



**Australian Government**  
**Immigration Assessment Authority**

**Decision and Reasons**

**Referred application**

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IRAN

IAA reference: IAA21/09567

IRAN

IAA reference: IAA21/09569

IRAN

IAA reference: IAA21/09570

IRAN

IAA reference: IAA21/09568

Date and time of decision: 7 September 2021 14:38:00

R Mikhail, Reviewer

**Decision**

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The IAA affirms the decision not to grant the referred applicants protection visas.

*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

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### Visa application

1. The referred applicants (the applicants) are a family group consisting of a father, mother and their daughter and son who all claim to be citizens of Iran. On 19 September 2017 they lodged a combined application for Safe Haven Enterprise Visas (application for protection).
2. On 24 June 2021 the father attended an interview with a delegate of the Minister for Immigration (the delegate), via telephone, in regard to the application for protection (PV interview).
3. On 26 July 2021 the delegate refused the grant of the visa.

### Information before the IAA

4. I have had regard to the material given by the Secretary under s.473CB of the *Migration Act 1958* (the Act) (review material).
5. On 23 August 2021, the IAA received a submission prepared by the applicants' legal representative (August submission). This includes a legal submission and country information. To the extent that it addresses concerns about the delegate's decision in relation to matters that were before the delegate I have had regard to it.
6. The submission states that the father will face significant harm in Iran as a non-practising Muslim. It is submitted that the delegate accepted that the father is a non-practising Muslim.
7. It is not at all clear to me that the father did claim he was a non-practising Muslim or that he feared harm in Iran on this basis. During the PV interview the delegate asked the father what his current religion was and he responded that he was a Muslim believer when he came to Australia but over time, he only has a little bit of belief in Islam because of "the disagreements between religions". I do not consider this exchange raised a claim to fear harm on the basis of religion, or a claim that the father is a non-practising Muslim. Nevertheless, in her decision, the delegate stated that the father claims that he will be harmed or persecuted for being a non-practising Muslim should he return to Iran. It appears the delegate saw this claim as arising on material and I will proceed on that basis as well.
8. Also included in the legal submission are citations to new country information on Iranian law and the government's treatment of those citizens who do not conform to Islamic religious beliefs, atheists, and Christians. Copies of these reports were also annexed to the submission except for one (2016 report by Iran Human Rights). These reports have been provided in response to the delegate's decision in regard to whether the father would face a real chance of harm in Iran as a non-practising Muslim in circumstances where this fear was not actually raised by the father before the delegate nor discussed at the PV interview. Given this, although the information was publicly available, as it was provided in response to a claim that in my view had not been made, it is understandable why it was not provided to the delegate and I am satisfied this new country information meets s.473DD(b)(i) of the Act. The country information does not refer to personal information relevant to the applicants' claims. The delegate considered this issue in her decision and the new country information does not materially add to the country information that was before the delegate. The new country information also provides little information specific to the treatment of non-practising Muslims. I am not satisfied this new country information is personal information that may

have affected consideration of the applicants' claims. I am not satisfied s.473DD(b)(ii) is met. In the circumstances, even though I accept s.473DD(b)(i) is met, I am not satisfied there are exceptional circumstances to justify considering this new information.

