



Australian Government

Immigration Assessment Authority

Decision and Reasons

Referred application

IRAN

IAA reference: IAA20/08117

Date and time of decision: 15 May 2020 19:17:00

R Mikhail, Reviewer

Decision

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

Any references appearing in square brackets indicate that information has been omitted from this decision pursuant to section 473EC(2) of the Migration Act 1958 and replaced with generic information which does not allow the identification of a referred applicant, or their relative or other dependant.

Background to the review

Visa application

1. The referred applicant (the applicant) claims to be a citizen of Iran. On 10 November 2016 he lodged an application for a Temporary Protection Visa (application for protection). On 31 March 2020 a delegate of the Minister for Immigration (the delegate) refused the grant of the 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) (review material).
3. On 29 April 2020 the IAA received a submission and other documents in relation to this matter.
4. In part, the submission includes legal argument in response to the delegate's decision and evidence that was before the delegate. I do not consider these aspects of the submission to be new information.
5. Attached to the submission was a copy of the bio page of the applicant's passport and an image and accredited translation of the applicant's military service exemption card issued in 1999. These documents are new information. The submission also refers to new information in respect of these documents.
6. The submission notes that the delegate issued an invitation for the applicant to comment on a number of issues pursuant to s.57 of the Act. It notes the letter was dated 13 March 2020 and the applicant was given 28 days to respond to the invitation. However, the delegate issued his decision prior to the end of that 28 day period and before the applicant had a chance to respond. This letter was included in the review material. In that letter the delegate invited the applicant to comment on information which reveals inconsistencies in his evidence in relation to when his passport expired, which government body questioned him after he returned from [Country 1] and when his military exemption card was issued. The above submission notes that the applicant's passport bio page and the military service card have been provided to the IAA in response to the issues raised in the above letter and I accept this to be the case. I accept that the delegate issued the refusal decision to the applicant on 30 March 2020, prior to the deadline for the applicant to provide his response to the above letter. Given this, I am satisfied there are exceptional circumstances to consider the above new information that has been provided in response to the invitation. This includes the passport bio page, the military service exemption card and the new information provided in the submission to the IAA about these documents.

Applicant's claims for protection

7. The applicant's claims can be summarised as follows:
 - He is of Kurdish ethnicity and was born and raised in Ilam Province.
 - In 2006 he started work as [an Occupation 1] for [Company 1] at [a location] in Tehran.
 - In 2011 he travelled to [Country 1] and when he returned to Iran he was questioned by the head of airport security, a subdivision of Information Ministry, about his travel and was monitored for six months after that. They also took his passport and never returned it.

- In May 2012 an acquaintance named [Mr A] told him he could help him with his problems with the government authorities if he joined his Kurdish opposition movement. After the applicant refused, [Mr A] informed him that his friends had broken into the applicant's house in March 2012 and stolen his computer containing images of the applicant with his Baha'i girlfriend and threatened to send it to the government authorities if he did not work with them. [Mr A] and his group continued to harass and intimidate the applicant's family.
- He departed Iran in September 2012 on a fraudulent passport.
- After leaving Iran, his family continued to be violently harassed by [Mr A] and his group. His father was also questioned by the Iranian authorities who then called the applicant in Australia and told him to return to Iran.
- He also fears harm in Iran after converting to Christianity in Australia and because he departed Iran illegally and will be returning from a western country.

Factual findings

Background and Identity

8. The applicant provided copies of his national identity card and birth certificate. He also provided his original Iranian driver's license at his protection visa interview held on 26 November 2019.
9. On the evidence before me, I am satisfied the applicant is a citizen of Iran and that Iran is the receiving country for the purpose of this assessment.
10. I also note that the applicant demonstrated fluency in the Faili Kurdish language during his protection visa interview. The copy of his passport bio data page, which he has provided to the IAA, also indicates his birthplace to be Ilam and country information indicates that many Kurds live in Ilam Province in Iran.¹ I accept that the applicant is of Kurdish ethnicity.
11. I accept that the applicant worked as [an Occupation 1] for [Company 1] at [a location] in Tehran and, in doing so, have given weight to evidence the applicant provided including his original employment card from [Company 1]. In the review material there are also a number of emails sent to the Department in January 2013 attaching numerous documents belonging to the applicant including technical certificates and licences associated with his work as an [Occupation 1] with [Company 1].
12. Nonetheless, having considered the applicant's evidence overall in relation to his claims for protection, I am not satisfied he is a credible witness.

