



Australian Government
Immigration Assessment Authority

Decision and Reasons

Referred application

IRAN

IAA reference: IAA19/06537

Date and time of decision: 15 May 2019 17:42:00

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 an 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 18 May 2016 he lodged an application for a Safe Haven Enterprise Visa (SHEV).
2. On 1 April 2019, a delegate for the Minister of Immigration (the delegate) refused to grant the visa on the grounds that Australia did not owe protection obligations in respect of the applicant. The delegate accepted that the applicant's father had aggressive tendencies, but found that they were not on account of the applicant's religious views but his mental health issues from a brain injury. The delegate did not accept that the applicant's father or step-father threatened to kill the applicant or report him to the authorities for not believing in Islam. She also did not accept that the applicant's cousins threatened to kill him. The delegate found that the applicant was an atheist but was not satisfied that there is a real chance that he will face harm on the basis of his religious beliefs if he returns to Iran. She also found that the applicant would not face a real chance of serious harm as a failed asylum seeker returning from a western country.

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). No further information has been obtained or received.

Applicant's claims for protection

4. The applicant's claims in his SHEV application can be summarised as follows:
 - The applicant was raised in an extremely religious Shia Muslim family, but does not believe in Islam and is an atheist.
 - He was physically and emotionally abused by his father in Iran. His father was injured in the Iran-Iraq war and suffers from mental health and anger management issues. His father was an Islamic extremist who persecuted the applicant because he did not conform to his father's idea of the perfect Muslim son. When his father became aware that the applicant did not believe in Islam, he threatened to inform the authorities about the applicant and to butcher the applicant if he disobeys Islam.
 - His step-father is a Mullah and a pro-regime extremist who forced the applicant to practise Islam and wanted him to train to become a cleric. The applicant told his step-father that he did not believe in Islam, and his step-father threatened to tell the authorities and told the applicant that he deserved to die and could not live with his step-father and mother.
 - Two of the applicant's cousins are very religious and have threatened to kill him.
 - He has many social media accounts, including [service names]. He shares his views publicly. He was not free to talk about things or share things on [one service] in Iran.
 - He left Iran because he did not have enough money to support himself, and because his parents lacked culture and were not adequately literate to teach him appropriately.
 - He fears that he will face harsh punishment from his family members if he returns to Iran because he has renounced Islam, and will also be subjected to torture and abuse

from government forces, including the Basij, the Sepah and the Ettelaat because he has no religion.

5. At his arrival interview in November 2012, the applicant also raised the following:
 - He was arrested and detained for [several] days for being outside a girls' school, about two years before he left Iran.
 - He was fired from a job in a [business] for wearing a short sleeved shirt.
6. The delegate also considered whether the applicant will be harmed on the basis that he is a failed asylum seeker returning from a western country.

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.

Religious beliefs

8. The applicant makes claims in his statutory declaration dated 12 April 2016 provided with his SHEV application that his family was extremely religious and that his father started taking him to mosque to pray and forced him to read the Quran from the age of seven. He claims that his father's efforts to force him to believe in Islam led him to lose interest in and have doubts about Islam, and his religious beliefs shifted to atheism. In his SHEV interview on 30 January 2019, the applicant gave evidence that he never prays, and does not believe in his father's religious beliefs. He stated that he does not believe in any religion and is an atheist, and that he has held these views for 10 years. I found the applicant's evidence about his religious beliefs convincing, and accept that he is an atheist.

Problems with family members in Iran

9. The applicant claims that he was physically and emotionally abused by his father in Iran. He claims that his father was an Islamic extremist who persecuted the applicant because he did not conform to his father's idea of the perfect Muslim son. The applicant's claim that his father's abuse and cruelty was a main reason for leaving Iran has been consistent since the applicant's arrival in Australia. The applicant provided detailed evidence about his father's mistreatment and abuse in his statutory declaration, which included claims that sometimes his father beat him and forced him to go to religious events; that he always had marks, cuts and bruises on his body because of his father's abusive behaviour; and that his father beat him and put him in house detention. At his SHEV interview, the applicant gave evidence that his father physically abused his younger siblings as well.
10. The applicant claims that he made excuses to avoid going to mosque with his father, and his father became aware that the applicant didn't believe in Islam, and started threatening the applicant by saying he would butcher him if he disobeyed Islam. He also claimed that his father choked him multiple times with his bare hands so hard the applicant felt he was going to die. The applicant also claimed that when his father became aware of his new beliefs, his father accused him of being an infidel and repeatedly beat him, and decided to take him to mosque to ask for forgiveness. The applicant took a strong stand against this and went to live with his mother and step-father.

