



Australian Government
Immigration Assessment Authority

Decision and Reasons

Referred application

IRAN

IAA reference: IAA21/08892

Date and time of decision: 18 March 2021 12:13:00

A Wilson, 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 national of Iran. He arrived in Australia [in] June 2013. On 27 July 2017 he lodged an application for a Safe Haven Enterprise visa (SHEV). On 18 February 2021 a delegate of the Minister for Immigration refused to grant the visa.
2. The delegate accepted the applicant had a sexual relationship with a woman he was not married to. However, the delegate was not satisfied the woman's family threatened to kill the applicant, threatened and assaulted members of the applicant's family or that the woman's family influenced the Iranian authorities to issue a court summons for the applicant. The delegate was not otherwise satisfied there was a real risk the applicant would suffer persecution or significant harm if returned 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).
4. No further information has been obtained or received.
5. I note that on 11 March 2021 the applicant contacted the IAA claiming he had not received an acknowledgement email from the IAA informing him that the decision to refuse him a protection visa had been referred to the IAA for a review. In that email he also requested an extension of time 'to make a complaint' about the refusal of the SHEV application.
6. On 12 March 2021 the IAA advised the applicant it declined the request for an extension of time, noting he had not indicated specifically what he intended to provide or when. The IAA also observed that while he had claimed he did not receive an email from the IAA, he was notified of the referral to both his current email address and postal address on 19 February 2021 and in a telephone conversation with the IAA on 9 March 2021 he had indicated that he had the IAA reference details and had discussed the matter with his representative. In these circumstances, the IAA was not satisfied that an extension of time was warranted. However, the applicant was also told that any submission or any new information which he provided to the IAA before a decision was made may be considered subject to the requirements of the IAA Practice Direction for Applicants, Representatives and Authorised Recipients. The applicant has not since come back to the IAA with a further submission. I also observe the acknowledgement email the IAA sent to the applicant has not 'bounced back' and the copy posted to him has not been returned to the IAA as undeliverable. Nor has the IAA received advice from the Department of Home Affairs (the Department) suggesting that the applicant did not receive notification of the refusal of his application for a visa from the Department.

Applicant's claims for protection

7. The applicant's claims can be summarised as follows:
 - he is an ethnic Fars/Persian male who has lived most of his life in [City] in southwest Iran. After finishing school in [City] he undertook compulsory military service in his birthplace, Ahvaz, in neighbouring Khuzestan province. He then spent six months pursuing tertiary

studies in [Country] before returning to [City] in March 2012, where he soon opened a [shop].

- he fled Iran because of the constant harassment and persecution by the Islamic theocracy. His first experience of the authoritarian nature of the regime occurred when he had just finished high school. It was the night of the martyrdom anniversary of Imam Ali during the holy month of Ramadan. He and a friend were driving around playing loud music when they were pulled over by law enforcement officers in an unmarked car just before midnight. They ordered them out of the car, swore at and scolded them for listening to music on the night of Ghadr, said they were violating Sharia and detained them. They then took them to the Monkirat police station which specialises in enforcing the Islamic law on Iranian citizens. The officers there swore at them and beat them. However, when there was a shift change in the early hours of the morning an officer who knew the applicant's father recognised the applicant, took him to his office and contacted his father who came and took him home.
- in subsequent years he stayed away from any trouble. However, some months after he returned from overseas and opened his shop, about two months before Nowruz, which would have been around late January 2013, he met a woman who introduced herself as [S]. He and [S] became friends and developed a relationship which became sexual. Sometimes they met once a week, at other times many times per week. They kept their relationship secret because it was dangerous, against the law and social norms. Only his close friends knew about their affair. [S] was secretive with him about her identity, and despite his best efforts he failed to find out more than her first name and contact number. He feared if he insisted she might choose to end the relationship.
- around two months before he left Iran, which would have been early April 2013, he and [S] went to his friend's home when no-one was there. They spent some time and slept together before leaving and parting ways. The day after they exchanged messages and then she suddenly called him and said someone had seen them together and told her family they had been seen going to a house together. She was crying and said they were in danger and pleaded with him to go where he would not be found.
- over the next few days he called her and sent her many messages but did not receive any reply. A few days later a regular customer from a local tribe came to his shop and told him his name had come up in a Lor tribal meeting, that the tribespeople knew about the relationship with [S], and that he had come to warn the applicant to run for his life. He also told the applicant [S] was the daughter of an influential tribal member and that the tribe was after him because he had dishonoured the tribe and the family.
- he immediately fled and hid in his auntie's home in the city of Shiraz, in a neighbouring province. Within a few days they all knew what had happened. His auntie told him to pack up because she feared for her family's safety. He called his mother who told him his brother had been beaten to near death, that they tried to force his father to give him up. People went to his shop looking for him and, after being threatened, his business partner revealed his whereabouts. He fled his aunt's and hid at a friend's place in Shiraz. His mother told him he had been summoned by the court because the tribes were using their influence in the government to catch him. With the help of a relative he made arrangements to flee Iran.
- after he arrived in Australia his mother and friends told him the tribe knows he has fled here, they have sworn to kill him upon return to Iran, they have beaten his brother and continue to harass his family.

