



Australian Government

Immigration Assessment Authority

Decision and Reasons

Referred application

IRAN

IAA reference: IAA20/07982

Date and time of decision: 17 April 2020 10:14:00

J Bishop, 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 identifies as Persian. He arrived in Australia [in] July 2013.
2. On 6 September 2017 the applicant lodged an application for a Safe Haven Enterprise Visa (SHEV). On 2 March 2020 the delegate refused the applicant's visa. The delegate determined the applicant did not face a real chance of serious harm or a real risk of significant harm now or in the foreseeable future in Iran.

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) (the review material).
4. I have obtained the new report on Iran by the Department of Foreign Affairs and Trade (DFAT) published on 14 April 2020. The new DFAT report contains the most up to date information about classes of persons to assist decision makers when assessing an individual's claims for protection. The new report replaces the previous DFAT report on Iran, published on 7 June 2018, which was before the delegate and relied upon. I am satisfied there are exceptional circumstances to justify considering this new information.

Applicant's claims for protection

5. The applicant claims to fear harm in Iran from the Iranian authorities because of his:
 - Imputed and/or actual political belief against the Iranian government and belief in a democratic and secular rule
 - Imputed religious belief and the perception of being apostate and anti-Islamic
 - Appearance (dress) and social group as a person contravening the Iranian Islamic moral code and laws
 - Physical altercation with the Basij and non-compliance with a summons to attend a police station
 - Claim for asylum in Australia
 - Time spent in Australia
 - Mental health

Factual findings

6. The applicant provided copies of his Iranian driver's licence, motorcycle licence, national identity card and birth certificate. He provided translations for his driver's licence, birth certificate and national identity card. I accept the applicant is who he claims to be and is an Iranian citizen. I find the receiving country is Iran.

7. The applicants' SHEV application stated his wife, parents, [and specified family members] live in Ghazvin, Iran. He indicated he was in regular contact with his wife and parents via Skype and mobile phone apps. During the SHEV interview the applicant confirmed he remains in regular contact with his wife and family and that they are 'good'. They continue to live in the same area and he misses them. I accept those claims.

The applicant's religion

8. The applicant's statutory declaration dated 29 August 2017 stated he had a Shia Muslim upbringing but is now non-practising. He began to lose his faith in Islam when he was about [age] years old. There was no specific incident he just didn't like praying, going to the Mosque or cemeteries (sic). He didn't tell his family because they are Muslim and he was scared of their disapproval. He doesn't like Islam. He couldn't be himself or have deep relationships with his family and friends. He couldn't voice his doubts or grievances about Islam and he never felt comfortable in Iran. From a young age he wanted to live in a Western country where there was religious freedom. He doesn't agree with the Iranian government's interpretation of Islam or how it imposes Islam on its people. He could not accept how religion was practised in Iran.
9. During his SHEV interview the applicant said he decided he didn't believe in Islam when he was about [age] years old. When the delegate asked what made him make that decision he responded 'the things he witnessed'. When the delegate asked for clarification he responded that he wasn't talking about specific incidents. It was general. He witnessed other countries living better and having better conditions like shopping, walking around the city and/or the way police confronted their people. When he looked at the Iranian police and the Iranian government they were supporters of Islam. The delegate asked the applicant if his family was religious and he responded "not very much". When the delegate asked the applicant if his family knew he had lost interest and/or left Islam he responded they knew a maximum of 50%. He went to the Mosque until he was about [age] years old because his family took him and it was a habit. When he grew up he realised that nothing in Islam is good, the rulers are not good and the government is not good. He believes in God but does not practise any religion in Australia. He hasn't discussed his lack of interest in practising a religion with anyone in Australia and said it is personal.
10. During the applicant's arrival interview he identified as a Shia Muslim and, although I have some doubts about whether the applicant has in fact lost his faith, I am prepared to accept for the purposes of this decision that he did when he was about [age] years old. I am satisfied the applicant is a non-practising Muslim who has lost his faith in Islam but continues to believe in God.

The applicant's dress

11. The applicant's 2017 statutory declaration stated that there is a strict dress code imposed upon the Iranian people. He believes in freedom of choice and expression. He didn't adhere to the moral dress code and would wear singlets in the park. He was never caught because of his dress but his friends got into trouble, were taken to the police station, given warnings and had to sign a promise not to do it again.
12. During the SHEV interview the applicant repeated the claim that he wore singlets. He said sometimes he paid fines and sometimes his motorbike was taken. He said he was detained, asked why he was wearing a singlet and fined by the traffic police. He got into trouble three or four times in a period of six months because of how he dressed. He wasn't sure what would happen to him if he returned to Iran because of how he dressed but he speculated he could go to prison for six months or a year.

