



Australian Government

Immigration Assessment Authority

Decision and Reasons

Referred application

IRAN

IAA reference: IAA21/09238

Date and time of decision: 28 June 2021 14:08:00

M Simmons, 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 of Persian ethnicity. On 29 August 2017 he lodged an application for a protection visa. A delegate of the Minister for Immigration refused that application 31 May 2021.

Information before the IAA

2. I have had regard to the material given by the Secretary under s.473CB of the *Migration Act 1958* (the Act).
3. No further information has been obtained or received.

Applicant's claims for protection

4. The applicant's claims from his application can be summarised as follows:
 - He was born into a Shia Muslim family but no longer practices any religion. His parents are very religious. He has three siblings, including one who travelled with him to Australia. His other brother works in a government office in Iran. During his childhood the family had no problems with the authorities.
 - At around 18 he finished schooling and started working [in Workplace 1]. After he completed his military service, towards the end of 2011, he returned to work at [Workplace 1], and [his duties included specified demanding physical tasks].
 - He had problems with the Iranian authorities due to his opposition to the Islamic regime. Following the 2009 elections he became part of the Green Movement and actively protested the re-election of Mahmoud Ahmadinejad. He attended many public demonstrations on the main streets of Tehran. The authorities began stopping the demonstrations by using extreme violence including beating, arresting and shooting people. He saw a girl named Neda Soltani after she had been shot and killed. Many people were killed.
 - One day in 2009 he was arrested by the Sepah in front of the mosque on his way home from [Workplace 1]. He was taken to the Basij station, under the control of the Sepah, and detained without charge for five days. He denied being part of the Green Movement and was tortured. He was beaten and water was thrown on the floor so he could not sleep. They broke his [Body Part 1]. He was not given any medical treatment and the nerves in his [Body Part 1] are destroyed.
 - About ten days after his release from detention he was arrested at his house by the Basij and taken to the Basij station. They put him in solitary confinement and beat him and mistreated him, in attempts to get him to confess to being part of the Green Movement. He did not confess, and he was eventually released.
 - About two weeks after his release the Basij arrested him for the third time. They tortured him again and treated him worse than the first two times. He has no idea how long he was locked up. They cut his [Body Part 2] and he lost a lot of blood, and he needed 26 internal stitches and [number] external stitches. He again refused to confess to being part

of the Green Movement and he was eventually released, and his brother took him to hospital for treatment.

- The Basij told him he must report to them regularly and inform on and report on others involved in the Green Movement or other political protests. He refused to do this.
- The applicant was scared, but he could not get a passport to leave Iran at that time because he hadn't completed his military service. In December 2009 he commenced his military service. He completed his service [in] September 2011. After this returned to his work and [workplace], and he did not attend any political protests or get involved in any political activities.
- In the lead up to the June 2013 election the Basij started arresting people who had previously been involved in the Green Movement. He was summoned to attend a Basij station for interrogation, but he did not go because he was too scared. The Basij stormed into his home several times to try to arrest him but on each occasion he was not there. He fled to live in the homes of friends and relatives to avoid the Basij. He could not go to work because the Basij would find him. Around mid-2013 he started to fear for his life. He could not live in his home or go to work, and he decided to leave Iran with his brother who also had problems with the authorities.
- If he returns to Iran he will be arrested and tortured by the authorities. He had a friend in the Green Movement who fled to [country], and after this friend returned to Iran he has disappeared to an unknown fate.
- The time he has spent in Australia will create additional problems for him and will be used against him. The government authorities have a record of his past political activities and would use it against him. His details were inadvertently released on the internet when he was in immigration detention in 2014.
- Since he left Iran, he has had many tattoos all over his body including [Body Parts 3 and 4], including a prominent 'romantic' tattoo of [a specified image]. He believes this could be a serious issue for him because of the strict religious laws in Iran.
- When he lodged his visa application, he indicated he no longer practices any religion and could be punished by the Iranian authorities for deviating from Islam.
- At his interview on 22 April 2021 the applicant indicate he had adopted the Christian faith, and that he did not wish to include his conversion to Christianity in his claims for protection.

Factual findings

Identity and background

5. The applicant has provided copies of identity documents issued by the Iranian authorities including a passport, national identity card and *shenasnameh*. Details in those documents concerning his identity generally align with the information provided in his visa application and with his oral evidence at interview. He has provided a reasonably consistent narrative in respect of his claimed identity over a number of years since entering Australia. I am satisfied his identity is as claimed and I accept he is an Iranian national of Persian ethnicity. Iran is the receiving country.

