



Australian Government
Immigration Assessment Authority

Decision and Reasons

Referred application

IRAN

IAA reference: IAA23/10576

Date and time of decision: 5 October 2023 14:13:00

S Kamandi, Reviewer

Decision

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

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

Background to the review

Visa application

1. The referred applicant (the applicant) claims to be a national of Iran. He arrived in Australia in February 2013 and on 19 December 2016 made an application for a Temporary Protection Visa (TPV).
2. On 5 October 2017 a delegate of the Minister for Immigration (the delegate) refused to grant the applicant's visa on the basis that he was not a person in respect of whom Australia owed protection obligations. While the delegate accepted that the applicant grew up in a non-religious family and that he did not follow a religion, the delegate did not accept the applicant's claims that he had strong political views or views against Islam. The delegate was not satisfied of the credibility of the applicant's claims that he ran a business in Iran, selling Virtual Private Networks (VPNs) and putting Persian subtitles on English movies, or that his shop was raided by the authorities prompting his departure from Iran. The delegate was not satisfied that the applicant faced a real chance of serious harm or was at a real risk of significant harm for being a non-religious person or as a returned asylum seeker returning from a western country.
3. The matter was referred to the Immigration Assessment Authority (IAA) which made a decision affirming the delegate's decision on 10 July 2018.
4. The applicant applied for judicial review of the IAA's decision and on 9 August 2023, the Federal Circuit and Family Court of Australia remitted the matter to the IAA by consent orders. The Minister conceded that the IAA made an error by not assessing whether pieces of new information satisfied s.473DD(b)(ii) of the *Migration Act 1958* (the Act) and considering these findings when it made a negative finding under s.473DD(a) of the Act.

Information before the IAA

5. I have had regard to the review material given by the Secretary under s.473CB of the Act. This review material includes the applicant's consular access form, his detention notice, and biodata form. These documents have been identified as information not provided to the IAA previously. These documents are administrative in nature, and in view, do not contain information that would materially assist in the determination of the applicant's claims for protection. I do not consider them to be relevant in the assessment of the applicant's claims.
6. The applicant's representative emailed the IAA with a submission dated 27 October 2017 and various attachments. Some of attached documents, including the applicant's birth certificate, business levy payment, business licence, court verdict, power of attorney, Facebook messages, evidence of VPN sales and Computer Crimes Laws in Iran, were provided to the delegate and are not new information. The submission primarily refers to the applicant's evidence before the delegate and sets out arguments that the delegate misunderstood parts of the applicant's evidence, did not consider the applicant's claims in their entirety, and erred in refusing the applicant's TPV application. The one-page attachment, which includes English translation of some parts of the applicant's evidence at the TPV interview, seeks to clarify parts of the applicant's evidence which was before the delegate. I do not consider this attachment and the submission to be new information and have considered them in undertaking this review.

