



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

**Decision and Reasons**

**Referred application**

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IRAN

IAA reference: IAA18/06156

Date and time of decision: 8 March 2019 12:29:00

A Lindsay, 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 claims to be a person with no religion from Iran. The applicant arrived in Australia [in] May 2013 and on 20 December 2016 she lodged an application for a Safe Haven Enterprise visa (SHEV).
2. On 14 December 2018 a delegate of the Minister for Immigration (the delegate) refused the grant of this visa on the grounds that the applicant did not face a real chance of serious harm or a real risk of significant harm if she were to 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 15 January 2019, the IAA received a submission from a migration agent on behalf of the applicant. To the extent that it discusses the findings of and other matters before the delegate this is not new information for the purposes of ss.473DC(1) and 473DD of the Act and I have considered them.
5. Attached to the submission is a copy of a certificate of Australian Citizenship dated [date] May 2014 for [Z], the applicant's fiancé, and copies of Australian passports issued in November 2017 for Z and the child of Z and the applicant. I am not satisfied that these documents were before the delegate. They are new information. There is no explanation provided in the submission to clarify why they were not provided to the delegate prior to the decision being made or why they are being provided to the IAA now. The fact that Z is an Australian Citizen was information that was before the delegate. The fact that Z and the child both hold Australian passports is not relevant to the issues under consideration in this review.
6. The submission prepared by the agent included the following statements which are new information:
  - In relation to the possibility that the applicant may be able to live with [Relative A], as she had done previously, if she were to return to Iran, the agent wrote, "Her [Relative A] has already told her that she has an acrimonious relationship with her husband and he would forbid it."
  - In relation to the risk of harm the applicant may experience as a single woman with a baby the agent wrote, "[Z] says he will not allow his daughter to be taken to Iran by our client if she is forced to return to Iran and in turn our client does not wish to take her daughter to Iran where she will be harmed. [Z] also says he suffers from health issues and would be unable to care for the child without [the applicant]."
7. The submission did not highlight this information as new information, include an explanation as to why the information could not have been given to the Department before the decision was made or why the information is credible personal information which was not previously known and may have affected consideration of the applicant's claims, had it been known, as is required by the Practice Direction for Applicants, Representatives and Authorised

Recipients given under s.473FB of the Act by Justice David Thomas, President on 17 December 2018.

8. I am willing to accept the statement about the applicant's [Relative A's] home not being somewhere that the applicant could stay if she were to return to Iran because I am satisfied this is personal information and it is something that had it been known by the Minister, the information may have affected consideration of the applicant's claims because the delegate accepted that if the applicant were to return to Iran she may be able to reside with her [Relative A] when considering her status as a member of a particular social group, that being 'women in Iran'. The issue of where the applicant would live if she were forcibly returned to Iran wasn't fully explored in the interview. In terms of whether this information is credible, I am satisfied this information is capable of being accepted as truthful, whether or not it is ultimately determined to be true.<sup>1</sup> I am satisfied that exceptional circumstances exist to justify accepting this new information.
9. In relation to the information about the applicant choosing not to take her daughter to Iran, if she herself was forced to return there and her fiancé's inability to care for the child on his own due to 'health issues', on its face represents a recent development in the applicant's circumstances and impinges on her claims for protection. I am satisfied that exceptional circumstances exist to justify accepting this new information and that it was not and could not have been provided to the delegate prior to the decision being.

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

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10. The applicant's claims can be summarised as follows:
  - She was born as a Shia Muslim and now identifies as having no religion.
  - She was arrested once at a park in Iran when a man sat beside her and authorities thought they were friends so they were taken to the authority's office and asked to give an undertaking.
  - She was born into a devout Muslim household and was beaten on a number of occasions by her father and [brother] for not strictly adhering to the rules of Islam. She was forced to wear a chador whenever she left home and went to live with her [Relative A] for a period of two years to remove herself from her violent home environment. Her mother is a member of the Basij.
  - She had a secretive relationship with Z for many years in Iran which her family did not know about.
  - Z left Iran four years prior to her leaving and he did not return.
  - Z's father proposed to the applicant on Z's behalf a few months prior to her leaving Iran. Her father did not approve of this union due to Z being a Faili Kurd living in a Western country but she still accepted the proposal and they became engaged.
  - She decided to flee Iran with the assistance of Z's father because she felt she could not continue to live with the strict adherence to Islam her family insisted on anymore.
  - She travelled to Australia with Z's brother and his brother's wife.
  - Z is now an Australian citizen, she is engaged to him and they have a child together who was born in Australia.

