



Australian Government

Immigration Assessment Authority

Decision and Reasons

Referred application

IRAN

IAA reference: IAA21/09689

Date and time of decision: 5 October 2021 16:27:00

D Hughes, 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 applied for a protection visa on 3 July 2017. A delegate of the Minister for Immigration refused to grant the visa on 12 August 2021.

Information before the IAA

2. I have had regard to the material given by the Secretary under s.473CB of the *Migration Act 1958* (the Act).
3. The applicant forwarded copies of the delegate's decision and notification to the IAA on 17 August 2021. These documents are not new information. No new information was obtained or received in the course of this review.

Applicant's claims for protection

4. The applicant's claims were originally provided in a statement attached to his 2017 visa application. Those claims can be relevantly summarised as follows:
 - He was born in Tehran in [Year 1].
 - His first troubles in Iran occurred in 2005 during his military service. He would be followed by several Basij members, who would watch and analyse his moves. He tried to behave normally as he did not want to create any trouble, but he received an unexpected formal warning from a court that he had to attend. They wanted to press charges against him because he was refusing to attend religious activities. In the end, they let him go because they did not have enough evidence. The main consequence of that incident was that his family found out about the charges and they started to watch his moves closely as they were very sensitive about religious activities. He spoke with his family to convince them that there was nothing to be worried about, but he had strong opinions which went against theirs and this made them suspicious.
 - On one occasion, he was sitting in a cafe with friends near his home. They were talking about issues in society and discussing political disorders in Iran. Without warning, undercover police officers entered the café. They arrested him and detained him for seven days. He was tortured every day and they asked him to confess his desire to undertake activities against the government and Islam. They injured his leg because they did not want him to meet with his lawyer. That injury lasted months. He was released after paying a deposit.
 - Shortly after his release, he met a girl named [Ms A]. Every time they went out in public, they had troubles with the Basij and police officers. They were arrested several times and taken to the police station. They were questioned about their relationship and a few times he had to go to court and defend himself and pay deposits.
 - During high school, the father of one of his classmate's was working for Sepah. His classmate had heard the applicant's conversations and reported him to his father, which caused the applicant trouble. They reported him to the court, and they charged him by sending him to a special centre for children with behavioural disorders, so that his thoughts would not affect other children in political or anti-religious ways.

- In 2009, he was involved in Mousavi's presidential campaign. Their ideas were not well received by the government, and both the Basij and Sepah punished them on the streets during protests. They also made death threats.
 - They decided to set up a silent protest on Shariati Street in Tehran, but they were tear gassed and violently kicked. Later, after a search, the applicant was arrested at his house for being involved in the Green Movement.
 - He was arrested and tortured over three days. His case was pending for over a year, after which he was sent a letter and asked to attend court. They charged him and he was required to make a deposit. But for no reason, the Basij arrested him for a week. He was tortured, offended, and raped, and forced to accept responsibility. However, he refused to take responsibility. He was charged and sent to the Supreme Court.
 - His employer [Employer 1] in Tehran found out about his situation and immediately terminated his employment.
 - Following this series of threats and intimidations to his life and liberty, he decided to travel to Australia, leaving Iran in April 2013. He had to pay a deposit to leave the country because of the troubles he experienced.
 - While he was detained in Australia, they captured his brother. He was exiled to another city and killed shortly after. His mother decided to sue the government, but they threatened to kill her other sons if she did. They told her to tell her sons to be quiet about the situation. He was confused as to how they found out he was detained in Australia, but later found out there was a spy in the detention centre.
 - He fears torture and the death penalty if he is returned to Iran. He would face a harder punishment to threaten others. He cannot obtain protection as the government are the perpetrators. The police, judiciary and revolutionary court systems are corrupt and are his enemies. He cannot relocate within the country, as the Iranian intelligence forces are throughout Iran and would easily locate him.
5. The applicant provided a further statement updating his claims in April 2020. He requests that the delegate disregard all the details provided by his previous migration agent. He claims that most parts of those statements were not his and were sent to the Department without his consent. The revised statement includes the following claims:
- He completed his compulsory military service from [year] for the period of 20 months. He spent 3 months training in Kermanshah Province and the remainder of his military service was completed in Tehran, finishing [year].
 - He grew up in an extremely religious and traditional family where he was expected to agree with their religious and traditional views. By the time he turned 18, attending Islamic rituals and duties was not important to him, for example the prohibitions on consuming alcohol. As a result, he faced problems in and outside his home.
 - In [Year 2], prior to finishing school, he was involved in a fight with a classmate in year 10. His classmate's father was powerful. While his classmate escaped with no charge, the applicant was fined and detained for three days in a children's correctional centre.
 - While undertaking his military service in Kermanshah, he was not committed to any of the religious rituals or duties. At this time, he felt he had his own view, which was different to that being taught. He did what he believed to be right rather than what he was told to follow. He faced no major problems during his military service in relation to his ideological views.

- After completing his military service, he was employed at [Employer 1]. This was the second job he found through a relative. His first job was an operator of [a] machine in a [company] from 2003 until 2005.
- His employment at [Employer 1] ended in August 2012 when he received his termination letter. While he was happy to have stable job in the government sector, he realised it came with difficulties, as he would be required to attend all religious event sand prayers, during work hours and after work.
- He did not want to attend most of the prayers and gatherings, and this was noticed by Herasat (an authority that controls political views and religious commitment of government employees)
- He had to show his loyalties toward Velayat Faghih and attend Friday prayers. If there was an anti US demonstration, they were forced to attend outside working hours. During working hours, he had to attend midday prayer, and during Ramadhan they had no right to consume water or good. He gradually began to face warnings and notices for not being a loyal citizen toward the Islamic Republic of Iran.
- Another reason that he left Iran was because of his imputed political opinion. He does not consider himself a person with strong political views or activities. He only shares his views when appropriate or during relevant conversations.
- One evening in early August 2012, he was in Chai Khaneh (where local people normally gather to meet up with friends and have tea or coffee) with his friends. They were talking about everyday life matters and how difficult it is for average people to survive. They continued to talk about political and financial matters and that the government was not acting in the interest of the people. During the conversation, two plainclothes persons began swearing at them and tried to attack them. They realised they were members of Sepah or Basij. They kicked him and called him filthy and infidel. When they realised that he had consumed alcohol, they called him names and threatened him.
- They were put in a van and driven to [a] Police Station where the interrogation started. He was questioned about his alcohol consumption. He denied doing so as he feared being lashed. He was also questioned about his conversation with his friends and he was told that he could be charged for disturbing the public order and insulting the system. He tried to explain and convince them that he was only having a conversation with his friends.
- For both reasons, they kept him there without informing his family members. He was kept in a room with 8-10 people. During the detention, they insulted and threatened to send them to prison.
- On the third day, they informed his family and told them they he could be released if his family provided a bond. It took them a few days to organise the bond. His aunt's husband, who was also working at [Employer 1] provided three payslips as a bond for his release. He was released after seven days in detention. His family was able to meet him just before his release. This incident caused his employment to be terminated and he became unemployed.
- Another reason that he left Iran was because of his beliefs. He does not believe in any religion. He only believes in God. He does not want religious matters to interfere with his life. In Iran, people who do not believe in Islam are considered an enemy of God and will be punished as a Mohareb (meaning someone who fights against God's will). Because he was born to Muslim parents, he must remain Muslim until his death.

