



Australian Government

Immigration Assessment Authority

Decision and Reasons

Referred application

IRAN

IAA reference: IAA19/06783

Date and time of decision: 25 July 2019 09:15:00

G Deal, 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 applicant (the applicant) claims to be an Azari Baha'i from Tehran, Iran. [In] July 2013 he arrived by boat in Australia. On 21 March 2017 he lodged an application for a Safe Haven Enterprise Visa (SHEV application) with the Department of Immigration, now part of the Department of Home Affairs.
2. On 25 June 2019 a delegate of the Minister for Immigration (the delegate) refused to grant the visa. While the delegate accepted the applicant had an interest in the Baha'i faith and had rejected Islam and was a non-practising Muslim the delegate did not accept the applicant had a genuine and on-going commitment to Baha'i, given the lack of cogent evidence in this regard, or that the applicant was being pursued by the *Basij* prior to his departure from Iran finding this aspect of his claim contrived. The delegate found the applicant did not meet the relevant definition of refugee, did not face a real risk of significant harm and was not a person in respect of whom Australia had protection obligations.

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 can be summarised as follows:
 - He is an Azari Baha'i from Tehran, Iran. His parents have since relocated to the north of Iran and his [siblings] continue to live in Tehran, Iran.
 - He is from a prominent Muslim family and was raised a Shia Muslim. His grandfather was a senior cleric in [City 1] and his family are known as "Seyyeds" and believed to be direct descendants of the Prophet Mohammad.
 - He is the youngest in the family and was exempted from military service as he had to look after his [father]. He completed primary and secondary education and two years of study toward becoming a [Occupation 1] at University in Tehran, Iran, but was forced to leave one semester shy of completing the course. While in Iran he also worked [in two occupations].
 - He began questioning his Islamic faith while at high school. Islamic studies and propaganda was forced on him wherever he went. His school was covered in Islamic posters and they were required to participate in daily prayers and regular Quranic and Arabic classes. The same messages were drummed into him at home, by his family and even in the media. He did not like the fact that Islam was forced on him. He also resented the limitations the religion imposed on women and on his own freedom.
 - He first met "S" through friends in about 2010. He later discovered S followed the Baha'i faith and they became close and would discuss the faith. He read Baha'i material when visiting S at his home. They also went to youth get-togethers in parks near his home together where they would talk about the Baha'i faith and S would discretely bring Baha'i material for the applicant to read. The applicant would talk to S about what he

had read and was always telling other young guys to read the material. He last saw S at one of these Baha'i group gatherings in about April 2013.

- A week later he tried to contact S but could not find him or his family and became concerned that something had happened to them. He was told by friends that they had also not seen S and that three people who looked like the *Basij* were asking questions about the applicant in the park. He feared S had been arrested and feared the *Basij* knew about his involvement in the Baha'i group and immediately took a bus to stay with a cousin in [City 1]. He called his mother and she told him that that *Basij* had been looking for him that afternoon. A few days later his mother told him the *Basij* had again been at the house looking for him but that some were now in plain clothes and they were more aggressive in their questioning. A week later he fled Iran in fear of his safety bound for Australia.
- Men in plain clothes, who his mother said she was sure were *Basij*, visited his house looking for him after he left Iran on numerous occasions.
- While in immigration detention in Australia he prayed and his Baha'i faith helped him and on his release he visited the Baha'i temple in [Suburb 1] and connected with the Australian Baha'i community. After moving to [Suburb 2] he attended Baha'i classes, meetings and activities with the [Suburb 2] Baha'i community. Since moving to [another area] in around late 2015 he has been active in the [Suburb 3] Baha'i Mahvel.
- He met his current de-facto in late 2015. She is Catholic and he has attended church with her and her family.
- He fears harm by the authorities for converting to Baha'i and believes the risk is exacerbated by the fact he comes from a prominent Muslim family. He fears his attendance at a Catholic church will become known to the authorities who will think he no longer follows Islam. He also left Iran because of the economic and employment problems there.

