



Australian Government
Immigration Assessment Authority

Decision and Reasons

Referred application

IRAN

IAA reference: IAA20/08004

Date and time of decision: 9 April 2020 11:24:00

J Maclean, 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 an Iranian national. On 20 July 2017 he lodged an application for a safe haven enterprise visa (SHEV). A delegate of the Minister for Immigration refused to grant the visa on 10 March 2020.

Information before the IAA

2. I have had regard to the material given by the Secretary under s.473CB of the *Migration Act 1958* (the Act) (the review material).
3. After considering the review material, I am satisfied of the following matters: the applicant's visa (SHEV) application and accompanying statement of claims were completed with the assistance of a solicitor (and a Farsi interpreter), however no representative attended the SHEV interview, which occurred on 13 January 2020, with the applicant. Along with the invitation to attend the SHEV interview the applicant was provided with an information sheet titled 'Important information about your Protection visa interview', in English and Farsi. The document outlines the purpose of the interview, and specifies the extreme importance of presenting all claims for protection during the interview, and providing all information in support, and that there may not be another opportunity to raise new claims if the application is refused. At the commencement of the SHEV interview the delegate asked the applicant if he had read and understood the information sheet, and he indicated he had. The delegate also cautioned the applicant that it was his responsibility to raise all claims for protection and provide evidence in support of those claims, and that he may not have another chance to provide further information to support his claims. The importance of telling the truth, and providing the Department with complete and accurate protection claims as early as possible, was also noted. In addition to discussing claims made in his statement of claims, the applicant was given a number of opportunities during the SHEV interview to provide any other claims, including towards the end of the interview being asked if there is anything else he would like to tell the delegate about his claims for protection, to which the applicant said 'No'. The delegate allowed a break for the applicant to think about whatever else he may want to say, and if he had forgotten to say something, and after the break the applicant was asked if there was 'anything he would like to restate, reemphasise, or come up with afresh', and the applicant said 'everything has already been said'. Before concluding the interview the delegate also told the applicant that if anything else comes to mind he should get back in touch, and any information received before a decision was made would be taken into account. Almost two months elapsed between the SHEV interview and the decision being made, and no further information was received from the applicant.
4. On 23 March 2020, after the delegate had made her decision, the applicant's new representative, who I note is a registered migration agent, sent an email to the IAA. The email includes a submission to the IAA. To the extent the submission reiterates the applicant's claims, takes issue with the delegate's decision and evidence relied on, or refers to caselaw, I do not consider it to be new information, and I have had regard to it.
5. The submission refers to a number of country information reports that were not before the delegate, and makes claims that were not before the delegate, and are new information. Along with the submission a number of photographs were also provided, which were not before the delegate, and are new information. Contrary to the IAA Practice Direction for Applicants,

Representatives and Authorised Recipients [December 2018], the submission did not identify which parts of the material was new information, or provide any explanation as to why the information could not have been, and was not, given to the Department prior to the delegate's decision, nor any explanation as to why the information is credible personal information that may have affected consideration of the applicant's claims. A copy of the Practice Direction was sent to the applicant after the referral along with other information about the IAA, the document is available on the IAA's website, and as a registered migration agent the applicant's representative would be aware of it. Although not required by the Practice Direction, I also note the submission provides no information regarding any exceptional circumstances to justify considering the new information.

