



**Australian Government**  

---

**Immigration Assessment Authority**

**Decision and Reasons**

**Referred application**

---

IRAN

IAA reference: IAA19/06756

Date and time of decision: 16 July 2019 10:14:00

S Kamandi, Reviewer

**Decision**

---

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

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

## Background to the review

---

### Visa application

1. The referred applicant (the applicant) claims to be a national of Iran and of Persian ethnicity. He arrived in Australia in November 2012 and on 13 April 2017 made a Safe Haven Enterprise Visa (SHEV) application.
2. On 11 June 2019, a delegate of the Minister for Immigration (the delegate) refused to grant the visa on the basis that the applicant was not a person in respect of whom Australia owed protection obligations. The delegate accepted that the applicant was a satellite dish installer in Iran, but rejected his claim that he was a member of a political party and found that he was of no interest to the authorities and left Iran legally. The delegate was not satisfied that the applicant would face a real chance of serious harm or was at risk of significant harm as a satellite dish installer or for reasons of being a non-practising Muslim or as a failed asylum seeker.
3. On 14 June 2019, the applicant's application was referred to the Immigration Assessment Authority (IAA) for review.

### Information before the IAA

4. I have had regard to the material given by the Secretary under s.473CB of the *Migration Act 1958* (the Act).
5. On 3 July 2019, the IAA received two emails from the applicant's representative with attachments consisting of two sets of submissions and various documents.
6. The first submission provides reasons why the applicant disagrees with the delegate's decision and refers to evidence that he presented to the delegate in his SHEV statement and interview. It also refers to interpretation errors that is said to have been picked up by the applicant's Farsi speaking representative and requests the applicant to be interviewed. The second submission refers to documents supplied to the IAA and sets out arguments why the requirements under s.473DD are met. I do not consider the submissions to be new information and have had regard to them in assessing the applicant's claims and in addressing s.473DD of the Act.
7. In support of the applicant's claim that he has been in contact with the Constitutionalist political party of Iran and [Mr A], the party's [Member 1] in [Country 1], the IAA has been provided a further letter from [Mr A] dated [June] 2019, a screenshot of the applicant's communication with [Mr A] via messenger and a copy of a receipt document issued by the Department indicating that the applicant hand delivered a support letter from [Mr A] to the Department on 11 April 2014. The letter of support from [Mr A] post-dates the delegate's decision and is new information. The messenger screenshots display the day and the month of June but do not display the year. Given that the screenshots are referred to as recent communication between the applicant and [Mr A], I am willing to accept that the screenshots are of the applicant's communication with [Mr A] soon after the delegate's decision. They are also new information. While the receipt document issued by the Department is dated 11 April 2014, given that the document was issued a number of years prior to the applicant's SHEV application and is not mentioned by the delegate in the decision nor included in the

material referred by the Secretary, I am satisfied that the receipt document was not before the delegate and is also new information.

8. [Mr A's] letter dated [June] 2019 appears to be replica copy of the letter dated [March] 2015 which was attached to the applicant's SHEV application. Apart from the date of the letters, the content of the letters are identical, with the recent letter providing no further information or clarification in relation to the applicant's political activities with the Constitutionalist party. It is submitted that the receipt document issued by the Department dated 11 April 2014 demonstrates that the applicant has been in contact with the political party and [Mr A] who has provided support to the applicant and his family "during all this time". Given that the applicant has provided the Department and now the IAA with letters of support from [Mr A], I accept that he has been in contact with [Mr A] over the course of his SHEV application process and been provided with letters of support. The receipt document issued by the Department does not demonstrate anything further.
9. The content of the messenger screenshots provided to the IAA is primarily written in Farsi and an English translation of the content has not been provided. The messages contain attachments, some appear to be documents named as the applicant's surname, a message which refers to the Constitutionalist party of Iran and a message entailing the hyperlinks to YouTube video of Reza Pahlavi speaking in San Diego. The screenshots do not illustrate anything further than that the applicant has made contact with [Mr A], possibly seeking a letter of support and that he has been referred to what appears to be a website containing information about the Constitutionalist party of Iran and YouTube video of Reza Pahlavi. As indicated above, I accept that the applicant has been in contact with [Mr A] who is involved in the Constitutionalist part of Iran and provided the applicant with a letter of support. The screenshots do not substantiate that the applicant is a member of the Constitutionalist party of Iran or that he had any active involvement with the party in Iran or in Australia. The screenshots do not demonstratively add to the applicant's case.
10. In light of the above, I am not satisfied that there are exceptional circumstances to justify considering the new information.
11. The applicant has provided a copy of a [social media] profile in his name but not his photo. The photo on the profile appears to be that of Reza Pahlavi (son of the Shah of Iran prior to the 1979 revolution). The document was not before the delegate and is new information. It is submitted that the delegate's decision indicates that the delegate could not find the applicant's social media page and given that the delegate never requested for the applicant provide evidence of his activities on social media, but then alleged that the applicant lacked having any social media activities, exceptional circumstances exists to justify considering the evidence of the applicant's [social media] profile which can be viewed publicly and has always been available. It is also submitted that the applicant was unrepresented at the time and was "not aware of it".
12. As indicated above the [social media] profile while created in the applicant's name, does not contain the applicant's picture and apart from indicating that the person is married and lives in Australia, it does not include any other identifiers identifying the applicant nor does it indicate when the profile was created. The further screenshots appears to show search results for "the official site of reza Pahlavi" with content in the Farsi language. It does not appear to me that the applicant has liked, shared or commented on the posts that appear on these sites. While the applicant may have a [social media] profile that is publicly available, I am not satisfied that the evidence of the [social media] profile provided to the IAA corroborates his claim of political activism on [social media] or other social media sites. I note

