



Australian Government
Immigration Assessment Authority

Decision and Reasons

Referred application

IRAN

IAA reference: IAA20/08052

Date and time of decision: 24 April 2020 17:03:00

N Becke, 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 citizen born in Tehran, Iran. On 12 April 2017 he lodged a valid application for a Temporary Protection Visa (TPV). On 20 March 2020 a delegate of the Minister for Immigration (the delegate) refused to grant this visa.

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).
3. The delegate, in his decision, relied on the June 2018 Department of Foreign Affairs and Trade (DFAT) report for Iran, which has since been superseded by the April 2020 DFAT report.¹ Given these circumstances, and the purpose for which the reports have been prepared, I am satisfied exceptional circumstances exist to justify the consideration of the April 2020 DFAT report.

Applicant's claims for protection

4. The applicant's claims can be summarised as follows:
 - In [year] he was born in Tehran. He is [one of a number of] children and was educated until the end of primary school. His father is a drug addict and dealer.
 - From the age of [age] until the age of [age] his father forced him to deliver drugs. When he refused to do so his father seriously mistreated him.
 - He found a job in a shop but his father found out and abused the owner. The applicant lost his job and was forced to resume working for his father.
 - The Basij used to follow and beat him on a monthly basis while he was working for his father. His father used to hand him over to the Basij, or lock him out of the house so the drugs were not discovered.
 - In late 2012 he started seeing a Christian girl. The Basij witnessed them together and would beat him for this reason around once a week.
 - Around one to two weeks before he left Iran the Basij detained and seriously abused him. His mother handed over the title deeds to his family home as bail and he was released after three days. He tried to complain to the police but they beat him further. He still has scars from this.
 - In January 2013 he departed Iran illegally using a fraudulent passport his uncle had obtained. The passport had his photo, but because he was still a minor, it had a different date of birth.
 - Two weeks later the Basij questioned his family about his whereabouts and then sold their house. His father is very angry about this.

¹ Department of Foreign Affairs and Trade (DFAT), "Country Information Report: Iran", 14 April 2020

- In 2014 the Department of Home Affairs ('the Department') accidentally released his personal details on its website ('the data breach'). As a result he is concerned the Basij will harm his family, particularly his mother and sister.
- He has not completed his compulsory military service in Iran and does not want to be taught to kill anyone.
- He fears the Basij and other Iranian authorities will cause him serious harm, or kill him, because: he delivered illegal drugs for his father; he was in a relationship with a Christian girl; he left Iran as a minor using a fraudulent passport and in breach of his bail conditions; he has not completed his military service; his details were included in the 2014 data breach; he is interested in Christianity; and because of his potential status as a returning asylum seeker.
- He also fears if he returns to Iran his father will report him to the Basij or kill him.
- He has suffered trauma due to the physical abuse he has received from his father and the Basij, and watching his father abuse his mother. He has recurring nightmares and difficulty recalling dates.

Refugee assessment

5. Section 5H(1) of the Act provides that a person is a refugee if, in a case where the person has a nationality, he or she is outside the country of his or her nationality and, owing to a well-founded fear of persecution, is unable or unwilling to avail himself or herself of the protection of that country; or in a case where the person does not have a nationality—is outside the country of his or her former habitual residence and owing to a well-founded fear of persecution, is unable or unwilling to return to it.

Well-founded fear of persecution

6. Under s.5J of the Act 'well-founded fear of persecution' involves a number of components which include that:
 - the person fears persecution and there is a real chance that the person would be persecuted
 - the real chance of persecution relates to all areas of the receiving country
 - the persecution involves serious harm and systematic and discriminatory conduct
 - the essential and significant reason (or reasons) for the persecution is race, religion, nationality, membership of a particular social group or political opinion
 - the person does not have a well-founded fear of persecution if effective protection measures are available to the person, and
 - the person does not have a well-founded fear of persecution if they could take reasonable steps to modify their behaviour, other than certain types of modification.

