



**Australian Government**  

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**Immigration Assessment Authority**

**Decision and Reasons**

**Referred application**

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IRAN

IAA reference: IAA21/10014

Date and time of decision: 1 December 2021 08:33:00

J Jennings, Reviewer

**Decision**

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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

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### Visa application

1. The referred applicant (the applicant) claims to be a citizen of Iran. He fears harm in Iran as a member of the minority Sunni group. He applied for a protection visa on 1 June 2017. A delegate of the Minister for Immigration refused to grant the visa on 30 September 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. On 27 October 2021 the IAA received a submission on behalf of the applicant comprising a statement from his representative and a range of country information reports.
4. The submission stated, "Attached to the submission are letters of reference from his mosque outlining the Applicant's religious beliefs." No such letters were included with this submission although a letter from the [Organisation 1] confirming his mosque attendance in Australia was provided to the delegate as part of post-interview submissions.
5. The representative's submission stated it would reiterate the applicant's claims for protection and stated the view that they satisfy Australia's protection obligations. I have had regard to these comments. The submission also stated it would "raise concerns as to the findings made by the delegate in the decision record", but there are no such apparent concerns discussed in the submission.
6. While the submission does restate some claims and put argument as to why there is a real chance of serious harm or a real risk of significant harm to the applicant in Iran the submission is largely a discussion of country information sourced from the accompanying reports. This country information was not before the delegate and is new information. The submission proposed that "generally, because the statement of claims outlines what has occurred for the Applicant personally, country information would not be provided. Therefore, most of the preceding information will be considered to be new information. We submit that this information is crucial to the Applicant's case as it emphasises the circumstances that the Applicant has faced in Australia."
7. The IAA must not consider any new information from an applicant unless satisfied there are exceptional circumstances to justify considering the new information and the new information was not and could not have been provided to the Minister or is credible personal information which was not previously known and had it been known may have affected the consideration of the applicant's claims.
8. The country information pre-dates the delegate's decision and I am not satisfied it could not have been provided earlier, as the IAA submission suggests. The applicant was advised at the protection visa interview that it was his responsibility to provide any information he wished to be considered and that if his application was refused he may not have a further opportunity to do so. It is not personal information. I am not satisfied that any exceptional circumstances exist that justify the IAA considering the new information.
9. While I have found the new information does not satisfy the requirements of s.473DD I am concerned that the information before me reporting on the treatment of the minority Sunni

group in Iran is limited to the Department of Foreign Affairs and Trade (DFAT) reports. Accordingly I have obtained new information from United States Department of State and the Middle East Institute.<sup>1</sup> This is publicly available general information which is relevant to assessing the applicant's fear of harm as a member of the minority Sunni group in Iran. I am satisfied that there are exceptional circumstances to justify considering this new information.

### **Applicant's claims for protection**

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10. The applicant's SHEV application form indicated he would lodge a statement of claims later; no further statement was received. In a pre-interview submission dated 15 June 2021 the applicant's representative referred to a statement of claim made by applicant on 25 March 2013. It was clarified at the protection visa interview that this reference is to the statement made by the applicant as part of his application [in Detention centre] for Refugee Status Determination (RSD). His claims can be summarised as follows:

- The applicant is a citizen of Iran.
- The applicant is a Sunni Muslim.
- Sunnis are a minority in Shia dominated Iran. After the 1979 revolution the applicant's family started to experience problems because of their religion. Sunnis face difficulties being accepted into university, getting government jobs and are subject to abuse and persecution.
- An example of the religious harassment they have faced was the attempt by unknown people to implicate his father in possessing illicit drugs.
- The applicant's brother was abused while doing his military service and the applicant believes he was killed during his service because of his religion. The applicant was also abused and mistreated during his military service because he is Sunni.
- As a Sunni the applicant found it difficult to obtain employment; workplaces expect employees to attend Shia prayers and engage in other Shia rites. In his employment the applicant has been mistreated and discriminated against because he is Sunni. He has been repeatedly sacked from positions because he is Sunni.
- When he returned to Iran from work in [Country 1] he was questioned by officials at the border about his activities.
- After an incident at one workplace he was interviewed by the Ettela'at. He was detained for three days and physically mistreated.
- The applicant and his family were monitored by the authorities.
- [In] July 2012 Ettela'at officers came to the family home and conducted a search and took some of his notes and Sunni religious books. He believes they were interested in him because of his previous work in the oil industry in [City] which has a lot of Sunni people and is near [Country 2].
- The applicant decided to leave Iran and departed later in July 2012.
- In Australia the applicant has attended Sunni mosques and has provided a letter from the [Organisation 1] confirming his attendance.