11. The applicant claims that his father was a member of the Basij and pressured him to join the Basij, and that his father had loud and often violent arguments with him about it. The applicant also claimed that the fact that he dressed in a modern style was another reason for his father to hate and harm him. He stated that his father threatened to inform the authorities about the applicant, telling the applicant that the police will believe whatever his father says because he holds a "red card" as a war veteran. He gave evidence about the "red card" at his SHEV interview, stating that these cards are issued to war veterans with a disability or impairment, and that this impairment is taken into account if he is involved in an accident or even if he kills somebody.
12. He claimed that his father had mental health and anger management issues as a result of injuries he suffered in the Iran-Iraq war, and from exposure to chemical weapons. He gave evidence at his SHEV interview that his father worked at [a named agency] and at a [business], but they found out that he could not work because he was fighting with people, and he stopped working about 10 years ago. He also stated that his father was hospitalised several times a year for his mental illness. The applicant provided medical reports about his [father] which corroborates his claims that his father was a war veteran who sustained injuries in the Iran-Iraq war, as well as suffering chemical exposure. The medical evidence includes a document from the [Armed Forces] which states that [the applicant's father] was injured on the head and ear (nerves and mental) in [a location] [in] May 1982, which was during the Iran-Iraq war, and a discharge summary sheet from the [named] Hospital, Shiraz relating to [his father's] admission between [specified dates in] 2010. This document states that had been hospitalised for treatment at the [hospital] on [number] occasions, refers to PTSD and sets out his symptoms which include anxiety, aggression, memory distortion, agitation, suicidal, social, family and occupational dysfunction.
13. At his SHEV interview, the applicant gave evidence that he couldn't live with his father and had left home because his father was a very short tempered person who had anger management issues for very trivial things. He stated that his father used the applicant to pacify his anger, and gave examples of incidents when his father subjected him to punishment, such as there being a fly or mosquito in the room, or a car driving in the street. I note that the applicant did not make any claim that he left home because his father had accused him of being an infidel and suggested he was going to take the applicant to the mosque to ask for forgiveness, which is the reason he gave for leaving his father's house in his statutory declaration.
14. After considering the evidence before me, I accept that the applicant's father suffered from a mental illness, which included symptoms of aggression, and that on occasions he assaulted the applicant and his siblings. I also accept that the applicant's father was extremely religious and that as a strict Muslim, he may have been upset when he became aware that the applicant did not believe in Islam. I also accept that the applicant's father may have disapproved of the applicant wearing modern style dress. However, I have doubts that his father's abuse was predominantly connected to the applicant's religious beliefs as claimed. This is because of the applicant's evidence at his SHEV interview that something as trivial and irrational as a fly in the room or a car in the street could trigger his father's anger and lead to punishment, and the fact that he gave these examples, rather than the applicant's rejection of Islam, as the reasons for his father's anger management issues and for the applicant leaving his father's house.
15. I accept that the applicant's father was a member of the Basij and had contacts in the Basij, and that as a war veteran, he may have held a card which gave him certain legal protections in relation to his medical condition. I also accept that his father may have put pressure on the

applicant to join the Basij, although I am not satisfied on the evidence that the applicant did in fact join the Basij. However, there is no suggestion on the evidence before me that the applicant's father acted on his threats to report the applicant to the Basij or the authorities for any reason, and I am not satisfied that any such report was made. He has also not suggested that his father acted on his threat to go to the mosque to ask for forgiveness after the applicant took a stand and left home before his father was able to do this. I am not satisfied that his father made the mosque aware of the applicant's religious beliefs.