Factual findings

5. Based on the applicant's evidence, including his identity documentation, I accept he is a [age] year old Azari male from Tehran, Iran. The applicant has not specified any instances of harm or fears specifically in relation to his ethnicity. I note the applicant destroyed his original passport en route to Australia but I agree with the delegate and consider the applicant has provided a reasonable explanation for this. He has provided the Department with other identity documents and there is nothing before me to indicate they are not genuine and I accept that they are genuine.

Baha'i group

6. The applicant's main claims centre on faith. He claims he fled Iran in 2013 after the *Basij* started pursuing him because of his involvement in the Baha'i faith.
7. The applicant has not claimed to have formally converted to the Baha'i faith or attended Baha'i temples while in Iran. In his visa application the applicant said that S asked him not to tell the others about his faith, and that S was the only one at their social gatherings who was of this faith but that others were interested. When S brought material to the group gatherings in the park he only shared it with the applicant and one other friend who was also interested. He said a group of them would meet in inconspicuous parks close to his home where lots of other

groups of young people met at that time to socialise. The country information before me indicates that it is not uncommon for young people to meet in parks in Tehran and that this sometimes attracts the ire of authorities.¹ When questioned in more detail in the SHEV interview about the gatherings the applicant indicated that he talked too much and that when playing ping pong with about 15 or 20 other people, they might have overheard what he was saying about the faith and reported that to the mosques and then S disappeared. Despite being given an opportunity to elaborate, he has provided little to no detail in relation to his friendship with S and only very brief and generalised statements about his claimed visits to S's home where he claims he read about Baha'i. The applicant has said that he believes S and his family were arrested by the *Basij* because of their faith, but has not elaborated on this or provided any more detail in support of this, despite being given an opportunity to do so. The applicant said toward the end of the SHEV interview that he advised other guys in his generation to read material about Baha'i and become Baha'i all the time while in Iran, but I do not accept this aspect of his claim as he only mentioned it after the delegate indicated he had issues with the applicant's Baha'i claims and it differs significantly from his descriptions of his conduct in his visa application. Based on the detail provided and the applicant's ability to spontaneously provide more detail about the social gatherings in the parks which were not uncommon I accept the applicant met with large groups of young friends in parks near his home in Iran to discuss various matters and play ping pong from about 2010 until he left Iran. I am also willing to accept he may have met S and that S was an adherent of the Baha'i faith and that the applicant might have discretely spoken to S about his faith and read some material about it. Given the brevity of the applicant's evidence in relation to their friendship I do not accept they were as close as the applicant claims. On the evidence, I do not accept S proselytised or that the social gatherings could be accurately characterised as a "Baha'i group".

8. The country information before me² documents a history of systematic discrimination against the Baha'i community, expelling children from schools if they reveal their Baha'i faith to other students, not allowing them to attend universities, excluding them from the public sector, expelling Baha'i communities from certain areas and making it difficult for them to run businesses, among other things. The government does not recognise them as a religious minority but treats them as a political opposition group. The Baha'i have not been able to maintain a formal organisational structure in Iran since the authorities banned all their activities in 1983 and so members now confine their religious activities to the home and keep a low profile externally only declaring their faith if specifically asked. In addition to kidnappings, murder and forced confessions and renunciations there are reports of the *Basij* ransacking homes of suspected Baha'i and confiscating religious texts.
9. In the SHEV interview the applicant said that when the *Basij* looked for him they did not go inside the house, they just knocked on the door and asked his mother a lot of questions and she said she did not know where he was. The delegate asked him what else they asked her and the applicant said they asked her where he was and then he started talking about their visits when he was in Australia. At another point he said that sometimes they would just remain out the front of the house and not even knock but his mother would see them. He said that the last time they looked for him was three or four months after he arrived in Australia (about August 2013) and he has not said his family home was searched or that his family were otherwise harmed by them. When asked if he had any information to substantiate the claim the *Basij* had looked for him including any documents, like orders or other requests issued by the authorities, the applicant said that he did not. The delegate indicated in the SHEV interview

¹ Asia News IT 'Young Iranians affected by the embargo, tired of political Islam', 1 April 2015, CXBD6A0DE4714.