However, he has renounced Islam and he does not follow any Islamic rules. He believes faith is a personal matter and rejecting Islam should not put anyone's life in danger.

- He is scared of being forced to return to Iran. Renouncing from Islam is a crime and is punishable by the death sentence under Sharia law in Iran.
- If returned to Iran, he will face persecution and his life will be in significant danger. He will be arrested, interrogated, tortured and may be executed because he has renounced from Islam.
- The intelligence service of Iran is strongly controlling people's lives and keeping personal information about all individuals, especially those who have sought asylum in Western countries and use it against them. During the Data Breach in February 2014, his information was available to the public and he is sure that this information was accessed by the Iranian government.
- He has a significant fear of the Islamic government of Iran and its forces like Sepah Pasdaran, Ettelaat, and particularly members of Basij. He believes that he would not be protected by anyone in Iran, especially by the authorities.
- He has come to the attention of the authorities before and he will be recognised by the airport police on his arrival. He will be considered an apostate. He will face the death penalty, or prolonged imprisonment. The sentence might reduce to prolonged imprisonment instead of a death penalty if the judge is lenient.

Factual findings

6. The applicant has consistently claimed to be an Iranian citizen of Persian ethnicity from Tehran. He has provided some documentary evidence in support of his identity, including a translation of his national identity card. I accept his identity as claimed.
7. A central issue before the delegate was the consistency and credibility of the applicant and his claims. I share many of the same concerns as the delegate. The applicant has provided what I consider to be inconsistent, contradictory and at times confused accounts of his circumstances in Iran, and the reasons for his departure from the country. The applicant's evidence has varied across his arrival interview (an issue discussed at the visa interview), his 2017 statement, his 2020 statement, the visa interview, and his post-interview submissions.
8. In the applicant's revised statement from 2020, he appears to resile from a number of his claims made in his 2017 statement. However, aspects of those claims re-emerged at the visa interview. To avoid uncertainty, I have assessed all his claims.
9. While there are aspects of his claims I do accept, I consider the applicant's claims are in the main not credible or plausible. I consider he has exaggerated his profile and past experiences. For the reasons that follow, I am not satisfied any aspect of his profile would give rise to a real chance or risk of harm for him on return to Iran.

Data breach

10. In the decision, the delegate indicated that the applicant was impacted by a data breach of Departmental systems in 2014. The delegate confirmed that basic biodata (and detention) details were briefly made public, but that the information disclosed would not have included information about his claims, or that he had made an application for a protection visa. I accept that assessment.

11. On the limited evidence before me, I accept the applicant was affected by a Departmental data breach in 2014, but I am satisfied no details of his protection claims or other related information was made available.

Experiences in his youth

12. The applicant has been broadly consistent in his evidence about an altercation with a classmate at school in [Year 2]. I accept the applicant was involved in a fight with a classmate. I consider it plausible the other classmate had an influential father and his classmate avoided punishment. I accept the applicant was punished with a three day detention at a youth correctional centre and his parents had to pay a fine/bond to secure his release. While I accept the applicant was fined and detained for three days, I am satisfied he has no adverse or other ongoing profile from this incident. To be clear, I am not satisfied he would face any chance or risk of harm in connection with this incident from his youth if he were to return to Iran.
13. The applicant has provided a translation of his completed military service card. It indicates he completed 20 months of service between [year] and [year]. That document gives no indication of any penalty or other concern with his service. I consider his period of service consistent with DFAT's advice that military service tends to range from 18 to 24 months.¹ It states his type of service was '[specified]'. I accept the applicant completed his military service through this period.
14. In his 2017 written statement it states the applicant first faced issues during his military service in [year]. It states he was watched and followed by members of the Basij. It states that he received a formal warning from the court for failing to attend religious activities, but he was let go because there was a lack of evidence.
15. In his 2020 statement, he stated that he was not committed to his religious rituals or duties during his military service, however he also states he had no major problems during his military service because of his ideological views. The applicant did not otherwise contend to have issues during his military service.
16. In the interview, the applicant again indicated he faced problems from his lack of religion since his military service. When asked for an example, he referred to the termination of his employment (which occurred in 2012) and made no specific reference to issues he faced during his military service.
17. I do not accept the claim in the 2017 statement. I note his claim in this regard is not consistent with his period of military service and does not otherwise arise in his evidence. I consider the applicant has provided no clear example of issues he faced during his military service. While I accept the applicant may not have engaged in all religious activities and responsibilities while undertaking his military service, I am satisfied his evidence in his 2020 statement is likely the truest answer and that he faced no major issues during his military service. I consider his evidence to the contrary is not credible and an exaggeration. I also consider that if the applicant had any adverse profile from his schooling or military service, this would have prevented him from obtaining public service employment later on.

¹ DFAT, 'Country Information Report – Iran', 14 April 2020, 20200414083132.

Employment

18. The applicant has been generally consistent in his employment history. In his 2020 statement, he contends that he worked for [Employer 1] from 2008 to August 2012.
19. In the visa application, the applicant provided a letter dated 22 August 2012 relating to the termination of his employment. It states this is 'due to acts of immorality and a failure to observe Islamic rituals'. It states he is unable to obtain employment with any [Employer 1 work sector] company. It states a copy is sent to Herasat.
20. I have weighed the reasons for the termination later in this decision, but on the basis of his evidence, and the supporting documentation, I accept he was employed with [Employer 1], and that his employment was terminated in August 2012.