that at the SHEV interview, the applicant stated that he is in touch with the Constitutionalist party on a daily basis and that he has attended protests in Australia and relayed information about these protests to [Mr A] and Mr Pahlavi via [social media] and email. The [social media] evidence provided does not appear to contain information corroborating the applicant's claim.

13. While the applicant was unrepresented at the SHEV interview, he had the assistance of a Farsi speaking interpreter and was asked about his political activities in Australia. The applicant stated that he had been active via social [media], but provided no evidence of his social media activities to the delegate. The applicant was expressly informed that he could provide the delegate with any additional information that he wished to be considered prior to the decision and given that he was asked about his activities in Australia and was aware of the delegate's concerns about why he would be of any interest to the Iranian authorities on return to Iran. I do not accept that the lack of legal representation before the delegate prevented him from providing the delegate with additional information about his social media activities. In considering the nature of the [social media] evidence submitted to the IAA, I am not satisfied that there are exceptional circumstances to justify considering the new information.
14. The IAA has also been provided with a document from [a hospital]. It is submitted that during the SHEV interview the applicant gave evidence that the authorities asked his father about his whereabouts and that his aged father was distressed and had a [medical condition]. The document is said to establish that the applicant's father had undergone a [medical procedure] [in] September 2015 and discharged three days later. It is submitted that given that the applicant was unrepresented at the interview, he was not aware that such evidence could have a positive effect on his credibility.
15. During the interview the applicant gave evidence that the Sepah went to his father's house inquiring about the applicant's whereabouts and his father was hospitalised due to his [medical condition]. I do not however consider that the hospital document supplied to the IAA establishes that his father's [medical condition] was as a result of the authorities inquiries about the applicant. The details of the patient, date of admission, cause of the condition and recommendation after discharge are in the Farsi language and not translated in English. While the applicant's father may have a [medical condition] for which he has undergone surgery and received treatment, some three years after the applicant's departure from Iran, it is not apparent and his father's [medical condition] is caused by the authorities questioning or search for the applicant and the hospital document does not corroborate the applicant's claim. I do not accept that the hospital document has any impact on the assessment of the applicant's credibility and I am not satisfied that there are exceptional circumstances to justify considering the new information.
16. It is submitted that the applicant's representative has picked up on interpreting errors and that due to the interpreting errors' impact on the overall credibility of the applicant, the IAA should invite the applicant for an interview. I note that the applicant's representative has outlined the interpreting errors in the submission to the IAA which I have considered in assessing the applicant's claims and for the reasons set out below, I do not consider the alleged errors to be material. Beyond what is included in the submission as interpreting errors, the applicant does not appear to have been prevented from giving evidence nor is there an indication that his evidence was misconstrued by the interpreter in any other way. The IAA has not been provided with a translated transcript of the SHEV interview. There is no indication that apart from the alleged interpreting errors outlined in the submission there are any other interpreting errors, or why any further interpreting errors could not have been

included and discussed in the submission. The applicant was interviewed with the assistance of an accredited interpreter. The applicant confirmed, in English, that he understood the interpreter and had no objections in using the particular interpreter. The applicant was asked to let the delegate know if at any time he did not understand the interpreter or he forms the view that the interpreter does not understand him. At no point during the interview the applicant raised any issues or concerns about the interpreter. I have considered whether to exercise my discretion to invite the applicant to give oral evidence or otherwise provide further information, and have decided in the circumstances that it is not necessary or required.

