



Australian Government
Immigration Assessment Authority

Decision and Reasons

Referred application

IRAN

IAA reference: IAA21/08896

Date and time of decision: 29 March 2021 15:43:00

G Ma, 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 an Iranian national who fears harm for reasons relating to his work during compulsory military service, and because of his political opinion and religious beliefs. On 4 August 2017 he lodged an application for a safe haven enterprise visa (SHEV). On 17 February 2021, a delegate of the Minister for Immigration (the delegate) refused to grant the visa.

Information before the IAA

2. I have had regard to the review 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

3. The applicant's claims can be summarised as follows:
 - The applicant was born and grew up in Tehran with his parents and [siblings]. He had lost religion years towards the end of his military service. He has no faith and would describe himself as agnostic.
 - He served his compulsory military service from [October] 2008 to [July] 2010.
 - His problems first began in 2009 during his military service. He was one of the soldiers working as a prison guard and was also responsible for escorting prisoners. Sometimes he would have to escort prisoners from [a] prison to court - which were often closed courts if the crimes alleged were politically sensitive. In the courts he would have to wait to escort the prisoners back to the prison so he would hear a lot of what was said even in the closed hearing cases. He heard details of a lot of abuses committed by government forces against civilians, including witnesses who described the horrible abuses they had suffered.
 - In May-June 2009, he took part in demonstrations against the government. He covered his face and was very active in the demonstrations, even leading the demonstrators sometimes. There were some pro-government people taking photos of the protesters. As he did not want to be identified, arrested and detained, he covered his face and did everything possible to avoid arrest.
 - In early 2010, his brother's friend who worked for the Security Police, contacted his brother to warn the applicant to be very careful and that it was known that he was being politically active. In particular, to warn him not to talk about his work in the military (especially in relation to escorting high-profile and other detainees from [the] prison to court) with any person or group opposed to the government.
 - A few months after he was discharged from the military, he began speaking more openly to a few close friends that he used to meet up with for coffee or at a restaurant who he felt comfortable with. He began sharing his experiences from his time in the military and his dislike of and disillusionment with the Islamic regime.
 - His brother's friend then contacted his brother again to warn him to stop speaking and said he was speaking too much. He did not want to be told to keep quiet. In fact, he became more determined to speak out against Islam.

- In mid-2012, he was working for a [product] company. One day, he was taking [product] registration papers to the government office and was stopped by two plain-clothed security officers who insisted to search him. They searched him and wanted cigarettes (he doesn't smoke), hassled him and threw around a few of the registration forms he was carrying and then left ('the random search incident').
- His brother later told him that only the formal police can do random searches like that and it was probably related to the warnings from the security services via his friend.
- In late 2012, on one evening, he and another friend went to meet friends at a [venue] near the residence of the Ayatollah Khamenei in central Tehran. After they arrived at the [venue], some security officers from the Ayatollah's residence came and said that the applicant was under arrest for a disrespectful hand gesture towards one of Ayatollah's vehicles while riding past the residence. He was taken to a police station, beaten, slapped and his fingers were twisted, and detained for five hours. He denied the accusation and asked them to provide a witness or evidence. There was no one who would give evidence that he actually made a disrespectful gesture, so the authorities let him go after they made him sign a document he was not allowed to read but he presumes it was an undertaking not to offend against Islam or the government again ('the [venue] incident').
- Things were not improving, and his brother started telling him he should get out of Tehran while he tried to sort things out for him so he would not be blacklisted by the authorities as a dissident. He was working for his brother's company at the time, so his brother sent him on company business to Tabriz where he stayed with his sister for about 20 days. His brother also sent him to [Village] for around 15 days, as well as to [Town] - a place known as a hot-springs holiday resort where he stayed for 15 days, just to keep him out of Tehran. This was between October 2012 and February 2013.
- He left Iran for Australia [in] May 2013.
- In early February 2015 his father was detained for 24 hours and interrogated about him. His father was taken to the hospital when he returned home. Since returning, his father has been unable to speak, and he now speaks using a microphone speaking aid.
- In early December 2015 his mother was detained for three days, but not hurt. After she returned home, she got very ill and had to be taken to hospital. She passed away [in] December 2015. At the SHEV interview, he also said that his brother blames him for his mother's illness and death because his mother was detained for two to three days and was questioned about him, and she passed away about a month after she returned home.
- While living in Australia, he stayed in touch with three friends in Iran. They communicate via [an] application – a chat room on the internet. He also talks to people from Iran he has met in Australia. When he is together with his Iranian friends they talk about the realities of Islam and what conditions are like in Iran.
- At the SHEV interview, he also claimed that the Iranian government confiscated their family home and furniture by staging some circumstances and using fake documents, and evicted his father from the house.
- He fears being arrested, charged, detained and harmed by the Iranian authorities as an apostate, an infidel, and endangering the security of the regime based on the political profile the authorities recorded during and after his military service years in Iran. He fears being charged with exposing state secrets and with the offence of apostasy.

