication in the SHEV interview that his brother was beaten during one of the home visits after he had left Iran. Rather, he indicated this happened when he was still in Iran and when the house was raided. He further advised the delegate that the authorities had last come about 11 or 12 months earlier, thereby indicating he was still being pursued some seven years since his shop and home were purportedly first raided.
16. I also found it difficult to reconcile the applicant's evidence in the SHEV interview about events in Australia with certain aspects of his written claims. Specifically, in respect of his claimed practise of Christianity. As noted above, the applicant's written evidence was that since June 2017 he attended church once a week and that if returned to Iran he would seek to continue to practise his faith and feared harm on this basis. However, in the SHEV interview, he advised the delegate that the "only reason" he feared returning to Iran was in connection with the matters involving the CDs. Further, he advised that he did not attend church regularly and nor was he studying to learn more about Christianity. His other evidence in the SHEV interview about his Christian journey and knowledge of the faith can be summarised as follows:
 - As an Iranian he developed a general dislike for Islam in Iran. He did like Christianity but did not have an opportunity to pursue it;
 - He went to church whilst in immigration detention in Australia but did not take it seriously. It was difficult to find out more about Christianity in Australia because of his mental health situation and his concern for his mother's health;
 - About one and a half years ago (approximately August 2018) he started going to a church in [Suburb 1] after being invited by a friend. I note this appeared to differ from

his written claim that he was moved to attend again church after he had a dream about Jesus. He cannot remember the name of the church;

- He was later baptised at a church in [Suburb 2] after two visits. He didn't really want to get baptised without first learning about the Christian faith. He cannot remember the name of that church or the priest who baptised him. He visited that church once after baptism and has not returned since. On one occasion he went with other members of the congregation and distributed anti-Islam and anti-Iran leaflets in [a Suburb 1 location];
 - He does not have his baptism certificate because it is still with the priest. The priest frequently calls him asking him to come and collect it;
 - The church he attended was a new church and many of the congregation were involved in the building of it, although he was not involved;
 - He didn't learn much about Christianity at church. The people he spoke to seemed to focus on the problems with Islam rather than the benefits of Christianity which was what he wanted to learn about;
 - Even now he does not know much about Christianity. He knows that unlike Islam there is compassion in Christianity. He does not know any Christian celebrations, doesn't know much about Jesus, and nor has he read the bible;
 - He does not want to return to the church where he was baptised but it is his intention to find a new church and try and learn about Christianity. He has been prevented from doing this earlier because he was inflicted with depression;
 - He is drawn to Christianity because Islam is a violent religion whereas Christianity is about love and peace. He was also drawn to the faith at a time when he was lonely. He was searching for something or someone he could have dialogue with.
17. Towards the end of the SHEV interview the delegate raised a concern with the applicant about his claim to have genuinely converted to Christianity. In response, he admitted that he did not know much about Christianity but that he believed in the dream that he had about Jesus and considered it his duty to go now and learn about the faith. He said a friend had told him about a church in [Suburb 3] and he has decided he will go there soon. The applicant also clarified that when preparing his SHEV statement his representative asked him if he was Christian and that he only said yes because he had been baptised.
18. At the end of the SHEV interview, the applicant was given an opportunity to discuss any outstanding matters with his representative in private. When the interview resumed, the representative said that the applicant had told her during their discussion that he had difficulty with the interpreter used when he prepared his SHEV statement. For this reason, it was requested that the applicant's oral evidence about his religious claims be given weight over his earlier written evidence.
19. Following the SHEV interview, the applicant's representative provided a written submission dated 20 February 2020 (post-SHEV interview submission) where she reiterated the applicant's claims for protection and addressed a number of concerns raised during the SHEV interview. She also advanced a number of additional claims and clarifications on the applicant's behalf,

some of which had been earlier raised by the representative from the same firm who attended the interview. Those additional claims and clarifications can be summarised as follows:

- The applicant did not attend church once a week as outlined in his SHEV statement. Rather, he attended every two or three weeks and supplemented church visits with bible study classes;
 - Another reason why he has not pursued Christianity since baptism is because of struggles he has faced due to a recent relationship coming to an end;
 - Irrespective of his religious beliefs it is probable that the Iranian authorities will impute Christianity to him or consider him an apostate because he 'proselytised' in [Suburb 1], made or shared [social media] posts of pictures and videos of Jesus Christ since at least 2017, and attended church and bible studies with other Iranian Christians;
 - He is at risk of harm should the he authorities come to know of his 'atheist views';
 - Between August 2016 and January 2020, the applicant shared anti-regime material on [social media];
 - If returned to Iran, the applicant will endeavour to partake in protests and activities similar to the CD creation he was previously involved in. Evidence shows that the Iranian state persecutes individuals and groups who take part in anti-regime political activism. The chance of harm is elevated for Arabs;
 - The applicant's faces harm due to his status as a returned asylum seeker.
20. There were also several elements of the post-SHEV interview submission that were difficult
21. Firstly, it was submitted that the applicant had 'engaged people to create CDs in his shop' and that he faced harm from the authorities on this basis. However, in the SHEV interview, he advised the delegate that he was not actively involved in the creation or the distribution of the CDs and that he simply allowed others, who had approached him, to use his computer to make the CDs. He also advised the delegate he knew little about their activities.
22. Secondly, the representative indicated that 'social media imagery' of the applicant participating in 'anti-regime demonstrations and gatherings' were posted online and are likely to have been accessed and analysed by the Iranian authorities. However, the applicant's evidence in his SHEV statement and SHEV interview was that he only ever attended one protest in 2009. At no point had he indicated prior to the submission that there were images of him circulating online at demonstrations or gatherings, or that feared harm for this reason.
23. Thirdly, it was submitted that the applicant faced harm in Iran 'should the authorities come to know of his atheist views'. The representative also stated that if questioned by the authorities his 'atheist beliefs' may become apparent and that his 'atheist beliefs' formed part of his cumulative 'anti-regime' risk profile. It was further submitted that the applicant could not conceal his 'atheist views'. However, consistent with the applicant's earlier evidence in his SHEV statement, the representative also submitted that the applicant was a 'Christian convert from Islam' and that he had 'renounced Islam'. Further, it was submitted that the applicant does not form part of the group 'non-practicing Muslims in Iran' but that should his Christian conversion be considered contrived that consideration should be given to his evidence that he was 'dissatisfied' with Islam when in Iran.

24. Fourthly, consistent with the applicant's evidence in the SHEV interview, the representative clarified that the applicant did not attend church once a week as outlined in his SHEV statement. However, the claim advanced that he attended every two or three weeks and that he supplemented church visits with bible study classes appeared to differ from his oral evidence that he no longer attends church and had not done so on any regular basis at any time. I also note the applicant made no mention in his written claims about attending bible studies and when specifically asked in the SHEV interview whether he had read the bible he indicated that he had not and that he was just told to get baptised.
25. Fifthly, the representative drew attention to an IAA decision that accepted that in Iran there is a "high level of societal discrimination against Arabs" and that this risk would "increase dramatically" for Arabs who attempt to publically assert cultural or political rights. It was also submitted that the applicant cannot 'conceal his ethnicity' to avoid harm. However, at no point prior to the post-SHEV interview submission did the applicant claim to be of Arab ethnicity. I note on his SHEV application form he recorded his ethnic group as 'Persian' and in his SHEV statement he again identified as Persian. I accept the applicant is of Persian ethnicity. Country information from the Department of Foreign Affairs and Trade (DFAT) indicates that Persians constitute the largest ethnic group in Iran, accounting for 60 per cent of the country's population. DFAT also describes Iran as a 'strongly Persian-centric society'.¹ While DFAT assess that members of minority ethnic groups can face official and societal discrimination, there is no indication that Persians face harm on the basis of ethnicity. I am not satisfied the applicant faces a real chance of harm due to his ethnicity.
26. The representative also stated in the post-SHEV interview submission that the applicant had provided consistent and detailed evidence through his entry (arrival) interview, SHEV application, SHEV statement and SHEV interview. However, as noted earlier, there were a number of apparent inconsistencies between his written and oral claims.
27. I also consider aspects of the applicant's evidence in the arrival interview not supportive of his later claims about events in Iran. As highlighted by the applicant in his SHEV statement, he initially claimed that he made a mistake when he said in the arrival interview that an ambulance transported him to Sepah headquarters. He appeared to attribute this error to being confused and not being able to remember what had actually happened to him. He also said that it was a mistake to mention he was arrested and detained for two days following the raid on his house. However, I note in the arrival interview he gave a relatively detailed account about how his mother and other relatives tried to get him released following this arrest. He also claimed in the arrival interview that five or six days following his release he was taken for interrogation and his shop was raided. However, his evidence throughout the SHEV process was that the shop was raided first and then his home and he indicated that this happened on the same day. Further, although he claimed in his SHEV application that he made a mistake when he mentioned in the arrival interview that he had been detained for two weeks (instead of two days) following the post-election demonstrations, I note it was a 'mistake' that was made no less than four times throughout the arrival interview where he specifically said he was detained for 13 days or two weeks. He also indicated that when he was detained at this time it was the first time he had ever been beaten by an official. However, as noted above, he claimed in his SHEV statement that he was first beaten when taken to Sepah headquarters while he was still in high school. I also note the applicant gave no indication in the arrival interview that he lived apart from his family for any period prior to leaving Iran. Further, he said that the last address