9. The submission also states that the daughter was over the age of 18 at the time of the PV interview. She is currently [age] years old. It is submitted that in the circumstances, it would have been prudent for the delegate to ask and provide the daughter an opportunity to submit her own claims for protection if she wished. It is submitted that she was not provided this option prior to the interview and that she should have, so as to satisfy procedural fairness.
10. The submission also states that the mother and children have spent a significant amount of time in Australia and have since become accustomed to Australian culture and its freedoms. Return to Iran will not only harm the father but also his wife and children. This is a new claim. No further details were provided in relation to this new claim in this submission.
11. The IAA received a further submission from the applicants' representative on 6 September 2021 (September submission). It states the mother is a non-practising Muslim, or rather does not conform to any religion. It is submitted she will face harm in Iran on the basis of her gender. Being a non-religious person, she does not and will not conform to Islamic teachings and codes of conduct for women, particularly with respect to wearing the hijab. She does not wear the hijab in Australia and does not intend to ever wear it. It is submitted the daughter is a young woman, and although she lives with her parents, she is independent and even provides for the family by means of paying rent and sharing her income. It is submitted she relies on the same claims as her mother, as she is a young woman, who is non-religious and does not and will not conform to the Islamic codes of conduct. She has significantly conformed to Australian cultures and ways of life as she works here, participates in Australian society and seeks to study. It is also submitted the son relies on the claims of his parents. He arrived in Australia as an infant and is [age] years old and has no connection to Iran, he only speaks English, does not speak Persian. He grew up in Australia and does not know any other way of life or culture. It is submitted a return to Iran would be a major culture shock for him and he will be subject to severe psychological harm if he were to return. The above are new claims.
12. The application for protection was prepared by a different lawyer and submitted in September 2017. In it, the father raised claims on his own behalf and that of his family members. The completed online form clearly indicated that the mother and children were not making their own claims for protection. On 4 October 2017 the applicants' former legal representative also submitted a comprehensive submission in support of the father's claims which made no reference to any separate claims that the other family members wished to raise and, again, indicated that they were relying on the family unit criteria. I am not satisfied, in the circumstances, that the wife and children were unaware that they could raise separate claims for protection at the time they made their application for protection. I am not satisfied the daughter was not given the opportunity to present her own claims for protection prior to the PV interview. During the PV interview the father was not legally represented. During that interview, the delegate asked the father some questions about his daughter and her current circumstances noting that she needed to make an assessment as to whether she was dependent on the father. The father provided evidence indicating that she was still dependent. He was also asked whether there were any other reasons he could not return to Iran and he did not raise any other claims regarding his children or wife. At the end of that interview, the delegate also advised the father that if there was anything that he had forgotten to provide to the Department in regards to his claims for protection to the

Department, he should provide that information to the Department and if it was received before a decision was made, then it would be considered. He did not provide any further information in support of the application or raise any other claims in respect of his wife and children. I note the delegate did not make her decision until a month after the interview. I am satisfied the wife and children had the opportunity to raise any other claims they had both before and after the PV interview.

13. In regard to the new claims, the IAA submissions do not address the s.473DD requirements other than stating that this information is 'crucial to the applicant's case as it emphasises the circumstances that the applicant has faced in Australia' and that the applicants were represented by a different lawyer at the time of their application. Having considered the circumstances I have outlined above, I am not satisfied these new claims could not have been raised before the delegate made her decision. Section 473DD(b)(i) of the Act is not met.
14. The September submission states that the mother is a non-practising Muslim "or rather does not conform to any religion" which, on its face, appear to be two very different beliefs or practises and no further clarity on this was included in the submission. In the passport photos attached to their application for protection and in the daughter's Australian driver's licence, the mother and daughter are not wearing the hijab. The claim they do not wear the hijab in Australia is capable of being believed. Yet in the application for protection, the mother and children declared their religion to be Islam and very little detail has been provided in the IAA submissions as to how, when or why the mother and daughter purportedly became non-religious or non-practising of Islam or to what extent they are non-practising or non-religious and will not conform to the Islamic codes of conduct other than not wearing the hijab. It is submitted the mother has conformed to Australian culture and freedoms, but no further detail as to been provided as to what is meant by "Australian culture and freedoms".
15. It is submitted that the mother and daughter will face harm in Iran based on their gender since women in Iran face discrimination and harassment from the authorities and the wider community. Beyond this general assertion, no detail was included in the submission in regards the types of discrimination they may face and in what context they will be subject to discrimination and harassment.
16. It is submitted the daughter has significantly conformed to Australian culture and ways of life as she works here, participates in Australian society and seeks to study. The claim that she works and seeks to study in Australia is capable of being believed. However, it is not evident that the fact that she works, studies and participates in Australian society reflects a conformity to Australian culture or its way of life nor does the submission define what is meant by its reference to "Australian culture and ways of life" or in what way these factors would place her at risk in Iran.
17. In the application for protection it states that the son speaks Persian which is at odds with the new claim that he does not speak Persian. It is also not evident why, being raised in Australia, necessarily means the son does not know any other way of life or culture and no further details were provided in relation to this claim. I note that during the PV interview, when discussing the daughter's dependency, the father indicated that she lives at home with his family as this is a cultural and religious expectation for daughters and sons. This reflects some continuing application of Iranian culture in the family, despite living in Australia.
18. I also note that no evidence has been provided in support of the applicants' new claims. I am also satisfied that, had the applicants had a genuine fear in this regard, they would have raised these claims earlier. Although I accept the mother and daughter do not wear the hijab

in Australia and the daughter works and studies in Australia and contributes financially to the family, I am not satisfied the remainder of the applicants' new claims are capable of being believed. Section 473DD(b)(ii) of the Act is not met. In the circumstances, I am also not satisfied there are exceptional circumstances to justify considering these new claims.