Refugee assessment

4. 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

5. 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.
6. On the basis of his Iranian birth certificate and national ID card, I accept that the applicant is a national of Iran born [in] Tehran. Iran is the relevant ‘receiving country’.
7. The applicant’s father, brother and [one] sister are living in Tehran, while his other [sisters] are living with their families in Tabriz in Iran and in [another country] respectively. The applicant grew up in Tehran, and since around 2001 he worked for several businesses [in] Tehran, including in his brother’s business as a [product] salesperson. I consider that if he returns to Iran he is most likely to return to Tehran, where he has family ties, network and support.
8. I accept that the applicant served his compulsory military service between October 2008 and July 2010 in Tehran, he was a soldier and he served as a prison guard. This is supported by his compulsory military service discharge card, as well as his generally consistent evidence at the arrival interview, in his SHEV application and at the SHEV interview. I also accept that his duties involved assisting with escorting prisoners to and from the courts from time to time.
9. I am prepared to accept that, like many young Iranians who chose not to practise any religion and are becoming secular,¹ the applicant has no faith and considers himself agnostic.

¹ Department of Foreign Affairs and Trade (DFAT), “DFAT Country Information Report - Iran”, 13 April 2020, 20200414083132; Austrian Centre for Country of Origin and Asylum Research and Documentation (ACCORD), “Iran - COI Compilation”, 1 July 2018, 20190326122102, p.146; “Young Iranians affected by the embargo, tired of political Islam”, Asia News IT, 1 April 2015, CXBD6A0DE4714; “Religion: Take it or leave it”, The Economist, 1 November 2014, CX1B9ECAB749; and Ali Sadrzadeh, “Turning away from Shia in Iran – ‘A Tsunami of Atheism’”, Qantara, 7 February 2013, CXC28129415432.

10. I am also prepared to accept that the applicant participated in the 2009 post-election anti-government protests, as did millions of others. The evidence indicates that many young Iranians are increasingly disillusioned by official Islam,² and I am prepared to accept that the applicant dislikes the regime and shared that opinion among his friends.
11. However, for the reasons given below, I consider that the applicant exaggerated and embellished the extent of his political involvement and experience in the military. I do not accept that he heard or acquired any sensitive or controversial information during his work in compulsory military service, or that he was or will be perceived as possessing information that is regarded as 'state secrets', controversial or sensitive. I do not accept that he shared experiences or information gained from his work in the military with anyone, or was perceived as such. I do not accept that he had an active or leading role in the 2009 protests.
12. Country information³ indicates that in Iran, military service is compulsory for men aged between 18 and 40, and usually lasts between 18 and 24 months. Iran experienced a significant population spike in the years after the 1979 revolution, where its population grew from 34 million to 62 million in the first decade of the Islamic Republic, and Iran has one of the youngest societies in the world. The Iranian security forces are large, powerful and conspicuous, with an extensive network of police, security and intelligence services that exercises effective control over most of the country. The Islamic Revolutionary Guards Corps (IRGC) is Iran's most powerful security and military organisation (estimated to have about 150,000 active personnel), responsible for the protection and survival of the Islamic Republic. Since the 1980s, the IRGC eclipsed the regular military as Iran's pre-eminent internal and external security force, operating substantial land, sea and air forces independent of the regular military, with a cyber command and a powerful intelligence arm that conducts domestic intelligence operations, including against political activists, and maintains its own detention facilities. The IRGC helped to suppress the Green Movement demonstrations in 2009, and played a role in responding to other more recent protests together with other parts of the security apparatus. Iran's military plays a secondary role to the IRGC in the provision of defence and consists of an army (comprising 130,000 enlisted personnel and 220,000 conscripts), a navy (18,000), an air force (30,000), and an additional 350,000 reserves, and can mobilise Basij forces as appropriate.
13. Given the powerful, large, effective and tightly controlled network of Iranian security forces, and that military service is compulsory in Iran, I have difficulties accepting as plausible that the applicant who, like many other young Iranians, was in compulsory military service for only a relatively short period of time, would have been given the opportunities to be exposed to sensitive or controversial information when escorting prisoners, or permitted to be present in court hearings involving high profile or politically sensitive matters or 'state secrets', or closed court hearings.
14. The applicant's core claim is that he suffered past harm and fears harm upon return because of the sensitive evidence that he heard in these court hearings due to his work during compulsory military service. However, he made no mention of them at his arrival interview. This omission is not insignificant.
15. As the delegate put to the applicant during the SHEV interview, when asked at the arrival interview why he left Iran, he responded it was because he wanted to have a comfortable life, and when asked if there was anything specific that happened in Iran that made him want to leave, he replied no. When asked at the arrival interview as to what he thinks will happen to him

