



Australian Government
Immigration Assessment Authority

Decision and Reasons

Referred application

[The applicant]

IRAN

IAA reference: IAA23/10477

[applicant wife]

IRAN

IAA reference: IAA23/10480

[child 1]

IRAN

IAA reference: IAA23/10479

[child 2]

IRAN

IAA reference: IAA23/10478

Date and time of decision: 26 June 2023 17:08:00

G Ma, Reviewer

Decision

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

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

Background to the review

Visa application

1. The referred applicants (the applicants) are a husband (the applicant), his wife (the applicant wife) and their two sons (the sons) who claim to be Iranian nationals. [In] August 2013, the applicants arrived in Australia. On 9 May 2017, they lodged applications for safe haven enterprise visas (SHEV).
2. On 17 September 2018, a delegate of the Minister for Immigration (the delegate) refused to grant the visas. That decision was referred to the IAA under s.473CB of the *Migration Act 1958* (the Act) and on 10 December 2018, the IAA affirmed the delegate's decision. On 26 April 2023, by consent, that decision was quashed by the Federal Circuit and Family Court of Australia and remitted to the IAA for determination according to the law. According to a note to the orders, it was conceded that the IAA decision was affected by jurisdictional error by failing to consider a claim, being whether the applicant would be at risk of harm on return due to any future public expression of political beliefs.

Information before the IAA

3. I have had regard to the review material given by the Secretary under s.473CB of the Act.
4. The review material includes a number of documents that were not provided to the IAA with the original when it was referred in 2018. One of these was the audio recording of the applicant's Irregular Maritime Arrival (IMA) entry interview. The delegate referred to this audio recording in her decision,¹ and I am satisfied that this information was before the delegate and is not 'new information' for the purposes of s.473DC(1) of the Act. Another of these documents is a copy of the applicant wife's and sons' birth certificates, which were also before the delegate, and are not new information. Some of the other documents are of an administrative nature and, in my view, not relevant to the assessment of the applicants' protection claims. As such, they are not 'new information' in the s.473DC(1) sense.
5. The review material also includes:- a copy of the applicant wife's and son's passports, and the audio recording and the written record of the applicant wife's IMA entry interview. The delegate made no mention of them, I am not satisfied that these were before her. They are new information.
6. The entry interview conducted with the applicant wife on 1 December 2014 seems to be the applicant wife's third interview with the Department, but this interview would appear to be the first opportunity the applicant wife had to provide details about the reasons as to why she could not return to Iran. I note that at the applicant wife's Unauthorised Maritime Arrival (UMA) induction interview held on 18 September 2013, she was only asked about her arrival and biographical information but not her claims or reasons why she left or could not return to Iran. I also note that the record of her bio-data interview dated 27 September 2013 contains what appears to be very brief responses to a number of questions including reasons for leaving the country of origin. No audio recording of that interview is available, and it is not apparent what degree of opportunity the applicant wife was given to respond to these questions. The entry interview information is a contemporaneous record of the applicant wife's description of her and her family's background, circumstances of arrival and why they could not return, and it is the type of information that one would ordinarily expect the

¹ See delegate's decision at footnote 24.

delegate would have regard to. I am satisfied that there are exceptional circumstances to justify considering this information.

7. With respect to the applicant wife's and son's passports, I note that the applicant wife and sons have provided other forms of identity documents to the delegate, and there are no issues of concern regarding their identity. The applicant has also given oral evidence at the SHEV interview regarding his and his family's passport details, such as when and why they obtained their passports. I am of the view that the applicant wife's and son's passports do not add any relevant additional information to what is already before me, and I am not satisfied that there are exceptional circumstances to justify considering them.
8. On 5 October 2018, the IAA received a submission with attachments from the applicants' former representative (the IAA submission). To the extent that the IAA submission explains and argues why the applicants disagree with the delegate's decision by reference to caselaw and departmental policy guidelines, it is not new information, and I have considered it.
9. In the IAA submission, the former representative submits that the applicant's ethnic origin as a Kurd would heighten the risk he would be subjected to greater scrutiny on his return as a failed asylum seeker, and that this would increase the risks that he or his family would be questioned or scrutinized around his activities in Australia.
10. The applicant has previously identified as Kurdish and that is not new information. However, the claimed fear of harm arising from his Kurdish ethnic origin is 'new information'. This claim was not expressly raised before the delegate and nor do I consider that it arose on the material before the delegate. Although the applicant has not sought to explain why he did not make this claim earlier, it is possible that the fear may have manifested in the four or five years since the delegate's decision, and I am satisfied that this new information could not have been provided earlier to the delegate and meets s.473DD(b)(i). Given the nature of the information, I am satisfied that on its face, it is credible personal information that may have affected the consideration of the claims if known. It meets s.473DD(b)(ii). The applicant's ethnic origin is part of his attributes, and this new claim, which meets s.473DD(b), is pertinent to the applicants' claims for protection, and taking account of all relevant matters, I am also satisfied that there are exceptional circumstances to justify considering it.
11. The IAA submission also attaches screenshots from the applicant's social media accounts - Facebook and Instagram. It is submitted that some of this information pre-dates the delegate's decision and that the applicant had provided the Department copies of the same photos of him at the demonstrations and discussed his social media activities at the interview, and therefore, these documents merely support information already before the Department at the time of the decision. It is further submitted that even if they are considered as new information, these posts contain credible personal information in that they represent the applicant's online activities and show his methods for expressing views against the Iranian government have evolved during his time in Australia. It is also submitted that it is likely that these posts would have impacted the delegate's decision with respect to the finding that the applicant would not hold a profile on return to Iran that would attract the interest of the Iranian authorities.
12. The Instagram screenshots show that the account contains only "5 posts", with images of the applicant at anti-Iranian government protests in [City 1] and [City 2] in [2018]. Although most of the Instagram images depicting the applicant attending protests were the same as the images from the applicant's Facebook account that he had provided to the delegate, I am of the view that these same images from a different source are 'new information'. The images

were posted on Instagram in January 2018, some eight months before the delegate's decision, and I am not satisfied that this information could not have been provided to the delegate before the delegate's decision, and s.473DD(b)(i) is not met. Although the applicant provided other images of him at the protests, these images were shared on another social media platform. In view of the contents of these posts, I am satisfied that on its face, it is credible personal information that may have affected the consideration of the claims had it been known. Section 473DD(b)(ii) is met. This information pertains to the applicant's claimed fear based on his activities in Australia. Having regard to the above matters, I am satisfied there are exceptional circumstances to justify considering it.