6. The submission is also non-compliant with the Practice Direction in that it does not identify the source of country information reports referred to. The submission refers to 'A review for the Independent Advisory Group on Country Information (IAGCI) as cited in the July 2016 UK Home Country Information and Guidance Note regarding Iran', and includes a quotation purporting to be from that document, and concerning the features of summons documents, including the format and layout. I note the IAGCI are referred to in the July 2016 UK Home Office report titled 'Country Information and Guidance – Iran: Illegal Exit',¹ which was referred to by the delegate and is included in the review material. I also note the July 2016 UK Home Office report states that 'Information about the IAGCI's work and a list of the COI documents which have been reviewed by the IAGCI can be found on the Independent Chief Inspector's website', and a hyperlink to that website is provided. I am not satisfied the hyperlinked document/s in the July 2016 report was accessed by the delegate, such that it is part of the review material. On the information provided in the submission I am unable to determine precisely the document being referred to, or where the extracted information originates from. Similarly, the submission refers to 'A report by The Guardian published in October 2013' noting that tattoos have been banned in Iran and are deemed un-Islamic, however neither the title or the exact date of the report has been provided. Pursuant to ss.473DC(2) and 473FB(5) I have decided not to accept this information because the sources of the information have not been identified.
7. The submission refers to the applicant having tattoos, and provides a number of pictures of the applicant showing tattoos on his [specified body parts]. It is suggested that although the applicant may not be arrested or convicted solely for wearing tattoos, and although the applicant did not expressly raise the issue as part of his SHEV application, that the 'delegate erred in [*sic*: not] giving ANY consideration to applicant's tattoos if returned as failed asylum seeker from the west', in particular that the applicant would be subjected to heightened scrutiny on return to Iran as a result of his visible tattoos. Having listened to the SHEV interview, it is not apparent to me that either the applicant or the delegate made any mention of the applicant having tattoos, and the delegate does not refer to them in the decision. Similarly tattoos do not appear to have been mentioned during the Arrival interview, or in the SHEV application. I am satisfied this claim and the photographs were not before the delegate, and are new information. As noted above, no explanation has been provided as to why the information was not or could not have been provided before the delegate made the decision, or why it is credible personal information that may have affected consideration of his claims had it been known. No submissions have been made regarding any exceptional circumstances to justify considering this new information. There is also a distinct lack of information about when and where the tattoos were obtained, the reason for doing so, the significance of the tattoos to the applicant, or any credible country information to support the contention that the applicant's risk of harm would be heightened

¹ UK Home Office, 'Country Information and Guidance – Iran: Illegal Exit', 20 July 2016, OGD7C848D28

because of his tattoos, apart from the Guardian report referred to above. In addition, I consider the applicant was warned of the importance of raising all his claims, and had various opportunities to raise this claim, including in his statement of claims, during the SHEV interview, or in the period after that interview before the decision was made, and his failure to do so leads me to believe he does not genuinely hold fears related to his tattoos, or he would have made mention of them at an earlier stage. In all the circumstances, I am not satisfied there are exceptional circumstances to justify considering the claim or the photographs.

8. Under the heading 'Failed Asylum Seeker/Forced Returnee', the submission also refers to 'the applicant asserted through [sic] that his conviction for breaching morality rules will surface if he is removed from Australia to Iran', and because he is a failed asylum seeker/forced returnee, and the laws are selectively enforced against those with adverse political opinions, or imputed with anti-Islamic views, he would be persecuted for one of those reasons, and also that he will be immediately imprisoned in Iran once his convictions are identified. The applicant's substantive claim for protection relates to imputed political opinion resulting from him being in the vicinity of a protest in 2009. It is not apparent to me the applicant referred to any conviction for breaching morality rules during the protection visa process, or during the Arrival interview. This claim was not before the delegate and is new information. The submission provides no information about the alleged conviction, including the nature of the purported offence, when the offence or conviction occurred, the conviction process, or the impact of such conviction on the applicant. In addition, at the conclusion of the SHEV interview the applicant specifically stated he had never had any violation of any law or committed any crimes. Taking into account the circumstances noted above, including the various warnings given to the applicant about presenting all his claims for protection and providing evidence to support those claims, that a number of opportunities were provided to do so, and the applicant's failure to mention a conviction for breaching morality rules, which I consider he would have done if that had occurred, I am not satisfied this claim is genuine, or that there are exceptional circumstances to justify considering the claim.

Applicant's claims for protection

9. The applicant claims to fear being arrested, tortured and killed if returned to Iran, for reasons relating to an imputed anti-regime political opinion resulting from him being in the vicinity of a protest, being arrested at that time, and later failing to appear in court.

Refugee assessment

10. 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

11. Under s.5J of the Act 'well-founded fear of persecution' involves a number of components which include that:
 - the person fears persecution and there is a real chance that the person would be persecuted

- the real chance of persecution relates to all areas of the receiving country
- the persecution involves serious harm and systematic and discriminatory conduct
- the essential and significant reason (or reasons) for the persecution is race, religion, nationality, membership of a particular social group or political opinion
- the person does not have a well-founded fear of persecution if effective protection measures are available to the person, and
- the person does not have a well-founded fear of persecution if they could take reasonable steps to modify their behaviour, other than certain types of modification.