Protests in 2009

21. In his arrival interview, the applicant made reference to attending protests in 2009 in support of Mousavi and the Green Movement (which was named after Mousavi's campaign colour).
22. In his 2017 statement with his visa application, the applicant states he was involved in Mousavi's presidential campaign. He claims they were punished and threatened on the streets by the Basij and Sepah. He claims they set up attendance at a 'silent protest' in which he was teargassed and beaten. He claims a while later he was searched and arrested for his involvement in the Green Movement. The phrasing in this statement is not entirely clear, but it appears to indicate that he was detained for three days, during which time he was tortured. He claims that after a year (which I take to be circa 2010) he was again requested to attend court. He claims he was forced to pay a deposit, however he was detained for a week by the Basij. He claims he was tortured, offended and raped, but that he refused to accept responsibility (for any charges). His matter was sent to the Supreme Court. He claims his employer found out and his employment was terminated.
23. In his revised statement from 2020, the applicant made no reference to his involvement in political activities or protests, stating that he does not consider himself a person with strong political views or activities. He claims he only shares his views when appropriate or during relevant conversations. His one reference to any remotely political activity related to a discussion at a café in 2012 (considered below), and that he feared harm on the basis of an imputed political opinion.
24. In the visa interview, the applicant again claimed to have been involved in the 2009 protests, and for the first time he contended that his brother was also present, and that they had 'a significant role' in the protests. He stated that they were involved in the organisation of the protests, and all aspects of communication regarding upcoming demonstrations. He claimed his brother was working with members of the Green Movement. He indicated that while his brother was arrested, the applicant was not arrested in connection with these protests. He claims his brother took the blame to protect him.
25. The delegate put to the applicant the inconsistency between his oral evidence and the 2017 statement regarding his own arrest. The applicant indicated this was a mistake. The delegate put to him that around 3 million people attended the 2009 protests. She asked what profile his brother had that was of such interest to the authorities. He claimed that his brother also assisted in organising and transporting people who were injured and forwarding information

that needed to be broadcast. He claimed his brother was a senior member of the Reformists. The applicant was also a member, but his brother did not allow him to participate too much.

26. When asked why he did not mention his brother's political involvement in the arrival interview, the applicant said he believed the interview was about his concerns.
27. In the 2017 application, it states the applicant left Iran in April 2013. It states that while he was in the camp (which I take to be the detention centre in Australia), the Iranian authorities could not find him so they captured his brother, who was then exiled to another city and killed shortly after that. It states he did not know how they found out he was in Australia, but it turned out there was a spy in the camp. The application also included a death certificate indicating his brother died on [Date 1] October 2013. The certificate is registered on [Date 2] October 2013. The cause of death is listed as 'unknown'. The 2017 statement does not refer to his brother's political activities or arrest, or that his brother's execution related to that profile.
28. In his revised 2020 statement, the applicant made no mention of his brother's political involvement or execution (or any protest or political activism at all, in fact the opposite). He does state the Iranian authorities acquired information about him (the applicant) through the 2014 data breach.
29. In the visa interview, the applicant said his brother was arrested in 2009 because of his political and social activities. He said his brother was released sometime in 2013, for the purpose of identifying friends and associates. He said his brother was later executed, as a result of his (the applicant's) detention in Australia. He said the authorities knew he left the country, and it was hard for him when he heard about the execution of his brother.
30. The applicant has not been consistent about his involvement in the 2009 protests. He was not consistent about the level of his involvement or political activity. He was not consistent in whether he was arrested or faced court proceedings as a result of his involvement. He was not consistent about the periods of detention, or the torture of sexual violence he experienced. He was also not consistent as to whether his brother was involved.
31. Given the large numbers of young Iranians that participated in the protests in Tehran in 2009, it is not implausible that the applicant (as a local in Tehran) could be at the protests, but I do not accept he had any active or significant role. I do not accept he was arrested, charged, raped, or tortured in its aftermath. I note the applicant was not otherwise politically active in Iran, and I consider that a further indication that he had no political profile or intentions, and if it was the case that he attended the protest, I am satisfied his attendance was limited and opportunistic, and did not give rise to any profile in its aftermath. I consider he would not face any risk or chance of harm on the basis of such a profile if he returned to Iran.
32. In terms of his brother, the applicant has provided two documents that indicate his brother died in 2013. The second document, a burial permission dated [Date 3] October 2013, confirms his brother's death on [Date 1] October 2013 and that the cause of death was 'under laboratory examination'. While I have concerns about the applicant's evidence, I accept his brother died and that the cause of death was not immediately established.
33. Beyond this, I am not satisfied and do not accept the applicant's brother was politically active or had any role of significance in the 2009 protests, or afterwards.
34. I do not consider the applicant has been consistent or credible in his evidence about his brother. The applicant made no reference to his brother's profile in his arrival interview. I have

weighed his explanation and I am conscious of the limits of this type of interview. I do not consider the omission of reference to his brother in this interview is any clear indication that this claim is not genuine. However, his later evidence raises further concerns.

35. While the applicant indicated his brother was executed in connection with his own (the applicant's) departure from the country in the 2017 statement, he gave no indication that his brother had his own political or other profile or that he was executed because of that profile. I am conscious that he sought to distance himself from that statement. I note his 2020 statement makes no reference to his brother having any political involvement, or that he was detained or executed because of his political profile.
36. The applicant made no reference to his brother's political activism, apostasy, arrest or detention, until the 2021 interview. His evidence in regard to his brother's activism in the visa interview was adequate, suggesting he had involvement in arranging groups, organising medical treatment, and communication of information. However, even in terms of his own claims it was not consistent. The applicant previously indicated he had been arrested during the protests, but at the visa interview, he stated that he had not been arrested, and that it was his brother who was arrested. I consider that a clear contradiction.
37. I consider his failure to mention his brother's political profile in his earlier statements is critical. Had his brother had a significant role in the 2009 protests, and this resulted in his detention and subsequent execution in October 2013, I consider that would have been at the forefront of his evidence in either his 2017 or 2020 statements.
38. I have weighed the translated letter from his mother. It is broadly consistent, but limited in its detail and content. I note it also appears to indicate that the applicant's employment was terminated subsequent to his brother's death. This is at odds with the applicant's evidence. I have weighed this letter, but I consider what limited corroboration it does provide does not overcome my many concerns with the applicant's evidence across time regarding his brother.
39. Beyond records of his death, he has not provided any formal documentary evidence of his brother's political involvement, detention, court proceedings, apostasy or other evidence related to his execution. I have weighed the submissions and supporting information and I accept that there may be barriers to obtaining such documentation, particularly if the charges related to sensitive matters. I also consider it plausible, in a general sense, that the Iranian authorities may threaten persons not to make complaints. However, I also consider it was his evidence his brother had been detained for three years, released and then detained again, exiled and executed. In that three or four year period, I consider there would have been proceedings and hearings, detention or release documentation, petitions or legal advice relating to these matters outside the scope of the execution itself. While I accept there could be limits to what could be obtained from the authorities, I consider the applicant or his family would have been able to provide at least some formal evidence of his brother's arrest and extended detention by the authorities, beyond the death and burial certificates.
40. I have weighed all the evidence before me. I accept his brother died in 2013 and this had a significant impact on the applicant. However, I do not consider the applicant has been credible or consistent in terms of his evidence regarding his brother's profile, including as it relates to his own profile. I am not satisfied the applicant's brother had a political or other adverse profile (linked to the 2009 protests, apostasy, or otherwise) or that he was executed because of that profile, or any other reason claimed by the applicant. I also do not accept his family faced any threat or harm in connection with his brother's profile or death.