- if returned to Iran, he fears the Iranian authorities and the woman's tribe would find out about his return, detain and interrogate him, punish him for failing to attend court, and subject him to severe harm, even death. Tribes in Iran have enormous influence over the government and the authorities. They tribes were able to mobilise the police to look for him, and the court to summon him. He could not expect the authorities to help or save him because they were themselves an agent of harm.
- if he returns to Iran he fears the regime would interrogate him about his reasons for fleeing to and living in Australia and subject him to inhumane treatment. When they found out that he had sought asylum they would punish him for giving the regime a bad name and offending it. The Iranian authorities consider it an offence and affront to their authority when Iranian citizens seek asylum in western countries.
- he could not live a proper and respectable life in Iran because the theocratic regime subjects all Iranians to strict Sharia code which takes away all freedoms and liberties.

Refugee assessment

8. 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

9. 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.
10. In support of his identity the applicant provided a certified copy (and English translation) of an undated Birth certificate and a certified copy (and English translation) of an Iranian Driver's Licence dated [December] 2012. While I have some concerns about the reliability of these documents as discussed below, I am willing to accept that the applicant's name is as claimed and that he is a national of Iran. Although the applicant lived and studied in [Country] for six months, there is no evidence to suggest that he has a presently existing right to enter and reside in any country apart from Iran. I find that Iran is his receiving country for the purpose of this review.

11. On the basis of the applicant's documentary and oral evidence I also accept: he completed primary school, high school and a pre-university course in Iran; he completed several years compulsory military service; he studied for six months at a tertiary level in [Country] in 2011-2012; that the applicant and a friend operated a [shop] for almost a year from mid-2012; and that his parents and several of his adult siblings continue to live in Iran.
12. The applicant has claimed his ethnicity is Fars (Persian) and that he was born in Ahvaz but lived most of his life in [City]. I accept the applicant has a Persian background. He has consistently claimed he belonged to this ethnic group since he arrived in Australia. Furthermore, country information confirms that greater than 60 per cent of Iran's population of more than 80 million people are Persians and that they comprise Iran's largest ethnic group¹.
13. However, I have significant doubt that for most of the more than two decades the applicant was in Iran that he lived in [City]. While the applicant has consistently given oral evidence that he lived in that city, there is no documentary evidence before me confirming that was the case. The English translations the applicant provided for the official identity documents seem to be missing some of the details that country information indicates should be found on such documents². In particular, the birth certificate provided refers to the applicant being born in Ahvaz and his parents being born in Abadan. However, the translation does not state where the document was issued as it should. This is despite authoritative country information stating a birth certificate includes the location where the birth certificate was issued³. Nor does the translation of the driver's licence furnished detail what the applicant's address was in 2012 or where the licence was issued.
14. Furthermore, none of the other identity documents the applicant provided to the Department, soon after he arrived in Australia, confirm he lived in [City] at any point. Apart from the birth certificate, the applicant did not provide English translations of the documents. I have listened to the audio recording of the 2013 arrival interview, that was before the delegate, and the applicant's identity documents were discussed then. When considering the biodata pages from the applicant's passport the interviewing officer remarked that the passport pages seemed to lack an entry against the 'Place of Issue' heading that was written in English. The applicant responded orally that the passport had been issued in [City]. However, when the accredited Farsi-English interpreter reviewed the pages provided she confirmed that neither [City] nor any other place was listed as the place of issue. The interpreter also confirmed that the untranslated pages from the applicant's National Identity Card did not list a place of issue. Again the applicant commented that the National Identity Card was issued in [City]. While the written record of the arrival interview records the applicant's name change certificate was issued in [City], I am not satisfied that reflects what is recorded on the certificate. The audio recording indicates the interpreter confirmed the name change certificate listed a date, a reference to relevant legislation, the applicant's old and new family names and a number. The interpreter did not state it included a place of issue.
15. The applicant has claimed, and I accept, that soon after he finished high school he was arrested, verbally and physically abused by security authorities, and held for several hours before being released after a car he was travelling in late at night was playing loud music on a holy day and

¹ Minority Rights Group International (MRG), World Directory of Minorities and Indigenous Peoples - Iran', December 2017, CXC90406624470. Department of Foreign Affairs and Trade (DFAT), 'DFAT Country Information Report - Iran', 14 April 2020, 20200414083132.