Events in Iran

6. The applicant claims he took part in Green Movement demonstrations following the 2009 elections. DFAT reports 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'. Green Movement protesters used public holidays and national commemorations as opportunities to rally, chanting slogans that challenged both the system and the Supreme Leader himself. In response, the government despatched security forces, including the Revolutionary Guard, Basij units and plain-clothed paramilitary forces. These forces beat thousands of protesters and arrested hundreds, while snipers killed dozens. By early 2010, the government had succeeded in quashing public displays of opposition.¹ Reports before me indicate that large numbers of participants took part in these demonstrations, including many younger and urban Iranians.² I note at the time of the demonstrations the applicant was both. The applicant has provided a reasonably consistent and plausible account of his involvement in these demonstrations as on various occasions following his entry into Australia. He correctly identified, in a general sense, the topic of and motivation behind the demonstrations. On the available information, I accept that the applicant attended Green Movement demonstrations as claimed. There is no indication that he had any involvement in the demonstrations beyond being an attendee.
7. I note that in his visa application he asserted that he witnessed the death of Neda Soltan, which occurred on 20 June 2009,³ whereas at the interview with the delegate he only referred to her killing and did not suggest that he personally saw her body. I note that this killing was a highly significant event within the Green Movement and if the applicant in fact witnessed it I consider he would have been more explicit about this during the interview. A cell phone video that captured Neda dying on the pavement was circulated around the world. Neda and pictures of her blood-spattered face became symbols of the Green Movement.⁴ Giving his shifting position I have serious doubts as to whether the applicant in fact saw Neda's killing as claimed, and I consider this to be an embellishment.
8. Reports before me indicate that there was considerable effort by security forces to quell demonstrations from mid-2009 until early 2010. The Green Movement tried to mobilize demonstrations for the 11 February 2010 anniversary of the revolution. However an advance crackdown was so pervasive that leaders of the movement called it off, and after that public demonstrations were then basically over.⁵ From mid-2009 until early 2010 thousands of demonstrators were detained and harassed by security forces. With prisons overflowing, some

¹ DFAT, 'DFAT Country Information Report Iran', 14 April 2020, #20200414083132; Immigration and Refugee Board of Canada, 'IRN104338.E - Iran: The Green Movement, including its mandate, structure, leadership, activities and treatment of members by authorities; The Green Party (2009-March 2013)', 21 March 2013, CIS27383; A. Milani, 'The Green Movement', United States Institute of Peace Iran Primer, CX303910; DFAT, 'DFAT Country Information Report Iran', 7 June 2018, CIS7B839411226; DFAT, 'DFAT Country Information Report Iran', 21 April 2016, CIS38A8012677.

² Immigration and Refugee Board of Canada, 'IRN104338.E - Iran: The Green Movement, including its mandate, structure, leadership, activities and treatment of members by authorities; The Green Party (2009-March 2013)', 21 March 2013, CIS27383; A. Milani, 'The Green Movement', United States Institute of Peace Iran Primer, CX303910.

³ A. Milani, 'The Green Movement', United States Institute of Peace Iran Primer, CX303910;; DFAT, 'DFAT Country Information Report Iran', 21 April 2016, CIS38A8012677.

⁴ A. Milani, 'The Green Movement', United States Institute of Peace Iran Primer, CX303910;; DFAT, 'DFAT Country Information Report Iran', 21 April 2016, CIS38A8012677.

⁵ A. Milani, 'The Green Movement', United States Institute of Peace Iran Primer, CX303910;; DFAT, 'DFAT Country Information Report Iran', 21 April 2016, CIS38A8012677.

protestors were held in make-shift detention facilities, including buses or other vehicles.⁶ In this context, I accept that the applicant was stopped at a checkpoint and arrested as claimed. DFAT noted there were credible reports of abuses in prison, including torture, in the aftermath of the protests,⁷ as such I accept that the applicant was mistreated as claimed. However, I have serious concerns in relation to the applicant's claims of being subjected to ongoing adverse interest and being arrested and detained and tortured a number of times.

