



**Australian Government**  

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**Immigration Assessment Authority**

**Decision and Reasons**

**Referred application**

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IRAN

IAA reference: IAA19/06308

Date and time of decision: 1 April 2019 15:20:00

M Simmons, Reviewer

**Decision**

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

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

## Background to the review

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### Visa application

1. The referred applicant (the applicant) claims to be an Iranian national. On 22 September 2017 he lodged an application for a safe haven enterprise visa. A delegate of the Minister for Immigration refused to grant that visa on 30 January 2019.

### Information before the IAA

2. I have had regard to the material given by the Secretary under s.473CB of the *Migration Act 1958* (the Act). No further information has been received.
3. I have obtained information regarding the situation in Iran for non-practising Muslims.<sup>1</sup> I have found below that the applicant is a non-practising Muslim. The delegate afforded little consideration to the applicant's religious beliefs and did not consider information regarding the situation for non-practising Muslims in Iran. I am satisfied that there are exceptional circumstances justifying my consideration of this new information. I have also obtained information in relation to the Green Movement protests following Iran's 2009 presidential election.<sup>2</sup> I have reached a different conclusion to the delegate on this matter. The delegate seemingly accepted that the applicant was involved in the Green Movement based exclusively on his pre-election campaign activities, whereas the balance of reports before me indicate the Green Movement commenced after the election results were announced. I am satisfied that these amount to exceptional circumstances justifying my consideration of this information.

### Applicant's claims for protection

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4. The applicant's claims can be summarised as follows:
  - The applicant does not have a religion, but he does believe in god.
  - He grew up in Ilam. As a teenager he used to socialise with a slightly older crowd and often went out without his parent's knowledge. On one occasion, when he was around [a certain age], he was raped by an older man. He did not tell anyone about this, however it affected him deeply and he became emotionally and socially withdrawn after this incident.
  - As part of the 'Green Movement', at [a certain] age the applicant took part in low level political activities in support of Presidential opposition candidate Mousavi. These activities included distributing pamphlets, putting up posters and wearing clothing with Green Movement slogans. The applicant did not have any particular political beliefs and did not actually care who won the election. He became involved in these activities because some of the people he was associating with held these beliefs and the applicant wanted to be involved in something. The applicant and his friends were often targeted for this activism by the Basij or supporters of Mousavi's political rivals. The authorities would disperse these groups and the applicant would run away to avoid being apprehended. The applicant was arrested once with several other people, but the

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<sup>1</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", 1 September 2015, CISEC96CF13622.

<sup>2</sup> Refugee Review Tribunal (RRT), "Issues Paper: The Green Revolution and its Aftermath", 7 November 2012, CR670483615.

authorities recognised that he was a lower level supporter and quickly released him because they were only interested in higher level activists.

- The applicant's [uncle], "N", was also involved in the Green Movement. He left Iran when he came to the attention of the authorities in 2011. This caused problems for the applicant's father as he assisted N to flee and he subsequently came under surveillance from the Iranian authorities.
- Around one year after the applicant's rape his father decided to move the family to Tehran. The applicant believes this was because his father had observed a radical change in him and wanted to move him to a safer environment. Shortly after moving to Tehran that applicant began using [drugs]. While living in Tehran he felt freer than in Ilam and began behaving more recklessly. He wore culturally inappropriate clothing and had western hairstyles, he socialised with girls in public and drank alcohol in public places. This behaviour and his regular drug use brought him to the attention of the Iranian authorities often.
- He was detained [a number of] times for various minor offences while residing in Tehran. Mostly he was held in a cell for a short time before being released into his father's custody. On one occasion he was arrested with an acquaintance who was a known [criminal]. The applicant's wrists were tied and he was pressured to confess to offences he did not commit. He was eventually released when the police did not uncover anything worthwhile to charge him with. He [was injured] from this incident.
- Eventually the applicant's father arranged for him to attend a rehabilitation clinic for his addiction. However, after leaving the clinic applicant soon resumed his drug abuse. His father was worried that if the applicant stayed in Iran he would die of a drug overdose. As a result, and given his own issues with the Iranian authorities, his father decided it was necessary for him and his family (including the applicant's mother and [brother]) to leave Iran.
- The applicant did not complete his compulsory military service, which is illegal in Iran. The Iranian Government allows such people to leave the country if they volunteer significant collateral to ensure their return, such as the deed to their home. As the applicant's family did not have sufficient resources, his father obtained a false bond document from a people smuggler to allow for the applicant to be given permission to leave Iran. The applicant presented this document with his passport to officials at Imam Khomeini International Airport in Tehran. If he is returned to Iran it will be discovered that he left the country through fraudulent means and will be punished for this. He fears this punishment could include imprisonment and torture. He also fears if he returns to Iran he might face imprisoned or some other serious punishment for absconding from military service.
- He also fears being harmed because he requested asylum in Australia.