Relationship with girlfriend

41. In his arrival interview, the applicant stated that another reason that he left Iran was that he could not be comfortable with his girlfriend as it was not safe. In his 2017 statement, the applicant again contended that he had a girlfriend ([Ms A]). He claimed that every time they went out in public, they had troubles with the Basij and police. He claims they were arrested several times and he had to go to court and defend himself and pay a deposit.
42. In his 2020 statement and later evidence, the applicant made no express mention of his girlfriend, nor did he make reference to trouble with the police or Basij, or any court attendances related to their relationship.
43. I am prepared to accept that the applicant had a girlfriend in Iran. Based on the country advice, I accept that their relationship may not have been unfettered due to the restrictions on unmarried couples having close contact in Iran. Equally, I note the country advice indicates the situation in Tehran is far more tolerant of such relationships.² I do not consider his claims of routine harassment and court appearances to be consistent with that country advice.
44. There is nothing implausible about the applicant having a girlfriend in Iran. However, given the omission of the specifics of this claim from his later evidence, and its inconsistency with the country advice, I consider this is an exaggeration of his circumstances in Iran. Were his contentions in this regard credible, I consider they would have featured in his later evidence. I am not satisfied and do not accept that the applicant and his girlfriend faced trouble with the police or Basij, that they were arrested several times, or that he was forced to attend court in connection with their relationship or pay deposits.

Religious profile and employment

45. The applicant has consistently advanced evidence that he does not practice or believe in religion, including in the arrival interview. On the basis of this consistent evidence, I accept that since about the time of his military service he has not engaged with his religion, albeit I give weight to the fact that this did not cause him any major issues, at least prior to the period of his public sector employment.
46. In the arrival interview, the applicant stated that he only believes in God, and that he does not believe in any sort of religion. In his 2020 statement, the applicant again said he does not believe in religion, but he does believe in God. I have some concerns about the extent of his religious profile beyond his lack of participation.
47. Having not accepted he faced any issues during his military service, it appears the applicant's first issues with his lack of religious engagement arose during his employment with [Employer 1]. The applicant indicates in his 2020 statement that his employment required a higher level of religious participation and pro-regime support, and that he received warnings and notices before an incident in 2012 resulted in his termination. He also referred to these obligations at the visa interview as well. I accept that his employment in the public service came with additional responsibilities in terms of his behaviour and engagement with religion and politics, including oversight by *Herasat*.³ Given that I accept that he has not engaged with his religion

² DFAT, 'Country Information Report – Iran', 14 April 2020, 20200414083132.

³ United States Department of State, 'International Religious Freedom Report for 2020 - Iran', 12 May 2021, 20210513092814; ACCORD, 'Iran - COI Compilation', July 2018, 20190326122102.

since his military service, I consider it plausible and accept that he received warnings from his employer or related officials for these reasons.

48. In the visa interview, the applicant was questioned for the first time about his overseas travel prior to coming to Australia. The applicant had indicated in his visa application that he travelled to [country] for around a week in September 2011. At the interview, he claimed that he holidayed there for visiting and entertainment, but it was not considered acceptable to his department. I accept this occurred and that it appears to have been a further fissure in his relationship with his employer.

Incident in 2012

49. The applicant has been broadly consistent in his claim that in August 2012, he was meeting with friends at a café. He claims they were talking about political and financial issues when they were confronted by officials in plainclothes. He has consistently referred to being detained for seven days before his family paid a deposit to secure his release. The applicant has consistently claimed that he lost his employment because of this incident. A copy of the letter of termination is on file. As noted above, it is dated 22 August 2012 relating to the termination of his employment. It states this is 'due to acts of immorality and a failure to observe Islamic rituals'. It states he is unable to obtain employment with any [work sector] company. It states a copy has been sent to Herasat.
50. Based on the applicant's oral and written evidence, I accept he was detained in 2012 while at a café with friends. I accept he was detained for seven days before his parents paid to secure his release. I note country advice provides some corroboration of situations where government workers can face penalty or be fired/barred from work in the public sector.⁴ In that context, and given his issues at work, I accept that this incident resulted in his final termination from [Employer 1] and prevented him from securing employment in that type of public service work.
51. I do not consider all aspects of his claims in this regard to be credible. My first concern relates to the applicant's evidence regarding the treatment he experienced in detention after the 2012 incident, and what occurred in the aftermath of his release.
52. In his arrival interview, he claimed he was released without charge, but also appeared to indicate that in April/May 2012 he was due to attend court. I am again conscious of the limits of the arrival interview, but I do note the inconsistency in his evidence. In his 2017 statement, he claimed he was tortured every day during his detention. In his 2020 statement, he claims he denied drinking alcohol as he feared being lashed. He makes no reference to being tortured, but he claims they were threatened with prison while in detention. Other than the loss of his employment, he gave no indication that he continued to face any ongoing charges from the authorities.
53. In the visa interview, he contended that he was detained and tortured (lashed on his feet and then forced to run). He claimed he was asked questions about the names of members of the Reformist group, but he did not have any information. He claimed he secured his release through his maternal aunt's husband's payslips. He claimed he was charged. He claimed he was due to attend court, but his lawyer told him to leave the country as soon as possible. He claimed he was issued a summons, but it was not given to his family. He claimed he received threatening phone calls prior to leaving the country, and there was lots of pressure on him and

⁴ United States Department of State, 'International Religious Freedom Report for 2020 - Iran', 12 May 2021, 20210513092814.

his family. He claimed the threats were made by Iranian intelligence. However, when asked, he could not remember what the threats were.

