



Australian Government
Immigration Assessment Authority

Decision and Reasons

Referred application

IRAN
IAA reference: IAA19/07317

Date and time of decision: 12 November 2019 15:23:00
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 September 2012 and on 16 March 2017 made a Safe Haven Enterprise Visa (SHEV) application.
2. On 8 October 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 the applicant's account in relation to his military service, harassment by the Basij, that he participated in the 2009 Green Movement protests and that he was not practising Islam, but found that the applicant was of no interest to the authorities in Iran. The delegate was not satisfied that the applicant would face a real chance of serious harm or was at risk of significant harm for reasons of his political opinion, non-practise of Islam or as a returnee from a western country.

Information before the IAA

3. I have had regard to the material given by the Secretary under s.473CB of the *Migration Act 1958* (the Act). No further information has been obtained or received.

Applicant's claims for protection

4. The applicant's claims can be summarised as follows:
 - The applicant commenced his military service in [year]. He was injured serving in the Iran-Iraq war and discharged from service due to his injuries. He witnessed unethical behaviours by a cleric. He reported the behaviour to his commander, but was threatened and ceased perusing the matter. He lost his faith in Islam, ceased practising the religion and left the military in 1983.
 - During the 2009 presidential election, the applicant supported Mr Mousavi and Mr Karroubi, representing the reformist group. He put up election posters on his shop windows. His shop windows were shattered by the Basij and he was marked as a supporter of the reformist group. He was detained on one occasion but released after a few hours of interrogation. He attended the Green Movement protests, but his attendance did not come to the attention of the authorities.
 - The harassment from the Basij continued after the election and until the applicant left the country in 2012. He was asked about his political association, but always denied having any political association with anyone. He was offered to join the Basij which he did not accept. The Basij noticed that he was not practising Islam. He was also harassed about the type of [products] he was selling in his shop. The Basij believed that his business was not compliant with Islamic guidelines.

- The applicant fears harm at the hands of the Basij and the authorities for reasons of not believing or practising Islam, his political opinion and seeking asylum in a western country.

Refugee assessment

5. 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

6. 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.
7. 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 I accept that the applicant is a national of Iran and that Iran is the receiving country for the purposes of this review.
8. The applicant’s SHEV application indicates that he was assisted by an interpreter and attaches his statement and supporting documents that were prepared with the assistance of a migration agent in 2013. The applicant was not represented during the SHEV interview but confirmed that he was happy to proceed with the interview. The applicant was questioned about all aspects of his claims as stated in his SHEV statement and was given ample opportunity to discuss his claims. He presented a number of further claims and provided further evidence which was not included in his SHEV application. He was given a break and asked on numerous occasions as to whether he wanted to add further information and whether he is satisfied that he has presented all of his claims and evidence. The applicant confirmed that he was given the opportunity to present his claims and evidence in support of his claims and was happy to conclude the interview. I am satisfied that the applicant was presented with a real opportunity to present his claims and evidence to the delegate.

