



**Australian Government**  
**Immigration Assessment Authority**

**Decision and Reasons**

**Referred application**

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IRAN

IAA reference: IAA18/05534

IRAN

IAA reference: IAA18/05536

IRAN

IAA reference: IAA18/05537

IRAN

IAA reference: IAA18/05535

Date and time of decision: 16 November 2018 11:27:00

K Juttner, Reviewer

**Decision**

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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

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### Visa application

1. The referred applicants (the applicants) claim to be Iranian citizens. The first applicant arrived in Australia in June 2013 with his wife (second applicant), and their two minor children (third and fourth applicants). On 3 February 2017 they lodged applications for Safe Haven Enterprise Visas (SHEV).
2. On 13 August 2018, a delegate of the Minister for Immigration and Border Protection (the delegate) refused to grant the SHEV visas on the basis that the first applicant was not a person in respect of whom Australia has protection obligations under section 36(2) of the Migration Act 1958 (the Act).

### Information before the IAA

3. I have had regard to the material given by the Secretary under s.473CB of the *Migration Act 1958* (the Act).
4. On 3 September 2018, the applicants provided the following to the IAA:
  - 5 page submissions from the applicants' representative
  - Documents provided to the Department on 9 November 2017 confirming the refugee status of the second applicant's siblings
  - Extracts of country information
  - Extract of profile for the second applicant's brother on the [Christianity-related] website (in English)
  - Title, contents and last page of the second applicant's brother's book on the [Christianity-related] website (Farsi text not translated)
5. Section 473DD of the Act provides that the IAA must not consider any new information from an applicant unless satisfied there are exceptional circumstances which justify considering the new information, and the new information was not and could not have been provided to the Minister or is credible personal information which was not previously known and had it been known may have affected the consideration of the applicant's claims.
6. Part of the submission contains arguments about why the applicants disagree with the delegate's decision, and sets out claims or evidence that the delegate has overlooked, to which I have had regard. The documents relating to the refugee status of the second applicant's siblings and two of the pieces of country information were provided to the delegate and are not new information.
7. The extract from the 2018 Home Office report on Christian Converts in Iran was not before the delegate and is new information. The representative submits that while not specifically referred to in the decision or earlier submissions, references in both to older UK Home Office reports supports that this information would have been available to the Department at the time of this decision. I note that there were two Home Office reports before the delegate but they did not include the 2018 report. The 2018 report was not before the delegate when the delegate made the decision and I find it to be new information within the meaning of s.473DC(1). The report is dated March 2018 and pre-dates the delegate's decision. The

applicant was represented and made submissions referring to other country information and I am not satisfied that this report could not have been provided to the Minister before the decision was made. The country information report contains generalised information and is not credible personal information that may have affected consideration of the claims. For these reasons, the applicant has not satisfied me of either of the requirements in section 473DD(b).

8. The applicants have provided documents relating to the second applicant's brother's book and his profile on the [Christianity-related] Website which was not before the delegate and the representative makes submissions about his online profile and activity. This is new information. The information includes two pages in English from the [Christianity-related] Website which is an extract of the profile for the second applicant's brother, [Mr A]. The applicants' representative submits that the majority of [Mr A's] work on the website was published only recently, either just before or just after the delegate's decision was made. The delegate did not consider the claims about the second applicant's siblings in her decision. At least some of the material post-dates the delegate's decision and much of it updates what was before the delegate in relation to [Mr A]'s online activity, his conversion and promotion of Christianity, suggesting further developments since that time. Considering these matters, I am satisfied that the information is credible personal information regarding the applicant's brother that was not previously known to the Minister and may have affected consideration of the claims, and that there are exceptional circumstances to justify considering this new information. Therefore, I am satisfied of the requirements in section 473DD.
9. In addition, the applicant has submitted three pages in Farsi which purport to be the title, contents and last page of a book written by [Mr A], published on the [Christianity-related] website [in] August 2018. The applicants have not provided a translation of these pages. I note the applicants submit that the full text of the book can be downloaded from the website, but have not provided a copy. However, from the information they have provided, the book appears to be in Farsi and has not been translated, and I have not accessed it. The Practice Direction indicates that all documents that are not in English should be translated by a NAATI accredited translator and s.473FB(5) provides that I am not required to accept new information or documents from a person if they fail to comply with a relevant direction that applies to them. I note that there is text in English on the final page of the extract, which appears to be a bibliography, as well as the email address of [Mr A]. However, without a translation of the remaining text, I am unable to determine whether these pages are from a book by [Mr A], assess their relevance or understand their content. In these circumstances, I have decided not to accept this extract.

