



Australian Government

Immigration Assessment Authority

Decision and Reasons

Referred application

IRAN

IAA reference: IAA18/06090

Date and time of decision: 18 February 2019 12:17:00

R Arends, Reviewer

Decision

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

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

Background to the review

Visa application

1. The referred applicant (the applicant) claims to be a Faili Kurd from Iran. He arrived in Australia [in] July 2013. On 16 February 2017 he lodged an application for a Temporary Protection Visa (TPV).
2. On 30 November 2018, a delegate of the Minister for Immigration (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. Essentially, the delegate did not accept the applicant's central claim to have been involved in a group associated with the Iranian Revolutionary Guards.

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. No further information has been obtained or received.

Applicant's claims for protection

5. The applicant's claims can be summarised as follows:
 - In his youth he was a member of the Basij.
 - He was a member of a group called [GROUP 1] which was affiliated with the Islamic Revolutionary Guard Corps (Revolutionary Guards), also known as Sepah. However, he became disillusioned with [GROUP 1].
 - To escape from [GROUP 1], he surreptitiously flew to [Country 1], and then travelled to Australia. For leaving Iran, he will be considered to be a traitor and a spy who has betrayed the Iranian authorities and Supreme leader.
 - He is at risk of being charged with "mohareb" for disclosing Iranian state security operations to the Australian government.
 - Since coming to Australia his sister has been denied educational opportunities and his brother has been harmed by the Iranian authorities, which he believes is related to his defection from [GROUP 1].
 - He was born Shia but is not religious.
 - Since arriving in Australia, he has criticised the Iranian regime and expressed interest in non-Muslim religions on [social media].
 - Upon arrival in Iran, he will be detained, interrogated and tortured for having sought asylum in a Western country and expressing anti regime sentiments on [social media].
 - His father is angry with him so that he cannot return to his home.

Factual findings

6. On the basis of documents provided by the applicant I accept his identity and nationality as claimed.
7. The applicant has been consistent in his claims that he is a Faili Kurd, that his father was born in [Country 2], that his mother was born in Ilam province and that he speaks Kurdish in addition to Farsi. This information is coherent and there is nothing before me that suggests it is not correct. I find that the applicant is Faili Kurd.
8. I accept that the applicant was a member of the Basij from middle school, and that he joined because of the benefits membership entailed such as going camping. In his application, when referring to an event that he claims occurred in military school, he said he was a member of the Basij. However, in his TPV interview, he said his involvement ended in high school. He has provided a Basij membership card giving the status of "ordinary Basij", with an expiry date of [2013], bearing a photograph of him as an adult.
9. The Department of Foreign Affairs and Trade (DFAT) reported that the Basij is a volunteer paramilitary organisation operating under the command of the Revolutionary Guards, with a wide range of duties, particularly internal security, law enforcement and morals policing. The Basij has been mobilised to put down anti-government protests, and they often patrol the streets and conduct checkpoints. It is believed that Basij members often receive very little formal training and can at times operate without orders or objectives. The Basij has some members who are ethnic minorities.¹ The Basij has been described by an expert on the subject, Afshon Ostovar², as a security organization that also engages in social and political activism, that is a supporter of hard-line conservative interests and a central component of Iran's clerical regime. Dr Ostovar reports that membership is voluntary and that there are seventeen separate Basij suborganizations (e.g., for university students, factory workers, government workers, engineers, etc.). There are three types of Basij memberships: regular, active, and special with regular members comprising the vast majority of the organization and being the lowest ranking, having undergone a minimal amount of training. In 2013 there were about 800,000 active members, 200,000 special members, and three million regular members. While members have to demonstrate ideological and religious commitment to the Iranian regime, the personal relationships and social benefits, including material benefits, are reportedly the primary drivers for participation. Personal involvement is moreover ad hoc, and individuals seem to be able to choose when and how they participate.³
10. I am satisfied that the applicant was a regular/ordinary member of the Basij from middle school, that his participation was at least partly driven by the benefits that membership entailed, and that his membership continued while he remained in Iran. It is not clear how involved the applicant was in the Basij. While I accept that the applicant was somewhat active in the Basij, the information before me does not suggest that he regularly participated in Basij activities. I find that his participation was ad hoc and infrequent.
11. In his Entry Interview in 2013 the applicant said he was exempted from military service in 2010 because of his position, he could pay the money, although he later provided different information about his service. In his visa application he claimed that he was not aware at the time of the Entry interview that the information he provided would be used for the purpose of

¹ Department of Foreign Affairs and Trade, "DFAT Country Information Report Iran", November 2013, CIS26780.