7. The attachments also included a document and English translation of what is described as a formal flowchart used by the ICT [City 1], the government authority in charge of overseeing and granting business licences to communication and information technology outlets in [City 1]; a news article (and English translation) published mehernews.com on 9 March 2015; photographs of what is claimed to be of the applicant's business; a copy of and English Translation of the lease agreement of the business; photographs described as depicting the applicant and his business assistant; statutory declarations from the applicant's friends declared in October 2017; and copies of two emails referred to as "further VPN sales records". These documents were not before the delegate and are new information.
8. It is submitted that the delegate did not make any direct or indirect comments nor gave any indications, during or after the interview, that she had any concerns in relation to the applicant's claim that he operated a computer services business in [City 2]. The delegate did not give the applicant natural justice by failing to raise her concerns and allowing the applicant to respond to her concerns. It is argued had the applicant been made aware of the delegate's concerns during the interview, the information provided to the IAA in support of his claims that he operated the business in Iran, would have been produced before the delegate's decision. It is argued that given the circumstances, the requirements under s.473DD of the Act is met.
9. While some of the new information post-date the delegate's decision, some new information pre-date the delegate's decision and include photographs which is claimed to have been taken prior to the applicant's departure from Iran. In accepting the applicant's assertion that he was not made aware of the delegate's concerns regarding his claim the he operated a business in Iran, I am satisfied that this information could not have been provided to the delegate and s.473DD(b)(i) of the Act is met. Some information such as the lease agreement, statutory declaration, photographs of the applicant which appear to be genuine, do contain credible personal information. I am also satisfied that that the information has been provided in support of claims that were rejected by the delegate and that they may have affected the consideration of the applicant's claims. Given these matters, I am satisfied that there are exceptional circumstances to justify considering the new information.
10. The delegate considered the 2016 Department of Foreign Affairs and Trade (DFAT) report¹ which was current at the time. As part of its previous review in 2018, the IAA obtained the 2018 DFAT report². Since that time, DFAT has published further reports, with the 2023 DFAT report³ being the most recent published report. Like all DFAT Country Information reports, its 2023 report on Iran has been prepared specifically for protection status determination purposes. While I am not satisfied that there are exceptional circumstances to justify considering the now outdated 2018 DFAT report, I am satisfied that there are exceptional circumstances to justify considering the most recent 2023 DFAT report.

Applicant's claims for protection

11. The applicant's claims can be summarised as follows:
 - The applicant was born in [City 3] and is of Persian ethnicity. He grew up in a non-religious family and never followed Islam or any other religion.

¹ DFAT, "DFAT Country Information Report Iran April 2016", 21 April 2016, CIS38A8012677.

² DFAT, "DFAT Country Information Report – Iran", 7 June 2018, CIS7B839411226.

³ DFAT, "DFAT Country Information Report", 24 July 2023, 20230724110043.

- The applicant operated a business, repairing computers and Apple products. He also sold VPNs and put Persian subtitles on English movies and sold them to customers.
- The applicant's shop was raided by the authorities on three occasions. During the first raid the authorities confiscated 400 CDs. As there was no obscene material on them, the applicant was forced to sign an undertaking that he would not engage in such activities and the matter was concluded without further issues. The second raid occurred almost three years prior to the applicant's departure from Iran. He was charged and tried. As the judge was one of his customers, the applicant was given an insignificant fine.
- The third raid occurred almost two months prior to the applicant's departure from Iran. The authorities searched his shop and house and confiscated CDs, computer parts, flash memories and the applicant's brother's computer. Most of the hardware belonged to the applicant's customers, which also included hardware that contained a derogatory song. The authorities also confiscated the applicant's mother's CD which contained information about the life of King Pahlavi and his wife.
- The applicant was ordered to go to the intelligence office of Amaken organisation the following day. He was taken to a room. There were three officers who asked him if he was a Bahai. While he said no on two occasions, when asked the third time, the applicant was outraged and said that he did not believe in Islam or the Bahai faith. The applicant was asked to give the names of three Bahai families. He told the officers that he would think about it and if he recalled anyone he would cooperate, with no intention of doing so. He was subsequently made to sit down and watch what the officers were doing to others.
- Two days after the raid, the applicant's shop was sealed. He faced allegations of unlawful acts, including publishing banned materials, and cyber offences.
- The applicant asked for the assistance of an influential corrupt person with contacts within the authorities. The applicant paid the person 1.5 million tomans to bury the charges that were going to be pressed against him. The person was unable to destroy the charges but changed the name of the defendant from the applicant to his mother's name. The authorities found out about this and informed the judge that the applicant was the correct defendant. The applicant's mother was dismissed and issued with a fine of 500,000 tomans.
- The applicant fled Iran. He used his own passport and departed the country [in] February 2013. After his departure, the authorities went to his house and enquired about the applicant's whereabouts.
- If returned to Iran, the applicant fears that he will be located, arrested, and charged by the intelligence officers for reasons of his politically motivated business activities and his opposition to Islamic regime.