² Landinfo, 'Iran: The situation of the Bahá'í community', 12 August 2016, CIS38A80124833.

that the fact the applicant was able to leave Iran legally on his own genuine passport without issue might indicate the claims were contrived. The applicant said that he was asked a lot of questions at the airport and moved quickly but when pressed on this he later agreed that the questions he was asked were the usual questions asked of departing passengers. I also note that the country information before me indicates that the *Basij* operate under the command of the Islamic Revolutionary Guard Corps (IRGC).³ The authorities routinely impose travel bans on people preventing them from leaving the country for a host of reasons including security concerns or membership of certain religious minorities (which only becomes known to the person at the airport) and the IRGC are empowered to impose these bans without recourse to the judiciary.⁴ In light of the country information detailed above and the applicant's limited exposure to the Baha'i faith I find it implausible that the *Basij* would look for the applicant as claimed. I have found the applicant's description of these events vague and unconvincing. I do not accept the *Basij* looked for him or that he was wanted by them whether in connection with the Baha'i faith, S or otherwise when he left Iran in 2013. It follows that I do not accept they have looked for him since he has been in Australia.

Baha'i faith

10. The applicant claims he has a genuine and on-going commitment to the Baha'i faith, has connected with the Australian Baha'i community, attended classes and meetings and temples in Australia, continues to lean about the faith and intends to convert to the faith.
11. In support of this claim the applicant has provided two personal reference letters from members of the Baha'i community (neither is on official letterhead or indicates it is officially from the Baha'i community). One dated in February 2016 states the writer is a member of the [Suburb 2] Baha'i community. It states that in 2014 and 2015 the applicant attended a number of Baha'i meetings in [Suburb 2], studying the teachings of the Baha'i faith. It goes on to state the applicant moved to [Suburb 4] in 2015 and that they believed the applicant attended further Baha'i study and meetings there. The second is dated in February 2017. It states the writer is from the Baha'i Community of [Suburb] [State]. The writer met the applicant in 2014 through her grandson. The applicant had expressed an interest in the Baha'i faith and wanted to get in contact with the community. When she met him he had a good basic knowledge of the faith. She has been lending him Baha'i writings and they had had long interesting conversations about his questions in relation to the Baha'i teachings. She has been inviting him to the Baha'i study circles and devotional meetings.
12. The applicant did not provide the Department with any more recent support letters or any official letters from the Baha'i community in Australia. When the delegate raised this as an issue in the SHEV interview it transpired that after moving in with his de-facto in late 2015 the applicant had had much less involvement with the Baha'i community and faith. At the time of the SHEV interview (June 2019) he had only been to temple once in that year just after Christmas and had been the year prior just before that Christmas. He said he was too busy. The applicant said he worked a full time 40 hour week [and] occasionally also did [extra] jobs. When pressed on this he said he had not done any [extra] jobs in the past four months. He said that his de-facto was studying and had a part-time job and he had promised her father he would look after her. He was really busy with his life. It was easier to attend when he was single. He was moving to [City 2] and had to organise everything which had also kept him busy

³ DFAT, 'DFAT Country Information Report - Iran', 7 June 2018, CIS7B839411226; US Department of State, 'US Department of State Human Rights Report 2018 - Iran', 13 March 2019, 20190315162620.

⁴ DFAT, 'DFAT Country Information Report - Iran', 7 June 2018, CIS7B839411226; US Department of State, 'US Department of State Human Rights Report 2018 - Iran', 13 March 2019, 20190315162620.

more recently. He hoped the Department understood and he indicated an intention to resume his faith once he moved.

