



Australian Government

Immigration Assessment Authority

Decision and Reasons

Referred application

IRAN

IAA reference: IAA18/06160

Date and time of decision: 18 March 2019 11:23:00

K Juttner, 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 an Iranian national. On 9 May 2016 he lodged an application for a Safe Haven Enterprise Visa (SHEV).
2. On 13 December 2018, a delegate of the Minister for Immigration (the delegate) refused to grant the visa on the grounds that Australia did not owe protection obligations to the applicant. The delegate did not find the applicant credible regarding claimed events in Iran and while she accepted he had engaged in some political activity in Iran and Australia, did not accept he had a profile with Iranian authorities.

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 applicant's lawyer and migration agent provided submissions to the IAA about the applicant's claims and why the delegate's decision was wrong. I have had regard to these aspects of the submission.
5. The first source cited in the submission has the same information as a source cited by the delegate¹ and is not new information. However, the submissions also refer to a number of pieces of country information regarding political protests, social media and failed asylum seekers which were not before the delegate and are new information. The applicant was sent a copy of the IAA's December 2018 Practice Direction for Applicants, Representatives and Authorised Recipients which requires the applicant to attach a copy of the new country information or an extract of the parts of the information on which they rely, and to identify the source of the information, and states that hyperlinks are not acceptable. The submission was prepared by the applicant's representative, who is a lawyer and migration agent. The applicant has not attached a copy or extract of the parts of the information he relies upon. Some of the information is not fully sourced, or the source consists only of a hyperlink. The new information does not comply with the requirements in the Practice Direction and I have decided not to accept it. In any event, even if I were to accept it, the applicant has not satisfied me of the requirements in s.473DD(b), namely that the information could not have been provided before the delegate made her decision, or that the information is personal information.

Applicant's claims for protection

6. The applicant's claims can be summarised as follows:
 - He does not believe in any religion. He grew up in a family who supported the Shah and did not support the regime, were not religious, and were more progressive than other people around them. He and his family were threatened and abused by members of his community and a man, H, for not following Islam. H came to his house with two other men and threatened and abused him and his brother, and took them away and detained them.

¹ "The Green Movement", US Institute of Peace, 1 January 2010, CX303910

- He participated in Green Movement protests against the Islamic regime in Iran. Since being in Australia, he has joined the National Council of Iran and has attended meetings and participated in protests against the Iranian regime. He has posted photographs and videos of the protests on [social media].
- He fears harm from the authorities on his return to Iran because he is a failed asylum seeker and has lived in Australia for six years. He would struggle to find a job in Iran and would face hardship and have a difficult life.

Factual findings

7. I have considered the identity documents provided by the applicant and I accept that he is an Iranian national and that Iran is his receiving country.

General credibility - military service

8. The applicant has provided conflicting evidence about whether and for how long he did military service in Iran which causes me concerns about his credibility as a witness. At his SHEV interview [in] November 2018, he gave evidence that he did his military service for 24 [months], and some details about the city where he did it, weapons training and being at the lower ranks. He said that he had a military service completion card. However, in his SHEV application form the applicant indicated that he had not done any military service. When this was put to him, the applicant responded: "I'm not sure, it could be, I'm not really sure what I did say". His representative made submissions that the applicant understood that military service was different from compulsory military service, and that he had said no to doing military service, but yes to doing compulsory military service. However, this explanation is not supported by his application form, where the question expressly includes compulsory military service.
9. After his SHEV interview, the applicant's evidence changed again. He provided a military service exemption card which specified a Special Circumstances exemption. He claimed that three months into his military service the government introduced a new law that fourth and subsequent sons did not need to undertake military service, so he was exempted. He claimed that he mentioned in his interview that he served for three months, but did not explain the situation in depth. I do not accept this, as the audio of the interview records the applicant stating that he did 24 months of service, and there was no mention of three months service. I find the inconsistencies in the evidence and the applicant's explanations to be perplexing and unpersuasive. While the applicant's military service is not directly relevant to his claims, his changing evidence raises concerns about his credibility as a witness.