19. The legislative framework governing the IAA provides for an exhaustive statement of the natural justice hearing rule. Pursuant to s.473DB(1) of the Act the IAA must review a fast track reviewable decision referred to it under s.473CA by considering the review material provided to the IAA under s.473CB without accepting or requesting new information and without interviewing the referred applicant. This is subject to other provisions of Part 7AA. Pursuant to s.473DC the IAA may get, request or accept 'new information' but is under no duty to do so whether requested to do so by a referred applicant, by any other person, or in any other circumstances. This discretionary power must be exercised reasonably having regard to the IAA's statutory framework and all the circumstances of each case. If the IAA decides to get or accept new information, it can only consider that information in exceptional circumstances.
20. For reasons I have already noted above, I am not satisfied the mother or children were denied the opportunity to put forward their own claims for protection before the delegate. The applicants have raised new claims that I have assessed in accordance with s.473DD of the Act. In the circumstances, I have decided not to invite further information from the mother and children whether by way of interview or otherwise.
21. The September submission also claims that the mother and children are failed asylum seekers. To the extent that this refers to information that arose on the material before the delegate, I do not consider it to be new information.

### **Applicants' claims for protection**

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22. In the application for protection, the father raised claims for protection on behalf of himself and his family. The other family members did not raise separate claims for protection but relied upon the family unit criteria.
23. The father's claims can be summarised as follows:
  - He experienced many problems with the Basij in his life.
  - During high school he was arrested for listening to music in his car.
  - He detained by the Basij on another occasion after they found a satellite dish in his car.
  - He was beaten and arrested by the Basij during a student protest.
  - He was pressured to join the Basij when he was working for a branch of [government]. During that time the company wanted to reduce people's electricity usage and he was forced to beat people and remove their high consumption light bulbs.
  - He was close to his brother-in-law who was being harassed by the Sepah because of his ex-wife's connection to Sepah. After the father's family witnessed his brother-in-law being beaten and taken away by Sepah, he decided to leave Iran with his family and brother-in-law.
  - He fears he and his family will be seriously harmed because of his anti-government opinion and opposition to the Basij and because of their close relationship with his brother-in-law.

- He also fears being detained and seriously harmed by the Iranian authorities for seeking asylum in Australia which is a western non-Muslim country.

## Refugee assessment

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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
  - 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. The applicants provided sufficient documentary evidence of their identity and accredited translations. This included their Iranian birth certificates, driver’s licences, and copies of their passports.
27. I am satisfied they are Iranian citizens and that Iran is the receiving county for the purpose of this assessment.
28. The above identity documents also confirm their claimed family relationship and I accept that the parents are married, and the children are their biological children.
29. In his statutory declaration attached to the application for protection (father’s statement), the father claims that during high school he was arrested and detained by the Basij for listening to music in his car. He was degraded and assaulted by the Basij. He was detained for three to four hours, beaten and then released after signing an undertaking.
30. During the PV interview the father provided a consistent account of this incident. Country information that was before the delegate indicates the Basij is a volunteer paramilitary group with local organisations across the country and has authority to police Islamic morals and social conduct in public. The Basij intimidate civilians perceived to be violating Iran’s strict moral code without formal guidance or supervision from their superiors and the authorities

can take a heavy-handed approach when they periodically enforce standards of Islamic conduct in the community. Youth in particular can experience some form of low-level harassment from security authorities, such as being subjected to searches, car checks and verbal warnings for dress or behaviour and certain types of music has been officially banned since the 1979 revolution.<sup>1</sup> I accept that this incident occurred.