13. The Facebook information was not before the delegate. It is new information. The former representative describes these Facebook posts as posts criticizing the Iranian government and its human right abuses against Iranian citizens. I note that these posts were links from other sources that were "shared" on the applicant's Facebook account in September 2018, i.e., just before, on the day of, and just after the delegate's decision of 17 September 2018. I am satisfied that these Facebook posts could not have been provided to the delegate before her decision, and s.473DD(b)(i) is met. As these posts include information about reasonably identifiable individuals, and at least some of which may be regarded as posts expressing negative sentiments about the Iranian government (an issue before the delegate, and now on review), I am satisfied that on its face, they are credible personal information that may have affected the consideration of the applicant's claims if known. Section 473DD(b)(ii) is met. Taking these matters into account, and that these Facebook posts pertain to the applicant's claimed political views and his activities in Australia, I am satisfied that there are exceptional circumstances to justify considering this new information.
14. I have obtained the most recent DFAT report on Iran published in 2020.² The delegate made the decision in 2018 and relied on the 2018 DFAT report and the 2016 DFAT report in her decision. The 2020 DFAT report being the most recently published report prepared by DFAT specifically for the purposes of protection status determination, and as this new information gives an update of the situation in Iran that is pertinent to the applicants' claims, I am satisfied that there are exceptional circumstances to justify considering it.

Applicants' claims for protection

15. The four applicants are the applicant, the applicant wife and their two sons. The applicant wife and sons indicated on the SHEV application forms that they are not raising their own claims for protection and are relying on their membership of the applicant's family.
16. The applicants' background circumstances and claims can be summarised as follows:
 - The applicants are Shia Muslims from Ahvaz, and are Iranian citizens. The applicant was born in [year] to Kurdish parents but considers himself Persian because he did not learn the language. The applicant wife and sons are Persians, and they were also born in Iran.
 - When the applicant became an adult, he began to resent the government of Iran and considered it to be inefficient and dishonest. From [years], he completed military service. He then worked in numerous jobs, including at a vast government owned company named [Company 1] that produced [goods]. The company had an intelligence backed division for monitoring and enforcing values and social norms known as Heresat.

² Department of Foreign Affairs and Trade (DFAT), "DFAT Country Information Report Iran", 14 April 2020, 20200414083132.

In that environment, it was dangerous to be too vocal with anti-government views, but he would occasionally make comments which came to the attention of Heresat at his workplace.

- In 2001, the applicant married the applicant wife.
 - During the 2009 Presidential elections, political dissidence became a sensitive issue. Intelligence networks began gathering information from workplaces and the applicant understood that comments he made in confidence to his friends reached Heresat. He was warned by Heresat during this period and undertook to stop this in future (“the 2009 incident”).
 - In 2012, the applicant sold his house, and the applicants obtained their Iranian passports.
 - On Friday 14 June 2013, the 2013 Presidential election day in Iran, his supervisor advised him to attend a nearby polling centre to cast his vote. He ignored this. Another person then called him reminding him to vote. He then went to the polling place in the nearby region set up to facilitate [Company 1] employees, where Heresat and Sepah were present. While queuing to vote he began questioning the integrity of the elections and felt that they were against his principles. He lingered until it became his turn to vote, at which point he withdrew from the line. The Heresat official accused him of dissidence for not voting. They had an argument. He became furious, raised his voice, and criticised the 2009 election. The manager of [Company 1] advised him to leave.
 - On the next Monday, he was summonsed to Heresat, where he was told he was under investigation for dissidence against the Supreme Leader and questioned. He was then transferred to several places where he was interrogated, threatened, beaten, and accused of insulting the Supreme Leader, Imam Zaman and God. In one of the cells, he saw a person named [Mr A] who he had met in a [Workplace 1] where his brother worked as a [position 1]. After two days, he was released and was told that the authorities would continue monitor him (“the 2013 incident”).
 - Upon release he was fearful and returned home. He did not want to tell the applicant wife about what he had been through and discovered that his brother had called her informing her that he would be away on work for a few days.
 - The following day, he visited his brother, who informed him that [Mr A] had facilitated his release, but had also suggested that he was still in danger and should flee Iran for Australia. His brother also informed that he should flee before being placed upon the travel-ban list. On his brother’s advice, he only told the applicant wife that they were going on holiday to [Country 1] and from there, he confessed to her that he wanted to resettle elsewhere.
 - [In] July 2013, he and his wife and children left Iran.
 - In 2018 the applicant attended two protests in Australia and posted materials on his social media accounts.
17. The applicant fears being re-interrogated upon return by customs officials at the airport in Tehran and being harmed and imprisoned by the authorities upon return. He fears that the authorities could continue accusing him of insulting the Supreme Leader, Imam Zaman and even God, which could result in him being indefinitely imprisoned or even killed. This accusation of dissidence would be reinforced by the fact that he fled Iran and have been living in Australia. Also, his ethnic origins as Kurd would heighten the risk that he would be subject to greater scrutiny on return as a failed asylum seeker and the risk of his family being

questioned or scrutinized around his activities in Australia (including online activities). Further, he fears harm should he engage in political activities upon return.

Refugee assessment

18. 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

19. 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.
20. Based on the evidence, I accept that the applicant, the applicant wife, and the sons were born in Ahvaz, Khuzestan in [year], [year], [year] and [year] respectively, and that they are Iranian nationals. Iran is the relevant ‘receiving country’.
21. I accept that the applicants are Shia Muslims. I also accept that the applicant wife and sons are Persian, and that the applicant was born to Kurdish parents but consider himself Persian. The applicant gave specific and generally consistent evidence regarding his biographical information, such as family and educational background and address history, including some 12 places that he lived in Iran from birth to 2013 at his entry interview and in the SHEV application. I accept that the applicant’s parents and the applicant wife’s father are deceased, and that the applicant has [a number of] brothers (several of them born in the [years] and much older than the applicant), [a number of] sisters and one half-sister, and that the applicant wife has [a number of] brothers and [sisters]. I accept that the applicant’s father and one of his younger brothers worked for an Iranian government owned [Company 2] that reportedly provided support to the Islamic Revolutionary Guard Corps (IRGC).³ I accept that one older brother worked as a [Profession 1], and that three of his brothers were employed by Iranian government-owned [institution] as [positions] and are now retired. I accept that after completing grade 12, the applicant undertook compulsory military service from [years],

³ See information in the delegate’s decision - “Iranian national oil company - Iranwatch - connection to Sepah”.

where he did guard work for the Sepah, and his rank was [rank deleted]. I also accept that [one of his] brother's] was posted in Kurdistan for his compulsory military service during the Iran-Iraq War and fought in that war. According to the applicant, apart from brief periods back in the 1980s where he lived in Mahshahr county, Khuzestan province, Ilam province, and Mazandaran province, he has always lived in Ahvaz, Khuzestan. He also worked in various jobs in Ahvaz from around 1992 to 2013. His wife's evidence was that she had always lived in Ahvaz when she was in Iran. The applicant and his wife were married in Ahvaz in [year], and their sons were also born in Ahvaz. The applicant wife's mother and siblings, and some of the applicant's siblings, are in Ahvaz. I consider that if the applicants return to Iran, they are very likely to return to Ahvaz, Khuzestan, where they have ties and a network.