Identity and background

12. The applicant has provided consistent evidence regarding his identity, during the Irregular Maritime Arrival & Induction interview (Arrival interview), and the SHEV application process. He has also submitted copies of a number of Iranian identity documents (and English translations) in support of that identity, including copies of a number of pages from his *shenasnameh* (birth certificate) with his photograph, his Iranian National Identity card, and Iranian drivers licence. I accept he is an Iranian national and Iran is the receiving country for the purpose of this assessment.
13. The applicant has provided broadly consistent evidence regarding his background and early life in Iran, and I accept that evidence. He was born in Tehran in [year], and always lived in his parent's home in Tehran, except during his military service when he lived on an army base. He identifies as being of Turkish (Azeri) ethnicity and, in addition to speaking Farsi (Persian), he speaks Turkish (or Azeri). He completed primary, secondary and high school in Tehran. After completing school in [year] the applicant worked in a [shop] for a brief period before attending compulsory military service. A 'Compulsory Military Service Discharge Card' (and English translation) was provided with the SHEV application, which indicates the applicant served [between specified dates]. During the SHEV interview the applicant confirmed he does not have any outstanding military obligation in Iran. After his military service the applicant was self-employed selling [products] at the market, and he continued this work until departing Iran in April 2013. His father died in 2001, but his mother and [number] of his siblings remain living in Iran. A further [number] siblings are deceased.
14. During the SHEV interview the applicant said he did not have many problems in Iran for being an Azeri Turk, but sometimes at school, in the workplace, and in the community he was discriminated against, such as being teased and bullied. He went on to say this issue is not part of his claims for protection.

Imputed political opinion

15. The applicant has consistently referred to leaving Iran because his life was in danger following being arrested tortured on suspicion of participation in a protest. In his statement of claims, which is dated 15 July 2017, he said he was on his way to work the afternoon/night shift in the market [in] December 2009; there was a huge 'Green movement' protest; he and about 12 other people were arrested by plain clothes security forces who would not listen to him saying he was not part of the protest; he was held for six days during which he was constantly tortured and interrogated; he was asked to sign a confession, but refused; he was taken to the Revolutionary Court and accused of rioting; he was released after his family provided a guarantee to the court, after which he was treated in hospital for two days; he engaged a lawyer to assist with the

matter, however a summons to attend court within 10 days was issued, with the reason to attend being 'with regards to the complaints against you'; he attended court and was asked to sign paperwork and was fingerprinted; he received a similar summons every six months or so and followed the same process; after his arrest plain clothes officers visited his mother's house (where he lived) every six months and interrogated his mother, searched the house and left it in a mess; he was out of the house on each occasion, and typically he would receive a summons to attend court after such searches; he was getting extremely weary of the situation and tried to renew his passport which was about to expire.