Events in Iran

13. In his statutory declaration attached to his application for protection (statement), the applicant claimed that, after returning from a trip to [Country 1] in 2011 he received a call from a person from the office of the head of security at [the] airport, which is a sub-division of the Information

¹ Austrian Red Cross: Austrian Centre for Country of Origin & Asylum Research and Documentation (ACCORD). "Iran: COI Compilation", 1 September 2013, CIS26267

Ministry of Iran, to say that they would like to speak to him. He was then interviewed by them about his trip to [Country 1] where they asked him questions about why he took the trip, where he went and who he met there. The airport Basij, a subdivision of the Information Ministry, also took his passport away and never returned it. In the subsequent two months they would call him in to their office once a week where he would sometimes be questioned and other times he would just sit there. He was also told that if he wanted to have more than three days off work, he must contact the sub-division of the Information Ministry of Iran and let them know his movements. He also believes he was being followed by two plainclothes people from the Information Ministry for roughly six months between approximately September 2011 until March 2012 as they would call him and tell him that they knew where he was yesterday and that he ate at a particular restaurant at a particular time. He claims they were interested in him because of his Kurdish background and because of the history of his father and uncle. He claims his uncle and family were very well known in Ilam before the revolution because his grandfather was a representative of the central government at the time of the Reza Shah in Ilam. After the revolution, his uncle was supposed to be executed but it was overturned in the appeal court in Iran and a large majority of their land was confiscated. During the same period, his father was imprisoned for around nine months because of suspicions that he was connected to the Shah of Iran.

14. In his statement, the applicant also claimed that in approximately May 2009, he became friends with a Kurdish man [called] [Mr A]. In approximately May 2012, [Mr A] told him he was actively involved in Kurdish opposition groups and offered to help the applicant in relation to his problems with the government and asked him to join his opposition movement and work with them. If he agreed they would give him money to escape Iran. The applicant refused and told [Mr A] to leave him alone as he did not believe in those activities. [Mr A] then told him that his friends had broken into the applicant's house in Tehran in March 2012 and had stolen his computer and camera containing images of him with his former Baha'i girlfriend at Baha'i gatherings and threatened to share these documents with the government if the applicant did not cooperate with [Mr A]. The applicant claims he became friends with the Baha'i woman on a business trip and only found out that she was Baha'i after five months of friendship. He claims he probably would not have become so close to her had he known as there are many fatwas against any person, especially a Muslim, who associates or socialises or does business with a Baha'i person. Between May and September 2012 the pressure from the [Mr A] and his Kurdish opposition group increased and his family in Ilam were bearing the brunt of the pressure. There were multiple incidents of attack and intimidation on his father and brother, such as repeated phone calls, harassment at his father's workplace and threats of violence. They broke the windows at his father's shop and at his family home. The applicant claims he could not speak to the police about the intimidation and threats as he feared that [Mr A] would show them the images from his computer to the authorities and his life would be in serious danger.
15. In his statement the applicant also claimed that he left Iran in September 2012 on a fake passport which was destroyed by the people smuggler in Indonesia. Since he left Iran, his father' was beaten up and his hand broken and his hardware shop was broken in to. His brother was also attacked with a knife but ran away. The people who did this said to his father that "this is what happens to you when your son does not do as we tell him". He believes his parents reported these crimes to the police but he is not sure. If he is forced to return Iran he will be imprisoned. If the Government have evidence of his friendship with a Baha'i woman and her family, he could be executed.
16. In the review material there were images of documents that the applicant had with him when he arrived to Australia and this includes his visa to [Country 1]. The stamps on the visa correspond with his claims to have travelled there for twenty days from [August] 2011. I accept

that he travelled to [Country 1] during this period. When the applicant was asked to briefly state why he left Iran during his Irregular Maritime Arrival and Entry Interview on 3 January 2013 (arrival interview), he claimed that he had been given a hard time by the Basij at his workplace after returning from [Country 1] and because of his Kurdish ethnicity. Therefore, he has been generally consistent in relation to this aspect of his claims.