Religious and political beliefs

10. The applicant has been consistent in his claim that he has no religion. At his arrival interview on 10 November 2012, in his SHEV application form received on 10 May 2016 and in his undated statutory declaration provided on 17 May 2018, he claimed that he had no religion. At his SHEV interview, he gave evidence that around where he lived there were fanatic Muslims always going to mosque and religious ceremonies and that he did not want to get involved. I found the applicant's evidence about having no religious beliefs to be credible, and accept that he does not have a religion.
11. In his statutory declaration, the applicant claimed that he grew up in a progressive family who were supporters of the Shah, who were never religious and did not support the Islamic

regime. He claims that because of his family's beliefs, he was also against the Islamic regime. However, in his SHEV application form, the applicant stated: "I had grown up in a very religious family, who were working for the Military Arm of the Islamic Government known as Sepah. This also meant that my parents received a good income. They were very strict in regards to practicing Islam. My brother and I were both opposed to the Islamic regime, and we were continually targeted by the Authorities which". The response appears to be incomplete. In the other questions in the section about his reasons for claiming protection, the applicant referred to his statement of claims which was not provided to the Department until 17 May 2018. The applicant received assistance to complete his SHEV application form from the same migration agent who has represented him throughout the SHEV application process.

12. According to the 2018 DFAT country information report², Iran is a theocracy that mixes religion and state more completely than any other country in the world. DFAT provides that the Islamic Revolutionary Guards Corps (IRGC), which is also known as Sepah, is Iran's most powerful security and military organisation, responsible for the protection and survival of the Islamic Republic. It has a powerful intelligence arm that carries out domestic intelligence operations, including against political activists. It maintains its own detention facilities and played a pivotal role in suppressing the Green Movement demonstrations in 2009. The IRGC has transformed over time into a leading economic and political actor, and has significant influence over political decisions.
13. The claim in his SHEV application form that his family were very religious and worked for the Sepah is significantly different from the evidence in his statutory declaration that his family were anti-regime and not religious. The delegate asked the applicant about the response in his SHEV application form and the applicant stated that his mother was in the Sepah. He said initially that he did not really know what his mother was doing in the Sepah, that it was "mostly maybe voluntary" and that he did not have a good relationship with his mother. He said his mother was in the Sepah for years and had retired about 5 or 6 years ago. He later gave evidence about two roles she held in the Sepah, as [two roles], which seems to contradict his claim not to have been aware of what she did in the Sepah. He did not deny that the statement in his application form was true, or seek to amend his application at the start of his SHEV interview when the opportunity was provided by the delegate.
14. The delegate asked why, if his mother worked for the Sepah, he had said that his parents were always talking about the Shah. The applicant's response was that it was his father. When the delegate put to the applicant that he had not specified that it was only his father, and had indicated that both his parents supported the Shahist regime, the applicant claimed that it was not both of his parents, that he hadn't separated them, but it was his father who was pro-Shahist. He also claimed that his parents did not have a good connection, and mostly argued, although when asked by the delegate, the applicant could not remember any particular conversation between his parents about the Shah and the Islamic regime. This evidence is contrary to the claims in his statutory declaration and earlier in his SHEV interview that his family used to talk a lot about the Shah. I do not find persuasive the applicant's explanations about why he referred to his family when he meant his father, or the evidence that his parents argued.
15. There are further inconsistencies in the applicant's evidence about whether his family were religious. At his SHEV interview, the applicant gave evidence that his parents were very strict about religion, which contradicts the evidence in his statutory declaration that his family

² DFAT, "DFAT Country Information Report – Iran", 7 June 2018, CIS7B839411226, page 44.

were never religious. Significantly, it also undermines the claim that his family were also abused by H and other people for not practising Islam. The applicant sought to distinguish between being strict about religion and political religion. The applicant stated that you can be a Muslim and be “religionist” but not follow the rule of government. He further stated that his mother was religious strict and also in the Sepah but that she was not “political religionist” strict and that she was not happy with the way that government represents religion. He has not suggested that his mother left the Sepah because of any difficulties with the organisation. While I accept that an Iranian person may be a strict practising Muslim but not a strict follower of the Islamic regime, I find it hard to believe that, as a long-standing member of the organisation responsible for protecting the Islamic Republic, the applicant’s mother did not support the Islamic regime. I do not find the applicant’s explanation about the distinction between his mother’s religious and political beliefs to be compelling.