16. The applicant's evidence at the SHEV interview regarding his arrest was broadly consistent with the statement of claims. However, rather than being on his way to work at the market, he said he was driving his truck with [products] from a wholesaler to distribute to another place when he got caught up in a protest and law enforcement officers in plain clothes dragged him from his vehicle and arrested him. I consider this discrepancy is minor and make no adverse inference from it. The applicant was also broadly consistent in claiming that he was summoned to attend court on about four occasions, that each time he was asked to sign a document confessing to participating in protests and damaging public property, but his lawyer advised him not to do so and he did not, but he signed an undertaking to appear before the court when summoned and cooperate with fingerprinting and the like. The delegate asked the applicant whether he was released when he refused to confess, and what the authorities did, and the applicant said the title to their house was with the court for security, and he was instructed not to leave the city of Tehran, and appear at court whenever asked to. When asked where the title to the home is now, the applicant said his lawyer managed to retrieve the title 'after a year and a half', and that occurred after he came to Australia. In his statement of claims the applicant refers to authorities continuing to look for him after he left Iran. He claims his family received a summons in his name, dated [in] July 2013, and when he did not appear in court authorities went to his mother's house and took his brother for questioning for a few hours, and as a result of this his mother has moved twice in previous three years. At the SHEV interview the applicant added that since the statement of claims was prepared in 2017 authorities wearing plain clothes have gone to the family home two or three times. At those times they create a disturbance for his brother, and although his mother has moved they find the new address and make enquiries about him, create a mess and direct accusations at him.
17. In support of his claims the applicant provided copies of three documents he claims are Court Summons documents issued by the [named court in Iran], and English translations. The first is dated [in] January 2010, and requests the applicant attend court 10 days from the date of the notice 'with regards to the complaints against you'. The second is dated [in] June 2010, and requests the applicant attend court [later in] June 2010 'with regards to the initial notice to you and your failure to attend the court, you are now required to defend the charges against you...otherwise an arrest warrant will be issued against you'. The third is dated [in] July 2013, and requests the applicant attend court 10 days from the date of the notice 'with regards to your charges on disturbing public opinion and failure to be present, a verdict in absentia and a mobile arrest warrant have been issued. You shall appear in court at the specified time otherwise a final verdict will be issued'. I have considered these documents below.
18. Country information reports that after the June 2009 presidential poll an informal movement known as 'The Green Movement' emerged over alleged vote-rigging. Every few weeks protesters took to the streets to challenge the regime and its leadership, but by early 2010 the regime had quashed public displays of opposition.² In June 2010 Amnesty International (Amnesty) reported on the situation of detainees and prisoners in Iran, most of whom are prisoners of conscience,

² UK Home Office, 'Iran Country of Origin (COI) Report, 16 January 2013, 3863

and many of whom were arrested during the mass protests which erupted after the disputed presidential election of June 2009. Most of the well over 5,000 arrested since June 2009 were ordinary citizens who went onto the streets to protest. Most were released after days or weeks, but some were held for months, and some remained languishing in prison. Amnesty confirms that those seen as political activists, such as the unsuccessful presidential candidates, remained at risk of arrest and were closely monitored, and that various other political activists had been summoned to court and arrested several times, such as members of political parties, and other political groups.³ In 2013 the Danish Refugee Council reported Amnesty International's opinion regarding whether individuals who were active - detained or convicted - in the 2009 post-presidential election unrest would still risk being pursued by authorities depends on who it is and what they do now; though many remained in prison at that time.⁴ The 2018 DFAT report refers to a number of sentences being handed out *in absentia* for a small number of people associated with the Green Movement and who fled the country. However, given the period of time that has elapsed, DFAT assesses it would be highly unlikely that those arrested at the time for simply participating in the protests would remain imprisoned, or would face continuing surveillance or harassment. Further, DFAT assesses it likely that those who had a more active organisational role in the movement and therefore have a higher profile are more likely to face continuing official attention and possible harassment.⁵

19. Taking into account the country information and the applicant's evidence, I can accept the applicant was in the wrong place at the wrong time at the time of a protest, that he was arrested, detained for six days, and mistreated at that time. However, the applicant indicated he is not a political person, and other than that incident he had no involvement with any political party or activity such that he would have been seen to be an activist, or be perceived to be in opposition to the government or having any involvement with the Green Movement. I consider his evidence about being summoned to attend court on several occasions, attending court and being asked to sign a confession but being able to leave after signing an undertaking to return if summoned, or being required to provide surety in the form of the title deed to his family home, was exaggerated and unconvincing, and I do not accept the events occurred. The applicant's evidence about the title to the family home being provided as a guarantee was also vague and unconvincing. He referred to the title being surrendered at the time of the first court appearance, and returned after a year and a half (which would equate to mid-2011), but also that this occurred after he arrived in Australia (which was in April 2013). In addition, it seems highly improbable the title would have been returned in the circumstances where the applicant claims he remained of interest to authorities, and subject to an arrest warrant. In any event, I have not accepted the title was surrendered as claimed. I also consider the level of purported interest in the applicant is out of all proportion with his actual involvement, simply being in the vicinity of a single protest. In making my assessment I have considered the three summons documents. The Danish Refugee Council and Danish Immigration Service reported in 2009 that an Attorney at Law stated that summonses can easily be obtained illegally and it is also easy to forge summonses by erasing information in the summons and adding new details.⁶ It is difficult to assess the genuineness of documents where the originals have not been provided, however noting my findings above and the country information, I consider these documents have been fabricated to support the applicant's protection visa application, and I do not accept they are genuine, or that the applicant was summonsed as claimed. Given the length of time that has