### **Applicants' claims for protection**

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10. The first applicant made the application for a SHEV on the basis that he is a person in respect of whom Australia owes protection obligations and provided further information about his protection claims at his SHEV interview on 20 October 2017. The other applicants indicated in the application that they rely on the family unit criteria, and on 25 October 2017 the second applicant provided a statutory declaration in which she also made her own claims for protection.
11. The first applicant's claims can be summarised as follows:
  - The first applicant ran a [service] business in Ahwaz. He claims that in May 2013, a member of the Basij overheard him consoling and agreeing with a customer who was

blaming the government for [specified reason] and abusing the Supreme Leader. He claims that the Basij member then accused him of sympathising with the customer. The following day, when he was out, he claims that an employee told him that the Basij had raided and closed his store. The first applicant was concerned that he would be charged with “moharebeh” (enmity against God).

- He feared that they were in danger, so the family went to stay with relatives in Tehran. They Iran 5 days later. He claims that the authorities have contacted his family since he left Iran.
- He claims to fear harm from the authorities on the basis that they consider him a dissident because of his political views. He also fears harm because of his Bakhtiari ethnicity and because his father was pro-Shahist and was imprisoned for a few months after the 1979 Revolution for [political involvement].
- He also fears that he would be interrogated and detained on his return to Iran for living in a western country, and that the authorities would ascertain that he fled Iran and consider him to be a dissident and make him become a spy.

12. The second applicant’s claims can be summarised as follows:

- The second applicant claims that she is of Bakhtiari ethnicity, and that Bakhtiaris have a reputation for being anti-government and pro-Shahish and that the Iranian government does not like them.
- She claims that she has a Facebook account in her abbreviated name on which she “likes” and “shares” posts criticising the Iranian government, and that she fears harm from the authorities in Iran if her Facebook account comes to their attention.
- She also claims to fear harm because the Iranian government suspects that her family are anti-government, because [some] of her siblings have sought or been granted protection in countries other than Australia. The first applicant also fears harm on this basis.

13. The applicants’ representative made post-interview submissions that a number of the applicants’ claims give raise to a claim on the ground of political opinion, including the public criticism of the regime by the first applicant; their Bakhtiari ethnicity; the second applicant’s social media activity; and their anti-regime family background.

## **Refugee assessment**

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14. 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**

15. 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.
16. All four applicants have provided certified copies of their birth certificates (with translations) and copies of their Iranian Passports. The first and second applicants have provided certified copies of their national identity cards. I am satisfied that the applicants are Iranian nationals and that Iran is their receiving country.
17. The first applicant claims to fear harm because a member of the Basij overheard a conversation he had with a customer, where the customer complained about the government and even insulted the Supreme Leader. The first applicant claims to fear harm for his political views and that he will be charged as a “moharebeh” (which is a religious crime that can result in the death penalty<sup>1</sup>) because he criticised the Iranian regime.
18. Country information provides that there are restrictions on freedom of expression in Iran, particularly in relation to certain topics. I note that the 2018 DFAT report on Iran states that Iranians are able to criticise the government of the day robustly, both in public conversation and online in social media, although a number of well-established ‘red line’ topics are off-limits<sup>2</sup>. These include ‘promoting subjects that might damage the foundation of the Islamic Republic’, ‘offending the Supreme Leader and senior religious authorities’, and ‘insulting lawfully respected persons or institutions’<sup>3</sup>. Amnesty International reported in 2013 that the authorities are intensifying their clampdown on dissent, with the targeted groups including political activists, journalists and other media workers, trade unionists, advocates of greater rights for Iran’s religious and ethnic minorities, students and others<sup>4</sup>, although the US Department of State 2017 Human Rights Report on Iran refers to more general repression on freedom of expression, with severe restrictions on freedom of expression, including criminalisation of libel and suppression of virtually all expression deemed critical to the regime or its officials<sup>5</sup>.
19. On the first applicant’s claims, it was the customer who made the complaints about [specified issues], and even insulted the Supreme Leader, while the first applicant merely attempted to console the customer by agreeing with him and telling him there was no other option. There is no evidence that the applicant made any statements or complaints himself about the government or the Supreme Leader. I accept that this conversation between the first applicant and the customer may have taken place. However, I find the first applicant’s claims about subsequent involvement of the Basij far-fetched and implausible. The first applicant has only

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<sup>1</sup>Department of Foreign Affairs and Trade (DFAT), “DFAT Country Information Report Iran April 2016”, 21 April 2016, CIS38A8012677, page 23.

