



**Australian Government**  

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**Immigration Assessment Authority**

**Decision and Reasons**

**Referred application**

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IRAN

IAA reference: IAA18/05700

Date and time of decision: 7 January 2019 11:17:00

R Arends, Reviewer

**Decision**

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

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

## Background to the review

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### Visa application

1. The referred applicant (the applicant) claims to be of Persian ethnicity from Iran. He arrived in Australia [in] June 2013. On 12 December 2016 he lodged an application for a Safe Haven Enterprise Visa (SHEV).
2. On 14 September 2018, a delegate of the Minister for Immigration and Border Protection (the delegate) refused the application on the basis that there was no real chance of serious harm or real risk of significant harm to the applicant should he return to Iran.

### 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 11 October 2018 the applicant's representative provided a submission to the IAA articulating why the applicant does not agree with the delegate's decision. This can be described as argument rather than new information, and I have considered it.
5. The applicant's representative also provided a statutory declaration from the applicant and screenshots of some of the applicant's Facebook posts. These documents were not before the delegate so they are new information and I am not permitted to consider them unless they satisfy s.473DD of the Act.
6. The applicant has described his statutory declaration as a response to the delegate's decision. For the most part, it re-iterates information that is already before me. The applicant has included some further details: a list of the names and government positions of his relatives whereas he previously made the general claim that many relatives worked for the government, and he says his colleagues discussed the daily political issues whereas he previously said they discussed political issues. The added details, if accepted, would not affect my consideration of the issues, so they are of low probative value, and I am not satisfied that this information could not have been provided before the delegate's decision was made.
7. In addition, the applicant asserts that not long after he left Iran, his co-workers told him that his former boss sold his business (a [particular type of business]), and that in the last few weeks they told him that recently he has returned to the business as [senior position], and that his co-workers did not know where his former boss was in those years. By itself, this information is not relevant to my consideration of the applicant's claims. However, the applicant suspects from this that his former boss was probably involved in a clandestine government mission somewhere and maybe he was looking to take the applicant to assist him. This could possibly support the applicant's claim that his former boss had attempted to recruit him to fight in [Country 1], although the connection is tenuous. However, the inference is speculative and is not supported by any credible information, so I find that it lacks probative value. The applicant also claims that his thoughts, sentiments and actions (including Facebook posts) are well known to his family members in Iran, although he does not provide any basis for this assertion. This is also speculative and is not supported by credible information, so I consider it, too, is of low probative value. On the applicant's account, he learnt his boss had sold the [specified business] within weeks of coming to Australia, however it is not clear whether he also knew that his colleagues did not know where his boss went at that time. The

applicant has not offered an explanation of why this information was not provided before the delegate's decision was made. I am not satisfied that it could not have been provided earlier. The information about the applicant's family knowing about him, if true, could have been provided to the delegate before the decision was made. It was, if true, known to the applicant, and was relevant to his claims and to the concerns expressed by the delegate in the SHEV interview. The fact that he did not provide the information about his family earlier further undermines its reliability.

8. The applicant has not pointed to any exceptional circumstances to justify considering the new information contained in the statutory declaration and none are apparent to me. I am not satisfied that the statutory declaration satisfies s.473DD. I am unable to consider it.
9. The Facebook screen shots show some photos and videos that the applicant has apparently shared between 2015 and 2017. Many of the posts are dated before the delegate's decision. No explanation has been offered as to why screen shots of those posts were not provided earlier, and I am not satisfied that they could not have been. All of the posts appear to be material generated by others that the applicant has shared or re-posted without comment, except for one post which the applicant commented on in a different language (and no translation has been provided). Some posts appear to contain pictures of political figures including Iranian political figures. In most, the writing is in a language that appears to be Farsi and an English translation has not been provided. It is not apparent from the text that is in English or from the graphics that the posts are anti-regime or anti-Islam. The account is set to public, however, most posts have not been liked, shared or commented on, indicating very limited reach and almost no engagement. I have the applicant's description of his Facebook activity and some screen shots of his Facebook page in the material before me. The only respect in which the new information differs in nature to the information before me is that one post in the new information contains a comment by the applicant whereas he has not commented on the posts in the information before me. I do not consider this difference to be significant. The new information does not materially add the information already before me. The applicant has not pointed to any exceptional circumstances to justify considering the new information and none are apparent to me. I am unable to consider it.