16. The applicant’s shifting evidence about whether his parents were never religious or have strict religious beliefs, and whether his mother is pro-Shahist or a supporter of the Islamic regime, lead me to have real doubts about the credibility of the applicant’s claims regarding his family’s political and religious beliefs.
17. The applicant claims in his statutory declaration that he did not follow the Islamic laws and codes of conduct in Iran, and would be targeted and harassed by the authorities. He also claims that because of his family’s attitudes against the Islamic regime, supporters of the regime would attack his family. He claimed that much of the abuse came from a man called H. When asked by the delegate what he did to show he was not following Islamic laws, the applicant appeared to have difficulty answering the question, taking a long time to provide an answer. He referred to growing up in a more open-minded family and then claimed that they were known as non-practising Muslims because they were not getting involved in religious ceremonies or going to mosque, and claimed that people started abusing and insulting them. His response did not identify any ways in which the family did not follow Islamic laws, other than not participating in religious activities.
18. In his SHEV interview, he described H as a person who Muslims would go to for advice, but did not identify him as having any formal religious or official role. He claimed that H threatened him constantly, making threats that they would create problems for him to earn an income and to live there, and they would make a phone call to his school. The delegate expressed her confusion about why H would be trying to advise the applicant about Islam if his parents were already very strict about religion, but the applicant did not answer that part of her question. While I have accepted that the applicant has no religion, the applicant’s evidence at his SHEV interview that his parents were strict practising Muslims leads me to have doubts about the applicant’s claims that his family as a whole were targeted and abused for being non-practising Muslims. It is not clear from the evidence why H would take such an interest in the applicant or his family.
19. The applicant claimed that H came to his house with two men and threatened the applicant and his brother. At his SHEV interview, he claimed that on that occasion, H took him and his brother away in a car and detained them. I accept the representative’s explanation for the omission of that incident from the applicant’s statutory declaration and draw no adverse inference in that regard. However, as pointed out in the delegate’s decision, there remain a number of inconsistencies between the applicant’s evidence at his arrival interview and his SHEV interview which cause me to have serious doubts about the credibility of his claim that H came to his house and detained him. In particular, he gave different evidence about when the incident occurred, claiming in his arrival interview that it took place at Muharram in November 2011, but saying in his SHEV interview that it happened a month or two before he

left Iran in June 2012. He claimed in his arrival interview that H came to his house twice, and that he was taken away a week after the first visit, but in his SHEV interview, he said that H only came to his house on one occasion and he was taken away on that day. He also gave inconsistent evidence about how long he was detained, saying that he was held for two days in his arrival interview, and for a couple of hours in his SHEV interview. Further, he claimed in his arrival interview that he was questioned about his parents, but said that he was not asked any questions at his SHEV interview. While I am mindful of the need to be cautious in relying on evidence from early arrival interviews, the arrival interview took place a month after the applicant's arrival in Australia and I am satisfied that the applicant was put on notice by the arrival interviewer that the purpose of the interview was to provide information about his circumstances. While I have had regard to the fact that the interviewer told the applicant she did not want full details about the incident, he nonetheless provided these, and also provided other information which was consistent with his later evidence. Although I have taken into account that the delegate did not ask the applicant about the inconsistencies in his arrival interview during the SHEV interview, she referred to them in her decision, and the applicant has not sought to address them in the submission to the IAA. Taken together, the inconsistencies in the applicant's evidence about the incident involving H make me doubt that the incident occurred at all.

20. After considering the applicant's evidence about his mother working for the Sepah, together with the inconsistencies in the applicant's evidence about his family's religious and political beliefs, and my general concerns about the applicant's credibility, I am not satisfied that the applicant or his family were progressive, pro-Shahist and anti-regime as claimed. Considering this, and my concerns with his account identified above, I do not accept that the applicant was known to H or members of the community for being a non-practising Muslim, or for holding anti-regime views, or that he was threatened or abused for his religious beliefs. I also do not accept that H visited his house or took the applicant away and detained him. Accordingly, I do not accept that the applicant or his family suffered any abuse, either physical or mental, because of their political and religious beliefs.