² Ibid.

³ DFAT, "DFAT Country Information Report - Iran", 13 April 2020, 20200414083132.

if he returns to Iran, he said his life will be ruined because he was working two to three shifts per day and paying for household expenses, it costs him a lot of money to get here and he will have nothing if he goes back.

16. I am not persuaded by the applicant's explanations that the omission was because he was told by the people smuggler not to say anything about his past life in Iran, just say he came here because of a better or comfortable life, not to talk about his life in Iran while he was in immigration detention, he can talk to anyone about his past life in Iran after he got out of the camp; he was afraid to risk something else but he told his lawyer everything after he got out; people in Iran warned him that the Australian authorities have connections with the Iranian authorities and would contact them or leak any information that he told them, and if the Iranian authorities knew that he spoke about any of this in a western country they would force him to return to Iran to detain him and target his family; and he feels safer about talking out now that he is out of detention and having lived in Australia for a few years and understands that the Australian government would keep such details confidential and secure; and that other than the problems he faced because he talked about the information that he gained while he was in military service, he had enough money and a house they could live in and there was no other problem.
17. At the arrival interview, the applicant gave detailed evidence about his military service, including that he was enlisted in 2008, the military training took place at [City] in the training centre next to the [City] prison, he was a recruit soldier, his service took place in [Location] for eight months as a prison guard, he was then transferred to the prison in [City] as a guard for 13 months, he completed military service in 2010, and he only served his compulsory military service and no additional service. He also gave evidence about his past life in Iran, such as his family background, education and work history, he disclosed that he was involved in the 2009 election protests and he was just marching in the protests. Also, as discussed below, although he did not claim to fear harm on this basis - he also disclosed at the arrival interview that he was arrested once in 2011 in Iran [when] he was on a motorbike with a friend, the military police stopped them, detained them for four to five hours, he did not know what the crime was and he was not charged with anything. Moreover, he said that the police and security or intelligence organisations did not impact on his day to day life in Iran, and he chose Australia as his destination because he got tired of Iran and wanted to live in Australia. His detailed evidence at the arrival interview about his biographical details, family background, education and work history and travel details to Australia, is broadly consistent with his evidence in his 2017 SHEV application. This is notwithstanding the fact that the applicant was in immigration detention at the time of his arrival interview held on 26 June 2013, shortly after his boat trip to Australia on 9 June 2013, and without the benefit of legal representation.
18. In my view, the applicant would not have revealed at the arrival interview his involvement in the 2009 protests (also known as the 'Green Movement'), which represented a major challenge to the authority of the Islamic Republic,⁴ or his 2011 encounter with the military police, if he had been warned or instructed by other people not to talk about his past life in Iran until after he was released from immigration detention, and to just say he came here for a better life, or if he feared that the Australian authorities would contact or leak his information to the Iranian authorities, or if he was afraid that he or his family would be harmed or targeted because he spoke about his past life in Iran in a western country, or feared risking something else, or felt unsafe or uncomfortable to talk about his life in Iran at the arrival interview.

⁴ Ibid.