² Assistant Professor of National Security Affairs at the Naval Postgraduate School in the United States.

³ Afshon Ostovar, Middle East Institute, 67, "Iran's Basij: Membership in a Militant Islamist Organization", 01 June 2013, CIS36DE0BB2049.

assessing his claims for protection and that there were discrepancies in relation to family birthdates, the frequency of his visits to Iran and his military service. Notably, he did not claim that these discrepancies were the result of mistakes or misunderstandings. In relation to his military service, he claimed that while the entry interview stated that he was exempt from military service, he was in the military from [2010] to [2011] after which time he was granted an exemption from service. He said he started military service in [2010], and he [performed some work] before getting an exemption in [2011] because he joined [GROUP 1]. In his TPV interview he again stated that he did military service in 2010/2011. He did not state the reason for his exemption but he provided a military exemption card to the delegate which said he was exempted in [2011] on medical grounds. The card does not indicate whether or not he performed some military service before he obtained the exemption.

12. The applicant has given three different versions about military service without providing adequate explanations for the differences. I have real doubts about whether he performed any military service. There is nothing on the face of the military exemption card, or the information before me, to suggest that it is not genuine. An exemption on the basis of medical grounds is consistent with country information which indicates that Iranians can be exempted from military training on several grounds, including medical grounds (and that it is also possible to purchase an exemption by paying an absence fine)⁴. Given all this, I am prepared to accept that the applicant was exempted from military service in [2011] on medical grounds. However, I am not satisfied that he performed any military service prior to being exempted.
13. In his visa application, the applicant said that during his military service, he was recruited to [GROUP 1] by two men who were dressed in military uniforms who said they were from the Ministry of Intelligence. In contrast, in the TPV interview he said they were in plain clothes and were from the Revolutionary Guards. The applicant claims they told him they wanted him to work for them to defend Iran and they were interested in him because he was a Faili Kurd and spoke some Arabic. He has also been a member of the Basij and his father had volunteered in [a workplace]. They offered him benefits such as a university education and an exemption from military service. While he was still in the military he was introduced to members of [GROUP 1].
14. The applicant described [GROUP 1] as a government organisation that was a branch of the Revolutionary Guards. Around April 2011, after leaving the military, he began to volunteer with [GROUP 1] for approximately [a few] days a week while also working in a family business. He described [GROUP 1]'s work as predominantly focused on political security and public security. [He performed certain duties]. After around six months (which would be around October 2011) he began to question his involvement with [GROUP 1] as he thought they were encroaching too much into people's private lives.
15. Despite the delegate's efforts in the TPV interview the applicant was unable to elucidate where [GROUP 1] sits in the Iranian law enforcement and security apparatus, its internal structure or its precise powers and functions. Further, the applicant has given confusing, and somewhat inconsistent, accounts of his involvement with [GROUP 1]. For example, in his Entry Interview he said in 2011 and 2012 he had travelled to [Country 2] three times for holidays and pilgrimage, and to [Country 3] once for a holiday and to see how to apply for asylum. In his application, he expressly sought to correct this and said he only went to [Country 2] twice, not three times. He described two trips in 2012 with one including a side trip to [Country 3]. The first trip was to familiarise himself with the language and culture of [Country 2], and [the] second [was] to examine the local situation there. In his interview, the delegate asked him

⁴ Department of Foreign Affairs and Trade, "DFAT Country Information Report Iran", June 2018, CIS7B839411226.

whether he went to [Country 2] two or three times. In contrast to the 'corrected' information he provided in the visa application, he said three times and there was one trip to [Country 3]. He told the delegate the first trip was [to] become familiar with the culture, language, streets, where the hotels are, the Bazaar and the markets in case [GROUP 1] were thinking of sending a group of people as tourists, so they would know where to send them. He said he was sent to [City 1 in Country 2] on another trip to learn the [culture]. Leaving aside the differences in the information he has given, I find it hard to believe that a section of the Revolutionary Guards would send members overseas to conduct research that essentially relates to tourism. He referred to the trips in his Entry Interview as holidays and pilgrimage, and his descriptions of them in his application and TPV interview are consistent with them having been holidays. He also disclosed that he has relatives in [Country 2].