Attending protests in Iran and Australia and social media activity

21. The applicant has consistently claimed that he attended demonstrations in Tehran against the Iranian regime. In his SHEV interview, he claimed that he attended Green Movement demonstrations, especially around the time of the elections, when he was aged [particular ages], in 1388 and 1389. When asked how many protests he attended, he gave evidence that it was many, and numbered over ten. He said that one was about the elections, and another was in regard to free speech. He also stated that hundreds, and sometimes thousands of people attended the protests, and that he held and made banners and said slogans. He gave evidence that they would also hold up the pictures and names of people who were killed in the demonstrations and ask about the reason for their deaths. He did not claim that he was ever arrested or detained by the authorities or otherwise came to any attention for taking part in the protests.
22. Country information indicates that Green Movement was the name given to protests that took place following the June 2009 presidential election, when up to three million supporters of reformist candidate Mir Hossein Mousavi turned out on Tehran streets to protest the official verdict that conservative candidate Mahmoud Ahmadinejad had won in a landslide. In the six months following the disputed election, it evolved from a mass group of angry voters to a nation-wide force peacefully demanding the democratic rights originally sought in the

1979 revolution.³ In response, the government despatched security forces, including the IRGC, Basij units and plain-clothed paramilitary forces who beat thousands of protesters and arrested hundreds. The applicant was aged [age] in 2009, and after considering his evidence about attending the protests and the country information about the large numbers of people who took part, I am willing to accept that the applicant attended Green Movement protests, notwithstanding the fact that his mother worked for the Sepah, who were heavily involved in suppressing the protests. The applicant has not claimed that he held an organisational role, and I am not satisfied on the evidence that he attended as anything other than a low level participant. I am also not satisfied on the evidence before me that the applicant participated in any further political activity in Iran after that time.

23. The applicant also claims to have attended protests in Australia with the National Council of Iran and voiced his opinions against the Iranian regime. He claims that he became a member of the National Council of Iran at the end of 2016 or in 2017, and has attended meetings [in] [Suburb 1] which take place [each] month. He gave evidence that they discuss arrangements for demonstrations, make banners and flags, and talk about what is going on in Iran. He said he last attended a meeting the month before last. He named two officers of the group, and said that most of the arrangements, text messages and communications take place with a [Mr A]. The applicant did not claim that he had an organisational role in the National Council of Iran.
24. When asked by the delegate how many protests he had attended, the applicant said several times that he could not say how many, but later said that he may have attended over fifteen protests. He gave evidence about going to [Australian City 1] and to [Suburb 2] a couple of times each, and a demonstration in [Australian City 2] where they walked to [a public building]. He stated that the biggest protest he had attended was [in] [Australian City 1] about two years ago, which he claimed was shown [in the media] and was attended by the Iranian national representative, JZ. Other protests happened in front of the Iranian embassy. The applicant did not make any claims to be aware that he had personally appeared or been identified in the media coverage in either Iran or Australia. He also referred to a protest at [a location], and claimed that he last attended a protest at [Suburb 2] about two months before. He gave evidence in his SHEV interview about the reasons for the protests, and referred to a Kurdish man who was executed and a journalist who was imprisoned, and wanting free elections and rights in Iran.
25. The day before his SHEV interview, the applicant provided photos which are said to be from his [social media] page. He has provided 6 photographs of people at demonstrations, with banners with anti-regime messages in English and what appear to be Iranian pre-revolutionary flags. The applicant is visible in [three of the photos]. The photographs are not dated, and he has not explained when or where they were taken or if they are of any of the protests he referred to in his SHEV interview. He also provided six screenshots from his [social media] account between May – October 2018, all of which share posts by other people. There is some Farsi text in the [posts] which has not been translated. None of the text in the posts is written by the applicant. Five of the posts contain images of people at demonstrations with anti-regime banners in English and Iranian flags, and one post has a photo of coffins draped in Iranian flags. He has not explained whether he attended any of the protests in the photos or videos in the [posts], although I accept it is possible that these are some of the events he referred to in the interview.