9. I do not consider it credible that the applicant would have been detained and released on three separate occasions within a period of around two months, at a time when, according to DFAT, prisons were 'overflowing'. If he were truly regarded by the authorities to have a profile of interest because to his Green Movement involvement I do not accept that he would be released, twice, when the protests and crackdowns were on going.⁸ The claimed level of official attention he asserts he was subject to is not credible. He was only a protest attendee. I do not consider it credible that the Iranian authorities would expend such resources pursuing, interrogating and releasing him, three times, noting his involvement with the Green Movement was not greater than that of scores of ordinary demonstrators. If he were truly regarded as having any Green Movement involvement any significance, the material before me suggests he would not have been released repeatedly during the second half of 2009 as claimed, but rather that he would have remained in detention.
10. I also have concerns regarding the applicant undertaking military service during the period when Green Movement protests and harsh government crackdowns were continuing. When discussing his military service with the delegate he advised that he delayed starting his military service resulting in a further 3 months service being added, because at that time was he loving [his job] and was busy that the [Workplace 1] and wasn't interested in the army. First, this is not supportive of his claim that he was urgently seeking to leave Iran following his arrests in 2009 and that is why he undertook military service – to obtain a passport and then depart. This suggests no real urgency to leave Iran at that time. Second, I note that he undertook military service around 4-5 months after he claims he was subjected to three occasions of detention and severe torture. The last instance of torture, he claims, resulted in hospital admission and ongoing injuries including nerve damage to his [Body Part 1]. It causes me serious doubt that in the period leading up to his military service he was busy with [demanding physical tasks] at [Workplace 1], when it is also his evidence that at this time he had only recently been released from detention and then hospital. I consider this level of physical activity in the period before December 2009 to be very unlikely for someone who endured the various physical mistreatments he claimed to have suffered from around June 2009 to September 2009. I consider his assertion that he was loving [his job] at [Workplace 1] in the months preceding his military service undermines his claim to have been severely tortured during three periods of detention in mid-2009.
11. The applicant undertook military service in December 2009. He claims this was necessary to obtain a passport and leave Iran for safety. There is no indication that he considered any alternate means for departing Iran in 2009 which did not require him to have a numerous dealings with the authorities. For instance, in 2016 DFAT reported borders to Turkey and Iraq

⁶ Immigration and Refugee Board of Canada, 'IRN104338.E - Iran: The Green Movement, including its mandate, structure, leadership, activities and treatment of members by authorities; The Green Party (2009-March 2013)', 21 March 2013, CIS27383; A. Milani, 'The Green Movement', United States Institute of Peace Iran Primer, CX303910;; DFAT, 'DFAT Country Information Report Iran', 21 April 2016, CIS38A8012677.

⁷ DFAT, 'DFAT Country Information Report Iran', 21 April 2016, CIS38A8012677.

⁸ A. Milani, 'The Green Movement', United States Institute of Peace Iran Primer, CX303910;; DFAT, 'DFAT Country Information Report Iran', 21 April 2016, CIS38A8012677.

are porous and there are well-established smugglers' routes.⁹ It is estimated that hundreds fled Iran as an immediate result of the Green Movement crackdown and hundreds more in subsequent years.¹⁰ However even when this applicant did obtain his passport in May 2012 he did not depart until April 2013, almost four years after the Green Movement protests began. I consider that him remaining in Iran for over a year while holding a valid passport is not supportive of his claim that he feared for his safety since 2009 or that he was eager to depart.

12. After mid 2009 the applicant seemingly had various dealings with the Iranian authorities without attracting any adverse interest. There is no suggestion that his Green Movement participation caused him any difficulties during military service from December 2009 until September 2011, or that this caused him any problems when he obtained his passport in May 2012. He also had no problems departing Iran via Tehran airport. When queried about this by the delegate the applicants it was because the security at the airport is not connected to the revolutionary guard and is a matter for the airport police. I do not find that explanation credible. DFAT reports the Iranian authorities impose travel bans on some Iranian citizens, including where there are security concerns, outstanding sentences awaiting enforcement, ongoing charges or outstanding court matters. The Sepah have the power to impose travel bans without recourse to the judiciary. Iranians under travel bans are often unaware of their status until they reach passport control at the airport and are turned back.¹¹ DFAT assesses that the presence of security organisations in all Iranian airports, particularly those with border checkpoints, enables authorities to determine whether any Iranian citizen can leave the country by air.¹² I accept the applicant's evidence that he departed Iran lawfully via an international airport and using an official Iranian passport issued to himself. I consider that the applicant's ability to depart Iran without detection or any incident via an airport using his own passport supports a conclusion that at that time he was of no interest to the Iranian authorities for any reason.
13. I accept the applicant was once detained at a checkpoint and interrogated by the Iranian authorities in 2009 in relation to the Green Movement demonstrations, and I accept he may have suffered some mistreatment during this detention. I do not accept he was detained and mistreated again by the Iranian authorities on two subsequent occasions or that he had any ongoing profile of interest stemming from either this incident or his attendance at Green Movement demonstrations. I note that the applicant claims he was asked to report regularly and provide information on other persons, but he refused to do so. There was no suggestion that there were any repercussions for this refusal, which strikes me as quite unlikely. I do not find his narrative in respect of this matter as credible. As I do not accept he had any on going profile of interest with the authorities after he was stopped at the checkpoint, detained, then released it follows that I do not accept he was then required to report regularly to the Basij, and to inform on others involved in the Green Movement or other political protests.
14. The applicant claims in the lead up to the June 2013 election the Basij started arresting people who had previously been involved in the Green Movement. He stated he was summoned to attend a Basij station for interrogation, but he did not go because he was too scared. He stated the Basij stormed into his home several times to try to arrest him but on each occasion, he was not there. He stated he fled to friend's homes to avoid the Basij, and he could not go to work because the Basij would find him. I do not find his narrative of repeatedly avoiding the Basij by conveniently not being at home whenever they visited to be compelling. He indicated at the