16. Further, in the TPV interview, the delegate put to the applicant that whenever Sepah or Basij went to do a job overseas, it was organised by a Qods force. The applicant initially responded that it was not a military activity, it was just a group going to investigate like normal people asking questions. Then, he said, that if Sepah wanted to gather information about something they could do it themselves and did not need to get it from "us", and that his trip was to prepare "us" in case they needed someone in [Country 2] - they could say they have people they know [Country 2]. This explanation – that the purpose of the trips was for the applicant to familiarise himself with [Country 2] and [Country 3] – is different to his earlier explanation that he was gathering information in case [GROUP 1] sent other people to those places. I do not accept either explanation.
17. The applicant claims that before the 2013 presidential election the Mayor of Tehran was a presidential candidate. [GROUP 1] supported the Mayor. A man with great influence over [votes in a particular sector], Mr E, initially supported the Mayor. However, he transferred his support to an opposing candidate, taking the [votes] with him. The applicant's [GROUP 1] colleagues started discussing Mr E's "physical removal" which he understood to mean they meant to kill Mr E and his immediate group of supporters. In his Entry Interview the applicant said "we" were tasked with the job but he did not want to kill anyone. When asked if he told them he would not kill Mr E, he said he was not actually given the job. Similarly, in the TPV interview, the applicant variously said that "we" had to carry out the order to eliminate Mr E, but that there was no order and it was just talk that he heard. The applicant's evidence was uncertain on a crucial point, and I find it unconvincing.
18. In his application, the applicant claimed that after this, and because he was unhappy about other aspects of [GROUP 1], he did not want to work with [GROUP 1] anymore but he felt trapped because he was very valuable to them and they paid extremely well. Earlier in his application he said he volunteered for [GROUP 1], and in his TPV interview he also said his work with [GROUP 1] was unpaid. In his application he said his departure from Iran would be seen as a betrayal of the trust that [GROUP 1] had in him, a betrayal that cost the organisation dearly because he knew a lot about its people and operations. However, as I have observed, the applicant was unable to provide clear information about [GROUP 1]'s people and operations even when questioned extensively in his TPV interview. Nor has he indicated why his departure, with that knowledge, would cost [GROUP 1] dearly: he does not claim to have held a position of seniority or to have had access to classified information about [GROUP 1]'s people and operations.
19. In his application he said he decided to leave Iran for his safety and his brother contacted a people smuggler for him. He told his brother and father of his plan to leave Iran, and he told his mother at the last minute. He booked two tickets out of Iran, one to [City 2] in [Country 3] and the other to [Country 1]. He checked his luggage on the [City 2] flight and he boarded the

[Country 1] flight with hand luggage. However, in the TPV interview he said he sent his belongings on the flight to [City 1 in Country 2], but boarded the [Country 1] flight. The delegate asked if it was definitely [City 1 in Country 2], and the applicant continued to refer to [City 1 in Country 2], even correcting the delegate on one occasion when the delegate referred to [City 2]. The applicant said the flight to [Country 1] left [before] the flight to [City 1 in Country 2]. When he was asked what happened to his luggage that he put on the [City 1 in Country 2] flight, he said it went to [City 1 in Country 2]. When the delegate said his luggage would have been removed from the flight, he agreed that it probably would have been taken off. He then said he did not know what happened to his luggage, and was surprised they had not sent it to his home address. I consider it implausible that the airport authorities would not investigate unaccompanied luggage on a commercial passenger plane and track down its owner. It would also appear that sending unaccompanied luggage on a flight would bring greater attention to him than if he had simply flown to [City 1 in Country 2] and then on to [Country 1], so it is an unusual strategy for the applicant to have adopted. Considering all of this, I do not accept that the applicant booked a decoy flight. I find that the applicant left Iran using his passport without incident.

20. According to the delegate, a search by the Department for information on [GROUP 1] found nothing in English language sources. In the TPV interview the delegate informed the applicant that she had looked “high and low” and not found any information about [GROUP 1]. The applicant’s representative said she had also looked. The delegate then invited her to provide anything including information in Farsi. None was forthcoming. In September 2018 the Department contacted [Mr A]⁵ who is a recognised expert on the Basij and the Revolutionary Guards. [Mr A] was asked whether he had any information about the group, and its roles and responsibilities within Iran’s security apparatus. He provided the following response:

“As far as I know, [Group 1] is a loosely [sic] and unimportant conservative/ hardliner political collation like other collations in Iran, created before the elections, and immediately deactivate [sic] or dismantle [sic] after that. Among the hardliner collations, [it] is the least important, and there is no structural or institutional connection with the basij. On an individual level, some of the basij members have been active in this collation. According to the law, no military or security personnel should be a member of any political parties, so there is no IRGC [Revolutionary Guards] or any security members in this collation, unless, they are retired.”⁶