³ Department of Foreign Affairs and Trade (DFAT), DFAT, "DFAT Country Information Report – Iran", 7 June 2018, CIS7B839411226, page 26.

26. Following the SHEV interview, the applicant provided a number of screenshots of text messages between August 2017 and October 2018, which are purported to be from the National Council of Iran and to notify the applicant of upcoming rallies and protests. The text messages contain Farsi text (not translated) and details in English of a number of addresses in [Australian City 2], and dates and times in English. There are also text messages that appear to refer to marches or demonstrations, such the [deleted]. The applicant has not provided any explanation about the information in the text messages or the significance of the other addresses. There is no reference to the National Council of Iran within the English words in the text messages, but the text messages are sent from a person called [Mr A] who may be the same person as the applicant's named contact there. I am willing to accept that some of the text messages corroborate the applicant's evidence that meetings of the National Council of Iran were held [in] [Suburb 1], and that the applicant received some text messages about meeting places for demonstrations or gatherings.
27. After considering the applicant's evidence, I accept that the applicant is a member of the National Council of Iran and attended some of their meetings. I also accept that the applicant has attended a number of anti-regime protests in Australia, although I have some doubts about whether the number is as high as fifteen. The applicant gave evidence at his SHEV interview that he heard about the National Council of Iran by communicating with people with the same way of thinking, mostly through [social media], but he did not specify any particular political motivation as his reason for joining. The applicant has not provided any messages from the National Council of Iran before 14 August 2017 or other evidence of involvement prior to that date, and I am not satisfied that he had any earlier involvement with that organisation as he claims. The applicant claims that he attended protests in [Australian City 1] two years before his SHEV interview, but he has not provided any documentary evidence to substantiate when these protests took place and I do not accept that they took place two years earlier. I find that he became a member of the National Council of Iran in around August 2017 and that his involvement in protests took place after that date. The evidence does not suggest and I am not satisfied that he held any sort of organisational role. I find that the applicant first shared material on [social media] that included images of demonstrations in May 2018. His involvement in all of these activities post-dates his SHEV application, which was signed on 23 January 2016 and received by the department on 9 May 2016. The applicant did not provide his statutory declaration with his statement of claims until 17 May 2018. After considering the evidence, I am satisfied that his interest in protests, the National Council of Iran and posting on social media coincided with the time he made his application and then provided his statutory declaration to the department. While I have accepted that the applicant took part with thousands of others in the Green Movement protests in 2009, I am not satisfied on the evidence that he engaged in any other political activity in Iran or Australia between then and 2017. As set out above, I have not found the applicant a credible witness regarding other aspects of his evidence, and I find his explanation for joining the National Council of Iran unconvincing. Considering these matters alongside the timing of his activity, I am not satisfied that the applicant joined the National Council of Iran, attended protests in Australia or posted material on his [social media] account for any reason other than to strengthen his claims.
28. The applicant also claims that he has been outspoken about his beliefs on [social media]. Because of this, he claims that his family and friends are aware of his opinions and that he will face significant harm from the authorities in Iran. The applicant has not submitted any other documentary evidence of his social media activity other than the posts discussed above. Beyond referring to those screenshots and photographs, he did not provide any details in his statutory declaration or at his SHEV interview about his claim that he is outspoken about his beliefs on social media. As discussed above, I am not satisfied that the

applicant engaged in the social media activity for any reason other than strengthening his claims. I am not satisfied that he has shared any other material on [social media] than the material that he has submitted.

Asylum seeker

29. Although the delegate does not appear to have considered this claim, the applicant also claimed at his SHEV interview that he would be harmed on the basis of being a failed asylum seeker returning from a western country. I accept that if the applicant returns to Iran, it will be as a failed asylum seeker from Australia.