¹ DFAT, "DFAT Country Information Report - Iran", 14 April 2020, 20200414083132

he lived in was the same address that his family still lived in and that he had lived there for three years.

28. Overall, I find the applicant's evidence about events in Iran and Australia highly problematic. I acknowledge his evidence in the SHEV interview that he has difficulty remembering dates. He also indicated that he had felt lonely and depressed in the past and had even recently seen a psychologist. There were also purported interpreting issues at the time he prepared his SHEV statement, although I note on the statement itself it says its contents were read back to him and he agreed with it. He also claimed in the SHEV interview that he declared himself Christian at the time the statement was prepared because he had been baptised. However, the certificate provided following the interview revealed he was in fact baptised about 18 months after the statement was prepared. I have considered the various explanations advanced as to why there are difficulties with his evidence but I am unpersuaded. I consider the problems with his evidence more likely arise due to the fact he was not recalling a genuinely lived experience.
29. In respect of past events in Iran, I am prepared to accept the applicant's broadly consistent evidence since his arrival in Australia that when in high school he faced problems with the Basij authorities because of his clothing, his hair style and because he was in public with his girlfriend. According to DFAT, the Basij is a voluntary paramilitary organisation under the command of the Islamic Revolutionary Guard Corps and is part of the Iranian security forces. DFAT indicate that the Basij are involved in morality policing and the occasional morality campaign where they enforce standards of Islamic conduct. DFAT report that interaction with the security forces is unpredictable and can be influenced by the prevailing political environment and individual personalities. DFAT also report that Basij members often receive little formal training and can operate without orders or objectives, resulting in unpredictable interactions with civilians.² Having regard to the evidence discussed, I am not satisfied that the applicant was taken to the headquarters of Sepah and/or beaten in respect of these interactions with the Basij.
30. DFAT also report that the Iranian authorities are far more likely to target women than men for dress code violations. Where there have been incidents of harassment of men for violating the dress code, DFAT assesses these were most likely the result of either over-zealous enforcement by individual security authorities in particular locations (particularly outside of major cities) or because the individual had come to the attention of the authorities for other activities.³ The applicant indicated he feared return to Iran based on his 'western practices' and I accept he may continue to dress or have a 'western' related appearance. However, while such appearances may be frowned upon by more conservative Iranians, DFAT assesses that people of 'western' appearance face a 'low risk' of official and societal discrimination. DFAT defines 'low risk' as it is aware of incidents but has insufficient evidence to conclude they form a pattern. DFAT reports it is common to see men on Iranian streets with western style clothing and hairstyles.⁴ While I have accepted the applicant faced problems with the Basij in high school due to his appearance, on the information before me, I am not satisfied he faces a real chance of harm on this basis now, or in the foreseeable future.
31. Although I have concerns, I am also prepared to accept the applicant's broadly consistent evidence that he attended a post-election demonstration or 'Green Movement' in 2009. The Green Movement is the name given to the demonstrators who protested in 2009 and 2010 against official claims that Mahmoud Ahmadinejad won the 2009 presidential election. During

² Ibid

³ Ibid

⁴ Ibid

the protests, thousands of demonstrators were detained, beaten and harassed by security forces.⁵ However, I am not satisfied there is 'social media imagery' of the applicant participating in this demonstration circulating online as first claimed in the post-SHEV interview submission, without explanation.