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<sup>1</sup> United States Department of State, "International Religious Freedom Report for 2020 – Iran", 12 May 2021; Middle East Institute, "Iran's Uneasy Relationship with its Sunni Minority", March 21, 2016

- He hates the Iranian regime and has attended between eight to ten demonstrations in Australia arranged by the [Organisation 2]. He has posted anti-regime material on various social media platforms.
- He fears that if he returned to Iran he would be harmed for his Sunni faith and not be able to find employment.
- He will be accused of being against the regime and aligned with the Sunni movement in Iran. He will be questioned about his activities in Australia.

## Refugee assessment

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11. 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

12. 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.
13. The applicant has consistently claimed to be a citizen of Iran has provided identity documents in support of his claimed identity. I accept the applicant’s identity and nationality as stated and that Iran is the receiving country for the purpose of this review.
14. I accept that the applicant is a Sunni Muslim.
15. Sunnis are a minority in Shia dominated Iran, comprising ten percent or less of the population. Despite the constitution enshrining protections for minority groups including Sunnis, reporting from DFAT confirms the applicant’s assertion that Sunnis face some discrimination in Iran.<sup>2</sup> In its recent International Religious Freedom Report the United States Department of State reported discrimination in the areas of employment and education and that Sunni students reported professors continued to routinely insult Sunni religious figures

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<sup>2</sup> Department of Foreign Affairs and Trade (DFAT), “Country Information Report – Iran”, 13 April 2020, 20200414083132

in class.<sup>3</sup> However despite these concerns I note the applicant completed school, attended [college], was employed in a skilled position, and was able to obtain a passport and travel abroad for work.

16. Negative attitude to Sunnis in Iran stems in part to actual and perceived links with Sunni extremism and concerns of the influence of foreign powers, notably the United States and Saudi Arabia. As outlined by the Middle East Institute the threat of militant extremism among Iran's Sunnis is taken "very seriously in Tehran". Iranian authorities have been exerting considerable effort to stem the spread of Salafism and Wahhabism into Iran's mainly Hanafi Sunni majority regions.<sup>4</sup> As a result of these concerns the authorities maintain strict controls over Sunni clerics and activists and some control over education and religious practise in general.<sup>5</sup> The applicant noted that his work abroad and in areas in Iran close to [Country 2] may be of concern to the authorities and I accept as plausible that he was asked at the entry border about his activities abroad when he returned from work in [Country 1]. However I note there is no indication he came to any harm because of his work abroad or was harmed in the questioning process.
17. The Iranian authorities actively quash Sunni insurgent or dissident groups. The IAA submission referred to "alienation from the rest of the Iranian community" resulting in "a growth of militant extremism and insurgent groups ... which the Islamic regime sees as a threat". Over the years armed Sunni militant groups have carried out violent attacks on the Iranian military; the Kurdish Sunni groups have been particularly active in this regard and other Sunni groups from various of the country's other ethnic minority groups have also conducted armed insurrections. Consequently Sunnis make up a large number of those prosecuted, imprisoned and executed in Iran for crimes characterised as 'enmity against God', 'taking up arms against the government' and 'supporting a dissident group'. Indicative of the profile of Sunni activists of concern to the Iranian authorities is Hedayat Abdollahpour, a Sunni Kurdish activist who Amnesty International and Voice of America reported was executed in 2020 after being taken in 2016 by the authorities following an armed fight between the Kurdish Democratic Party of Iran and the Islamic Revolutionary Guard Corp.<sup>6</sup>
18. The Iran Human Rights Documentation Center in 2017 reported on religious practitioners imprisoned for their membership in or activities on behalf of a minority religious group and that those detained included 250 Sunnis and a further three Sunni converts.<sup>7</sup> The Special Rapporteur on the situation of human rights in Iran also reported more than 53 Sunnis, including clerics, have been arrested and some charged with national security-related offences including 'propaganda against the state' and 'membership in Salafist groups' in the two years leading up to 2020.<sup>8</sup>
19. The applicant's account that his family experienced difficulties after the 1979 revolution are plausible in the context of reporting of negative attitudes to Sunnis. DFAT assesses that Sunnis face a moderate risk of official discrimination, with 'official discrimination' being defined as DFAT being "aware of sufficient incidents to suggest a pattern of behaviour".