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

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10. The applicant's claims can be summarised as follows:
  - Before he left Iran he was working in a [business] owned by [Mr A], who has powerful family connections in the Iranian government. [Mr A] told him to fight in [Country 1], but he did not want to and he was scared that refusing would be seen as anti-regime and he would be imprisoned, tortured or even killed.
  - The Iranian authorities will know that he has been living in Australia, and applied for asylum, so they will question him upon his return. Also, it will mark him as anti-regime.
  - He was raised in a devout Islamic family but he no longer believes in Islam and does not practise it. He does not want to have to pretend to be Muslim as it is against his ideology. He has explored other religions while in Australia and this might become known to the Iranian authorities, so that he is perceived to have converted. In Iran he will be considered an apostate and harmed on that basis.
  - He has posted material on his Facebook account, some of which is anti-regime and some of which relates to atheism and other religions, and he will be harmed by the Iranian authorities because of this.

## Factual findings

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11. On the basis of identity documents provided by the applicant, I accept his identity and nationality as claimed. I further accept that he is of Persian ethnicity and he lived in Tehran.
12. The applicant claims to have completed his military service. All Iranian males are required to perform military service unless they obtain an exemption. They are normally called up around the age of 18. The government may refuse to grant draft evaders drivers licences, revoke their passports, or prohibit them from leaving the country without special permission.<sup>1</sup> I have sighted a Military Service Completion Card that states the applicant completed military service in [year], and a photocopy of a passport issued to the applicant in 2008. I find that the applicant completed military service in Iran in [year] when he was [age] years old. He claims that he spent [number] months in weapons training before he used a [Body Part 1] injury to avoid further weapons training because he did not want to be deployed as a security guard, standing for 12 hours at a time. He was then transferred to office work. I accept all this.
13. In his SHEV application, the applicant claimed that in 2011 he got a job at a pharmacy owned by [Mr A], who had powerful family connections in the Iranian government. [Mr A] told the applicant to go and fight in support of [Country 1], and that he had been selected to do that because he had proven devotion and a good family background. The applicant said his lack of criminal history and his strong family connections to the Iranian authorities made him a good candidate for fighting in [Country 1] in “their” eyes. After this conversation, he had a number of visits from unknown people who appeared to be from the [intelligence authority] who asked him questions about his ideology. He did not dare to say no because the [intelligence authority] was involved. He went to some introductory meetings about going to [Country 1] but he did not want to go and he knew that if he objected, it would be seen as an expression of opposition toward the Iranian authorities, and he would face imprisonment, torture and possibly death, so he left Iran.
14. When questioned about the details of this account in the SHEV interview, the applicant gave a version that was different in the existence, timing and order of events, the content of discussions and the nature of his relationship with [Mr A]. For example, while he claimed to be afraid of going against [Mr A] and being seen as anti-regime and punished for that, he admitted that [Mr A] allowed staff in the [business] to access Facebook on their work computers and was unconcerned when staff openly voiced their opposition to the Iranian regime. He later said that he was afraid that if he did not go along with [Mr A], [Mr A] would call the police and make something up about him to have him arrested. This seems doubtful because it follows from the applicant’s account that [Mr A] could have simply reported him to the [intelligence authority] for refusing to fight in [Country 1]. Further, he claimed to fear [Mr A] making something up about him because once when some cashiers stole money from the till, [Mr A] reported them to the police rather than informally seeking repayment from their families. He did not explain how [Mr A] making a genuine police report led him to fear that [Mr A] would make a false police report, and no explanation is apparent to me. In the interview, the applicant did not claim that [Mr A] had told him to go to [Country 1], and that he was chosen because of his good record and family background. Rather he said [Mr A] asked him if he was interested in going to [Country 2] for some training and some classes, and gave him some phone numbers and addresses so he could set up meetings, which he duly did, but he never knew why he was selected.

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<sup>1</sup> Department of Foreign Affairs and Trade, “DFAT Country Information Report Iran”, June 2018, CIS7B839411226.