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
 - 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. Further to my findings above and having regard to my credibility concerns, the applicant’s explanation for joining the National Council of Iran and the timing of his activity, the applicant has not satisfied me that he joined the National Council of Iran, attended protests in Australia or posted material on his [social media] account otherwise than for the purpose of strengthening his claims to be a refugee. I have disregarded this conduct in accordance with s.5J(6) of the Act.
33. I have accepted that the applicant took part in Green Movement protests in Iran in 2009. DFAT has observed that Iran’s security forces arrested hundreds of demonstrators and beat and harassed thousands more during and after the 2009-10 Green Movement protests. While some low level participants in the protests were arrested at the protests when they took place, those targeted over subsequent years would appear to have been persons with a more

active organisational role in the movement.⁴ The 2018 DFAT report assesses that those who had a more active organisational role in the movement, and have a higher profile, are more likely to face continuing official attention and possible harassment, but that it would be highly unlikely that those arrested at the time for simply participating in the protests would remain imprisoned, or would face continuing surveillance or harassment. Other country info has similarly assessed that those at risk of arrest are those who have continued to be politically active⁵.

34. The applicant claims that there is a black mark against him, and that he would be the first person the authorities would come to if there are any demonstrations after he returns to Iran. In light of the country information, and given that the applicant was not arrested or detained for his participation in the protests in 2009, and did not hold any organisational role, I am not satisfied that the applicant is known to the authorities for participating in the protests or that there is a black mark against his name. I am also not satisfied on the evidence that the applicant has any commitment or intention to engage in protest activity in the future. I am not satisfied that there is a real chance that the applicant would come to the adverse attention of the Iranian authorities in the future for his past participation in demonstrations in Iran or face harm of any kind for reason of his involvement in protests or his political views if he returns to Iran.
35. I have accepted that the applicant does not have a religion. Country information provides that under Iranian law, a Muslim who leaves their faith or converts to another faith or atheism can be charged with apostasy⁶. The Penal Code does not specifically criminalise apostasy, but provisions in the Penal Code and Constitution state that sharia applies to situations in which the law is silent, and judges are compelled to deliver sharia-based judgements in such cases⁷. However, the country information suggests that Iran is quite a mixed society, involving both a conservative group and a more secular group of people, and that abstaining from Muslim rituals such as not attending mosque would not necessarily arouse any suspicion as many in Iran do not regularly attend mosques⁸. The 2016 DFAT report considered it unlikely that individuals will be prosecuted on charges of apostasy. It also considers it 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 such as Ashura or Muharram – and thus it would generally be unlikely that it would become known that a person was no longer faithful to Shia Islam. Perceived apostates are only likely to come to the attention of Iranian authorities through public manifestations of their new faith, attempts at proselytization or via informants⁹. The 2018 DFAT report does not indicate that the situation has changed since the earlier report.
36. I have not accepted that the applicant was known within his community in Iran for not practising Islam, or that he received threats and abuse or was detained by H for his religious beliefs. I am not satisfied on the evidence that the applicant was otherwise known to the authorities for his religious beliefs. The applicant has not made any claims that he wishes to publicise his beliefs either in Australia or if he returns to Iran. In light of the country

⁴ Danish Refugee Council, Landinfo and Danish Immigration Service, "Iran: On Conversion to Christianity, Issues concerning Kurds and Post-2009 Election Protestors as well as Legal Issues and Exit Procedures", 1 February 2013, CIS25114; DFAT, "DFAT Country Information Report: Iran", 21 April 2016, CIS38A8012677; DFAT, "DFAT Country Information Report – Iran", 7 June 2018, CIS7B839411226

⁵ Danish Immigration Service, "Update on the Situation for Christian Converts in Iran", June 2014, CIS28931.

⁶ DFAT, "DFAT Country Information Report Iran April 2016", 21 April 2016, CIS38A8012677, page 14; DFAT, "DFAT Country Information Report – Iran", 7 June 2018, CIS7B839411226, page 22.

⁷ DFAT, "DFAT Country Information Report – Iran", 7 June 2018, CIS7B839411226, page 24.

⁸ Danish Immigration Service, "Update on the Situation for Christian Converts in Iran", June 2014, CIS28931, page 12.

⁹ DFAT, "DFAT Country Information Report Iran April 2016", 21 April 2016, CIS38A8012677, page 14.

information that the government is unlikely to monitor religious observance, I am not satisfied that the fact that the applicant has no religion would bring him to the adverse attention of the authorities (or others) if he returned to Iran. I am not satisfied that he would face a real chance of harm for his religious beliefs if he returned to Iran.