Refugee assessment

12. 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

13. 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.
14. The applicant has consistently claimed to be a national of Iran. He provided the delegate with copies, and English translations, of his Iranian Birth Certificate and National Identity Card. I accept that the applicant is a national of Iran and that Iran is the receiving country for the purposes of this review.
15. The applicant claims, and I accept, that he was born in [City 3] where he resided until he was [Age]. I accept that the applicant's family moved to [City 1] in [Year], where the application resided until his departure from the country in 2013.
16. The applicant's evidence is that his father passed away and his mother, a retired [Occupation], resides in [City 1]. The applicant has [brothers], also residing in [City 1]. The applicant was enrolled in school in [City 1] in [Year] and completed high school in [Year]. He completed his compulsory military services between [Years]. I accept the applicant's evidence in this regard.
17. At his arrival interview, held on 2 March 2013, the applicant stated that he got married in [Year] and travelled to Australia with his wife and several other friends and people he knew in Iran. He claimed that his family did not know of his marriage and that they were against it. He provided his wife's sister's details as the emergency contact person and a copy of an untranslated document referred to as a "marriage licence". The applicant's TPV application indicates that he has never been married. At the TPV interview, the delegate referred to the applicant's evidence during his arrival interview that he married in [Year] and travelled to Australia with his wife. The applicant explained that in Iran there were two systems of marriage, one legal and the other according to Sharia law. He stated that there is a document called "sigheh-nameh", which is issued according to Sharia law so young people don't have problems when seen together in public. When asked if his marriage was according to Sharia law, the applicant responded in the positive and confirmed that clerics issued marriage certificates, for a fee, for this type of marriages. When asked about when he got divorced, the applicant stated that they simply obtained the document to prevent issues and that the marriage expired after a year. He reiterated that young people obtained these documents to be able to travel freely and prevent issues with the authorities. In post-interview submissions, the applicant's representative indicated that the applicant's marriage was of a temporary nature (Nikah only) and expired "long ago" and that the applicant has never been legally

married. I am willing to accept that the applicant's marriage was a temporary marriage and that their "marriage licence" may have been obtained to facilitate their departure from Iran.

18. The applicant's central claim relates to his role as a self-employed shop operator, where he repaired computers and Apple products, and also engaged in selling VPNs and English movies with Persian subtitles. He claims that he engaged in these activities due to his strong political views and opposition to the Iranian government and that as result of his business activities he came to the attention of the authorities and had to leave the country.
19. The applicant's TPV application indicates that he was operating a computer shop in [City 2], where he resided, from 2005 until 2012. In his TPV statement, the applicant indicates that he owned a reputable business, which he built from scratch. He repaired computer parts and peripherals as well as Apple iPhones and that he was very well known and served considerable customers on a daily basis. At the TPV interview, the applicant stated that the shop was attached to his family home. He stated that he was running the business for about five or six years and that it was not a family business as he was the only one who knew about computers within his family. When asked about how he started this business from scratch as claimed in his TPV statement, the applicant stated that "one day" his mother came to him and said that the house zoning had changed from residential to business. He borrowed money and made two shops, one was rented and the other was used for his business. The applicant stated that when he started the business, he had 900,000 tomans and borrowed 52 million tomans. He had one computer and borrowed another from his aunt, and that the business grew to the extent that he used to repair 15 computers a day. When asked if he registered the business, the applicant claimed that he was not allowed to register the business in his name because he was not married, and that the business was registered in his mother's name. When asked about when the business was registered, the applicant stated that it was when he sat for the test and passed the test and that it was such a good time that he had forgotten when that was. When asked to give an idea when that was, the applicant stated that it may had been five years before he left Iran (around 2007/2008). The applicant's evidence seems to suggest that although the business was registered in his mother's name, he sat and passed the test to register the business. In support of his claim that he was unable to register the business in his name because he was nor married, the applicant provided a copy and English translation of what is referred to as a formal flowchart used by ICT [City 1] (the government authority in charge of overseeing and granting of business licenses to communication and information technology outlets in [City 1]). I note that the document indicates that gentlemen should be married or between 30 to 40 years of age and that licenses cannot be granted to ladies.
20. Regarding the profitability of his business, the applicant claimed that his business generated five times the turnover of a business of that size, as the labour was mainly service-related 90 percent of the income was profit and that the maximum he ever made was 650,000 tomans in one morning. In response to questions about whether he paid tax, the applicant indicated that he did, but the system was different to Australia in that people paid much less tax. He also stated that the tax was a fixed amount that he paid regardless of income, and that it was like a utility bill that he received annually and had to pay. The applicant also stated that the taxation officer, who was a friend of his, used to come to his shop and that he never received an income tax letter. While the translation of the applicant's evidence at the TPV interview provided by his representative clearly indicates that the applicant stated that he paid tax and that the system was different to that of Australia, it is submitted that the applicant was referring to payment of a business levy in Iran and that he had never paid income tax in the years he lived in Iran. In support, the applicant provided a translation of a short article published in mehrnws in 2019, which indicates that 73 million Iranians did not pay tax