31. In his statement, the father claims that when he was [age] years old, he was taking his satellite dish in his car to sell to a friend when he was stopped by the Basij. The Basij found the dish in his car and arrested him. He was detained for twenty-four hours and beaten and insulted by the Basij. He was eventually bailed and signed an undertaking on release.
32. The father also gave a consistent account of this incident during the PV interview and country information that was before the delegate indicates that satellite dishes are illegal in Iran and carrying, keeping, installing or repairing satellite dishes and equipment entails a fine. According to local sources, while satellite dishes are sometimes confiscated, fines are rare.<sup>2</sup> Although the father's account of his alleged punishment seems excessive in light of the country information above, I have also taken into account the unpredictable nature of the Basij and consider his account to be plausible. I accept this incident occurred.
33. In his statement, the father claims that, in 1999, there was a protest in [location] in Tehran but he was not part of it. He was on the bus on his way to work when his bus stopped around [location] because of the protest. He got off the bus and was suddenly hit with a baton and arrested by the Basij for a few hours. He was released when they found out he was not part of the protest.
34. The father gave a detailed and consistent account of this during the PV interview. Country information before the delegate also confirms the Basij led a crackdown on student protestors in 1999.<sup>3</sup> I accept that this incident occurred.
35. In his statement, the father further claims that, in approximately 2006, he was working as an [Occupation 1] at [Company 1] which is one of the branches of [government]. In 2009 the Basij department in his company demanded that he join them, but he refused. They continued to pressure him for three to four years. He told them he was against what they were doing and did not want to act against his community. Eventually most of the people in his workplace joined the Basij and there were only a few of them that did not. The Basij continued to harass him and he was threatened that he would lose his job and not be paid if he did not join them. His manager also cut his overtime shifts in order to pressure him. In late 2012 he was forced to join the Basij. The Basij wanted people to reduce their electricity usage and he was ordered to beat people if necessary and to issue warnings to people to reduce their electricity usage and remove their light bulbs. This included forcibly removing the high consumption light bulbs that were used by the bazaar shopkeepers. The shopkeepers would get angry with him and get violent.

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<sup>1</sup> "Iran reacts to ayatollahs dictatorship through music", *Asia News IT*, 9 November 2012, CX302115; "Banned Music Banned", *Radio Free Europe / Radio Liberty (RFE/RL)*, 11 May 2010, CX318662; Afshon Ostovar, "Iran's Basij: Membership in a Militant Islamist Organization", Middle East Institute, 1 June 2013, CIS36DE0BB2049; United States Department of State, "Country Reports on Human Rights Practices for 2019 – Iran", 11 March 2020, 20200312093514; Australian Department of Foreign Affairs (DFAT), "DFAT Country Information Report—Iran", 14 April 2020, 20200414083132; DFAT, "DFAT Country Information Report – Iran", 21 April 2016, CIS38A8012677

<sup>2</sup> DFAT, "DFAT Country Information Report—Iran", 14 April 2020, 20200414083132

<sup>3</sup> Afshon Ostovar, "Iran's Basij: Membership in a Militant Islamist Organization", Middle East Institute, 1 June 2013, CIS36DE0BB2049