21. The applicant did not provide any independent information to the delegate about [GROUP 1], and he has not sought to provide any such information to the IAA in response to the delegate’s decision. On the basis of [Mr A]’s evidence, I accept that [GROUP 1] existed, that it was a very minor political coalition that was created before the 2013 election and de-activated after it. I do not accept that it was part of Iran’s security or law enforcement apparatus, that its members acted with government authority, or that it had any power or influence beyond possibly influencing citizens with respect to how they voted.
22. The applicant provided what is said to be a scanned copy a [GROUP 1] membership card, bearing his photo, name and membership number. The original of this card was not provided. There is no date of issues but it does have an expiry date of May-June 2013 (converted from the Persian calendar). It says he is “[details deleted]”. He also produced a card that he claims entitled him to discounts because he was in [GROUP 1]. There is nothing on the face of this

⁵ [Source deleted].

⁶ Delegate’s decision page 7.

card to indicate that it has anything to do with membership of [GROUP 1] or the Revolutionary Guards or that it was issued to the applicant.

23. The 2013 Presidential elections were held on 14 June 2013⁷. It is somewhat curious that a loose, temporary coalition that existed for the purposes of elections would issue a membership card that expired at the time of the 2013 election, but not outside the realms of possibility. In the context of the very conflicting evidence about the existence and nature of this organisation and the length and nature of the applicant's role, I do not consider the card provides any reliable evidence of the applicant's claims. I do not accept that the applicant was a member of [GROUP 1] or engaged in any of the activities he claims to have engaged in for [GROUP 1] or because of [GROUP 1]. I am not satisfied that he went to [Country 2] and [Country 3] for anything other than personal reasons.
24. The applicant claims [GROUP 1] got him a job working [for] [Company 1].⁸ I do not accept that [GROUP 1] got the applicant a job because I do not accept that he was ever a member of, or associated with [GROUP 1]. However, having regard to the information he provided on arrival and his declared employment history, I am prepared to accept that he worked for [Company 1]. However, I consider he has embellished the nature of his role. In his Entry interview he described his role as "[Occupation 1]". The Interview was conducted around two weeks after the applicant arrived, he had the assistance of an interpreter and he was told at the outset that he was expected to give correct information. While he has pointed to some discrepancies in that interview he did not identify that his employment duties were one of them. In his visa application he described his duties as [different to Occupation 1]. In neither job description did he suggest that he was responsible for [protecting] sensitive information. I am not satisfied that the applicant's role was a sensitive one.
25. Nor am I satisfied, on the information before me, that the applicant had access to any other sensitive or classified information in Iran. I am not satisfied that the applicant would be perceived to be someone who has disclosed Iranian state security operations to the Australian government in connection to his visa application or otherwise.
26. The applicant claims that since he came to Australia his family have been harassed and discriminated against because he defected from [GROUP 1]. He claims his sister, who is a good student, was not allowed to undertake [further studies]. Further, he claims that on a couple of occasions his brother has been stopped and harassed in his car when he was drinking alcohol and was once bashed. I have not accepted that the applicant was ever in [GROUP 1] and he has provided very limited information about the circumstances surrounding this claimed discriminatory treatment. On the information before me, I am not satisfied that any member of the applicant's family has been harassed or discriminated against for the reasons claimed, or because of their relationship to the applicant.
27. In his application the applicant claimed to have left Islam shortly after he started his military service. He claims he started military service in March 2010 (a claim that I do not accept). Also in his application he said that just before the election, he was developing an interest in learning about other religions and comparing them to Islam, and questioning a number of the basic Islamic beliefs including the inequality of women and killing in the name of God. He also developed an interest in Christianity. The election was in 2013. In his TPV interview he said he thought his religious practices were one of the reasons he was recruited to [GROUP 1], although I have found his evidence with respect to [GROUP 1] to be unreliable. The applicant

⁷ Department of Foreign Affairs and Trade, "DFAT Country Information Report Iran", April 2016, CIS38A8012677.

⁸ [Source deleted].

has not been consistent about when he rejected Islam which undermines his claim to have rejected it at all. As it is common for people to join the Basij for its associated benefits, I do not consider that membership of the Basij necessarily means a person privately feels devotion to Islam. In 2003 the Boston Review reported that up to 50% of Iranians see themselves as agnostic or uninterested in Islam⁹. Considering all this, I am prepared to accept that the applicant is not religious, however I am not satisfied that he made a conscious decision to reject Islam, as opposed to simply having no interest in it. In the TPV interview he said he has posted material on [social media] relating to different religions, however he has not provided any supporting evidence. I am not satisfied that he has posted such material or that he has any interest in doing so. Nor does he claim to have converted to another religion such as Christianity and I am satisfied that he has not.