Identity

7. The applicant has been consistent in stating his identity since his arrival in Australia. In support, he provided his original Iranian birth certificate, with a translation, to the delegate at the TPV interview, and a scanned copy is before me. On the basis of the information before me I am satisfied the applicant's identity is as claimed and that Iran is the receiving country for the purposes of this assessment.

Relationship with his Father

8. Since his arrival in Australia the applicant has consistently claimed that his father is an abusive drug addict who for several years forced to applicant to deliver drugs in their local neighbourhood. In contrast to the other claims which the applicant has presented, for which I found his evidence appeared internally inconsistent and was lacking credibility, I consider his evidence regarding his father was detailed and for the most part forthright.
9. I accept the applicant is from a poor area of Tehran as claimed and his father is a drug addict and dealer. I accept that as the youngest of five children, and a minor, the applicant was particularly exposed to his father's violent and controlling behaviour. Throughout all his dealings with the Department the applicant has consistently advised that during an incident in which he was trying to protect his mother from his father's abuse, his father pushed [him], resulting in a serious injury to his [Body part 1]. I accept the applicant's claims in this regard.
10. The applicant has also consistently spoken of his uncle (his mother's brother) who used to help him when, due to his father's behaviour, he could not remain the family home. The applicant has consistently claimed that it was his uncle who encouraged him to travel to Australia, obtained a passport for him, and paid for the journey. I accept the applicant's claims in this regard although, for the reasons given below, I am satisfied that the applicant's father knew of his intention to leave Iran, as evidenced by his passport application.
11. When asked about his current contact with his parents, the applicant explained that he speaks to his mother regularly but not often to his father. When the delegate asked the applicant about his father's activities now, he responded that his father was in his [age] but that as an addict, he would still be doing the same bad things. The applicant added that when he talks to his mother he doesn't ask about his father because it is not important to him. When asked how he knows his father is still an addict the applicant responded that he doesn't know exactly, because his mother wouldn't want to upset him, but he has heard from friends in the neighbourhood that he still is. The applicant also confirmed that his parents are still living in the same house where he was born and as far as he knows his other siblings, with whom he has some occasional contact, are still in Tehran.
12. The applicant claims that between the ages of [age], his father forced him to deliver drugs to his customers in their local neighbourhood. When asked how long his father made him do this for, the applicant responded that it was around a year, but at other points in the TPV interview suggested it was closer to two years. The applicant told the delegate that during this period he found a job in his local [neighbourhood], but when his father found out he started an argument with his boss and the applicant lost his job. I accept this occurred.
13. DFAT indicates that drug addiction is a serious and growing problem in Iran. The Iranian police focus on apprehending drug smugglers but do not generally victimise or harass drug addicts,

although they occasionally receive orders to round them up.² The applicant has not claimed that his father was a drug smuggler, or involved in organised crime, but rather that he sold drugs in their local neighbourhood to finance his own addiction. I note that the applicant departed Iran around a month prior to his [birthday] and his evidence at the TPV interview indicated that at the time of his departure he was no longer being forced to work for his father, although it is unclear how or why this change occurred. The applicant also made it clear during the TPV interview that he is strongly opposed to the drug trade and drug use.

14. I accept that the applicant may have suffered trauma as the result of his father's drug use and abusive behaviour towards him and his mother, and that he may also have trouble recalling specific dates given he was a minor at the time of the claimed events. Where appropriate I have not drawn an adverse inference from any discrepancies in dates or the time frames he has presented, including at his arrival interview when he was still a minor. However the applicant's traumatic childhood, and the fact that he was a minor during the claimed events in Iran, does not overcome my concern that his responses on material points during the TPV interview frequently contradicted each other, as well contradicted as his TPV statement. For the following reasons I have very serious concerns regarding the veracity of the applicant's remaining claims for protection.