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<sup>1</sup> *CSR16 v MIBP* [2018] FCA 474.

- Her family will beat her if she were to return to Iran because she has brought dishonour to the family by fleeing the country and having a child outside of the sanctity of marriage.
- She faces persecution from Iranian authorities for being a woman who has had a child outside of wedlock and does not want to wear a hijab.

### **Factual findings**

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11. On the basis of the documents provided by the applicant I accept her identity and nationality as an Iranian citizen as claimed. Iran is the receiving country for the purpose of this review.
12. In the Statement of Claim accompanying her visa application the applicant said that she was not made aware before or during the arrival interview that information she provided during this interview would be used for the purposes of assessing her claims for protection and that during this interview she was being pushed by the interviewing officer to answer questions quickly and provide short answers which made her feel uncomfortable and caused her to omit information about her past. The applicant said that she was unsure about her address history and provided information during the arrival interview that was inaccurate which she has attempted to correct (in the SHEV application).
13. During the arrival interview, the applicant was advised that: the interview was her opportunity to provide any reasons why she should not be removed from Australia; she was expected to give true and correct answers to the questions being asked; and, she should understand that if the information she give at any future interview was different from what she said during the arrival interview, this could raise doubts about the reliability of what she has said. The applicant's arrival interview went for almost two hours and the interviewing officer obtained information from the applicant on range of topics including the reasons why she left Iran, what would happen if she were to return there and details of how she left Iran to travel to Australia. The applicant said 'no' when asked if there was anything she would like to say that the interviewing officer had not asked about. At the commencement of the SHEV interview, the applicant was given the opportunity to add to or correct any information she had provided to the Department previously and she declined. During the SHEV interview the delegate asked questions about the applicant's evidence when it didn't seem to make sense and gave the applicant the opportunity to respond to those questions and provide a further explanation. At the end of the interview information that might be the reason for refusing the applicant's protection visa was outlined to her and time was provided for the applicant to discuss this in private with her representative prior to being given the opportunity to comment on that information.
14. I do not accept the applicant was not aware that the information she provided during the arrival interview could be used to assess her claims for protection. I am conscious that the arrival interview covers a range of topics that need and it is not an exhaustive exploration of the applicant's reasons for seeking asylum. This does not however account for the provision of inconsistent statements made during the later stages of the protection visa application process that conflict with information provided by the applicant during the arrival interview.
15. The applicant has provided inconsistent information about how she came to be without her Iranian passport. In the SHEV application, the applicant said her Iranian passport was confiscated by smugglers and destroyed. In the arrival interview and SHEV interview the applicant said she tore up her Iranian passport and threw it in the ocean because she thought having possession of it would mean she would be deported back to Iran. During the SHEV

interview, the applicant said that Z, her fiancé, was a Faili Kurd who left Iran in 2009, did not have Iranian citizenship, had been granted permanent residency in Australia and had not returned to Iran. The interviewing officer put information that had come to the attention of the Department which contradicted the applicant's evidence in that it showed that Z had returned to Iran just prior to the applicant leaving Iran to travel to Australia which she continued to deny. I acknowledge that these inconsistencies are not particularly significant in comparison to the applicant's claims for protection for however they do indicate she has a propensity to be less than forthcoming in the information she has provided to the Department and they cause concern in relation to the credibility of the information she seeks to rely on in relation to her claims for protection.

