



Australian Government

Immigration Assessment Authority

Decision and Reasons

Referred application

IRAN

IAA reference: IAA21/09444

Date and time of decision: 4 August 2021 12:30:00

J Bishop, Reviewer

Decision

The IAA affirms the decision not to grant the referred applicant a protection visa.

Any references appearing in square brackets indicate that information has been omitted from this decision pursuant to section 473EC(2) of the Migration Act 1958 and replaced with generic information which does not allow the identification of a referred applicant, or their relative or other dependant.

Background to the review

Visa application

1. The referred applicant (the applicant) claims to be a citizen of Iran. He arrived in Australia by boat [in] June 2013.
2. On 11 September 2017 the applicant lodged an application for a Temporary Protection Visa (TPV). On 28 June 2021 a delegate for the Minister for Immigration (the delegate) refused the applicant's visa. The delegate determined the applicant did not face a real chance of serious harm or a real risk of significant harm now or in the foreseeable future in Iran.

Information before the IAA

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

Applicant's claims for protection

4. The applicant claims to fear harm in Iran because of his:
 - actual and/or political opinions; Kurdish, anti-Iranian regime social media posts
 - religion; non-practicing and non-believing Muslim, Christian conversion, Christian social media posts, summonses
 - past relationship with his ex-girlfriend
5. The applicant also claims to fear harm in Iran because of Iran's economy and COVID19.

Factual findings

6. The applicant provided untranslated copies of his Iranian birth certificate, Iranian military service card and Iranian national identification card. He said he lost his passport when he was in Indonesia and lost all his other original identification documents when he was in Sydney. The applicant has provided limited evidence of his claimed identity. However, for the purposes of this decision, I accept the applicant is who he claims to be. I accept the applicant is an Iranian citizen. I find the receiving country is Iran.
7. The applicant claims to have been born a Shia Muslim in Illam Province, Iran. He identifies as Kurdish. I accept those claims.
8. The applicant claims he worked as an assistant in his father's [product] shop in Iran and is working as [an occupation 1] in Australia. I accept those claims.
9. The applicant claims he left Iran legally via the airport using a genuine passport. He had no difficulties leaving Iran. I accept those claims.

Kurdish

10. The applicant said he was persecuted in Iran because he was Kurdish. Kurds were denied basic rights and it was made difficult for them to get decent work which made it hard for them to

subsist. During the applicant's TPV interview, he said Kurdish people do not have good lives in Iran and the Iranian government doesn't look after them.

11. In 2013 it was reported that no matter what ethnic or religious background an individual had, if he or she accepted and lived by the Islamic regime, he or she would be left alone. However, there was institutional discrimination in Iran and it was harder for a Kurd to get a job compared to a Persian Iranian.¹
12. DFAT now assesses that Kurds are not specifically targeted for discrimination on the basis of their ethnicity. Kurds can access government services and the same state protections as other ethnic minorities.² However Kurds have reported political and socioeconomic discrimination accessing economic aid, business licenses, and job opportunities.³
13. The applicant's father had a business in Iran and the applicant worked in that business after he finished his schooling. I accept the applicant could face some discrimination as outlined above, but I am not satisfied such discrimination would ever amount to serious or significant harm. I am not satisfied the applicant faces a real chance of serious harm in Iran now or in the foreseeable future because he identifies as being of Kurdish ethnicity.

Secret relationship with his girlfriend

14. The applicant claims he had a secret relationship with a girl in Iran for about four years. The relationship started when the applicant was in the Iranian army in about [year]. A friend of his girlfriend informed her family about the relationship and her family did not approve because they were not married. His girlfriend's parents locked her in the house for some time and beat her. Her phone was taken from her and she couldn't contact the applicant. The applicant found out about this from one of her friends and from his girlfriend when she managed to reach the applicant on a telephone.
15. The applicant said he started to get targeted by his girlfriend's father and uncles because of the relationship. If his girlfriend's father and/or uncles saw the applicant they would start shouting at him and arguing. They all lived in a very small area and this happened often. There were a few physical fights with 'them' and the applicant was threatened with being killed. If the applicant was driving and 'they' saw him, they would stand in front of his car and yell at him. On a few occasions there was no one else around and the applicant ran away because he was sure they were going to seriously harm him.
16. The applicant claims he was very afraid of harm from his girlfriend's family because many of them worked for the Basij. After her family found out about the relationship, the Basij started causing the applicant problems. The Basij would stop the applicant in the street and search his car. As these incidents were happening all the time the applicant started to fear for his life. He did not feel safe in Iran. And, because of his girlfriend's connections with the Basij, he could be located and harmed anywhere in Iran. He knew he had to leave Iran to save his life.
17. During the applicant's TPV interview he said his girlfriend's father threatened to kill him a few times and told him he would take his revenge no matter how long it took. When the delegate asked the applicant why his girlfriend's father didn't take his revenge when the applicant was