## **Factual findings**

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### **Identity and background**

5. The applicant has provided documentary evidence which confirms his identity, including a certified copy of his Iranian birth record or *shenasnameh*. I am satisfied his identity is as claimed. I accept that he is an Iranian national and Iran is the receiving country for the purpose of this assessment.

6. The applicant's claims concern events in Iran from approximately [a certain age]. During this period he resided in Ilam, then moved to Tehran for around a year and a half before departing Iran in January 2013. There is some ambiguity as to whether certain key events occurred while he was residing in Ilam or Tehran. These include his claimed Green Movement involvement and his family's harbouring his uncle N. When comparing the narrative in his statement with his address, education and employment history supplied in the visa application, there are discrepancies in his residence as at key dates. There are also some internal inconsistencies within the applicant's own narrative and discrepancies between the applicant's evidence and that of his father as was highlighted by the delegate. Cumulatively, I found the applicant's evidence in relation to past events to be generally unpersuasive. I have expanded upon my concerns below.

### **Rape**

7. When asked by the delegate at the beginning of the interview whether he had any additional information to provide, the applicant indicated he would be presenting claims that were not previously provided. He then set out the circumstances that led to a rape and the consequences that flowed from it. The applicant provided an account of his experience as a teenager in Ilam. He explained that he was a difficult child, and that around [certain] years of age he would socialise with older people and put himself in dangerous situations that he should not have. He mentioned a number of times that he received adverse attention and was targeted for being good-looking. After some time he indicated to the delegate that he found it difficult to explain what had happened to him as he felt ashamed, but that he would answer any question the delegate had. Eventually through direct questioning from the delegate the applicant confirmed that he was raped. He said this only happened on one occasion and he essentially stopped leaving the house after it occurred. The applicant explained that this information was not previously provided as he only had a short time to meet his lawyer to prepare his visa application, and that this occurred with the rest of his family. At the time the visa application was prepared he did not feel he was able to disclose this matter and still struggles to discuss it. His evidence was that following the rape he stopped socialising and rarely left the house. He believes that his father had worked out what happened to him, and around 12 months later moved the family to Tehran to get the applicant out of the dangerous environment in Ilam.
8. I found the applicant's evidence regarding the rape to be plausible and generally persuasive. He provided a compelling account of this incident which I accept did occur. I consider his explanation for the delay in disclosing this event to be understandable. The delegate asked the applicant if he feared harm in Iran in the future because of the rape. He responded that at the time he was a child and could not defend himself, however now he can manage himself and nothing would happen.

### **Green Movement / Mousavi campaign**

9. The applicant has provided a shifting narrative in relation to his claimed green movement involvement and one which does not align with country information before me. I am not satisfied it is based on his lived experience. I find he has fabricated these claims and I reject them in their entirety for the following reasons.
10. The applicant did not indicate whether his Green Movement involvement occurred in Ilam or Tehran. He stated that he was around [a certain age] when he took part in the Green Movement. The address history provided in his visa application indicates that he resided in

Ilam until 2011, relocating to Tehran in 2012. The applicant turned [a certain age] in [2011], meaning any Green Movement involvement between the ages of [a certain age] would have occurred while he resided in Ilam. During the visa interview, when discussing the purported Green Movement involvement the delegate asked *"Did you get harassed at protests or was this while you were out doing your pamphleteering?"* The applicant responded *"It was actually chaotic. It was a bit of everything that we experienced. Because it is a little town."* On various other occasions during the interview the applicant referred to Ilam as being a small place or small town. Tehran is the largest urban center in Iran with a population of around 15 million,<sup>3</sup> and I am satisfied that the applicant was referring to Ilam and not Tehran when he described the location of his Green Movement activities. I note the delegate's decision records states that the applicant stated that after he moved to Tehran he joined a group of friends who were older than him and through this group he became involved in the Green Movement. It is possible this is a misunderstanding on the part of the delegate although the applicant has not made any submissions to the IAA in response to this finding.