13. The applicant has said he approached the [Suburb 2] Baha'i community (which he has said he was in contact with prior to moving in late 2015) requesting a certificate of conversion. They had said they believed him but that he should come back once his visa application process was finalised. He understood this was a rule for them before they issued a certificate. The delegate sought to clarify with the applicant exactly what they had told him but the applicant had difficulties articulating this, despite having a number of opportunities to do so. The delegate read the applicant information before him that said the Baha'i community would issue certificates to people without permanent residency but that they were careful to ensure a person's motives were genuine and sincere before doing so. The delegate indicated that based on this information he was of the view that if they were satisfied the applicant had a genuine and on-going commitment they would have issued him a certificate. The applicant indicated he did not agree with this and said it was not easy being a refugee, he was doing all he could and he was working hard. He would move to [City 2] and he had a lot of Baha'i friends there and he would 100 percent keep going with Baha'i and would be a Baha'i.
14. When the delegate asked the applicant for more detail about the Baha'i faith in the SHEV interview, the applicant demonstrated some basic knowledge. He broadly mentioned the largest religious holiday "Ridvan" and that it was celebrated in April and May; there were 19 months and 19 days in each month and 361 days a year; the holy scripture was in the "Aqdas" and he mentioned another book called "Econ"; science and religion worked together; education was important; the Baha'i believed in the unification of the world, colours, races and the religion had nothing to do with politics.⁵ However when the delegate asked the applicant for more specific details about the faith I found the applicant unable to spontaneously respond. For example, at one point the applicant appeared confused by the delegate's request to explain what the Baha'i believe in. The applicant asked the delegate what side of religion the delegate was talking about. The delegate rephrased the question asking him to summarise Baha'i beliefs. The applicant asked the delegate if he wanted to know what he personally believed or what they are trying to believe. The delegate asked the applicant if his personal beliefs were related to the faith and the applicant said they were 100 percent and the delegate asked him to tell him about that. The applicant largely repeated things he had previously said, such as that they mixed religion and science and were about unifying the world and then said there were a lot of things but it was hard for him to say because there were a lot. He mentioned it was also about being quiet and calm, always singing songs and praying. When asked if there were any other specific beliefs the Baha'i held the applicant said no, he just really wanted to be Baha'i because it has helped him a lot in the last few years in this country. When asked he provided a brief description in relation to the classes he attended in Australia. The applicant also spent a considerable amount of time describing what he disliked about Islam and how his life was better in Australia rather than responding to the delegate's specific questions about the Baha'i faith and his connection with it.
15. The applicant has claimed to have had an interest in the Baha'i faith since 2010 and to have been reading and talking about the faith since about 2013 but I did not find the level of his knowledge demonstrated in the SHEV interview reflected this. I also note the applicant has not formally converted to the Baha'i faith in the six or so years he has been in Australia despite claiming his interest commenced back in Iran before he came to Australia. It also appears his only real attempt to formally convert was some four years ago while in [Suburb 2] and he has

⁵ Landinfo, 'Iran: The situation of the Bahá'í community', 12 August 2016, CIS38A80124833.

done little toward achieving this since. He has had little to no involvement in the community or faith in recent years for no real reason other than that he works full time and has a de-facto partner. On the evidence I find the claim the applicant has a genuine and on-going commitment to the Baha'i faith unsubstantiated and I do not accept that he does. Based on his evidence, including his level of understanding of the faith and his documentary evidence, I am willing accept he has an interest in the Baha'i faith and attended Baha'i temples and other activities in Australia but only in 2014 and 2015.