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<sup>3</sup> United States Department of State, "International Religious Freedom Report for 2020 – Iran", 12 May 2021

<sup>4</sup> Middle East Institute, "Iran's Uneasy Relationship with its Sunni Minority", March 21, 2016

<sup>5</sup> Middle East Institute, "Iran's Uneasy Relationship with its Sunni Minority", March 21, 2016; United States Department of State, "International Religious Freedom Report for 2020 – Iran", 12 May 2021; DFAT, "Country Information Report – Iran", 13 April 2020, 20200414083132

<sup>6</sup> United States Department of State, "International Religious Freedom Report for 2020 – Iran", 12 May 2021

<sup>7</sup> UK Home Office, "Country Policy and Information Note: Iran: Christians and Christian converts", 27 February 2017, OG6E7028813

<sup>8</sup> Special Rapporteur on the situation of human rights in Iran; as cited in DFAT, "Country Information Report – Iran", 13 April 2020, 20200414083132

Sunnis face difficulties being accepted into university, getting government jobs and are subject to abuse.<sup>9</sup> To progress in education Sunni students and students from other minority religious groups must take and pass the courses on Shia Islam. Sunnis are underrepresented in government positions in the provinces where they form a majority; lack of basic government services; and inadequate public funding for infrastructure projects.<sup>10</sup> I note the comments in the IAA submission regarding limitations on Sunnis in public life, and while I accept they face some difficulties I note that Sunnis are represented at high levels of government and administration.<sup>11</sup>

20. I accept that as a Sunni the applicant was humiliated and taunted during his military service in the manner outlined in the RSD statement. I note his comments about his brother's death in military service but I find these to be speculative. He has not provided a copy of the death certificate which may lend weight in support of his contention his brother's death was the result of torture or otherwise suspicious. I am not satisfied the country information supports a finding Sunnis are tortured during military service or killed because of their religion. The applicant has failed to satisfy me his brother was killed during military service due to his religion.
21. I also have concerns about his account unknown people tried to implicate his father in possessing illicit drugs by placing a powder substance in his restaurant. If these people had intended to implicate and damage his father in this manner then it seems pointless to have left an innocuous powder substance rather than an illicit drug. I have difficulty accepting this is a genuine account, however even if I were to accept it did occur as claimed I note the applicant's father was able to present his case to the police and no further action was taken against him, although the applicant is concerned the police did not investigate the alleged culprit.
22. I accept the applicant had to travel to obtain employment, including working abroad, but I note that despite these limitations he was able to be employed in the oil industry, considered one of Iran's most important and sensitive industries and one which the security agencies closely control.<sup>12</sup>
23. In his RSD statement the applicant outlined the difficulties he experienced with his employers and the claimed subsequent adverse interest in him by the Ettela'at. The applicant expanded on these claims at the protection visa interview. I have significant concerns with the applicant's account of his employment experience and his account he was repeatedly sacked because of his religion, and that after he secured alternative positions his new employers soon learned of his past work history and sacked him.
24. It is of concern that the employment history in the protection visa application purports that he was unemployed in Iran from June 2010 after his return from [Country 1]. This conflicts with his employment history as given in the RSD application and in the Transferee Interview conducted on 5 December 2012 and counters his claims of the workplace abuse in 2011/2012 he detailed in the RSD statement. This anomaly was put to the applicant at the protection visa interview; his response was to recount being hired, then fired when his new employer became aware of his work history. I am concerned that this response did not address the matter of the inconsistent information across applications and it remains that at Question 84

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<sup>9</sup> DFAT, "Country Information Report – Iran", 13 April 2020, 20200414083132

<sup>10</sup> ibid

<sup>11</sup> ibid

<sup>12</sup> DFAT, "Country Information Report – Iran", 13 April 2020, 20200414083132; DFAT, "DFAT Country Information Report Iran", 21 April 2016, CIS38A8012677

of the protection visa application he specifically stated he was “unemployed” from June 2010.