19. In the circumstances of this case, I consider that if the claimed past incidents and experiences gained from his work during compulsory military service were true, and if the applicant fled Iran to seek protection in Australia because he feared harm upon return for reasons relating to his work in military service, which he now says was the problem and he had no other problems, he would have at least briefly mentioned them at the arrival interview. His voluntary disclosure at the arrival interview about his past life in Iran, including his involvement in the 2009 protests and his 2011 encounter with the military police, together with his evidence that nothing happened to him in Iran that made him want to leave and he came here for a comfortable life, to me, strongly indicate that he did not face past harm nor fear harm upon return. While he may have had enough money and a house to live in Iran, this does not satisfactorily explain the omission. I am also not satisfied that any effect of the boat trip, the arrival interview being his first interview, he was in immigration detention, the lack of legal representation, anxiety, stress or any other external factors could adequately explain the omission or the problematic evidence.
20. Country information⁵ indicates that following the June 2009 presidential election, up to 3 million supporters of reformist candidate Mir Hossein Mousavi took to the streets of Tehran to protest the official verdict that conservative candidate Mahmoud Ahmadinejad had been re-elected in a landslide, in what became known as the 'Green Movement'. In response, the government despatched security forces, who beat and harassed thousands of protesters and arrested hundreds, while snipers killed dozens. Some protesters died in prison, others associated with the Green Movement fled Iran (in numbers likely to be in the hundreds), and a small number were handed sentences by Iranian courts in absentia. The Green Movement leaders have been under house arrest without formal charge or trial since 2011, and many prominent Green Movement activists were imprisoned.
21. However, the Green Movement has little profile in Iran today. Ordinary participants in the Green Movement are not of interest to the authorities. One source noted that a family member who had been briefly detained and arrested for their participation in the Green Movement, and had subsequently secured asylum abroad, returns to Iran regularly without experiencing any harassment. Given the lengthy passage of time since the Green Movement protests, DFAT advises it would be highly unlikely that those arrested at the time for simply participating in the protests would remain imprisoned or be the subject of continuing surveillance or harassment. High profile Green Movement participants are more likely to face continuing official attention or harassment. The authorities would generally not have records of, nor interest in, participants who avoided arrest at the time, and ordinary participants who avoided arrest face a low risk of official discrimination. Moreover, Iranians are able to criticise the government of the day robustly, both in public conversations and online in social media so long as the well-understood 'red lines' are not crossed. It is common for Iranians to be critical of the government in public places, including supermarkets, shopping malls and taxis. But people remain cautious about crossing 'red lines', like insulting the Supreme Leader, in their public interactions beyond close family and friends.⁶
22. In view of the country information above regarding the scale of the Green Movement and the treatment of protestors during and soon after the 2009 protests, I do not find it believable or plausible that the applicant was 'very active' or sometimes 'leading the demonstrators' during

⁵ DFAT, "DFAT Country Information Report - Iran", 13 April 2020, 20200414083132; Danish Refugee Council, Landinfo and Danish Immigration Service, "Iran: On Conversion to Christianity, Issues concerning Kurds and Post-2009 Election Protestors as well as Legal Issues and Exit Procedures", February 2013, CIS25114; "Protesters from 2009 election sentenced in absentia", Radio Zamaneh (Netherlands), 15 July 2014, CX323256; "Rude Homecoming For Iranian Dissidents", Esfandiari, G, Radio Free Europe/Radio Liberty, 29 April 2014, CX320500; and "Former Reformist Member of Parliament Arrested Upon Return to Iran", International Campaign for Human Rights in Iran (United States), 27 July 2015, CXBD6A0DE10786.

⁶ Ibid.

those protests, without being identified, arrested, detained, or otherwise harmed just because he covered his face and 'did everything possible' to avoid arrest. I also consider the applicant's overall evidence regarding his involvement in the 2009 protests general, lacking in detail, and not indicative of someone who has taken an active or leading role. He provided no detail about the frequency, location, how or what exactly he did to very actively take part in the protests or lead the demonstrators. On the evidence, I do not accept that the applicant was anything more than a low-level ordinary protester during the 2009 protests.