<sup>2</sup> Department of Foreign Affairs and Trade (DFAT), “DFAT Country Information Report – Iran”, 7 June 2018, CIS7B839411226, page 25.

<sup>3</sup> Ibid, page 30.

<sup>4</sup> Austrian Red Cross: Austrian Centre for Country of Origin & Asylum Research and Documentation, “Iran: COI Compilation”, 1 September 2013, CIS26267, page 65

<sup>5</sup> US Department of State, “Iran - Country Reports on Human Rights Practices 2017”, 20 April 2018, OGD95BE9274519

given a very general overview about the topics of the customer's conversation, and not provided any specific detail about what the customer said when he insulted the Supreme Leader. Having regard to the country information discussed above, I accept that a member of the Basij may have taken issue if he heard criticism of the Supreme Leader, given that the Basij's duties include internal security, law enforcement, special religious or political events, and morals policing<sup>6</sup>. However, the first applicant claims that the customer was allowed to leave the shop without being spoken to by the Basiji officer. On the first applicant's evidence, I am not satisfied that the first applicant himself said anything that opposed the regime or insulted the Supreme Leader. In those circumstances, I find it implausible that the Basij would speak to the first applicant instead of the customer. When asked by the delegate why the Basij was interested in him, and not the customer, he said that it was because he was working there for [number] years, but he was not sure why, and that everyone knew him in that area. I have taken into consideration that the first applicant was a [occupation], but I am not satisfied this explains why the Basij spoke to the first applicant, rather than to the customer who had insulted the Supreme Leader at the time that the conversation was overhead. Indeed, the fact that the first applicant was a [occupation] who had been working in the same area for [number] years, and who everyone knew, could seem all the more reason for the Basij to pursue the customer in the first instance if he believed that he had behaved inappropriately. The first applicant would easily be located, whereas the customer may not.

20. I also find that there are inconsistencies and implausibilities in the first applicant's evidence about his interactions with the Basij which cause me to further doubt the credibility of his claim. The first applicant provided inconsistent evidence about what the Basij did to his shop, and the contact that they had with his family after he left Iran. In his arrival interview and statutory declaration, he claimed that his employee told him that the Basij broke the [specified fittings] and closed the store. In the SHEV interview, he was asked what had occurred, asked other open questions to prompt him to say more, and allowed to freely narrate his claims, but he did not mention that there was any damage to his shop, and just claimed that the store was closed. He also gives inconsistent evidence about the claim that the Basij came looking for him after he left. In his statutory declaration, he claimed that his brother contacted him after he left Iran to inform him that the authorities had called his brother and asked about the first applicant's whereabouts, but in his SHEV interview he claimed that the Basij went to his mother's house a few times looking for him, and went to the house where he was living before he left Iran. I find that if the Basij had been to visit his mother and gone to his house, which is a more serious claim, he would have mentioned this in his statutory declaration, at the time he mentioned the phone calls to his brother. These inconsistencies cause me to further doubt the credibility of his claim.
21. Given my concerns above, I do not accept the first applicant's claims that the member of the Basij overheard and objected to the first applicant's comments to the customer, or that that the Basij raided or closed the first applicant's shop, or tried to find him after he left Iran.
22. I am not satisfied there is a real chance of the applicant being charged with being a "moharebeh" or considered by the authorities a political dissident or otherwise harmed by the Basij or authorities in relation to the claimed conversation in his shop. Other than the evidence that he agreed with what his customer was saying, the first applicant has not given any evidence about his political views. He gave evidence at his SHEV interview that he has never been politically active and on the evidence I am not satisfied he has any intention or wish to express his views more broadly in the future.

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<sup>6</sup> Department of Foreign Affairs and Trade (DFAT), "DFAT Country Information Report – Iran", 7 June 2018, CIS7B839411226, page 45.