² DFAT, 'DFAT Country Information Report - Iran', 14 April 2020, 20200414083132. DFAT, 'DFAT Country Information Report Iran', 21 April 2016, CIS38A8012677.

³ DFAT, 'DFAT Country Information Report - Iran', 14 April 2020, 20200414083132. DFAT, 'DFAT Country Information Report Iran', 21 April 2016, CIS38A8012677.

was stopped by security authorities. He has consistently claimed this event occurred since he arrived in Australia and contemporaneous country information broadly supports that at around that time Iranian authorities periodically took a heavy-handed approach to enforcing standards of Islamic conduct in the community, that enforcement could be unpredictable and that it potentially related to the prevailing political atmosphere of the time⁴. I note that the applicant was not formally charged or convicted of any offence and despite the incident the applicant completed military service without apparent difficulty, was able to exit and re-enter the country without apparently attracting adverse attention when he went to study in [Country], and was able to establish and operate a small business after he returned to Iran, suggesting the incident did not pose any ongoing problems for him and he was not of ongoing interest to the Iranian authorities. Additionally, at the SHEV interview the applicant confirmed that between that short detention and when he left Iran to come to Australia some years later in 2013 he did not have any further interactions with the authorities in connection with this event.

16. The applicant claims that his intimate relationship with a woman [S] led to events that were the catalyst for his departure from Iran. Under the Islamic Penal Code of the Islamic Republic of Iran sexual intercourse of a man with a woman who is inherently prohibited to him, except in the cases where the intercourse is done by mistake, is defined as Zina [Article 63]. Apart from Zina with blood relatives prohibited from marrying; with a step-mother; or rape the punishment for Zina committed by an unmarried man or woman is one hundred lashes [Article 88]. Zina punishable by flogging shall be proved by testimony of four just men or three just men together with two just women [Article 74] or the testimony of two just men together with four just women [Article 75]⁵. A report by the Finnish Immigration Service indicates that as well as up to 100 lashes, premarital sex may be punished by between 10 days and two months of imprisonment and one source told the Danish authorities that detention could extend to between six months and a year⁶. The Finnish report also observed that no detailed information is available on how common flogging is in these cases, as they are not entered into official statistics, and victims avoid talking about them in public for fear of stigmatization⁷.
17. The Finnish Immigration Service also reports that since the 1979 Revolution Iranian society has undergone substantial structural, demographic, social and cultural changes. The cultural atmosphere has changed considerably especially during the last 20 years: patriarchal values are weakening and liberal values in general are on the rise and the generation gap that developed after the Islamic Revolution has changed the relationship between men and women. Of Iran's population, 70% are under 30 years old, and the largest generation was born during the rapid population growth years of the 1980s following the Revolution. The attitude shift observed among liberal urban youth has been dubbed a sexual revolution and extramarital relationships have become increasingly common in Iran. Young people are more likely to date, although they still largely hide it from their parents⁸.
18. In 2018 the Danish Refugee Council and Immigration Service published a report based on discussions with expert interlocutors both in Iran and outside the country. They were told that pre-marriage relationships are widespread and common among young people in Iran, particularly in major cities, although their frequency may differ in some border and rural areas.

⁴ DFAT, 'DFAT Country Information Report—Iran', 29 November 2013, CIS26780.

⁵ Iran Human Rights Documentation Centre 'Islamic Penal Code of the Islamic Republic of Iran Book 1 and 2 2012', Legal Affairs Commission of the Islamic Consultative Assembly, 1 April 2013, CIS25509.

⁶ Danish Refugee Council and the Danish Immigration Service, 'Iran: Relations outside of marriage and marriages without the accept of the family', February 2018, CIS7B83941639.

⁷ Finnish Immigration Service, 'Violence against women and honour-related violence in Iran', 26 June 2015, CISEC96CF13114.

⁸ Finnish Immigration Service, 'Violence against women and honour-related violence in Iran', 26 June 2015, CISEC96CF13114.