23. I share the delegate's concerns, and I consider the applicant's evidence about the claimed past incidents inconsistent, vague and totally unconvincing. On the applicant's evidence, he was still in compulsory military service in early 2010, he covered his face to avoid being identified in the 2009 protests and only began to share his views and experiences from the military services a few months after he was discharged from the military, that is, sometime in late 2010. In these circumstances, I consider it very odd that anyone, including his brother's friend, would have considered him to be politically active in early 2010, such that his brother's friend would have contacted his brother to warn him to be careful and not to talk about his work in the military service, some months before he even started to share such experiences or views. I also consider that if he was known or perceived as politically active while he was serving in the military, the authorities would have taken more direct and drastic actions against him, especially given their sensitivity to the Green Movement and known political activists.
24. The applicant's evidence at the SHEV interview about his brother's friend was vague and very limited. When invited to talk about his brother's friend, apart from saying this person was in the military service with his brother and joined the intelligence service after finishing military service, he did not know him personally, he only saw him from a distance and not in person, he gave no other details about this person.
25. The applicant says that the random search incident in 2012 relates to the warning from the security services via his brother's friend. I find it implausible that during the claimed random search incident, the police would have simply searched and hassled him, asked for cigarettes, threw some registration forms, and then left, without taking any other actions against him, or even warning or mentioning to him about his claimed sharing of views, experiences from his work in the military or political activities. Particularly when the applicant claims that this incident occurred some two years after the first warning from his brother's friend in early 2010, and after he became more determined to speak out against Islam and the regime following the second warning from his brother's friend.
26. I also consider it implausible that the authorities would have made no mention to the applicant about his claimed sharing of views or work experiences or his political activities during the [venue] incident, and only accused him of making a disrespectful gesture, and released him after no one would give evidence on it, if he was seen as politically active, spoke out against Islam or the regime, or a threat to the security of the regime.
27. As pointed out by the delegate in the primary decision, the applicant also provided inconsistent evidence about the timing of the claimed past events – in his written statement attached to the SHEV application he stated that the random search incident occurred before the [venue] incident, but at the SHEV interview he said that the [venue] incident had occurred before the random search incident. His oral evidence about these claimed incidents was also vague, confused and unconvincing. When invited to talk about the [venue] incident at the SHEV interview, the applicant responded by regurgitating some of his evidence in his written statement and seemed unable to elaborate on the details. When asked to clarify what he meant when he stated in his written statement that 'things were not improving' after he was released

in late 2012, he replied that 'Yeah, they were making a... file... fraudulent sort of accusation, or trying to... someone is guilty of things that they haven't done...'. He then started talking about the random search incident, albeit with little detail, and said that his brother's friend informed his brother that they were making a file for him to show that he is guilty of many things, so it was best for him to get out of the country before they put a ban on the airport for him.

28. I appreciate that applicants are not expected to be able to recall the minute details or specific dates of the claimed past events, and that the inability to retell the correct sequence of events does not necessarily mean that the events did not occur. However, in this case, the mixing up of the sequence of events is not insignificant when viewed in the context of the applicant's other evidence, and when he claimed that only two main incidents occurred. More importantly, the applicant's overall evidence gave an impression that it was not just a mere failure to recall the order or details of events, but an inability to tell the story in a coherent manner from his personal experience. His oral evidence above about what he meant by 'things were not improving' after the [venue] incident in late 2012 was confused and inconsistent. I consider that if the claimed past incidents had actually happened, he would at least be able to give generally consistent evidence as to whether he left Tehran because things were not improving after he was released from the [venue] incident in late 2012, or after the random search incident in mid-2012, and would at least be able to share some personal experience and details about the claimed incidents, even without the benefit of legal representation at the SHEV interview. This is particularly so when the [venue] incident was the only incident in which he claims to have been physically mistreated, which would have been a significant and memorable incident. The applicant's oral evidence gave an impression that he was making up the story as he went in an attempt to respond to the delegate's questions. Overall, the inconsistencies, deficiencies and unconvincing evidence, to me, reflect that these claimed past incidents did not occur as claimed.
29. I consider it highly improbable that the applicant would have been able to remain unharmed and not located by the Iranian authorities in the seven months between October 2012 when he says he fled Tehran for Tabriz for 20 days (and then to [Village] and [Town] for another 30 days), and May 2013 when he left Iran via Imam Khomeini airport in Tehran for Australia.
30. Moreover, the fact that he was able to obtain his Iranian passport legally in mid-2010, visited [Country] for leisure in mid-2010, and departed Iran in 2013 with his genuine passport lawfully without problems, when the evidence is that Iran maintains sophisticated and strict security measures at the international airports,⁷ to me, further indicates that he was of no adverse interest to the authorities for reasons relating to his work in the military, the claimed past incidents, his real or imputed views, beliefs, opinion or profile, or for any other reason.
31. Furthermore, I find it unbelievable that the authorities would have suddenly started to interrogate, detain or harm his parents for reasons relating to the applicant, some two years after he left Iran legally in 2015.
32. No documentary evidence, such as medical evidence or death certificate, has been provided to substantiate the claimed death or the cause of death of his mother, or his father's speech problems.
33. For these reasons, I do not accept that the applicant acquired any information or experience from his work in the military that would be considered sensitive, controversial, 'state secrets' or a threat to the security. I am not persuaded that the applicant's work experiences and