¹ Iran: On Conversion to Christianity, Issues concerning Kurds and Post-2009 Election Protestors as well as Legal Issues and Exit Procedures, Danish Refugee Council, Landinfo and Danish Immigration Service, Danish Refugee Council, Landinfo and Danish Immigration Service, 1 February 2013

² DFAT Country Information Report—Iran, Department of Foreign Affairs and Trade, 14 April 2020

³ Country Reports on Human Rights Practices for 2019, US Department of State, 11 March 2020

living in Iran, he responded he tried but couldn't because he was already staying away from him and avoiding where he was. The applicant said his girlfriend's father would not agree to them getting married and she is no longer his girlfriend.

18. The delegate asked the applicant if he believed his ex-girlfriend's father would create problems for him if he returned to Iran now and he responded that he would. He said, because they are Muslims, it was related to their honour. He had relations with her and Muslims don't forget that. His ex-girlfriend's father is working for the Iranian government and was always creating problems for him. The delegate asked the applicant how he could leave Iran without any problems if his ex-girlfriend's father worked for the Iranian government and he responded that her father didn't work for the police and wasn't a member of Sepah. He worked in something like a registry office. The delegate asked the applicant if he could live in another part of Iran without fear of harm from his ex-girlfriend's family and he responded that he tried to live someone else but it was hard to stay away from the place where you are born and they live in the same village. Some of his girlfriend's [relatives] worked in Sepah. The delegate asked the applicant if he had ever been arrested by the Basij and he responded no. He was never arrested but was stopped on the street and body searched. He said the Basij annoyed him and caused problems for him. He said Sepah gave him a hard time and would stop him on the streets.
19. The applicant's written evidence was his ex-girlfriend's family had connections to Basij but his oral evidence was that they had connections to Sepah. And, I find it implausible that if the applicant's ex-girlfriend's father and/or uncles had a genuine intention to harm or kill the applicant, that he would be able to avoid that harm by staying away and/or avoiding the places he was at; especially give the applicant and his girlfriend's relatives lived in a small village. Based on the evidence before me, I am not satisfied the applicant was ever threatened or harmed by his ex-girlfriend's family and/or any Iranian authorities because of his relationship with his ex-girlfriend. Nor am I satisfied the applicant ever feared for his safety in Iran because of his relationship with his ex-girlfriend. These findings are consistent with the applicant's evidence given during his arrival interview. In that interview the applicant didn't mention fearing harm from his girlfriend's family, he indicated his reasons for coming to Australia were primarily because he couldn't financially support his family and he said he had lived in his home village before leaving Iran. I am not satisfied the applicant would be at risk of any harm from anyone in Iran because of his relationship with his ex-girlfriend now or in the reasonably foreseeable future.

Conversion to Christianity

20. The applicant claims to have converted to Christianity in Australia and fears he would be charged with apostasy in Iran which is punishable by death. He was born a Shia Muslim but it was not by choice. He never understood the religion and never agreed with it. He was forced to pretend he was a Muslim but he never believed in Islam. He heard and read about Christianity when he was young in Iran. He remembers talking about it with his friends but he knew it was dangerous to explore Christianity further. When the applicant came to Australia, he started to explore Christianity. He officially renounced Islam and was baptised.
21. In the applicant's statement of claims dated 25 August 2017 he stated he had been going to church for over a year and attending bible classes when he had time. He believes everyone has to have a religion and he didn't like what Muslims were doing around the world killing people. When he started to learn about Christianity, he realised everything they were saying about Islam in Iran was "just lies". 'They' argued with the applicant and have since rejected him. He has no contact with his family anymore.