15. The applicant said around ten days after that conversation, he met with a lady who did not reveal her name or who she worked for. Around three days later he had a second meeting with a man who did not reveal his identity or who he worked for. The delegate asked several questions to elicit what was discussed in these meetings. The applicant said that they did not discuss ideology (which is different from what he said in the application) or religion, and that he was not asked to join any particular organisational group. He said the first meeting was mainly about him and his family members, and in the second meeting they discussed [Mr A] – his connections, views and the challenges he was facing. He said that following the second meeting, [Mr A] first mentioned going to [Country 1] (not before the meetings as he said in his application). He said he would probably have some training to go to [Country 2] or [Country 1]. This is not nearly as strong as what the applicant said in his application – that [Mr A] had told him to fight in [Country 1]. The applicant did not think it was a serious plan at the time but later, when he was told to attend two more meetings, he realised it was getting serious. I note that this account, where he attended two meetings in which [Country 1] was not discussed, differs significantly from the account given in his application in which he claimed he had a number of visits followed by some introductory meetings about going to [Country 1]. In the interview he said that, as he had gone along with things thus far, he was afraid to back out and be seen as not supporting the regime. He said this all occurred a few months before he left Iran, which would place it around March 2013. In his application he had said it happened in March 2011, but I do not place weight on this discrepancy as mistakes are more likely when a person has to convert dates, and the applicant had to convert dates from the Persian calendar.
16. The applicant said that he found out after he had left Iran that [Mr A] had asked two of his cousins about him, but later in the interview he said [Mr A] had not contacted his family and that a cousin who worked for the [intelligence authority] had asked about his whereabouts. He also said that in 2016 the Iranian government sent a letter telling him to report for military service despite him having already completed military service. He cites these things as evidence that the Iranian government was, and still is, interested in him.
17. I find the applicant's account thoroughly unconvincing, and not only because he gave two versions that differ in several material respects. I also have regard to the fact that, according to the version given in the SHEV interview, fighting in [Country 1] was never even touched on in the two meetings and was only alluded to by [Mr A]. I further have regard to the fact that the information before me does not explain why the applicant would be chosen, let alone pressured, to fight in [Country 1]: he does not appear to have any relevant experience or skills, his weapons training [number] years earlier was very limited, and he had never expressed any interest in combat.
18. The applicant's account is not supported by country information before me, which indicates that recruitment to fight in [Country 1] is voluntary and that, generally, Iran draws recruits from the Basij and the Revolutionary Guards. In 2013, the US Congressional Research Service reported that Iran had sent Qods Forces to [Country 1] to advise the regime and fight alongside the [Country 1] military, with some experts saying that Iran also sent Revolutionary Guard ground forces.<sup>2</sup> In 2014 the American Enterprise Institute reported that Iran was recruiting Afghani refugees to fight alongside the [Country 1] army by offering permanent residency in Iran and other inducements, and that the Revolutionary Guard was providing the training.<sup>3</sup> In 2018 the Danish Immigration Service and Danish Refugee Council reported that members of the Revolutionary Guard and the Basij are present in the war in [Country 1], that recruitment is

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<sup>2</sup> Congressional Research Service, "Iran: U.S. Concerns and Policy Responses", 1 November 2013, CIS26786.

<sup>3</sup> American Enterprise Institute, "Iran's Revolutionary Guards send Afghan refugees to fight in Syria", 15 January 2014, CX1B9ECAB7661.

on a voluntary basis, there is no shortage of recruits, and that financial reward is a major incentive to recruits. One source claimed to have knowledge of forced recruitment of government employees who had a critical view of the government. It was reported that there are no consequences for a person who initially agrees to fight and then changes their mind.<sup>4</sup> None of this supports the applicant's contention that he, an employee at a [business] who does not claim to have expressed anti-government views, and who was not a member of the Revolutionary Guards or the Basij, would be approached or pressured to join the war in [Country 1].