9. At the conclusion of the interview, the applicant was asked whether he had any health issues. The applicant stated that he had “a bit of mental health problems” and that he was treated by his General Practitioner and Psychologist and prescribed medication. He stated that he feels better and has reduced the intake of his medication. He attributed his mental health problems partly to his experiences serving in the military during the war and partly to his boat journey to Australia, stating that the smuggler did not inform them of all the dangers that were associated with the journey. The delegate was not provided with any medical evidence about the applicant’s mental health problems or any treatment that he may have received. The applicant has not made any claims in relation to his mental health or that he requires ongoing treatment. Having listened to the SHEV interview, it is not apparent that the applicant’s capacity to give evidence or present his claims to the delegate was impacted by any mental health problems that he may have had at the time.
10. The applicant has consistently claimed, and I accept, that he was conscripted to perform his compulsory military service in [year] and deployed to the then war zone. The Iran-Iraq war which is described as one of the bloodiest of the 20th century commenced in the early 1980s and continued until 1998 resulting in a death toll of one million for Iran.¹ At the SHEV interview the applicant gave detailed evidence of having been involved in gathering injured officers and getting them medical help. He stated that he was also injured as a result of a cannon explosion nearby and was discharged from service due to his injuries. I accept the applicant’s evidence in this regard.
11. At the SHEV interview the applicant stated that because of his strong faith in Islam and having the urge to complete what he started, he voluntarily returned to serve in the military and was again deployed to the war zone. He stated that he was given [a number of] people, all young boys from families who had members martyred during the war, to work with. At the time clerics and Mullahs were sent to the area and one of the clerics stayed with the applicant’s group due to problems with his car. The cleric was leading prayers for the group. However, the applicant was informed by one of the boys that when he asked the cleric a religious question, the cleric had made an indecent request of the boy. The applicant gave evidence that at first he did not believe the boy, but after hearing the same thing from other boys, he realised what was happening and was upset about the situation. He reported the matter to his commander who defended the cleric and told the applicant not to talk about it. The applicant wanted to report the matter to the general commander, but was stopped from doing so and told that if he did he would not see his family. The applicant decided to go to Tehran and do something about this. However, once he got to Tehran he realised that his commander had already spoken to the general commander blaming the applicant for making problems. The applicant’s friends persuaded him to drop the matter for the sake of his and his family’s safety. The applicant lost complete faith in Islam and people promoting the religion. He left the army in 1983.
12. Given the applicant’s detailed recount of this matter and the manner he presented his evidence at the SHEV interview, I accept the applicant’s account and that he tried to report the matter but was prevented from doing so by his commander and was threatened. I also accept that the applicant was persuaded by friends to let go of his mission to report the matter higher up the chain of the military and that the whole experience caused him to stop believing in Islam and practising the religion. I accept that he stopped praying, going to the Mosque and did not fast during Ramadan. I note that the applicant has consistently claimed that he has no religion and does not practise Islam.

¹ Guardian (Unlimited) (UK), “Iran and Iraq remember war that cost more than a million lives”, 23 September 2010, CX262952.

13. The applicant's evidence indicates that following his departure from the military, he commenced working in [certain] companies and then as a [Occupation 1]. Subsequently he opened his own [shop] which he worked in until his departure from Iran in 2012. The applicant's evidence, in his SHEV application or interview, does not indicate that after he left the military and stopped practising Islam in 1983, he was the subject of any adverse interest or adverse attention from the authorities, but rather that he commenced working and eventually established his own business. I also note his evidence that he travelled to [another country] for work in 1983, after he left the military.
14. At the SHEV interview, the applicant was asked if the authorities realised that he had given up Islam, to which he responded "I was monitored. I just left the army and they wanted to see my reaction". The applicant has not provided any details of the claimed monitoring or incidents of being questioned or harassed by the authorities or any other person for any reason until 2009, some 25 years after he left the military. The applicant's evidence also does not suggest that he came to any further adverse attention at the hands of the authorities or any other person for reasons of his attempt to report the incident regarding the cleric while he was a volunteer within the army. It appears that once the applicant decided not to pursue the matter further, any threats of harm against him ceased and he was free to depart the military. On the evidence before me, I consider the chances of the applicant facing any harm for reasons of what occurred over 30 years ago to be no more than remote.
15. In his SHEV application, the applicant claims that during the 2009 presidential election, in support of the reformist group, he displayed election posters on his shop's windows. After the election, the Basij shattered his windows and he was arrested and detained for a few hours on two occasions. He states that as a non-believer stuck in religious dictatorship, he supported change and reform and was marked by the Basij as a supporter of the reformist group. At the SHEV interview, in response to questions about his [shop], the applicant stated that he was running a successful business until the harassment commenced. He stated that the harassment commenced when he promoted and supported the green movement. When asked how he promoted Mr Mousavi, the applicant stated that he put posters and banners in the shops and supermarkets and attended meetings and that he was harassed because they were against the group. Although the applicant confirmed that the Basij's intention was to stop him from putting up posters which he stopped after the election, he stated that the Basij continued to harass him. He stated that he was taken for interrogation in 2010 or 2011 but was released after a few hours as they had no evidence against him. In response to the delegate's question about whether he attended the famous Green movement protests in 2009, the applicant stated that he did take part in the protests but was not an organiser and did not come to the attention of the authorities for attending the protests.
16. While I accept that the applicant, like many Iranians, supported change and reform, I have difficulty accepting the applicant's claim that he openly supported the reformist group by displaying posters on his shop windows, attending the 2009 protests or that he was arrested or marked as against the government by the Basij. I found the applicant's evidence in relation to the continued harassment by the Basij, which he claims to have continued right up until his departure in 2012, problematic. Apart from differences in the applicant's evidence in relation to the number of times he was arrested and how he promoted the reformist group, there is also tension between the applicant's evidence in his SHEV statement that he always denied any political association with any group and his evidence that he openly displayed election posters in his shop, even after being harassed and threatened by the Basij. Further, I also found the applicant's evidence in this regard less compelling than his evidence about the problems he encountered during his military service.