11. The applicant claimed at interview that he was raped when he was [a certain] age in Ilam, and after this incident he became socially reclusive up until his family relocated to Tehran a year later. I accept this rape occurred. The applicant has not explained, nor is it apparent to me, how he could possibly have been concurrently an active election campaigner and also socially withdrawn following the sexual attack. His evidence was that the rape occurred when he was around [a certain age] and after this he effectively stopped leaving his house. He moved to Tehran around a year after this incident. However, he also claims that he took part in the Green Movement in Ilam at around [a certain] age. These narratives do not sit easily together. I consider his claim to have been socialising reclusive following his rape until he relocated to Tehran to significantly undermine his claim to have been politically active and publically involved in an election campaign at the same time.
12. In his statement the applicant refers to the '2008 elections', although the presidential elections contested by Mousavi were in June 2009.<sup>4</sup> The applicant's statement describes his involvement in various pre-election campaigning activities in support of Mousavi and states that he was [a certain age] at that time. However, I note that based on the date of birth he provided he was [a different] age in the lead up to the 2009 election.
13. When discussing the Green Movement at the delegate's interview, the applicant indicated he did not care who won the election but that he supported Mousavi because that was the candidate his older friends supported and he just wanted to be involved. Somewhat contradictorily he later asserted that Mousavi supported the youth and that was what the Green Movement was actually about and he was involved because he was a young person. I consider his endorsement of Mousavi's youth platform is at odds with his earlier assertion that he did not care which candidate won.
14. As to the nature of his claimed involvement in the Green Movement, the applicant stated he took part in activities such as distributing Green Movement pamphlets, sticking Green Movement posters on walls and wearing shirts with Green Movement slogans. His group of campaigners would often be dispersed by the Basij and on several occasions they were beaten by members of the Basij and supporters of other candidates including Ahmadinejad and Kourabi. Reports indicate that following the announcement of election results that gave a clear victory to Ahmadinejad, there was widespread popular disbelief and complaints of irregularities by Mousavi and his fellow reformist candidate, Mehdi Karroubi. This resulted in

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<sup>3</sup> DFAT, "DFAT Country Information Report Iran", 7 June 2018, CIS7B839411226.

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

street protests that began in the immediate aftermath of the election and continued throughout the remainder of 2009. These protests came to be known as the 'Green Movement' due to its adoption of the colour of Mousavi's election campaign.<sup>5</sup> There was no mention by the applicant in his visa application or at interview of the election result or the events following the announcement, he refers only to campaigning for Mousavi in the lead up to the election. Before the post-election protests, the Mousavi campaign had been known as the 'Green Wave' (*Mowjeh Sabz*). Sources indicate that references to the post-election protests as the 'Green Movement' can be found as early as the second half of June 2009, after the election.<sup>6</sup> The material before me does not suggest the Green Movement terminology was used prior to the election result being announced. He did not mention the contested results or large protests the ensued following the election in any of his evidence. Furthermore, material before me does not indicate that the Mousavi and Karroubi supporters engaged in violence against each other in the lead up to the election, as the applicant has claimed. Both were reformist candidates, both campaigns questioned the result and both were arrested after the elections.<sup>7</sup> The applicant has offered no supporting country information that aligns with his version of events.

15. Overall, the applicant's evidence does not support a conclusion that he had any involvement with the Green Movement, even at a low level. His failure to mention the election results or the events that stemmed from it, his characterisation of Mousavi's pre-election campaign as being the Green Movement, and his suggestion that Mousavi and Karroubi supporters were frequently violent towards each other, and his conflicting evidence as to his motivation for supporting the Mousavi campaign, all lead me to conclude that he did not have any involvement in the Mousavi campaign or the Green Movement at all. I am not satisfied that his young age at the time, or his purported indifference as to the outcome of the elections, accounts for the contradictions in his own evidence or the disparity between his understanding of the Green Movement and the account set out in country information reports. That the applicant claimed to be a Mousavi supporter because he best represented Youth interests suggests he was politically engaged enough to inquire into policy platforms of the candidates and was not actually indifferent as claimed.
16. A separate and distinct reason for me to doubt the applicant's claimed political activism is the absence of any reference to this in his father's statements in support of his separate visa application. These statements were discussed with the applicant at the delegate's interview. They make no reference at all to the applicant having any Green Movement or Mousavi Campaign involvement what so ever, and only discuss his uncle N's claimed green movement involvement. I consider it unlikely that the applicant's father would be unaware of his son's involvement in Mousavi's campaign and related claimed beatings and arrest, given at this time he was relatively young and still residing at home. I do not accept the applicant had any involvement in the Green Movement or Mousavi's election campaign at all. I reject these claims as fabrication.
17. The applicant's evidence at interview was that because the authorities found out about his uncle N's Green Movement activities and that his family had housed him for some time. Because of that and what happened to the applicant in the past, the family had to move to Tehran and then later to Australia. The applicant's evidence clearly indicates that it was prior to relocating to Tehran that his family sheltered his uncle N. However, the applicant's father's statement asserts that the family were already residing in Tehran when his brother N hid in