16. The applicant claims he comes from a prominent Muslim family and that his grandfather was a senior cleric. In the SHEV interview the applicant provided more general details about his extended family in [City 1] including that his grandfather had more than one wife and that his father [had a medical condition]. He also indicated his parents had moved up north. When asked for more details about their religious activities, despite claiming he spent two weeks with a cousin in [City 1] before fleeing Iran, the applicant only said they were Shia Muslim and strict and indicated he knew very little more about their activities because he did not know most of them, had not seen them in a while and was not sure what they did. Given the detail provided and the applicant's ability to spontaneously respond to the delegate's questions more generally I accept he has a large extended family in [City 1] and that they are Shia Muslims. In contrast, I have found the claim they are a prominent Muslim family and "Seyyeds" believed to be direct descendants of the Prophet Mohammad and that his grandfather was a senior cleric, lacking in detail and unsubstantiated and I do not accept this aspect of his claim.
17. I note that phone number for the writer of each of the reference letters discussed above was included at the bottom of the letter and his de-facto put her phone number on her character reference for the applicant. In the SHEV interview the applicant appeared to urge the delegate to talk to them, stating they would indicate they knew him. The delegate did not contact them. In light of the evidence before me and that I consider the applicant has had an adequate opportunity to put forward his claims and supporting information I consider the writers unwarranted in this matter and I have not done so. I also note his de-facto attended the SHEV interview and made a brief verbal statement when given an opportunity to talk at that time.

Catholic Church

18. The applicant claims he attended a Catholic church with his de-facto while in Australia. In the SHEV interview he indicated this was only on two occasions, once in 2015 and a second time in 2019 and on the second occasion he was only very briefly in the church maybe five or 10 minutes. His de-facto said that she was raised a Catholic but was not practising and indicated she only attended sometimes out of respect for her family. The applicant has indicated on a number of occasions that he is a young man interested in the world and enjoys talking about all sorts of things including religion and science with co-workers, friends and family. He indicated he was only interested in Catholicism like he was other religions but had no intention of converting. I accept the applicant accompanied his de-facto and her family to a Catholic church on two occasions while in Australia.

Refugee assessment

19. 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

20. 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.

21. I accept the applicant is an Azari male from Tehran, Iran, raised a Shia Muslim and that Iran is the receiving country. I accept the applicant had some limited exposure to information about the Baha'i faith in Iran but I do not accept he was pursued or wanted by the authorities in Iran because of this. While I accept he has an interest in Baha'i and attended classes and other activities in 2014 and 2015 in Australia I do not accept he has a genuine and on-going commitment to the faith.

22. DFAT⁶ reports that Iran is a theocracy that mixes religion and state more than any other country in the world and that its laws and regulations are based on Shia Islamic principles. Since the applicant's departure from Iran in 2013 Hassan Rouhani won the Presidential election with moderate and reformist support. Iran is reportedly undergoing a time of demographic and ideological change. The younger generation (representing close to 70 percent of the population) comprise a post-revolutionary generation tired of the repression, extensive politicisation of religion, high youth unemployment and corruption of the clergy under the Islamic Republic.⁷ The youth are fighting for secularism, democracy and freedom in Iran.⁸

23. I accept the applicant had some limited exposure to the Baha'i faith while in Iran some six years ago but there is no credible evidence before me to indicate he came to the adverse attention of authorities because of this. I accept the applicant has an interest in the Baha'i faith and participated in Baha'i activities while in Australia in 2014 and 2015 but I do not accept he has a genuine and on-going commitment to the Baha'i faith and because of this I do not accept he will practise the faith or proselytise in Iran. I accept the applicant accompanied his de-facto and family to a Catholic church on two occasions while in Australia but he has not claimed to

⁶ DFAT, 'DFAT Country Information Report - Iran, Department of Foreign Affairs and Trade', 7 June 2018, CIS7B839411226.

⁷ Asia News IT, 'Young Iranians affected by the embargo, tired of political Islam', 1 April 2015, CXBD6A0DE4714; LSE Middle East Centre (United Kingdom), 'The Revival of Nationalism and Secularism in Modern Iran', November 2015, CISEC96CF14725.