36. During the PV interview, when asked by the delegate why the Basij wanted the father to join them, he said they wanted to find out if he was against the government because they knew about him and what he had done in the past. He said because of the past incidents he was under government surveillance. He used to get together with friends in hiding and organise something to do. It is not clear what the father was talking about in this regard and I note that he did not refer to being involved in any political activities in his statement. Although his statement indicates it is just a summary of his claims, I remain concerned that he did not mention such activities given the significant of the claim. He did not refer to this again during the PV interview and, as noted, his description of these activities was lacking any detail. I am not satisfied he was involved in any political activities in Iran.
37. The delegate then asked the father whether he was referring the past incidents where he was caught listening to music, being caught with a satellite dish and his arrest in 1999. He said he was but that it is not that simple as the authorities tend to add other accusations to one's case and when one goes to court, that is when they realise that other false charges have been added to their existing charges. However, the father never previously claimed that he had been charged and gone to court in regard to these previous incidents, either in his statement or earlier on in the PV interview when he was first asked about these events. Again, I am not convinced he would omit that he had been charged and attended court and facing additional charges, from his statement, if that were true. I also note that he has not provided any documentary evidence of this. I do not accept he was charged regards to these incidents.
38. I am not satisfied on the evidence the authorities considered the father to be anti-government because of his previous interactions with the Basij. I am not satisfied that Iranians who are caught listening to banned music or own satellite dishes are perceived to the against the government. The father has not provided credible evidence in support of this claim. In regard to the incident in 1999, the father has claimed that he was released when the authorities realised that he was not part of the protest and he had been arrested by mistake indicating he was of no further interest to them. Having considered the father's description of the car and satellite dish incidents, I am also not satisfied that listening to music in his car and transporting a satellite dish for sale were an expression of the father's political opinion against the Iranian government.
39. I am also not satisfied on the evidence that there was any connection between these incidents. I am not satisfied he was arrested in regard to the satellite dish because of his previously being caught listening to music and I note there appears to be a significant number of years between the two incidents. The father has not claimed that he was arrested and suspected of being part of this protest because of the previous incidents and I am not satisfied he was. During the PV interview he explained that he was arrested on this occasion because when he got off the bus, he got mixed up with the student protestors and that is why he was arrested by mistake.
40. Given the nature of his past interactions with the Basij and my findings in that regard, I also do not accept he was under government surveillance because of these past incidents. There was also ten between the last incident in 1999 and his claim that the Basij started to pressure him at his workplace in the pressure from the Basij in 2009 and he has not claimed to have had other adverse interactions with the Iranian authorities during that period of time.
41. I am not satisfied on the evidence that the father was of any further adverse interest to the authorities because of his interactions with the Basij when he was younger. I am not satisfied



the applicants will face a real chance of harm in Iran from the Iranian authorities or any other group or person because of these past incidents.

42. I note that in the father's Irregular Maritime Arrival and Induction Interview held with him shortly after he arrived in Australia in 2013, when asked why he left Iran, he did refer to being under pressure to be a Basij person.
43. When the delegate asked the father why he eventually joined the Basij, he said that he never said that and maybe it was a mistake by someone. This is at odds with his written claims. During the interview he said that he refused to join the Basij and because of that he was placed under a lot of pressure.
44. Country information that was before the delegate confirms the Basij militia is an omnipresent feature of life in many Iranian cities. It is one of the regime's largest social enterprises, encompassing somewhere between 1.5 to 15 million members, and has steadily evolved over the last two decades into a pillar of Iran's security establishment. The Basij was designed to be an ideologically and religiously-driven armed force geared toward the defence of Iran's revolutionary regime and its theocratic system. It has a presence in schools, factories, guilds, offices, and mosques throughout the country and there is a Basij suborganisation for government workers. However, in a detailed study of the Basij published in 2013 by the Middle East Institute, it noted that because of its explicit ideological basis, the Basij is selective in its recruitment. It states the Basij is an all-volunteer organisation that does not rely on conscripts to fill its ranks. Instead, the Basij uses informal and formal means to attract voluntary recruits who share its ideological and religious perspectives. There is no indication from this report or other country information before the delegate that the Basij pressure or force people in government offices, or otherwise, to join their organisation.<sup>4</sup>
45. I do not accept the father was pressured to join the Basij in his workplace and I am satisfied the father did not join the Basij. Given this, I do not accept his written claim that he was forced to beat people to pressure them to reduce their electricity usage and forcibly removed their high consumption lightbulbs and the shopkeepers subsequently became violent with him. I also do not accept his claim during the PV interview that the Basij would force them to disconnect the electrical towers and tell people not to use so much power in order to start an argument with the people in the community. He claimed the purpose of this was for the Basij to create problems with the community and to create disunity. He said the Basij were benefitting from this discord, but he did not say what the benefit was and there appears to be no obvious benefit on the evidence before me. I accept, however, his claims that people in the community would complain that they did not have electricity even though they had paid for it. Although he claims he was under pressure during his employment with this company, in his application for protection it indicates he worked there until he left for Australia. I am not satisfied on the evidence the father was of adverse interest to the Basij or other Iranian authorities or faced harm as a result of his previous work with this company.
46. I am not satisfied the applicants will face a real chance of harm on return to Iran from any group or person because of the father's previous work in this company.
47. In his statement, the father further claimed that he has a close relationship with his brother-in-law. His brother-in-law had issues with his ex-wife because of her family's connection to Sepah who had high positions in that organisation. He claims the Sepah would follow and harass his brother-in-law. Because the father was close to his brother-in-law, Sepah would