22. I accept that the applicant worked as a [Job 1] for the state government in Ahvaz from around 1997 to 1998, and from 1999 he began working in a vast government-owned [goods] company named [Company 1] (also known as [name deleted] Company) which was responsible for many tens of thousands of hectares of land. At the interview, the applicant gave specific and convincing evidence about [Company 1], including the controversy about its operations, which is also externally consistent with country information. [Company 1] is a large state-owned [goods] company that is partly funded [information deleted]. The company's operations [information deleted].⁴ I accept that the applicant's duties in [Company 1] included [work duties deleted]. The applicant said at the SHEV interview that he was not employed as an ongoing employee in [Company 1]. Rather, he was on one-year contracts that were renewed yearly. He said because this job required some skills and it was hard labour work especially during summertime, they continued to renew his contract every year from 1999 to 2013. He also gave detailed evidence about the company's recruitment processes. He said that potential employees, including himself, had to undergo a job interview. During the job interview, they were asked whether they believed that the Supreme Leader of Iran was represented by God, and whether they agreed and accepted their system. They had to say 'yes' to be employed. Prior to the interview, the company made investigations to ensure that potential employees had not been politically active and the like. When asked, the applicant said the company did not re-interview him every year before they renewed his contract, but this sort of assessment of values and allegiance was in place throughout the time he worked there by virtue of an active monitoring system, where a part of the company called Heresat and other people from the security department and agents among the workers would monitor them all the time. I accept this evidence.
23. Country information⁵ is that following the 12 June 2009 presidential election, up to 3 million supporters of reformist candidate Mir Hossein Mousavi took to the streets of Tehran to protest the official verdict that conservative candidate Mahmoud Ahmadinejad had been re-elected in a landslide, in what became known as the 'Green Movement'. Green Movement demonstrations built throughout 13 – 19 June 2009. Protestors' hopes of having the Supreme Leader annul the election were dashed by his major Friday prayer sermon on 19 June 2009 in which he refuted allegations of vast fraud and threatened a crackdown on further protests. Green Movement protesters used public holidays and national commemorations as opportunities to rally, chanting slogans that challenged both the system and the Supreme Leader. In response, security forces arrested hundreds of protestors, killed dozens, and beat

[footnote deleted].

⁵ DFAT, "DFAT Country Information Report Iran", 14 April 2020, 20200414083132; Immigration and Refugee Board of Canada, "IRN104338.E – Iran: The Green Movement, including its mandate, structure, leadership, activities and treatment of members by authorities; The Green Party (2009-March 2013)", 1 March 2013; Kenneth Katzman, "Iran: U.S. Concerns and Policy Responses", US Congressional Research Service, 1 March 2012, CIS22870; and Amnesty International, "Iran: Elections Contested, Repression Compounded", 1 December 2009, CIS18098. See also other country information in the review material.

and harassed thousands more during and after the 2009-10 Green Movement protests. The 2009-10 protests represented a major challenge to the authority of the Islamic Republic. It was reported that after the 2009 presidential election, the regime “struggled to contain popular dissatisfaction”. By early 2010, the government had succeeded in quashing public displays of opposition. Mousavi, his wife and other Green Movement’s leaders have been under house arrest since 2011. The Green Movement has little profile in Iran today. Ordinary participants in the Green Movement are reported not to be of interest to the authorities. Green Movement participants who were arrested but then released without prosecution are considered unlikely to be of ongoing interest to the authorities. Generally, the authorities would not have interest in, nor records of, participants who avoided arrest at that time.

24. At the applicant’s entry interview, when asked whether he was involved in any activities or protests against the government, the applicant replied that in 2009 there were some protests against the election, and like everybody else, he voiced his dismay and anger and said a few things.
25. In the SHEV application, the applicant stated that when he became an adult (without specifying when exactly), he began to resent the Iranian government and considered it to be inefficient and dishonest. In that environment, it was dangerous to be too vocal with such views, but he would occasionally make comments which had come to the attention of Heresat at his workplace. During the 2009 Presidential election, political dissidence became a sensitive issue. Intelligence networks began gathering information from workplaces through its network of informants and the comments he made in confidence to his friends reached Heresat and he was warned by Heresat and made an undertaking to stop this in the future.
26. I note there was no mention about the applicant being involved in the Green Movement protests in the SHEV application.
27. At the SHEV interview, when asked whether he in fact attended any protests at that time, the applicant replied that actually there was a mistake in his previous interview, he was only summonsed to Heresat, and he did not take part in any protests. I accept that the applicant was not involved in the Green Movement or any other protests in Iran.
28. At the SHEV interview, when invited to give evidence about the voting stamps on his Shenanameh, the applicant replied that he voted when he was in military service (in [years] when he was around [age] years old), and he also voted in the 2009 Presidential election. He said that after finishing his military service, his brother suggested to him that he needed to have a record of having voted if he wanted to be employed. He also said there was a gap of some 17 or 18 years between the two elections in which he had voted. This was because they were expecting some change in 2009, given that Mousavi was a Prime Minister during the time of the Iran-Iraq War in the 1980s, and the security and economic conditions in Iran at that time were better than the time when Ahmadinejad was President. Also, during the 2009 Presidential election campaign, Mousavi directly criticized the policies of Ahmadinejad, so Mousavi was able to gain the trust of the public. When asked what changed in 2009, he responded that after the 2009 election, Mousavi was going to be elected as President, but they announced Ahmadinejad as the President, so people started to protest, mostly in Tehran, until the Supreme Leader intervened and said his views were closer to Ahmadinejad. He also said that at a Friday Mass prayer, the Supreme Leader said that if anybody continued with the protests against the election results, he would be responsible for his “own blood”. After that, the atmosphere of the country became very tense; there would be consequences if people talked about political issues at work, and Heresat had spies among the people in the workplace.