37. The applicant made claims at his SHEV interview that he would have difficulties finding a job and problems with study and communicating if he returns to Iran, and fears that he would face discrimination and hardship if he returns to Iran after being away for six years. He also claims that the people who know him would fear that he may make trouble and cause problems for them if he returns to Iran, although he has not specified who these people are or what the trouble or problems would be, and I find this claim to be fanciful and unfounded. On the applicant's evidence, he has a [qualification] and worked in Iran [in various jobs] since coming to Australia in 2013. Given the applicant's previous employment history, I am satisfied that he will be able to find employment and make money to support himself if he returns to Iran. The applicant's parents and siblings still live in Tehran, and there is no credible evidence to suggest that they have been targeted or harmed in any way since the applicant left Iran, and I am satisfied that the applicant could return to live with his family if he returned to Iran. He has not specified what problems he would face in relation to study or communication, or what other discrimination or hardship he would suffer. I am not satisfied that the applicant would face a real chance of harm if he returns to Iran on any of these grounds.
38. The applicant claims to fear harm as a returning asylum seeker from a western country. The applicant left Iran on a valid passport which he claims was collected by the people smugglers. Given that the applicant no longer has his passport, he will require temporary travel documents to be issued by Iranian diplomatic representatives overseas¹⁰. The country information provides that authorities at the airport in Iran will be forewarned about the return of a person on a temporary travel document because of Iran's sophisticated government systems¹¹, and in these circumstances, I accept that the Iranian authorities may infer that the applicant has sought asylum in Australia.
39. I have had regard to the country information¹² that Iran has historically refused to issue travel documents to allow the involuntary return of its citizens, such as the applicant who arrived in Australia in 2013 (although this has changed in respect of later arrivals) and find that if the applicant were to return to Iran it would be on the basis it was voluntary. I accept that the applicant will be returning to Iran as a failed asylum seeker, but note the information from DFAT¹³ that according to international observers, Iranian authorities pay little attention to failed asylum seekers on their return to Iran and have little interest in prosecuting failed asylum seekers for activities conducted outside Iran. The authorities will usually only question a voluntary returnee on return if they have already come to official attention, such as committing a crime.
40. For the reasons set out above, I do not accept that the applicant is a person of interest to the authorities for any reason, and the country information does not support his claim that he would be questioned by the authorities at the airport for what he has done or said. Considering the applicant's lack of profile, and the country information, I do not accept that the fact that the applicant fled Iran and claimed asylum in Australia would lead to any adverse attention from the authorities. I am not satisfied that there is a real chance that the

¹⁰ DFAT, "DFAT Country Information Report - Iran", 7 June 2018, CIS7B839411226, page 49.

¹¹ DFAT, "DFAT Country Information Report Iran April 2016", 21 April 2016, CIS38A8012677, page 29.

¹² DFAT, "DFAT Country Information Report - Iran", 7 June 2018, CIS7B839411226, page 49.

¹³ Ibid.

applicant will suffer any harm in Iran as a result of being identified as a failed asylum seeker who sought protection and lived for a period of time in Australia.

41. I have considered the applicant's claims as a whole. Taking his claims together, I am not satisfied that the applicant faces a real chance of harm now or in the reasonably foreseeable future, whether because of his religious and political views, for reasons of employment, because he made a claim for asylum in Australia, or any combination of these matters.

Refugee: conclusion

42. 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

43. A criterion for a protection visa is that the applicant is a non-citizen in Australia (other than a person who is a refugee) in respect of whom the Minister (or Reviewer) is satisfied Australia has protection obligations because there are substantial grounds for believing that, as a necessary and foreseeable consequence of the person being removed from Australia to a receiving country, there is a real risk that the person will suffer significant harm.