because Iran did not have a comprehensive tax system or effective mechanisms for tax enforcement is provided. While I accept people in Iran are able to avoid paying tax due to the country's tax processes and enforcement mechanisms, the applicant's evidence at the TPV interview appears to suggest that he did pay a fixed amount of tax, which is claimed to have been the payment of a business levy in the 2017 submission.

21. The applicant also provided copies and English translation of a business license issued [in] December 2006 and payment of business levy for the statement period between [March] 2009 and [March] 2010. The documents refer to the applicant's mother as the business owner of a computer business at the applicant's residential address. In support of his claim that he operated the computer business in Iran, the applicant provided photographs of himself, and another person said to have been taken at the business premises, and photographs of what appears to be of a shopfront. The photographs do not include any marking and are not dated. They show the applicant and another person with what appears to be CDs on the shelves behind them. The photograph of the shopfront shows closed double doors with no signage of the shop's name and shows a closed "[Product 1s]" shop on one side and a shop displaying what appears to be [Product 2s] and other [products] on the other side. In my view, these photographs do not establish that the applicant operated a large-scale business selling VPNs, banned English movies, or that he engaged in these activities due to his political or anti-regime views.
22. In his TPV statement, the applicant states that as a young man with strong political views, he was dedicated to play his part in the underground fight for the Iranian youth against the regime's widespread brainwashing programmes entailing elements of censorship, manipulation, and information control. He claims that in his efforts to neutralise and circumvent the regime's online filtering and censorship efforts, he hired servers located overseas and sold VPNs allowing internet users to access filtered websites without risking their identity. The applicant claims that he also embarked on putting Persian subtitles on "proper" English movies, burnt them on CDs and sold them to customers. The applicant provided statutory declarations from three people in Australia declaring that the applicant operated a computer and mobile services shop in [City 2]. The statutory declarations indicate that the applicant assisted with VPNs and sold various uncensored foreign films, including foreign movies with Persian subtitles.
23. At the TPV interview, the applicant was asked about his strong political views. He stated that because people were unhappy and suffering, it made him unhappy and caused him to suffer. The applicant explained that it felt like it was raining, and many people did not have an umbrella and he wished he did not have an umbrella so he would suffer like they did. He wanted to help them as much as he could to the best of his ability and that he knew it was a dangerous choice. When asked if there was anything else he wanted to say, the applicant stated that he thought he could do something so people were relieved from that condition. When asked what was it that he did, the applicant said that he wanted to empower people and open their eyes. When asked again about what he did, the applicant said that he enabled people to reach information that were filtered and banned by the regime and that where he lived almost 50,000 people knew him by his first name. When asked about why he sold VPNs, the applicant explained that this was the way he could help people as the VPNs eliminated government filters. Regarding selling of the VPNs, the applicant stated he had to memorise a 12-digit number. The supporting evidence include copies and English translation of two messages from his customers. One sent on 21 October 2011, informing the applicant that the latest VPN he provided did not work. The other was sent on 11 October 2012 asking the applicant to assist with setting a VPN on an iPhone. Further evidence includes what appears

to be sent emails with usernames and passwords. I do not consider the applicant's evidence to support his assertion that he engaged in "vast scale sale of VPNs".