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

---

17. The applicant's claims can be summarised as follows:

- The applicant worked as a supplier and distributor of satellite equipment across Tehran.
- In the lead up to the 2009 presidential election, the applicant became involved with the Constitutionalist party of Iran. He met party members at rallies and demonstrations and they guided him towards becoming involved as an official member of the party. He was told by party members that his satellite dish work would support the ideals of the party.
- The applicant came to the attention of the authorities as his photo, and potentially a video, which were taken during his participation in the 2009 presidential election, was distributed to police stations throughout Tehran and he was flagged as a person of interest.
- After the 2009 elections, the applicant noticed motorbike riders monitoring and following him. One night the authorities visited his home, but as he was tipped off by a friend, he removed satellite dish equipment from his car and they were unable to locate any evidence against him. The harassment continued for the next couple of years. His wife was approached by the authorities three or four times and was told to tell the applicant to stop his satellite dish work. The applicant had to bribe an agent at a checkpoint who became suspicious of him.
- In 2012, the applicant was informed by other party members that an arrest warrant was going to be issued in the near future. He would also be blacklisted and prevented from leaving the country. The applicant became fearful and decided to depart Iran with his wife and [child].
- The applicant and his family left Iran legally using their own genuine passports. However, the applicant applied for the passport through one of his connections as he was afraid to approach the authorities in person.
- The applicant was separated from his wife and [child] on his journey from [Country 2] and arrived in Australia on his own. His wife and [child] continue to reside in [Country 2].
- After the applicant's departure, a summons was issued for his arrest and his father has been asked about his whereabouts.
- In Australia the applicant has attended demonstrations and relayed information about the protests to Mr Pahlavi and [Mr A] ([Member 1] of the Constitutionalist party in [Country 1]) via email and [social media].
- The applicant fears harm at the hands of the authorities on account of his previous work distributing satellites and his continuing involvement with the Constitutionalist party.

He would continue to uphold his liberal beliefs and will be considered as an enemy of state. He will face imprisonment and at worst would be executed or would secretly disappear and killed by the government.

- The applicant is not practising Islam and is researching other faiths. He currently has no religion, but his wife and [child] have converted to Christianity in [Country 2]. If he returns to Iran, his family will also return from [Country 2] and they will be at risk of harm for reasons of his wife and [child]’s conversion to Christianity.

## **Refugee assessment**

---

18. 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**

19. 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.

### *Identity*

20. The applicant has consistently claimed to be a national of Iran. He has provided documents to support his identity and nationality. On the information before me and in absence of any information to the contrary, I accept that the applicant is a national of Iran and that Iran is the receiving country for the purposes of this review.

### *Satellite dish distributor and membership of the Constitutionalist party*

21. In his SHEV statement the applicant claims that his problems began in around 1995 when he started to work as a supplier and distributor of satellite dishes across Tehran. His business operated by word of mouth and his friends would pass on his information to their friends. As satellite dish equipment is illegal in Iran and his work involved importing the equipment illegally into the country, he carried out his work at night. He engaged in this work because

he wanted people to have access to information and media from overseas and independent sources, and to know more about social issues and lack of civil liberties in Iran. Although the applicant's statement indicates that his problems began in 1995 due to importing and distribution of satellite equipment across a vast area in Tehran, he has not pointed to any specific issues or problems with the authorities or any other person until his claimed involvement with the Constitutionalist party during the 2009 presidential elections, nearly 15 years later.

22. At the beginning of the SHEV interview the applicant stated that he started his satellite dish business in 1995 but was never arrested. Later during the interview when discussing the claimed subpoena for his arrest and risks associated with his job, the applicant, in response to the delegate's question of how long he did this job, stated that he did this job for about four years, from 1388 (2009) until he departed Iran. He stated that before starting his satellite dish work, he worked [in various positions] and that he did not have any financial difficulties while in Iran. The applicant has attached two photos of himself in his SHEV application claiming that they were taken while installing satellite dishes in Iran in 2009.
23. Country information reports<sup>1</sup> indicate that private broadcasting, including the use of satellite equipment is illegal in Iran. The government maintains a monopoly over all television and radio broadcasting facilities through the government agency, Islamic Republic of Iran Broadcasting to ensure that radio and television programs broadcasted reflect the government's political and socio-religious ideology. Despite satellite dishes becoming technically illegal since the mid-1990s, it is reported that use of satellite dishes has increased rapidly, with approximately 80 percent of the population having access to satellite channels, rising to up to 95 percent in the southern and border regions. In Tehran, it is estimated that 50 to 70 percent of households have satellite dishes. The authorities have periodically undertaken campaigns, in which they raid homes, confiscate satellite dishes and fine the owners or installers of the equipment. In addition the authorities have jammed satellite signals and at times taken pictures of the police reprimanding homeowners, issuing fines and destroying satellite dishes to deter people from use and installation of satellite dishes. It is reported that satellite installers can be arrested, have their equipment confiscated, and be charged with fines from approximately less than AUD\$9 to AUD\$130. It is also reported that those who distribute, use or repair satellite dishes can face fines of up to US\$2800. However, such actions by the authorities have not deterred people from using and installing satellite dishes. The dishes are smuggled into the country and sold for less than UD\$200 and people who have their satellite dishes confiscated or destroyed can replace them quickly. Furthermore, there are reports of government officials changing their views on forcible removal and confiscation of satellite dishes as such measures have not been effective.
24. I have doubts about the applicant's claim that he was involved in importation and distribution of satellite dishes in Tehran since 1995. Apart from the discrepancy in his evidence about when he commenced his work with satellite dishes, the applicant gave evidence that it was during the 2009 presidential election that his beliefs and views of the government changed and he stopped practising his Shia Muslim religion and engaged in this work because he believed that giving people access to information about the government was like him doing his part to overthrow the government. Given the applicant's evidence that he has worked in