54. In the post interview submission, he contended that the summons was issued after he left Iran, and that is why he faced no travel restriction when he left the country.
55. I do not consider the applicant has provided a consistent or credible account of the aftermath of his arrest and detention from the incident in 2012, whether in terms of the treatment he experienced in detention or whether charges were pending. I also found the applicant's evidence at the interview was unpersuasive. He could not remember what threats Iranian intelligence made to him. He could not explain what the charges were or why they would lead to his own execution. He was not able to explain how he was able to leave the country if he was being investigated or charged by Iranian intelligence.
56. Secondly, I do not consider his claims to have faced ongoing issues are credible when viewed against the country information regarding political criticism and alcohol use in Iran.
57. At the interview, the applicant described in general terms what they discussed at the café, stating they were discussing social and political views, and the need to be heard. They discussed the limits on talking about politics and the need to do compulsory prayer and the fact that they had no right to express their views. In his 2020 statement, he said they were discussing political and financial matters, and the government was not acting in the interest of the people. His 2017 statement and arrival evidence was generally consistent with this.
58. I considered the applicant's evidence of what they discussed at the café to be credible, but also general and low level. Country information before me indicates that Iranians are able to criticise the government of the day robustly, both in public conversation and online in social media. DFAT does indicate that this freedom is not unlimited — a number of well-established 'red line' topics (for example insulting the Supreme Leader) are off-limits and critical commentary may lead to prosecution under national security legislation.⁵ DFAT does not provide further examples of these red-line topics, but I do not consider any aspect of his evidence indicates he or his friends obviously transgressed any red lines.
59. I also do not consider the applicant's alcohol consumption was at a level that would have resulted in subsequent charges. DFAT indicates that while alcohol is forbidden and punishable by lashes, prosecutions for alcohol consumption are not common. DFAT understands that police do not actively investigate or seek to entrap individuals consuming alcohol in their own homes, and will generally act only if the activity comes to public attention or if specifically instructed to do so. Payment of bribes is common. Where enforced, the punishment for alcohol consumption is normally a fine, usually paid on the spot. Floggings may be imposed periodically, but cases are rare. NGOs working in the health sector report that the government has changed its approach to the use of alcohol in recent years from a purely law and order focus to one emphasising treatment and rehabilitation.⁶
60. It is not implausible that his political and religious discussion with friends at the café, together with his suspected alcohol consumption, could have led to his arrest, detention, and a fine/deposit. It is also not implausible that this could lead to him losing his employment, particularly if in the context of other infractions. However, I do not consider either factor would have resulted in ongoing charges as he contends, or that he was at risk of detention, torture, or execution as a result. Having rejected that he and his brother have any adverse or

⁵ DFAT, 'Country Information Report – Iran', 14 April 2020, 20200414083132.

⁶ DFAT, 'Country Information Report – Iran', 14 April 2020, 20200414083132.

political profile, I also do not consider this was a factor in his arrest, his subsequent treatment, or any further charges.

61. I again consider the applicant's evidence is not credible and at best an exaggeration of what occurred. As above, I do accept the 2012 incident occurred. I consider it was likely a combination of his suspected alcohol consumption and the topics they were discussing at the café that lead to his arrest. However, beyond a period of detention and a payment to secure his release, I am not satisfied he was tortured or lashed. I do not accept he faced any further charge or threat following his release, or that any summons was later issued. I accept he lost his job as a consequence, but I find he and his family faced no further consequence from the 2012 incident. I consider every other aspect of his claims in this regard are not credible and are exaggerations. I find the applicant left Iran in 2013 on his own passport, and that he was facing no pending charges and had no adverse profile when he departed. While I accept he was penalised, I am not satisfied he was considered 'mohareb' or 'mortdad' by local Basij, Sepah or Herasat. In this regard, beyond his detention in 2012 and termination of his employment, I am not satisfied he had any further issues with local authorities or Iranian intelligence in the several months leading up to his departure, relating to his lack of religious engagement, or any other aspect of his profile.
62. Lastly, as I do not accept the applicant left Iran with any adverse profile, it follows that I am also not satisfied and do not accept his brother was killed because the applicant left Iran, evaded charges, or sought asylum in Australia. I also do not accept his family has faced any threat, interference or harm in terms of the applicant's claimed profile, or for any other reason.

Political profile

63. At the visa interview, the applicant said his political views put him in danger. He believes in unity, freedom of religion and freedom of speech. I accept this likely reflects the spectrum of his political views, and the topics he and his friends were discussing in 2012. I find his political views are progressive, but moderate. I do not consider he is anti-regime or anti-government, nor do I consider he has spoken against the Iranian leader.
64. I do not consider his political views cross any obvious 'red-lines', but in any event I consider a more critical question is how he would represent those views. Having rejected his claims to have been politically active, I consider the applicant's 2020 statement likely reflects the truth of his political profile – i.e. that he does not consider himself a person with strong political views or activities, and that he only shares his views when appropriate or during relevant conversations. I accept this and consider it would be the extent of his political profile on return. I am satisfied he would not be politically active or outspoken on return to Iran, beyond discussions in public and private, and that his would not involve 'strong political views'.
65. I accept he may continue to drink alcohol, but I also note it is quite clear from his oral evidence that he did not drink alcohol in the café that evening (having drunk beforehand), and that the plainclothes officers detected it on him. In this sense, I consider he was very unlucky, with a conflation of unlikely circumstances leading to his arrest. Based on his evidence, I am not satisfied the applicant drinks alcohol in public, or that he would do so on return to Iran. In terms of both politics and his alcohol consumption, I am not satisfied this would involve any modification of his behaviour, but would reflect his personal approach to both politics and alcohol consumption.