23. The second applicant claims that since moving to Australia, she has been active on social media and critical of the Iranian regime on numerous occasions. In her statutory declaration submitted after the first applicant's SHEV interview, the second applicant claims that she often "likes" and "shares" posts criticising the Iranian government on many topics, including the way they abuse women's rights, the treatment of political prisoners and other issues.
24. The second applicant has provided 13 screenshots of pages from a Facebook account depicting photographs and text in Farsi and English. The second applicant has not provided any translations of the Farsi text within the Facebook pages, or any explanation about the text or the photographs. While some of the words are in English, such as the dates of the post and that she has shared the link, photo or video, the rest of the text is in Farsi. The photographs include images of [specified political figures], people at a demonstration holding [signs], police speaking to people in a car, items being burnt in a street, as well as other unidentifiable persons. In one screenshot, there are pictures of the Supreme Leader and photographs of a person with [injuries]. It is difficult to ascertain whether these posts are critical of the Iranian regime on the evidence before me but even if they are, I note that in all of the posts, the second applicant has not provided original content but has merely shared someone else's post, link, photo or video. I also note that the Facebook account is in her first name followed by [other letters], and is not in her full name. She has not given any evidence about the privacy settings on her Facebook account and whether it is private or publicly available. She claims she has made numerous "likes" and "shares" and that her activity has been prolific, but on the evidence before me, she has only provided [a small number of] posts over a three year period, dating from [June] 2014 to [September] (2017), and all of them are "shares". She does not seem to be a particularly regular user of Facebook.
25. I have had regard to the country information that the Iranian government restricts and disrupts access to the internet, monitors private online communications, and censors online content<sup>7</sup>. The authorities routinely block or filter websites they consider objectionable, which includes Facebook, although Iranians can generally use virtual private networks (VPNs) and other methods to circumnavigate these blocks and to anonymise their online activities<sup>8</sup>. The US Department of State reports that government organisations, including the Basij "Cyber Council," the Cyber Police, and the Cyber Army, which observers presumed to be controlled by the IRGC, monitor, identify and counter alleged cyberattacks to national security, and especially targeted citizens' activities on officially banned websites such as Facebook and reportedly harassed people who criticised the government or raised sensitive social problems<sup>9</sup>. The 2018 DFAT report refers to a case of a man sentenced to death after making social media posts considered critical of Islam, which was upheld by the Supreme Court in March 2017<sup>10</sup>. It also provides information that the Iranian authorities have little interest in prosecuting failed asylum seekers for activities conducted outside Iran, which includes posting social media comments critical of the government because heavy internet filtering means most Iranians will never see them<sup>11</sup>. I have also considered the representative's submissions about the UK Upper Tribunal decision of AB & Others<sup>12</sup>, but prefer the more recent DFAT information cited above.

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<sup>7</sup> US Department of State, "2015 Report on International Religious Freedom - Iran", 10 August 2016, OGD95BE926723.

<sup>8</sup> Department of Foreign Affairs and Trade (DFAT), "DFAT Country Information Report – Iran", 7 June 2018, CIS7B839411226, page 30.

<sup>9</sup> US Department of State, "Iran - Country Reports on Human Rights Practices 2017", 20 April 2018, OGD95BE9274519, page 22.

<sup>10</sup> Department of Foreign Affairs and Trade (DFAT), "DFAT Country Information Report – Iran", 7 June 2018, CIS7B839411226, page 25.

<sup>11</sup> Ibid, page 49.

<sup>12</sup> [2015] UKUT 257

The representative has also referred to an IAA decision in another matter, but I am satisfied that it involved a different applicant and is specific to that person's particular circumstances.