25. Even putting aside the inaccurate or sparse information in the protection visa application I share the delegate’s concern at the applicant’s apparent ability, as stated at the Transferee Interview, to obtain a position in the Sepah at the [City] oil refinery in January 2012, after the claimed incidents at his workplace in 2011 and the claimed Ettela’at interest.
26. I note the applicant did not dispute the information in the Transferee Interview that he secured a position with Sepah in January 2012, although the employer was described as Darya Sahel in the RSD application rather than Sepah. If this is inaccurate or incorrect in any way the applicant had the opportunity to correct this at the protection visa interview or in post-interview submissions, or in submissions to the IAA. As he has not done so I conclude he maintains he was employed by Sepah in January 2012.
27. Sepah refers to the Islamic Revolutionary Guard Corps, Iran’s premium security organisation charged with defending the Islamic Republic and the revolution. Their role extends to protecting the regime from internal dissent and foreign interference, international covert action and maintaining control over sensitive industries, including the oil industry.<sup>13</sup> When asked at the protection visa interview how he secured the Sepah position his response was that in Iran to obtain employment you go the office and give your papers and you are employed and then they investigate you, which takes about 40 days, and that after the new employer discovered his past history he was sacked. While this explanation may be plausible in the context of general employment in the applicant’s case his employment was in the sensitive and highly controlled oil industry. Country information advises of the influence of the Sepah in the industry and noting the importance of Sepah as a security agency with sophisticated intelligence operations and that they are charged with defending the Republic I consider it implausible he could have secured a position in Sepah after the claimed prior attention in 2011 at the same [City] oil refinery, albeit with a different employer.
28. I am not persuaded by the applicant’s explanation he was sacked by the Sepah after they discovered his work history; noting the nature of Sepah’s role and the sensitive nature of the oil industry I consider it implausible they would engage an employee in that industry before making checks as to their past employment and history. That the applicant was able to secure a position with Sepah in the oil industry in 2012 casts doubt on his claims of his past work experience and the Ettela’at claims.
29. I have significant concerns as to the applicant’s account of his work history and the referral to the Ettela’at in 2011 and their claimed interest in him. The applicant has not provided any evidence of his past employment to support his claims or that would corroborate his claims of repeated engagement then dismissal. At the protection visa interview the representative referred to a document relating to the applicant’s employment history but it is not evident that this was any form of independent verification such as an employment contract, nor did the representative or the applicant submit this document in support of the applicant’s claims.
30. In his decision the delegate made adverse credibility findings and found the applicant was not a credible witness; one issue in this regard was that in his Transferee Interview the applicant stated he was detained at work for three days in November 2011 but did not mention at the interview the claims later made in the RSD statement that he was brutally beaten at this time and then sacked from his position. The applicant was put on notice at the protection visa

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<sup>13</sup> DFAT, "DFAT Country Information Report Iran", 21 April 2016, CIS38A8012677

interview as to the delegate's concerns in this regard and while the applicant disputed the delegate's assertion that he had not mentioned this mistreatment during the protection visa interview he did not explain the apparent omission in the Transferee Interview of this significant aspect of his experience.

31. It is plausible that the applicant may have faced difficulties at work. Adherence to Shia prayer and religious practise is a common requirement in government and some private employment in Iran, and the applicant's account of such requirements is consistent with country information.<sup>14</sup> Refusal to comply may result in sanction and may jeopardise ongoing employment. But I am not persuaded he came to the attention of the Ettela'at in 2011 and was detained and beaten.
32. Also of concern is the claimed visit to his family home in 2012. In the Transferee Interview the applicant did not mention the visit to the family home. His response to the question 'Did the police and security or intelligence organisations impact on your day to day life' was recorded in the Transferee Interview report as "Yes, because all life of our family is under surveillance". It is of significant concern that he did not mention this matter at that interview. In this RSD statement he advised this was the reason he decided to leave Iran and, if true, I do not accept he would have failed to mention this matter at the Transferee Interview conducted less than six months after this claimed significant incident.
33. Furthermore the profile of Sunni of concern to the authorities is outspoken clerics, activists, insurgents and separatists and other high profile campaigners.<sup>15</sup> I am not satisfied that the applicant had a profile in Iran that would have attracted the claimed adverse interest, even considered together with his work in the sensitive oil industry, work abroad and work in areas with many foreigners and near [Country 2].
34. Considered overall the applicant has failed to satisfy me his claims he was detained at work in 2011, beaten and sacked, or that the Ettela'at came to his family home in 2012, or that the authorities have an adverse interest in him and he was monitored, are genuine. I do not accept these claims.
35. I note the applicant's concern that as a Sunni he will not be able to obtain employment should he return to Iran. The applicant has been able to repeatedly secure work in the sensitive oil industry, an important industry in Iran in which employment is highly sought after. Despite his first claimed dispute at work in 2003 he secured positions again after his returns to Iran from [Country 3] and [Country 1]. From his employment history he has been able to secure skilled positions in the oil and [another] industries, despite being a Sunni. His employment history shows he had several different employers over time but he has failed to satisfy this has been due to being repeatedly sacked because of his religion or past work history. I note the depressed Iranian economy, the impact of economic sanctions, and the unemployment rate in the country and I accept this impacts employment opportunities, particularly long term secure employment, and I accept this has impacted on the applicant.<sup>16</sup> As already noted above I have accepted he has had to move to secure employment. But I am not satisfied he has been denied the capacity to earn a livelihood of any kind threatening his capacity to subsist, or that he would be should he return to Iran. I am not satisfied that there