19. I have seen the letter that purports to be from the Iranian government accusing the applicant of failing to present himself for military service and directing him to present himself. The letter is dated [in] 2016. The applicant left Iran using his own passport meaning that in 2016 the Iranian authorities would have known he was not in Iran, but this is not mentioned in the letter. The applicant's contention that the letter indicates that the Iranian authorities are after him, but they do not want to reveal the real reason, is speculative. Other possible reasons for the letter include administrative error, or fraud on behalf of the applicant. I do not consider the letter to support the applicant's claim that [Mr A] tried to get him to fight in [Country 1]. Nor am I satisfied that if any enquiries were made by [Mr A] or a cousin about him after he left Iran, this has any sinister meaning. There are innocent reasons why a person's former employer or relative would ask after them.
20. I am not satisfied that the applicant was approached by [Mr A] or anyone else to fight in [Country 1] or anywhere else. The applicant claims that he has never been in trouble with the Iranian authorities, that his family are of good standing in Iran, and that he left Iran without incident, and I accept all of this. I find that the applicant did not have a political profile in Iran, that he has never been of any interest to the Iranian authorities, and that he was not of any interest to them when he left Iran.
21. In his application, the applicant said he grew up in a strict Shia Muslim family and he adhered to religious practices at all times. However, when he was about [age] years old he started becoming less religious because he interacted with people who had different religious views to his. While still in Iran he had abandoned Islam but still believed in God. In Australia he has had the opportunity to explore different religions such as Christianity, Baha'ism, Judaism and Krishna but he has chosen not to practise any religion at all and he feels very strongly about educating others about this, and he does this by sharing materials about atheism on his Facebook page and having discussions with people he knows. He feels he would have to pretend to be Muslim around his family and society if he returns to Iran. Also, he studied Christianity for around 6 months in Australia, and learned about the Bahai faith for around 12 months, as well as learning some basic information about Judaism and Krishna. People in the Iranian community in Australia are aware of these activities and some might think he has converted to Christianity or Baha'ism.
22. In his SHEV interview, he said he was [age] when he started questioning Islam because, among other reasons, a cleric used to touch him inappropriately. He said he was [age] when he stopped considering himself to be a Muslim. When asked if he continued to practise after he came to that realisation, he said that under family pressure, mostly from his mother, he continued to pray but did not adhere so much to other practices like fasting. I note that his mother died when he was [age]. He said he now doubts whether there is a God. When it was put to him that there are many people in Iran who do not practise Islam, and he was asked

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<sup>4</sup> Danish Immigration Service and Danish Refugee Council, "Iran: Recruitment of Iranian nationals to the war in Syria", 1 February 2018, CIS7B83941875.

how he would be different from them, he said the [intelligence authority] would interview him and might interrogate him about his Bahai and Christian friends – their names, who they are and what they do.

23. I have doubts that the applicant really is an evangelising atheist as he claimed in his application. First, in his Entry interview, which was conducted one week after he arrived in Australia, he was asked if he had a religion and he replied that he was Shia. This is not consistent with a long standing rejection of Islam. The applicant was asked about this in the SHEV interview, and he said when they ask you, you just say Muslim, but later he felt more comfortable and at ease to express himself. I find it doubtful that the applicant came to a place he considered to be a safe haven but did not feel able to state his religious beliefs. While I take into account that, at the time of the Entry interview, the applicant had recently completed a risky journey to Australia and that particular interview covers a range of topics, I nevertheless find this discrepancy to be significant.
24. I also note a significant discrepancy between the applicant's application and his SHEV interview. In the application he said he started questioning Islam when he was around [age]. This is several years after his mother died. In the SHEV interview he said that after he decided he was not Muslim (at around [age]) he did not practise Islam as much but continued to pray mostly because of pressure from his mother. I do not place significance on small discrepancies with respect to the applicant's age because it can be hard to recall at exactly what age events occurred especially when they are part of a process such as changing one's beliefs, but I do consider it significant that according to his application he started questioning Islam at [age], long after his mother had passed away, but in the interview he claimed to have kept up prayers after he no longer believed in Islam largely because of pressure from his mother. I also note that in his application the applicant says he feels very strongly about not having a religion and tries to educate others about this by sharing material about atheism using his Facebook page and in discussions. However, in the SHEV interview he said he doubts that there is a God, which is more consistent with agnosticism than atheism. Moreover, he did not give details about what sort of atheist material he shares or how he goes about educating people when he talks to them, and I consider that the absence of such detail undermines the credibility of his claim to feel "very strongly" about educating others.
25. I have viewed screenshots of Facebook posts that were included with the applicant's application and in a post-interview submission. The applicant has [small number of] Facebook friends, however his account is set to public, meaning others can potentially see his page. He has shared existing content rather than creating content. Most of the writing in the posts is in what appears to be Persian and an English translation has not been provided. The images in the posts are not obviously anti-Iran or about atheism. There are posts that say, respectively, Hillsong], [secretive fraternity], [specified post] and [Christian quotes], but it is not apparent what messages these posts convey. The posts that contain English writing include a post with a photograph of [Mr B](a well-known, senior member of the Catholic Church) in opposition to an unidentified man with the word "[specified word]" superimposed between them, a post about [international assistance] in Iran, and a post that [questions the authority of the Supreme Leader]. Where I am able to see whether anyone has liked, shared or commented on a post, I see that no-one has done so, which indicates very low reach and engagement, i.e. low interest.
26. I find that the applicant has shared material created by others on his Facebook page. I find that some of it relates to religion and Iranian politics, and at least one post is critical of, or makes fun of, Iran's Supreme Leader. However, the information that I can discern from these posts does not support there being a political or religious theme, or indicate that the applicant holds

a particular political or religious opinion. Nor does it show an attempt to educate people to reject religion.