Claimed Interactions with the Basij and other Iranian Authorities

15. Overall I consider the applicant's evidence at TPV interview regarding the Iranian authorities purported knowledge of his father's activities, and their knowledge of his own activities on behalf of his father, was difficult to follow, evasive, and strongly suggested he was not recalling evidence from his own personal experience.
16. When asked if his father was ever sent to jail, the applicant responded that he was. When asked how he knows, the applicant responded because once or twice letters were sent to his father ordering him to court. The applicant added that he doesn't know if his father attended, or if he was ever convicted, which I consider this at odds with his written TPV statement, "my father never got arrested because he always used me and another friend to deliver the drugs", as well as his written claim that his father used to hand him over to the Basij regularly and not let him come back inside the house because he didn't want them to find his drugs. When asked when his parents' house was last raided he responded that he doesn't know because he is in Australia.
17. When asked if he, the applicant, was ever arrested he responded that he was "legally" arrested in relation to the incident with his girlfriend (discussed below). When asked if he was charged with anything, the applicant did not respond directly. When asked if the police or Basij ever brought him into the station in relation to any drug related matters, the applicant responded that on one occasion the Basij raided their family home and found his fingerprints on a packet of drugs, a claim that is not contained in his written TPV statement and which is at odds with his written claim that his father never used to let the Basij inside. When asked again if he was charged with anything, he responded that the authorities didn't have much evidence so they let him go, which I consider at odds with his claim that the police had arrested him because they had found his fingerprints on a packet of drugs. When asked how many times he had been taken to the Basij station the applicant responded he was arrested twice because of his father and once because of the incident with his girlfriend, which was at odds with his earlier evidence that he had only been brought into the station on one drug related matter.

² Ibid.

Claimed Incident with Girlfriend

18. In his written TPV statement the applicant claims that shortly before his departure from Iran he fell in love with a Christian girl and they were seeing each other for three months. Both the applicant and his girlfriend had to hide their relationship from their respective families because of their different religions. When the Basij saw them together, they would follow the applicant, detain him, cut him and beat him on a weekly basis.
19. During the TPV interview the delegate asked the applicant if he had ever had any issues with the Iranian authorities and he raised the matter of his girlfriend, but claimed that she was a Sunni Muslim not a Christian. The applicant told the delegate that his girlfriend's father wanted her to marry someone else, so he stood in front of their house. A physical altercation started between the applicant and his girlfriend's father and the Basij were called. The applicant was taken to the Basij station where he was held for three days and seriously mistreated until his mother handed over the title deeds to their family home as bail and he was released. When asked if anything else had occurred in relation to this incident the applicant responded in the negative, and said that his uncle had then started making arrangements for his passport. When asked, the applicant stated that he doesn't know what happened to his girlfriend because she left for her home region outside of Tehran so she could marry someone else.
20. Towards the end of the TPV interview the delegate asked the applicant if there was a mistake in his TPV statement, in which he had described his girlfriend as a Christian, and he agreed that there was a mistake because she was actually Sunni and Kurdish. I have considered the applicant's evidence that there was a mistake in his TPV statement, and I have had regard to the disclaimer at the beginning of his TPV statement that it was prepared with the assistance of volunteers at a community legal centre and that any errors are due to the lack of resources available for asylum seekers. As noted above, I have also taken into account that the applicant may have experienced some trauma as the result of his family circumstances prior to departing Iran. However, in light of the serious inconsistencies and implausibilities in the applicant's evidence, for example that it was the incident with the girl which led to his three day detention (rather than a drug related incident as per his TPV statement) I am not prepared to accept that there was an error in the TPV statement in relation to her religion. Overall I am not satisfied that the applicant had been seeing a girl from a different faith prior to his departure from Iran, and I do not accept that he fears harm in Iran for any reason related to this.

Departure from Iran

21. I also have serious concerns about the applicant's ability to depart Iran in the manner claimed. In his written TPV statement the applicant claims that his uncle obtained a fraudulent passport for him, which contained his photo and a different date of birth. When asked about the passport, the applicant claimed that he gave his passport photos to his uncle, and his uncle took care of the rest of it. When asked if he signed the application himself, the applicant confirmed that his uncle had brought it to him and he signed it. When asked if his uncle was his official guardian, the applicant did not answer directly but said that his uncle sorted out most things for him. The applicant claims he received the passport about one or two months before his departure.
22. Later in the TPV interview the delegate put to the applicant that the Iranian Passport Office had issued him a passport, and on this basis it appeared the Iranian authorities were not concerned about him leaving the country. The applicant responded that he does not know how his uncle was able to get the passport for him, but that he "did something" with the date of birth (on the passport) and that in Iran you can do anything if you pay a bribe. When asked if

he had encountered any problems in Tehran airport, the applicant responded that he had not, but that usually the authorities warn you two or three times, and that if he had tried to leave any later he would have been prevented from doing so.