26. I have also considered the country information cited earlier about the "red line" topics on which the government cannot be criticised without adverse attention from the authorities. I accept that if the second applicant's posts offend the Supreme Leader or insult lawfully respected persons or institutions, these are some of the topics that are off-limits. However, I note that there is no evidence before me to suggest that the second applicant has come to the adverse attention of the authorities in Iran. I find that the fact that her Facebook account is anonymised, the irregular nature of her posts, and the country information about heavy internet filtering all suggest that the chance that her Facebook activity will be seen by the authorities is no more than remote. I have also considered whether she will attract the adverse attention of the authorities if she engages in similar activity on Facebook if she returns to Iran. I note that Facebook is currently banned in Iran, and that she will have to use a VPN to access it. While the country information suggests that monitoring by the government of sites such as Facebook takes place in Iran, I am not satisfied that the second applicant's level or type of activity would make her a person of interest to the authorities. Considering this and my findings below about her lack of any other profile of interest, I am not satisfied that the second applicant would face any more than a remote chance of harm because of her activity on Facebook if she returns to Iran.
27. The first applicant claims that his family is well-known for its pro-Shahist views, and that his father was [involved with] the election in 1979, although he has not given evidence about the political party that his father was affiliated to. He claims that his father was imprisoned for a few months after the Revolution, and that as a child they had to move around a lot because of his father's political views. After the SHEV interview, the applicants' representative provided a document which is claimed to be a political [party] document relating to the first applicant's father. The document contains 15 photographs and text in Farsi. This document has not been translated, and no other explanation has been provided about whether the first applicant's father is in any of the photos and exactly what the document is. In these circumstances, I do not place any weight on the document as supporting the claims that the first applicant's father was politically active. I am willing to accept that the first applicant's father was [involved with the election] in 1979 and may have spent a few months in prison after the election. However, I am willing to accept that the first applicant's father was [involved with the election] in 1979. Having regard to country information that after the establishment of the Islamic Republic of Iran, hundreds of officials of the Shah's regime and others perceived to oppose the new regime were executed<sup>13</sup>, I am also prepared to accept he may have spent a few months in prison after the election.
28. I am not satisfied that the first applicant came to the adverse attention of the authorities because of his father's political views during the time that he lived in Iran. The country information before me does not suggest that family members of persons who supported the Shah in 1979 are still of interest to the authorities in Iran. The first applicant has been dealing with government departments since 2003 in relation to operating [his] business, and has not been subject to any adverse attention because of his father. He has provided documents issued by Iranian government authorities in respect of his business which include a Licence regarding the establishment and use of a [public service] issued in December 2003 and a Permit to operate a [service business], valid from 2011 to 2014. I am satisfied that the first applicant was known to the Iranian government in his professional capacity, and that the fact

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<sup>13</sup> Department of Foreign Affairs and Trade (DFAT), "DFAT Country Information Report – Iran", 7 June 2018, CIS7B839411226, page 7.

that his father may have been politically active in 1979 did not prevent the first applicant from being permitted to operate a [business] in Iran. The first applicant also gave evidence that he had never been arrested, harmed or come to the attention of the authorities, prior to the claimed incident in the shop. I am not satisfied that the chance of the first applicant facing harm from the authorities if he returns to Iran because his father was politically active in 1979 and his family is viewed as pro-Shahist is anything but remote.

29. The first and second applicants also claim that they fear harm because of their Bakhtiari ethnicity. The first and second applicant first raised claims that they are Bakhtiaris at their arrival interviews on 1 August 2013 and I accept that they are of Bakhtiari ethnicity. The applicants' representative has cited country information from 2009 that the government disproportionately targeted minority groups, including Kurds, Arabs, Azeris and Baluch for arbitrary arrest, prolonged detention and physical abuse<sup>14</sup>. Bakhtiaris are not one of the minority groups included in the list, and I note the country information that by the time of the 1979 Revolution the term Bakhtiari was restricted to 250,000 tribespeople, most of whom still practiced pastoral nomadism<sup>15</sup>. The applicants' post-interview submissions argue that country information on Iranians of Bakhtiari ethnicity indicate they may be perceived to be anti-regime and that Bakhtiari leaders have been described as being part of the "pre-revolutionary elite"<sup>16</sup>. However, this country information is referring to the historical, rather than the present day situation for Bakhtiaris. The country information before me does not indicate that Bakhtiaris are regarded as anti-regime.
30. The first applicant made claims at his SHEV interview that many years ago the Bakhtiaris served the Royal family and that this can cause trouble for Bakhtiaris. The second applicant claims that the Iranian government does not like Bakhtiaris. However, the applicants have not made any specific claims that they have been discriminated against, arrested or have otherwise come to the attention of the authorities because of their Bakhtiari ethnicity. I do not accept that they have suffered any harm on account of their ethnicity. While the applicants' representative referred the delegate to a news article about pro-Bakhtiari political demonstrations which took place in 2014<sup>17</sup>, I note that the applicants have also not claimed that they were politically active as Bakhtiaris when they lived in Iran, or made any claims that they intend to be politically active as Bakhtiaris, or take part in demonstrations, if they return to Iran. The second applicant has not made any claims that her Facebook posts refer to her Bakhtiari ethnicity. For these reasons, I am not satisfied that the applicants face any more than a remote chance of harm because of their Bakhtiari ethnicity if they return to Iran, including when considered together with the first applicant's family background and father's political activity discussed above.
31. The applicants also claim to fear harm because the Iranian authorities suspect that the second applicant's siblings are anti-regime, and have sought or been granted asylum in countries other than Australia. The claims relating to her siblings are as follows:
- Her brother [Mr A] sought protection in [Country 1] in [year] because of issues with the Iranian government after criticising the Iranian government and promoting Christianity on [a specified] application while he was [outside Iran]. It is claimed that somehow the Iranian government found out about these recordings and his colleagues warned him that he was wanted by the authorities. In August 2018, he has posted information on a

