



**Australian Government**  

---

**Immigration Assessment Authority**

**Decision and Reasons**

**Referred application**

---

IRAN

IAA reference: IAA23/10541

Date and time of decision: 23 August 2023 14:07:00

R Mikhail, Reviewer

**Decision**

---

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

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

## Background to the review

---

### Visa application

1. The applicant is an Iranian national who arrived in Australia by sea and was considered an 'unauthorised maritime arrival'. On 17 March 2017 he was granted a temporary protection visa (Subclass 785) (TPV). The visa was valid for a period of three years from the date of grant.
2. On 2 January 2020 the applicant lodged an application for a subsequent TPV.
3. In 2021 his TPV was cancelled due to breach of visa condition 8570, as he departed Australia and entered another country without seeking, or obtaining, written approval from the Minister of Immigration.
4. On 3 August 2023 a delegate of the Minister for Immigration refused to grant the subsequent TPV on the basis that the applicant did not satisfy subsection 36(2) of the *Migration Act 1958*.
5. The applicant is a 'fast track applicant' by operation of *Migration (Fast Track Applicant Class – Temporary Protection and Safe Haven Enterprise Visa Holders) Instrument 2019*.

### Protection visa assessment

---

6. Under s.36(2) of the Act, the criteria for the grant of a protection visa require that the applicant for the visa is a 'non-citizen in Australia'. This means that a protection visa may only be granted if the applicant is physically present in Australia.
7. According to information included in the review material, the applicant was not in Australia at the time of the delegate's decision. In August 2023, the applicant contacted the IAA confirming that he was outside Australia and did not have a visa. I am satisfied the applicant does not hold a substantive visa and there is no evidence he holds a visa of any type that would allow him to lawfully re-enter Australia.
8. I am satisfied that the applicant is not a 'non-citizen in Australia' and so does not meet the requirements of s.36(2). The applicant does not satisfy the criteria for the grant of the visa.

### Decision

---

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

***Migration Act 1958***

**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 under the Refugees Convention as amended by the Refugees Protocol 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.

...