22. The applicant stated his family and friends know he has converted to Christianity. He would not be able to hide his Christianity and would be considered an apostate. He doesn't like the Iranian regime forcing Iranians to be Shia Muslims. He has posted pro-Christian content on his social media platforms.
23. During the TPV interview the delegate asked the applicant when he became interested in Christianity and he responded he couldn't remember. He thought it was four or five years ago. He didn't choose to be a Muslim and was only a Muslim by name. He never fasted or prayed in Iran. He went to the Mosque only for funerals and the like. When he left Iran, he wasn't a Muslim anymore. When the delegate asked the applicant when he first went to church in Australia, he responded he couldn't remember. He had a friend who went to church and he went with him. When the delegate asked the applicant what church he attended he said he wasn't sure of the name as it was a long time ago. He hadn't been to church since coming to Melbourne because he had been struggling with problems. Sometimes he didn't have enough money to buy food. He hasn't been to church for two or three years. When the delegate asked the applicant what makes him a Christian, he said he went to church and was baptised. Being baptised made him a Christian. When the delegate asked what happened at his baptism, he said he was submerged into the water and things were said; an undertaking to god for him. When the delegate asked the applicant if he had to prepare for his baptism, he responded that he didn't have to take anything except a towel. When the delegate asked what the applicant had to do at the baptism, he responded he queued for his turn, the father said some prayers and he put his head in the water. He didn't know what prayers were said and couldn't remember when he was baptised but thought it was two to three years ago in 2018. The applicant said he believed everyone has to have a religion so they can get close to the god. When the delegate asked the applicant why it was important to get close to the god, he responded to be careful and watch things 'they' do and say. When the delegate asked what kind of things, he responded to be mindful of your attitude and not to bother or annoy other people. He demonstrates being a Christian by helping people that need help, not doing 'bad things' and respecting others. He likes being a Christian because Christians respect people. The delegate put to the applicant that he could respect or help people and not do bad things without being a Christian and he responded that you could. However, he wasn't that person before becoming a Christian and he hadn't seen Muslims operating like that.
24. The delegate asked the applicant if he would recommend Christianity to other people and he said that he couldn't because people should work out their own religion. He wasn't given a choice of religion as a child and he wouldn't force a religion onto others.
25. The delegate again asked the applicant what church he attended in the past and he responded it was in [Town 1] but he was not sure. He attended church on Sundays and would sometimes attend classes during the week. When the delegate asked what the classes were about, he said the person – who was an ex-Muslim – would talk about Christianity and compare Christianity with the Muslim religion. He would talk about all the bad things that Muslims had done. He didn't know the name of the church he attended or the name of the person who baptised him. He said the person who baptised him was his [social media contact] but he doesn't have access to his [social media] account anymore.
26. The applicant said he first went to church with a friend and his friend was one of the reasons he became a Christian. His friend was sick and had problems. His friend couldn't walk properly and the church did everything for him and took him to the doctors. The applicant said when he realised how the church was helping his friend and treating him like their own child he was touched and wanted to become a Christian. The services were in English and for the first couple of months he didn't understand what was being said. He said there was a church in

[Town 1] that held a service in Farsi. When he thinks about it, he has made a mistake not going to church in Melbourne because he had a lot of problems and they would have helped him. Christians respect people and he hadn't seen them oppress others.