24. Regarding the sale of foreign movies, the applicant confirmed that foreign movies were widely available in Iran. When asked how he obtained the foreign movies, the applicant stated that he downloaded them using a private VPN server. While the applicant explained that more recently people in Iran have access to full foreign movies revised in Farsi, he said that when he was in Iran, revised movies were censored, and people could only obtain full movies with subtitles. The applicant has not provided any explanations of how he included English subtitles, particularly given that he has not claimed to have been fluent in English and only ever worked with one assistant. It has been several years since the delegate's rejection of his claims that he engaged in vast scale selling of VPNs and selling of subtitled banned movies, and I note that the applicant has not provided any further credible information explaining how he included English subtitles on banned foreign movies which he sold to his customers. While the short statutory declaration from his friends attest to the applicant operating a business and that he assisted with VPNs and sold uncensored foreign films, they do not include details of how the applicant obtained the VPNs and banned films or inserted English Subtitles, nor do they include any information about the scale of the applicant's business.
25. The applicant has consistently claimed that the authorities were aware of his activities and raided his shop. In his TPV statement, the applicant claims that the authorities were aware of what he was doing and that they raided his shop on three occasions. He indicates that during the first occasion, the intelligence and police force confiscated 400 CDs and as there was no obscene material found, he was just made to sign an undertaking that he would not engage in such activities again. The applicant explains that as this incident was insignificant, he did not mention it during his arrival interview. At The TPV interview, the applicant was asked about when this raid occurred. At first, the applicant stated that it happened a long time ago and when asked to give an idea of when the incident occurred, the applicant said that it may have been in the first year after he opened the shop. In response to the delegate's observation that the applicant considered confiscation of 400 CDs as insignificant, the applicant stated that he could not say that he counted the CDs, those incidents make one fearful and that he went back to the incident later and calculated how much he had lost. I found the applicant's explanation for not mentioning this claimed raid earlier unconvincing, given that he claims that some 400 CDs were confiscated, and he had to sign an undertaking to refrain from engaging in such activities. Furthermore, the applicant's claim that he was selling foreign movies with English subtitles, which was banned by the authorities, detracts from the credibility of his explanation that the authorities could not find anything significant against him.
26. The applicant claims that the second raid occurred almost three years before he fled Iran in 2013. In his TPV statement, the applicant claims that he was mistreated by the police, charged, and tried. As the judge was a customer of his, the applicant states that he was given an insignificant fine and got off without too much damage. At the TPV interview, the applicant stated that his shop was searched, CDs confiscated, and that they didn't have any proof. I find the applicant's evidence that they did not have any proof and his claim that he was charged and tried before a judge, conflicting. In his TPV statement, the applicant's evidence is that each time his shop was raided he ramped up his "anti-censorship and anti-cultural limitation trades". The applicant has not detailed how he ramped up his activities/trades and I note that there was a period of several years between the first and the second claimed raid, and no evidence that after confiscation of 400 CDs and signing of undertaking that he would not engage in such activities, that he was visited or monitored by

the authorities but rather that he continued to operate his business without any ongoing issues.