27. I am not satisfied that the applicant has made a genuine effort to use Facebook or discussions with people to educate others to reject religion. I am not satisfied that he feels strongly about educating others in that regard or that he has any real desire to do that. Nor am I satisfied that he is atheist as opposed to agnostic. I find that he does not adhere to any religious faith.
28. Following on from my analysis of the applicant's Facebook activity, I am not satisfied he used Facebook to express a particular stance on politics or religion. Further, as he does not claim to have received any criticism, warnings or other type of adverse attention from the Iranian authorities or anyone in his family, about his Facebook posts, I find that the authorities and his family are either unaware of, or unconcerned with, his Facebook activity.
29. The applicant claims that his Twitter account was hacked and all of his posts were deleted. However, he does not claim to have been contacted by the Iranian authorities about his Twitter activity, and I note that his Facebook account, set to public, is still active. I am not satisfied, on the information before me, that if the applicant's Twitter account was hacked and posts were deleted, it was done by the Iranian authorities.
30. I accept that the applicant no longer practises Islam and has spent some time in Australia exploring other faiths. I accept that his family are practising Muslims, and the information before me indicates that they have tolerated him relaxing his religious practices since he was in his teens, and that it was his now-deceased mother who applied the most pressure on him to practise Islam. The applicant does not claim that his family or relatives have made negative comments about his religious practices since he has been in Australia. Nor does he claim to have received any negative attention from members of the Iranian community in Australia or from the Iranian authorities concerning his religious activity. Nor does he claim that his family in Iran have been approached by anyone about this. I find that, even if members of the Iranian community in Australia are aware of the applicant's past involvement with other religions or that he does not practise Islam here, his family and the Iranian authorities are either unaware of, or unconcerned about, these matters.

## **Refugee assessment**

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31. 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**

32. 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.

33. As I do not accept that the applicant was approached to fight in [Country 1] (or anywhere), or that he was of any interest to the Iranian authorities when he left Iran, I am not satisfied that there is real chance that the Iranian authorities will harm him for not fighting in [Country 1].

34. The applicant claims to fear that if he returns to Iran he will be seen as an apostate which is punishable by death, and he does not want to pretend that he is Muslim because it is against his ideology. The Austrian Centre for Country of Origin and Asylum Research and Documentation (ACCORD) reported in 2015 that a senior research fellow in Iranian studies at a university in Germany stated that non-practising Muslims form a large part of the population of Iran's cities. They lead normal daily lives and are rarely called upon to answer direct questions about Muslim religious practice and are rarely pressured to observe Muslim precepts. However, exceptions include: applicants for certain jobs are asked about their religious affiliation and way of practising Islam during their job interviews; and during Ramadan, everyone is obliged to observe the Islamic precepts and is therefore not allowed to eat, drink or smoke in public, and any visible act of non-observance can entail punishment under the law.<sup>5</sup> DFAT reports that it is highly unlikely that the government would monitor religious observance by Iranians – for example, whether or not a person regularly attends mosque or participates in religious occasions – and thus it would generally be unlikely that it would become known that a person was no longer faithful to Shia Islam. A Muslim who leaves his or her faith to practise atheism can be charged with apostasy, however atheists are unlikely to come to the attention of security authorities unless they seek to publicise their views.<sup>6</sup> Based on the country information I find that the Iranian authorities have little interest in enquiring into people's privately held religious beliefs or requiring outward displays of Muslim faith except to observe Ramadan in public – and I note that the applicant says he did not strictly observe fasting requirements after he stopped believing in Islam and he does not claim to have received any adverse attention because of that.

35. Also, I note that in the SHEV interview, when the applicant was asked how he is different from other non-practising Muslims in Iran, he did not say that he would seek to proselytise his non-religious views. Rather, he said he might be interrogated about his Christian and Bahai friends. Further, the suggestion in his application that members of the Iranian community who are aware of his past involvement with other religions in Australia might consider him to have converted to those religions is speculative, and seems unlikely given he has not continued his association with any of those religions.