⁹ DFAT, 'DFAT Country Information Report Iran', 21 April 2016, CIS38A8012677.

¹⁰ DFAT, 'DFAT Country Information Report Iran', 21 April 2016, CIS38A8012677.

¹¹ DFAT, 'DFAT Country Information Report Iran', 14 April 2020, #20200414083132; DFAT, 'DFAT Country Information Report Iran', 21 April 2016, CIS38A8012677.

¹² DFAT, 'DFAT Country Information Report Iran', 14 April 2020, #20200414083132.

interview with the delegate that he would seek to provide a copy of the summons, but subsequently advised he did not have a copy.

15. I do not accept that the applicant was of any interest to the authorities in the lead up to the 2013 elections. I note that he departed via Tehran airport that year without attracting any attention, and that in 2012 the authorities granted him a passport. I do not accept that his limited 2009 Green Movement involvement imparted any ongoing profile of interest upon him. In a 2013 report based on a 2012 visit, the Danish Refugee Council indicated that Green Movement protestors who were no longer active would most likely be of no interest in Iran, and that it would be wrong to believe that the authorities were actively pursuing individuals who were in the streets in connection with the demonstrations in 2009.¹³ Given he was able to depart Iran without incident on his own lawfully issued Iranian passport, I do not accept that he was of any interest to the Iranian authorities for any reason at the time of his departure in 2013.

Tattoos

16. The delegate sighted the applicant and accepted he has visible tattoos as claimed, including on his [Body Parts 3 and 4]. I also accept that the applicant has tattoos, including a visible tattoo on his [Body Part 3] with [a specified image], as he described at the interview.

Religious beliefs

17. Prior to coming to Australia, the applicant indicated he grew up in a religious family but that he himself was not religious. Country information indicates many Iranian, particularly young and urban, are not strict in their religious worship and belief or do follow a religion at all.¹⁴ I accept the applicant's evidence that was not adherent to Shia Islam prior to departing Iran. There is no suggestion his religious views or lack of adherence to any practises ever caused any difficulties for him in while in Iran and I am satisfied it did not.
18. It is claimed that after entering Australia the applicant developed an interest in Christianity and adopted that faith. He advised the delegate of this at interview, where he also indicated he did not wish for his Christian beliefs to be considered in relation to his protection visa application. The delegate discussed with the applicant his Christian beliefs, practise and activities. While accepting he may be on a pathway of exploring Christianity, the delegate ultimately found that he has not adopted that faith and would not be recognised as a Christian on return to Iran.
19. I note the applicant's request that his claimed adoption of Christianity not be considered in relation to his protection visa application. However, I have before me dialogue between the applicant and the delegate on the applicant's beliefs and activities, as well as the delegate's consideration of this matter in his decision record. I am satisfied that the material before me warrants a consideration of the prospects of the applicant facing harm in Iran due to his religious conduct while in Australia.
20. The applicant mentioned that a friend encouraged him to attend church and that was how he became interested. His friend also helped to explain Christian concepts to him. He stated that his brother has become baptised though he himself has not as yet, without further elaboration. He indicated he is interested in following Christianity, though due to Covid lockdown he has not been able to attend church as much. He indicated he found the friendly atmosphere at the

¹³ 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.