32. I note the delegate accepted that applicant was arrested and detained in connection with his involvement at the post-election protests. In coming to this conclusion she gave weight to his 'consistent testimony' and the country information. However, I have come to a different conclusion. Of particular concern is the applicant's apparent conflicting evidence about his claimed detention by the authorities in connection with his involvement with the Green Movement. It does not appear the delegate gave consideration to these matters. As noted above, there were significant inconsistencies in his evidence as to how he was detained and for how long which leads me to doubt he was recalling a genuinely lived experience. As also noted above, I considered his various explanations advanced as to why there are difficulties with his evidence unpersuasive. On the evidence, I am not satisfied the applicant came to the adverse attention of the Iranian authorities in connection with his participation at the post-election protests. Even if I were to accept the applicant was arrested and detained in connection with his involvement at the protest, I would not be satisfied he would face a real chance of harm on return to Iran on this basis. DFAT assesses that Green Movement participants who were arrested but then released without prosecution are unlikely to be of ongoing interest to the Iranian authorities. DFAT also assesses that, given the period of time that has elapsed, it would be highly unlikely that those arrested for simply participating in the Green Movement protests would be the subject of continuing surveillance or harassment by the authorities. DFAT also note that the authorities would generally not have records of, nor interest in, participants who avoided arrest at the time.⁶ I am not satisfied the applicant faces a real chance of coming to the adverse attention of the Iranian authorities in connection with his participation at the 2009 post-election protests now, or in the foreseeable future.
33. In the SHEV interview, the applicant variously claimed that his university enrolment was rejected and/or that he was expelled from university due to his past participation in the Green Movement. There was not mention of this in his SHEV statement nor in the post-SHEV interview submission. Having regard to all of the evidence, I am not satisfied the applicant was a person of adverse interest to the Iranian authorities due to his participation in the Green Movement, either at the time of the protests or in the period that followed. It follows that I reject his claim in the SHEV interview that his university education was impacted in 2011 for this reason.
34. The delegate also accepted that applicant allowed people to use his [shop] premises to create CDs containing political material. She considered this claim 'plausible' due to his 'anti-regime sympathies'. However, having regard to the evidence discussed, I have come to a different conclusion and I am not satisfied the applicant allowed others to use his [shop] or equipment to create anti-regime materials. As noted earlier, there were apparent inconsistencies in his evidence around these events including as to whether security officers came into his shop to harass him, when his shop and home were raided, where his computer was taken from, and as to the number of times he has been pursued at his home since he lawfully departed Iran. I also consider the applicant's failure to mention in the arrival interview that he moved to Shahin Shahr for any period following the purported raid not insignificant. Overall, I considered the applicant's evidence in the arrival interview about what transpired in the approximate 12 month period prior to his departure from Iran to bear little resemblance to what he later claimed. Again, I am not persuaded by his explanation for this and I reject the entirety of the

⁵ Ibid

⁶ Ibid

applicant's evidence about the creation of CDs in his [shop] and the events that purportedly followed. I am not satisfied that when the applicant lawfully departed Iran in 2013, on his own passport, that he was a person of adverse interest to the Iranian authorities for any reason.