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<sup>5</sup> RRT, "Issues Paper: The Green Revolution and its Aftermath", 7 November 2012, CR670483615.

<sup>6</sup> RRT, "Issues Paper: The Green Revolution and its Aftermath", 7 November 2012, CR670483615.

<sup>7</sup> RRT, "Issues Paper: The Green Revolution and its Aftermath", 7 November 2012, CR670483615.

their home. These two narratives are irreconcilable. Furthermore, the applicant told the delegate that he never had any issues because of N, but that his actions did affect his father. However, his father asserts in his statement of 10 April 2017 that the applicant was arrested and questioned by the police in relation to N. Furthermore, the applicant has not explained why, if both he and his uncle N were involved in and actively supporting the Green Movement as claimed, it was only N who came under surveillance by the government. He has not suggested that he himself was subject to such surveillance. I reject the claim that N was involved in the Green Movement in its entirety. I consider this to be a fabrication.

### **Un-Islamic activities in Tehran**

18. The applicant has provided generally vague particulars in respect of events following his move to Tehran until he left Iran. The address history provided in his visa application indicates that he resided in Tehran for approximately [a number of] months before departing Iran in January 2013. His visa application indicates he undertook all of his schooling in Ilam. At interview with the delegate he indicated that he had completed high school but that he did not obtain his diploma certificate because he knew he would be departing Iran when he finished his studies. This suggests that the applicant had already formed the view that he was going to depart Iran at the time he finished his school in Ilam, prior to moving to Tehran and more than a year and a half before the family left the country.
19. The applicant has claimed to have engaged in various activities while in Tehran that he described as un-Islamic and which he claimed exposed him to the adverse attention of the authorities. He wore western clothes and western hairstyles, socialised with females in public, drank alcohol in public and regularly consumed [drugs]. Because of this he was regularly detained by the Basij, [multiple] times while living in Tehran. He was generally detained for a day or two then released after his father paid bail. He was also taken to court a number of times.
20. I can accept that on occasion in Tehran he may have publically socialised with females. Reports indicate that the Iranian authorities can take a heavy-handed approach when they periodically enforce standards of Islamic conduct in the community, including public displays of affection with non-family members of the opposite sex.<sup>8</sup> However, the Australian Department of Foreign Affairs and Trade (DFAT) has reported that pre-marital and extra-marital relations are common and unmarried couples appearing together in public is very common, particularly in the middle and upper classes. DFAT assessed that the authorities generally turned a blind eye to such couples.<sup>9</sup> The applicant has not ever suggested he was in a relationship with a female, just that he socialised publically with members of the opposite sex and this caused him to be pursued by the authorities. Reports suggest that the Iranian authorities can on occasion strictly enforce standards of Islamic conduct in the community, including in respect of dress style.<sup>10</sup> Notwithstanding these reports, young Iranians – including men – are regularly seen with ‘western’ hairstyles, using hair products and with visible hair removal. DFAT assessed that Iranians would be unlikely to come to the interest of authorities on the basis of these characteristics alone.<sup>11</sup>
21. Sources indicated that Iranians wishing to obtain and consume alcohol can do so relatively easily. The World Health Organisation reported in 2014 that Iran had the 19th highest rate of

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<sup>8</sup> DFAT, “DFAT Country Information Report Iran”, 21 April 2016, CIS38A8012677.

<sup>9</sup> DFAT, “DFAT Country Information Report Iran”, 21 April 2016, CIS38A8012677.

<sup>10</sup> DFAT, “DFAT Country Information Report Iran”, 21 April 2016, CIS38A8012677.