⁷ DFAT, "DFAT Country Information Report - Iran", 13 April 2020, 20200414083132; and Danish Refugee Council, Landinfo and Danish Immigration Service, "Iran: On Conversion to Christianity, Issues concerning Kurds and Post-2009 Election Protestors as well as Legal Issues and Exit Procedures", February 2013, CIS25114.

information gained from his work during compulsory military service would have been much different from those gained by other Iranians from their compulsory military service. I do not accept that the applicant shared any information or experience from his time in the military with anyone, or perceived as such. I reject the random search incident and the [venue] incident. I do not accept that his brother's friend contacted his brother to warn him, or that there were any files or false accusations against him, or that 'things were not improving', or that his brother sent him to Tabriz on the pretext of company business, or other places to keep him out of Tehran. As mentioned above, he disclosed an encounter with the military police in 2011 at his arrival interview. This was in response to the specific questions (Q.38 to 38b) about whether he has ever been arrested, detained or charged with any offences. I note that he made no reference to this 2011 incident in his SHEV application or SHEV interview. In the circumstances, I consider that he made no claim for protection based upon the 2011 incident, nor could it be said that a claim based on this incident arose squarely on the material. As such, it is unnecessary for me to consider whether he faces a real chance of harm because of this incident. In any event, he was not harmed and was released without any charges, the evidence does not support that he was of ongoing interest to the authorities following this incident, and I am not satisfied on the material that he faces any real chance of harm as a result of this 2011 incident. I do not accept that the applicant was warned, arrested, detained, mistreated, interrogated, forced to sign any undertakings, viewed as a threat to security or endangering the security of the regime, or otherwise harmed for any reasons, or that there is any record, file, false accusations or 'staged circumstances' against him or his family. I also do not accept that his parents were interrogated, detained, or otherwise harmed, or that his father's house or furniture were confiscated, or his family was evicted, or that his brother blamed him for his mother's illness or death. I am prepared to accept that his father has speech problems and that his mother died after an illness, but I reject that his father's speech problems or his mother's illness or death have anything to do with him.

34. I find that the applicant was no more than a low-profile participant in the 2009 protests, he was not arrested at the time. I also find that he did not claim to fear harm arising out of the 2011 incident, and that in any case, he faces no real chance of harm on this basis upon return. I have rejected the other claimed past incidents. I consider that he is not and has never been of adverse interest to the authorities for the reasons relating to his real or perceived political views, opinions or activities. I accept that while living in Australia, he might have talked to Iranian people that he met here, and he has stayed in touch with three friends in Iran via an internet chatroom, where they talk about Islam and the conditions in Iran. But I do not accept his assertion that the content of their discussion was the kind that would be condemned by the Iranian authorities as anti-Islam or anti-Iranian. Apart from these, the applicant has not been involved in any political activities in Australia, where he has the freedom to do so. I consider that upon return, the applicant would do no more than talk to his friends about his views and opinions, like he did in the past, not due to fear of harm, but because he lacks commitment or interest to do so. On the evidence, I do not accept that he was, or would be perceived as a political activist. As noted above, country information indicates that the authorities would generally have no records nor interest in ordinary Green Movement participants who avoided arrest at the time, and that Iranians are able to criticise the government robustly both in public and online within limits. Considering the applicant's particular circumstances and the lack of profile, I am not satisfied that he will face a real chance of harm for reasons relating to his real or imputed political views or opinion, because he voiced his views and opinions among friends in Iran and Australia, or if he were to share his views and opinions with his friends in the same manner as he has done in the past on return to Iran, and/or his low-level involvement in the 2009 protests.