27. The delegate asked the applicant if he prays now and he responded that he didn't. When she asked why he said he hasn't been able to pray since he hasn't been to church. He has been looking for a church but because of COVID19 he hasn't found one. The delegate asked the applicant if he needed to go to church to pray and he responded that sometimes he sits by himself and prays but he wanted to say prayers like he did in church and he would have to attend church for that.
28. The delegate asked the applicant what his beliefs were as a Christian and the applicant said he didn't understand the question. The delegate repeated the question and the applicant asked if the delegate meant the Prophet or Jesus Christ and she responded yes. The applicant then said Jesus Christ. The delegate asked the applicant what he could tell her about Jesus Christ and he responded he was resurrected. When the delegate asked the applicant what he could tell her about the resurrection there was a long pause before the applicant said he wasn't sure what he could say about that. When the delegate asked the applicant how being a Christian had changed his life, he responded he respects people and has regard to attitudes and behaviours.
29. In support of the applicant's claim of attending church, being baptised and converting to Christianity he provided a Certificate of Baptism indicating he was baptised [in] October 2016. When the delegate put to the applicant that his baptismal certificate indicated he was baptised in 2016 and not 2018, he responded that 2016 would be correct. When the delegate asked why he got baptised when he did, he responded because he changed his religion, he chose to be a Christian and when you change your religion you are baptised. When the delegate asked the applicant again why he got baptised when he did, he said he requested to be baptised and the father chose that time. The delegate put to the applicant that she was concerned he could not remember when he was baptised and he responded he has had a very tough life. He has had tough times and because of that he has forgotten many things in his life.
30. During the TPV interview the delegate asked the applicant if he was in contact with his family and he responded that he was. He said he mainly talks to his brother who lives in their village and would speak to his parents and [another relative] maybe once a month. The delegate put to the applicant that he said his family doesn't communicate with him because he converted to Christianity and he responded that they didn't talk to him for a while but have started talking to him again. When the delegate asked why his family started talking to him again, he said it was not possible to set aside family. When the delegate asked the applicant when his family stopped talking to him, he said he didn't exactly remember but he thought it was about three years ago but he has lost all his documents. When the delegate asked what documents he lost he responded his birth certificate, paperwork for conversion and everything. He said all his documents were in a bag and he was not sure what happened to it. He said his family don't except him being a Christian because they are Muslim. The delegate asked the applicant if he lost contact with his family after he told them he had been baptised and he responded they knew before he told them. He didn't know how his family found out but their relationship became very bad. I find it implausible, that if the applicant's family stopped speaking to him and didn't except him because he had converted to Christianity, they would start speaking to him because "it was not possible to set aside family".
31. The applicant was unable to name the church he attended for over a year or the name of the person who baptised him. He did not know when he was baptised or what prayers were said at the baptism. Despite attending bible classes, he was unable to tell the delegate anything about

Jesus Christ's resurrection. He hadn't attended church since moving to Melbourne and he said he wasn't praying because he hadn't been to church. When the delegate asked him if he needed to go to church to pray, he then changed his evidence and said he was praying on his own but wanted to pray like he did at church. His reasons for becoming a Christian, how he demonstrated being a Christian and what he liked about being a Christian were about respecting others, doing the right thing and not hurting others. Overall, I find the applicant's evidence about his conversion to Christianity lacking in detail and unconvincing. I am not satisfied the applicant attended church on a regular basis or went to classes during the week as claimed. I am not satisfied the applicant has been looking for a church since he moved to Melbourne. I am not satisfied the applicant prays on his own. I accept the applicant went through the ritual of being baptised but I am not satisfied he has ever held a genuine interest or belief in the teachings of Christianity. The applicant was baptised about two months after the Department invited him to make an application for his protection visa and I have concerns he went through a baptismal ritual at that particular time to strengthen his claims for protection. This raises doubts about whether the applicant's evidence is credible. Based on all the evidence before me, I am not satisfied the applicant has ever been a genuine Christian or practised the religion. Nor am I satisfied the applicant's family ever stopped speaking to him and/or accepting him because he had converted to Christianity. I am not satisfied the applicant ever converted to Christianity.

32. The applicant's evidence was that he was never a practising Muslim in Iran and never believed in the religion. I accept the applicant is a non-believing, non-practising Shia Muslim.

Christian social media posts

33. The applicant told the delegate that he posted about his Christianity on [social media platforms] but he doesn't have access to the passwords anymore because he lost his telephone. He had to open new accounts and he is not active now. He hasn't posted anything about Christianity on his new [social media] account. He said he only has [one platform] now and doesn't use it a lot. He wants to distance himself from social media because it takes up too much time. He can't sleep or work well because social media affects everything.
34. The applicant claimed that people in Iran were aware he was a Christian. He posted his story on [social media]. His Iranian friends who he was once close to realised he was a Christian and he doesn't have a relationship with them anymore.
35. The applicant's reasons for not being able to access his historical social media platforms because he lost the passwords is unconvincing and I do not accept it. The applicant has provided no corroborating evidence of his claimed posts. I was not satisfied the applicant ever converted to Christianity and I am not satisfied he ever posted Christian content on his social media. Nor am I satisfied anyone in Iran believes the applicant is a Christian.