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<sup>14</sup> DFAT, "Country Information Report – Iran", 13 April 2020, 20200414083132

<sup>15</sup> Middle East Institute, "Iran's Uneasy Relationship with its Sunni Minority", March 21, 2016; United States Department of State, "International Religious Freedom Report for 2020 – Iran", 12 May 2021; DFAT, "Country Information Report – Iran", 13 April 2020, 20200414083132

<sup>16</sup> DFAT, "Country Information Report – Iran", 13 April 2020, 20200414083132



is a real chance he would experience serious harm in this regard in Iran on the basis of his religion.

36. The IAA submission refers to the practice of Sunni beliefs being “hindered” and mosques being demolished or becoming dilapidated. DFAT confirms that Sunnis accuse the authorities of suppressing their religious rights, including limitations in performing Friday prayers and religious celebrations in Tehran and other major cities. In regard to claims Sunnis are denied permission to build mosques in major cities, including Tehran, DFAT understands that no Sunni mosques have been constructed in Tehran since the revolution. The information from DFAT is that there are thousands of Sunni mosques and schools in Iran.<sup>17</sup> More comprehensive and insightful reporting advises that members of the Sunni community dispute official statistics published in 2015 that stated there were nine Sunni mosques operating in Tehran and 15,000 across the country. Community members said the vast majority of these were simply prayer rooms or rented prayer spaces and the authorities prevented the building of any new Sunni mosques in Tehran and that there were not enough mosques in the country to meet needs.<sup>18</sup>
37. In the December 2012 Transferee interview the applicant participated in while [in Detention centre] he stated that as Sunnis they were not allowed the simplest things such a prayer or funeral ceremonies. The applicant did not indicate in the 2013 RSD statement of claims that he was not able to attend mosque or was prevented from praying, although he did refer to Sunni religious practices/ceremonies being questioned. The comprehensive United States Department of State International Religious Freedom Report outlines that Sunnis face some discrimination and difficulties practising but does not indicate they are prevented from Sunni prayer or practise.<sup>19</sup> I accept that there may be some concern about the availability of Sunni mosques, but I am not satisfied the applicant was prevented from practising as a Sunni in Iran and I am not satisfied he would be should he return to Iran.
38. I am not satisfied that there is a real chance he would experience persecution in Iran on the basis of his religion.
39. The applicant claims to hate the Iranian regime and to have been active posting anti-regime material and attending demonstrations in Australia. The IAA submission referred to the applicant as being “dedicated in demonstrating and expressing his disdain towards the Islamic Regime” and that he “continues to harbour these views and will continue to participate in anti-regime activity in Australia”, but I am not satisfied this is borne out by the information before me.
40. The applicant has provided letters which are described as supporting his claims. The [Organisation 1] letter confirmed his attendance at mosque and his voluntary work for the association. The letter from the [Organisation 3] also attests to his voluntary work and general good character. Neither letter supports his claim to have attended demonstrations or to be a vocal critic of the Iranian regime.
41. The applicant has not provided any evidence to support his claim he has posted anti-regime material on social media. The delegate noted at the protection visa interview that there was no evidence beyond his own account that he had done so and the applicant stated he would provide this later. No further information in this regard was provided to the delegate. Beyond

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<sup>17</sup> DFAT, “Country Information Report – Iran”, 13 April 2020, 20200414083132

<sup>18</sup> Middle East Institute, “Iran’s Uneasy Relationship with its Sunni Minority”, March 21, 2016; United States Department of State, “International Religious Freedom Report for 2020 – Iran”, 12 May 2021

<sup>19</sup> United States Department of State, “International Religious Freedom Report for 2020 – Iran”, 12 May 2021

the assertions in the IAA submission no corroborative evidence has been provided to the IAA in response to the related negative findings by the delegate.