16. In her arrival interview the applicant identified as a Shia Muslim. The applicant said she had no religion when completing her SHEV application and during the SHEV interview. The applicant said that she turned away from Islam because she was forced to follow it and she felt that a person should be free to choose the religion they follow. In her Statement of Claim, the applicant said that since she arrived in Australia she had been learning about Christianity and she was considering converting to after her pregnancy. During the SHEV interview and when no longer pregnant, the applicant said she remained interested in Christianity but did not follow it and had not taken any steps in relation to exploring it since she lodged her SHEV application in December 2016. The applicant said having a young child prevented her from exploring or learning more about the Christian faith and she considers that she has no religion.
17. I accept that the applicant has denounced her Muslim faith and now considers that she has no religion. I also accept that the applicant has expressed an interest in learning more about Christianity but has done nothing to further this interest since falling pregnant with her child who was born in [date]. The applicant has not claimed she fears harm on the basis of holding an interest in learning more about Christianity if she were to return to Iran and I am satisfied that no such claim arises on the material.
18. During the arrival interview, when asked if she had ever been arrested or detained by police or security organisations the applicant said that she had been arrested once at the park where she was sitting and looking at her camera when a man sat beside her and the authorities, the Park Police, assumed they were friends and took them to the office in the park and asked the applicant to give an undertaking. The applicant confirmed that the police and security or intelligence organisations did not have an impact on her day to day life in Iran.
19. The UK Home Office reports that the Iranian government enforces gender segregation in many public spaces and prohibits women from mixing openly with unmarried men or men not related to them.<sup>2</sup> I accept that the applicant was detained by the Park Police on one occasion and required to enter into an undertaking. Her explanation was unambiguous and plausible in light of the country information. The applicant did not claim a fear of harm on this basis if she were to return to Iran and I do not consider that one arises on the material.
20. The applicant claimed she was born into a devout Muslim family and subjected to violent beatings if she did not strictly comply with the rules of Islam at the hands of her father and [brother]. The applicant said she conducted a secretive relationship with Z for a number of years prior to him leaving Iran in 2009 to travel to Australia. A few months prior to her leaving Iran in April 2013, the applicant said Z's father came to her family home and proposed to her on behalf of Z which she accepted despite not having her family's approval. The

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<sup>2</sup> UK Home Office, "Country Information and Guidance - Iran: Women", 16 February 2016, OGD7C848D3.

applicant decided to flee Iran because she could not continue to live under the oppressive compliance her family required to the rules of Islam. Information provided by the applicant as part of this claim conflicts with information she provided during the arrival interview.

21. During the arrival interview, the applicant was asked to give a brief explanation of why she left Iran. The applicant said that she left Iran in April 2013 and came to Australia to marry her fiancé, Z, who now had permanent residency in Australia, to live a marital life together and that she had paid a lot for it. The interviewing officer asked if the applicant received any threats of violence to make her leave Iran and she said that she didn't and that her father had told her whatever happens it will be her responsibility. The applicant was asked what she thought would happen if she were to return to Iran and she advised that she did not have any place to go and that she received an ultimatum from her father that 'if she goes, she goes'; there was no other threat. As previously mentioned, at the end of the arrival interview when asked if there was anything else she wanted to say that the interviewing officer had not already asked about, the applicant said 'no'.
22. In the Statement of Claim and SHEV interview, the applicant stated she was born into a strict Muslim household and her parents required her to strictly comply with the rules of Islam. She said her parents would pray five times a day, recite the Koran on a daily basis and hold religious ceremonies in their family home which others would attend. The applicant said her parent's religious adherence was acknowledged in the local government because her mother was recruited into the Basij. The applicant said she has never considered herself to be a religious person and that while growing up she was forced to practise the Muslim faith and wear a chador whenever leaving the home which had an adverse impact on her perception of the religion and caused her to live with significant stress. The applicant said this was also a basis for abuse she received at the hands of her [Relative B] and one of brothers, H, and she produced details of this abuse as follows:
  - At the age of 12 she was beaten by her father for her 'liberal social mannerisms' and he demanded that she stop laughing and focus on her spirituality.
  - At the age of 16 she was beaten by H because a friend's brother called the home to ask if their sister was there and after H hung up the phone he accused the applicant of being friends with lowly people, called her friend a 'troll' and beat her. The applicant described this as a harsh beating where she was punched in the face numerous times and she suffered black eyes, a broken nose, bruising across her ears and the side of her head which resulted in her not attending school for two weeks.
  - At age 21 the applicant was beaten by H for attending a driving course alone and he said she should have attended with her mother. The applicant's parents supported H and said that the applicant should listen to H.
23. The applicant has not produced any evidence in support of her claims of having been beaten by her family whilst living in Iran. She did not suggest in her arrival interview that her family were violent or controlling.
24. In the Statement of Claim, the applicant said that she attempted to avoid the problems at her family home by spending extended periods of time living at her [Relative A's] home between 2011 and 2013 however her family deemed this was inappropriate because her [Relative A] was married.
25. In the submission to the IAA, the applicant provided a different reason as to why she could not live at her [Relative A's] home. She now asserts that she had previously been told she was

forbidden to live there by her [Relative A] husband because of an acrimonious relationship between them.