29. The delegate expressed that she was trying to understand the applicant's own political views and would like him to talk about what happened to him, rather than the country more generally. She referred to his earlier evidence that Mousavi had been critical about Ahmadinejad, and asked "did you share those criticisms", to which the applicant said yes. He added that at that time, the country was highly controlled, and people were not allowed to criticise the ruling people, so talking or criticising Ahmadinejad was something new. After these talks people became aware that the elections were not real; they were sham elections. The delegate then asked when he said the "people became aware", whether this was what *he* realised. The applicant responded yes, as the results proved that. When asked whether he thought about that before, he said yes. He added that after these elections, more people shared these views. When asked what his views were that he was talking about, he said he believed that in a society. He believed the public should have the right to elect the person they think more represent them for a period of time, e.g. four years, rather than someone who is set up by the Supreme Leader or the system. And if the person did not fulfil the public need during that period, they should have the right to change that person. When asked "Was that a view you held for a long time in Iran?", the applicant said yes, actually as soon as he understood himself and kind of in this situation, he kind of did not believe in the system of the government. He also said he gained this awareness when he was in high school (from around 1983 to 1990). When asked whether he continued holding these views through his adult life, he replied "yes". He also said he did not talk about his views with anybody as he was not politically active, and these were his own views. He added that his older brothers shared the same views, but they did not have the courage to express them. At that time, they lived in a 'very closed' atmosphere where anyone who expressed their views would be arrested. When asked, he confirmed that he was not politically active in Iran, and that he never joined any groups or anything like that.
30. When invited to talk more about the Iranian system and what was wrong with it, the applicant responded that it was a religious government since its inception in 1979, at that time he was very young, and from what he heard from the adults, it was always promising people the other world, emphasising this is all the test by the almighty God for people to go to heaven. They did not take care of the condition of the people in this world, and then the war between Iraq and Iran broke out, and the enmity with the USA continued. The delegate then asked: "And did you have a problem with those things?". The applicant said yes, they managed to keep people busy with the Iran Iraq War and make people believe they were good, but after the 2009 election, people realised that the system was corrupt.
31. The applicant has demonstrated some general knowledge of Iran's country conditions, system, political history, and the public's views, commensurate with his having been born in and lived and worked in Iran for [a number of] years. The applicant was able to give some evidence about his views regarding the 2009 election results, however, I consider his evidence about his own views to be generic and superficial. The content and substance of his evidence gave the impression that he was able to give relatively detailed evidence about general matters going to the country situation and the public's views, but brief in relation to his own anti-government views. Overall, I am satisfied that like many Iranians, the applicant was dissatisfied with the regime, and to that extent, he held views against or did not agree with the government.
32. Moreover, I note that the applicant worked for government entities for some 16 years from around 1997 to 2013. As noted above, his family members also have a history of connection with the government, where his father and many of his male siblings were employed by Iranian government entities. A person's and his family's employment by government entities, of itself, does not necessarily mean that the person did not hold anti-government views.

However, in this case, the nature, extent, degree and duration of the applicant's and his family's links with the government is not insignificant.

33. Although I accept that similar to many other Iranians, the applicant may have felt disappointed by the 2009 election results, I am not satisfied that he had strong feelings about it at that time. I consider that he did not take part in the Green Movement protests not because he feared harm, but because he was not particularly interested in politics, and he lacked desire or commitment to do so at that time. I accept that when the applicant was in Iran, he was never politically active and was not involved in any protests. I consider it plausible that the feeling of the relatively open atmosphere during the 2009 election and the momentum created by the Green Movement led to the applicant and some colleagues, with whom he had worked for many years, expressing their views . I accept the 2009 incident occurred as claimed. I accept that he was warned by Heresat and made an undertaking not to repeat such behaviour in the future.
34. I note that the delegate invited the applicant under s.57 of the Act to comment on his evidence at the interview that seemed to suggest that he was "sacked" or "dismissed" from his employment in 2009 because he shared his views in the 2009 incident. In response, the applicant attributed the discrepancy to an error by both interpreters. The delegate ultimately concluded in her decision that his being dismissed in 2009 undermined the claimed incident in 2013 at the same workplace. Having considered the evidence, I am not persuaded that there was necessarily an interpreting "error" as described by the former representative, as the words used by the applicant could have a number of meanings, such as reject, excuse, reason, pretext, plea, and subterfuge etc.,⁶ but could also be interpreted in a work context to mean sacked or dismissed. However, I am prepared to accept that the applicant did not intend to mean he was dismissed from work in 2009, and what he was saying was that he was asked to explain himself about his indiscretion by Heresat at work.
35. I accept that after the 2009 incident, nothing happened to him for reasons relating to this incident. I accept that he lived a normal life and continued to work in the same company until he left Iran in 2013.
36. Although there were some common themes in the applicant's evidence regarding the claimed 2013 incident, I consider that the applicant has given different accounts of this incident, and that key aspects of his evidence were also at times implausible, superficial and ultimately unconvincing.
37. In the SHEV application, the applicant stated on the election day on 14 June 2013, he was informed by his supervisor to attend a nearby polling centre to cast his vote. He ignored this and soon after he received another call from Heresat also reminding him to cast his vote. He stated he was surprised that Heresat had called as this was unusual. He travelled to the polling booth which was set up to facilitate [Company 1] employees, where he noticed Heresat and other high ranking intelligence officials, including Sepah. He queued up waiting to vote. He claimed that while in the queue, he began questioning the integrity of the elections and felt he was doing something against his principles. He lingered until it was his turn to vote, at which point he decided to withdraw from the line. The Heresat official approached him and questioned why he stepped out of the line and accused him of dissidence for not voting. An argument ensued and he stated voting was not compulsory in Iran. The Heresat official claimed the applicant was insulting the Supreme Leader because all

⁶ See 'Dict Box Pro' Persian-English dictionary, and the different NAATI-accredited interpreters' interpretation of the words used by the applicant as referred to in the delegate's decision.

had been encouraged to vote, he became furious and began raising his voice, and he criticised the integrity of the 2009 election as a reason why he was conflicted to vote today. At this point, the manager of [Company 1] approached and advised him to leave.