Religious profile

66. In terms of his religious profile, I have accepted he does not practise or engage with religion. However, for the reasons that follow, I am not satisfied and do not accept he has renounced Islam or that he would be considered an atheist or apostate, or that he would be outspoken about his non-religious profile.
67. At the visa interview, the applicant raised for the first time a contention that he had burned a copy of the Quran. He stated that he did this in public before a group consisting of his family, his friends, and some strangers. When asked why he did it, knowing the consequences, he said he had no option, he was forced to do so, and he had been put in a difficult position. He did it to show his dissatisfaction with the authorities. He confirmed it occurred before the arrest.
68. The applicant had never previously raised this claim. When asked why he had not, the applicant said he did not know he had to go through the 'small details'. When the delegate put to him that this would be more significant than his claims related to alcohol, the applicant stated that he mentioned that because it was in the context of his arrest and detention.
69. I consider this claim lacks credibility. While I accept he did not engage with religion, I consider burning the Quran would have been a dangerous act of blasphemy at odds with his previous behaviour. I consider it occurred ahead of his arrest, and even if it is accepted that his brother was detained at the time (and it is not) there was no clear catalyst for it given the incident at the café had not occurred. I also do not accept this was a small detail. If true, I consider the applicant would have raised this claim far earlier. I find the claim is not credible. I reject the applicant's claim that he burned the Quran or otherwise engaged in active ways against Islam.
70. The applicant also contends that his family is very religious and traditional, but I note he continued to live with them until he departed Iran, including after his military service (when he first claimed to have stopped engaging with religion) and after 2012 (when his employment was terminated due to the café incident). Had the applicant renounced Islam as he contends, and his family was as traditional as he contends, I do not accept his family would have tolerated his actions and continued to let him live in their home. I note DFAT refers to the risk of ostracism for atheists living in conservative families.⁷ I accept they may have preferred him to practice Islam, and even have pressured him at times, but I consider it far more likely that his family accepts or at least tolerates his lack of engagement with religion. I also consider this an indication that he has not renounced Islam or claimed to be an atheist.
71. I accept the applicant may not practise his religion. The evidence before me is that this is increasingly common in Iran, particularly in Tehran. However, I am not satisfied the applicant has taken any active steps to renounce Islam, or that he is considered an atheist or an apostate. I give weight to the fact that in both the arrival interview and his 2020 statement the applicant clearly indicated he still believes in God. I consider the weight of evidence before me indicates that the applicant is irreligious, but also that he continues to believe in God. I consider he has sought to exaggerate the extent of his religious (or non-religious) profile to suggest he has a higher risk profile on return to Iran than is in fact the case.

Refugee assessment

72. 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-

⁷ DFAT, 'Country Information Report – Iran', 14 April 2020, 20200414083132.

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

73. 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.

Political profile

74. I have found the applicant’s political opinions are progressive, but moderate, and I am satisfied he would not be politically active on return to Iran. I have accepted he may have been present for the 2009 protests, but I have found any attendance by him was opportunistic and did not continue after the protests. I find he was not politically active beyond this attendance. I do not consider he had any political profile in the aftermath of 2009 and note in any event that DFAT indicates persons who merely participated in the protests are highly unlikely to face interest from the authorities.⁸

75. I again consider his statement from 2020 more accurately reflects the reality of his limited political profile and opinions. I do not consider he would engage in protests or be politically outspoken on return to Iran. However, I do accept that he would from time to time speak about his moderate political views in person and in private.

76. As noted above, DFAT states that Iranians are able to criticise the government of the day robustly, both in public conversations and online in social media, so long as they do not cross the well-understood ‘red lines’. Local sources told DFAT that it is common for Iranians to be critical of the government in public places, including supermarkets, shopping malls and taxis. However, people remain cautious about crossing well-understood ‘red lines’, like insulting the Supreme Leader, in their public interactions beyond close family and friends.⁹

77. While I accept there are credible risks for political activists in Iran, and those strongly critical of the regime and Iranian leader,¹⁰ I am not satisfied this is a profile held by the applicant, or a

⁸ DFAT, 'Country Information Report – Iran', 14 April 2020, 20200414083132.

⁹ DFAT, 'Country Information Report – Iran', 14 April 2020, 20200414083132.

¹⁰ DFAT, 'Country Information Report – Iran', 14 April 2020, 20200414083132; Landinfo and Danish Immigration Service, 'Iran: On Conversion to Christianity, Issues concerning Kurds and Post-2009 Election Protestors as well as Legal Issues and

profile that would be imputed to him. I consider the applicant's political profile is entirely consistent with the attitudes and behaviour of other ordinary Iranians. Based on the advice before me, I find the applicant would not face a real chance of harm on the basis of his limited political profile, opinions, and activity, or any imputed profile, if he were to return to Iran, now or in the reasonably foreseeable future.

Religious profile

78. I have found the applicant is non-religious, but I have not accepted he has renounced Islam or is an atheist. I have not accepted he is politically active or outspoken, and I consider that would be true in the context of his religious (or non-religious) profile.
79. The country advice before me refers in some detail to the significance of religion in Iran. While the country is in many respects a theocracy, secularism is widespread, particularly in the major cities and among young and wealthier Iranians. Mosque attendance is not monitored by the state, and many Iranians do not attend mosque regularly.¹¹ One report suggests more than half of young Iranians consider themselves agnostic, a group that is often cynical about religion.¹² Another report indicates that a significant number of young Iranians do not consider themselves to be Muslim.¹³
80. According to DFAT, religion in Iran is considered a private matter. Beyond the expectation that people do not eat in public or hold parties during the holy Muslim month of Ramadan, how a person wishes to observe Islam is an individual choice and is not a matter for the state. DFAT reports that many Iranians do not observe Ramadan strictly, including by eating, drinking liquids, and smoking at home. Most restaurants are closed during Ramadan, although many (especially in Tehran) reportedly serve food discreetly. Those caught eating in public during Ramadan do run the risk of arrest and prosecution.¹⁴
81. DFAT states that a Muslim who renounces Islam and becomes atheist is considered an apostate and risks state persecution and, potentially, the death penalty. DFAT states that it is unable to verify what proportion of the population is atheist. According to local sources, atheists are discreet about their non-belief beyond their close family and friends. Unless they widely publicise their non-belief, atheists are unlikely to come to the attention of the authorities. Atheists from conservative families might face familial pressure and potential ostracism if their atheism were revealed but would generally not be subjected to physical harm. Local sources told DFAT that atheists from more liberal families and parts of the country, like north Tehran, would face no such pressure. DFAT is unaware of individuals being prosecuted for atheism.¹⁵
82. DFAT assesses that non-practising Iranian Muslims face a low risk of official and societal discrimination, particularly in the major cities. DFAT assesses that atheists who are open about

Exit Procedures', Danish Refugee Council, 1 February 2013, CIS25114; Amnesty International, 'Amnesty International Report 2020/21: The State of the World's Human Rights', 6 April 2021, 20210407093348.

¹¹ DFAT, 'Country Information Report – Iran', 14 April 2020, 20200414083132; Danish Immigration Service 'Update on the Situation for Christian Converts in Iran', 1 June 2014, CIS28931; The Economist, 'Religion: Take it or leave it', 1 November 2014, CX1B9ECAB7499; ACCORD, 'Iran - COI Compilation', July 2018, 20190326122102.