42. The applicant has provided no other evidence, beyond his own testimony, to support his claim he has attended any demonstrations in Australia. Nor has he provided any evidence to corroborate his claim he has posted anti-regime material on social media. Furthermore he has not provided any explanation as to why he could not provide such supporting material and that he has not done so leads me to doubt his claims are genuine. I do not accept these claims.
43. I accept he has engaged in social activities with any other Sunnis in Australia and attended mosque but I am not satisfied that these activities would be of concern to the authorities in Iran or that he would be harmed as a returning asylum seeker whose details were released in the data breach. I do not accept the applicant was of adverse interest to the authorities when he departed Iran or had a profile of concern which would be "more evident" as a returning failed asylum seeker and because of the data breach.
44. While I am willing to accept the applicant may have concerns about the Iranian regime he has failed to satisfy me he was been active in expressing this, despite the greater freedom to do so in Australia. I find that he will conduct himself in the future as he has in the past in both Iran and Australia and, I am not satisfied that he has any desire to behave in a different manner. I am satisfied his behaviour is a reflection of his opinion and does not involve him taking any steps to modify his behaviour. I am not satisfied that the applicant has a well-founded fear of persecution in Iran on the basis of his opinion.
45. The country information does not indicate that returning asylum seekers are imputed with an anti-government political opinion or harmed because of their asylum claim, or for reason of being in a western country.<sup>20</sup> Reports of asylum seekers being arrested on return relate to those involved in anti-government activities, either in Iran or during their time abroad.<sup>21</sup> The country information does not indicate that returning asylum seekers are imputed with an anti-government political opinion or harmed because of their asylum claim and I am not satisfied that there is a real chance he would be harmed on this basis. I accept he may have been questioned in the past when he returned from work abroad but I have already noted there is no indication that such led to any harm.
46. To return to Iran the applicant would require documentation to be issued to facilitate his travel but country information advises that historically Iran does not accept involuntary returnees and does not issue travel documents to involuntary returnees.<sup>22</sup> I find that if the applicant is returned to Iran it would be on a voluntary basis and there is no indication in the information before me that voluntary returnees face harm on return. Country information indicates that people of interest may be questioned on return but I have not accepted that the applicant would be of interest to the Iranian authorities. I accept the applicant may be questioned because of his travel document, but I do not accept this would result in any adverse interest in the applicant or that he would be harmed during that questioning or process or that such would amount to serious harm.

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<sup>20</sup> UK Home Office, "Country Policy and Information Note: Iran: Christians and Christian converts", 27 February 2017, OG6E7028813; DFAT, "Country Information Report – Iran", 13 April 2020, 20200414083132

<sup>21</sup> Radio Zamaneh, "Iranian poet/activist arrested at Tehran airport", 8 January 2016, CX6A26A6E140; Human Rights Activists News Agency (HRANA), "Zahra Majd Sequestered for Opinions of her Dissident Spouse", 15 October 2018, CXBB8A1DA36878  
DFAT, "Country Information Report – Iran", 13 April 2020, 20200414083132

47. I have considered the applicant's circumstances as a whole, and I am not satisfied there is a real chance of the applicant suffering persecution in the reasonably foreseeable future in Iran on any of the bases claimed.

#### **Refugee: conclusion**

48. 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**

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49. 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**

50. 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.
51. 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.
52. I have accepted that Sunnis face discrimination in Iran and that the applicant may face some discrimination in obtaining employment but I have found that this, or being questioned on his return to Iran, do not amount to serious harm. I also find that, either considered alone or together, this does not amount to significant harm. The harm feared by the applicant does not include deprivation of life, the death penalty, or torture; nor am I satisfied he will be subject to cruel, inhuman or degrading treatment or punishment as defined.
53. I have otherwise found that there is not a real chance that the applicant faces harm on any of the bases claimed. Noting that the "real risk" test for complementary protection is the same standard as the "real chance" test, and based on the same information, and for the reasons set out above, I am also satisfied that there is not a real risk that he would face significant harm for these reasons.

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

54. 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**

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

## Applicable law

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### **Migration Act 1958**

#### **5 (1) Interpretation**

In this Act, unless the contrary intention appears:

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**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.