13. The delegate put to the applicant that he indicated in his written statement that his appearance and dress was an expression of his political and religious beliefs and the applicant responded that he wanted to do what he wanted to. He wants to be free to express himself. He wasn't involved with the reformists or Islamists in Iran. He said his appearance and dress had nothing to do with the expression of his political and/or religious beliefs. He never went to court because of how he dressed. The applicant said he was wearing a singlet on his motorbike when the incident in the park happened (discussed below). When the delegate asked why he dressed like that he responded that he was with his friends and it was to attract the attention of girls. He then said it was more for entertainment. He was married but his friends were interested in girls and he got involved. He wasn't making a political statement. He wanted to do what interested him and be free.
14. The applicant's written evidence was that he was never caught for wearing a singlet in the park but his oral evidence was that he got into trouble three to four times in a six month period and the traffic police detained and fined him for doing so. The applicant has given inconsistent evidence and I am not satisfied he was ever detained, fined or got into trouble for wearing a singlet. I am prepared to accept the applicant, on at least on one occasion, wore a singlet in the park with his friends to attract the attention of girls. I accept the applicant's dress had nothing to do with the expression of his political and/or religious beliefs.

The applicant's political opinion

15. The applicant's 2017 statutory declaration states that he believes in the separation of government and religion and the principles of democracy. He doesn't believe the political system should be based on the interpretation of a religious text. He believes the political system in Iran should be elected and represent/act in the best interests of its people.
16. During his SHEV interview the delegate read that part of the applicant's statement to him and he responded that it doesn't matter if it is Islam or Christianity but there 'should be a good and easy life'. If Iran represented and acted in the best interests of its people he would have remained there. He knew having this opinion would get him into trouble in Iran but he never expressed that opinion in public or openly. The applicant said he is one person and what could one person do? Even if he had a weapon what could he do? There were many Sepah, Basij, militia and police. The Iranian authorities had no knowledge of his opinions and he wasn't involved in any groups or movements that had similar views against Islam or could be perceived as being anti the Iranian regime. He hasn't become involved in any political or anti-Iranian regime groups or organisations in Australia or attended such events. He doesn't use social media like Facebook or Instagram. The delegate put to the applicant that his evidence was that he couldn't say or do things in Iran but in Australia there is freedom of expression. The applicant responded that he supported the idea – for example of protesting outside the Iranian embassy - and when he sees videos of protests he wishes he could have taken part but he doesn't. There are riots in Iran at the moment and he wished it didn't happen. He reasoned it was like having a friend who was not a good friend. You wished your friend was a good friend from the beginning.
17. The applicant's oral evidence about his political views was unconvincing and, apart from his written statement, he has never acted on those views either in Iran or in Australia. I am not satisfied the applicant genuinely holds the political views he claims. I accept the applicant believes that, regardless of religion, there should be a good and easy life. I accept the applicant has never been involved in – or would ever be perceived to be involved in - any political or anti-Iranian regime activities in Iran and/or in Australia.