³ Amnesty International, 'From protest to prison: Iran one year after the election', 01 June 2010, CIS18830

⁴ 'Iran: On Conversion to Christianity, Issues concerning Kurds and Post-2009 Election Protestors as well as Legal Issues and Exit Procedures', Danish Refugee Council, Landinfo and Danish Immigration Service, Danish Refugee Council, Landinfo and Danish Immigration Service, 01 February 2013, CIS25114

⁵ Department of Foreign Affairs and Trade (DFAT), 'DFAT Country Information Report - Iran', 7 June 2018, CIS7B839411226

⁶ Danish Refugee Council & Danish Immigration Service, 'Human Rights Situation for Minorities, Women and Converts, and Entry and Exit Procedures, ID Cards, Summons and Reporting, etc.', 01 April 2009, CIS17329

elapsed since the incident in December 2009, over 10 years, and the nature of the applicant's involvement, I consider it is highly improbable the applicant would continue to be of interest to authorities. I consider it most likely that after investigation the applicant was released without charge or further reporting requirement, and I am not satisfied the applicant signed the claimed undertakings, that he failed to attend court, that he was of interest after his release, or that authorities visited his family members as claimed, including since the applicant left Iran. I can accept the applicant's mother has changed her address several times, however I am not satisfied she did so for the purported reason.

20. With regard to the arrangements the applicant made to leave Iran, at the Arrival interview he said he started making those arrangements about six months before leaving in April 2013. He claims he was on a 'black list' and could not leave the country, and when he tried to renew his passport he was sent to the main passport office and told he could not do so without a letter from the court; the court refused to provide a letter; he tried to change his name at the Registry Office to get a new passport, but was not successful; he met a cleaner at the Registry Office who said he could arrange a name change for a payment; he gave his original documents to the cleaner who provided a birth certificate and National identity card in the new name; he then attempted to obtain a passport, but was refused because the officer entered the National identity number into the computer and found the name had been changed, and that he was not allowed to leave the country without a letter from the court; he found out about a person who could assist him obtain a fraudulent passport, and he paid money to that person to do so, after which he made arrangements for his travel with a travel agent.
21. In his statement of claims the applicant provided further details about these issues. He refers to attending the '+10 Police', an administrative body, to renew his passport, being told he had been black listed, and them suggesting he attend the Court to have the issue sorted out. In contrast to the Arrival interview he states that because of his previous experience with the Court he did not think attending would be a good idea. At the SHEV interview he confirmed he did not ask the court to remove the travel ban, because he understood the request would not be honoured. He also referred to changing his name at the Registry Office with the assistance of a cleaner there, so he could apply for a passport in a different name. The applicant refers to attending the '+10 Police' again with his new documents to have a passport issued, and being referred to the main passport office where he was questioned for about four hours before being allowed to go. He was told he would probably get a letter from the Court. His lawyer told him if he was arrested he would be in great danger and he went to hide at a friend's place for two weeks. His friends suggested he obtain a false passport and gave him details of who could do that, and within two weeks he had the false passport and booked flights out of Tehran. He does not remember the details of the passport as the smugglers took it from him on the boat from Indonesia, and he left his expired passport in Iran. At the SHEV interview the applicant said the passport he used to leave Iran was an authentic passport of the Islamic Republic of Iran, but in an entirely different name, '[specified]', and with his photograph on the document. The delegate noted he had difficulty accepting the applicant managed to get through the airport on the document, and the applicant said at the airport they scanned the barcode and it was fine, but that he was stressed out because he did not know what they would have done if they found out.
22. As noted above, the applicant provided copies of a number of identity documents, including his birth certificate. On that document is a section titled 'Remarks', which indicates the applicant changed his name [in] 2013 to remove [one] name, and adding the [another] name. Of note, the National No. and Birth certificate number shown on the document is the same recorded on his National ID card. He did not provide a copy of his expired passport.