26. During the arrival interview, when asked to provide details of the last address she resided in prior to leaving Iran, the applicant provided an address in Tehran where she lived for a period of two months from February 2013 prior to leaving the country in April 2013 which she listed as being her fiancé's parent's home. The applicant's address history included her living in her parents' home in Karaj from 2009 until February 2013. This differs markedly with the applicant's address history provided in the SHEV application, and later the SHEV interview, in which she stated that she lived in Karaj from December 2005 until July 2011, at which time she then lived in a home in Tehran until April 2013 which she identified as being her [Relative A's] home. There was no reference at all during the arrival interview to the applicant living with her [Relative A] in Tehran for a period of two years when she was specifically asked to give details of her residential history, despite this now being identified as her most recent residence before departure. This change to her address history in her SHEV application coincides with the additional claim being raised regarding her family being devout Muslims and who punished her with violence if she did not strictly comply with the rules of Islam and that she lived elsewhere to avoid the violence and conflict with her father and brother.
27. During the SHEV interview, the applicant said that Z's father, V, went to her family home a few months prior to her leaving Iran to propose to her on behalf of Z. The applicant said her family were not aware of the fact that she had been in a secret relationship with Z for many years and thought this was just a traditional proposal from V on behalf of his son and not one being made as the result of an ongoing relationship. The applicant said her parents did not support this because Z was a Faili Kurd, he did not have any documents and he was now living in a Western country and would become westernised. Despite her parent's disagreement, the applicant said she accepted the proposal. The applicant confirmed she did not experience any harm, or even a threat of harm, following this proposal or her acceptance of it, from her family.
28. In the Statement of Claim the applicant claimed the accumulation of her controlled and suppressed lifestyle caused her to resent her life where she felt she lived with a high amount of stress and hopelessness. She said this made her desperate to find a way out and caused her to flee Iran to travel to Australia. This explanation is in contrast to that given by her in the arrival interview about her wanting to move to Australia to marry Z and live with him. In that interview she made no mention of feeling desperate to find a way out due to a suppressed lifestyle. Despite her desire to move to Australia to marry her fiancé and live with him being the only reason she gave for leaving Iran in her arrival interview, the applicant made no mention of the marriage proposal by V on behalf of Z or of a desire to live with him in Australia and marry him in the Statement of Claim.
29. In the SHEV application, the applicant said that she was not employed whilst she lived in Iran and was financially supported by family members from 2007 when she finished her education until [date] April 2013 when she left the country.
30. During the arrival interview when asked how much money either she or her family paid to the smuggler to enable the applicant to travel to Australia she advised that her father paid [amount] million Iranian (currency not given) and when asked if any money was still owing to the smugglers she advised that [amount] million had been paid and there was [amount] million remaining which her father would pay to V, her fiancé's father who organised the smuggler, and V would pay the smuggler. The applicant said she travelled from Iran, via [Country 1] and [Country 2] to Australia with Z's brother, M, and M's wife, S. The applicant

said that V made all of the arrangements with the smugglers for M, S and herself to travel to Australia with the exception of M organising their flights from [Country 1] and accommodation in [Country 2], and Z organising her passport.

31. In the SHEV interview, the applicant said she applied for an Iranian passport herself for the purpose of travelling to Australia and estimated this was about one year prior to her leaving Iran. This conflicts with the aforementioned statement made by the applicant in the arrival interview that her fiancé, Z, organised her passport for her. County information reports that a woman can obtain a passport to travel abroad only with the permission of their father or husband<sup>3</sup> and given she was not married, this permission would need to have been obtained from her father. Regardless of the nuances in the applicant's evidence, I accept that Z may have assisted the applicant in organising her application but based on the country information before me, her father's permission would have been required for the government to accept her application and provide her with an Iranian passport.
32. In the SHEV application, Z is listed as being the de facto partner of the applicant and that they had been partners since August 2013. Z is also listed within this application as the applicant's partner who she met in Australia and who is an Australian Citizen. In the SHEV interview, the applicant said that Z left Iran for Australia in 2009 and she was his girlfriend from when she was in high school but it was a secretive relationship that she kept from her family and they were mostly in contact on the telephone. According to the applicant's education history she finished high school in 2004. In the SHEV interview, the applicant was asked why she did not leave Iran when Z did in 2009 and she said that when Z was in Iran her family did not allow her to marry him and they were against this. When asked again why she didn't come together with Z, she said this was because her family wouldn't let her. During the arrival interview, the applicant said she wanted to come to Australia legally to be with Z as his partner so she contacted the embassy but was told that it takes three to four years and this is why she decided to come by boat.
33. There are vast differences in the evidence the applicant has provided about her relationship with Z including the duration of it, whether it was carried on in secret and whether they are currently engaged or in a de facto relationship. Given Z only returned very briefly to Iran just prior to the applicant leaving the country in March 2013 and given the clear explanation given by the applicant as her reason for travelling to Australia to be with Z, the fact that they are now engaged and have a child together and her family supported her financially to travel to Australia to be with him I am satisfied that they met and had some form of a relationship whilst Z was still in Iran.
34. I do not accept that the applicant's family did not know about the relationship between herself and Z prior to the proposal. The applicant has provided differing accounts about her relationship as outlined above. The applicant's own evidence in the arrival interview was that she resided with Z's family for the two months prior to leaving the country, and her own father provided the money for the smugglers to organise her to travel to Australia and still needed to pay the remaining money to Z's father so he could pay it to the smugglers, all strongly points to her being a relationship that was not only known to both families but supported.
35. I do not accept that the applicant's family were strict adherents to the Muslim faith who were violent and required her to wear chador when leaving the house causing her to live with her [Relative A] in Tehran and then flee Iran because of the oppression and violence. Relevantly:

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<sup>3</sup> Ibid.



- I do not accept that the relationship between the applicant and Z was not known to her family.
  - The applicant made no mention during the arrival interview of being beaten by her father and brother, to the point of being unable to attend school for two weeks, or of an ongoing fear of the need to strictly adhere to the rules of Islam in case it happened again.
  - There is no independent evidence before me which supports the claims that the applicant was beaten in Iran, and on one occasion quite severely involving her suffering facial fractures.
  - She did not experience threats of it, from either her father or H, following her acceptance of the marriage proposal from a Faili Kurd who was residing in a Western country and yet she was beaten on a previous occasion for having a friend who was considered to be of a lower class or for laughing.
  - The applicant said in her arrival interview that there had been no threat involved when she spoke of her father's view on her decision to travel to Australia to be with Z.
  - The applicant made unambiguous statements in the arrival interview about living with Z's family for the final two months prior to leaving the country.
  - The applicant clearly stated during the arrival and SHEV interviews that her priority was to marry Z and live with him in Australia.
  - The applicant's family supported her financially for over five years in Iran when she was unemployed, helped fund her trip to Australia and her father's permission would have been needed for her to obtain an Iranian passport.
36. In the Statement of Claim, the applicant said that her parent's religious adherence was acknowledged in the local government because her mother was recruited into the Basij. The applicant said her family members are part of the Basij and can access vast resources in order to locate her anywhere in Iran. No further information or evidence was provided by the applicant in support of this claim.
37. The Basij Resistance force (Basij), established shortly after the 1979 Iranian Revolution, is a volunteer paramilitary organisation operating under the command of the Iranian Revolutionary Guard Corp (IRGC) whose duties include internal security, law enforcement, special religious and political events and morals policing.<sup>4</sup> During the arrival interview, the applicant said that the police, security or intelligence organisations did not impact on her day-to-day life other than being arrested on one occasion by the Park Police as outlined above and which I have accepted did occur. The applicant has not provided any information to indicate that her mother, as part of the Basij, took action against the applicant because she failed to strictly adhere to the rules of Islam such as travelling alone to driving lessons, being caught in a park by the authorities with a man who was not related to her or when she decided to accept the marriage proposal from a Faili Kurd living in a Western country and travel to that country to be with him.
38. I do not accept that the applicant's mother was recruited into the Basij. I have not accepted that the applicant's family strictly adhered to the Muslim faith. The applicant has not produced any evidence in support of this claimed Basij membership and in her arrival interview she said police, security and intelligence organisations did not impact on her day-to-day life.

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<sup>4</sup> Department of Foreign Affairs and Trade (DFAT), "DFAT Country Information Report: Iran", 7 June 2018, CIS7B839411226.