Real risk of significant harm

44. Under s.36(2A), a person will suffer 'significant harm' if:
- the person will be arbitrarily deprived of his or her life
 - the death penalty will be carried out on the person
 - the person will be subjected to torture
 - the person will be subjected to cruel or inhuman treatment or punishment, or
 - the person will be subjected to degrading treatment or punishment.
45. I have accepted that the applicant has been a member of the National Council of Iran since August 2017 and that he has attended some of their meetings, and that he has also attended some protests in Australia after he joined the National Council of Iran. While I have disregarded this conduct in Australia under s.5J(6), that qualification does not apply to a consideration of s.36(2)(aa).
46. I am not satisfied that the applicant holds an organisational role in the National Council of Iran, or that he has personally appeared or been identified in any media coverage or images on [social media] of any protests that he attended, either in [Australian City 1] or elsewhere. I am also not satisfied on the evidence that the applicant has any commitment or intention to engage in protest activity in the future, either in Australia or if he returns to Iran. In these circumstances, I am not satisfied that the applicant's political activities have come to the attention of the Iranian authorities. Considering his lack of profile, I find that there is no more than a remote possibility that the applicant's engagement with the National Council of Iran, or attendance at protests, would come to the adverse attention of the authorities.

47. I have also found that the applicant posted material on [social media] that includes images of protests. I have had regard to the 2018 DFAT report that provides that Iranians are able to criticise the government robustly, subject to certain off-limit “red-line” topics which violate Islamic principles, codes, and public rights, including ‘promoting subjects that might damage the foundation of the Islamic Republic’ and ‘insulting lawfully respected persons or institutions, even by means of pictures or caricatures’. Country information provides that the authorities routinely block or filter websites they consider objectionable, which includes [social media]¹⁴, although it also suggests that the Iranian authorities have little visibility into who is participating in certain online communities – or whether they are even in the country¹⁵, and that it is unclear how the authorities can technically monitor the content of messages on foreign social networks, given that some apps encrypt their messages¹⁶. The Danish Immigration Service¹⁷ indicates that [social media] is not monitored on a systematic basis and the only way for the authorities to monitor an individual's activities on [social media] is if they have a friend who is an agent of the authorities or if they have not set the privacy settings of their page properly (i.e. has an open page). DFAT also suggests that the Iranian authorities have little interest in prosecuting failed asylum seekers for activities conducted outside Iran, which includes posting social media comments critical of the government because heavy internet filtering means most Iranians will never see them¹⁸.
48. While I accept that the applicant’s posts on [social media] containing images of anti-regime protests fall within the off-limit topics, there is no evidence before me to suggest that the applicant has come to the adverse attention of the authorities or from his family and friends in Iran for his [social media] activity. I am not satisfied on the limited evidence of his activity provided by the applicant that he has been anything but an irregular user of [social media] in respect of political content, and he has only shared posts of other people and not written his own material. This, together with the country information about heavy internet filtering, all indicate that the chance that his [social media] activity will be seen by the authorities is no more than remote. Given my findings about the applicant’s motivation for posting political material on [social media], I am not satisfied he would engage in any such activity in the future. I am not satisfied that the applicant would face any more than a remote risk of harm because of his activity on social media if he returns to Iran.
49. I have otherwise found, for the reasons given above, that the applicant does not face a real chance of experiencing harm of any kind if he were to return to Iran. The Court has held that real chance in the refugee context has the same standard as real risk in a complementary protection assessment¹⁹. Considering my findings and the country information set out above, and also taking into account my consideration of the applicant’s activities in Australia, I am not satisfied that the applicant would face a real risk of experiencing harm of any kind if he were to return to Iran. I am therefore not satisfied that the applicant would face a real risk of experiencing any significant harm kind if he were to return to Iran.

¹⁴ Ibid, page 30.

¹⁵ "Fictitious Profiles and WEBRTC's privacy leaks used to identify Iranian activists", Iran Threats, 11 November 2016, CX6A26A6E16849

¹⁶ Freedom House, "Freedom on the Net 2016 - Iran", NGE43874C612, page 13.

¹⁷ Danish Immigration Service, Update on the Situation for Christian Converts in Iran, June 2014, page 21

¹⁸ Ibid, page 49.

¹⁹ *MIAC v SZQRB* (2013) 210 FCR 505

Complementary protection: conclusion

50. 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.