36. I am not satisfied that there is any more than a remote chance that the applicant's religious views would come to the adverse attention of the Iranian authorities merely because he does not practise Islam. I have not accepted that the applicant has a genuine desire to educate other

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<sup>5</sup> Austrian Centre for Country of Origin and Asylum Research and Documentation, "Iran: Freedom of Religion; Treatment of Religious and Ethnic Minorities, COI Compilation", September 2015, CISEC96CF13622.

<sup>6</sup> Department of Foreign Affairs and Trade, "DFAT Country Information Report Iran", April 2016, CIS38A8012677 – and the 2018 report does not suggest that the situation has changed.

people to reject religion, or that he attempts to do that. Nor am I satisfied that he would seek to proselytise his non-religious views if he returns to Iran or that his reason for not doing so would be fear of harm.

37. The applicant's representative argues that, as the applicant has many family members working in the Iranian government, if one of them found out that he is not religious, they would report him to protect their own good standing. I find it illogical that accusing a family member of being an apostate would help to preserve one's good standing with the Iranian regime. Without any credible information to support, or make sense of, this contention, I do not accept it. I am not satisfied that there is any more than a remote chance that a member of the applicant's family, including extended family, would report him to the Iranian authorities for apostasy. Further, I have found that the Iranian authorities and the applicant's family are unaware of, or unconcerned with, his religious practices in Australia. I accept that the fact that the applicant does not practise Islam could result in him being disadvantaged with respect to some types of employment if his employer requires employees to follow Islamic practices, but I am not satisfied that this would amount to serious harm or that he would be precluded from earning a living. Nor am I satisfied that there is a real chance that the applicant would be subjected to any other kind of harm.
38. I am not satisfied that there is a real chance that if the applicant returns to Iran he will be identified as an apostate or seriously harmed for being non-practising, for his religious activity in Australia, for proselytising or as a result of being reported by a relative or family member.
39. The applicant claims to be worried that, because he has been out of Iran for so long, the authorities will check his social media upon his return to Iran. However country information indicates that Iranians have left Iran in large numbers since the 1979 revolution and authorities accept that many will seek to live and work overseas for economic reasons. What's more, Iranian authorities pay little attention to failed asylum seekers on their return to Iran. Iranian authorities have little interest in prosecuting returning failed asylum seekers for activities conducted outside Iran, including social media activity and applying for asylum. Those returnees with an existing high profile may face a higher risk of coming to official attention on return to Iran, particularly political activists. Authorities will usually question a voluntary returnee on return only if they have already come to official attention.<sup>7</sup> The applicant was not of any interest to the Iranian authorities when he departed Iran and I am not satisfied that he has attracted the interest of the Iranian authorities since leaving Iran. I am not satisfied that there is any more than a remote chance that, upon the applicant's return to Iran, the Iranian authorities would question him or enquire into his social media activity. Nor am I satisfied that there is any more than a remote chance that the Iranian authorities would impute the applicant with anti-regime beliefs for having lived in Australia or having applied for asylum here.
40. The applicant's Facebook account is set to "public" and he has not indicated whether he would continue to post on Facebook if he returns to Iran. The Iranian government may be criticised robustly, both in public (for example, during conversations on the street and in workplaces) and online (for example, on social media). Media organisations must not cross understood 'red lines', which include respect for the Supreme Leader, the constitutional and territorial foundations of the Islamic Republic and the place of Shia Islam in Iran. DFAT assesses that the treatment of human rights defenders, political activists, lawyers and journalists remains particularly parlous. Further, political activists who are perceived to cross red lines are often

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<sup>7</sup> Department of Foreign Affairs and Trade, "DFAT Country Information Report Iran", June 2018, CIS7B839411226; Department of Foreign Affairs and Trade, "DFAT Country Information Report Iran", April 2016, CIS38A8012677.