17. At the SHEV interview, the applicant in confirming that he was only detained by the Basij once and released because they had no evidence against him, went on to state that the Basij knew about his background that he fought in the war and wanted him to cooperate and support the Basij. This claim was not included in his SHEV application, which I note was prepared in 2013 with the assistance of an agent and an interpreter. At the SHEV interview, the applicant elaborated that because he was a volunteer during the war, the Basij told him that he was like them and should join them, but the applicant refused. When asked about how the Basij reacted to this, the applicant stated that they showed no reaction and came a few times and started to pick on him. When he told them again that he won't join them, the Basij invited him to their meetings. The applicant claimed that he attended a meeting in 2010 or 2011 and got nothing out of it. He told the Basij that he would think about joining them and make a decision, but he decided to not to join them. When asked what happened between the time he attended the meeting and the time he left Iran, the applicant stated that they continued to threaten him and introduced another element to his claim that the Basij could see that he was not attending the Mosque or Friday prayers and thought that he was doing things against them. The applicant stated that he told them that he was not doing anything against them and was just taking care of his family, which they accepted at first, but then continued to harass him. He was asked if he was detained again in that period of time, to which he responded that he was not as he didn't do anything against them for them to take him away.
18. The Basij, a volunteer paramilitary organisation operating under the banner of the Islamic Revolutionary Guards Corps (IRGC) is an auxiliary force whose duties include internal security, law enforcement, special religious or political events and moral policing. There are branches of the Basij in every city and town of Iran. The Basij engage in repression of political opposition or intimidation of civilians accused of violating Iran's strict moral code. They undertake these duties without any formal training and can operate without order or objectives.² The Basij have the power to arrest and it is reported that many of those arrested, particularly those suspected of opposition to the government, are arrested without warrant and detained. It is common to be detained for days, weeks or even months with no chance to understand or challenge the basis for detention.³ In relation to recruiting members, it is noted that given its specific ideological basis, the Basij are very selective in its recruitment of members and only recruit those that share its ideological and religious perspectives. Recruitment is generally based on personal or familial relationships, and can take place through work, school, university, mosque, or neighbourhood Basij associations. It is likely that the Basij would have some background information about the recruits to ensure that they are obedient to the regime and come from religious and politically acceptable families.⁴
19. Apart from not mentioning the Basij's interest in him to join the group in his SHEV statement, the applicant's evidence about the motive of the Basij's interest in him and continued harassment evolved significantly during the SHEV interview.
20. The applicant's evidence that he was marked as a person against the government, but was only arrested once and released due to lack of evidence against him is at odds with the country information about the Basij's actions against individuals who are suspected of being

² 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; Washington Institute for Near East Policy, "Iran's Coercive Apparatus: Capacity and Desire", 05 January 2018, CXBB8A1DA143.

³ Amnesty International, "We are ordered to crush you' Expanding Repression of Dissent in Iran", 1 February 2012, CIS22610.

⁴ Afshon Ostovar, Middle East Institute, "Iran's Basij: Membership in a Militant Islamist Organization", 1 June 2013, CIS36DE0BB2049.

against the government. I find it difficult to accept that if the Basij targeted the applicant as someone perceived to be against the government, not practising the religion or doing something against the Basij, given their powers and arbitrary actions that they would not have detained him for prolonged periods or taken further action against him. Further, the applicant's evidence about the Basij's continued harassment for him to join the group is at odds with the country information about how Basij recruit members and the ideological, moral and religious standing required for successful recruitment. Given that the applicant's evidence that as a non-believer stuck in a religious dictatorship, he supported change and reform, I find it difficult to accept that the Basij would have repeatedly targeted someone like the applicant to join their group. I do not accept the applicant's assertion that the local Basij were aware that he had served in the war as a volunteer and that on that basis they wanted him to join their group. I note that the applicant left the military in 1983. The applicant's claim that the Basij wanted him to join the group is further undermined by his evidence that the Basij considered his business as un-Islamic and that his employees were harassed for not wearing their hijab properly.