27. Regarding the third raid, the applicant claims that it occurred about two months prior to his departure from Iran. The applicant departed Iran [in] February 2013. In his TPV statement and at the TPV interview, the applicant gave details that after closing the shop to go home, he was grabbed by his wrist and shown a gun. In his TPV statement, the applicant claims there were three men one of which was a duty judge, and that he was forced into his shop which was searched. The men did not find anything and entered his house, searched the house, and took all his CDs, computer parts, flash memories and his brother's computer. Most of the hardware belonged to his customers and one contained a derogatory song called "Naghi" and that a CD belonged to his mother and was about the life of King Pahlavi and his wife. The applicant claims that the men then returned to the shop and took his CDs and as they left, they ordered the applicant to go to the intelligence office of the Amaken organisation on the following day. When he reported the next day, the applicant claims that there were three men in a room and that they all asked him if he was of Bahai faith. The applicant claims that while he said no twice, the third time he lost control and said that he did not believe in Islam or the Bahai faith. The applicant further claims that he was told that they were collecting the names of at least three Bahai families, and that as they knew that the applicant was associating with Bahai families, they asked him for the names to add to the gravity of the charges that they were laying against him. The applicant claims that he told them that he would think about it and that if he recalled any names he would cooperate, without any intention to do so. The applicant claims that he was made to watch what the men were doing to other people to instil fear in him and that this continued for eight to ten days. He also states that his shop was sealed two days after the raid and that he was facing allegations of unlawful acts, including publishing banded materials and cyber offences. I find the applicant's evidence that, after being accused of following the Bahai faith and telling the authorities that he did not believe in Islam, he was released to go home and return to watch what the authorities were doing to others and without being harmed or detained highly implausible. I consider that if the authorities had evidence that the applicant was engaging in banned activities and admitted to not believing in Islam, that they could and would have easily detained him. I also find it difficult to accept that if the authorities knew that the applicant was associating with Bahai community, accused or questioned him about his faith and asked him to give details of other Bahai families in the area, that he would have been released by making a promise that he would think about giving the names of Bahai families. I also find the applicant's evidence he was asked to return for eight to 10 days to watch what the authorities were doing to others without being harmed or detained, unconvincing.
28. Regarding how the applicant managed to escape the allegation, he claims that he knew of an influential person who had strong contacts with the authorities. The applicant asked for assistance and paid him money. The man could not destroy the ongoing investigation against the applicant but was able to change the name of the defendant from the applicant's name to his mother's name, as the applicant's mother was elderly it was believed that the judge would show leniency towards her. He claims that the intelligence unit informed the judge that the applicant's mother was not the correct defendant, and the judge dismissed his mother with a fine of 500,000 tomans. As the applicant knew that he was going to be chased, he fled Iran in a matter of four or five days.
29. At the TPV interview, the applicant gave broadly consistent evidence regarding the events of the third raid and how he managed to evade the charges laid against him. When asked if the applicant went to court with his mother, the applicant stated that he could not remember if he took his mother, or if he was at home, or waited outside the court. He claimed that he was

very stressed and could not remember. In support, the applicant provided a copy and English translation of a court verdict issued [in] January 2013 which names the applicant's mother as the defendant. Contrary to the applicant's evidence which suggests that his mother appeared before the court, the verdict indicates that the verdict was issued in absence of the defendant. Also contrary to the applicant's claim that the court was informed by the intelligence officers that his mother was not the correct defendant, the verdict names his mother as the defendant convicted of charges to supply and distribute illegal audio and visual products and storing of obscene and immodest CDs.