23. DFAT indicates that Iranian identity documents include sophisticated security features and are difficult to manufacture for fraudulent use. Since February 2011 Iran has only been issuing biometric passports which include the following data: holder's signature; country of residence; place of issue; name and position of the issuing authority; passport type; country code; passport number; national identity number; holder's name; father's name; date and place of birth; sex; date of issue; and date of expiry. Passport applicants are required to provide their original shenasnameh, photocopies of all of the pages of the shenasnameh containing an ID photograph, the original and a copy of their Residence Permit, and three passport photographs taken within the last three months.³ DFAT indicates that minors under the age of 18 require permission of their father/custodian to obtain a passport, and on the evidence I am not satisfied that the applicant's uncle was his official custodian, but rather a helpful family member. Although DFAT describes corruption as endemic in Iran and that some law enforcement officials do accept bribes,⁴ given the robust procedures in place for passport issuance and exit procedures, it is difficult to accept that the applicant's uncle would have been able to circumvent the requirement for the applicant to have his father's permission to obtain a passport, and would have been able to supply a fraudulent date of birth.
24. The applicant also claims that two weeks after his departure the Basij questioned his family about his whereabouts and, according to his written TPV statement, sold his family house. DFAT assesses that Iranian border control procedures are sophisticated and 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.⁵ I find it difficult to accept that the Basij, or the police, would not have the ability to verify if a person of adverse interest had left the country, particularly given, in the applicant's case, he claims to have departed on a passport issued in his own name (albeit with a purportedly different date of birth) but that instead they would have needed to ask his parents where he was after his departure.

Court Documentation

25. The applicant's evidence regarding any documents he may have received in relation to his interactions with Iranian authorities was also lacking in credibility. During the TPV interview the delegate asked the applicant if he had ever been formally charged and what the charges were. The applicant did not answer the question directly but responded that in Iran you have already been charged at the moment of arrest. When asked if he had ever received any letters ordering him to attend court while he was in Iran, the applicant responded that on the occasion his mother secured his release on bail, the Basij had advised that they would let him know whether he needed to go to court or not.
26. When asked again if he ever received any documentation about appearing in court, the applicant responded that he doesn't know about that because he is in Australia. The delegate reminded the applicant that he had said he was delivering drugs for his father between the ages of [age] and he responded that in fact he had delivered drugs for his father until he was [older] and that in Iran it takes time for court letters to be sent out. Given the applicant did not

³ Ibid.

⁴ Ibid.

⁵ Ibid.

leave Iran until just prior to his [a specified year] birthday I consider his evidence in this regard to be lacking credibility.