35. In respect of events in Australia, I am prepared to accept that the applicant attempted to turn to Christianity at a time in his life when he felt lonely and depressed. While the applicant was baptised in January 2019, I am not satisfied that he considers he has genuinely converted to Christianity. It was clear from his evidence in the SHEV interview that he was pressured into becoming baptised at a time when he first wanted to learn about Christianity. He didn't even collect his baptism certificate from the priest despite frequent calls from the priest requesting he do so. It was also clear from his evidence in the SHEV interview that he knew very little about the faith and that, aside from attending church on two or three occasions with the intention of learning more, he has not since taken any real or meaningful steps to engage with the Christian church or learn more about its teachings. I am not satisfied the applicant attended bible study classes.
36. In the post-SHEV interview submission, the applicant's representative submitted that irrespective of his religious beliefs it is probable that the Iranian authorities will impute Christianity to him or consider him an apostate because he 'proselytised' in [Suburb 1], he made or shared [social media] posts of pictures and videos of Jesus Christ since at least 2017, and he attended church and bible studies with other Iranian Christians.
37. The representative claimed in the submission that the applicant handed out pamphlets in [Suburb 1] that included information to 'promote Christianity', which appeared to differ from his oral evidence in the SHEV interview that he distributed pamphlets opposing Islam and Iran. The representative contended that due to [Suburb 1's] dense and diverse population it is 'highly probable' that:
 - a. other Iranians saw the applicant handing out the pamphlets;
 - b. photos were taken of the applicant;
 - c. the photos were shared on social media;
 - d. the Iranian authorities are now aware of the applicant's proselytising.
38. The representative also drew attention to two [social media] posts made by the applicant [in] August 2017 which she stated was the applicant vocalising his interest in Christianity. She submitted that because the [social media] posts are publicly viewable it is plausible that the Iranian authorities will be aware and consider him a Christian convert.
39. While I accept the applicant may have been curious about Christianity while in Iran and that he may of genuinely intended to learn more about the faith in Australia when he arrived here in 2013, I am not satisfied he continues to have a genuine interest in learning about the faith or that he genuinely intends to start going to church. I accept his evidence in the SHEV interview that he has had little engagement with the faith or the church both prior to and following his baptism and I found his evidence in the SHEV interview that he would now seek to go out and learn more about the faith, and that he soon intends to visit a new church, unconvincing. Overall, I consider the applicant's lack of engagement with the church/faith since he first attended church not supportive of his claim that he wants to learn more. I also find his various explanations for not doing so unpersuasive.

40. According to DFAT, the Iranian authorities do not actively search for Christian converts. DFAT assesses that a Christian convert would not face harm if they maintain a low profile, do not openly proselytise and are not of interest to the authorities for other reasons, for example, political activism. Official sources told DFAT that converts who keep their beliefs private are not of interest to the authorities. However, individuals who openly propagate Christianity and seek to convert others, in contrast, would draw the attention of the authorities, and face a high risk of official discrimination, including harassment, arrest and prosecution, and some societal discrimination. DFAT also refers to international observers who report that Iranians who convert to Christianity abroad are unlikely to face adverse official attention upon their return, provided they have not previously come to the attention of the authorities for political activities, maintain a low profile and do not engage in proselytisation activities. This includes individuals who publicise their conversion online while abroad.⁷
41. DFAT also report that while the Iranian authorities monitor social media, they do not comprehensively monitor its citizen's online activities. DFAT report that individuals with a public profile (including with large social media followings, particularly on Instagram), who are politically active, advocate for greater human rights, have connections to foreigners and are otherwise perceived as threats to the Islamic Republic are more likely to have their social media monitored.⁸ I am not satisfied the applicant has such a profile (either online or in real life) that would lead him to have his [social media] account monitored by the Iranian state. I am not satisfied that the Iranian authorities monitor the applicant's [social media] account or that they are aware of his sharing of Christian material on the platform in August 2017. I also consider the assertion that the applicant may have been photographed distributing pamphlets in [Suburb 1], that those photographs were uploaded and shared on social media, and that he has now been personally identified by the Iranian authorities as proselytising speculative and I do not accept it. Having considered all of the evidence, I am not satisfied the authorities in Iran are aware of the applicant's Christian activities in Australia, including his sharing of Christian material on [social media] in 2017 or the distribution of pamphlets in [Suburb 1].
42. On the evidence, I am satisfied that the applicant engaged in Christian related activities in Australia and was baptised other than for the sole purpose of strengthening his claims to be a refugee and that s.5J(6) of the Act does not apply. I accept his evidence that he engaged with other church members during a vulnerable time in his life. However, on the evidence before me, I am not satisfied the applicant has had any involvement with Christianity in recent years beyond two to three visits to Church (including for baptism) or that he truly identifies as Christian. Given his apparent lack of engagement with the Christian faith beyond January 2019 I do not consider he has demonstrated a genuine interest in practising any branch of the Christian religion upon return to Iran. I am not satisfied the applicant has a genuine intention or desire to practise the Christian faith in the reasonably foreseeable future, including in Iran. I am also not satisfied that that the applicant's Christian activities in Australia, including on [social media], would become known to the authorities in Iran, or that this would raise concern in Iran if known. The information before me does not support the applicant's engagement in Christianity in Australia would be known in Iran, or that if it was, he would be viewed as having genuinely converted to Christianity. It follows that I am not satisfied he faces real chance of harm on this basis.
43. In the post-SHEV interview submission, the representative stated that the applicant shared 'anti-regime' material on [social media] between August 2016 and January 2020. According to the representative, the information shared is about the arrest of Iranian returnees who were