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<sup>14</sup> US Department of State, "Country Reports on Human Rights Practices 2009 - Iran", 11 March 2010

<sup>15</sup> "Lurs and Bakhtiaris", Library of Congress, 1 January 2018, CXBB8A1DA333

<sup>16</sup> Ibid

<sup>17</sup> Iran News Update (25 February 2014) "Iran: At least 600 arrested in Bakhtiari protests".

website called [Website 1], which includes information about his conversion to Christianity and a download link to a book he has written called [Book 1].

- Her brother [Mr B] fled Iran [number] years ago after being beaten by the Basij during [a festival], and he is currently in [Country 2] where he has made a protection claim to the UNHCR.
  - Her sister [Ms C] was granted protection in [Country 3] in 2000 because her husband was involved with a [political] group, the [Political Group 1]. They were resettled with the assistance of the UNHCR in [Country 3].
32. The applicants provided the delegate with correspondence which they claim relates to the refugee or asylum seeker status of the second applicant's siblings. Three of the five documents are in languages other than English, but translations have not been provided. One of the documents is from the UNHCR and includes [Mr B]'s name, and another document is addressed to [Mr A]. However, without English translations, it is unclear whether or not these documents evidence that the siblings have sought or been granted refugee status, and if so, on what basis.
33. The applicants have not provided any documentary evidence about [Mr A]'s activity on the [specified] application, but have provided information about [Mr A]'s recent activity on the [Website 1]. There is no evidence before me about whether [Mr A] had any trouble with the authorities when he was living in Iran and it is not apparent on the evidence before me whether or not he has been granted asylum. The second applicant claims that somehow the Iranian authorities found out about his posts on [the specified application], but she does not give any details about how this occurred. There is also a lack of detail about the warnings that were made to his colleagues, and I have some doubts about whether he is known to the Iranian authorities for criticising the government on [the specified application] as claimed. The first applicant has also provided no information to suggest that the authorities have shown any interest in him in relation to his writing about Christianity.
34. There is also a letter from [a welfare agency] to a Protection Officer in [Country 2]. The organisation that the Protection Officer works for is not specified, although I am willing to accept that it is UNHCR, because the applicants have submitted a letter in a language other than English from the UNHCR about [Mr B]. The letter writer acts for the second applicant's sister [Ms C] and her husband, and thanks the Protection Officer for providing [Mr B] with protection as a refugee and asks for [Mr B] to be resettled in [Country 3]. However, there is no evidence before me which confirms that [Mr B] has been granted protection, about the nature of [Mr B]'s claim for protection, or why he is said to be perceived as holding anti-regime views. The second applicant claims that [Mr B] was beaten by the Basij [during a festival] but has not provided any other details about the incident.
35. On the basis of a document from the UNHCR issued in July 2005 in English and [another language] certifying that [Ms C and her spouse], are refugees recognised by the UNHCR, I accept that [Ms C] has been granted protection by the UNHCR. However, the document does not confirm the basis on which protection has been granted. I note that the second applicant has provided no other information about her sister's husband and his involvement in [Political Group 1]. The applicants' representative submits that [Ms C] and her husband have previously been identified by the Iranian authorities for their involvement with [a] separatist movement, but have provided no evidence or information in support of this.
36. The applicants claim that as failed Bakhtiari asylum seekers, they would come under the scrutiny of the Iranian authorities and details of their association to [Ms C] and her husband