27. When asked if his mother had ever advised him if court letters had arrived after his departure from Iran, the applicant responded that she had not said that directly, but she has said whatever you do don't come back to Iran. When asked why his mother would say that, the applicant responded that it is because people are dying of hunger in Iran. As noted above, the applicant advised at the outset of the TPV interview that his parents have been living in the same house since he was born, yet in his TPV statement he claims, "The Basij sold my family house after I left because I had breached bail...my father is very angry about this." When the delegate asked him about this matter the applicant responded that perhaps the Basij have already confiscated the house. DFAT indicates that the Iranian authorities routinely impose travel bans on individuals released on bail or pending trial, and for the reasons given above, I find it farfetched that the applicant could have departed Iran using a passport issued in his own name with a different date of birth, if he had been released on bail as he claims.⁶
28. At the end of the TPV interview the delegate outlined his outstanding concerns to the applicant. Firstly that the applicant has not provided any court summons, arrest warrant, or other documentary evidence to support his claims to be a person of adverse interest to the Iranian authorities and that he was in breach of his bail conditions when he left Iran. Secondly, that the applicant was issued a passport and was able to depart Iran without incident. Thirdly, that the applicant's parents continue to live in the same house despite his claim to have breached his bail. The delegate offered the applicant an opportunity to take an adjournment following which they could discuss the outstanding matters, or respond in writing in seven days. The applicant stated that he would call his mother and get her to take photos of any letters which she may have received and that he would then respond in writing.
29. Following the TPV interview the delegate sent the applicant a letter which outlined the above concerns. The applicant responded with a written request for an extension claiming that his mother did hand over the title deeds to his house but his brother had paid money and got the deeds back. The applicant also reiterated that his uncle had applied for the passport on his behalf and bribed people to allow the applicant to leave Iran unhindered. The applicant concluded that he needed more time to get the documents, if his family have not thrown them away, and requested an extension of time.
30. Ten days later the delegate received a final response from the applicant in which he stated that he has been in contact with his family but they do not have any evidence of his arrest warrant because, as he is not a criminal, no court letter was issued. The applicant further stated that as it was a long time ago, his family had destroyed the evidence out of fear for their safety and his uncle would not have obtained a receipt for bribing people. The applicant concluded that that he will be unable to provide any evidence to support his claims that he is a person of adverse authorities to the Iranian authorities.
31. I have considered the applicant's written responses to the issues which the delegate raised and they do not overcome my concerns. I find it lacking in credibility that the applicant would not have been issued any documents to corroborate his detention by the Basij, or the police, or to corroborate that he had been released on bail. I do not accept the applicant's reasons for not having such documents, or his claim that there is no formal process for charging someone with an offence in Iran, beyond actually arresting them. The reasons the applicant gave were also contradictory, such as that no court letter was issued because he was not a criminal, but also

⁶ Ibid.

that his family had destroyed any such documents out of fear for their safety. I consider these discrepancies strongly suggest that applicant has not been truthful with his evidence.

32. Overall, I accept that the applicant's consistent evidence that his father is a drug addict and dealer, and that he forced the applicant to deliver illicit drugs for him for a number of years while he was in his early teens, but then ceased. On the evidence before me I am not satisfied that the applicant ever came to the adverse attention of the Iranian authorities for this reason or that his father is known to the Iranian authorities. Nor am I satisfied that the applicant was involved with a girl from a different religion, which brought him to the adverse attention of the Iranian authorities, or that he has any sort of profile with the Iranian authorities at all.
33. Furthermore, I consider the applicant's circumstances if he were return to Iran would now be very different. The applicant departed Iran as a minor but is now in his [age] and has been living and working independently of his family in Australia for the past seven years, during which time he has also gotten married. While I consider the applicant may return to the area of Tehran where his family lives, on the evidence overall I am not satisfied that he would need, or choose, to reside with his parents. On the evidence I am not satisfied the applicant faces a real chance of harm in Iran from his father.

Military Service

34. In his written TPV statement the applicant claims that because he left Iran as a minor he did not complete his military service, and would be forced to undertake it upon return. The applicant also claims in his written TPV statement that he does not want to learn how to kill people. During the TPV interview the delegate asked the applicant about his military service obligations, and he responded that if the authorities didn't kill him first then he would have to undertake military service, which he reiterated twice. I note however the applicant did not reiterate his written claim that he does not want to it because he has an aversion to killing people. While I accept that the applicant does not want to undertake his military service, on the evidence before me I do not accept that this is because he has any sort of conscientious objection to the idea of the military itself, or killing people in a military context.
35. DFAT indicates that Iranian males who do not complete military service because they are outside of the country must complete their service on return if they are under the age of 40. Most – but by no means all – Iranian males will undergo military service. The UK Home Office, citing media sources, reported in 2016 that conditions for conscripts were often poor, with low pay, poor living conditions and frequent physical and psychological abuse by senior officers contributing to low morale. However, military service conditions can vary considerably depending on individual placements and circumstances. Those seeking to avoid military service are likely to face arrest and restricted access to a wide range of social benefits and civic rights, which may impact their ability to leave the country.⁷ The country information before me does not suggest that the Iranian authorities consider draft evasion as a matter of political disobedience.
36. DFAT also outlines a number of grounds on which a persona may obtain a legitimate exemption from military service, but given the applicant's personal circumstances I do not consider that he would qualify for any of those.⁸ Given all the evidence I accept the applicant, as an Iranian male aged under 40, will have to undergo military service upon his return to Iran. However, this is a law of general application which is not discriminatory on its face or application, and I

⁷ Ibid.