30. In his TPV statement, the applicant claims that after his departure from Iran the authorities went to his house enquiring about him. He also claims that one of his friends, who used to work in the applicant's shop, started his own business and was approached by the authorities about the applicant. At the TPV interview, the applicant stated that his worker rented his business premise and was running the business but had to shut the business because security stormed in and he had to shut the business. He could not recall when this occurred but indicated that he talked to his worker while in detention in Australia, this may have been a month or two or three after his arrival. The applicant has provided a copy and English translation of a lease, indicating that the applicant's mother leased the shop for a period of three years between 2016 and 2019. I find it difficult to believe that if as claimed, the applicant was facing charges under the Computer Crimes Act facing lengthy custodial sentences, draconian fines, judicial orders to close organisations and being banned from using electronic communication, that his assistant would have been able to operate the business after it was sealed. I also note that the applicant has not claimed that his mother faced any further repercussions as the owner of the shop.
31. Country information reports⁴ indicate that travel bans may be imposed on citizens preventing them from leaving the country. Individuals banned from leaving the country may find this out at the airport for the first time. The 2009 Danish Immigration Service report⁵ indicated that permission to leave Iran might be revoked in cases where the authorities found it necessary. This may be because a person has outstanding issues with the government and that immigration police may revoke the permission to leave anywhere in the airport, since the airport is under the jurisdiction of the immigration police. The 2016 DFAT report⁶ assessed that it was possible to leave Iran to flee arrest warrants or charges but was usually accomplished overland rather than through the main airports.
32. The applicant's evidence is that he departed the airport using his own passport and that he did not encounter any issues. Given the applicant's evidence that his shop was raided just a couple of months prior to his departure and sealed, he was made to go to the intelligence office for days and questioned about his faith, and that court was advised that his mother was not the correct defendant, I consider it highly implausible that the applicant would have been able to exit the airport without any difficulties. I also note that the applicant's evidence that he obtained a temporary marriage certificate in 2011 to be able to travel with his then wife and that he also travelled to Australia with a group of his friends and people he knew from Iran. I consider this to further detract from the credibility of the applicant's evidence that his travel to Australia was made under the circumstances claimed and that he made these arrangements days prior to his departure.

⁴ DFAT, "DFAT Country Information Report Iran April 2016", 21 April 2016, CIS38A8012677; Danish Refugee Council, Landinfo and Danish Immigration Service, "Iran: On Conversion to Christianity, Issues concerning Kurds and Post-2009 Election Protestors as well as Legal Issues and Exit Procedures", 1 February 2013, page 67, CIS25114.

⁵ Danish Refugee Council, Landinfo and Danish Immigration Service, "Human Rights Situation for Minorities, Women and Converts, and Entry and Exit Procedures, ID Cards, Summons and Reporting, etc.", April 2009, p.36, CIS17329.

⁶ DFAT, "DFAT Country Information Report Iran April 2016", 21 April 2016, CIS38A8012677.

33. Overall, While I am willing to accept that the applicant operated a business, attached to his home in [City 1], repairing computers and iPhones, I am not at all satisfied of the veracity of his claims that he operated “a vast scale sales of VPNs and banned foreign movies” with Persian subtitles. I do not accept that the applicant’s shop was raided on three occasions as claimed, that he faced charges, was interrogated, and asked if he was of Bahai faith or asked to provide details of Bahai families that he knew. While I am willing to accept that the business may have continued by his assistance for a few months after the applicant’s departure, I do not accept that the shop or the business was shut due to security officers storming the shop. I accept that the applicant’s mother leased the shop to others after the applicant’s departure. I do not accept that the applicant was of any adverse interest or had any political or religious profile with the authorities at the time of his departure from Iran or that the authorities made enquiries about his whereabouts given that I do not accept that he was of any ongoing interest to the authorities and that he departed the country using his own passport.
34. The applicant has consistently claimed, and I accept, that he grew up in a non-religious family and did not practise any religion in Iran. Apart from the claims that while interrogated, he was asked if he was of Bahai faith, claims which I do not accept, the applicant has not claimed that he had come to the attention of the authorities for reasons of his religious views or non-practice of Islam. The 2020 DFAT report⁷ indicated that that the official religion of Iran is Shia Muslim and that a Muslim who leaves his or her faith or converts to another religion or atheism risk state prosecution and may be charged with apostasy. However, in relation to the Muslim population, it is reported that a significant proportion of the population does not attend Mosque or pray on a regular basis. Religion is considered a private matter and that beyond the expectation that people do not eat in public or hold parties during the holy Muslim month of Ramadan, how one wished to observe Islam is an individual choice, and not a matter for the state. The most recent 2023 DFAT report⁸ indicates that younger and wealthier Iranians, particularly in the major cities, are secular and that most of the population does not attend mosque. Despite government laws, religion is considered a private matter, beyond the expectation that people do not eat in public during Ramadan or hold parties during Muharram and Safar, how an individual observed Islam was an individual choice. Atheism was quite common and only those who publicly renounce Islam face apostasy charges and atheists from liberal families do not face any familial pressures. While I accept that the applicant holds opposing views to the Iranian regime, I do not accept that the applicant engaged in any political or anti-regime/religion activities in Iran or publicly denounced the regime or the religion. There is no evidence that the applicant has engaged in any activities that would of concern to the Iranian authorities in Australia. I am not satisfied that the applicant has any intention to engage in activities that would be of concern to the authorities or that he would publicly denounce Islam or the regime if returned to Iran or that he would refrain from such activities for fear of persecution. Given the country information, I consider the chance of the applicant coming to attention of the authorities or facing any harm for not practising Islam, or as someone who considers himself as non-religious, to be no more than remote.
35. The applicant has not claimed to hold a valid Iranian passport and I accept that to be the case. The delegate considered whether the applicant would face a real chance of harm for having sought asylum in Australia.