28. The applicant claims that since arriving in Australia he has regularly used [social media] to air his criticism of the Iranian regime, and he is the subject of abuse from his family and Iranian citizens because of this. However, he has not provided any evidence of the material he claims to have posted. Given this, and my serious concerns about his credibility, I am not satisfied that he has criticised the Iranian regime on [social media] or that he has any interest in doing so.
29. In the TPV interview the applicant said he had not spoken with his family for a few months because of some problems. In a post-interview submission his representative said that he is unable to return home because his father is angry with him. However in the TPV interview when he was asked what the problems were, he said his father has a [medical condition] and wants to see him, asked when he is coming and called him a betrayer. The applicant did not explain what he took "betrayer" to mean, and I consider it could equally have referred to the applicant remaining away from his father when he is sick. I am satisfied, on the basis of the applicant's father's reported remarks, that his father wants him to return home.

Refugee assessment

30. 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

31. 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

⁹ Boston Review (United States), 'Iran's Other Religion', 1 June 2003, CX82EDE9415499.

- 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.
32. I have not accepted that the applicant was a member, or in any way associated with [GROUP 1]. Further, I have not accepted that the applicant departed Iran for the reasons claimed or that he booked a decoy flight in order to leave Iran. I am not satisfied that the applicant attracted the adverse interest of any Iranian government authority by leaving Iran or other organisation, that the Iranian authorities had an interest in the applicant at the time he left Iran, or that he is considered to be a traitor or a spy for having left Iran. I have not accepted that the applicant would be perceived as having disclosed Iranian state security operations to the Australian government.
33. I am not satisfied that there is a real chance that he will be subject to any harm on these bases.
34. The applicant claims to fear that he will be persecuted for being an apostate. I have accepted that the applicant is not religious. However, 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.¹⁰ I have not accepted that the applicant expressed interest in non-Islamic religions on [social media] or that he has any interest in doing so, or that he has converted to another religion. I am not satisfied that if he returns to Iran he would openly renounce Islam or express interest in following another religion, on [social media] or otherwise, or that his reason for not doing those things would be fear of harm. I am not satisfied that, if the applicant returns to Iran, there is any more than a remote chance that the applicant will suffer harm for reasons of religion.
35. I have not accepted that the applicant expressed anti-regime sentiment on [social media] or that he has any interest in doing so. I am not satisfied that he would have any interest in openly expressing anti-regime sentiment, on [social media] or otherwise, in Iran.
36. The applicant did not expressly claim, but he hinted at the possibility, that he will be discriminated against on the basis of his ethnicity as a Faili Kurd, and although he indicated that his father [was] discriminated against in his employment I do not accept this. He and his family's history of education, employment and interaction with the government do not suggest any targeting or discrimination on account of their ethnicity. This is consistent with country information which indicates that Faili Kurds who are Iranian citizens appear to face little to no discrimination in access to services on the basis of their ethnicity or religion. They can access services on the same basis as other Iranian citizens, and they have the same access to employment.¹¹ Nor has the applicant indicated that he has any links to Kurdish political groups or that he has any interest in Kurdish culture or politics, which are factors that could bring him to the attention of the authorities¹². I am not satisfied that there is any more than a remote chance that the applicant would be imputed with anti-regime beliefs, or discriminated against because of his ethnicity. I am not satisfied that there is a real chance that the applicant will face any harm in Iran because of his ethnicity.

¹⁰ Department of Foreign Affairs and Trade, "DFAT Country Information Report Iran", April 2016, CIS38A8012677.

¹¹ Department of Foreign Affairs and Trade, "DFAT Thematic Report: Faili Kurds in Iraq and Iran", 3 December 2014, CIS2F827D91722.

¹² Department of Foreign Affairs and Trade, "DFAT Country Information Report Iran", April 2016, CIS38A8012677.