⁸ Ibid.

am not satisfied that the penalties for not complying with the law constitute persecution within the meaning of s.5J(4) of the Act.⁹

Religion

37. At the outset of the TPV interview the delegate asked the applicant what religion he follows and he responded simply that he is a Shia Muslim. Yet later in the TPV interview the applicant claimed that he had been forced to follow Shia Islam since his birth. The applicant also told the delegate that now he is in Australia he is free to follow whatever religion he likes and is researching other options because he does not want to be a Shia anymore. The delegate then invited the applicant to talk about his feelings about religion and the applicant responded that he has been to church in Australia with a friend called H, who is introducing him to Christianity. When asked which church they had been going to the applicant responded it was in [Suburb 1], near the street where he lived, and that he had been there three or four days a week. When asked the name of the church the applicant responded that he didn't know the name but that the pope there was elderly. When asked if this was the church H usually attended, the applicant responded in the negative and added that H knows a lot of churches and goes to a lot of churches. When asked if he had read the Bible, the applicant responded that he has asked H to obtain a Farsi version of the Bible for him. When asked how he prays, the applicant stated that when he first came to Australia he prayed in a Shia way but now he says "mercy" and "thank you".
38. When asked the date that he had first attended church the applicant responded "well today is Friday, so the first time I went was Monday this week". When asked if he had previously been exposed to Christianity the applicant responded he had attended (an unspecified event) a few times when he was still in immigration detention but because he could not speak English, he had not understood what it was about. When asked why he had chosen Christianity the applicant responded that he likes the celebrations which are different from Shia Islam. When asked why he had just started attending church very recently, after being in Australia for seven years, the applicant responded that he had been interested for a while but had spent five years in Perth. Although he had tried to do some research there, because he didn't speak English at that point, it had been difficult. When asked what religion his wife in Perth follows, the applicant responded that she is a Shia and that he is unsure whether she is researching any other religions.
39. While I also accept that religious belief and practise is personal and can manifest in different ways, I am not satisfied on the evidence overall that the applicant has demonstrated any genuine commitment to, or understanding of, Christianity. I note that in the applicant's 2017 TPV application, and his accompanying written statement of claims, he has indicated that he is a Shia Muslim and has not indicated an interest in any other religions. Nor has the applicant provided any persuasive evidence as to why, after seven years in Australia, he started attending church the week of his TPV interview. Furthermore, at the outset of the TPV interview the applicant confirmed that he and his wife are in an ongoing relationship and I find it difficult to accept that as a Shia, who is purportedly looking to change his religion, he is unaware of her own feelings on the matter. Furthermore, given the superficial and generalised nature of the applicant's responses at the TPV interview regarding Christianity as a religion and his association with the church, I am not satisfied he has a genuine interest in Christianity.
40. Overall I am not satisfied that the applicant would seek to practise Christianity or visit a church upon return to Iran because he is not genuinely committed to being a Christian. Overall I am

⁹ *Chen Shi Hai v MIMA* (2001) CLR 293

not satisfied the applicant attended church, otherwise than for the purpose of strengthening his claims to be a refugee, and I have disregarded that conduct under s.5J(6) of the Act.

41. On the evidence before me I am also not satisfied that the applicant's repeated declarations that Shia Islam was forced upon him, and that he does not want to be a Shia anymore, were genuine. On the evidence I am not satisfied that the applicant no longer considers himself a Shia Muslim.