16. The applicant also claims that he had difficulties with other family members who were extremely religious. In particular, he claims that his step-father is a Mullah and a preacher who was a "pro-regime" extremist, who forced the applicant to pray five times a day and fast, and tried to get him to train to be a religious cleric. In his statutory declaration, the applicant claimed that his step-father had an extreme reaction after the applicant told him that he did not believe in Islam, and that his step-father called him a *Mortad* (apostate), threatened him and told him that he deserved to die. He also claimed that his step-father told the applicant he was not allowed to live in the step-father's house, and threatened to tell the authorities about the applicant.
17. In his SHEV application, the applicant provided a letter addressed to [title and names] as evidence of his step-father's role and what he used to do for work. The letter is from the Islamic Republic of Iran, [agency] dated December 1985, and invites the addressee to a meeting to discuss his views and experiences. The applicant gave evidence at his SHEV interview that his step-father is a very famous cleric in Shiraz, and that the title of [title] is a religious title, but that he does not care what the letter says. I accept that the letter is addressed to the applicant's step-father, and that he had a religious title in 1985.
18. I accept that the applicant's step-father was very religious and may have imposed strict observance of Islam while the applicant lived with him. I also accept that his step-father may have wanted the applicant to undertake study to become a cleric, but note that there is no suggestion that the applicant undertook this study. On the applicant's evidence at his SHEV interview, he did not really live at his step-father's house and would only go there to sleep; was going back and forth between different homes; was trying to live by himself after the age of [age]; and was travelling to other cities around Shiraz looking for work. This suggests that the applicant did not live with his step-father for a year or two as initially claimed in his SHEV interview. On the applicant's evidence, he did not have any further difficulties with his step-father after he stopped living with him. The fact that the applicant did not mention at his SHEV interview that his step-father made threats or told the applicant to leave his house raises credibility concerns about these aspects of his claims. The applicant was asked at his SHEV interview why he could not live with his step-father, and responded that his step-father was too religious, that they prayed a number of times each day, his mother was always covered, and he "likes to be more free". This response suggests that the applicant left voluntarily because he had issues with the level of religious observance in his step-father's house, and not because he was told to leave. In response to a question about whether his father's actions were worse than his step-father's, he stated that his step-father wanted the applicant to go to mosque with him and pray, and to study in a seminary and become a cleric but did not raise the claims about his step-father's threats. Given the seriousness of the threats the applicant said in his written claims that his step father made - to tell the authorities about the applicant and that the applicant deserved to die - I am surprised that the applicant did not refer to this when giving evidence about what his step-father had done to him. In these circumstances, I do not accept that any threats were made by his step-father.

19. The applicant also made claims at his SHEV interview that his family in Iran are jealous about his situation in Australia, and that every time they call or message the applicant they threaten they will deal with him, stab him or kill him on his return. When asked by the delegate who has said they will stab or kill him, the applicant claimed that two of his cousins in Iran are very religious and have made threats to kill him because he has changed his religion. He went on to say that he fears that his cousins may attack or fight him if he returns to Iran. The applicant has not provided any details about when these threats occurred, or claimed that they only occurred recently. He has not indicated who the cousins are, where they live or how the threats were made to him. Given the seriousness of the claim, I find it surprising that the claim was not raised in his SHEV application, and was raised for the first time at his SHEV interview. In all of these circumstances, I am not satisfied that any such threats have been made against the applicant.

Refugee assessment

20. 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

21. 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.
22. The applicant gave evidence at SHEV interview that he has many social media accounts, including [service names] and that he shares his views publicly. He also claimed that was not free to talk about things or share things on [social media] in Iran. When asked by the delegate whether he has evidence of sharing his views, he stated that gets a lot of posting on [service names] but he does not really share, click on “like” or comment on them. He then said that he does not have information that he would like to share on social media applications. The applicant has not provided any documentary evidence in relation to his social media activity. I accept that on the applicant’s evidence he uses social media in Australia, but do not accept that he has shared his views publicly on his social media accounts. I also do not accept that he wanted to post things on social media in Iran in the past. Furthermore, I am not satisfied that

there are things that he wants to share on social media in Australia and that he has been unable to do so, or that he intends to share his views publicly on his social media accounts in the future. I am not satisfied that the applicant would face a real chance of harm in the reasonably foreseeable future because of his activity on social media if he returns to Iran.