39. The applicant has also provided conflicting information about the two people she travelled to Australia with from Iran.
40. In the arrival interview the applicant said she travelled to Australia with Z's brother, M, and M's wife, S. The applicant explained that Z, when he arrived in Australia changed his surname and that M had the same surname as Z's father, V. The applicant said that whilst in the detention centre on [location] M harassed her by being suspicious and asking her why she was laughing or talking to other people and taking issue with her head scarf and for that reason he was separated from her in the centre. When asked during this interview if anyone had told her not to tell the truth, the applicant said her fiancé, Z, told her not to say anything about the way his brother, M, was acting towards her (about her talking to people and her head scarf) because it might mean he had to stay in detention.
41. After identifying M as the brother of Z in her arrival interview the applicant then changed this in the SHEV interview to say he was only a distant relative or friend of Z or his father. She also gave conflicting explanations as to why she called M Z's brother Z at first instance. The applicant initially stated that it was because they (M and Z) were very close and then her second explanation was that she panicked, they'd had an argument and that he was harassing her. The applicant then added to the conflicting information being provided by stating she was told to lie by Z's father and say M was Z's brother so they would be kept together in detention and the applicant would not be sent to the single camp. However the applicant's own version was that M was separated from the applicant in the detention centre because he was harassing her and that Z had asked her not to say anything in case it resulted in M being kept in detention.
42. In the SHEV interview, the interviewing officer advised that there was information before the Department that M had Iranian citizenship, which then raised questions about Z's original application for a visa because he claimed to be a stateless Faili Kurd. The officer put to the applicant if M was Z's brother and has Iranian citizenship, it followed that Z may also have Iranian citizenship and may not have been stateless as he originally claimed. The applicant responded that there was no sign they were brothers and apart from that she did not want to talk about it because it would place her relationship at risk. The migration agent confirmed that the topics the applicant did not want to speak about were other people's citizenship or relationships because it could be used as evidence.
43. Based on the significant amount of conflicting information provided by the applicant that I have outlined above, I consider the applicant has been less than truthful during the protection visa application process regarding the nature of the relationship between the male and female she travelled to Australia. This conduct by the applicant contributes to the serious concerns I hold regarding the credibility of information she seeks to rely on in support of her protection claims.
44. The applicant advised that Z is now a citizen of Australia, they are not married and have a child who was born in Australia in [date]. I accept these claims as stated.
45. The applicant confirmed she wore a hijab whilst in Iran because she would be arrested and taken to detention if she didn't. The applicant confirmed she had never been in trouble for not wearing it. She claimed having to wear a hijab if she were to return to Iran would make her feel hateful and disgusting because this was something that was forced upon her. The applicant said wearing a hijab is very tough in the hot weather because it makes her sweat. I accept that the applicant would wear a hijab if she were to return to Iran, despite the fact that she does not want to, because she does not wish to be punished by the authorities.

46. The applicant claims her family will beat her or kill her if she returns to Iran because she has brought dishonour on the family by fleeing the country without their permission and has had a child outside of marriage. I have not accepted that her family strictly adheres to the Muslim faith or that they were violent towards her. Moreover, I have found that her family was supportive of her relationship with Z, financially supported her to travel to Australia to be with him and her father provided his approval so that she could be issued a passport. I do not accept that the applicant's family will beat her or kill her for bringing dishonour to the family as claimed.

## Refugee assessment

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47. 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

48. 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.
49. I accepted the applicant now considers herself as someone who has no religion. I do not accept however that the applicant's family are devout Muslims who strictly adhere to the rules of Islam.
50. Country information indicates that abstaining from Muslim rituals, such as not attending mosque or Friday prayers, is not usually monitored by Iranian authorities and a large proportion of Iranians do not regularly attend mosques.<sup>5</sup> DFAT considers it is highly unlikely that authorities would monitor religious observance by Iranians and as a result it would generally be unlikely that it would become known that a person was no longer faithful to Shia Islam.<sup>6</sup> It is reported that atheists are unlikely to come to the attention of security authorities

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<sup>5</sup> LSE Middle East Centre (United Kingdom), "The Revival of Nationalism and Secularism in Modern Iran", November 2015, CISEC96CF14725.

<sup>6</sup> DFAT, "DFAT Country Information Report Iran", 21 April 2016, CIS38A8012677.

unless they seek to publicise their views.<sup>7</sup> People who do not practise the Muslim faith form a large part of the population of Iran's cities and they lead normal daily lives.<sup>8</sup>