21. As noted by the delegate, the applicant did not mention any involvement in protests prior to his SHEV interview. I note that the applicant only stated that he took part in the Green Movement protests after specifically being asked by the delegate. Prior to that point the applicant's evidence was that neither he, nor any member of his family, was ever involved in any political activities or protests against the government. I am not convinced that the applicant attended the Green Movement protests in 2009 and consider that he fabricated this at the interview to enhance his political involvement in Iran.
22. Given my concerns about the applicant's evidence as set out above, I do not accept that he displayed election posters in his shop, supermarkets or attended meeting or the Green Movement protests. I do not accept that he came to the attention of the local Basij, was arrested and interrogated for reasons of being against the government or non-practise of Islam or that he was pressured to join the Basij and threatened if he did not cooperate.
23. In his SHEV statement, the applicant states that he was harassed for the types of [products] that he was selling in his shop and that the Basij believed that his business activities did not comply with Islamic guidelines. As noted by the delegate, at the applicant's arrival interview he also spoke of coming to the attention of the authorities because of the [items] he used in his shop [and] that his female staff were harassed for not wearing the hijab correctly. [Details deleted],⁵ I consider it plausible, and accept, that the applicant's [shop] may have attracted the attention of the local Basij for reasons claimed and this may have impacted the applicant's business.
24. Country information confirms that women in Iran are required to cover their bodies and women who appear in public without appropriate attire, such as a cloth scarf veil (hijab) over their head may be sentenced to flogging and fined. Article 638 of the penal code stipulates that those who fail to comply with hijab face 10 days to two months in prison or fines between 50,000 to 500,000 rial (AUD 2-20). However, the level of enforcement of these dress codes has varied considerably over time and between locations. Implementation has been left to the discretion of individual security authorities, including the Basij. It is noted that women would rarely be formally punished for contraventions of rules around hijab. Women

⁵ [Source deleted].

would be more likely to be escorted to a police station and asked to have a family member bring acceptable hijab after which they could leave without sanction.⁶

25. The applicant has not provided details of the extent of the harassment in this regard and I note that he continued with his business up until his departure in 2012. Apart from referring to continued harassment and an occasion of being arrested and released after a few hours due to lack of evidence, which I note the applicant attributed to many reasons which I have rejected, the applicant's evidence does not suggest that he was prevented from operating his business or that he was arrested, detained, fined for reasons of how operated his business. His evidence also does not suggest that his employees were arrested, detained or fined for reasons of non-compliance with Islamic dress code. Although not claimed, even if the applicant were to re-open his business and experience similar treatment, on the information before me, I am not satisfied that any consequences that the applicant or his employees faced or may face as a result of contravention of Islamic dress code and guidelines, which is applicable to all citizens in Iran, are discriminatory in nature or are applied in a discriminatory way or selectively enforced. I am not satisfied that there is a real chance that he would face persecution for this reason.
26. I also note that in 2012, the applicant departed Iran through the airport and using his own passport without encountering any problems. The applicant's evidence indicates that prior to his travel to Australia in 2012 he also travelled to [Country 2] in 2011. The applicant asked the UNHCR to return him back to Iran and accepted tickets organised by the UNHCR and returned back to Iran. There is no indication that he encountered any problems from the Iranian authorities on return. At the SHEV interview the applicant gave evidence that since his departure, his family members in Iran have had no issues with the authorities.
27. I am not satisfied that he had any adverse political or religious profile with the authorities or that he was of any interest to the authorities, the Basij or any other person for any reason at that time.
28. At the SHEV interview, in response to the delegate's question about involvement in any anti-Iranian political groups, the applicant stated that he has not been very involved but attended meetings and demonstrations in [City 1]. When asked about the group that organised these meetings and demonstrations, the applicant stated that he could not remember the name but they broadcasted the demonstration on [social media]. When asked what was the reason for the demonstrations, the applicant stated that "the government in Iran". When asked how many demonstrations he attended, the applicant did not give any details but stated that he attended as many as he could. I found the applicant's evidence in this regard very superficial. I am not satisfied that he has associated with any Iranian political groups in Australia or attended any demonstrations. I note that he provided this information in answers to the specific questions put to him by the delegate. I find it difficult to accept that if the applicant had attended meeting or demonstrations in Australia that he would not have been able to give the name of the group or organisers, the level and nature of his involvement and how many meeting or demonstrations he attended.
29. The applicant has consistently claimed that he stopped believing in Islam in 1983 and has not practised the religion since. At the SHEV interview he confirmed that he has not been practising any religion since arriving in Australia in 2012. I accept that the applicant is non-believer in Islam and does not practise any religion.