38. In the SHEV application, the applicant claimed that a few days later, he was summonsed to Heresat where he was told he was under investigation for dissidence against the Supreme Leader. His interviewer demanded to know who had been instilling these views into his mind.
39. The applicant also claimed that he was then transported to an unknown location in Ahwaz where he was placed in a cell and interrogated. His interrogators demanded to know what his political views were and who he was working with. He claimed that he pleaded that he was not part of any political group or a dissident, but they refused to believe him. His interrogators were furious at this point; they threatened and accused him of many things including insulting the Supreme Leader, Imam Zaman and ultimately God himself. After an hour of interrogation, the authorities informed they would be moved.
40. In the SHEV application, the applicant further claimed that he was then blindfolded and taken to a dark cell in which some men physically abused him. They first began slapping him and then he felt a hard strike at the back of his neck causing him to become unconscious. When he woke up, he began yelling out and another man entered his cell and informed he would be interrogated again. His blindfold was removed, and his arms were uncuffed. In the cell, he noticed one person he knew as [Mr A] who he had met in a [workplace 1] his brother was working as a [position 1]. His interrogation resumed and he was once again accused of being part of a political movement. He denied everything.
41. In the SHEV application, the applicant claimed that he was then transferred again. He believed he was there for about two days. He was then released but told by the authorities they would continue monitor him. Upon release he was fearful and anxious about his circumstances and returned home to his family. He did not want to tell his wife about what he had been through and discovered that his brother had called her informing that he would be away on work for a few days.
42. The above accounts, particularly in relation to the places in which the applicant claimed to have been transferred, and what then happened, were at times quite different from the applicant's evidence at the SHEV interview.
43. At the SHEV interview, the applicant claimed that when he withdrew from the queue at the polling booth, the head of Heresat came and asked why he did not want to vote. He then had an argument with the head of Heresat and said something against the Supreme Leader.
44. This differs from the applicant's evidence in the SHEV application, where he claimed that a Heresat official came and questioned why he stopped out of the line, and they had an argument. There was no mention in the SHEV application that this person was the head of Heresat.
45. The applicant's evidence regarding what happened after he was summonsed to Heresat a few days later was also different. At the SHEV interview, the applicant said that after he was transported from Heresat at work to the security office at an unknown location, they were really aggressive, they were slapping him, swearing at him and gave him very harsh treatment. When invited to describe the whole sequence in more detail about, such as where he was taken to and what happened, the applicant responded that he was taken there, it was a room, a person in plain clothes was sitting there. The person started talking, and as he was

talking, two other people entered, and they started beating him from behind. They asked why he insulted the Supreme Leader, Imam Zaman and God, and who gave him instructions to say these things, and whether he was in contact with the foreigners. He denied it. He said he lost the sense of time because they continued beating him from behind. After one hour, they blindfolded him and transferred him somewhere else. When confirmation was sought as to whether he was saying that when he was first brought to this unknown location, there was a plainclothes man asking him questions, and they also beat him at that time, the applicant responded yes, they attacked and assaulted him from behind, and they did this in order to intimidate him. He also said he did not know who these people were, and that they were security officers.

46. This differs from the applicant's evidence in the SHEV application where he claimed that after he was transported to an unknown location, he was placed in a cell, where he threatened, accused of insulting the Supreme Leader, Imam Zaman and God and interrogated for an hour before he was moved to the second room. There was no mention of him being physically attacked in this first room in the SHEV application.
47. At the SHEV interview, when asked what happened next, the applicant responded that they then blindfolded and handcuffed him, and took him somewhere else, and he walked for a distance. He also said they took him into a normal room that looked bigger than the first one, and then they removed his blindfold and handcuffs. He added there as a big window in the room, but you could not see through the window. When asked, he said different people in plain clothes and with facial hair were in this room. He also said that he did not know these men except one of them, which was [Mr A], who was a customer of the [workplace 1] where his brother worked. When invited to give further details about the appearance of these men, the applicant responded in general they have a kind of "scary appearance" and they tried to scare people.
48. When asked what happened in this second room, the applicant said when he came into the room, they took his blindfold and handcuffs off, and then they pointed to the window and told him that in a few minutes, they would bring his family behind that window, and they could see how he was being tortured here. Then they said it was better for him to tell them about the foreigners that he was in contact with, otherwise they would bring his family here to watch him. When asked, he said the men also slapped his face with their hands, and they continued beating him until he received a blow from the back of his head or neck, and then he became unconscious. When asked whether [Mr A] was in this room, he said yes. He also said that [Mr A] was present in this second room from the beginning, but he left the room after some time.
49. The above oral evidence that the second room was a normal room with a big window that looked bigger than the first room, differs from the applicant's evidence in the SHEV application where he described the second room as "a dark cell". There was no mention in his SHEV application about any windows in this room or the associated threats about bringing his family to watch him behind the window.
50. The applicant's above oral evidence that they removed his blindfold soon after he arrived at the second room, also differs from his evidence in the SHEV application that the men attacked him until he became unconscious while he was blindfolded, and that the blindfold was only removed after he regained consciousness. The applicant's oral evidence at the SHEV interview that [Mr A] was present in the room from the beginning that he was taken to that room, also differs from his evidence in the SHEV application that he only saw [Mr A] after he woke up.

51. At the SHEV interview, when asked, the applicant said that when he regained consciousness this time, he was in a small dark room. When asked what happened then, he responded after that, they did not have any kind of confrontation with him, and then they released him after telling him that he would be watched. He added he believed it was a gap of two days.
52. When asked what happened in these two days, the applicant responded that he was unconscious because of the strong blow. When invited to describe what happened after he woke up, he said so they usually kind of watch the person in their custody to see whether they were still alive or not, so after he woke up, they again took him there, where he was kind of wanted there. But this time, they did not bother him, they told him that he could go, and he would be under surveillance. They blindfolded him, took him in a car and transferred him to somewhere else, and then when they reached a place, they removed his blindfold and released him. When asked about where this place was, he replied it was one of the streets in Ahvaz. When asked, the applicant also said he was not charged with anything or any crime, and no undertaking was made, and they told him that he could go but he would be watched.
53. Towards the end of the SHEV interview, the delegate put her multiple concerns about the different accounts to the applicant for comment.
54. One of the delegate's concerns was the applicant wife's request for voluntary removal to Iran in 2014 with the applicant's consent, and such request was found by the delegate to be contradictory to the applicant's alleged fears and weighed in small part against the plausibility of the claimed 2013 incident. Having assessed the evidence, I accept that the applicants were in detention on Christmas Island at the time and could not wait any longer for medical treatment for the applicant wife's [medical] condition, and that his wife was in a poor emotional state at that time as her [sibling] had passed away and her mother was ill, and a request was made for her to leave Australia for Iran. I accept that the applicant in fact did not wish to return, but he was concerned about his wife's wellbeing, so he consented to her leaving but not with the sons. I draw no adverse inference from the request to return to Iran. I also accept the claim that the applicant wife had no knowledge of the applicant's protection claims. And this explains her responses at her entry interview, induction interview and bio-data interview that she did not know why they left Iran, the applicant did not explain to her, he told her they had to go, and she just followed him.
55. In response to the delegate's concerns, the applicant relevantly explained that during the SHEV interview, he was under great pressure and struggled recalling detail of what happened. He dislikes concentrating and discussing what happened although he may have appeared placid. This was a traumatic experience, he felt vulnerable, he was beaten and slandered, he did not know what would come next, and the consequences of these remained present with him physically and mentally. He also explained that recalling these incidents impact upon him negatively, so he did not attend counselling sessions. He believed he could only benefit from self-help. He listens to music and goes to gym to avoid these memories. He also explained that while he did the best to recount the events at the SHEV interview, his statement of claims attached to his SHEV application was a more accurate and precise account of his experiences.
56. In the IAA submission, it is submitted that the applicant's accounts appear largely consistent. The only difference relates to the sequence that certain events took place during the period of the applicant's interrogation. It is also submitted that the differences were minor and understandable considering the period of time since this incident occurred and the traumatic nature of it.