23. Country information reports that authorities routinely impose travel bans on Iranian citizens for reasons including security concerns, financial debts, outstanding taxes, crimes committed abroad, and outstanding sentences awaiting enforcement. Civil and political activists are particularly likely to face travel bans. The presence of security organisations in all Iranian airports, particularly those with border checkpoints, enables authorities to determine whether or not any Iranian citizen can leave the country by air. DFAT assesses that leaving Iran through irregular means is more likely to be achievable overland than via air or sea.⁷
24. I have not accepted the applicant was of interest to authorities at the time he departed Iran, and similarly I am not satisfied he was unable to renew his passport. I consider various aspects of his evidence on this issue highly improbable, including that he would hand over his original birth certificate and National identity card to a complete stranger he happened to meet at the Registry Office he had attended to alter those documents to change his name. Moreover, given country information reports that to obtain an Iranian passport applicants are required to provide their original *shenasnameh* and that Iranian passports include data on the holder's national ID number, and also regarding the sophisticated border control procedures which would make it difficult to use a document such as the one the applicant claims he used to leave Iran,⁸ I consider it extremely unlikely the applicant would have engaged with authorities on the occasions noted, or presented a document showing that his name had changed, but with the same national ID and Birth certificate numbers, or that he risked presenting a passport in another person's name, if he genuinely feared harm from those authorities. Although the applicant suggested he was not arrested at the main passport office because they do not have powers of arrest, in the circumstances described, where the applicant claims this was the second time he attended that office, and that he was questioned for several hours about his name change, I consider it improbable other authorities, who could have arrested him, were not contacted if he was genuinely considered a person of interest. As noted in the delegate's decision, Iranian law allows a person to change their name, after presentation of the National identity card. I can accept the applicant changed his name, however I do not accept it was for the reason claimed, or that it was done in the manner suggested. I consider it more probable that the name change was effected using the legally available process.
25. In all the circumstances, I am not satisfied the applicant was of interest to Iranian authorities at the time he departed, including having a profile as a political activist, or as a person having anti-government views. I am also not satisfied the applicant was on a blacklist or subject to a travel ban, and I consider it most likely he departed Iran using a legitimate Iranian passport in his own name (albeit one he had legally changed), and I do not accept he departed Iran illegally. I accept the applicant no longer has the passport in his possession, being taken by a smuggler in Indonesia.
26. I have also considered whether there is a real chance the applicant would be harmed on return to Iran for any imputed political opinion. The applicant did not suggest he had been engaged in any activities since leaving Iran that could be considered political in nature, or would raise his profile. Country information referred to above indicates it is highly unlikely those arrested for participating in the Green Movement protests in 2009 would face continuing surveillance or harassment, or be prevented from accessing employment in the public or private sectors. However, given the sensitivity of the government to such challenges, DFAT assesses it is likely those who had a more organisational role in the movement, and therefore have a higher profile, are more likely to face continuing official attention and possible harassment.⁹ The applicant did

⁷ DFAT, 'DFAT Country Information Report – Iran', 7 June 2018, CIS7B839411226

⁸ DFAT, 'DFAT Country Information Report – Iran', 7 June 2018, CIS7B839411226

⁹ DFAT, 'DFAT Country Information Report – Iran', 7 June 2018, CIS7B839411226

not claim to be an organiser or leader of any protest, or even that he had participated in any protest. Taking into account the applicant's evidence in the context of the country information, and my findings that the applicant was not of interest to the Iranian authorities for any reason at the time he departed Iran, and that there is no information before me the applicant has subsequently been involved in any activity that would attract the adverse attention of authorities in Iran, I am not satisfied there is a real chance he will suffer harm for reason of his imputed or actual political opinion if he is returned to Iran now or in the reasonably foreseeable future.