⁸ Asia News IT, 'Young Iranians affected by the embargo, tired of political Islam', 1 April 2015, CXBD6A0DE4714; LSE Middle East Centre (United Kingdom), 'The Revival of Nationalism and Secularism in Modern Iran', November 2015, CISEC96CF14725.

have converted or to want to convert to Catholicism. The country information before me⁹ indicates the Baha'i are persecuted in Iran. It also indicates the Iranian authorities have little interest in prosecuting returnees for activities conducted abroad. I do not accept the applicant will practise the Baha'i faith or proselytise in Iran and there is no credible evidence before me to indicate he has since come to the adverse attention of the authorities in Iran because of his activities in Australia or otherwise. Based on the country information the applicant's profile detailed above I am not satisfied the applicant faces a real chance of harm on account of his experiences in Iran or Australia including in relation to the Baha'i and Catholic faiths.

24. The delegate considered the harm the applicant may suffer for being a non-practising Muslim in Iran as he had said the applicant may be considered a non-practising Muslim in the SHEV interview and the applicant appeared to agree. The country information before me notes that crimes such as blasphemy and apostasy may be punishable by death, although it notes this is rare.¹⁰ Other crimes such as eating during Ramadam are more commonly policed and punished, for example by arrest and flogging.¹¹ The country information before me indicates a more recent shift in Iran. Islam plays a smaller part in public life than it did a decade ago, with some even stating it is "mostly gone"; it is reported that a significant number of young Iranians do not consider themselves Muslims and 35 percent of those who claimed to be Muslim said they were non-practising; some young Iranians even challenging the Islamic Republic and its oppressive rules in public acts of protest; calls to prayer are reportedly rare; Iran is reportedly one of the least religious countries in the middle east; and the clerics' powers have waned and are mostly indirect.¹² At one point in the SHEV interview the applicant said he might be asked why he did not attend mosque but that his case concerned the Baha'i faith. He indicated that the authorities were more concerned with conversions to other faiths which posed a greater risk to the regime. There is no credible evidence before me to indicate the applicant was harmed in the past for not practising Islam. Based on the applicant's evidence, including in the SHEV interview, and his profile and the country information before me I am not satisfied there is a real risk the applicant will suffer harm on account of his religious beliefs or being a non-practising Muslim.
25. In the arrival interview the applicant briefly mentioned he had left Iran because of issues with the economy and employment and (other than mentioning one of his brothers was struggling financially to support his family because of the poor economy) he has not elaborated on this. The country information before me¹³ indicates the economy in Iran is bad, with the rial hitting an all-time low against major currencies in 2018, 40 per cent live under the poverty line and

⁹ US Department of State, 'US Department of State Human Rights Report 2018 - Iran', 13 March 2019, 20190315162620; DFAT, 'DFAT Country Information Report - Iran', 7 June 2018, CIS7B839411226; Landinfo, 'Iran: The situation of the Bahá'í community', 12 August 2016, CIS38A80124833; Knowledge as Resistance: Small Media, 'The Baha'i Institute for Higher Education', 1 February 2013, CIS28781.

¹⁰ DFAT, 'DFAT Country Information Report - Iran, Department of Foreign Affairs and Trade', 7 June 2018, CIS7B839411226.

¹¹ PersiaPort (France), 'Travelling to Iran during Ramadan- a Survival Kit', 25 June 2017, CXC90406620608; Center for Human Rights in Iran (United States), 'Arresting People for Eating in Their Cars During the Ramadan Fasting Month in Iran is Illegal', 2 June 2017, CXC90406620605; Iran Human Rights Monitor (United States), 'The Story Of Treatment Of People Accused Of Eating In Public In Ramadan', 26 June 2017, CXC90406620606; National Council of Resistance of Iran, 'IRAN: 92 arrested in restaurant during Ramadan', 27 June 2015, CXBD6A0DE21223; Center for Human Rights in Iran (United States), 'Shaparak Shajarizadeh Twice Arrested For Allegedly Removing Her Headscarf in Public in Iran', 12 May 2018, CXBB8A1DA27118.