would become known. They rely on country information about the consequences for family members of political activists<sup>18</sup> to argue that this would place them in the wrong place at the wrong time. However, the applicants have provided very little information about the experiences of their siblings in Iran and have not indicated that there has been any subsequent interest shown in [Ms C] or [Mr B] by Iranian authorities following their departure. On the second applicant's evidence, [Ms C] left Iran in [year], and [Mr B] left Iran in around [year], but the applicants have not made any claims to have come to the adverse attention of the authorities because of the second applicant's siblings' activities, the activities of [Ms C]'s husband, or their claims for asylum, while the applicants were in Iran. While [Mr A]'s promotion of Christianity on social media has taken place after the applicants left Iran, I note country information about the possible implications for family members to converts to Christianity cites a source from a Western embassy who considered that family members might be associated with the convert, but that this would not necessarily lead to punishment from the authorities<sup>19</sup>. The applicants have not provided information regarding the nature of any past interest in [Mr A] prior to his departure from Iran that might suggest he had such a profile that Iranian authorities would have monitored his online activities. Nor have they otherwise explained why they believe the authorities would be aware of his writing activities abroad. The applicants have also not explained why they believe the Iranian authorities are aware of these siblings having sought or been granted asylum. Even if the authorities were aware of this, country information provides that it is not a criminal offence in Iran for any Iranian to ask for asylum in another country, and that approximately 60% of Iranians who have asylum in other countries, travel back and forth between Iran and other countries<sup>20</sup>. Significantly, the second applicant's parents and [number] of her siblings still live in Iran, and there is no claim that they have been harmed because of the activities of the second applicant's siblings. In light of the above, I do not accept that Iranian authorities have any ongoing interest in the applicants' siblings or view the second applicant's family as anti-government and am not satisfied that there is anything but a remote chance that the applicants would face harm from the authorities because of the second applicants' siblings' political or religious views and/or because they have sought or been granted protection in a western country.

37. The applicants claim that because of all of the matters discussed above, they will be harmed in Iran for their actual and imputed political views. I have considered all of these things together, including the second applicant's activities on Facebook in Australia and future Facebook activity in Iran, the first applicant's own political views, his father's past political activity and his family's pro-Shahist views, the applicants' Bakhtiari ethnicity, and the second applicant's siblings' anti-regime and Christian activities, and their having left Iran to seek asylum. However, even in combination I am not satisfied there is a real chance of the applicants being harmed in the reasonably foreseeable future if they return to Iran, given the lack of harm in the past for any of these reasons; that the authorities had no interest in the first applicant on account of his own or his father's political and pro-Shahist views during the time that he operated a [service business] in Iran; that I have not accepted that the first applicant expressed anti-regime views or intends to do so in the future; that I have found that the second applicant's Facebook activity has not, and will not, come to the adverse attention of the authorities; and that I am not satisfied that the authorities have any ongoing interest in the second applicant's siblings. Accordingly, I am not satisfied that the applicants face a real chance of harm for their actual or imputed political opinion.

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<sup>18</sup> 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, CIS25114

<sup>19</sup> Ibid, page 32.

<sup>20</sup> Ibid, page 69.