17. I, nonetheless, have other significant concerns with the above claims including the plausibility of major aspects of his claims, a number of inconsistencies in his evidence and a general lack of supporting evidence.
18. The applicant claims that the [company] he worked for did not just accept everyone to work there as they had special rules in relation to security. If this were the case, I find any concerns they or the Information Ministry had about the applicant's family's political history in Ilam during the time of the Shah, this would have arisen earlier when he was first employed by the [company] and not five years later merely because the applicant took an overseas trip. The applicant has also not claimed that he or his family had been regularly harassed or questioned over their family history since the Iranian revolution. The applicant has also not provided any supporting evidence of his claims that his grandfather was a representative of the central government at the time of the Shah or in regards to charges against his uncle and the confiscation of their land and his father's detention. It is also not evident in his statement that he was even questioned about his family history when he was being questioned by the head of security at the airport after his return from [Country 1] as he claims they just asked a number of questions about his trip and sometimes just made him sit there. Furthermore, during the protection visa interview he did not repeat his claims about being questioned or of interest to the Information Ministry due to his family's alleged history or Kurdish ethnicity but, instead, claimed that they asked him why he left the country without informing them as that was a requirement of his employment which he claims he was not aware of. This latter claim was also not raised in his statement. Further, I also find it difficult to believe that he would not know the company rules about seeking permission to leave the country if the security was particularly strict in this regard and it was a condition of his employment and he had been working with this company for five years at the time of his travel to [Country 1] in 2011.
19. It also appears the applicant remained employed with the [company] up and until he departed Iran in September 2012 which seems at odds with his claims to have ever been of adverse interest to them after returning from [Country 1] and to have been monitored for six months. The applicant stated during the protection visa interview that he was advised by the Information Ministry that if they had no further concerns about him, they would return his passport to him. As he claims to have only been monitored by the Information Ministry until March 2012 it strongly suggests that he was of no further interest to them after this time so in these circumstances I also find it difficult to believe that his passport was never returned to him. When the delegate also expressed concerns about this aspect of his claims, the applicant then claimed that, as his employer was sensitive about him, he did not want to increase that sensitivity and that is why he did not ask them to give his passport back. I find this explanation unconvincing given it had been approximately six months from when they stopped monitoring him to when he departed Iran in September 2012. He also claimed that he did not ask for it back because he did not need to go anywhere but I note that he decided to leave the country in September 2012. The applicant then said that he was subject to a [contract] with his employer and he was not allowed to break the contract other than for reasonable circumstances such as being sick and by leaving the country in September 2012 he broke his contract. When asked by the delegate for a copy of his employment contract, the applicant claimed that the original was kept by his employer and he did not have a copy because he was "wanted" at that time. Again, I find this very unconvincing as I find it very difficult to believe that the applicant was never given a copy

of his employment contract when he was first employed with this [company] in 2006 and he was allegedly not of concern to his employer until 2011.