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<sup>4</sup> Ibid.

also follow and harass the father and his family. They would park outside their home and watch them and knock on their door asking for his brother-in-law's whereabouts. The harassment continued for three years. In 2013 his brother-in-law told the father that Sepah were following him and in early 2013 the wife and daughter witnessed him being beaten and taken by Sepah. After this incident the father felt threatened and decided to leave Iran with his family and the above brother-in law.

48. I am concerned with the lack of details the father has provided in regard to his claims regarding his brother-in-law. For example, he has not articulated what the dispute was between his brother-in-law and his ex-wife's family and why the Sepah would continue to harass and seek out his brother-in-law. The father has not provided any details as to why he felt threatened when his brother-in-law was beaten and taken by Sepah given they had been looking for his brother-in-law and evidently found him in 2013. When asked about these claims during the PV interview, the father gave a general recount of the claims but did not elaborate nor provide any further detail. He also said that his brother-in-law's case (before the Department) is totally different to his. This is at odds with his written claim that they left Iran after witnessing his brother-in-law being beaten and taken by the Sepah in 2013. He also said that Sepah might put pressure on him to tell them where his brother-in-law is but then noted he is worried about his own case and, after being in Australia for eight years, queried why he should care about his brother-in-law's family and whether the Sepah would pick on the father, given he has his own issues. I found his oral evidence lacking in detail, confused unconvincing. I do not accept the father's claims about his brother-in-law.
49. Even if his brother-in-law was being harassed by the Sepah for the reasons the father has claimed, I do not accept that the father and his family were being harassed or were of any adverse interest to Sepah or other Iranian authorities for these reasons or that they left Iran due to fear after witnessing his brother-in-law being beaten and taken by Sepah in 2013.
50. I am not satisfied the applicants will face a real chance of harm from the Iranian authorities or any other group or person because of their association to the father's brother-in-law.
51. During the PV interview the father claimed that, since being in Australia, he has posted anti-Iranian government material on his social media pages on [Social Media 1], [Social Media 2] and [Social Media 3]. The father has not provided any evidence in support of these claims. During the PV interview he also indicated that he was unfamiliar with the privacy settings on [Social Media 1] which is somewhat hard to believe given he claims he has a [Social Media 1] account. He has also claimed that he posted this material so that other people could know about the Iranian government and the Basij, Iranian government embezzlement and the recent unlawful election. Although I accept the father has a political opinion against the Iranian government, I do not accept that he was involved in any anti-government activities in Iran or that playing music in his car and owning or selling a satellite dish in Iran was an expression of his anti-government opinion. In her decision, the delegate also noted the father's evidence in this regard was vague and generalised and did not accept his claim and I note the father has not provided any further evidence in support of this claim in the submissions to the IAA. On the evidence before me, I do not accept the father has posted anti-government material on his social media accounts since being in Australia.
52. I am not satisfied the father will publicly promote his political opinion if he were to return to Iran and I am not satisfied this will be due to a fear of persecution. I am not satisfied the applicants face a real chance of harm in Iran because of the father's political opinion.