35. I accept that the applicant no longer believes in Islam, has no religion and considers himself agnostic. Country information⁸ indicates that Iran is a theocracy with Islamic beliefs and customs enshrined in law. Shia Islam is the official state religion. A Muslim who renounces Islam or converts to another religion can be charged with apostasy and risks state persecution, and potentially, the death penalty. However, atheists are unlikely to come to the attention of the authorities unless they widely publicise their non-belief, and sources indicate that they are discreet about their non-belief beyond their close family and friends. Moreover, secularism is widespread, particularly in major cities, such as Tehran where the applicant originates from, and among younger and wealthier Iranians. Many Iranians consider themselves agnostic, atheist or similarly disinterested in Islam. A significant proportion of the population does not attend mosque or pray on a regular basis. DFAT has been advised that religion is a private matter and that, beyond the expectation that people do not eat in public or hold parties during the holy Muslim month of Ramadan, how one wished to observe Islam was an individual choice, and was not a matter for the state. Many Iranians do not observe Ramadan strictly, including by eating, drinking liquids and smoking at home. Most restaurants are closed during Ramadan, although many (especially in Tehran) reportedly serve food discreetly. Individuals who are found to be eating in public during Ramadan may run the risk of arrest and prosecution. Apostasy and blasphemy cases are no longer an everyday occurrence in Iran. Death sentences in apostasy and blasphemy cases are rare today. Overall, DFAT assesses that non-practising Iranian Muslims face a low risk of official and societal discrimination, particularly in the major cities such as Tehran.
36. The applicant had lost religion some 10 years ago, in around 2010, before he left Iran in 2013. Apart from the claimed past incidents discussed above, the applicant has not claimed, and the evidence does not indicate that he was harmed or ever came to the attention of the authorities because he has no religion or for not practising Islam. While I accept that he may have shared his views or opinions about the Islamic regime among his friends, I am not satisfied on the evidence before me that he attempted or will attempt to publicise his non-belief or agnostic views or religious practices, not because of fear of harm or behavioural modification, but because he has no interest in or commitment to doing so. The applicant has not expressed any desire to eat in public during Ramadan, and I am not satisfied that he has any desire to do so. Also, the above country information indicates that restaurants in Iran are mostly closed during this time so he would not be able to eat in public during that time. As noted above, religion is a private matter in Iran, how one wishes to observe Islam is an individual choice, and non-practising Iranian Muslims face a low risk of official and societal discrimination, particularly in major cities. The applicant will be returning to Tehran - a major city, where secularism is widespread and more tolerant of atheists, secular and non-practising Muslims. In view of his accepted profile, individual circumstances, and the country information above, I am not satisfied that the applicant's religious beliefs, views or practices would give rise to a real chance of him facing any harm upon return.
37. Country information⁹ indicates that Iran has historically refused to issue travel documents to allow the involuntary return of its citizens from abroad. Under a more recent Memorandum of Understanding signed in 2018, Iran has agreed to facilitate the return of the Iranians who arrived

⁸ DFAT, "DFAT Country Information Report - Iran", 13 April 2020, 20200414083132; ACCORD, "Iran - COI Compilation", 1 July 2018, 20190326122102, p.146; 'The Revival of Nationalism and Secularism in Modern Iran', LSE Middle East Centre (United Kingdom), November 2015, pp. 5, 11, CISEC96CF14725; "Young Iranians affected by the embargo, tired of political Islam", Asia News IT, 1 April 2015, CXBD6A0DE4714; "Religion: Take it or leave it", The Economist, 1 November 2014, CX1B9ECAB749; and Ali Sadrzadeh, "Turning away from Shia in Iran - 'A Tsunami of Atheism'", Qantara, 7 February 2013, CXC28129415432; "The Story Of Treatment Of People Accused Of Eating In Public In Ramadan", Iran Human Rights Monitor (United States), 26 June 2017, CXC90406620606; "At least 20 Iranians lashed for breaking Ramadan fast", Trend News Agency (Azerbaijan), 11 June 2017, CXC90406620607; and "IRAN: 92 arrested in restaurant during Ramadan", National Council of Resistance of Iran, 27 June 2015, CXBD6A0DE21223.

⁹ DFAT, "DFAT Country Information Report Iran", 14 April 2020, 20200414083132, 5.22 - 5.31.

after 19 March 2018 and who have exhausted all legal and administrative avenues to regularise their immigration status in Australia. As the applicant arrived before this date, I consider that if he were to return to Iran, it would only be on a voluntary basis. The International Organisation for Migration (IOM) runs a program to assist voluntary returnees to Iran, and the Iranian authorities cooperate with the IOM in this regard. Millions of Iranians travel in and out of Iran each year without difficulty. Those who return on a *laissez-passer* are questioned by the Immigration Police at Imam Khomeini International Airport about the circumstances of their departure and why they are traveling on a *laissez-passer*. The 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.