23. I have accepted that the applicant is an atheist. The 2018 Department of Foreign Affairs and Trade (DFAT) report provides that under Iranian law, a Muslim who leaves their faith or converts to another faith or atheism can be charged with apostasy¹. 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 cases. However, the country information suggests that abstaining from Muslim rituals such as not attending mosque would not necessarily arouse any suspicion as many in Iran do not regularly attend mosques². Country information also states that non-practising Muslims form a large part of the population of Iranian cities and that they lead normal daily lives and are rarely called upon to answer direct questions about Muslim religious practice or pressured to observe Muslim precepts³. The 2016 DFAT report considered that atheists are unlikely to come to the attention of security authorities unless they seek to publicise their views, and that it is unlikely that the government would monitor religious observance by Iranians, such as whether they regularly attend mosque or participate in religious occasions and thus it would generally be unlikely that it would become known that a person was no longer faithful to Shia Islam⁴. The 2018 DFAT report does not indicate that the situation has changed since the earlier report.
24. I have accepted that the applicant's father and step-father were very religious, and were aware that the applicant did not believe in Islam when the applicant lived in Iran, but not that his father made the mosque aware of the applicant's religious beliefs or reported the applicant to the Basij or the authorities on account of his religious beliefs. I also do not accept that his step-father threatened to inform the authorities about the applicant's beliefs, or that he reported the applicant to the authorities. I am not satisfied that the applicant has come to the adverse attention of his father's mosque, the Basij or the authorities for his religious beliefs on account of his father and step-father, or for any other reason. While the applicant's father and step-father may have wanted the applicant to adhere to a strict practise of Islam during the time he lived with them, for the reasons set out below, I am not satisfied that the applicant will live with his father or step-father if he returns to Iran or that he will be forced to practise Islam by his family members. While the applicant claimed that he was not free to talk about things or share things on [social media] in Iran, I have found that he did not want to share things on [social media] and am not satisfied that he wishes to publicise his beliefs either in Australia or if he returns to Iran. In light of the country information set out above I am not satisfied that the fact that the applicant is an atheist would bring him to the adverse attention of the authorities if he returned to Iran. I am not satisfied that the applicant would face a real chance of harm from the authorities, his family members or other persons for his religious beliefs in the reasonably foreseeable future if he returned to Iran.
25. I have accepted that the applicant's father suffers from mental health and anger management issues, and that the applicant was assaulted by his father when he lived with him in Iran. I have not accepted that the reason for his father's abuse was predominantly

¹ Department of Foreign Affairs and Trade (DFAT), "DFAT Country Information Report – Iran", 7 June 2018, CIS7B839411226.

² Danish Immigration Service, 'Update on the Situation for Christian Converts in Iran', June 2014, CIS28931.

³ Austrian Centre for Country of Origin and Asylum Research and Documentation (ACCORD), "Iran: Freedom of Religion; Treatment of Religious and Ethnic Minorities COI Compilation September 2015", 1 September 2015, CISEC96CF13622.

⁴ DFAT, "DFAT Country Information Report Iran April 2016", 21 April 2016, CIS38A8012677.

connected to the applicant's religious beliefs. On the applicant's evidence, he stopped living with his father a year or two before he left Iran, and went to live with other relatives and also travelled to other cities looking for work, which suggests that he was not living continuously in Shiraz. I am not satisfied on the evidence that the applicant had any further difficulties with his father after he stopped living at his father's house, or that his father continued to abuse him. He gave evidence at his SHEV interview that he calls his father once a year at New Year to show respect to his father. When asked by the delegate about his telephone conversations with his father, the applicant gave evidence that he tells his father to relax, because his brother and sisters are still living there and his father cannot control his anger. He then stated that he calls his father when his father goes crazy and hits his younger siblings, to ask why he is doing this to his siblings, and to tell him to relax. This suggests that the applicant contacts his father more regularly than once a year, that he is proactive in making contact with him, and that he is not afraid to express his concerns when his father mistreats his younger siblings. I am similarly not satisfied that the applicant had any problems with his step-father after he stopped living in his step-father's house. The applicant has not lived with his father for [number] years, since he was aged [age], and has not lived with his step-father since he was aged [age range]. The applicant has lived independently in Australia for over six years. Since March 2016, the applicant has been working in [a specified industry] and has been supporting himself financially. Although the applicant claims that he did not have enough money to support himself in the past, in his SHEV application form, he stated that he was employed continuously in Iran between July 2000 to August 2012 as [two occupations] and in [the specified industry] and gave evidence that after the age of [age] he had been trying to live by himself. While he said that at times he slept in parks and on the street after he left his father's house, the reasons he gave for doing so were not financial, but because it was too late to find a place to stay or he had run away from his father's abuse and didn't have anywhere to stay. The applicant is skilled and has a history of employment both in Australia and Iran, and I am not satisfied that there is a real chance that the applicant would be unable to obtain employment or support himself financially if he returns to Iran. While I accept that there may be some tension between the applicant and, respectively, his father and step-father, I am not satisfied that the applicant would live with his father or step-father if he returns to Iran. I am not satisfied that the applicant's parents' claimed lack of literacy, education or culture will adversely affect the applicant if he returns to Iran. For all of these reasons, I am not satisfied that the applicant would face a real chance of harm from his father or from his other family members in the reasonably foreseeable future if he returns to Iran.