53. Towards the end of the PV interview the father claimed that, after he left Iran, his older brother, who was working in a government organisation that was related to Sepah, was questioned about the father. They asked his brother where the father was and they exiled his brother to Iraq and then sent him to [location], one of the [places] in Iran and then he was eventually dismissed from his job a couple of years later. The father did not know about this for years. I have concerns that the father did not mention this earlier in the interview given the significance of this claim. Regardless, I have not accepted that the father was of any adverse interest to the authorities for the reasons he has claimed when he departed Iran. I do not accept this claim. I am not satisfied the applicants have a well-founded fear of persecution in Iran in relation to this claim.
54. During the PV interview the delegate asked the father what his current religion was and he responded that he was a Muslim believer when he came to Australia but over time, he only has a little bit of belief in Islam because of “the disagreements between religions”. In her decision, the delegate stated that the father claims that he will be harmed or persecuted for being a non-practising Muslim should he return to Iran. As already noted, it is not evident to me that the father claimed he was a non-practising Muslim or that he feared harm in Iran on this basis. As it appears the delegate saw this claim as arising on material, I have also proceeded on that basis.
55. During the PV interview the father said that he never practised Islam in Iran but clarified that he did not promote it and kept his beliefs to himself. I also note that he has claimed to have gone to Saudi Arabia on pilgrimage in 2009 which does not reflect someone who did not practise their Islamic faith. When asked by the delegate if this caused him any issues in Iran, he said that some government organisations would force their own aspects of Islam on people and gave the example of government employers who have to say their obligatory prayers during work hours. He did not, however, claim that he did not wish to say his obligatory prayers at work or in general when he was in Iran and I have not accepted his claims about being pressured by the Basij in his former workplace in Iran. I do not accept the father did not practise his Islamic faith in Iran. He has also not claimed that he will work for a government organisation if he were to return to Iran
56. Country information that was before the delegate indicates that Iran is a theocracy with Islamic beliefs and customs enshrined in law. Shia Islam is the official state religion. In the most recent report on Iran by the Australian Department of Foreign Affairs and Trade published in April 2020 (DFAT 2020 report), it states that secularism in Iran is widespread, particularly in the major cities and among younger and wealthier Iranians. A significant proportion of the population does not attend mosque or pray on a regular basis, and alcohol consumption is common. 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. Other sources that were before the delegate also indicate that many Iranians do not attend mosque regularly and do not perform their daily prayers and, for this reason, not attending mosque would not necessarily arouse any suspicion. According to the World Values Survey, Iran has one of the lowest mosque attendances compared to ten other important Muslim countries. A large part of Iran’s population has a secular lifestyle.<sup>5</sup>

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<sup>5</sup> DFAT, “Country Information Report – Iran”, 14 April 2020, 20200414083132; Boston Review, “Iran’s Other Religion”, 1 June 2003, CX82EDE9415499; The Austrian Centre for Country of Origin & Asylum Research and Documentation (ACCORD), “Iran - COI Compilation”, 1 July 2018, 20190326122102; Danish Immigration Service, “Update on the Situation for Christian Converts in Iran”, June 2014, CIS28931; LSE Middle East Centre (United Kingdom), “The Revival of Nationalism and Secularism in Modern Iran”, November 2015, CISEC96CF14725; “Turning away from Shia in Iran - 'A Tsunami of Atheism'”,

DFAT assesses that non-practising Iranian Muslims face a low risk of official and societal discrimination, particularly in the major cities.

57. Even if the father no longer practises his Islamic faith, I am not satisfied on the evidence he has an interest in publicly promoting his religious opinion. I am satisfied on the evidence the father will not promote his religious in public in Iran and I am satisfied this will not be due to a fear of persecution. I am not satisfied the applicants face a real chance of harm in Iran from the Iranian authorities or any other group or person because of the father's religious opinion.
58. The father also claims that he fears he will be detained and seriously harmed by the Iranian authorities for seeking asylum in Australia which is a western non-Muslim country.
59. Country information that was before the delegate notes that Iran has a longstanding policy of not accepting involuntary returns. Nevertheless, in March 2018, Iran and Australia signed a Memorandum of Understanding on Consular Matters which includes an agreement by Iran to facilitate the return of Iranians who arrived after March 2018. The applicants do not fall within that category and as such I am satisfied that if the applicants were to return to Iran, it will only be on a voluntary basis.
60. There are few recent reports of returnees being mistreated on the basis of being failed asylum seekers returning from a western country before the delegate. A 2019 article claims that an Iranian convert to Christianity who was refused asylum in Germany and deported back to Iran was arrested "immediately" upon her arrival in Tehran, but it is unclear from the report why she was arrested. A small number of older articles, including those cited in a written submission provide to the Department in support of this application, refer to the arrest of people with a particular existing profile such as political activists or their families, artists, PHD students, and journalists.
61. DFAT's more recent 2020 report on Iran notes that the Iranian authorities pay little attention to failed asylum seekers on their return to Iran and they have little interest in prosecuting failed asylum seekers for activities conducted outside Iran, including in relation to protection claims. In cases where an Iranian diplomatic mission has issued temporary travel documents, authorities will be forewarned of the person's imminent return. Those who return on a *laissez-passer* are questioned by the Immigration Police at Imam Khomeini International Airport in Tehran about the circumstances of their departure and why they are traveling on a *laissez-passer*. Questioning usually takes between 30 minutes and one hour but may take longer where the returnee is considered evasive in their answers and/or immigration authorities suspect a criminal history on the part of the returnee. Arrest and mistreatment are not common during this process. The treatment of returnees, including failed asylum seekers, depends on the returnees' profile before departing Iran and their actions on return. DFAT assesses that, unless they were the subject of adverse official attention prior to departing Iran (e.g. for their political activism), returnees are unlikely to attract attention from the authorities, and face a low risk of monitoring, mistreatment or other forms of official discrimination. Other recent sources claim the same.<sup>6</sup> I am also not satisfied, on the information before me, that the Iranian authorities impute failed asylum seekers from western countries with a political opinion against the Iranian government or Islam.