Incident in the park

18. The applicant said during his arrival interview that he was on his motorbike and got into an argument with the Basij. The Basij took his motorbike and took him to the Basij and Sepah base. He had to bail himself out and one of the Basij reported him to a person with a high rank in the Basij of Sepah. After that, he was sent a warning that they wanted to get him. When the officer asked why the Basij took him, he responded he was told not to ride in the park and to ride somewhere else. The applicant's 2017 statutory declaration stated that there were several errors about the incident in his arrival interview. The arrival interview stated that the Basij took his motorbike, that he had to pay his own bail and that he was reported to a high ranking Basij person. He believes those details were an error in translation and communication. He stated the description of the event in his 2017 statutory declaration was the correct. I have listened to the applicant's arrival interview and he did mention the interpreter had a different accent. However, he confirmed he could understand the interpreter and he did not object to the arrival interview continuing. I find it implausible and do not accept that the substantial amount of purported errors in the applicant's arrival interview were because of errors in translation and communication.
19. The applicant's 2017 statutory declaration states that when he was [age] years old he was riding his motorbike around a park with two of his friends when he was stopped by four or five Basij armed with pistols. The Basij asked what they were doing and whether they had been insulting girls in the park. The applicant responded that they were just riding. The Basij told them they had to leave the park and the applicant responded that they couldn't make him leave and didn't own the road. They argued for about 20 minutes and were let go with a warning. They were told to expect a summons to the police station in the mail.
20. During the SHEV interview the applicant repeated his claims of the Basij telling him he was not allowed to ride his motorbike in the park and fighting with the Basij. The delegate asked what sort of fight he had with the Basij and he responded it was physical and included punching. The Basij were punching him more and took his motorbike because there were three of them. He was wearing a singlet riding his motorbike in the park. He was doing acrobatics and the Basij wanted to take the bike. The applicant resisted but the Basij insisted. They ended up fighting and he was taken to court. When the delegate asked if he was taken to court for fighting with the Basij he responded yes. He said the incident happened about six months before he left Iran and it was then that he applied for a passport. The delegate asked the applicant if this incident was the same incident when he was accused of insulting girls and he responded that there were two incidents. However, later in the SHEV interview he said it was the same incident. He was taken to court for doing acrobatics with his bike. When the delegate asked what happened in court he then responded that he didn't go to court but was served a summons. He didn't realise that the summons would have been useful to keep for his protection claims and it was 'gone'. The delegate put to the applicant that his written statement indicated the incident happened one and a half months before he left Iran and he responded that was incorrect. It was about six months. The delegate put to the applicant that he found it hard to understand why three Basij officers didn't arrest him at the time instead of sending him a summons and he responded that the Basij are not police. Only the disciplinary police can arrest someone. Even the traffic police cannot arrest a person and the summons is from the disciplinary police. The Basij did not have the power to arrest a person and take that person into custody.
21. Country information indicates that the Law Enforcement Force of the Islamic Republic of Iran (LEF) includes the border, anti-terror and security police. The LEF has a morality control department which is responsible for enforcing Islamic rules and standards and it shares that role with the Basij. The Basij is a volunteer militia who use violence and arrests to intimidate people who are in opposition to the Supreme Leaders. Regular members of the Basij are able to give

oral advice and warnings. However, active members have the power to carry guns and make arrests.¹

22. The applicant's written evidence was the four or five Basij members who approached him in the park were carrying pistols and country information indicates those members did have the power to arrest the applicant.
23. I did not accept the applicant's reasons for the errors in his evidence given during the arrival interview. And, putting those inconsistencies aside, the applicant has given inconsistent evidence about whether the Basij did or didn't take his motorbike. He didn't mention punching the Basij and/or being punched by them in his written evidence and his reason for not being arrested is inconsistent with country information. I find it implausible and do not accept that active members of the Basij – who were carrying weapons and had the power to arrest someone – would fail to arrest a person who, after coming to their attention for doing acrobats on his motorbike, engaged in a physical fight with them. I accept the applicant was riding his motorbike in the park wearing a singlet with his friends. I accept he was approached by the Basij and given a warning for doing acrobats. I do not accept he had a physical fight with the Basij.

The applicant being issued a summons

24. The applicant's 2017 statutory declaration stated that about a week after the incident in the park he received a summons telling him to go to the police station on a certain date. It did not state the offence. He feared he would be charged, not have a fair trial and go to prison because he argued back. He left about one and a half months after the incident. It was only after three summonses have been issued and ignored that the disciplinary forces will pursue a person and visit them at home. Only one summons had been issued before he left Iran. Since he left Iran two more summonses have been sent to his home. And, about two months after he left Iran the disciplinary forces came to his family home and asked where he was. His parents responded that they didn't know. They have visited three times and the last visit was three months after he left Iran. He believes they have realised he is no longer in Iran and so have stopped visiting his family.
25. During the SHEV interview the applicant said his mother and father read the summons first and then handed it to him. It had a date and time that he needed to go to court. When the delegate asked what he thought the summons was for he responded that it mentioned the motorbike and the argument with the Basij. He was scared when he received the summons and didn't know what would happen. He didn't know if he would be sent to prison for six months or one or two years for fighting with the Basij. The disciplinary forces are still coming to his parents' home and asking why he didn't comply with the summonses. When the delegate specifically asked if they are still making enquiries now he responded that they are. If he goes back he might be arrested or someone might report him to the disciplinary police that he has come back.
26. The delegate asked the applicant what made him leave Iran when he did and he responded that a person will get three summonses and it takes three months before the third summons is issued. After he received the third summons he decided to leave. His friends didn't receive summonses. It was 50% because he didn't want to go to court or prison and 50% because he was thinking the