¹² Jehangir Pocha, 'Iran's Other Religion', Boston Review, 01 June 2003, CX82EDE9415499.

¹³ ACCORD, 'Iran - COI Compilation', July 2018, 20190326122102.

¹⁴ DFAT, 'Country Information Report – Iran', 14 April 2020, 20200414083132; ACCORD, 'Iran - COI Compilation', July 2018, 20190326122102.

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

their non-belief face a moderate level of official and societal discrimination.¹⁶ That analysis is consistent with other country information before me.

83. In the assessment above, I have accepted the applicant is not religious and does not engage with religious activities, however I am not satisfied he has actively rejected or renounced Islam or that he considers himself an apostate or an atheist. I again give weight to the applicant's evidence that he believes in God.
84. I find that secularism is common and widespread among young Iranians. I accept the applicant would not practice Islam on return to Iran. I am satisfied this was the case when he left the country. Other than the 2012 incident, and the termination of his employment, I give weight to the fact that he faced no other issues in a long history of being non-religious.
85. Given he would not practice or engage with religion, I accept the DFAT advice and find that he would face a low risk of official or societal discrimination for these reasons. DFAT does not expand on the type of discrimination faced by persons with this profile, but based on its broader general definitions (e.g. difficulties registering papers, refusal to rent properties, etc.) I consider the impact would be low level. I give weight to the fact that the applicant would return to Tehran, where this profile is more common. While I accept it is possible that he may experience discrimination or other interference that may inconvenience him, I find it would be low level and would not constitute harm, let alone serious harm. Even if I am wrong and he was assessed or imputed to be an atheist, I consider at most he would face a higher chance of official and societal discrimination, which I also consider would not constitute harm or serious harm.
86. As I am not satisfied he has actively or expressly rejected or renounced Islam, I am not satisfied the applicant is at any real chance or risk of punishment for religious based charges, such as apostasy or blasphemy, which I note in any event are rare and typically relate to persons who insult the regime or religious values. In this regard, I do not consider he has been outspoken about his lack of religion in the past, nor do I consider he would do so in the future. I have rejected his claim to have burned the Quran or engaged in other such behaviour. I also note he has not converted to another religion. Based on his limited profile, I find he would not face any real chance of being assessed as an apostate or charged with blasphemy, or that he would face any real chance of harm for these reasons.
87. In full view of the information and advice before me, I find there is not a real chance of the applicant facing harm or serious harm for reasons related to his religious (non-religious) profile, or as a person with no religion who does not practise Islam, whether from the state authorities, morality or intelligence forces, or any other person or group, now or in the reasonably foreseeable future.

Societal profile (relationships, alcohol consumption)

88. I accept the applicant may have had a girlfriend in Iran. While close contact between unmarried men and women is prohibited in Iran, the authorities generally tolerate unmarried couples being together in public, particularly in the major cities. According to DFAT, unmarried couples appearing together in public in Tehran does not meet societal resistance.

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

89. DFAT states that in the event of arrest, an unmarried couple would be taken to the nearest police station and their parents or guardians summoned. Typically, the unmarried couple would sign a written statement and then be released. A fine may be imposed occasionally.¹⁷
90. As referred above, alcohol is forbidden in Iran, with a penalty of 80 lashes for consumption. Despite the prohibition, alcohol is readily available and prosecutions for alcohol consumption are not common. DFAT reports that police do not actively investigate or seek to entrap individuals consuming alcohol in their own homes and will generally act only if the activity comes to public attention or if specifically instructed to do so. Payment of bribes is common.¹⁸
91. I consider the applicant is one of many secular young Iranians living in Tehran. I have found the applicant may continue to consume alcohol, however I also find that he has not and would not consume alcohol in public. I accept he may seek to have a girlfriend again or have relationships outside of marriage.
92. I accept DFAT and other advice before me indicates that there are prohibitions on such relationships and alcohol consumption, but I consider the reality on the ground is far different. Given his pattern of alcohol consumption, I am not satisfied there is any real chance of the applicant facing harm on the basis of his limited alcohol consumption, which I am satisfied has not been public in the past, and would not be public in the future. While I accept that he was detained in the past, in part as a consequence of his alcohol consumption, I again consider those circumstances were very unlucky and unlikely to arise again. As I do not accept that he would drink in public again, I find there is not a real chance of the applicant being arrested or detained on this basis again, whether separately or in connection with any political or other discussions in public with friends.
93. In terms of relationships, I consider the applicant would be far more public, but in the context of Tehran, I consider the chance of the applicant (or his partner) facing any official penalty or societal reaction is low level, and not a real chance. Even in the unlikely event that this did occur, I consider the consequences, being attendance at the police station, the involvement of parents, written statements, and occasional fines, would be low level, and would not constitute serious harm. But again, in the context of Tehran, I am satisfied there is no real chance of the applicant facing such interference or penalty, or any other harm, whether now or in the reasonably foreseeable future.

Cumulative profile

94. I have accepted that the applicant was terminated from his employment with [Employer 1]. I do not consider this was due to any individual aspect of his profile. I consider his termination was a consequence of his cumulative profile over time; as a person who did not meet his religious and other obligations at work, who travelled overseas and had a girlfriend, who discussed politics in public, and consumed alcohol. Within the broader Iranian society, particularly within Tehran, I consider that profile was unremarkable. However, I also accept that it was significant enough for the applicant to lose his public sector employment.
95. I accept that the termination from his job had a significant impact on the applicant, but I also consider it reasonable that the public sector would have higher expectations of its employees. I consider that is likely the case in most countries. While I accept this cumulative profile led to him losing his public sector employment, I do not consider it constituted serious harm. On his

¹⁷ DFAT, 'Country Information Report – Iran', 14 April 2020, 20200414083132.

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

release from detention, he did not face any further harm or charge. He was not denied a passport or the freedom to travel, or the capacity to find other employment.

96. In the assessment above, I have found that each aspect of his religious, political and societal profile would not give rise to a real chance of serious harm, albeit I have accepted those factors may give rise to some degree of official or societal discrimination or other interference/consequences or barriers that would not constitute serious harm. I also consider that is the case with his cumulative profile. While I accept that profile has ultimately denied him the ability to continue his career in the public sector, I am not satisfied that profile would prevent him from finding work, accessing accommodation or services, accessing documents, travelling or finding a relationship. I accept his life will not be free of interference from the regime or the security forces, and this may cause him frustration, but I am not satisfied that it would threaten his capacity to subsist and earn a livelihood, or that it would otherwise constitute or amount to serious harm, including in a cumulative sense. For clarity, I find the applicant would not face a real chance of harm or serious harm on the basis of his cumulative profile.