<sup>11</sup> DFAT, “DFAT Country Information Report Iran”, 21 April 2016, CIS38A8012677.

alcohol consumption in the world, with an annual average of 25 litres per person. Media reports of prosecutions for alcohol consumption exist, but these are not common. DFAT understands that police do not usually seek to investigate actively or entrap individuals consuming alcohol in their own homes, but will act if the activity comes to public attention or if instructed to crack down on it.<sup>12</sup> According to the UN Office of Drugs and Crime (UNODC), Iran has one of the gravest addiction crises in the world. Health Ministry officials estimate 2.2 million Iranians (2.75 per cent of the population) are drug addicted. Drug abuse occurs across social classes and across genders, a wide range of drugs is readily [available]. According to local NGOs, a range of factors has contributed to the increase in drug use, including availability, economic and social frustration, increased urbanisation, greater use of social media, a lack of early intervention programs in schools, and insufficient public awareness of the issue.<sup>13</sup>

22. The applicant attributes his [drug] addiction and alcohol consumption, at least in part, to adjusting to living in Tehran and to dealing with his rape. In light of country information before me about the prevalence of drug and alcohol consumption in Tehran and that I accept the applicant was raped, I am prepared to accept that while residing in Tehran he occasionally consumed [drugs] and alcohol. He has not provided any medical evidence concerning previous addiction nor is there any indication he has sought any professional assistance while in Australia to address any ongoing addiction. I am not satisfied that the applicant was placed in a rehabilitation centre by his father. He has provided no supporting documentation in respect of this matter and his father makes no reference to this matter in his own statements. He indicated to the delegate that he has not used illicit substances while in Australia and I accept that is the case.
23. At interview the applicant referred to a specific incident where he claims he was arrested while socialising with a known [criminal], was taken to a police station, had his wrists tied and was beaten in an effort to force a confession to also being a [certain criminal]. In his statement he recounts a similar situation where he was taken to a police station, his father tried to obtain bail but this was denied, he was beaten to confess to 'wrongdoings' but he did not know what he was meant to confess to, and that he [was injured] from the beatings he [received]. His father makes no mention to bailing his son [multiple] times in his own visa application. In his April 2017 statement he claims that the authorities never physically harmed either of his sons. In his January 2019 statement he changed his account and stated that the applicant was arrested and tortured by the authorities, but he could not recall how many times. He also stated that he once saw the applicant at a police station hung upside down by his legs. I note that the applicant has never presented such a claim to have been hung up by his legs in a police station. When asked about this incident by the delegate, the applicant responded that he has [injuries]. I am not satisfied that this occurred and that it is further indication of disparate accounts being provided by the applicant and his father.
24. Generally the applicant's evidence in respect of his purported un-Islamic activities was vague. He talked about purported repeated behaviour but offered few specific examples. No documentary evidence of any legal proceeding having ever been instigated against the applicant, or proof of any bail payment, has been provided. This is despite the applicant's claim to have been arrested [multiple] times, having often appeared in court, and being released on bail. Nor has the applicant produced any photographic evidence of his claimed un-Islamic dress or hairstyle. He offered no detail on how he came to meet his social circle in Tehran, and he has not indicated whether any of these people ever came to the adverse interest of the authorities and is so what the consequences were.

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

<sup>13</sup> DFAT, "DFAT Country Information Report Iran", 7 June 2018, CIS7B839411226.



25. Based on country information suggesting that drug and alcohol consumption, socialising in public with members of the opposite sex, and so called 'western' hairstyles and dress are common in Iran, I can accept that the applicant may have on occasion engaged in these activities or assumed this style while residing in Tehran. However, I do not accept he ever attracted any adverse attention from the Iranian authorities for any of these reasons. I do not accept that the applicant was ever arrested or detained while living in Tehran. He has not provided any corroborative material indicating he was ever subject to any legal process or that he ever attended any rehabilitation centre while in Iran. Furthermore the applicant's version of events while he resided in Tehran does not accord with the narrative presented by his father. On the evidence before me I consider the claims relating to arrest for so called 'non-Islamic' behaviour have been fabricated.

### **Religious views**

26. In an arrival interview completed shortly after he entered Australia, the applicant stated his religion was Islam. However in that same interview when asked whether he belonged to any social or religious groups, the applicant indicated he was against Islam as a religion and that he did not accept the religion. On his visa application form the applicant stated that he had no religion but that he believed in god, he has not claimed to have experienced harm on this basis. The statement accompanying his visa application refers to instances where the applicant claims he was targeted for harm in Iran due to non-compliance with Islamic rules. He has not explained when, how or why he has purportedly left Islam.