⁷ Ibid

⁸ Ibid

involve in post-election events, the disappearance of two men who disappeared after they went to an airport in Iran, the arrests of three Iranian returnees, a video of a civilian receiving a public lashing, the killing of two people in the 'November' protests in Iran, and the arrest of an Iranian citizen in Iran. Several screenshots were provided although I note it is in a language other than English. The representative advised that the applicant would provide translations though, as noted by the delegate, none were provided. As above, I am not satisfied that the Iranian authorities monitor the applicant's [social media] account and nor am I satisfied they are aware of the applicant's posting of material between August 2016 and January 2020.

44. It was submitted that if returned to Iran the applicant will endeavour to partake in protests and activities similar to the CD creation he was previously involved in. I have found earlier that the applicant was not involved in the creation of the CDs and I am not satisfied he will partake in activities like that if returned to Iran. While I have accepted he was involved in the Green Movement demonstration in 2009, the applicant's evidence indicates he has not been involved in any similar activity since, either in Iran or in Australia. I note he specifically advised the delegate in the SHEV interview that after the 2009 demonstration he did not want to get further involved.
45. As noted by the delegate, the applicant's purported posting of anti-regime material on [social media] was limited and coincided mostly with milestones related to his SHEV application. The first post appears to have been shared [in] August 2016, about four weeks after he was invited to apply for a protection visa. The last two posts were [in] January 2020, about two and a half years since the last post and the day after the applicant's representative had been notified that the applicant had been invited to attend the SHEV interview. While I accept the applicant may have shared some articles on [social media], I do not consider this to be indicative of a real interest or strong desire to engage publically in anti-regime activities. I am also not satisfied that the applicant genuinely defines himself as an anti-regime activist, or that he holds strong anti-regime opinions or that he would seek to proactively channel his sentiments upon return to Iran. On the information before me, I am not satisfied that the applicant would face a real chance of any harm upon return to Iran for reasons of his political opinion.
46. I accept the applicant's broadly consistent evidence that prior to departing Iran he had little interest in Islam. However, I do not accept the claims first advanced in the post-SHEV interview submission, without explanation, that the applicant holds atheist views. I find the applicant was a non-practising Muslim when in Iran and that he continues to be so.
47. Sources noted by the delegate including the Austrian Centre for Country of Origin and Asylum Research and Documentation indicate that many Iranians have a secular attitude, rejecting all religions, including Islam. Abstaining from Muslim rituals such as not attending mosque would not necessarily arouse any suspicion, as many Iranians do not regularly attend mosques. Non-practising Muslims form a large part of the cities and generally lead normal daily lives without being pressured to observe Muslim precepts. DFAT report that sources advised that secularism in Iran is widespread and that a significant proportion of the population does not attend mosque or pray on a regular basis. Other sources advised DFAT that religious observance was a private matter and that many Iranians do not observe Ramadan strictly, including by eating, drinking liquids and smoking at home. Overall, DFAT assesses that non-practising Iranian Muslims face a low risk of official and societal discrimination. I am not satisfied that the applicant would publicly declare that he does not practise Islam on return to Iran, or that he has any interest in doing so. While I accept that there is a chance he may face some official and societal discrimination as a non-practising Muslim whilst regrettable, nevertheless, on the information before me, I am not satisfied that it amounts to or would result in a real chance of serious harm to the applicant now, or in the foreseeable future.