Departure from Iran and claims for asylum

97. I accept the applicant left Iran on a valid passport. I have found he had no adverse profile when he left Iran, and that he did so legally. It is not clear to me whether the Iranian authorities accessed the information from the 2014 data breach but given his time in Australia and lack of a passport, I am satisfied the Iranian authorities would determine that he sought asylum in Australia. I have no reason to consider any aspect of his claims or profile could have been accessed by the Iranian authorities.
98. The risks on return to Iran appear to be limited, but I accept there may be risks for those who had an adverse profile when they left Iran, or have been critical of the regime while overseas. The most recent advice from DFAT is that the Iranian authorities pay little attention to failed asylum seekers. DFAT assesses that, unless a person was the subject of adverse official attention prior to departing Iran (e.g. 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.¹⁹ I am satisfied the applicant had and has no profile of consequence.
99. The available reporting indicates that Iran has historically refused to issue travel documents to allow the involuntary return of its citizens from abroad. Under a Memorandum of Understanding signed in 2018, Iran has agreed to facilitate the return of Iranians who arrived after 19 March 2018 and who have exhausted all legal and administrative avenues to regularise their immigration status in Australia.²⁰ The applicant arrived in Australia well before 2018. The applicant has claimed he fears being forced to return to Iran. If the authorities were to facilitate his return to Iran, I am satisfied it could only be on a voluntary basis. The International Organisation for Migration (IOM) runs a program to assist voluntary returnees to Iran, and the Iranian authorities cooperate with the IOM in this regard.²¹

¹⁹ DFAT, 'Country Information Report – Iran', 14 April 2020, 20200414083132; Landinfo and Danish Immigration Service, 'Iran: On Conversion to Christianity, Issues concerning Kurds and Post-2009 Election Protestors as well as Legal Issues and Exit Procedures', Danish Refugee Council, 1 February 2013, CIS25114; Amnesty International 'We are ordered to crush you' Expanding Repression of Dissent in Iran', Amnesty International, 1 February 2012, CIS22610; 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.

²⁰ DFAT, 'Country Information Report – Iran', 14 April 2020, 20200414083132.

²¹ DFAT, 'Country Information Report – Iran', 14 April 2020, 20200414083132.

100. According to DFAT, millions of Iranians travel in and out of Iran each year without difficulty. Those who return on a laissez-passer are questioned by the Immigration Police at Imam Khomeini International Airport about the circumstances of their departure and why they are traveling on a laissez-passer. The questioning usually takes between 30 minutes and an 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.²²
101. I have not accepted the applicant has any adverse profile or that he has any charges outstanding. It is quite possible the officials may know or be able to determine his history in Iran. I am not satisfied any aspect of that limited profile would be of interest to the Iranian authorities on his return. Given his limited profile, I am satisfied he would not face a real chance of harm on his return to Iran, whether on the basis of his profile as a failed asylum seeker, or any aspect of his profile, if he were to return to Iran. I am satisfied he would not face monitoring, mistreatment, or other forms of official discrimination. I note he has some identity documents which would assist in substantiating his identity. Given the information before me, I find any questioning or processing he may face would not be protracted and would not constitute serious harm.
102. In view of all the information and advice before me, I find there is not a real chance of the applicant facing serious harm for these reasons, if he were to return to Iran, now or in the reasonably foreseeable future.

Refugee: conclusion

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

Complementary protection assessment

104. 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

105. 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.

²² DFAT, 'Country Information Report – Iran', 14 April 2020, 20200414083132.

106. 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.
107. I have accepted the applicant may face some discrimination and interference/barriers in Iran on the basis of his cumulative (political, non-religious, societal) profile. Having regard to the same analysis and information, in terms of any discrimination he might experience on return to Iran, while I accept it may be frustrating, I again consider it would be low level, and would not prevent him from finding work (outside of the public sector), accommodation, travelling, or accessing services or documentation. I have found that he would not face a real chance of harm if he were to be seen in public with an unmarried woman, but that in any event, the consequences or penalties of any such relationship would be low level, and would not constitute serious harm. I have also found that any questioning or processing he may experience on his return to Iran would not amount to serious harm. Looking to all the circumstances above, I am also satisfied any discrimination, interference/barriers, penalties, questioning or processing he may face on return to Iran for these reasons would not amount to significant harm as defined.
108. I have rejected the applicant's claims to be at a real chance of harm on the basis of his political, non-religious and societal profile. In the context of complementary protection, for the same reasons, I am not satisfied there is a real chance or risk of the applicant facing torture, indefinite detention, or the death penalty, or any other significant harm for the reasons he has claimed. In relation to his claimed profile more broadly, I have found there is not a real chance of the applicant facing harm for any of the reasons he has claimed. Having regard to the evidence and assessment above, I am also satisfied the applicant will not face a real risk of significant harm for any of these reasons.

Complementary protection: conclusion

109. There are not substantial grounds for believing that, as a necessary and foreseeable consequence of being returned from Australia to a receiving country, there is a real risk that the applicant will suffer significant harm. The applicant does not meet s.36(2)(aa).

Decision

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

Applicable law

Migration Act 1958

5 (1) Interpretation

In this Act, unless the contrary intention appears:

...

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

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

...

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

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

but does not include an act or omission:

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

...

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

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

...

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

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

...

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

- (a) for the purpose of obtaining from the person or from a third person information or a confession; or
- (b) for the purpose of punishing the person for an act which that person or a third person has committed or is suspected of having committed; or
- (c) for the purpose of intimidating or coercing the person or a third person; or
- (d) for a purpose related to a purpose mentioned in paragraph (a), (b) or (c); or
- (e) for any reason based on discrimination that is inconsistent with the Articles of the Covenant;

but does not include an act or omission arising only from, inherent in or incidental to, lawful sanctions that are not inconsistent with the Articles of the Covenant.

...

5H Meaning of refugee

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

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

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

...

5J Meaning of well-founded fear of persecution

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

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

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

5K Membership of a particular social group consisting of family

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

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

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

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

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

5L Membership of a particular social group other than family

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

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

5LA Effective protection measures

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

...

36 Protection visas – criteria provided for by this Act

...

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

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

...

Protection obligations

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

Determining nationality

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