They observed that if no one reports pre-marriage relation to the authorities, the unmarried couples will not be prosecuted. Previously there was severe ill-treatment of young Iranians who were questioned on the streets about their relationships and even punished for vulgar and unethical behaviour simply for being seen in the public with a person of the opposite sex without being in a marital relationship. However, the more recent approach of the authorities is a soft approach where there is less pressure on Iranian youth especially in major cities and that the Iranian society has become more tolerant. However, it may happen that the morality police will more strictly enforce modesty rules in situations with elections or similar political events. Interlocutors were not aware of examples of recent cases related to pre-marriage relations ending up in courts. Although they indicated it cannot be excluded that families or neighbours report a pre-marriage relationship, although they very rarely take it to the court. Consequences within families are generally minimal but they can differ significantly. In the south, families would most likely take it upon themselves to solve the matter by forcing the couple into marriage. If such a relationship was reported, the person would in most cases be neglected by the authorities. Young people may, however, enter a religious marriage if they engage in sexual relations and they want to avoid trouble with the law⁹. The UK Home Office cited an expert on women's rights in Iran who stated that although the official rhetoric about pre-marital relationships is hard-line, a significant portion of Iranian society is more sophisticated and less hidebound than the ruling establishment¹⁰.

19. More recently, DFAT has reported that close contact between unmarried men and women is illegal in Iran. However, DFAT also states that while prohibited by the law and frowned upon by the religious establishment and more conservative Iranians, relations outside of marriage occur in practice. DFAT assesses that there is greater tolerance today for mixed-gender interactions, particularly in the larger cities. The authorities generally tolerate unmarried couples being together in public, particularly in the major cities. In the event of arrest, DFAT understands that an unmarried couple would be taken to the nearest police station and their parents or guardians summoned. Typically, the unmarried couple would sign a written statement and then be released. A fine may be imposed occasionally. DFAT also reports the punishment for adultery for a Muslim man with a Muslim woman is 100 lashes but the Penal Code does not specify any punishment for a Muslim man committing adultery with a non-Muslim woman. They observe that strict standards of proof are required to convict someone of adultery, including testimony from four eyewitnesses¹¹.
20. An honour killing is defined as a murder committed or ordered by a relative as a punishment to a family member who is seen to have damaged the family's reputation by their actions, such as extramarital sex. In the most extreme cases, even a suspicion of such actions is enough. Both women and men are vulnerable to honour-related violence in Iran, however due to cultural reasons women and girls are the mostly likely victims of honour killings. No comprehensive statistics are available on the subject, but a total of 340 honour killings in which the victims were women took place in Iran between March 2011 and March 2012, mostly in Kurdistan and Khuzestan. It is noted that it is difficult to estimate the prevalence of honour-related violence against men, as there are no statistics on it. Honour killings are an established phenomenon in many of Iran's outermost provinces, while they are less common in cities. They are most common among nomads, uneducated people and conservative ethnic minorities. The victims are most likely to be married women who are suspected of adultery, but young girls who are suspected of having relations with boys can also be targeted. The likelihood of honour killings

⁹ Danish Refugee Council and the Danish Immigration Service, 'Iran: Relations outside of marriage and marriages without the accept of the family', February 2018, CIS7B83941639.

¹⁰ UK Home Office, 'Country Policy and Information Note - Iran: Adulterers', October 2019, 20191009102136.

¹¹ DFAT, 'DFAT Country Information Report - Iran', 14 April 2020, 20200414083132.

decreases with education, urbanisation and access to society's services.¹² According to Minority Rights Group International women from minority backgrounds are at highest risk of 'honour' killings. They also note this form of violence is particularly widespread among the Lor, and some other minority communities¹³. The Penal Code does not specifically criminalise honour crimes and, in line with sharia principles provides for reduced sentences for those who commit them. Most perpetrators of honour killings therefore serve only a short prison sentence or avoid punishment altogether¹⁴.