37. The delegate considered whether the applicant faces a risk of harm for leaving Iran while he was a member of the Basij. He has not claimed to have such a fear. Further, by his account, until a few months before the TPV interview he was in regular contact with his family, and there is no information before me to suggest that anything has been said or done to him or his family by, or on behalf of, the Basij because he left Iran. This is not surprising given membership is voluntary and the applicant was one of some three million ordinary members. I am not satisfied that there is a real chance that the applicant will face any harm in connection with his service with the Basij.
38. The applicant claims that he cannot return home because his father is angry with him. I have rejected that claim. I am not satisfied that there is a real chance that the applicant will be harmed in Iran on this basis.
39. The applicant claims to fear that upon arrival in Iran, he will be detained, interrogated and tortured partly for having sought asylum in a Western country. 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. Iranian authorities pay little attention to failed asylum seekers on their return to Iran. Further, Iranian authorities have little interest in prosecuting returning failed asylum seekers for activities conducted outside Iran, including 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.¹³(Iran will not accept involuntary returnees who departed Iran when the applicant did¹⁴ so I find that if he returns to Iran it will only be as a voluntary returnee). The applicant, a non-religious Faili Kurd, was not of any interest to the Iranian authorities when he departed Iran for any reason, and I am not satisfied that he has come to their attention since leaving, or engaged in any activities of interest. I am not satisfied that there is any more than a remote chance that the applicant, with his background and profile, will be imputed with anti-regime beliefs including for having lived in Australia or applying for asylum. I am not satisfied that there is a real chance that the applicant will suffer any harm on these bases.
40. I am not satisfied the applicant has a well-founded fear of persecution now or in the reasonably foreseeable future.

Refugee: conclusion

41. 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

42. 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.

¹³ Department of Foreign Affairs and Trade, "DFAT Country Information Report Iran", June 2018, CIS7B839411226.

¹⁴ Department of Foreign Affairs and Trade, "DFAT Country Information Report Iran", June 2018, CIS7B839411226.

Real risk of significant harm

43. 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.

44. I have found that there not a real chance that the applicant will suffer any harm in the reasonably foreseeable future if he returns to Iran for any reason relating to [GROUP 1] or the Basij, for disclosing Iranian state security operations to the Australian government, in connection with religious beliefs or ethnicity, because of his father, and for having left Iran and sought asylum in Australia.

45. 'Real chance' and 'real risk' involve the same standard. Therefore, I am not satisfied that there is a real risk of any harm, including significant harm, for these reasons.

Complementary protection: conclusion

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

Decision

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

Applicable law

Migration Act 1958

5 (1) Interpretation

In this Act, unless the contrary intention appears:

...

bogus document, in relation to a person, means a document that the Minister reasonably suspects is a document that:

- (a) purports to have been, but was not, issued in respect of the person; or
- (b) is counterfeit or has been altered by a person who does not have authority to do so; or
- (c) was obtained because of a false or misleading statement, whether or not made knowingly

...

cruel or inhuman treatment or punishment means an act or omission by which:

- (a) severe pain or suffering, whether physical or mental, is intentionally inflicted on a person; or
- (b) pain or suffering, whether physical or mental, is intentionally inflicted on a person so long as, in all the circumstances, the act or omission could reasonably be regarded as cruel or inhuman in nature; but does not include an act or omission:
 - (c) that is not inconsistent with Article 7 of the Covenant; or
 - (d) arising only from, inherent in or incidental to, lawful sanctions that are not inconsistent with the Articles of the Covenant.

...

degrading treatment or punishment means an act or omission that causes, and is intended to cause, extreme humiliation which is unreasonable, but does not include an act or omission:

- (a) that is not inconsistent with Article 7 of the Covenant; or
- (b) that causes, and is intended to cause, extreme humiliation arising only from, inherent in or incidental to, lawful sanctions that are not inconsistent with the Articles of the Covenant.

...

receiving country, in relation to a non-citizen, means:

- (a) a country of which the non-citizen is a national, to be determined solely by reference to the law of the relevant country; or
- (b) if the non-citizen has no country of nationality—a country of his or her former habitual residence, regardless of whether it would be possible to return the non-citizen to the country.

...

torture means an act or omission by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person:

- (a) for the purpose of obtaining from the person or from a third person information or a confession; or
- (b) for the purpose of punishing the person for an act which that person or a third person has committed or is suspected of having committed; or
- (c) for the purpose of intimidating or coercing the person or a third person; or
- (d) for a purpose related to a purpose mentioned in paragraph (a), (b) or (c); or
- (e) for any reason based on discrimination that is inconsistent with the Articles of the Covenant; but does not include an act or omission arising only from, inherent in or incidental to, lawful sanctions that are not inconsistent with the Articles of the Covenant.

...