¹ See 'Iran's Coercive Apparatus: Capacity and Desire', Washington Institute for Near East Policy, 05 January 2018, CXBB8A1DA143; 'Morality Police to Educate Women with Bad Hejab', IranWire, 08 December 2014, CX1B9ECAB10513; 'Iran: Political Opposition Groups, Security Forces, Selected Human Rights Issues, Rule of Law: COI Compilation', Austrian Centre for Country of Origin and Asylum Research and Documentation (ACCORD), Austrian Centre for Country of Origin and Asylum Research and Documentation (ACCORD), 01 July 2015, CISEC96CF12768; Foot Soldiers of the Islamic Republic's "Culture of Modesty", The Middle East Report, Spring, Vol. 39-Sadeghi, Fatemeh 2009, available at <http://www.merip.org/mer/mer250/foot-soldiers-islamic-republic%E2%80%99s-%E2%80%99culture-modesty%E2%80%9D>

Iranian government is not a good government. The delegate asked if his parents were ever informed if his case went ahead without him being present and, if so, what the result was. He responded that his parents have never been informed of that.

27. The applicant has given inconsistent evidence. In particular, he said he had received one summons before he left Iran and then said he had received three. He said the summons didn't mention the offence and then said it mentioned the motorbike and argument with the Basij. He said the disciplinary police stopped visiting his family three months after he left Iran and then said they are still visiting. I consider these differences are significant and I am not satisfied the applicant was ever issued with a summons. This raises doubts about his credibility.

The applicant's mental health

28. The applicant provided a medical certificate from a general practitioner dated 2 October 2019 stating that he has the diagnosis of depression. The condition was considered temporary and would continue for less than three months. Past, current and planned treatment was counselling. The applicant was experiencing feeling down, had poor sleep and low self-esteem. He was unable to do his normal work but could work eight hours or more per week.
29. During the SHEV interview the applicant said that since he arrived in Australia he has had problems with his memory. He doesn't know if it is related to his depression but in his head he has many thoughts and no more space. When the delegate asked if he is taking medication for his depression he stated that he was but couldn't remember what it was called. He takes a tablet every day. When the delegate asked if it helped he responded that it didn't. He has trialled different tablets but none of them have been useful – although he doesn't know if he would be worse without them. He was diagnosed about two years after arriving in Australia (about 2015) and first went to a doctor about the condition two years ago (about 2017). He doesn't have a job because he isn't well enough to work. When the delegate asked the applicant if he had any concerns about being treated for his depression in Iran he responded that it depended on how much a person paid.
30. The applicant didn't know what medication he was taking for his depression and the medical evidence was that his past, current and planned treatment was counselling. I have no corroborating evidence that the applicant is on medication for his depression or that his depression has been ongoing for more than four years. I accept the applicant had the diagnosis of depression that was temporary and being managed with counselling. I accept that, in October 2019, the medical evidence was that he couldn't do his usual pattern of work but he could work eight or more hours per week. However, based on the evidence before me, I am not satisfied the applicant wasn't working when he attended his SHEV interview because he was too unwell.
31. The applicant's 2017 statutory declaration stated that he fears serious mental harm as a result of having to adjust to life in Iran after living in Australia. He doesn't practice any religion and can express his views and dress how he wishes. If he was forced to return to Iran he would be forced to change his life and repress his fundamental opinions, beliefs and true identity or be subjected to serious physical harm. His life would become worthless and meaningless.
32. The applicant's oral evidence was that he hasn't discussed his religious beliefs with anyone because they are personal and I was not satisfied he genuinely held the political opinions he claimed. Unlike Australia, the applicant has his wife, parents and siblings in Iran. His oral evidence was that he is in regular contact with them, they were good and he misses them. I do not accept the applicant's claim that he would be forced to change his life and repress his fundamental opinions, beliefs and true identity if he returned to Iran. I do not accept the

applicant would face serious mental harm because he would have to adjust to life in Iran after living in Australia.