21. The Lor (Lur) ethnic minority comprise six per cent of Iran's population¹⁵. They live across a number of provinces in Iran's west, including Kohgiluyeh and Boyer-Ahmad province in which [City] is located¹⁶.
22. While his account of the relationship was not particularly persuasive, taking into account the country information cited above indicating an increase in interactions between unmarried males and females in Iran, and as he was around [age] years old at that time, it is not implausible, and I am willing to accept that the applicant conducted a sexual relationship with a woman for a couple of months. On the basis of country information I also accept that an unmarried couple having sexual relations is a crime in Iran, although it would appear the offence is seldom pursued in the legal system and if it is it is difficult to gain a conviction. I accept that honour killings sometimes occur in Iran, that [City] is an area where the Lor tribe live and that there is some evidence the tribe has been involved in honour crimes. However, for the reasons that follow I am not satisfied the applicant's relationship was with a Lor woman from a prominent tribal family, that her family were informed the couple had been seen together, that the family and Lor tribe threatened to kill the applicant because he had dishonoured them, that the family/tribe assaulted his brother and harassed his father, or that they succeeded in having a court summons issued in the applicant's name.
23. As set out above I strongly doubt the applicant lived in [City], an area in which the Lor tribe are present. Additionally, although the applicant was assisted by a registered migration agent to lodge his SHEV application and at the SHEV interview, at which that agent was present, he was directly asked whether he had any documentation that would support the claims, the applicant has not provided any independent evidence to corroborate any aspect of the claims. Although the applicant claimed at the SHEV interview that he paid for his brother's hospitalisation after his brother was attacked by the woman's tribe/family he has not, for example, provided any evidence of financial payments to his brother or any medical documents relating to his brother's purported hospitalisation. Nor has the applicant provided a copy of the court summons he claims the woman's family/tribe had issued against him.
24. I have considered but am not persuaded by the applicant's explanations as to why he has not provided any supporting documentary evidence. At the SHEV interview the applicant initially stated he did not have any documents because everything happened quickly and he never thought he would come to Australia. While it is plausible that the applicant may not have thought to bring this type of paperwork with him on the journey to Australia, it is unclear why he did not seek to obtain any written evidence via his family, that he states he is in contact

¹² Finnish Immigration Service, Violence against women and honour-related violence in Iran', 26 June 2015, CISEC96CF13114.

¹³ Minority Rights Group International, 'Beyond the Veil: Discrimination against women in Iran', 16 September 2019, 20191002103655.

¹⁴ DFAT, 'DFAT Country Information Report - Iran', 14 April 2020, 20200414083132.

¹⁵ Minority Rights Group International, 'World Directory of Minorities and Indigenous Peoples - Iran', December 2017, CXC90406624470.

¹⁶ Sawhney, A and Azad, S, 'No country for minorities: the inequality of state repression in Iran', Open Democracy, 2 June 2020, 20200602095134.

with, in the three and a half years since he lodged the SHEV application with the assistance of his representative or in the month that passed between the SHEV interview, where the delegate asked him about the existence of supporting documents, and the delegate's decision. In relation to the purported court summons, at the SHEV interview the applicant stated he did not think about having a copy made of it, and he told his mother to put it in the bin as he did not need it anymore because he was in Australia. I find this explanation implausible given that the relationship and its purportedly dire consequences for him is virtually the entire basis on which the applicant has sought protection in Australia.

25. Furthermore, the applicant's claim that the Lor tribe enforces the regime's authority and is closely aligned with the law enforcement force, the police and the Islamic Republic is not supported by the country information before me. Contrary to the applicant's claim independent sources suggest that ethnic minorities, such as the Lor, face discrimination and marginalisation by the Iranian authorities¹⁷. Also if it were the case that the woman's family/tribe were powerful and had strong connections with the authorities as claimed, it is difficult to believe that the applicant could have remained in Iran for several months after the illicit relationship was discovered and exit the country on a passport in his name, noting that country information indicates that passport control checks at Iranian airports are sophisticated and that citizens with ongoing charges or outstanding court matters are subjected to travel bans¹⁸.
26. Finally, the applicant's evidence about the court summons issued by the authorities at the behest of the woman's family/tribe was unpersuasive. Beyond saying it required him to present himself, the applicant did not provide any particulars about what the document said, such as where he was required to present himself or what, if anything, he had been charged with. Additionally, his evidence about the timing of his awareness of the official document varied over time. In the statutory declaration the applicant referred to his mother telling him about the summons in the context of being in hiding at a friend's place in Shiraz in the period before he left Iran. At the SHEV interview the applicant stated his mother told him about the summons a number of months after he had left Iran. Like the delegate, I am not satisfied the applicant was of interest to the Iranian authorities. If he returns to Iran, I am not satisfied there is a real chance the applicant will be harmed by the woman's family or tribe or the Iranian authorities now or in the reasonably foreseeable future.
27. While the applicant left the question in the SHEV application form asking him his religion blank and in the accompanying statutory declaration stated he did not have a religion, considering his evidence in totality I am satisfied the applicant remains a non-practising Muslim. When asked about his religious beliefs, at both the SHEV interview and when he arrived in Australia, the applicant consistently indicated he believed in God. The applicant has not claimed that he is an atheist. He also referred to himself being born a Muslim but he had never been to a mosque or followed the religion and that his family were non-practising Muslims. He also said that if asked his religion he would say he was born Muslim, that Iran is a Muslim country, and that an individual has to be a Muslim. However, he does not believe in religion but believes that God is in his heart. Country information indicates over 99 per cent of Iranians are Muslim and that Shia Islam is the official state religion. It also states secularism is widespread in Iran, that a significant proportion of the population does not attend mosque or pray on a regular