charged and sentenced under offences such as ‘propaganda against the State’, ‘insulting Islamic values or the Prophets’, and ‘insulting the Supreme Leader’, which can carry lengthy prison terms. The more high profile a journalist or blogger is, the more likely that they will become subject to adverse attention if the material they publish crosses red lines. However, journalists do not have to be particularly high-profile to be subject to adverse attention from authorities. For example, bloggers who only have a handful of readers have been arrested and imprisoned for their published work. In September 2014, the Supreme Court of Iran upheld the death sentence for Soheil Arabi, a blogger convicted of sabb a-nabi (insulting the Prophet Mohammed) for comments he allegedly posted on several Facebook accounts.<sup>8</sup> I note that in 2017, Freedom House reported that Iranian citizens that are not politically active also find themselves subject to harsh prison sentences for their activities on social media. This statement is based on the cases of Sina Dehghani, who has been sentenced to death over a series of public messages he posted (with two others) on the messaging platform LINE that criticised Islam and the Koran, and three men who were imprisoned for posting cartoons about religion and politics on Facebook and Telegram.<sup>9</sup> However, it is not apparent in the report or the sources that are cited, what Mr Dehghani or the three others posted, how active they were on those platforms beforehand, and what audiences they had, so there does not appear to be a sound basis for asserting that they were not politically active. Accordingly, I give more weight to the information from the Department of Foreign Affairs and Trade on this issue.

41. A post that accuses the Supreme Leader of [specified attribute] does appear to cross a red line. However, I am not satisfied that the applicant has a political profile. He is not a blogger or journalist, he does not generate his own content, and his shares of other people’s material have very little reach or engagement. Nor is he prolific. He has not expressed any intention or desire to increase his social media activity with respect to politics and religion or to seek a larger audience. I have found that the Iranian authorities are either unaware of, or unconcerned with, his Facebook activity thus far. I am not satisfied that there is any more than a remote chance of the applicant’s social media activity attracting the adverse attention of the Iranian authorities.
42. The applicant’s posts could well give the impression that he is not an unquestioning follower of Islam, and that he disapproves of the Supreme Leader, although disapproving of the Supreme Leader does not necessarily equate to denouncing Islam. I have found that the applicant’s posts do not show a particular religious stance, so I am not satisfied that there is any more than a remote chance that the applicant’s Facebook activity would reveal him to be non-Muslim or suggest that he adheres to any non-Shia faith.
43. I am not satisfied that there is a real chance that the applicant will be harmed on the basis of the material he has posted on Facebook, or his actual or imputed political opinion. Nor am I satisfied that, beyond potential discrimination with respect to employment mentioned above, there is a real chance of the applicant being harmed in Iran because of his actual or imputed religious beliefs, including not being religious.
44. The applicant has said he does not want to return to Iran. He does not have his passport and Iran will not accept or issue travel documents to involuntary returnees who departed Iran when the applicant did<sup>10</sup>, so I find that if the applicant returns to Iran it will be as a voluntary returnee.

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<sup>8</sup> Department of Foreign Affairs and Trade, “DFAT Country Information Report Iran”, April 2016, CIS38A8012677.

<sup>9</sup> Freedom House, “Freedom on the Net 2017 – Iran”, 14 November 2017, NG2A465F5221.

<sup>10</sup> Department of Foreign Affairs and Trade, “DFAT Country Information Report Iran”, June 2018, CIS7B839411226.

45. Considering the applicant's claims as a whole, I am not satisfied that there is a real chance that he will be seriously harmed in the reasonably foreseeable future if he returns to Iran for not going to fight in [Country 1], for his actual or imputed political opinion, for his actual or imputed religious opinion, for his social media activity, or for having left Iran, lived in Australia and sought asylum, separately or cumulatively.

**Refugee: conclusion**

46. There is not a real chance that the applicant will be seriously harmed in the reasonably foreseeable future if he returns to Iran. The applicant does not have a well-founded fear of persecution within the meaning of s.5J. The applicant does not meet the requirements of the definition of refugee in s.5H(1). The applicant does not meet s.36(2)(a).

**Complementary protection assessment**

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47. 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**

48. 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.

49. I have found that the applicant may be disadvantaged with respect to some employment, but not so that he would be precluded from earning a living, because he is non-Muslim. However, I am not satisfied that this would amount to significant harm or that there is more than a remote possibility that he will experience harm beyond this such that he would suffer significant harm within the meaning of the Act.

50. Beyond that, I have found that there is not a real chance that he will be harmed if he returns to Iran for being seen as anti-regime, for his actual or imputed political opinion, for his Facebook activity or for having left Iran, lived in Australia or applied for asylum, separately or cumulatively. Real chance and real risk involve the same standard. Therefore, I am not satisfied that there is a real risk of the applicant being harmed for these reasons, individually or cumulatively.

**Complementary protection: conclusion**

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

**Decision**

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

## Applicable law

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### ***Migration Act 1958***

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

In this Act, unless the contrary intention appears:

...

***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.