57. I disagree. The claimed 2013 incident is central to the applicant's case. In view of the nature of this incident, which he says led to his and his family fleeing Iran for Australia to seek protection, I consider it to be a significant and memorable incident if it had in fact occurred. There were numerous differences in the applicant's accounts, which were not only limited to the sequence of the events, but also the details as to the description of the places in which he claimed to have been transferred to, and who, when and what he saw in these cells, and what happened. For example, the applicant's evidence in his SHEV application that he was transferred from Heresat to an unknown location where he was interrogated in a cell for an hour, and there was no mention of him being physically harmed in this first room. This differs from his oral evidence that in this first room, they slapped, assaulted and beat him from behind, they were "really aggressive" and gave him "very harsh treatment". The evidence in the SHEV application that the second room was a "dark cell", in contrast to his oral evidence at the interview that the second room was a normal room bigger than the first room with a big window (albeit one that he could not see through). His oral evidence that they removed his blindfold and handcuffs after he entered the second room and then they pointed to the window to threaten him, also conflicts with his evidence in the SHEV application where he claimed that they removed his blindfold and handcuffs after he woke up. The applicant's oral evidence at the SHEV interview that [Mr A] was present in the room from the beginning but left after some time, differs from his evidence in the SHEV application that after he woke up from a hard strike, his blindfold and handcuffs were removed, and he then saw [Mr A]. The applicant's oral evidence regarding the "scary" appearance of these men was also unconvincing.
58. The applicant says that the version in his SHEV application is more accurate and precise. I note that in the SHEV application, he also stated that the version in his SHEV application was only a summary of his claims, and he would provide further information about his claims during his departmental interview. I am cognisant that the interview was conducted some five years after the claimed incident, but I note that the SHEV application which provided reasonable detail was only lodged a year prior. I do not accept the applicant's explanations, stress, anxiety, pressure, passage of time, his reluctance to recall traumatic experience, and/or any other external factors, could adequately explain the relatively detailed but very different accounts of the claimed incident, or the problematic evidence. It is true that some people are reluctant to revisit trauma or seek assistance, however, in this case, there is no other evidence before me to support the claimed mental/physical impacts. At his entry interview, when asked to briefly state the reason why he left Iran, the applicant said that he was working at the [goods] company and there were discrepancies in the accounts and his job was an accountant. He was accused of insulting the Supreme Leader because he did not wish to vote. He also said nothing would happen to someone that did not vote, but he was pushed into a corner, so he started bad mouthing the Supreme Leader, and he was accused of being political and against them, and that there were a group of people who were against him, and they staged this and pushed him into it.
59. Like the delegate, I consider it implausible that the applicant would have behaved in the manner as claimed at the polling centre organised by his company in 2013, where he withdrew from the queue in front of high-ranking intelligence officials, had an argument with the head of Heresat, had a sudden outburst, lost control, and criticised the Supreme Leader and the integrity of the 2009 elections as claimed. This is particularly so given his and his family background, his history of compliance, his experience from the 2009 incident, where he was questioned, cautioned and undertook not to repeat such behaviour or else his case would be escalated to higher authorities, and he would face arrest. The applicant knew that his workplace was monitored even if the atmosphere seemed freer and more liberal during election times, like during the 2009 election. His own evidence was that he noticed that

Heresat, Sepah and other high ranking intelligence officials were present at the polling booth, and the environment in Iran was that whether you are level-headed or not, speaking out against the government was not sensible and does not occur in a public setting. He was fully aware that his work depended on his loyalty to the regime, and his work contract needed to be renewed every year. He says he had a history of subservience to keep his job because of his mother's advice to keep his mouth shut or risk losing his job and because he needed to think about his wife. The applicant was never politically active in Iran. His own evidence was that since the 2009 incident, he became extremely cautious because he was worried about him and his family. In the circumstances, I am not persuaded by the explanations that it was the climax of a lengthy period of resentment and anger he felt towards the regime, or that it was merely an action out of character or lacking in common sense. I also do not accept the claim that he believed his boss created this problem as a pretext to punish him for him making a complaint against his boss to the [Senior official] (where the complaint process was confidential but he believed his identity was exposed "because of his boss's demeanour"). The suggestion that his boss created this problem to punish him, does not seem to sit well with his own evidence that his boss in fact advised him to go to a polling centre to cast his vote, which he ignored. It also does not seem plausible that his boss would have known in advance that he would suddenly withdrew from the queue and had an argument with high rank officials at the polling station, if this is what the applicant is suggesting when he says his boss created this problem for him. Also, his claims that in the past he felt keeping his mouth shut whenever he stepped out of line wasn't a gross breach of his personal rights, and to some extent signing the undertaking in 2009 was not a breach of his rights as he had spoken out of line, seem to clash with his other claims that the treatment and the undertaking in 2009 caused him to resent the government further.

60. I accept that the applicant made an undertaking in 2009 not to refrain from making critical comments during elections, and if he were to repeat such behaviours his case would be escalated to higher authorities and he would be arrested. I do not find it plausible in these circumstances that the Heresat and the authorities would have detained, interrogated and beat him for two days in 2013, and then release him without taking any further actions against him, had he reoffended in 2013.
61. Further, I consider it unbelievable that his wife would not have known about the claimed 2013 incident if it occurred as claimed. The applicant's evidence was that he was physically assaulted and attacked continuously to the extent that he lost consciousness during the two days while he was detained. I have difficulty accepting as plausible that his wife would not have noticed the wounds and injuries inflicted on the applicant's body when he returned home and thought that he was away on a work trip as told by his brother.
62. The applicant said at the SHEV interview that two to three days after he returned home, his brother told him that [Mr A] said there was an open file against him that could not be closed, and he left Iran before the file was escalated to higher authorities and before he was banned from leaving the country. When asked, he said no summons or notices relating to him were issued or sent to his family after he left Iran, and he had no information about any further investigations or anything like that. It has been some 10 years since the applicants left Iran. There is no independent evidence, such as summons or orders for arrest, or any other evidence suggesting that the applicant was or is wanted by the Iranian authorities.
63. Considering all the materials, for the reasons above, and given my concerns with the evidence, I reject the 2013 incident. I accept the 2009 incident. The applicant's own evidence was that he continued with his normal life after the 2009 incident without problems (until the claimed 2013 incident). He continued to work in the same company and his contracts were

renewed yearly without problems from after the 2009 incident until he left Iran in 2013. The applicants also had no issues acquiring their passports in 2012. The applicant was not involved in the Green Movement. The country information above also indicates that the Green Movement has little profile in Iran today, and even ordinary participants in the Green Movement are not of interest to the authorities. I consider that the applicants were of no adverse interest to the authorities after the 2009 incident, and when they departed Iran in 2013.