¹⁷ Minority Rights Group International, 'World Directory of Minorities and Indigenous Peoples - Iran', December 2017, CXC90406624470. Sawhney, A and Azad, S, 'No country for minorities: the inequality of state repression in Iran', Open Democracy, 2 June 2020, 20200602095134.

¹⁸ DFAT, 'DFAT Country Information Report Iran', 21 April 2016, CIS38A8012677. DFAT, 'DFAT Country Information Report - Iran', 14 April 2020, 20200414083132.

basis, and that religion is regarded as a private matter¹⁹. Consistent with this, the applicant confirmed at the SHEV interview that in the two and a half decades he lived in Iran before coming to Australia he did not suffer any adverse attention because he did not practise of Islam. I am not satisfied the situation would be different for him. If he returns to Iran, I am not satisfied there is a real chance the applicant will suffer any harm in connection with his religious beliefs as a non-practising Muslim now or in the reasonably foreseeable future.

28. The applicant also claimed to fear harm in connection with having sought asylum in Australia. Country information before me indicates millions of Iranians travel into and out of the country each year without difficulty, including the large Iranian diaspora residing in North America, Europe, the United Arab Emirates and Australia. Country information also indicates Iran has a global and longstanding policy of not accepting involuntary returns, other than for individuals who arrived in Australia after the signing of a Memorandum of Understanding between the Australian and Iranian governments in 2018.²⁰ However, country information also supports that it is not a criminal offence in Iran for any Iranian to ask for asylum in another country²¹. Additionally, Iranians who return with their passports will not face any problem at the airport when they return after a longer stay abroad provided they left the country legally²².
29. Nonetheless in recent years there have been a few examples of returnees being arrested, detained or physically punished on return to the country. These individuals appear to have been known political activists or persons convicted of crimes prior to their departure from Iran²³. Reflecting this, reporting from DFAT over a number of years, including in its most recent publication, has stated Iranian authorities pay little attention to failed asylum seekers on their return to Iran. They note Iranians have left the country in large numbers since the 1979 revolution, and authorities accept that many will seek to live and work overseas for economic reasons. They also observe that 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 30 minutes and one hour, but may take longer where the returnee is considered evasive in their answers and/or immigration authorities suspect a criminal history on the part of the returnee. Arrest and mistreatment are not common during this process. A well-placed source 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. DFAT also referred to international observers reporting that Iranian authorities have little interest in prosecuting failed asylum seekers for activities conducted outside Iran, including in relation to protection claims. However, DFAT did caution that those with an existing high profile may face a higher risk of coming to official attention on return to Iran, particularly political activists. They assessed that, unless they were the subject of adverse official attention prior to departing Iran (e.g. for their political activism), returnees are unlikely to attract attention from the authorities, and face a low risk of monitoring, mistreatment or other forms of official discrimination. They

¹⁹ DFAT, 'DFAT Country Information Report Iran', 21 April 2016, CIS38A8012677.

²⁰ DFAT, 'DFAT Country Information Report Iran', 21 April 2016, CIS38A8012677.

²¹ Danish Refugee Council, 'Iran: On Conversion to Christianity, Issues concerning Kurds and Post-2009 Election Protestors as well as Legal Issues and Exit Procedures', Landinfo and Danish Immigration Service, February 2013, CIS25114.

²² Danish Refugee Council, 'Iran: On Conversion to Christianity, Issues concerning Kurds and Post-2009 Election Protestors as well as Legal Issues and Exit Procedures', Landinfo and Danish Immigration Service, February 2013, CIS25114.

²³ Center for Human Rights in Iran (United States), 'Reformist Political Activist Turned Refugee Briefly Arrested Upon Return to Iran', 18 October 2017, CXC90406615858. Iran Human Rights (Norway), 'Woman Asylum Seeker Lashed 80 Times After Being Deported to Iran From Norway', 20 September 2017, CXC90406614387. Human Rights Activists News Agency (United States), 'An Arab Asylum Seeker Sentenced to Jail after Returning to Iran', 30 May 2017, CXC9040668619. Immigration and Refugee Board of Canada, 'IRN200133.E - Iran: Treatment by Iranian authorities of failed refugee claimants and family members of persons who have left Iran and claimed refugee status (2017-February 2020)', 9 March 2020, 20200402123733.

cited local sources as stating the greatest challenge facing failed asylum seekers on return is reintegrating economically and finding meaningful employment²⁴.