51. Having regard to the country information, and the applicant's own circumstances, I am not satisfied the applicant faces a real chance of any harm as the result of her having no religion if she were to return to Iran because there is no evidence before me that the applicant has in any way sought to publicise her non-religious views either in Iran or Australia or that she has a desire or intention to if she were to return to Iran in the future.
52. I have accepted the applicant would feel compelled to wear a hijab if she were to return to Iran, despite her saying she would feel hateful and disgusting if she did this, and am satisfied that her reason for this is the potential consequences she would face in breaching the laws that govern dress in that country.
53. The Department of Foreign Affairs and Trade (DFAT) reports that the penalty in the Iranian Penal Code for women appearing in public without proper hijab is imprisonment from ten days to two months or a fine of between 50,000 and 500,000 Rials.<sup>9</sup> DFAT reports however that these penalties are imposed very rarely and that in practice women accused of having bad hijab are most likely escorted to a police station and asked to have a family member bring acceptable hijab, after which they are able to leave without sanction,<sup>10</sup> or they are issued with a verbal warning (as occurs to approximately three million women each year).<sup>11</sup> In 2017-2018 demonstrations occurred in Iran in relation to a range of political and social issues including those opposed to wearing the hijab and as the anti-hijab movement gained traction among Iranian women the response from authorities was to arrest activists and sentence them to terms of imprisonment in an effort to rein in the political activism.<sup>12</sup>
54. The applicant, in her arrival interview, said that neither she nor her family had been involved in any activities or protests against the government, or been associated or involved with any political groups or organisations. The applicant has not provided any information to indicate that if she were to return to Iran that she would engage in activism or demonstrations in relation to not wanting to comply with the rules of Islam, including wearing a hijab, and I am satisfied she has no intention or desire to do so in the future.
55. The country information indicates if a woman is in public without a proper hijab she is very likely to be issued with a warning or detained until a family member can bring an acceptable hijab for her to wear and she is then released. I am not satisfied either of these responses from the authorities amounts to serious harm. I consider the likelihood that the applicant would be imprisoned or fined for not wearing a proper hijab as remote based on the aforementioned DFAT report which states this type of penalty is imposed very rarely. I am not satisfied the applicant faces a real chance of receiving such a penalty. I am not satisfied that the applicant feeling hateful and disgusting for having to wear a hijab is itself serious harm. Furthermore, I am not satisfied, based on the information before me, that the law in Iran which imposes dress standards including the wearing of hijab, is discriminatory on its face either in the way it is being applied or enforced.

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<sup>7</sup> Ibid.

<sup>8</sup> Austrian Centre for Country of Origin and Asylum Research and Documentation (ACCORD), "Iran: Freedom of Religion; Treatment of Religious and Ethnic Minorities COI Compilation September 2015", 1 September 2016, CISEC96CF13622.

<sup>9</sup> DFAT, "DFAT Country Information Report: Iran", 7 June 2018, CIS7B839411226.

<sup>10</sup> Ibid.

<sup>11</sup> UK Home Office, "Country Information and Guidance - Iran: Women", 16 February 2016, OGD7C848D3.

<sup>12</sup> DFAT, "DFAT Country Information Report: Iran", 7 June 2018, CIS7B839411226.

56. I accept that the applicant's fiancé is an Australian citizen and that they have a child who was born in Australia. The applicant claims she faces harm if she were to return to Iran for having a child out of wedlock from Iranian authorities and her family. If the applicant were forced to return to Iran she advised that she does not wish to take the child with her because she fears the child will be harmed and Z will not allow his daughter to be taken to Iran in these circumstances. In the IAA submission, the representative reported that Z claims to suffer from health issues that would prevent him from being able to care for the child without the applicant. I accept that if the applicant were to return to Iran she would not take her child with her because Z has said he will not allow this.
57. Neither the representative nor the applicant produced any evidence in support of the claim that Z was unable to care for the child on his own due to his 'health issues' and nor did they provide an explanation of why the child would be harmed if the applicant were to take her back to Iran beyond the broader claim of her being a child born out of wedlock. In any event, the child is not an applicant in this review.
58. I do not accept the applicant faces any harm from her family for having a child out of wedlock. I have not accepted they are devout adherents to the Muslim faith who have used violence and control to force her to comply with the laws of Islam. The applicant's family were not only aware, but also supportive, of her relationship with Z prior to her leaving Iran; they were also in support of her travelling to Australia to be with him. The applicant said in the SHEV interview that her family is aware she has had a child and has not produced any evidence to indicate that they have made adverse or negative comments about this or issued any threats to harm her on this basis.
59. Other than making a general statement that she faces persecution from the Iranian authorities for having a child outside of a marriage the applicant has not provided any evidence in support of this claim regarding the authorities already being aware of this or details of a particular situation where she would need to disclose this to the authorities if she were to return to Iran. The applicant hasn't articulated the harm she fears from the authorities on the basis of her having a child out of wedlock, other than in extremely general terms, and when questioned about this during the SHEV interview she stated that her major harm she feared was from her family. Given I have not accepted the applicant's family are part of the Basij or devout Muslims, there is no evidence before me to indicate her family are likely to disclose the fact that the applicant has had a child out of wedlock to the authorities.
60. In the submission, the agent argues that the issue of the applicant being separated from her child, if she were forcibly returned to Iran, should be considered under the 'Convention on the Rights of the Child'. The applicant's daughter is not an applicant in this protection visa application process and the purpose of the review is to assess whether the applicant meets the criteria to be found to be a refugee with a well-founded fear of persecution under the Act or that as a necessary and foreseeable consequence of her being removed from Australia to Iran there is a real risk she will suffer significant harm, as will be discussed in the next section.
61. I do not accept that the Iranian authorities are aware that the applicant has produced a child out of wedlock and there is no evidence before me to indicate a situation would arise where the applicant was required to disclose this to them. Even if the authorities were to find out that the applicant had a child in Australia outside of wedlock, the applicant hasn't articulated what she fears from the authorities and there is an absence of country information before me regarding the way authorities respond to an issue of this type to give rise to the applicant facing a real chance of serious harm on this basis. I am not satisfied the applicant faces a