5H Meaning of refugee

(1) For the purposes of the application of this Act and the regulations to a particular person in Australia, the person is a refugee if the person:

- (a) in a case where the person has a nationality—is outside the country of his or her nationality and, owing to a well-founded fear of persecution, is unable or unwilling to avail himself or herself of the protection of that country; or
- (b) in a case where the person does not have a nationality—is outside the country of his or her former habitual residence and owing to a well-founded fear of persecution, is unable or unwilling to return to it.

Note: For the meaning of ***well-founded fear of persecution***, see section 5J.

...

5J Meaning of well-founded fear of persecution

- (1) For the purposes of the application of this Act and the regulations to a particular person, the person has a well-founded fear of persecution if:
 - (a) the person fears being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion; and
 - (b) there is a real chance that, if the person returned to the receiving country, the person would be persecuted for one or more of the reasons mentioned in paragraph (a); and
 - (c) the real chance of persecution relates to all areas of a receiving country.

Note: For membership of a particular social group, see sections 5K and 5L.
- (2) A person does not have a well-founded fear of persecution if effective protection measures are available to the person in a receiving country.

Note: For effective protection measures, see section 5LA.
- (3) A person does not have a well-founded fear of persecution if the person could take reasonable steps to modify his or her behaviour so as to avoid a real chance of persecution in a receiving country, other than a modification that would:
 - (a) conflict with a characteristic that is fundamental to the person's identity or conscience; or
 - (b) conceal an innate or immutable characteristic of the person; or
 - (c) without limiting paragraph (a) or (b), require the person to do any of the following:
 - (i) alter his or her religious beliefs, including by renouncing a religious conversion, or conceal his or her true religious beliefs, or cease to be involved in the practice of his or her faith;
 - (ii) conceal his or her true race, ethnicity, nationality or country of origin;
 - (iii) alter his or her political beliefs or conceal his or her true political beliefs;
 - (iv) conceal a physical, psychological or intellectual disability;
 - (v) enter into or remain in a marriage to which that person is opposed, or accept the forced marriage of a child;
 - (vi) alter his or her sexual orientation or gender identity or conceal his or her true sexual orientation, gender identity or intersex status.
- (4) If a person fears persecution for one or more of the reasons mentioned in paragraph (1)(a):
 - (a) that reason must be the essential and significant reason, or those reasons must be the essential and significant reasons, for the persecution; and
 - (b) the persecution must involve serious harm to the person; and
 - (c) the persecution must involve systematic and discriminatory conduct.
- (5) Without limiting what is serious harm for the purposes of paragraph (4)(b), the following are instances of **serious harm** for the purposes of that paragraph:
 - (a) a threat to the person's life or liberty;
 - (b) significant physical harassment of the person;
 - (c) significant physical ill-treatment of the person;
 - (d) significant economic hardship that threatens the person's capacity to subsist;
 - (e) denial of access to basic services, where the denial threatens the person's capacity to subsist;
 - (f) denial of capacity to earn a livelihood of any kind, where the denial threatens the person's capacity to subsist.
- (6) In determining whether the person has a **well-founded fear of persecution** for one or more of the reasons mentioned in paragraph (1)(a), any conduct engaged in by the person in Australia is to be disregarded unless the person satisfies the Minister that the person engaged in the conduct otherwise than for the purpose of strengthening the person's claim to be a refugee.

5K Membership of a particular social group consisting of family

For the purposes of the application of this Act and the regulations to a particular person (the **first person**), in determining whether the first person has a well-founded fear of persecution for the reason of membership of a particular social group that consists of the first person's family:

- (a) disregard any fear of persecution, or any persecution, that any other member or former member (whether alive or dead) of the family has ever experienced, where the reason for the fear or persecution is not a reason mentioned in paragraph 5J(1)(a); and
- (b) disregard any fear of persecution, or any persecution, that:
 - (i) the first person has ever experienced; or

- (ii) any other member or former member (whether alive or dead) of the family has ever experienced;

where it is reasonable to conclude that the fear or persecution would not exist if it were assumed that the fear or persecution mentioned in paragraph (a) had never existed.

Note: Section 5G may be relevant for determining family relationships for the purposes of this section.

5L Membership of a particular social group other than family

For the purposes of the application of this Act and the regulations to a particular person, the person is to be treated as a member of a particular social group (other than the person's family) if:

- (a) a characteristic is shared by each member of the group; and
- (b) the person shares, or is perceived as sharing, the characteristic; and
- (c) any of the following apply:
 - (i) the characteristic is an innate or immutable characteristic;
 - (ii) the characteristic is so fundamental to a member's identity or conscience, the member should not be forced to renounce it;
 - (iii) the characteristic distinguishes the group from society; and
- (d) the characteristic is not a fear of persecution.