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

⁸ DFAT, “DFAT Country Information Report”, 24 July 2023, 20230724110043.

36. The 2020 DFAT report⁹ indicates that Iran does not permit the involuntary return of Iranians from Australia unless they arrived in Australia after 19 March 2018, the date on which Iran and Australia signed a Memorandum of Understanding that includes an agreement by Iran to facilitate the return of Iranians who arrived after this date and who have no legal right to stay in Australia. As the applicant arrived in Australia prior to 19 March 2018, I find that if he were to return to Iran, it would necessarily be on voluntary basis. DFAT also reports that persons who do not have a valid Iranian passport require temporary travel documents issued by Iranian diplomatic representatives overseas to facilitate their return and that the authorities at the airport will be forewarned about such persons' return.¹⁰ It is reported that in general, authorities pay little attention to returned asylum seekers on their return to Iran. DFAT also reports that persons who do not have a valid Iranian passport require temporary travel documents issued by Iranian diplomatic representatives overseas to facilitate their return and that the authorities at the airport will be forewarned about such persons' return.¹¹ Given that the applicant will only be returned on a voluntary basis, it may be possible for him to obtain an Iranian passport. However, even if the applicant returns to Iran on temporary travel documents, I am not satisfied he faces a real chance of persecution. DFAT reports¹² that returnees on temporary documents are questioned about the circumstances of their departure and the reason for travelling on temporary documents. Questioning only takes between 30 minutes to an hour, however, may take longer if the returnee is considered evasive in their answers/ or immigration authorities suspect a criminal history on the part of the returnee. Arrest and mistreatment are not common during this process. I do not accept that the applicant faced any criminal allegations or charges while in Iran and I consider the chances of the applicant facing harm during the arrival process to be no more than remote.
37. Considering the applicant's circumstances as a whole and in light of what I have accepted of his claims, I am not satisfied that the applicant faces a real chance of harm at the hands of the authorities or any other person in the reasonably foreseeable future. I am not satisfied that the applicant has a well-founded fear of persecution within the meaning of s.5J of the Act.

Refugee: conclusion

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

Complementary protection assessment

39. 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.

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

¹⁰ DFAT, "DFAT Country Information Report – Iran", 14 April 2020, 20200414083132; DFAT, "DFAT Country Information Report", 24 July 2023, 20230724110043.

¹¹ DFAT, "DFAT Country Information Report – Iran", 14 April 2020, 20200414083132.

¹² DFAT, "DFAT Country Information Report – Iran", 14 April 2020, 20200414083132; DFAT, "DFAT Country Information Report", 24 July 2023, 20230724110043.

Real risk of significant harm

40. 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.
41. 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.
42. I have found above that the applicant does not face a real chance of harm in Iran for any of the claimed reasons. The Federal Court¹³ held that 'real risk' imposes the same standards as the 'real chance' test. Having regard to my findings and reasoning above I am also satisfied that the applicant does not face a real risk of significant harm on those grounds, if returned to Iran.

Complementary protection: conclusion

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

Decision

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

¹³ MIAC v SZQRB (2013) 210 FCR 505.

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.