---

<sup>1</sup> Department of Foreign Affairs and Trade (DFAT) "DFAT Country Information Report Iran", 7 June 2018, CIS7B839411226; DFAT, "DFAT Country Information Report Iran April 2016", 21 April 2016, CIS38A8012677; Iran Human Rights Monitor (United States) 'Iran: Security forces confiscate satellite dishes in Tehran', 01 August 2017, CXC90406611415; AI Monitor 'Iran's Basij concedes confiscating satellite dishes not working', 16 June 2015, CXBD6A0DE8245; The Christian Science Monitor, 'Why did Iran destroy 100,000 satellite dishes?', 25 July 2016, CX6A26A6E6872; US Department of State, "Iran - Country Reports on Human Rights Practices 2016", 3 March 2017, OGD95BE926964.

other fields [in] the past and that he engaged in satellite dish work not for financial reasons but due to his aversion to the government which appears to have crystallised for him during the 2009 election, I am not convinced that the applicant engaged in distribution of satellite dishes as far back as 1995. However, even if he was engaged in this type of work prior to 2009, he has not claimed to have come to the attention of the authorities or faced any issues due to his work until after his claimed involvement with the Constitutionalist party in 2009.

25. The applicant claims that in July 2009 when people started to protest against the government and the government was cracking down on protesters, he became involved with the Constitutionalist party as he wanted to support people's right to protest freely. The applicant claims that after he became a member of the party, he started to be under the watch of the government authorities. His photo, and potentially a video, which were taken when the applicant among other protested during the 2009 presidential election was distributed to police stations throughout Tehran and he was flagged as a person of interest. His car registration was supplied to government authorities that manned check points throughout the city with instructions to detain him. He was under monitoring by plain clothed agents. However, he avoided arrest and detention. On one occasion he was tipped off by a friend that the police were coming to his house and he managed to remove satellite equipment before their visit. On another occasion he bribed the agent at a checkpoint to avoid getting caught.
26. I have a number of concerns about the credibility of the applicant's claim that he became involved and joined the Constitutionalist party in 2009, that the reason he continued to distribute satellite dishes was to do his part in overthrowing the government or that he became a person of interest to the authorities in Iran and left Iran for fear of his life.
27. The applicant arrived in Australia [in] November 2012, was interviewed soon after on 21 November 2012 and was asked for his reasons for leaving Iran. The applicant gave evidence that the reason he left Iran was because he was a satellite dish installer, which is illegal in Iran, and he was unable to work. When asked about whether anything specific happened to him, the applicant stated that he was harassed and picked on as the government did not want people to know about other countries through satellite. In response to the question of whether that was the only reason he departed Iran, the applicant replied "yes". He stated "no" to all questions about whether he or any member of his family were members of any political party, involved in any political protests, whether he was arrested or detained or the authorities had any impact on his day to day life. At no point did the applicant mention attending any protests or being a member of or involved in any political party in Iran.
28. Although the applicant included details of his involvement in the 2009 protests and his membership of the Constitutionalist Party in his SHEV statement he did not provide any explanation as to why he did not mention his claimed political activities during his arrival interview. At the SHEV interview the delegate questioned him about his failure to mention any involvement in political activities in Iran and read out his statements at his arrival interview. The applicant stated that when he arrived at Christmas Island the atmosphere was not normal. He heard that asylum seekers were being sent to other places like Nauru and there were rumours that whoever had a subpoena or government order against them would be sent to Nauru. At that time he was not thinking normally, his wife and [child] were separated from him and he was afraid of telling the officer about his situation.
29. While I acknowledge that the applicant may have been distressed at the time as he was separated from his family and that the omission of claims at arrival and entry interviews must be treated with caution, I do not accept that the applicant did not mention his claimed



political activities and membership of the Constitutionalist party for the reasons that he has given. I note that despite being distressed, he presented his answers to questions asked without hesitation and in a clear manner. The applicant gave evidence about taking part in instillation of satellites, which is described as an illegal activity in Iran perceived to undermine the government's political ideals. He also expressed his view that the government of Iran prevented people from gaining access to information from other countries, which also suggests that he was taking part in activities that was not condoned and was against the government. Given that the applicant was willing to give such information, I do not accept that he was influenced by any rumours at the time or was afraid of mentioning his attendance at widespread and well documented 2009 protests in Iran or his membership of a political party of which he says he was a low level member. He could have provided this information without any suggestion that there was a subpoena or government order against him.