64. The applicant has raised claims about his involvement in political activities in Australia at the SHEV interview held in July 2018. There was no mention of him being involved in any political activities in Australia in the 2017 SHEV application.
65. Towards the end of the SHEV interview, the delegate observed to the applicant that it had been a long time since he had done anything that would offend the Iranian government and asked whether he thought it would be an issue if he returns now. The applicant responded by advancing claims that he attended two anti-regime protests a few months earlier in January 2018 - one in [City 1] and one in [City 2]. He also said he had photos on social media on his mobile phone. When asked, the applicant said that he did not join any political organisation that was against the Iranian government in any way since coming to Australia.
66. In the post-interview submission, the applicant provided undated photos, and screenshots of his Facebook account showing photos of him attending these two protests, which were posted on Facebook on 4th and 9th January 2018. The applicant stated that the protest at [Location 1] in [City 1] [in] January 2018 was a controversial event because it was organised by a controversial group known as [Organisation 1] and that given the backdrop he thought it was obvious why he resented this regime and partook in these activities. He said the protest at the [Location 2] in [City 2] [in] January 2018 was a protest against the mistreatment of demonstrators within Iran. He also stated that [Location 2] in [City 2] had big cameras which could be used to record and identify people and he feared harm because of this. The [City 1] demonstration was covered by [the] news. He also stated that he placed these photos on his Facebook page. He asserted that the Facebook page [Organisation 1] also depicted him at the protests. He further claimed that during the [City 1] demonstrations, suspicious persons approached demonstrators asking questions like “why are you protesting... the government of Iran is a good government... you should not be here”, and he believed these people worked for the Iranian government. As noted above, in the IAA submissions, the applicant provided screenshots of his Instagram account showing images of him attending these two protests.
67. In the IAA submissions, the applicant also provided screenshots of his Facebook posts that were said to be criticising the Iranian government and its human rights abuses against Iranians.
68. The applicant has not provided any further details about [Organisation 1] or explained its significance or why it was controversial. It is also not apparent from the materials as to who organised these protests. Absent independent evidence, I do not accept that the Facebook page of [Organisation 1] depicted the applicant, or that this was a controversial group, or that the protests were controversial events. There is no credible evidence, and I am not satisfied that any cameras at [Location 2] in [City 2] or news coverage of the demonstrations recorded or identified the applicant, or that persons worked for the Iranian government were present at these protests.

69. Based on the evidence, I accept that the applicant attended a protest [in] January 2018 in [City 1] and a protest [in] January 2018 at the [Location 2]in [City 2]as claimed, and that he posted some images of him attending these two protests on social media in early January 2018, including on Facebook and Instagram. Although the screenshot of the Instagram profile picture shows a photo of the applicant, the Instagram account name “[account name deleted]” does not identify him. Also, it is not apparent from the screenshots, and I am not satisfied that the Instagram account was or is publicly accessible. I note that the Facebook posts showing the applicant attending protests were private posts visible to his “friends”, and not public posts that were visible to the public. Most of these images portray the applicant wearing sunglasses and holding Iranian flag or placard with groups of people. The captions for these social media posts were not in English, and no English translations have been provided. I also note that there were very little “likes” on these posts, ranging from none to eight “likes”.
70. I also accept that in the month of September 2018, the applicant “shared” several posts that were posted by others on his Facebook page. The posts contain photographic images and captions. The posts seem to relate to various topics, and some of them have political connotations, for example, one post reported a teacher had committed suicide and he was likely murdered; another post contained image of a sleeping child and caption with negative sentiments about the Iranian government that there was nothing left for the children of Iran; some other posts reported the conviction and execution of political prisoners, violence by men against women; and one post concerned a letter from a lawyer to Ali Khamenei etc. It is not apparent from the screenshots that these posts were public posts, and I am not satisfied that these were visible to the public. It is also not apparent that there were “likes”, if any, on these posts. I accept that the applicant shared a few posts of this nature on his Facebook page without adding any comments on them.
71. I accept that the applicant holds views critical of the system and the regime since the 2009 Presidential election, and I accept that his activities in Australia, including the two protests attendance and his social medial activities in 2018, were not solely for the purpose of strengthening his refugee claims, and I am not required to disregard them pursuant to s.5J(6).
72. Country information⁷ indicates that Iran is a theocracy with Islamic beliefs and customs enshrined in law. Use of the Internet in Iran is widespread, and reportedly 50 million Iranians use the internet. Although there have been instances of the authorities monitoring social media activities and have blocked or filtered websites and social media applications they consider objectionable, including Facebook, Iranians routinely use virtual private networks (VPNs) to circumvent these blocks. While it was reported that individuals posting content openly critical of the Islamic republic, its institutions and politics or deemed to be pushing moral boundaries may attract adverse attention, including individuals based abroad, the evidence is that the authorities do not comprehensively and cannot effectively monitor Iranians’ online activities. Individuals with a public profile (including with large social media followings) who are politically active, advocate for greater human rights, have connections to foreigners or are otherwise perceived as threats to the Islamic Republic are more likely to have their social media monitored than other Iranians. Groups such as journalists, bloggers, popular social media influencers deemed to be critical of the regime, administrators of social media platforms are at a higher risk of arrest and harassment by the authorities.

⁷ DFAT, “DFAT Country Information Report Iran”, 14 April 2020, 20200414083132; and DFAT, “DFAT Country Report Iran”, 7 June 2018, CIS7B839411226. See also other country information in the review material.