Returning Asylum Seeker from Australia/Western Country

42. I accept in early 2013 the applicant departed Iran to seek asylum in Australia. For the reasons discussed above, I am satisfied that he left legally, using a genuine Iranian passport issued in his own name but I accept that he is no longer in possession of that passport and that he would require a temporary travel document (laissez-passer), issued by the Iranian consular authorities in Australia, to return. I note that Iran does not facilitate the involuntary return of Iranian citizens from Australia if they arrived before 19 March 2018.¹⁰ If the applicant were to return to Iran, I am satisfied it would only be on a voluntary basis.
43. DFAT indicates that Iranians have left the country in large numbers since the 1979 revolution and that the Iranian authorities accept that many will seek to live and work overseas for economic reasons. International observers report that Iranian authorities have little interest in prosecuting failed asylum seekers for activities conducted outside Iran, including in relation to protection claims.¹¹
44. Those who return on temporary travel documents are questioned by the Immigration Police at Imam Khomeini International Airport in Tehran about the circumstances of their departure and why they are traveling on a temporary document. Questioning usually takes between 30 minutes and one hour, but may take longer where the returnee is considered evasive in their answers and/or immigration authorities suspect a criminal history on the part of the returnee. Arrest and mistreatment are not common during this process.¹² For the reasons already expressed I am not satisfied that the applicant has a criminal history or a profile with the Iranian authorities. Nor, given the country information before me regarding the prevalence of drug use in Iran, am I satisfied that the applicant's prior activities for his father (as a minor and under duress) would now be of interest to them. Overall I am not satisfied that such questioning as the applicant may face upon return would amount to serious harm.
45. In his decision, the delegate accepted the applicant's personal information, including his name, date of birth, citizenship, mode of arrival (boat), and detention status, had been briefly accessible online during the 2014 data breach and I also accept that this is the case. The applicant has claimed that as a result of the data breach the Basij may harm his family, in particular his mother and sister.
46. Again, for the reasons already expressed, I am not satisfied that the applicant has ever had a profile with the Iranian authorities and I am satisfied he departed Iran lawfully. Furthermore, no protection claims were published in the data breach and I am not satisfied the Iranian authorities, or anyone else, would be aware of the contents of the applicant's TPV application. In any event, I find the fact that the applicant has sought asylum in Australia would be evident on his return to Iran, because of his lack of passport, amongst other factors. There is also no

¹⁰ DFAT, "Country Information Report: Iran", 14 April 2020

¹¹ Ibid.

¹² Ibid.

credible evidence before me to support the applicant's claim that the inclusion of his details in the data breach would result in the Basij harming his mother and sister.

47. Given the evidence overall I am not satisfied the applicant would attract the adverse attention of the Iranian authorities upon return. I am not satisfied the applicant faces a real chance of serious harm on this basis.
48. The applicant does not have a well-founded fear of persecution within the meaning of s.5J.

Refugee: conclusion

49. 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

50. 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

51. Under s.36(2A), a person will suffer 'significant harm' if:
 - the person will be arbitrarily deprived of his or her life
 - the death penalty will be carried out on the person
 - the person will be subjected to torture
 - the person will be subjected to cruel or inhuman treatment or punishment, or
 - the person will be subjected to degrading treatment or punishment.
52. 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.
53. I accept that the applicant attended church three or four times in the week of his TPV interview; however I have not accepted that his interest is at all genuine and I am not satisfied he would be involved with the practise of Christianity upon return. Furthermore, the country information before me does not indicate that merely attending church overseas, without anything further, would give rise to a real risk of any harm. Overall I am not satisfied that there is a real risk that he would face significant harm for this reason.
54. I also accept that as an asylum seeker returning voluntarily to Iran on a temporary travel document that the applicant may be questioned on his return for up to an hour, but I do not consider that this would amount to significant harm. He will not be arbitrarily deprived of his life or subject to the death penalty. He will not face a real risk of torture, cruel or inhuman treatment or degrading treatment or punishment. I am not satisfied that there is a real risk that the applicant would suffer significant harm from the Iranian authorities upon his return.

55. I have otherwise found that the applicant does not face a real chance of harm in Iran for the reasons claimed. Based on the same information, and for the reasons set out above, I find he does not have a real risk of suffering significant harm in Iran.

Complementary protection: conclusion

56. 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.