30. During the SHEV interview, the applicant was asked how he got involved with the Constitutionalist party. He started by giving general information about the 2009 protests held at the university of Tehran and his interest in the old regime because he was born prior to the revolution in 1979. When asked to give information about the process of how he got involved, the applicant stated that it was not planned but that during the rallies and demonstrations he got to know members of the party. He stated that he met a person by the name "A" who gave him details about the party and because they became aware of his work as a satellite dish installer they trusted him and thought that he could be a positive member of the party. When asked how he became an official member of the party, the applicant stated that in Iran this activity is not done officially but illegally and that they gave him the promise that he was an official member. Apart from the evasive manner in which the applicant presented his evidence at the interview, I consider it implausible that having no knowledge of the party, by accident the applicant met some party members at a large demonstration and that they trusted him because he was a satellite dish installer and he became an official member of the party by way of a promise given by other party members.
31. In his SHEV application the applicant describes his role within the party as the person who liaised with other opposition groups protesting against the government and recruiting new members. At the SHEV interview the applicant gave evidence that he distributed flyers and brochures for the party on Thursday nights and installed opposition channels. He confirmed that apart from this, he did not do anything else for the party. The applicant was also asked about his title or position within the party, to which he responded that the letter of support from [Mr A] gives all details about his title and when he started his position. When prompted to give the information himself, the applicant stated that in Iran you don't have an official title and that "we" just help to prevent people from getting killed. I note that the letter of support from [Mr A], who the applicant states that he has never met, only states that the applicant was a political activist for many years. It does not include information about the applicant's role, title, position or details of when he joined the party. Given that the applicant claims that he was a member of this party since 2009 and would continue to uphold his beliefs, I find his evidence in relation to his involvement and activities within the party and the manner in which he presented his evidence less than compelling. This together with the superficial nature of the letter of support causes me to have grave doubts as to the credibility of his claim that he became a member of the party or that he undertook any active role within the party.
32. I found the applicant's evidence about how he obtained his passport equally concerning. The applicant has consistently claimed that he departed Iran legally, using his own genuinely obtained passport. However, at the SHEV interview, the applicant gave evidence that about a

month or two prior to his departure, a friend of his [brother] applied for and collected the applicant and his family's passports while the applicant waited outside. He stated that he paid the person a total of [amount] together with their pictures and he picked the passports up and brought it to the applicant. When asked whether he had to supply this person with identity documents, the applicant stated "no" because the person was [an officer] and you don't need to present identification to get a passport. In response to the delegate's observation that the person took such a massive risk for only [amount], given that independent information suggests that it would usually cost around US\$8000-10,000 to obtain one passport, the applicant stated that because all their details were correct and original and at the time he was not under the control of the police, he didn't have to pay for obtaining a totally illegal passport. In submission to the IAA the applicant's representative argues that the applicant never stated that he did not need to supply identification documents at the time of application, as portrayed by the delegate, but that one does not need identification to collect the passports.

33. Even accepting the applicant's representative's submission that the applicant was only referring to the collection of the passports, this does not overcome my concerns about the vague and hesitant manner in which the applicant presented his evidence at the SHEV interview, the fact that he did not mention in his SHEV statement that he obtained his passport with the assistance of a friend of his brother's, and country information which indicates that applications for passports are lodged at the Police+10 offices and that the person applying for the passport must be present in person at the time of lodgement.<sup>2</sup> Given that the applicant claims that it was only about one or two months prior to his departure that he obtained his passport and his evidence that he was warned that a warrant was going to be issued for his arrest, I find it difficult to accept that if he was of any interest to the authorities that he would have been able to attend the passport office, apply for a passport and then bribe an officer an amount of [amount] to just collect the passports while he waited outside. Further, the applicant's evidence that at the time he was not under the control of the police undermines his claims that he was flagged as a person of interest, his photo was distributed to check points in Tehran with instructions to detain him and that he was being monitored since after the 2009 presidential election. I also find it difficult to accept that if the applicant was a person of such interest, that he would be able to depart Iran through the airport without any difficulties or attention from the authorities at the various checkpoints that operate at the airport.
34. The applicant gave evidence that in 2011, he went to [Country 3] for a holiday and that he had no issues departing and entering Iran. This further suggests that the applicant was not flagged as a person of interest by the authorities at that time. I note the applicant's representative's submission that the incidents that forced the applicant to depart Iran occurred after his travel to [Country 3], but the applicant's evidence in his SHEV statement indicates that after the 2009 elections he noticed groups of plain clothed agents on motorbikes monitoring and following him and that he was warned by friends about the authorities coming to his house and that harassment persisted in the following years. While the applicant's SHEV statement indicates that he was told by members of the party in 2012 that there was going to be a warrant for his arrest, his evidence does not suggest that all his problems with the authorities commenced after his return from [Country 3] in 2011; rather that he was flagged as a person of interest with instructions to be detained prior to 2011.