27. There is no indication on the applicant's evidence that he engages in regular religious worship or public demonstrations of faith, nor has he suggested he ever attracted adverse interest for failing to do either whilst in Iran. I am satisfied that the applicant does not conform to Islamic precepts. However, on the limited detail before me I am not satisfied he has in fact left Islam. I consider that he is a non-practising Muslim, and that he will continue to be so into the reasonably foreseeable future.

### **Military service**

28. The applicant claims he will be required to undertake military service on return to Iran. Iran enforces compulsory military service for all men above the age of 18, and most complete between 18 and 24 months of service in a variety of positions. A person who deserts from the military must complete his service on return if he is under the age of 40. Draft evaders are liable for prosecution.<sup>14</sup> Authorities can grant an individual exemption from military service on several grounds including medical reasons, being the only son in the family, having elderly parents, and having a brother currently serving in the military. Wealthy families can also purchase an exemption by paying absence fines, which is a relatively common practice.<sup>15</sup> I accept that the applicant was over 18 years of age when he left Iran, and that there was insufficient time between his 18<sup>th</sup> birthday and his departure for him to have completed the required 18 to 24 months conscription.

29. The applicant claims a person aged 18 or over can leave Iran without having undertaken military service if a bond, such as a title to property, is provided as a guarantee you'll come back and do military service. His evidence was that his family could not afford such a bond, so his father paid bribe to receive a passport with a false bond to enable him to depart. It is

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<sup>14</sup> United Kingdom (UK) Home Office, "Country Policy and Information Note: Iran: Military service", 25 October 2016, OGD7C848D84; DFAT, "DFAT Country Information Report Iran", 7 June 2018, CIS7B839411226.

<sup>15</sup> DFAT, "DFAT Country Information Report Iran", 7 June 2018, CIS7B839411226.

claimed that the passport itself was not fake, only the bond. The person who arranged the passport told the family that the bond document is illegal, and if they checked it on the computer at the airport they will know that it is a fake. The delegate put concerns regarding these claims to the applicant at the interview, and ultimately in their decision did not accept that the applicant did depart Iran by relying on a fake document. I note that the delegate also found the applicant was [a certain age] when he left Iran, but I have accepted he was actually [a different] age. The applicant did not respond to the delegate's rejection of this claim.

30. I do not accept the applicant departed by relying on a fake property bond. The applicant has provided no proof of the document in question and I do not consider it plausible that he would be able to depart undetected relying on this document. DFAT has consistently assessed over time that Iranian border control procedures are sophisticated, make it difficult to utilise fraudulent or fraudulently obtained documents in order to leave Iran.<sup>16</sup> I consider it highly likely that the applicant was able to depart because arrangements were made to pay an exemption fee for his non-completion of military service. Wealthy families can purchase exemptions for their sons through paying absence fines. This practice is common: in June 2016, the chief conscription officer for the armed forces told a local newspaper that more than 10,000 people had applied to pay absence fines in the past month alone. Absence fines start at approximately USD 6,500 and can run to over USD 13,000, with the amount varying based on levels of education, with those with a higher education liable for higher fines.<sup>17</sup> As the applicant had only completed high school the required amount for him would have been at the lower end of the scale. Moreover, at the Arrival interview the applicant indicated his family paid US \$35,000 for their travel to Australia. This indicated that they had access to a considerable amount of funds and I am satisfied they had the means to pay the applicant's exemption fee; its possible this fee may have been included in the figure provided by the applicant.
31. I do not accept that the applicant departed Iran using a fake security bond. I am satisfied that his family has paid an exemption fine. As such, I am not satisfied he has any ongoing military service obligations and would not be subject to any such obligations upon return to Iran.

### **Returning asylum seeker**

32. I accept that were the applicant to return to Iran he would do so after having requested asylum in Australia. Country information indicates that Iranian overseas missions will not issue travel documents to Iranian nationals whom a foreign government wishes to return involuntarily to Iran. The Australian government has reached an agreement with the Iranian authorities to facilitate the return of Iranians who arrived in Australia after 19 March 2018.<sup>18</sup> As the applicant arrived in Australia in 2013 those arrangements do not apply to him. I am not satisfied the applicant will be involuntarily returned to Iran from Australia and any return to that country would be on a voluntary basis.