Anti-Iranian opinion

36. The applicant claimed that if he sees something online that he agrees with that is against the Iranian regime, he shares it online. The delegate asked the applicant if he shared anti-Iranian posts on social media and he responded that he did but was not active at the moment. He would put things on his [previous social media] account. When the delegate asked why, he said the Islamic public of Iran oppressed its people and it made him sad. He wanted people to be aware of it. He expressed these views with his friends as well. When the delegate asked the applicant if he thought the Iranian authorities would be aware of what he has said, he responded that the situation in Iran is bad and a lot of people are protesting against the Iranian

government. When the delegate asked if the Iranian authorities were aware of his individual opinions, he responded that he wasn't saying the Iranian authorities knew about him in particular. But in Iran the Iranian people are talking about these things all the time.

37. The applicant has not provided corroborating evidence of his anti-Iranian regime posts and I have concerns about whether his evidence is credible. Even if I accepted the applicant held or holds some anti-Iranian regime views, I am not satisfied the applicant ever made those views public by posting anti-Iranian regime content on his social media platforms or by discussing anti-Iranian regime content with others in Iran or Australia.
38. There are reports of political and human rights activities being banned from leaving Iran and/or having their passports confiscated.⁴ The applicant left Iran via the airport using a genuine passport. Even if I accept the applicant held or holds anti-Iranian regime views, I find that the applicant was of no adverse interest to the Iranian authorities when he left Iran because of those views. And I am not satisfied the applicant has said or been involved in any activities since he left Iran that would make him of adverse attention to the Iranian authorities now. Based on the evidence before me, I am not satisfied there is a real chance the applicant would face any harm from the Iranian authorities now or in the foreseeable future for holding any anti-Iranian regime opinions.

Being summoned

39. The applicant told the delegate that he was waiting for two letters to come from Iran. He said the letters were summonses sent to him via his family from Sepah. He hadn't provided them earlier because he had just found out about them. He wasn't sure when the summonses were sent to his family but he thought it was more than a year ago. He hadn't been in touch with his family until recently. When the delegate asked if the summonses related to his claims, he responded he had difficulties with Sepah about going to church. He said Sepah have gone to his family and annoyed and/or troubled them. The charges relate to him changing his religion and if he goes back to Iran that would be a very big problem for him. The delegate put to the applicant that he claimed to have converted to Christianity years ago and asked why this paperwork was being sent to his family now. The applicant responded that the paperwork was not recent but from the past.
40. The delegate asked the applicant how Sepah found out he had changed his religion and he responded that he lived in a small town and Sepah has lots of informants. Some of those informants followed him on [social media] and saw his posts. The delegate asked the applicant why Sepah would be interested in him and he responded it wasn't just him but other people who have changed their religion. He said his ex-girlfriend's mother, had some [relatives] working for Sepah.
41. On 6 May 2021 the applicant sent an untranslated document to the delegate via email. The delegate responded to the applicant's email and asked the applicant to explain the contents of the document but the applicant did not respond. I note the document provided by the applicant does not appear to contain any security features that would make it difficult to reproduce and DFAT reports that paper-based documents - including court documents and summonses - are relatively easy to obtain through fraudulent means⁵. Even if I accepted the document is a summons from Sepah addressed to the applicant about his conversion to

⁴ DFAT Country Information Report—Iran, Department of Foreign Affairs and Trade, 14 April 2020; Country Reports on Human Rights Practices for 2019, US Department of State, 11 March 2020

⁵ DFAT Country Information Report—Iran, Department of Foreign Affairs and Trade, 14 April 2020

Christianity, I am not satisfied the contents of the document is reliable and I place no weight on it.

42. I was not satisfied the applicant had converted to Christianity or that anyone in Iran believed he was a Christian. I am not satisfied the applicant has ever been summoned because he has converted to Christianity.

Refugee assessment

43. 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

44. 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.

45. I was not satisfied the applicant was a Christian covert or that he posted Christian content on his social medial platforms. I accepted the applicant was born a Shia Muslim but he did not believe and/or practise the religion in Iran or Australia. The applicant has not claimed - and there is no evidence before me to indicate - that he was ever harmed or came to the adverse attention of the Iranian authorities because he was a non-believing and/or non-practising Muslim. DFAT reports⁶ that secularism is widespread particularly in major cities in Iran. Religion is a private matter and how one wishes to observe Islam is a matter for the individual. A significant proportion of the population does not attend mosque or pray on a regular basis. DFAT assesses that non-practising Muslims face a low risk of official and societal discrimination in Iran especially in major cities. Based on all the evidence before me, I do not accept the applicant would be viewed as an apostate by the Iranian authorities and would face charges for renouncing Islam. I am not satisfied the applicant faces a real chance of serious harm in Iran because he doesn't believe or practise the Muslim faith now or in the reasonably foreseeable future.