20. During the protection visa interview the applicant further claimed that the Iranian authorities went to his house in Ilam after he left Iran and asked his father to attend the office of the “Etilaat” (Ministry of Intelligence).² When his father attended the office, he was told that they knew that his son had left the country and they took the applicant’s phone number from his father and called the applicant in Australia in February/March 2013. During the call they told the applicant to come back to Iran and they will work together to fix this problem. The applicant asked the caller if he could guarantee that the applicant would not go to jail and the caller said that was not up to him. I have already expressed my doubts that the applicant was ever of adverse interest to the Iranian authorities after travelling to [Country 1] and his own evidence even suggests he was no longer of interest after they stopped allegedly following him in March 2012 so I find it difficult to believe they would then question the applicant’s father many months later and then call the applicant in Australia. Of further concern is the fact that the applicant did not raise this claim in his application for protection which was prepared in 2016. When the delegate asked the applicant about this, he said he did not remember at the time and claims he was not asked if another big issue had arisen since he left Iran. This is inconsistent with information in his statement where he raised claims that his family had continued to be violently harassed by [Mr A] and his group after the applicant left Iran.
21. On the evidence before me I do not accept that the applicant was questioned and subsequently monitored by the Information Ministry after he returned from a trip to [Country 1] in 2011 because he did not seek prior permission to travel or because they had an interest in him because of his Kurdish background and/or family history in Ilam. I also do not accept his claims about his family’s history in Ilam. I also do not accept his claim that his passport was taken by these authorities and never returned to him and that he left Iran on a fraudulent passport in September 2012. I note the applicant’s bio page of his passport that he provided to the IAA indicates it was still valid at the time of his departure in September 2012. I am satisfied the applicant left Iran on his own genuine passport. I also do not accept that he broke his employment contract by departing Iran in 2012 or that he and his father were contacted by the Etilaat after the applicant left Iran.
22. I also have concerns about the credibility of the applicant’s claims in relation to his alleged Baha’i girlfriend.
23. In his statement the applicant claims that he would not have become so close to his Baha’i girlfriend if he had known that she was Baha’i and only found out after five months of their friendship. However, during the protection visa interview he claims he met her in approximately 2007 and continued with their relationship for approximately four years. This is despite his alleged fears and the objection of both their parents and his claim that he had no intentions of getting married at the time. I find his alleged involvement in this relationship for so long and in such circumstances at odds with his claim in his statement that he would not have continued in the relationship had he known the woman was Baha’i.
24. During the protection visa interview the applicant claimed that, after he started facing problems with his employer after returning from [Country 1], he broke up with his Baha’i girlfriend. Given I have not accepted his claims in regards to being interrogated and monitored by the Information Ministry after returning from [Country 1], I do not accept he broke up with his girlfriend for this

² ACCORD, “Iran: Political Opposition Groups, Security Forces, Selected Human Rights Issues, Rule of Law: COI Compilation”, 1 July 2015, CISEC96CF12768

reason. I also find it difficult to believe he would end the relationship for this reason as has not claimed that his employer or the Information Ministry were aware of his relationship or had questioned him about it and they stopped monitoring him after six months.

25. I also have concerns with the applicant's claims that he did not complain to the Iranian authorities about the threats from [Mr A] because he was afraid [Mr A] would show the photos of him with his Baha'i girlfriend to the authorities. During the protection visa interview the applicant referred to [Mr A]'s group as "PJK" which country information before me indicates is the Party for Free Life of Kurdistan/Kurdistan Free Life Party (also known as PJAK). This is a separatist militant group linked to the Kurdistan Workers' Party (PKK) of Turkey which seeks a federal and secular government in Iran in order to secure the national rights of the Kurdish people. There are many cases reported regarding imprisonment, torture, terrible prison conditions and executions in Iran of PJAK members and supporters. One source noted that in 2013 it had the largest number of political prisoners compared to other Kurdish political parties and most of the Kurdish prisoners sentenced to death are affiliated with PJAK.³ Given this, had [Mr A] approached the authorities with these pictures he would have to explain where he got them and also would likely draw attention to himself and his own illegal activities with PJAK. When the delegate raised these concerns with the applicant, he said he could have complained to the authorities but did not because he was afraid and stressed and his mother was sick and had cancer and he did not want to increase her stress. However at this time his family were being violently harassed by [Mr A] and his group which would have caused his mother even more stress.
26. In his statement, the applicant also claimed that his parents would have reported to the police the continued harassment from [Mr A] and PJAK that they allegedly endured after the applicant claimed he left Iran but he was not sure. I find this claim to be inconsistent with his claim that he himself was too afraid to report their harassment to the police for fear that [Mr A] would send photos of him with his Baha'i girlfriend to the authorities, so it is unclear why his family would have. The applicant has also not provided any supporting evidence of these reports.
27. In his statement the applicant claimed that, since he left Iran, as a result of continued harassment by [Mr A]'s group, his father's was beaten up and his hand broken and his brother was attacked with a knife. The people who did this said to his father that "this is what happens to you when your son doesn't do as we tell him". However, during the protection visa interview he claimed that this group only contacted his family one or two times after he left Iran and then they stopped. When the delegate asked him what this group did when they contacted his family, he said he did not know exactly what they told his family but his father told the applicant they were harassing them. I am concerned that the applicant provided such a vague response to this question in the interview given he was quite specific about what happened to his family after he left Iran in his statement. Furthermore, the applicant has not provided any supporting evidence of the physical injuries his father and brother suffered as a result of these attacks.
28. I have also had regard to the fact that the applicant did not refer to the harassment and threats from [Mr A] and the PJAK when asked why he left Iran during his arrival interview. When this was raised by the delegate the applicant said that he was told in this interview to keep his answer brief. It is true that the applicant was told to provide his reasons for leaving in two sentences during this interview and I am aware that these interviews are not for the purposes of assessing an applicant's claims for protection. However, I find it odd that he would only refer to the