### **Refugee assessment**

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33. 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

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<sup>16</sup> DFAT, "DFAT Country Information Report Iran April 2016", 21 April 2016, CIS38A8012677; DFAT, "DFAT Country Information Report Iran", 7 June 2018, CIS7B839411226.

<sup>17</sup> DFAT, "DFAT Country Information Report Iran", 7 June 2018, CIS7B839411226.

<sup>18</sup> DFAT, "DFAT Country Information Report Iran", 7 June 2018, CIS7B839411226.

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**

34. 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.

35. The applicant's evidence to the delegate was that he was aware that his mother, father and brother had their visa application refused and that he would return to Iran with his family if they were not able remain in Australia, irrespective of the outcome of his own separate application. He has presented his own protection claims distinct from those of his family and claims to fear harm in Iran for reasons particular to himself.

36. I have accepted that the applicant was raped when he was approximately [a certain] age, which was around 10 years ago. He indicated at the interview with the delegate that he did not fear harm upon return to Iran for any reason related to this incident, as he is now an adult and feels able to protect himself. There was no suggestion he has been the target of sexual violence other than during this incident, including in the years following the rape when he continued to reside in Iran. There is no indication he has sought any professional assistance in relation to the rape while he has been in Australia. I consider the incident described by the applicant to be on its face opportunistic, occurring in a particular context where the applicant was quite vulnerable. His evidence is, and I accept, that were he to return to Iran he would not be in such a vulnerable position as he would be an adult. In light of the applicant's evidence and given the considerable passage of time, I am satisfied that there is a real chance of harm related to this historical incident in the foreseeable future.

37. I have not accepted that the applicant had any Green Movement involvement at all. I have also rejected the claims relating to N's purported Green Movement activities. There is no indication he has engaged in any political activity while in Australia. The information before me does not support a conclusion that the applicant faces a real chance any harm upon return to Iran because of any political opinion.

38. For the reason outlined above, I do not accept that the applicant ever came to the adverse interest of the authorities for drinking alcohol or consuming drugs, or for any other anti-Islamic' activity such as socialising with females, or wearing certain clothing and hair styles. There is no indication that he currently has any problematic substance abuse issues. There is

no suggestion he has sought any professional assistance with any such matters during his years in Australia. He has been living independently from his family in a separate city without issue for an extended period while in Australia. The applicant attributed his purported anti-Islamic behaviour to being young and energetic, mixing in new social circles, and enjoying the relative freedom in Tehran. I note that on return to Iran he would face a different set out circumstances to those that he previously attributed to his risk taking behaviour, given he is no longer young and he has resided in a relatively free society for the past six years. I am not satisfied he faces a real chance of any harm in the foreseeable future based on his past activities in Iran. The country information I have referred to indicates that notwithstanding sporadic strict enforcement; alcohol and drug consumption, male 'western' hair and dress style, and public fraternisation with the opposite sex, will generally not attract adverse interest from the Iranian authorities. He has not suggested that he continues to engage in any of these behaviours presently, or that he would do so in the future were he to return to Iran. Given this, the passage of time since he engaged in this behaviour in Tehran, that it was only for a period of around 18 months that he undertook this behaviour, and that the applicant attributes his past conduct to a different set of circumstances to those he would not face in Iran in the foreseeable future, I am not satisfied he would engage in any so called un-Islamic conduct on return to Iran. I do not consider he faces a real chance of any harm for this reason.

39. I have found the applicant does not have any ongoing military service obligations in Iran. As such, I am not satisfied that there is a real chance of him experiencing any harm for this reason was he to return to Iran.
40. I have found that the applicant is a non practising Muslim. Country information indicates that non-practising Muslims form a large part of the population of Iran's cities, lead normal daily lives and are rarely pressured to observe Muslim precepts.<sup>19</sup> DFAT considers it is unlikely that the government would monitor religious observance such as whether a person regularly attends mosque or participates in religious occasions. As such it would be unlikely for it to become known that a person was no longer faithful to Shia Islam.<sup>20</sup> There are some reports that disclosure of non-practising status may impact on a person's employment prospects including if they are seeking to obtain employment with a government agency.<sup>21</sup> I note that the applicant successfully secured employment while in Iran and there is no indication that he faced any difficulty in this regard on religious grounds. There is no indication that he experienced any harm for failure to observe the Muslim faith while in Iran and I am not satisfied there is a real chance he would experience any harm for this reason in the foreseeable future were he to return to that country
41. The material before me also does not suggest a real chance of harm should the authorities come to know the applicant previously sought asylum in a western country or spent time in a western country. The Danish Refugee Council and Danish Immigration Service have previously assessed that provided a returnee has not been member of an oppositional political party or involved in political activities abroad in other ways, she or he would not face problems upon return to Iran.<sup>22</sup> These views are consistent with DFAT's assessment that failed asylum seekers are unlikely to be targeted by the Iranian authorities for the sole reason of having applied for