⁶ DFAT Country Information Report—Iran, Department of Foreign Affairs and Trade, 14 April 2020

46. I accept the applicant is an Iranian citizen who left Iran on a genuine Iranian passport. I accept the applicant no longer has his passport and in order to return to Iran he would need to obtain documentation to facilitate his travel. While officials assist Iranians who wish to voluntarily return, Iranian overseas missions will not issue travel documents to an Iranian whom a foreign government wishes to return involuntarily to Iran. However, Iran and Australia signed a Memorandum of Understanding (MOU) on Consular Matters on 19 March 2018 to facilitate the return of Iranians who arrived after that date and who have no legal right to stay in Australia.⁷ The applicant does not fall into this category and I am satisfied there is not a real chance the applicant will be returned to Iran involuntarily. If the applicant did return to Iran in the foreseeable future, then it would only be on a voluntary basis, using a temporary travel document issued by the Iranian authorities.
47. I am of the view the applicant was of no adverse interest to the Iranian authorities when he left Iran and I did not accept he had posted any anti-regime content on his social media platforms or discussed such content with his friends. I accept that if the applicant returned to Iran, he would be returning to Iran after a long absence and after having claimed asylum in the West. DFAT's more recent report states that Iranian authorities pay little attention to failed asylum seekers on their return after a long absence and have little interest in prosecuting failed asylum seekers for activities conducted outside Iran, including in relation to protection claims.⁸ This includes posting social media comments critical of the Iranian 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 who return on temporary travel documents are questioned by the Immigration Police at the airport about the circumstances of their departure and the reasons for travelling on a temporary travel document. This questioning takes between 30 minutes and one hour but can take longer if the returnee gives evasive answers or is suspected of having a criminal history. Arrests and mistreatment are not common during this process. I do not accept the applicant would be subjected to a degree of ill-treatment upon his return as outlined. I accept the applicant would be questioned by the Iranian Immigration Police if he returned to Iran on temporary travel documents.
48. Millions of Iranians travel into and out of Iran each year without difficulty, including the large Iranian diaspora residing in North America and Europe.⁹ People with an existing high profile may face a higher risk of coming to official attention on return to Iran, particularly political activists.¹⁰ I have found that the applicant was of no adverse interest to the Iranian authorities when he left Iran. And, although I have accepted the applicant was baptised in Australia and could have attended some church services, I find the Iranian authorities would have no interest in those past Christian activities. The applicant has not claimed to have been involved in criminal activities in Australia. I am of the view that the applicant would be of no adverse interest to the Iranian authorities if he returned to Iran. I am not satisfied the applicant would face a real chance of serious harm from being questioned by the Immigration Police on his arrival in Iran.
49. When the delegate asked the applicant why he feared returning to Iran he responded that it was a really hard life in Iran and people don't have jobs. There is no money or life and 'everything' is forced upon you. He said the COVID19 pandemic is taking its toll in Iran and the Iranian government is not doing anything to prevent it.

⁷ DFAT Country Information Report - Iran, Department of Foreign Affairs and Trade, 13 April 2020