---

<sup>2</sup> Department of Foreign Affairs and Trade (DFAT), COUNTRY INFORMATION REPORT NO. 09/50 TITLE CIS Request No. IRN 9725 Passport and exit procedures', 9 June 2009, CX227682.

35. The applicant provided the delegate with two documents, a translation of a summons sheet issued [in] October 2012 and a translation of legal correspondence issued [in] April 2013. The summons notes the day of appearance [in] October 2012 and indicates that the applicant is warned to report within a specified period or an arrest warrant will be issued. The document does not include details why the applicant is required to report or the particulars of the offence that requires the applicant to report to prosecutor's office. Further, although the document notes the date of appearance [in] October 2012 and that a failure to report will result in an arrest warrant, the applicant has not claimed nor produced any warrants for his arrest. Although the applicant at the SHEV interview claimed that his father was questioned about the applicant by a Sepah officer causing his father's hospitalisation, there is no indication that his remaining family members have continued to face harassment or that an arrest warrant has been issued due to the applicant's failure to report in October 2012. Similarly, the document referred to as legal correspondence issued [in] April 2013 indicates that all of the applicant's properties have been confiscated on the basis of required completion of an investigation, but provides no details of the reasons for investigation nor is there any evidence produced about the outcome of the investigation. Given the nature of the documents and my concerns about the credibility of the applicant's claims as noted above, I place no weight on these documents.
36. I note that the applicant has obtained a letter of support from [Mr A] while in Australia. Given the very general nature of the letter, the lack of any specific details about the applicant's membership, activities or role within the party, I am not satisfied that the letter of support establishes his claimed political membership and I give it no weight. In light of what I have set out above, I am also not satisfied that the applicant has engaged in political activities in Australia in support of this party, attended demonstrations in [Australia] or relayed information to [Mr A] or Mr Pahlavi via email or through social media as claimed. I find that the applicant has fabricated his involvement with the Constitutionalist party in Iran and ongoing support in Australia to further his claims for protection.
37. While I am willing to accept that the applicant did engage in distribution or installation of satellite dishes in Iran, for the reasons set out above, I do not accept his claim that he attended the 2009 demonstrations; that his photo or video was distributed to checkpoints in Teheran with instructions to detain him; that he became a member of the Constitutionalist party; that he continued installing satellites to do his part to overthrow the government or for reasons of his political beliefs; that he obtained his passport in the manner described; that he was a person of interest to the authorities at the time of his departure from Iran or that a summons was issued for his arrest or that his property was as a result of political activities.
38. I accept that the applicant has engaged in importing and distribution of satellite dishes in Iran. Given the country information about the prevalence of use of satellite dishes and the authorities periodic and sporadic response to use and installation of satellite dishes in Iran cited above, I am willing to accept that as an importer and distributor of satellite equipment, the applicant was careful in conducting his business and that he may have on an occasion bribed an officer at a checkpoint and that he was subjected to a search at his house, but managed to remove all equipment from his car prior to the authorities visit. The applicant's evidence suggests that he was monitored and harassed after his political involvement which I have rejected, and I do not accept that he came to the attention of the authorities, that he was subjected to ongoing monitoring or that his wife was harassed due to his satellite dish business. Nor am I satisfied that he was a person of ongoing interest due to his work. I am not satisfied that he was ever arrested, fined, his equipment confiscated or questioned about his work. I am not satisfied that there is a real chance of the applicant being harmed for reasons of his past work as a satellite dish importer and distributor.

39. I have rejected the applicant's claims of political involvement in Iran and In Australia or that he engaged in satellite dish work for reasons of his political beliefs. The applicant gave evidence that he has worked as [various positions] and that he did not have any financial difficulties that led him to engage in importing and distributing satellite dishes. The applicant's evidence does not suggest that he has engaged in this type of work while in Australia nor has he expressed that he would return to this line of work in Iran. Given his skillset and work experience, I am not satisfied that he would return to this type of work on return to Iran. However, even if he chooses to return to this line of work on return, I note that the applicant, in engaging in this type of work for a number of years, has not faced any repercussions in terms of arrests, fines or confiscation of equipment. This together with my finding that the applicant was of no interest to the authorities and has no adverse political or other profile and given the periodic and sporadic nature of the authorities campaigns to curb the use and instillation of satellite dishes, I am not satisfied that there is a real chance that the applicant would face harm as a result of working as a satellite dish installer.
40. Given my finding above, I do not consider it necessary to deal with the applicant's submission that the law of banning satellite TV in Iran is discriminatory, targeting people who are against the regime and designed to suppress the political opposition groups abroad and their fans inside the country. However, for the sake of completeness I will consider the submission.
41. As noted above, country information indicates that satellite dishes are in use in the majority of households and the government's campaign which involved confiscation and destruction of satellite dishes from homeowners have occurred for the purposes of deterring homeowners and satellite dish distributors from use and instillation of dishes which allows the viewing of programs that is perceived to be against the political and socio-religious ideals of the government. There is no indication that only those with opposing views to the government have satellite dishes or that the campaigns to deter use and instillation of satellite dishes target those with, or those perceived to have, an opposing view to that of the current government. It is noted that satellite dishes are used to have access to much larger selection of programs than those broadcasted, including popular Turkish soap operas which are disliked by conservative Muslims.<sup>3</sup> Although the use and instillation of satellite dishes may be banned due to the country's religious and political values, I do not agree with the applicant's submission that the law is discriminatory on its terms or is applied in a discriminatory manner to selectively target those with differing religious or political views to that of the government or that it is enforced selectively.
42. In considering all of the above, I am not satisfied that there is real chance of the applicant facing any harm in the reasonably foreseeable future for reasons of his work as a satellite dish installer or his actual or imputed political opinion.