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<sup>19</sup> ACCORD, "Iran: Freedom of Religion; Treatment of Religious and Ethnic Minorities: COI Compilation", 1 September 2015, CISEC96CF13622.

<sup>20</sup> DFAT, "DFAT Country Information Report Iran", 7 June 2018, CIS7B839411226.

<sup>21</sup> ACCORD, "Iran: Freedom of Religion; Treatment of Religious and Ethnic Minorities: COI Compilation", 1 September 2015, CISEC96CF13622.

<sup>22</sup> Danish Refugee Council and Danish Immigration Service, "Iranian Kurds: On Conditions for Iranian Kurdish Parties in Iran and KRI, Activities in the Kurdish Area of Iran, Conditions in Border Area and Situation of Returnees from KRI to Iran", September 2013, CIS26587.

asylum overseas.<sup>23</sup> Millions of Iranians travel into and out of Iran each year without difficulty, including the large Iranian diaspora residing in North America and Europe.<sup>24</sup> DFAT has reported over time that Iranian authorities have little interest in prosecuting failed asylum seekers for activities conducted outside Iran, including in relation to protection claims.<sup>25</sup> Reports indicate that persons who have engaged in anti-regime activism overseas, or who have a known anti-regime profile in Iran, may be subject to arbitrary arrest, detention and mistreatment upon return to Iran.<sup>26</sup> However there is no indication the applicant has become politically engaged while in Australia and I am not satisfied he has otherwise engaged in any conduct that would be of interest to the Iranian authorities while in Australia.

42. The applicant does not face a real chance of any harm, including any treatment amounting to serious harm, for any reasons were he to return to Iran. His fear of persecution is not well founded.

### **Refugee: conclusion**

43. 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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44. 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**

45. 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.

46. The requirement for there to be a "real risk" of significant harm applies the same standard as the "real chance" test.<sup>27</sup> I have concluded for the reasons set out that the applicant does not

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<sup>23</sup> DFAT, "DFAT Country Information Report Iran", 7 June 2018, CIS7B839411226; UK Home Office, "Country Information and Guidance – Iran: Illegal Exit", 20 July 2016, OGD7C848D28.

<sup>24</sup> Danish Refugee Council, Landinfo and Danish Immigration Service, "Iran: On Conversion to Christianity, Issues concerning Kurds and Post-2009 Election Protestors as well as Legal Issues and Exit Procedures", 1 February 2013, CIS25114; DFAT, "DFAT Country Information Report Iran", 7 June 2018, CIS7B839411226.

<sup>25</sup> DFAT, "DFAT Country Information Report Iran April 2016", 21 April 2016, CIS38A8012677; DFAT, "DFAT Country Information Report Iran", 7 June 2018, CIS7B839411226.

<sup>26</sup> Amnesty International, "We are ordered to crush you': Expanding Repression of Dissent in Iran", 28 February 2012, CIS22610.

<sup>27</sup> *MIAC v SZQRB* (2013) 210 FCR 505.

face a real chance of any harm in Iran for any reason were he to return to Iran. Accordingly, for the same reasons I am satisfied he does not face a real risk of experiencing any harm, including any treatment amounting to significant harm, for any reason were he to return to Iran.

**Complementary protection: conclusion**

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

**Decision**

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

## Applicable law

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

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

In this Act, unless the contrary intention appears:

...

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

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

...

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

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

...

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

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

...

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

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

...

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

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

...

#### **5H Meaning of refugee**

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

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

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

...

### 5J Meaning of well-founded fear of persecution

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

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

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

### 5K Membership of a particular social group consisting of family

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

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



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

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

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

#### 5L Membership of a particular social group other than family

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

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

#### 5LA Effective protection measures

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

...

#### 36 Protection visas – criteria provided for by this Act

...

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

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

...

*Protection obligations*

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

*Determining nationality*

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