Religion

27. At the Arrival interview the applicant identified his religion as Shia, however in his SHEV application and at the SHEV interview he referred to being born and raised in a religious Shia Muslim family, but that he was never a practising religious person, and no longer considers himself as belonging to a religion. At the SHEV interview the applicant confirmed he had gradually drifted away from the religion and was not very keen on it. When asked if he had any problems for not following religious practices he said he lived in a society where expressing anything of that nature would get you in serious trouble. When asked if he had expressed any such views, or whether he just kept quiet about his non-observance of Shia practices the applicant said 'no, I had nothing to do with them'. I accept the applicant was not a practising Muslim at the time he departed Iran.
28. During the SHEV interview the applicant confirmed he does not practise as a Shia Muslim, but he has been to some churches and temples, and feels some kind of inner peace and serenity and enjoys the experience. He said he went to a church for Mormons in [Australia], the last time being about two years ago, and that he does not go there anymore because he is pre-occupied with his job and other things. He also referred to occasionally going to other churches, and said the reason he did so was because he wanted to discover more about Christianity, partly out of interest and curiosity to acquire more knowledge. He said he had been to a Vietnamese temple with a friend from work on several occasions, for example for ceremonies such as for the New Year, and that he is curious to learn about people, what kind of worship they have, and who their God is. He said he is a believer in God, but not in any particular religion. I accept the applicant has attended a number of churches or temples whilst in Australia. Of note, it appears his attendance at the Vietnamese temple were primarily social in nature, being invited to attend with his friend. I am not satisfied the applicant has regularly attended any particular church or temple, or that he is committed to any religion, such that he would seek to practise that religion if returned to Iran.
29. As noted above, the applicant referred to those who expressed anti-religious views getting into serious trouble in Iran. However, I am not satisfied the applicant did not express his religious views because of such fear of harm, but rather because he does not have any strong religious conviction. I am not satisfied he would speak out about religion if returned to Iran, and be at risk of harm for that reason. Although the applicant expressed an interest in religions in general, I am not satisfied he currently practises any religion, or that he would pursue any particular religion if returned to Iran.
30. I accept the applicant is unlikely to practise the Muslim religion if returned to Iran, and he will be considered a non-practising Muslim. The applicant did not indicate he had any problems with authorities or the community as a result of not engaging in religious practices, such as attending mosque and other ceremonies, or praying and fasting. Country information before me indicates that although the official religion of Iran is Shia Islam, many Iranians do not attend mosque

regularly and do not practice Islam.¹⁰ Under Iranian law, a Muslim who leaves his or her faith or converts to another religion can be charged with apostasy. Separately, a person of any religion may be charged with the crime of 'swearing at the Prophet' (blasphemy) if they make utterances that are deemed derogatory towards the Prophet Mohammed, other Shi'a holy figures, or other divine prophets. The 2016 DFAT report referred to charges of apostasy being rare, and the 2018 DFAT report suggests cases of apostasy and blasphemy are no longer an everyday occurrence in Iran. However, both reports indicate Iranian authorities continue to use religiously-based charges, including against Muslim-born converts to Christianity, Baha'is, Muslims who challenge the prevailing interpretation of Islam, and others who espouse unconventional religious beliefs. The 2018 DFAT report also refers to politically-motivated apostasy charges, which were frequent following the Iranian revolution, and defendants charged with apostasy also faced a litany of other charges related to national security.¹¹

31. In 2016 DFAT assessed that it is highly unlikely the Iranian government would monitor religious observance by Iranians, for example, whether or not a person regularly attends mosque or participates in religious occasions such as Ashura or Muharram, and the 2018 DFAT report does not indicate there has been any change in that regard.¹² The applicant did not indicate he had come to the adverse attention of the community or authorities whilst in Iran for being a non-practising Muslim, nor did he claim that he feared harm on that basis during the protection visa process.
32. I am not satisfied the applicant ever experienced harm in Iran for religious reasons, including as a non-practising Muslim, and I am similarly satisfied there is not a real chance he would on return to Iran in the foreseeable future. I am not satisfied he has spoken out on religious issues in the past, or that would do so on return to Iran, or that he would otherwise have a profile of interest for reason of religion. In addition, considering his political profile, I am also not satisfied he would be of interest on return, or considered a security risk, such that there is a real chance of politically-motivated charges relating to religion. I do not accept there is a real chance of any harm to the applicant in Iran for reason of religion.