chance of any harm from Iranian authorities on the basis of having a child outside of wedlock whilst in Australia.

62. Overall, I am not satisfied the applicant has a well-founded fear of persecution.

### **Refugee: conclusion**

63. 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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64. 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**

65. 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.

66. I have accepted that if she were to be returned to Iran she would wear a hijab to avoid the consequences of breaching this Iranian law, despite not wanting to, but I do not consider her having to comply with these dress standards is sufficient to establish she faces a real risk of significant harm as defined in s.36(2A) of the Act. I do not accept being forced to wear a hijab for the applicant amounts to 'torture', cruel or inhuman punishment or degrading treatment or punishment. Even accepting the applicant's reaction to having to do so, I am not satisfied that it amounts to severe pain or suffering, whether physical or mental, or pain or suffering that could reasonably be regarded as cruel or inhuman, is intentionally inflicted. Nor does the evidence support that it is intended to cause extreme humiliation. I am also not satisfied that there is a real risk it will result in the death penalty being carried out or arbitrary loss of the applicant's life. I am therefore satisfied the applicant does not face a real risk of significant harm in relation to these matters.

67. I have not accepted that the applicant faces a real chance of any harm from her family because she has had a child outside of wedlock. On the basis of the evidence before me, I'm not satisfied the applicant faces a real risk of significant harm from the Iranian authorities even if they were to find out about her having a child in Australia whilst not being married to the father. I have given consideration to whether, under Australia's complementary protection obligations listed in s.36(2)(aa) of the Act, the applicant faces a real risk of significant harm as a necessary and foreseeable consequence of the applicant being removed

from Australia to Iran if she were separated from her daughter. The term 'significant harm' is outlined above and is exhaustive in that the significant harm the applicant claims to be at a real risk of suffering must meet the definition of at least one of the five terms listed. I do not accept that the applicant being separated from her child, if she were to return to Iran, amounts to 'torture', cruel or inhuman punishment or degrading treatment or punishment. Whilst I acknowledge the difficulty the applicant would face if she were separated from her child if she returned to Iran, I am not satisfied this amounts to severe pain or suffering, whether physical or mental, or pain or suffering that could reasonably be regarded as cruel or inhuman, is intentionally inflicted. The evidence before me does not support that this is intended to cause the applicant extreme humiliation and I am not satisfied that there is a real risk it would result in the arbitrary loss of the applicant's life or the death penalty being carried out.

68. In reference to the terms contained within the definition of significant harm, the applicant being separated from her child in this context is not an act or omission but the consequence of an act and that relevant act would be the removal of the applicant from Australia.<sup>13</sup>
69. I have otherwise concluded that the applicant does not face a real chance of any harm for the reasons claimed. As 'real chance' and 'real risk' are of the same threshold, I am therefore satisfied that the applicant does not face a real risk of harm, including significant harm, on these other bases.

#### **Complementary protection: conclusion**

70. 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.

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<sup>13</sup> *SZRSN v Minister for Immigration and Citizenship* [2013] FCA 751.

## 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.