30. In the SHEV application and on arrival in Australia the applicant claimed, and I accept, that he departed Iran legally. On the basis of country information set out above, I also accept that the applicant will only be returned to Iran on a voluntary basis. Although there is no independent evidence before me to suggest it has occurred, I also accept it is possible the Iranian authorities may surmise the applicant has sought asylum in Australia, noting country information indicating millions of Iranians travel into and out of the country each year and that authorities accept that many Iranians will seek to live and work overseas for economic reasons²⁵.
31. However, I am not satisfied there is a real chance the applicant will suffer serious harm because he has sought asylum and lived in Australia. Country information before me does not support that it is an offence for an Iranian citizen to seek asylum or that returnees without an existing adverse or political profile are targeted for harm by the authorities or anyone else. I have not accepted that the applicant was the subject of a court summons or any attention from the Iranian authorities over a relationship he had with a woman he was not married to more than seven years ago or that he was of ongoing interest to the authorities following a few hours detention on another occasion. Nor do I accept that he had a high, or any sort of, profile when he departed Iran in 2013. Additionally, the applicant indicated in the SHEV application that he has never been convicted of any offence in Iran and he has not claimed that he has been convicted of any crimes in Australia. I am not satisfied that the applicant has participated in any activity in Australia that will be viewed as critical of Iran or the Iranian government.
32. I consider it highly likely that on arrival in Iran the applicant will, if he returns voluntarily on a passport, be allowed to enter the country without question. If he returns voluntarily on a laissez-passer, I consider it highly likely that on arrival at the airport he will be questioned for up to an hour about the circumstances of his departure and why he is traveling on a laissez-passer before being released. As he does not have a political profile and on my finding was not of adverse interest to the authorities when he left Iran I am not satisfied there is a real chance the applicant will be interrogated, as distinct from interviewed, or subject to adverse treatment. If an interview with the applicant were to occur, I do not consider such an interview would rise to the level of serious harm. I am otherwise not satisfied there is a real chance the applicant will suffer any harm as a returnee from Australia.
33. If he returns to Iran, I accept that the applicant will be obliged to live under Sharia law and that he would accordingly be subjected to a range of restrictions, including some that he may personally find objectionable. Although I note he did not identify any particular future limitations he was concerned about, apart possibly from those relating to sexual relationships and playing music on holy days that were touched on in his claims. Country information before me indicates that Iran is a theocratic republic and its Constitution provides for a judicial system based on Sharia (Islamic law)²⁶. Having regard to the country information, it is apparent that all Iranians are subject to the Sharia code, as the applicant himself states in his statutory declaration. I am not satisfied it amounts to systematic and discriminatory treatment. I am not satisfied it constitutes persecution.
34. I accept the applicant is a non-practising Muslim from Iran. I accept just after finishing school he was detained for a few hours and beaten before being released without charge, after the car he was travelling in was stopped for travelling fast and playing loud music on a holy day. I

²⁴ DFAT, 'DFAT Country Information Report - Iran', 14 April 2020, 20200414083132.

²⁵ DFAT, 'DFAT Country Information Report - Iran', 14 April 2020, 20200414083132.

²⁶ DFAT, 'DFAT Country Information Report - Iran', 14 April 2020, 20200414083132.

also accept he had a brief relationship with a woman more than seven years ago. However, I am not satisfied the applicant or his family was threatened or harmed by the woman's family or tribe or that the applicant was of adverse interest to the Iranian authorities. Nor am I persuaded that the applicant was subjected to ongoing harassment and ill-treatment by the Iranian authorities. Apart from the car incident referred to above that occurred more than a decade ago, and the claim that the applicant was summoned by an Iranian court, which I have not accepted, the applicant has not particularised any other interactions he has had with the Iranian authorities or how he has been harmed by them. Moreover, I observe the applicant was educated to the post-secondary level, was able to establish and operate a small business in Iran, was issued with official documentation by the Iranian authorities, was able to exit and re-enter the country without apparent difficulty following overseas travel and study, and was able to legally exit the country again in 2013. I note in Australia the applicant has been employed as [an occupation]. He indicated at the SHEV interview that his brother operates a [shop] in Iran. I consider it highly unlikely the applicant would be unable to find employment or subsist in Iran where most of his family still live. I am not satisfied there is a real chance the applicant will be denied the capacity to earn a livelihood of any kind, where the denial threatens his capacity to subsist or that he will otherwise suffer persecution now or in the reasonably foreseeable future.