38. The first applicant also claims that he would be interrogated and detained at the airport if he returns to Iran for living in a western country, and that it would transpire that he fled Iran and is a dissident. I have not accepted that the applicant would be regarded as a dissident by the Iranian authorities. I note that the first applicant did not expressly claim that he will face harm as a failed asylum seeker if he returns to Iran, but as the delegate considered this claim, I will also consider whether the applicants face harm on this basis. The applicants left Iran legally on their own passports. They have provided certified copies of their passports, which they still have, although I note that they all expired in [2017]. Given that the applicants do not have valid passports, they will require temporary travel documents to be issued by Iranian diplomatic representatives overseas<sup>21</sup>. The country information provides that authorities at the airport in Iran will be forewarned about the return of a person on a temporary travel document because of Iran's sophisticated government systems<sup>22</sup>, and in these circumstances, I accept that the Iranian authorities may infer that the applicants have sought asylum in Australia.
39. I have had regard to the country information<sup>23</sup> that Iran has historically refused to issue travel documents to allow the involuntary return of its citizens, such as the applicants who arrived in Australia in 2013, from abroad, and find that if the applicants were to return to Iran it would be on the basis it was voluntary. I also accept that the applicants will be returning to Iran as failed asylum seekers, but note the information from DFAT<sup>24</sup> that according to international observers, Iranian authorities pay little attention to failed asylum seekers on their return to Iran and have little interest in prosecuting failed asylum seekers for activities conducted outside Iran. The authorities will usually only question a voluntary returnee on return if they have already come to official attention, such as committing a crime.
40. Considering this information, I do not accept that the authorities regard people who left Iran and sought asylum to be dissidents, or otherwise take an adverse interest in them for that reason. For the reasons set out above, I have not accepted that the first applicant would be of interest to the authorities in Iran because of his political views, his father's political activities, or his family's pro-Shahist views. I have also not accepted that he was involved in an incident with the Basij at his shop, or that the Basij would have an interest in him if he returns to Iran. I have not accepted that the authorities would have an interest in the second applicant's Facebook activity. I have also not accepted that the applicants would be of interest to the authorities because of their Bakhtiari ethnicity or because of the political or religious views of the second applicant's siblings, or any combination of those matters. I am similarly not satisfied on the evidence that the other applicants would be of any interest. I am satisfied that there is no real chance that the applicants will suffer harm in Iran as a result of being identified as failed asylum seekers who sought protection in a western country.
41. The first applicant also refers to an incident that he claims took place two weeks before making his statutory declaration, where an Iranian returning from [another country] was arbitrarily detained and went missing after he refused to be a spy. He claims that he may become a victim

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<sup>21</sup> Department of Foreign Affairs and Trade (DFAT), "DFAT Country Information Report Iran April 2016", 21 April 2016, CIS38A8012677, page 29; Department of Foreign Affairs and Trade, "DFAT Country Information Report - Iran", 7 June 2018, CIS7B839411226, page 49.

<sup>22</sup> Department of Foreign Affairs and Trade (DFAT), "DFAT Country Information Report Iran April 2016", 21 April 2016, CIS38A8012677, page 29.

<sup>23</sup> Department of Foreign Affairs and Trade, "DFAT Country Information Report - Iran", 7 June 2018, CIS7B839411226, page 49; Department of Foreign Affairs and Trade (DFAT), "DFAT Country Information Report Iran April 2016", 21 April 2016, CIS38A8012677, page 28.

<sup>24</sup> Department of Foreign Affairs and Trade, "DFAT Country Information Report - Iran", 7 June 2018, CIS7B839411226, page 49; Department of Foreign Affairs and Trade (DFAT), "DFAT Country Information Report Iran April 2016", 21 April 2016, CIS38A8012677, page 29.

of this. There is no any other evidence about this incident, and I find that this claim is fanciful. I am satisfied that there is no real chance that the first applicant, or the other applicants, will suffer harm if they return to Iran on this basis.

### **Refugee: conclusion**

42. 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**

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43. 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**

44. 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.

45. I have found that the first applicant may have had a conversation with a customer where he confirmed and agreed with the customer's complaints about the Iranian regime, but I have not accepted that this conversation was overheard by the Basij or that the Basij took any subsequent action against the first applicant. I do not accept that the first applicant will face a real chance of harm from the Basij if he returns to Iran. I have also found that the applicants will not face a real chance of harm for their actual or imputed political opinion, related to the first applicant's own political views and the political activities of his father, the second applicant's Facebook activity, the applicants' Bakhtiari ethnicity and the political and religious activities of the second applicant's siblings.

46. I have also found that the applicants will not face a real chance of harm from the Iranian authorities as a result of being identified as failed asylum seekers who sought protection in a Western country, or being asked to be a spy if they return to Iran.

47. The Court has held that real chance in the refugee context has the same standard as real risk in a complementary protection assessment<sup>25</sup>. Having regard to the country information and reasoning above, I find that there is no real risk that the applicants will suffer significant harm in connection with any of these matters alone or cumulatively.

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<sup>25</sup> *MIAC v SZQRB* (2013) 210 FCR 505.

### **Complementary protection: conclusion**

48. 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 the applicants do not meet s.36(2)(aa).

### **Member of same family unit**

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49. 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 a spouse and dependent children of the family head.
50. 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**

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

## Applicable law

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### ***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.