Other claims

33. The applicant said there is no work in Iran and making money is difficult. He said there are problems in Iran and he cannot live there. The problems are economic, political and all other possible options. I do not know what political problems or other possible options the applicant is referring to and, in the absence of sufficient detail, the claims have no probative value.
34. The applicant's evidence given during his arrival interview indicated he worked for his family's multiple businesses ([specified]) as well as having his own business as [an occupation] in Iran. His SHEV application indicated he was employed [in that occupation] from 2000 to 2013. The applicant remains in regular contact with his family. He has not claimed that he couldn't support himself when he lived in Iran and/or that he could not return to working for his family's businesses if he returned to Iran. I do not accept the applicant would be unable to find work or support himself in Iran.
35. The applicant said he left Iran at the Khomeini airport using a genuine Iranian passport. He obtained the passport six months before he left Iran and had no problems exiting the country. I accept that claims.

Refugee assessment

36. 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

37. 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.

38. I have found that the applicant is a non-practising Muslim and has decided to leave the faith. Under Iranian law a Muslim who leaves his or her faith can be charged with apostasy and most Islamic judges in Iran agree that apostasy should be a capital crime. However, DFAT considers² it highly unlikely that the Iranian government would monitor religious observance by Iranians such as whether or not a person regularly attends Mosque or participates in religious occasions such as Ashura or Muharram. Likewise, DFAT assesses³ that it would be unlikely that it would become known that a person was no longer faithful to Shia Islam. On the applicant's own evidence he lost his faith and stopped practising as a Shia Muslim when he was 14 or 15 years old but he has not claimed, nor is there any evidence before me to indicate, that he ever came to any adverse attention or faced any adverse consequences from his family or anybody else, because of his lack of religious practise while in Iran. I accept the applicant's religious beliefs are personal and I am not satisfied he would discuss his religious opinions and/or beliefs with anyone if he returned to Iran. Based on all the evidence before me, I am not satisfied the applicant faces a real chance of any harm in Iran as a non-practising Muslim who has left the faith now or in the reasonably foreseeable future.
39. I accepted the applicant wore a singlet on at least one occasion in a park. Men are required to adhere to a conservative dress code in public that requires them to cover their private areas. Social norms dictate wearing long trousers rather than shorts. Some men have claimed to have been discriminated against because of their western style of hairstyle or clothing but it is common to see such men on Iranian streets particularly in larger cities. Where there have been incidents of men being harassed because of their dress it is likely to be the result of over-zealous enforcement or because the individual has come to the attention of the authorities for other activities. DFAT assesses that the dress code in place for men does not amount to discrimination.⁴ And authorities are far more likely to target women than men for dress code violations. I accept the applicant could continue to wear singlets if he returned to Iran. I was not satisfied the applicant was ever detained, fined or in trouble because he wore singlets in Iran and I am not satisfied he faces a real chance of any harm in Iran if he continues to do so now or in the reasonably foreseeable future.
40. The applicant said he would be in trouble in Iran for trying to remain in Australia. The delegate explained to the applicant that there was a lot of country information that indicated people didn't have problems returning to Iran after seeking asylum as long as they hadn't committed an offence. He responded that he had heard of people going back from Australia, Canada and England having problems but wasn't sure.
41. The applicant no longer has a passport and in order for him to return to Iran he would need to obtain documentation to facilitate his travel. While officials provide assistance to Iranians who wish to voluntarily return, Iranian overseas missions will not issue travel documents to an Iranian whom a foreign government wishes to return to Iran involuntarily.⁵ Iran and Australia signed a Memorandum of Understanding on Consular Matters on 19 March 2018 to facilitate the return of Iranians who arrived after that date and who have no legal right to stay in Australia.⁶ However, the applicant does not fall into this category and I am satisfied there is no real chance the applicant will be returned to Iran involuntarily.

² DFAT Country Information Report Iran, 7 June 2018, CIS7B839411226; DFAT Country DFAT Country Information Report Iran, 14 April 2020

³ Ibid

⁴ Ibid

⁵ DFAT Country Information Report Iran, 7 June 2018, CIS7B839411226; DFAT Country DFAT Country Information Report Iran, 14 April 2020