48. In the post-SHEV interview submission, the applicant's representative stated the applicant would come to the greater attention and suspicion of Iranian authorities due to the fact that he sought asylum in Australia. In support of this claim she pointed to country information and Administrative Appeals Tribunal decisions published between 2009 and 2013. It was further submitted that his risk of harm was elevated as a 'Christian convert' and due to his 'significant involvement in anti-regime political activism'. It was also argued that if the authorities were not aware of his [social media] posts that they would become aware during the examination and investigation process if he was forcibly returned to Iran. The delegate considered whether the applicant faced a real chance of harm for reason of being 'a failed asylum seeker returning from a western country'.
49. According to DFAT, Iran has historically refused to accept involuntary returnees, and 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 involuntarily to Iran. In March 2018 Iran and Australia signed a Memorandum of Understanding (MOU) on Consular Matters to facilitate the return of Iranians who arrived after that date and who have no legal right to stay in Australia.⁹ The applicant does not fall into this category and I am satisfied there is not a real chance he would be forcibly returned to Iran.
50. DFAT states that the Iranian authorities pay little attention to failed asylum seekers on their return to Iran. International observers reported that the authorities have little interest in prosecuting failed asylum seekers for activities conducted outside of Iran, including in relation to protection claims, and that this includes posting social media comments critical of the government or converting to Christianity. DFAT states that, as far as it is aware, the Iranian authorities do not check the social media accounts of Iranians returning from abroad. A well-placed source advised DFAT that it was not aware of voluntary returnees being prosecuted for criticising the Islamic Republic, converting to Christianity or proselytising while abroad on their return to Iran.¹⁰
51. DFAT assesses that persons with an existing high profile, particularly political activists, may face a higher risk of coming to the official attention of the authorities in Iran. DFAT also states that treatment of returnees, including failed asylum seekers, depends on their profile before departing Iran and their actions on return.¹¹ DFAT assesses that in general returnees are unlikely to attract attention from the authorities and face a 'low risk' of monitoring, mistreatment or other forms of official discrimination.¹²
52. As already noted, I am not satisfied that the applicant holds a profile that would raise the concern of the Iranian authorities and I am mindful that he was able to depart Iran legally in 2013 without difficulty. As above, I am also not satisfied that applicant's activities in Australia, including on [social media], is known or will become known to the Iranian authorities.
53. While I accept the authorities may question and in this process may briefly detain the applicant as a voluntary returnee¹³, I am not satisfied that this treatment would amount to or lead to harm. While I also accept that there is a chance he may face some monitoring, mistreatment or other forms of official discrimination as a returnee whilst regrettable, nevertheless, on the information before me, I am not satisfied that it amounts to or would result in a real chance of serious harm to him now, or in the foreseeable future. I am not satisfied the applicant faces a

⁹ Ibid

¹⁰ Ibid

¹¹ Ibid

¹² ibid

¹³ Ibid

real chance of harm as a failed asylum seeker, or due to his time spent in a western country like Australia now, or in the foreseeable future, should he return to Iran.

54. The applicant's representative submitted that the applicant's claims should be considered cumulatively. However, having carefully considered his claims in respect of events in Iran, events in Australia, and his profile as a non-practising Muslim and returnee from Australia individually and noting my findings in respect of each claim, I am not satisfied that he cumulatively faces a real chance of harm in Iran now, or the foreseeable future, for these reasons.
55. I find that the applicant does not have a well-founded fear of persecution within the meaning of s.5J.

Refugee: conclusion

56. 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

57. 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

58. 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.
59. 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.
60. While I accept the applicant may face some level of official and societal discrimination in Iran due to a 'western' appearance or as a non-practising Muslim, or a low risk of monitoring, mistreatment or other form of official discrimination as a returnee, I am not satisfied that this, either individually or cumulatively, amounts to or would lead to significant harm as defined. I am not satisfied that the treatment he may face would amount to the death penalty, or result in an arbitrary deprivation of life, or torture. I also do not accept that the treatment he may face would involve pain or suffering that could reasonably be regarded as cruel or inhuman in nature, or severe pain or suffering or that would cause extreme humiliation, even when

considered in a cumulative sense. I am not satisfied there is a real risk of significant harm on this basis.

61. I have otherwise found that the applicant does not face a real chance of any harm in Iran for the reasons claimed. Based on the same information, and for the reasons set out above, I find he does not have a real risk of suffering significant harm in Iran.
62. After having regard to the applicant's circumstances, I find that he does not face a real risk of suffering significant harm.

Complementary protection: conclusion

63. 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.