73. Iranians are able to criticise the government of the day robustly, both in public conversations and online in social media so long as the well understood 'red lines' are not crossed. It is common for Iranians to be critical of the government in public places, including supermarkets, shopping malls and taxis. But people remain cautious about crossing 'red lines', like insulting the Supreme Leader, in their public interactions beyond close family and friends. In addition, the Iranian authorities have little interest in prosecuting failed asylum seekers for activities conducted outside Iran, including in relation to protection claims, including posting social media comments critical of the government etc. Iranian authorities do not check the social media accounts of Iranians returning from overseas.⁸
74. The applicant has not provided any further evidence of involvement in protests or online activities in Australia in the years since September 2018. In the 10 years since the applicant has been in Australia he has attended two protests in January 2018, and privately shared a few images of him attending these protests on social media and a few posts that seem limited in content and nature in 2018. This is notwithstanding that the applicant has the opportunity and freedom to express his political views in Australia. His own evidence was that he has not joined any groups or political parties in Australia. On my findings above, the applicant has only shared some private and limited contents on his social media accounts in January and September 2018, with very little "likes" by others, and without personal comments. There is no evidence of him involving himself in any political activities in Australia since September 2018, five years ago. Having evaluated all the evidence, I am not satisfied that he will involve in any protests or other kinds of political activities upon return or in the reasonably foreseeable, not due to fear of harm or behavioural modification, but because he lacks any real desire, interest commitment to engage in such activities.
75. I accept like many Iranians, the applicant may have been dismayed by the 2009 election results. I also accept that comments made by him (which he thought was in confidence) to his colleagues reached Heresat, and he was warned, and undertook, to stop this behaviour in future, and that he was able to live a normal life and continued to work in the same vast government owned company after this incident. I consider that the applicants face no real chance of any harm for reasons relating to the 2009 incident if they return to Iran now or in the reasonably foreseeable future even when considered in light of the applicant's limited activities in Australia. While in Iran, the applicant was not politically active and did not participate in any protests. I do not accept the 2013 incident, or that there is any open file against the applicant. I consider that the applicant was of no ongoing interest to the authorities following the 2009 incident, and that the applicants lack any adverse profile with the authorities since that time. A considerable time has passed since the 2009 incident and since the applicants departed Iran in 2013. I do not accept the applicant's sporadic and limited political activities in Australia have, or there is a real chance that they will, come to the attention of the authorities in Iran. I do not accept that the applicant has a genuine desire to, or interest in, express his views or participate in any political activities upon return or in the reasonably foreseeable future. In view of the above country information, the applicants' particular circumstances and my findings that the applicants lacked any adverse profile with the authorities after the 2009 incident, I am not satisfied that the authorities would spend the time and resources in actively monitoring the applicant's activities. There is no credible evidence, and I also do not accept the claims that the applicant's social media posts or his attendance at the two protests in 2018 have already reached the Iranian authorities or would become known to the authorities in the reasonably foreseeable future. As noted above, the information is that there are millions of internet users in Iran, and that the government of the day may be criticised robustly in public and online, and that the Iranian authorities have little

⁸ Ibid.

interest in prosecuting returned asylum seekers for activities undertaken abroad. The information does not suggest that people with Kurdish ethnic origins are treated any differently. I do not accept there is a real chance of the applicant being accused of insulting the Supreme Leader, Imam Zaman or God, or an apostate. I also am not satisfied that the applicants face a real chance of harm for reasons relating to the applicant's past political activities (online or otherwise) if they were to return to Iran now or in the reasonably foreseeable future.

76. Country information⁹ 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 the Iranians who arrived after 19 March 2018 and who have exhausted all legal and administrative avenues to regularise their immigration status in Australia.
77. Given that the applicants arrived before this date, I consider that if they return to Iran, it would 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. 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, usually for about 30 minutes to one hour, about the circumstances of their departure and why they are traveling on a *laissez-passer*. Arrest and mistreatment are not common during this process.¹⁰
78. Iranian authorities pay little attention to failed asylum seekers on their return to Iran. Iranians have left Iran in large numbers since the 1979 revolution, and the authorities accept that many Iranians will seek to live and work overseas for economic reasons. As noted above, Iranian authorities have little interest in prosecuting failed asylum seekers for activities conducted abroad or their protection claims. Those with an existing high profile, such as political activists, may face a higher risk of coming to official attention upon return. In its 2020 report, DFAT indicated it was not aware of any legislative or social barriers to voluntary returnees finding work, shelter or to return to their home region. Some countries offer failed asylum seekers financial packages to support their reintegration on return to Iran, and the IOM also provides some resettlement assistance to voluntary returnees. Unless they were the subject of adverse official attention before departing Iran, returnees are unlikely to attract attention from the authorities, and face a low risk of monitoring, mistreatment, or other forms of official discrimination.¹¹ The evidence does not indicate that the situation has changed.
79. On my findings above, the applicants were not of adverse interest to the authorities or anyone when they departed Iran. The applicants' evidence was that in 2013 they exited Iran legally on their own Iranian passport, which was issued in 2012, via the international airport in Tehran without problems. I find that the applicants are of no adverse interest to the authorities or anyone for reasons relating to the 2019 incident, the applicant's political opinion, activities or any other reasons. I accept that the applicant is of Kurdish ethnicity, but he regards himself Persian and he did not learn the language. The information is that an estimated 8 million Kurds live in Iran.¹² The applicant and his brothers worked for Iranian government entities, and the evidence does not suggest that he faced any past harm for reasons relating to his ethnic origin. There is no credible evidence, and I do not accept the

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

¹⁰ Ibid.

¹¹ Ibid.

¹² Ibid.

claims that his ethnic origins as a Kurd would heighten the risk that the applicants would be subject to enhanced scrutiny or questioning around the applicant's activities or their return as failed asylum seekers. Considering the applicants' particular circumstances as a whole, I am not satisfied on the evidence that as returned failed asylum seekers who have spent time in Australia, the applicants would face a real chance of being interrogated, arrested, detained or otherwise harmed upon return. I am also not satisfied that the applicants will have an adverse profile on return, or that any of them will face a real chance of harm during the processing at the airport, or upon return to Iran.

80. I am not satisfied that there is a real chance of the applicants facing harm for any reasons now or in the reasonably foreseeable future if they return to Iran.
81. The applicants do not have a well-founded fear of persecution.

Refugee: conclusion

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

Complementary protection assessment

83. Under s.36(2)(aa) of the Act, a criterion for a protection visa is that the applicant is a non-citizen in Australia (other than a person who is a refugee) in respect of whom the Minister (or Reviewer) is satisfied Australia has protection obligations because there are substantial grounds for believing that, as a necessary and foreseeable consequence of the person being removed from Australia to a receiving country, there is a real risk that the person will suffer significant harm.

Real risk of significant harm

84. 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.
85. 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.
86. Given that the 'real risk' test imposes the same standard as the 'real chance' test, for the same reasons discussed above, I find that the applicants do not face real risk of suffering harm for the purposes of s.36(2)(aa). I conclude that there are not substantial grounds for believing that, as a necessary and foreseeable consequence of being removed from Australia to Iran, there is a real risk that the applicants will suffer significant harm for any reasons.

Complementary protection: conclusion

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

Member of same family unit

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

Decision

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

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.