38. The evidence is that Iranian authorities pay little attention to failed asylum seekers on their return to Iran. Iranians have left Iran in large numbers since the 1979 revolution, and the authorities accept that many Iranians (as it seems to me the applicant did in this case) will seek to live and work overseas for economic reasons. Iranian authorities do not check the social media accounts of Iranians. It is also reported that the Iranian authorities have little interest in prosecuting failed asylum seekers for activities conducted outside Iran, including in relation to protection claims. This includes posting social media comments critical of the government (heavy Internet filtering means most Iranians will never see them), protesting outside an Iranian diplomatic mission, converting to Christianity or engaging in LGBTI activities. Those with an existing high profile, such as political activists, may face a higher risk of coming to official attention upon return. Although local sources advised DFAT that failed asylum seekers may have challenges in reintegrating economically and finding meaningful employment, DFAT states that it is not aware of any legislative or social barriers to voluntary returnees finding work, shelter or to return to their home region. Some countries offer failed asylum seekers financial packages to support their reintegration on return to Iran, and the IOM also provides some resettlement assistance to voluntary returnees. DFAT advises that unless they were the subject of adverse official attention before departing Iran, returnees are unlikely to attract attention from the authorities, and face a low risk of monitoring, mistreatment or other forms of official discrimination.¹⁰
39. The applicant left Iran legally on his own passport. He was a low-level participant in the 2009 protests. I find that he was not and would not be perceived as a political activist. He did not claim to fear harm by reason of the 2011 incident, and I am not satisfied that he faces any real chance of harm on this basis. I have rejected all the other claimed past incidents. I find that he is of no adverse interest to the authorities or anyone for reasons relating to his work in the military, his participation in the 2009 protests, the 2011 incident, his actual or imputed views, profile, beliefs, religious practices, political opinion or activities, or for any other reasons. Recent country information indicates that the Iranian authorities have little interest in failed asylum seekers, or their activities conducted outside Iran including in relation to protection claims. I do not accept that as a returned failed asylum seeker who has spent time in Australia, the applicant would be imputed as having said or done things against the regime, or exposing state secrets, or would otherwise face a real chance of being arrested, detained or otherwise harmed by the authorities.
40. I accept on the evidence that the applicant will face questioning at the airport on return. However, I have found above that he was not of adverse interest to the authorities, and nor am I satisfied that he will have an adverse profile of interest due to his actual or perceived views, political involvement or religious beliefs, or for any other reason or reasons. Having considered

¹⁰ Ibid.

the claims and evidence as a whole, I am not satisfied that he will otherwise have an adverse profile on return. Considering his accepted profile and particular circumstances, and the country information above, I am not satisfied that the applicant faces a real chance of any harm during any questioning and consider he will be processed without difficulty.

41. On the applicant's accepted profile and circumstances, including that he will be returning to Tehran where he grew up, employed in several businesses, and has family network and support, I am satisfied that he will be able to reintegrate economically and find accommodation and employment to support himself on return.
42. Considering all the claims and the material before me, I am not satisfied there is a real chance of the applicant being arrested, interrogated, charged, detained, harassed, killed or otherwise harmed by the regime, the authorities or anyone for reasons relating to his previous work in the military service, his participation in the 2009 protests, his actual or perceived views, beliefs, religious practices, political opinion, activities, and/or as a returnee failed asylum seeker who lived in Australia, if he returns to Iran now, over seven years since he left Iran in 2013 and a decade after he completed military service in 2010, or in the reasonably foreseeable future.
43. I am not satisfied that there is a real chance of the applicant facing any harm for the reasons claimed now or in the reasonably foreseeable future if he returns to Iran.
44. The applicant does not have a well-founded fear of persecution.

Refugee: conclusion

45. 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

46. 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

47. 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.
48. 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.

49. Given that the 'real risk' test imposes the same standard as the 'real chance' test, for the same reasons as set out above, I find that the applicant does not face a real risk of suffering harm if he were to return to Iran for the purposes of s.36(2)(aa). I conclude that there are not substantial grounds for believing that, as a necessary and foreseeable consequence of being returned from Australia to Iran, there is a real risk that the applicant will suffer significant harm for any of the reasons claimed or otherwise.

Complementary protection: conclusion

50. 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.