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

30. 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.⁷ The 2018 DFAT⁸ report does not suggest that monitoring of religious practices by the authorities have increased in the recent years.
31. The applicant has not claimed any incidents of harm or problems for reasons of non-practise of Islam in the years between 1983 and 2009. For the reasons above, while I have accepted that the applicant and his employees encountered some harassment from the Basij for matters relating to non-compliance with strict Islamic dress code, I have rejected the applicant's claim that after the 2009 elections, the Basij in trying to persuade him to join their group noticed that he was not attending Friday prayers or the Mosque. I am not satisfied that the applicant's non-practise of Islam came to the attention of the authorities. There is also no indication that the applicant has in the past or has any interest in the future to publicise his views about Islam or his decision not to practise the religion to others. The applicant has not expressed any desire to practice or convert to any other religion. 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 as a non-believer in Islam to be remote.
32. 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.⁹ 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.¹⁰ I accept that this may lead Iranian authorities to infer that the applicant sought asylum in Australia.
33. 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 attract the specific attention of the authorities.¹¹ 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

⁷ DFAT, "DFAT Country Information Report Iran April 2016", 21 April 2016, CIS38A8012677.

⁸ DFAT, "DFAT Country Information Report Iran", 7 June 2018, CIS7B839411226.

⁹ DFAT, "DFAT Country Information Report Iran", 7 June 2018, CIS7B839411226.

¹⁰ DFAT, "DFAT Country Information Report Iran April 2016", 21 April 2016, CIS38A8012677.

¹¹ DFAT, "DFAT Country Information Report Iran April 2016", 21 April 2016, CIS38A8012677; DFAT, "DFAT Country Information Report Iran", 7 June 2018, CIS7B839411226.

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.¹²

34. 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.¹³ 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. I am not satisfied that the applicant faces a real chance of any harm in this regard.
35. 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

36. 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

37. 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

38. 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

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

¹³ 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, "Rouhani 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 person will be subjected to degrading treatment or punishment.

39. I have accepted that the applicant's [details deleted]. If the applicant returns to operating [the] shop it is possible he may encounter some harassment to comply with Islamic guidelines. However, I do not consider that any consequences that he may face would involve significant harm. I am not satisfied that it amounts to pain or suffering that can reasonably be regarded as cruel and inhuman in nature, severe pain or suffering or to extreme humiliation such as to meet the definitions of torture or cruel or inhumane treatment or punishment or degrading treatment or punishment. I am also not satisfied that the applicant will face a real risk of being arbitrarily deprived of his life, or be subject to the death penalty. I am not satisfied that the applicant faces a real risk of significant harm as defined.

40. I have found above that the applicant does not face a real chance of harm in Iran for any of the other claimed reasons. The Federal Court held that 'real risk' imposes the same standards as the 'real chance' test. Having regard to my findings and reasoning above I am also satisfied that the applicant does not face a real risk of significant harm.

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

Complementary protection: conclusion

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

Decision

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

Applicable law

Migration Act 1958

5 (1) Interpretation

In this Act, unless the contrary intention appears:

...

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

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

...

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

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

...

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

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

...

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

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

...

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

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

...

5H Meaning of refugee

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

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

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

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5J Meaning of well-founded fear of persecution

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

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

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

5K Membership of a particular social group consisting of family

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

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

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

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

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

5L Membership of a particular social group other than family

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

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

5LA Effective protection measures

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

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36 Protection visas – criteria provided for by this Act

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- (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.

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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.