¹² The Economist 'Religion: Take it or leave it', 1 November 2014, CX1B9ECAB7499; Asia News IT, 'Young Iranians affected by the embargo, tired of political Islam', 1 April 2015, CXBD6A0DE4714; Center for Human Rights in Iran (United States), 'Shaparak Shajarizadeh Twice Arrested For Allegedly Removing Her Headscarf in Public in Iran', 12 May 2018, CXBB8A1DA27118; LSE Middle East Centre (United Kingdom), 'The Revival of Nationalism and Secularism in Modern Iran', November 2015, p. 11, CISEC96CF14725.

¹³ Asia News IT, 'Young Iranians affected by the embargo, tired of political Islam', 1 April 2015, CXBD6A0DE4714; DFAT, 'DFAT Country Information Report - Iran, Department of Foreign Affairs and Trade', 7 June 2018, CIS7B839411226.

there is a 20% youth unemployment rate. In this regard, it is also reported that life can be tough for young Iranians, especially if they have family members to support. The applicant is an educated [age] year old without no children who has worked in various capacities in the past and currently works full time [in] Australia. He has said that his [siblings] continue to reside in Tehran, Iran and has not indicated he would not return there. Based on the country information detailed above the applicant may initially find it difficult to find employment but based on his profile I am not satisfied this would threaten his capacity to subsist or otherwise amount to serious harm.

26. The delegate considered whether the applicant would suffer harm on account of being a failed asylum seeker from a Australia. The applicant did not mention this claim. The country information before me¹⁴ notes that Iran has historically refused to accept involuntary returnees. Under a more recent Memorandum of Understanding with Australia Iran has agreed to facilitate the return of Iranians who arrived after 19 March 2018 and have no legal right to remain in Australia. Voluntary returnees re-entering on their passport or temporary travel documents issued by Iranian diplomatic representatives do not attract much interest from authorities and will generally only be questioned if they are already on the authority's radar, for example, because they committed a crime in Iran before they left. It is also reported that the Iranian authorities pay little attention to failed asylum seekers and have little interest in prosecuting them for activities conducted outside Iran such engaging in Christian activities. They accept that many Iranians travel overseas for a number of reasons including work. In its 2018 report DFAT states it is not aware of any barriers for returnees in terms of finding work, shelter or returning home. The applicant's [siblings] continue to reside in Tehran and the applicant has not said he would not return there. He has not said he would not return voluntarily. He disposed of his passport on the boat travelling to Australia and I accept the applicant will re-enter Iran on a temporary travel document. Based on the applicant's profile and the country information detailed above I am not satisfied there is a real chance he will suffer harm on account of being a returning asylum seeker from a Western country.
27. I am not satisfied the applicant has a well-founded fear of persecution whether because of the economy and job market in Iran, his experiences in Iran or Australia, including his de-facto relationship and religious activities, or his religious views or on account of being a returning asylum seeker from Australia.

Refugee: conclusion

28. 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

29. 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.

¹⁴ DFAT, DFAT Country Information Report - Iran, 7 June 2018, CIS7B839411226; DFAT, 'DFAT Country Information Report Iran April 2016', 21 April 2016, CIS38A8012677.

Real risk of significant harm

30. 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.

31. For the reasons already discussed I accept the applicant may initially find it difficult to find employment but I am not satisfied that these circumstances would amount to 'significant harm'. The harm does not include the arbitrary deprivation of life, the death penalty, or torture; nor am I satisfied he will be subject to cruel, inhuman or degrading treatment or punishment, as defined.

32. In considering the applicant's refugee status, I have otherwise concluded that there was no 'real chance' the applicant would suffer harm on his return to Iran for the other reasons claimed. 'Real chance' and 'real risk' involve the same standard.¹⁵ For the same reasons, I am also not satisfied the applicant would face a 'real risk' of significant harm.

Complementary protection: conclusion

33. 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.

¹⁵ *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.