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

church attractive. Overall, I do not consider he exemplified a particularly strong personal connection to the Christian faith. When asked why Christianity is important to him and what it means to him to be a Christian, the applicant recanted a narrative about Jesus being dragged up a hill and put on a cross. He did not offer any incite into the personal significance of this story or of his new claimed faith generally.

21. The only evidence related to the applicant's Christian activities is his testimony. There is no corroborative material such as letters of support or photographs. The applicant referred to posting an image of himself with Christian worry beads on Instagram, however there is no evidence of any such social media activity before me. Nor has the applicant sought to provide information in response to the conclusions by the delegate on this subject.
22. I accept that the applicant has had some interest in Christianity while in Australia and that he has attended church on occasion. On the information before I do not accept, he has as yet adopted the Christian faith or that he may do so in the foreseeable future.

Returnee, data breach

23. I accept that were the applicant to return to Iran he would do so after having resided in Australia for a number of years and after having requested asylum here. I accept that some of the applicant's details were released in the 2014 Department of Immigration data breach and it cannot be discounted that the Iranian authorities would be aware, or become aware, of his asylum request and extended residence in Australia. Iran has a global and longstanding policy of not accepting involuntary returns. In March 2018, Iran and Australia signed a Memorandum of Understanding on Consular Matters. This includes an agreement by Iran to facilitate the return of Iranians who arrived after March 2018 and who have exhausted all legal and administrative avenues to regularise their immigration status in Australia.¹⁵ This applicant arrived in 2013, as such any return to Iran would be voluntary.

Refugee assessment

24. 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

25. 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

¹⁵ DFAT, 'DFAT Country Information Report Iran', 14 April 2020, #20200414083132.

- 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.
26. In its most recent report DFAT stated that the Green Movement has little profile in Iran today. Local sources told DFAT that ordinary participants in the Green Movement are not of interest to the authorities.¹⁶ Although I accept the applicant has a political opinion against the Iranian government, his participation in the Green Movement protests appears isolated and he has not claimed he will participate in such activity again if he were to return to Iran. His evidence was that after 2009 he was not politically active in Iran. I note that there is no indication the applicant participated in any political activities at all during his years in Australia. This is not reflective of someone with an ongoing commitment to public political activity and given this extended period of inactivity I am not satisfied he would seek to become politically active in the foreseeable future. I am not satisfied the applicant will face a real chance of harm in Iran from the Iranian authorities or any other group or person because of his participation in the Green Movement protests in 2009 or due to of his political opinion.
27. Country information does not indicate that a person would be of interest in Iran due to historical overseas Christian activities. Reports before me indicate that converts to Christianity who engage in public worship or practise, or who seek to proselytise, may come to the adverse interest of the Iranian authorities.¹⁷ Official sources told DFAT that converts who keep their beliefs private are not of interest to the authorities.¹⁸ I am not satisfied the applicant is sincerely adherent to Christianity or that he will become so in the foreseeable future. I do not accept he would seek to or wish to engage in any Christian worship or practise were he to return to Iran, or that he would seek to proselytise. The applicant's involvement in Christianity during his time in Australia has been quite limited. I am not satisfied that his activities in Australia, including some church attendance, would constitute conduct that would be of interest to the Iranian authorities or that they attract any chance of harm in Iran.¹⁹
28. The applicant has not claimed to have previously experienced any harm while in Iran for reasons related to his lack of religious belief despite being not being adherent to Shia Islam while resident there. DFAT has previously assessed that '[a]theists are unlikely to come to the attention of security authorities unless they seek to publicise their views.'²⁰ There is no suggestion that the applicant ever sought to promote his beliefs or that he may do so in the future. It is unlikely that the government would monitor religious observance such as whether a person regularly attends mosque or participates in religious occasions. As such it would be unlikely for it to become known that a person was no longer faithful to Shia Islam.²¹ There is no suggestion he was ever forced to engage in any religious activities against his will while resident in Iran. Country information indicates that non-devout and non-practising Muslims form a large part of the Iranian population. Secularism is widespread, particularly in the major cities and among younger and

¹⁶ DFAT, 'DFAT Country Information Report Iran', 14 April 2020, #20200414083132.

¹⁷ DFAT, 'DFAT Country Information Report Iran', 7 June 2018, CIS7B839411226.

¹⁸ DFAT, 'DFAT Country Information Report Iran', 14 April 2020, #20200414083132.

¹⁹ DFAT, 'DFAT Country Information Report Iran', 14 April 2020, #20200414083132.