⁶ Ibid

42. If the applicant did return to Iran in the foreseeable future, after having spent a period of time in a western country, then it would only be on a voluntary basis, using a temporary travel document issued by the Iranian authorities. DFAT's assessment is that Iranian authorities pay little attention to failed asylum seekers on their return and have little interest in prosecuting failed asylum seekers for activities conducted outside Iran, including in relation to protection claims.⁷ Millions of Iranians travel into and out of Iran each year without difficulty, including the large Iranian diaspora residing in North America and Europe.⁸ Those with an existing high profile may face a higher risk of coming to official attention on return to Iran, particularly political activists.⁹ The applicant has not been engaged in such activities in Iran or Australia and he has not claimed that he intended to engage in any such conduct in the future. Based on the evidence before me, I am not satisfied the applicant will face a real chance of any harm from the Iranian authorities for being a failed asylum seeker who has spent time in a western country now or in the reasonably foreseeable future.
43. I accept the applicant had the diagnosis of depression that was being managed with counselling. Mental health services are available in Iran¹⁰ if the applicant wishes to engage with them and there is no suggestion that the applicant would be denied access to treatment on the basis of any of the reasons specified in s 5J(1). Likewise, there is no evidence before me to indicate that access to mental health services is selective or applied in a discriminatory manner. I find that any lack of mental health services in Iran does not involve systematic and discriminatory conduct and does not amount to persecution within the meaning of s.5J(4).
44. I have considered the applicant's personal characteristics and circumstances against the country information before me. Taking into consideration his claims which I have accepted on a cumulative basis, I find he would not face a real chance of serious harm amounting to persecution, now or in the reasonably foreseeable future.

Refugee: conclusion

45. 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

46. 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

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

⁷ Ibid

⁸ Ibid

⁹ Ibid

¹⁰ CIS18623: WHO-AIMS report on the Mental Health System in the Islamic Republic of Iran, World Health Organisation/Ministry of Health and Medical Examination, Islamic Republic of Iran, 2006

- 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.

48. The expressions ‘torture’, ‘cruel or inhuman treatment or punishment’ and ‘degrading treatment or punishment’ are in turn defined in s.5(1) of the Act.

Qualifications to the real risk threshold

49. Section 36(2B) provides that there is taken not to be a real risk that a person will suffer significant harm in a country if:

- it would be reasonable for the person to relocate to an area of the country where there would not be a real risk that the person will suffer significant harm
- the person could obtain, from an authority of the country, protection such that there would not be a real risk that the person will suffer significant harm, or
- the real risk is one faced by the population of the country generally and is not faced by the person personally.

50. I accept that, in October 2019, the medical evidence was that the applicant had the diagnosis of depression and couldn’t do his usual pattern of work. However, the condition was considered temporary and he could work eight or more hours per week. And, I was not satisfied that the applicant wasn’t working when he attended his SHEV interview because he was too unwell. I am not satisfied the applicant would be unable to work if he returned to Iran. The applicant’s family has a number of businesses in Iran and he has worked for those businesses in the past. He has significant familial supports in Iran and he remains in regular contact with them. He has not claimed and there is no evidence before me to indicate that his family would not provide accommodation and/or work for him again if he returned to Iran. I am not satisfied the applicant would be unable support himself if he returned to Iran. I am therefore not satisfied that there is a real risk that the applicant will suffer significant harm within the meaning of s.5(1) and s.36(2A) upon his return to Iran nor or in the foreseeable future.

51. I accepted that the applicant would probably be identified as a failed asylum seeker should he choose to return to Iran but I was not satisfied he will face a real chance of any harm for that reason. As the “real risk” test in the complementary protection provisions imposes the same standard as the “real chance” test applicable to the assessment of “well-founded fear”.¹¹ I also find that the applicant does not face a real risk of any harm for that or any of his other claimed reasons.

52. Considering the applicant’s claims for protection altogether, I am not satisfied that the applicant faces a real risk of significant harm for any reason should he return to Iran now or in the reasonably foreseeable future.

¹¹ *MIAC v SZQRB* (2013) 210 FCR 505 per Lander and Gordon JJ at [246], Besanko and Jagot JJ at [297], Flick J at [342].

Complementary protection: conclusion

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

Decision

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

Applicable law

Migration Act 1958

5 (1) Interpretation

In this Act, unless the contrary intention appears:

...

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

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

...

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

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

but does not include an act or omission:

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

...

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

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

...

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

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

...

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

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

...

5H Meaning of refugee

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

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

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

...

5J Meaning of well-founded fear of persecution

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

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

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

5K Membership of a particular social group consisting of family

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

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

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

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

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

5L Membership of a particular social group other than family

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

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

5LA Effective protection measures

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

...

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.