35. Overall, I am not satisfied the applicant has a well-founded fear of persecution in Iran.

Refugee: conclusion

36. 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

37. 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

38. 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.

39. 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.

40. I accept if the applicant returns voluntarily to Iran he will be obliged to live under the restrictions of Sharia law. However, I note these limitations seem to be faced by the population of the country generally and are not faced by the applicant personally. Nor am I satisfied that there is an intention to cause pain and suffering that can be reasonably regarded as cruel or inhuman, severe pain or suffering or extreme humiliation. Nor is there a real risk of the death penalty, torture or the arbitrary deprivation of life. I am not satisfied on the evidence that if he returns to Iran, and is required to live under Sharia law, the applicant would be at real risk of being subjected to significant harm.
41. I accept if the applicant returns voluntarily to Iran on a laissez-passer he may be questioned for up to an hour before being released. However I am not satisfied that there is an intention to cause pain and suffering that can be reasonably regarded as cruel or inhuman, severe pain or suffering or extreme humiliation. Nor is there a real risk of the death penalty, torture or the arbitrary deprivation of life. I am not satisfied on the evidence that if he returns to Iran, and if he is questioned at the airport, the applicant would be at real risk of being subjected to significant harm.
42. I have otherwise concluded that the applicant does not face a real chance of harm for any of the reasons claimed. As 'real risk' and 'real chance' involve the application of the same standard²⁷, I am also not satisfied that the applicant would face a real risk of significant harm for the purposes of s.36(2)(aa) on these grounds.

Complementary protection: conclusion

43. 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.

²⁷ *MIAC v SZQRB* (2013) 210 FCR 505.

Applicable law

Migration Act 1958

5 (1) Interpretation

In this Act, unless the contrary intention appears:

...

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

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

...

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

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

but does not include an act or omission:

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

...

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

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

...

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

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

...

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

- (a) for the purpose of obtaining from the person or from a third person information or a confession; or
 - (b) for the purpose of punishing the person for an act which that person or a third person has committed or is suspected of having committed; or
 - (c) for the purpose of intimidating or coercing the person or a third person; or
 - (d) for a purpose related to a purpose mentioned in paragraph (a), (b) or (c); or
 - (e) for any reason based on discrimination that is inconsistent with the Articles of the Covenant;
- but does not include an act or omission arising only from, inherent in or incidental to, lawful sanctions that are not inconsistent with the Articles of the Covenant.

...

5H Meaning of refugee

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

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

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

...

5J Meaning of well-founded fear of persecution

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

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

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

5K Membership of a particular social group consisting of family

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

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

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

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

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

5L Membership of a particular social group other than family

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

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

5LA Effective protection measures

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

...

36 Protection visas – criteria provided for by this Act

...

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

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

...

Protection obligations

- (3) Australia is taken not to have protection obligations in respect of a non-citizen who has not taken all possible steps to avail himself or herself of a right to enter and reside in, whether temporarily or permanently and however that right arose or is expressed, any country apart from Australia, including countries of which the non-citizen is a national.
- (4) However, subsection (3) does not apply in relation to a country in respect of which:
- (a) the non-citizen has a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion; or
 - (b) the Minister has substantial grounds for believing that, as a necessary and foreseeable consequence of the non-citizen availing himself or herself of a right mentioned in subsection (3), there would be a real risk that the non-citizen will suffer significant harm in relation to the country.
- (5) Subsection (3) does not apply in relation to a country if the non-citizen has a well-founded fear that:
- (a) the country will return the non-citizen to another country; and
 - (b) the non-citizen will be persecuted in that other country for reasons of race, religion, nationality, membership of a particular social group or political opinion.
- (5A) Also, subsection (3) does not apply in relation to a country if:
- (a) the non-citizen has a well-founded fear that the country will return the non-citizen to another country; and
 - (b) the Minister has substantial grounds for believing that, as a necessary and foreseeable consequence of the non-citizen availing himself or herself of a right mentioned in subsection (3), there would be a real risk that the non-citizen will suffer significant harm in relation to the other country.

Determining nationality

- (6) For the purposes of subsection (3), the question of whether a non-citizen is a national of a particular country must be determined solely by reference to the law of that country.
- (7) Subsection (6) does not, by implication, affect the interpretation of any other provision of this Act.