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Qantara, 7 February 2013, CXC28129415432; "Young Iranians affected by the embargo, tired of political Islam", *Asia News IT*, 1 April 2015, CXBD6A0DE4714

<sup>6</sup> 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

62. The applicants claim, and I accept, that they left Iran legally on their own genuine passports which were lost on their way to Australia. Should the applicants return on a *laissez-passer*, I accept the applicants will very likely face a brief period of questioning on return to Iran. There is no indication from the above information that children are questioned in these circumstances. The applicants are Iranian citizens and I am satisfied they left Iran legally. I am not satisfied the father was of adverse interest to the Iranian authorities prior to their departure for any reason and he has not claimed the other applicants were of any adverse interest to the authorities and I am not satisfied they were. I am not satisfied the applicants have a profile such that there is a real chance they will attract the adverse attention of the Iranian authorities on return. I am not satisfied there is a real chance the applicants will be subject to prolonged questioning or their minor son will be questioned. I am not satisfied the applicants will face a real chance of harm during such questioning for any reason. I also do not consider being questioned for a short period in these circumstances amounts to harm.
63. I am not satisfied the applicants will face a real chance of harm from any group or person as failed asylum seekers from Australia.

#### **Refugee: conclusion**

64. The applicants do 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**

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65. Under s.36(2)(aa) of the Act, 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**

66. 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.
67. 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.
68. I have not accepted that the father's claims regarding his brother-in-law, or that the father posted anti-Iranian government material on his social media accounts in Australia or that the Iranian authorities questioned his brother after the father left Iran. I am not satisfied the applicants will face a real risk of significant harm in Iran in relation to these claims.

69. I have found the applicants will not face a real chance of any harm in relation to the father's other claims or those that arose on the material. Consequently, they will also not face a real risk of any harm in Iran in relation to those claims.<sup>7</sup> I am not satisfied the applicants will face a real risk of significant harm in Iran.

#### **Complementary protection: conclusion**

70. 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 applicants will suffer significant harm. The applicants do not meet s.36(2)(aa).

#### **Member of same family unit**

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71. Under s.36(2)(b) or s.36(2)(c) of the Act, an applicant may meet the criteria for a protection visa if they are a member of the same family unit as a person who (i) is mentioned in s.36(2)(a) or (aa) and (ii) holds a protection visa of the same class as that applied for by the applicant. A person is a 'member of the same family unit' as another if either is a member of the family unit of the other or each is a member of the family unit of a third person: s.5(1). For the purpose of s.5(1), the expression 'member of the family unit' is defined in r.1.12 of the Migration Regulations 1994 to include a spouse and dependent children.
72. It is unnecessary for me to determine whether the applicants are all members of the same family unit and in particular whether the daughter meets the definition of 'dependent child'. As none of the applicants meets the definition of refugee or the complementary protection criterion, it follows that they also do not meet the family unit criterion in either s.36(2)(b) or s.36(2)(c).

#### **Decision**

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The IAA affirms the decision not to grant the referred applicants protection visas.

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<sup>7</sup> *MIAC v SZQRB* (2013) 210 FCR 505.

## Applicable law

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### **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.