### *Religion*

43. Although the applicant's SHEV application indicates that he is of Shia Muslim faith, at the SHEV interview the applicant gave evidence that he grew up as a Shia Muslim but he stopped having faith in Islam in 1388 (2009). He is reviewing all religions and will soon find out the most appropriate religion for him. The applicant also stated that his wife and [child] have converted to Christianity in [Country 2], but provided no other evidence of their conversion. On the applicant's evidence, I am willing to accept that he does not practise Shia Islam and is not indenting to do so on return.

---

<sup>3</sup> Iran Human Rights Monitor (United States), 'Iran: Security forces confiscate satellite dishes in Tehran', 1 August 2017, CXC90406611415.

44. Country information before me indicates that the official religion of Iran is Shia Muslim and that a Muslim who leaves his or her faith or converts to another religion or atheism can be charged with apostasy. However, it is noted it is unlikely that individuals will be prosecuted for apostasy and highly unlikely that the government would monitor religious observance by Iranians. Whether or not a person regularly attends mosques or participates in religious occasions such as Ashura or Muharram or that a person is no longer faithful to Shia Islam is unlikely to come to the attention of the authorities. Furthermore, perceived apostates are only likely to come to the attention of the Iranian authorities through public manifestations of a new faith, attempts at proselytization, attendance at house Churches or via informants. Atheists are also unlikely to come to the attention of the authorities unless they seek to publicise their views.<sup>4</sup> The 2018 DFAT<sup>5</sup> report does not suggest that monitoring of religious practices by the authorities have increased in the recent years.
45. While it is unclear as to whether the applicant practised Islam in Iran, he has not claimed any incidents of harm or problems for reasons of his religion. Despite his claim that in 2009 he stopped believing in Islam, there is no indication that he has in the past or has any interest in the future to publicise his views about Islam or researching other religions to others or that the authorities are aware of the applicant's search for another religion. The applicant has not converted to any other religion and there is no indication that he would practise another religion on return to Iran. While the applicant claims that his wife and [child] have converted to Christianity in [Country 2], he has not presented any evidence in support and I am not satisfied that the applicant's wife and [child] have converted to Christianity. On the evidence before me, together with the applicant's lack of past political or religious profile with the authorities, I consider the chance of the applicant facing any harm in the reasonably foreseeable future for reasons of his religious views, non-practise of Islam or being perceived as a convert or an apostate to be remote.

*Failed asylum seeker*

46. The applicant claims that he is not in possession of his passport and I accept that to be the case. In absence of a valid passport, the applicant will require travel documents issued by Iranian diplomatic representatives to return to Iran. Historically Iran did not issue travel documents to involuntary returnees. On 19 March 2018, Iran and Australia signed a Memorandum of Understanding that includes an agreement by Iran to facilitate the return of Iranians who arrived after this date and who have no legal right to stay in Australia.<sup>6</sup> However, as the applicant arrived in Australia prior to 19 March 2018, I find that if he was to return to Iran, it would be on voluntary basis. Further, where temporary travel documents are issued by Iranian diplomatic representatives overseas, authorities at the airport will be forewarned about the person's return.<sup>7</sup> I accept that this may lead Iranian authorities to infer that the applicant sought asylum in Australia.
47. However, DFAT advises that voluntary returnees do not attract much interest amongst the large regular international movements of Iranians and that they will generally move quickly through airports. Further, where temporary travel documents are issued by Iranian diplomatic representatives overseas, while the authorities at the airport will be forewarned about the person's return, they will only question returnee if they had done something to

---

<sup>4</sup> DFAT, "DFAT Country Information Report Iran April 2016", 21 April 2016, CIS38A8012677.

<sup>5</sup> DFAT, "DFAT Country Information Report Iran", 7 June 2018, CIS7B839411226.