⁸ Ibid

⁹ Ibid

¹⁰ Ibid

50. DFAT assesses the current economic conditions in Iran are challenging, and economic incentives are a primary 'push factor' for emigration for most Iranians. And COVID-19 has placed further strain on Iran's economy and its health services.¹¹
51. The applicant claims he cannot return to Iran because of the harsh economic conditions and the COVID-19 pandemic. I have found that the applicant would be of no adverse interest to the Iranian authorities if he returned to Iran and that he will be questioned for a short period of time on his return. The applicant has not claimed, and there is no evidence before me to indicate, that he would contract COVID-19 on the basis of any of the reasons specified in s 5J(1) or because of systematic or discriminatory conduct. I find that if the applicant did contract COVID-19 in Iran, it would not involve systematic and discriminatory conduct and would not amount to persecution within the meaning of s.5J(4).
52. The DFAT report¹² states public healthcare in Iran is of a good standard although there is overcrowding and doctor shortages. And, COVID-19 has placed significant strains on the local health care system. Health services are available in Iran and there is no suggestion the applicant would be denied access to medical treatment on the basis of any of the reasons specified in s 5J(1). Likewise, there is no evidence before me to indicate that access to health services is selective or applied in a discriminatory manner. I find that the applicant's access to health services in Iran does not involve systematic and discriminatory conduct and does not amount to persecution within the meaning of s.5J(4).
53. The applicant continues to have his parents and siblings living in Iran who he is in contact with. He told the delegate that he worked with his father in his father's business when he was in Iran and he is working now. I did not accept the applicant's relationship with his parents and siblings has ever been strained as claimed. I am not satisfied the applicant would be unable to work and/or find accommodation in Iran upon his return.
54. Based on the evidence before me, I am not satisfied the applicant will face a real chance of serious harm from the Iranian authorities or anyone else for being a non-believing, non-practising Muslim, because he would be returning as a failed asylum seeker after being absent from Iran for some time, because he would be returning on temporary documents and/or for any of his other claimed reasons now or in the reasonably foreseeable future.
55. Taking into consideration the applicant's claims which I have accepted on a cumulative basis, I am not satisfied he would face a real chance of serious harm amounting to persecution, now or in the reasonably foreseeable future in Iran for any of his claimed reasons.

Refugee: conclusion

56. The applicant does not meet the requirements of the definition of refugee in s.5H(1). The applicants do not meet s.36(2)(a).

Complementary protection assessment

57. A criterion for a protection visa is that the applicant is a non-citizen in Australia (other than a person who is a refugee) in respect of whom the Minister (or Reviewer) is satisfied Australia has protection obligations because there are substantial grounds for believing that, as a

¹¹ DFAT Country Information Report - Iran, Department of Foreign Affairs and Trade, 13 April 2020

¹² Ibid

necessary and foreseeable consequence of the person being removed from Australia to a receiving country, there is a real risk that the person will suffer significant harm.

Real risk of significant harm

58. Under s.36(2A), a person will suffer 'significant harm' if:

- the person will be arbitrarily deprived of his or her life
- the death penalty will be carried out on the person
- the person will be subjected to torture
- the person will be subjected to cruel or inhuman treatment or punishment, or
- the person will be subjected to degrading treatment or punishment.

59. The expressions 'torture', 'cruel or inhuman treatment or punishment' and 'degrading treatment or punishment' are in turn defined in s.5(1) of the Act.

Qualifications to the real risk threshold

60. Section 36(2B) provides that there is taken not to be a real risk that a person will suffer significant harm in a country if:

- it would be reasonable for the person to relocate to an area of the country where there would not be a real risk that the person will suffer significant harm
- the person could obtain, from an authority of the country, protection such that there would not be a real risk that the person will suffer significant harm, or
- the real risk is one faced by the population of the country generally and is not faced by the person personally.

61. I have accepted that the applicant may face a low risk of official and societal discrimination for being a non-believing, non-practising Muslim. I have accepted that the applicant would be questioned by the Iranian Immigration Police if he returned to Iran on temporary travel documents. I have accepted the applicant could face discrimination as outlined above because of his Kurdish ethnicity. But, I was not satisfied that the applicant would be returning with an adverse profile and I am not satisfied that facing discrimination and/or being questioned by the Immigration Police would ever amount to suffering significant harm within the meaning of s.5(1) and s.36(2A) upon his return to Iran now or in the foreseeable future.

62. I was not satisfied the applicant would be unable to work in Iran or find suitable accommodation. Although speculative, I accept the applicant – like in most countries during a pandemic - could be exposed to/contract the COVID-19 virus and, although good, the Iranian public health system is under strain. However, being exposed to the COVID-19 virus and accessing the Iranian public health system does not amount to the applicant suffering significant harm within the meaning of s. 5. I am therefore not satisfied that there is a real risk that the applicant will suffer significant harm within the meaning of s.5 because of Iran's economic conditions and the COVID19 pandemic.

63. I did not accept the applicant would face a real chance of any harm for any of his other claimed reasons. As the “real risk” test in the complementary protection provisions imposes the same standard as the “real chance” test applicable to the assessment of “well-founded fear”,¹³ I also find that the applicant does not face a real risk of any harm for any of his other claimed reasons.

Complementary protection: conclusion

64. 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.

¹³ *MIAC v SZQRB* (2013) 210 FCR 505 per Lander and Gordon JJ at [246], Besanko and Jagot JJ at [297], Flick J at [342].

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.