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

²¹ DFAT, 'DFAT Country Information Report Iran', 7 June 2018, CIS7B839411226.

wealthier Iranians. A significant proportion of the population does not attend mosque or pray on a regular basis.²² Official sources told DFAT that religion was a private matter — 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.²³ The applicant has not suggested he ever experienced any harm for failure to observe the Muslim faith while in Iran, and I am not satisfied there is a real chance he would experience any harm for this reason in the foreseeable future were he to return to that country. In this context, I am not satisfied that there is a real chance either his nonbelief or lackadaisical approach to Islamic practise will cause him to be targeted for any harm.

29. Reports before me indicate that tattoos are increasingly popular and visible in Iran. Young men with visible tattoos are common in Tehran, and DFAT reportedly saw some men with tattoos covering nearly the entire length of their arms, so called sleeve tattoos.²⁴ DFAT is not aware of the authorities targeting people for having visible tattoos.²⁵ Country information does not suggest that men with tattoos are routinely targeted for harm. The applicant claims that the particular design of one of his tattoos, [an image] which he describes as ‘romantic’, will attract adverse attention due to strict religious belief and laws in Iran. The applicant has not referred to any corroborative material to suggest such tattoo designs are problematic in Iran. Reports before me note that there are certain ‘red line’ topics in Iran, which the public generally regard as off limits, including public criticism of the Supreme Leader, the IRGC and the Islamic system of governance, as well as anything that is considered to violate Islamic values and principles. On the information before me I am not satisfied that the tattoo design featuring [a specified image] is something that would be regarded as impermissibly crossing a relevant red line. Noting country information indicates tattoos are widespread amongst young Iranian men, I am not satisfied the applicant, a young man from Tehran, faces a real chance of any harm in Iran due to having tattoos.
30. The material before me does not suggest that there is a real chance of harm should the authorities come to know the applicant previously departed Iran, spent time in a western country or sought asylum in a western country. DFAT’s assessment is that failed asylum seekers are unlikely to be targeted by the Iranian authorities for the sole reason of having applied for asylum overseas.²⁶ Millions of Iranians travel into and out of Iran each year without difficulty, including the large Iranian diaspora residing in North America and Europe.²⁷ DFAT has reported over time that Iranian authorities have little interest in prosecuting failed asylum seekers for activities conducted outside Iran, including in relation to protection claims such as adopting Christianity.²⁸ Given his personal information was inadvertently released in the data breach, I accept it could become known to the Iranian authorities that the applicant requested asylum in Australia. The country information does not indicate that returning asylum seekers are imputed with an anti-government political opinion or harmed because of their asylum claim and I am not satisfied that there is a real chance he would be harmed on this basis. Reports before me indicate that asylum seekers returning from abroad who have attracted adverse attention on return are those with an existing high profile, particularly political activists.²⁹ I do not accept the applicant’s

²² DFAT, ‘DFAT Country Information Report Iran’, 14 April 2020, #20200414083132.

²³ DFAT, ‘DFAT Country Information Report Iran’, 14 April 2020, #20200414083132.

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.

²⁷ DFAT, ‘DFAT Country Information Report Iran’, 14 April 2020, #20200414083132.

²⁸ DFAT, ‘DFAT Country Information Report Iran’, 14 April 2020, #20200414083132.

²⁹ 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; Center for Human Rights in Iran, ‘Reformist Political Activist Turned Refugee Briefly Arrested Upon Return to Iran’, 18 October 2017, CXC90406615858.

involvement in the 2009 protests would be of concern or that he would otherwise be imputed with an anti-government profile of concern, be viewed as a spy or an activist, or with another profile of concern.

31. On the information before me I am not satisfied the applicant's faces a real chance of any adverse treatment in Iran in the reasonably foreseeable future for any reason. This includes due to 2009 Green Movement involvement and general anti-Iranian government views, because of his religious nonbelief or failure to adhere to Islam, or limited involvement in Christianity, or because he requested asylum from and resided in Australia. I am not satisfied this applicant faces a real chance of any harm for any reason in the foreseeable future in Iran. He does not have a well-founded fear of persecution.

Refugee: conclusion

32. 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

33. 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

34. 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.
35. 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.
36. The requirement for there to be a "real risk" of significant harm applies the same standard as the "real chance" test.³⁰ I have found above that the applicant does not face a real chance of harm for any reason on return to Iran. As such, I am also satisfied that there is not a real risk he would any face harm, including treatment constituting significant harm, for any reason were he to return to Iran.

³⁰ *MIAC v SZQRB* (2013) 210 FCR 505.

Complementary protection: conclusion

37. 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.