26. The applicant claimed in his arrival interview that he was arrested and detained for [several] days for being outside a girls' school, about two years before he left Iran. He claims that his father came to the police station to arrange for his release. He did not raise this claim in his SHEV application or at his SHEV interview, and provided no other details about the incident. He has not claimed that he was charged with any offences or suffered any further consequences. While I have some doubts about whether this incident occurred, even if it did, I am not satisfied that the applicant would face a real chance of harm if he returns to Iran on account of this incident.
27. The applicant claimed in his arrival interview that he was fired from a job in a [business] for wearing a short sleeved shirt. The applicant did not pursue this claim in his SHEV application, and has provided no other details about this incident. I have real doubts that the applicant was fired from a job in [this specified business] for his style of dress, but even if he was, I am not satisfied that he would face a real chance of harm if he returns to Iran on account of this incident. I have accepted that the applicant dressed in a modern style when he lived in Iran, and I am satisfied that he is likely to dress in this way if he returns to Iran. The 2018 DFAT report indicates that men and women are required to adhere in public to conservative dress

codes, and that men are required only to cover their 'private areas', although social norms dictate wearing long trousers rather than shorts. The authorities are far more likely to target women than men for dress code violations, although DFAT is aware that some men have claimed to have been discriminated against on the basis of their dress, and for having 'Western-style' hairstyles or clothing styles. Notwithstanding such reports, it is common to see young men fitting all of the above descriptions on Iranian streets, particularly in larger cities such as Tehran. DFAT assesses that where there have been incidents of harassment of men for violating the dress code, it is likely to have been the result of either over-zealous enforcement by individual security authorities in particular locations (particularly outside of major cities), or because the individual has come to the attention of authorities for separate activities, particularly political activism. DFAT assesses that the restrictions the dress codes place on men do not amount to discrimination. I note that the applicant lived for most of his life in Iran in the city of Shiraz, except when he travelled to other cities looking for work. I accept on the country information that the applicant may face some harassment in Iran on account of his dress, but I am not satisfied that there is a real chance of the applicant facing any harm but harassment, or of him experiencing harassment to an extent that would amount to serious harm within the meaning of the Act.

28. The delegate considered whether the applicant would be harmed on the basis of being a failed asylum seeker returning from a western country. I accept that the applicant will be returning to Iran as a person who has sought asylum in a western country. The applicant claims that he threw his passport into the sea and he no longer has it. Given that the applicant does not have a passport, he will require a temporary travel document to be issued by Iranian diplomatic representatives overseas in order to return to Iran⁵. 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 systems⁶, and in these circumstances, I accept that the Iranian authorities may infer that the applicant has sought asylum in Australia. I have had regard to the country information⁷ that Iran has historically refused to issue travel documents to allow the involuntary return of its citizens, although this changed for those who arrived in Australia after the signing of a memorandum of understanding in 2018. As the applicant arrived in Australia in 2012 I am satisfied that if he was to return to Iran it would be on the basis it was voluntary.
29. Country information indicates that the Head of Passport and Visa Department in Iran has stressed that the Iranian constitution allows for Iranians to live where they wish and that it is not a criminal offense in Iran for any Iranian to ask for asylum in another country⁸. The 2018 DFAT report provides that the authorities will usually only question a voluntary returnee on return if they have already come to official attention, such as committing a crime, and states 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.
30. For the reasons set out above, I do not accept that the applicant was or is a person of any interest to the authorities. I am not satisfied that there is a real chance that the applicant will suffer harm in the reasonably foreseeable future if he returns to Iran as a result of being

⁵ DFAT, "DFAT Country Information Report Iran April 2016", 21 April 2016, CIS38A8012677; DFAT, "DFAT Country Information Report - Iran", 7 June 2018, CIS7B839411226.

⁶ DFAT, "DFAT Country Information Report Iran April 2016", 21 April 2016, CIS38A8012677.

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

⁸ 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.

identified as a failed asylum seeker who sought protection in Australia, including when considered in combination with his other circumstances.

31. I am not satisfied that the applicant has a well-founded fear of persecution.

Refugee: conclusion

32. 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

33. 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

34. 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.
35. I have accepted that the applicant may face some low-level harassment for wearing modern style dress. However, after considering the applicant's circumstances and the country information set out above, I do not consider there is a real risk that the harassment that he may suffer will involve the level of pain, suffering or humiliation contemplated in the definitions of cruel or inhuman treatment or punishment, degrading treatment or punishment, or torture, or that there is otherwise a real risk of him suffering significant harm as described.
36. Beyond this, I am not satisfied there is a real chance of him experiencing any harm in Iran. The Court has held that real chance in the refugee context has the same standard as real risk in a complementary protection assessment⁹. Having regard to the country information and reasoning above, I find that there is no real risk that the applicant will suffer significant harm in connection with any of the matters he has claimed, alone or cumulatively.

⁹ *MIAC v SZQRB* (2013) 210 FCR 505.

Complementary protection: conclusion

37. 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.

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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.