<sup>6</sup> DFAT, "DFAT Country Information Report Iran", 7 June 2018, CIS7B839411226.

<sup>7</sup> DFAT, "DFAT Country Information Report Iran April 2016", 21 April 2016, CIS38A8012677.

attract the specific attention of the authorities.<sup>8</sup> International observers have reported that the Iranian authorities pay little attention to failed asylum seekers on their return to Iran and have little interest in prosecuting for activities conducted outside of Iran, including in relation to protection claims. This includes posting on social media, converting to Christianity, and DFAT advises that unless the person has an existing profile with the authorities, the risk profile for the individuals will be the same as for any other person in Iran within that category.<sup>9</sup>

48. Although there are reports of persons being arrested on return to Iran, these reports refer to cases involving individuals with pre-existing profiles in Iran or individuals engaged in activities abroad that is considered against the Iranian regime.<sup>10</sup> The evidence before me does not suggest that the authorities in Iran impute adverse political views to Iranians returning from the west, including those who have sought asylum and there is no indication that a person with no political or religious profile who departed the country legally will be of adverse interest to the authorities on return to Iran. Given my findings above, I find the chance of the applicant being identified as a person of interest or imputed with any adverse political or other profile, or being the subject of any harm, to be remote.
49. In considering the applicant's circumstances as a whole and in light of what I have accepted of his claims, I am not satisfied that the applicant has a well-founded fear of persecution within the meaning of s.5J of the Act.

#### **Refugee: conclusion**

50. 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) of the Act.

#### **Complementary protection assessment**

---

51. 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**

52. Under s.36(2A), a person will suffer 'significant harm' if:
  - the person will be arbitrarily deprived of his or her life

---

<sup>8</sup> DFAT, "DFAT Country Information Report Iran April 2016", 21 April 2016, CIS38A8012677; DFAT, "DFAT Country Information Report Iran", 7 June 2018, CIS7B839411226.

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

<sup>10</sup> Radio Zamaneh, "Iranian poet/activist arrested at Tehran airport", 8 January 2016, CX6A26A6E140; International Campaign for Human Rights in Iran, "New Video: Iranian Expats Face Arrest upon Return to their Homeland", 23 April 2015, CXBD6A0DE5203; Radio Zamaneh, "Jailing of returning journalists called part of anti-Rohani plan", 31 July 2014, CX324017; Committee to Protect Journalists, "Rohani has yet to deliver on press reforms in Iran", 13 March 2014, CX318970; Radio Zamaneh, "Mousavi's campaign worker arrested upon return to Iran", 16 February 2014, CX318168; Amnesty International, "'We are ordered to crush you': Expanding Repression of Dissent in Iran", 28 February 2012, p.56, CIS22610; Amnesty International, "Amnesty International - Urgent Action: UA 125/11: Student activists held in Iran", 6 May 2011, CX264288.

- 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.

53. I have found above that there is no real chance of the applicant facing any harm for reasons of his work as a satellite dish importer and distributor, his actual or imputed political opinion, his non-belief in Islam or returning as a failed asylum seeker from Australia. The Federal Court held that 'real risk' imposes the same standards as the 'real chance' test.<sup>11</sup> For the reasons set out above and on the basis of the country information cited, I am also satisfied that the applicant does not face a real risk of significant harm for those reasons.

54. I am not satisfied that there is a real risk that the applicant will suffer significant harm in Iran.

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

55. 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.

---

<sup>11</sup> *MIAC v SZQRB* (2013) 210 FCR 505.

## Applicable law

---

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

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

In this Act, unless the contrary intention appears:

...

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

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

...

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

- (a) severe pain or suffering, whether physical or mental, is intentionally inflicted on a person; or
- (b) pain or suffering, whether physical or mental, is intentionally inflicted on a person so long as, in all the circumstances, the act or omission could reasonably be regarded as cruel or inhuman in nature;

but does not include an act or omission:

- (c) that is not inconsistent with Article 7 of the Covenant; or
- (d) arising only from, inherent in or incidental to, lawful sanctions that are not inconsistent with the Articles of the Covenant.

...

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

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

...

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

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

...

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

- (a) for the purpose of obtaining from the person or from a third person information or a confession; or
- (b) for the purpose of punishing the person for an act which that person or a third person has committed or is suspected of having committed; or
- (c) for the purpose of intimidating or coercing the person or a third person; or
- (d) for a purpose related to a purpose mentioned in paragraph (a), (b) or (c); or
- (e) for any reason based on discrimination that is inconsistent with the Articles of the Covenant;

but does not include an act or omission arising only from, inherent in or incidental to, lawful sanctions that are not inconsistent with the Articles of the Covenant.

...

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

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

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

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



...

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

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

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

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

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

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

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

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

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

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

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

#### 5LA Effective protection measures

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

...

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

...

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

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

...

*Protection obligations*

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

*Determining nationality*

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