Returning asylum seeker

33. The delegate considered the risk of the applicant being harmed for being a failed asylum seeker returning from a Western country. As noted above, I am satisfied the applicant left Iran legally from the airport by plane, using a passport in his name, and that he no longer has that passport in his possession. I accept if he were returned to Iran it would be done using temporary travel documents, and it is likely Iranian authorities would assume he sought protection in Australia.
34. Iran has historically refused to issue travel documents (*laissez passers*) to allow the involuntary return of its citizens from abroad. On 19 March 2018, however, Iran and Australia signed a Memorandum of Understanding (MOU) on Consular Matters 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.¹³ The applicant does not fall within that category, and if returned to Iran I am satisfied it would only be on a voluntary basis.

¹⁰ Danish Immigration Service, 'Update on the Situation for Christian Converts in Iran', June 2014, CIS28931; 'Young Iranians affected by the embargo, tired of political Islam', Asia News IT, 1 April 2015, CXBD6A0DE4714

¹¹ DFAT, 'DFAT Country Information Report—Iran', 21 April 2016, CIS38A8012677; DFAT, 'DFAT Country Information Report – Iran', 7 June 2018, CIS7B839411226

¹² DFAT, 'DFAT Country Information Report—Iran', 21 April 2016, CIS38A8012677; DFAT, 'DFAT Country Information Report – Iran', 7 June 2018, CIS7B839411226

¹³ DFAT, 'DFAT Country Information Report – Iran', 7 June 2018, CIS7B839411226

35. Authorities at the airport will be forewarned about a person's return because of Iran's sophisticated government systems. However, the person will generally only be questioned if they have done something to attract the specific attention of authorities, and the vast majority of people questioned would be released after an hour or two.¹⁴ More recently DFAT have reported that Iranian authorities pay little attention to failed asylum seekers on their return to Iran. Iranians have left the country in large numbers since the 1979 revolution, and authorities accept many will seek to live and work overseas for economic reasons. DFAT assesses it is not a criminal offence in Iran for any Iranian to ask for asylum in another country, and Iranian authorities have little interest in prosecuting failed asylum seekers for activities conducted outside Iran, including in relation to protection claims, and authorities will usually question a voluntary returnee on return only if they have already come to official attention, such as by committing a crime in Iran before departing.¹⁵ I am not satisfied the applicant has such a profile.
36. I accept the applicant may be questioned and briefly detained at the airport for one or two hours before being released, I am not satisfied this treatment amounts to serious harm for this applicant. I have accepted the applicant was arrested and detained for a period of time for being in the vicinity of a Green Movement demonstration in 2009, however I am not satisfied he was of adverse interest to Iranian authorities at the time he left Iran, that he has been of such interest since his departure, or that he has a profile as a political dissident or activist as a result of the 2009 incident, or any subsequent conduct. There is no information before me the applicant has engaged in any conduct since leaving Iran, such that he would be of interest to Iranian authorities. The country information before me does not support a finding that persons who have sought asylum in Western countries, such as Australia, are imputed to hold anti-Iranian government political opinions. I am not satisfied there is a real chance the applicant would suffer serious harm for being a failed asylum seeker who sought protection in a Western country. I am also not satisfied there is a real chance the applicant would suffer any harm for reason of religion as a non-practising Muslim, or for reason of his actual or imputed political opinion.
37. The applicant does not have a well-founded fear of persecution.

Refugee: conclusion

38. 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

39. 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

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

¹⁴ DFAT, 'DFAT Country Information Report – Iran', 21 April 2016, CIS38A8012677

¹⁵ DFAT, 'DFAT Country Information Report – Iran', 7 June 2018, CIS7B839411226

- 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.

41. 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.

42. I have accepted that as a returning asylum seeker the applicant may face questioning and be detained at the airport for that purpose for a brief period, but he will not otherwise attract the attention of authorities for any reason. I am not satisfied this treatment amounts to significant harm, as defined, for this applicant.

43. I have otherwise concluded there is not a real chance the applicant will face any harm on return to Iran. For the same reasons, I am also not satisfied there is a real risk of any harm, including significant harm, should he return to Iran.

Complementary protection: conclusion

44. 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.