5LA Effective protection measures

- (1) For the purposes of the application of this Act and the regulations to a particular person, effective protection measures are available to the person in a receiving country if:
 - (a) protection against persecution could be provided to the person by:
 - (i) the relevant State; or
 - (ii) a party or organisation, including an international organisation, that controls the relevant State or a substantial part of the territory of the relevant State; and
 - (b) the relevant State, party or organisation mentioned in paragraph (a) is willing and able to offer such protection.
- (2) A relevant State, party or organisation mentioned in paragraph (1)(a) is taken to be able to offer protection against persecution to a person if:
 - (a) the person can access the protection; and
 - (b) the protection is durable; and
 - (c) in the case of protection provided by the relevant State—the protection consists of an appropriate criminal law, a reasonably effective police force and an impartial judicial system.

...

36 Protection visas – criteria provided for by this Act

...

- (2) A criterion for a protection visa is that the applicant for the visa is:
 - (a) a non-citizen in Australia in respect of whom the Minister is satisfied Australia has protection obligations because the person is a refugee; or
 - (aa) a non-citizen in Australia (other than a non-citizen mentioned in paragraph (a)) in respect of whom the Minister is satisfied Australia has protection obligations because the Minister has substantial grounds for believing that, as a necessary and foreseeable consequence of the non-citizen being removed from Australia to a receiving country, there is a real risk that the non-citizen will suffer significant harm; or
 - (b) a non-citizen in Australia who is a member of the same family unit as a non-citizen who:
 - (i) is mentioned in paragraph (a); and
 - (ii) holds a protection visa of the same class as that applied for by the applicant; or
 - (c) a non-citizen in Australia who is a member of the same family unit as a non-citizen who:
 - (i) is mentioned in paragraph (aa); and
 - (ii) holds a protection visa of the same class as that applied for by the applicant.
- (2A) A non-citizen will suffer **significant harm** if:
 - (a) the non-citizen will be arbitrarily deprived of his or her life; or
 - (b) the death penalty will be carried out on the non-citizen; or
 - (c) the non-citizen will be subjected to torture; or
 - (d) the non-citizen will be subjected to cruel or inhuman treatment or punishment; or
 - (e) the non-citizen will be subjected to degrading treatment or punishment.

- (2B) However, there is taken not to be a real risk that a non-citizen will suffer significant harm in a country if the Minister is satisfied that:
- (a) it would be reasonable for the non-citizen to relocate to an area of the country where there would not be a real risk that the non-citizen will suffer significant harm; or
 - (b) the non-citizen could obtain, from an authority of the country, protection such that there would not be a real risk that the non-citizen will suffer significant harm; or
 - (c) the real risk is one faced by the population of the country generally and is not faced by the non-citizen personally.

...

Protection obligations

- (3) Australia is taken not to have protection obligations in respect of a non-citizen who has not taken all possible steps to avail himself or herself of a right to enter and reside in, whether temporarily or permanently and however that right arose or is expressed, any country apart from Australia, including countries of which the non-citizen is a national.
- (4) However, subsection (3) does not apply in relation to a country in respect of which:
- (a) the non-citizen has a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion; or
 - (b) the Minister has substantial grounds for believing that, as a necessary and foreseeable consequence of the non-citizen availing himself or herself of a right mentioned in subsection (3), there would be a real risk that the non-citizen will suffer significant harm in relation to the country.
- (5) Subsection (3) does not apply in relation to a country if the non-citizen has a well-founded fear that:
- (a) the country will return the non-citizen to another country; and
 - (b) the non-citizen will be persecuted in that other country for reasons of race, religion, nationality, membership of a particular social group or political opinion.
- (5A) Also, subsection (3) does not apply in relation to a country if:
- (a) the non-citizen has a well-founded fear that the country will return the non-citizen to another country; and
 - (b) the Minister has substantial grounds for believing that, as a necessary and foreseeable consequence of the non-citizen availing himself or herself of a right mentioned in subsection (3), there would be a real risk that the non-citizen will suffer significant harm in relation to the other country.

Determining nationality

- (6) For the purposes of subsection (3), the question of whether a non-citizen is a national of a particular country must be determined solely by reference to the law of that country.
- (7) Subsection (6) does not, by implication, affect the interpretation of any other provision of this Act.