³ ACCORD, "Iran: COI Compilation", 1 September 2013, CIS26267; ACCORD, "Iran: Political Opposition Groups, Security Forces, Selected Human Rights Issues, Rule of Law: COI Compilation", 1 July 2015, CISEC96CF12768; "The Kurds are being driven out again - this time by Iran", Time Magazine, 26 August 2006, CX160826

difficulties he faced with the government authorities after returning from [Country 1] during that interview when he claims the most recent events that occurred prior to his departure from Iran were the continuing harassment and threats from [Mr A] and PJAK.

29. Of further significant concern is that towards end of the protection visa interview, the applicant stated he no longer feared harm in Iran in relation to his former relationship with a Baha'i woman and no longer feared harm from [Mr A]. His change of mind in this regard also causes me to doubt the credibility of these claims.
30. Given my overall concerns, I do not accept any of the applicant's claims in relation to having a Baha'i girlfriend, having images of his relationship with his Baha'i girlfriend stolen by [Mr A] and being subsequently being threatened and harassed by [Mr A] and PJAK because the applicant did not agree to work with them. I reject these claims in their entirety.

Christian Conversion in Australia

31. The applicant also claims that he has converted to Christianity in Australia.
32. In support of this claim the applicant provided a copy of a document titled "Communicant Membership Certificate" from [a] Church. It certified that he became a member of their congregation [in] October 2019 and is signed by [Reverend A]. He also provided another document which certified that he was baptised in this church [in] October 2019 by the above priest. On the evidence before me I accept that the applicant was baptised in this church [in] October 2019.
33. During the protection visa interview the applicant claimed that when he was living in Iran he only believed in God and his parents were Muslim. He then said he previously had information and belief about Islam but not a strong belief. Although I find this statement to be somewhat confusing, I note that during his arrival interview, when asked about his religion, he also said his parents were Muslim but he did not have a religion and only believed in God. I accept that when he lived in Iran and first arrived to Australia he did not consider himself to be a Muslim but retained a belief in God.
34. During his protection visa interview in November 2019 the applicant claimed that he was introduced to Christianity by a friend he met in the Kurdish community in Australia and started attending church about six months ago. During that interview the applicant demonstrated a basic understanding of Christianity and the significance of Jesus in the Christian religion. When asked by the delegate if he had to do anything to prepare to be baptised, he said that he had to believe that Jesus is the son of God. He also said that he had to attend classes in the church with [Reverend A] which he claims he did every Sunday for more than two months. He also claimed that he advised his father and brother about his conversion and indicated there were supportive.
35. The applicant also provided a support letter from [Reverend A] dated [November] 2019, who is the Minister of the above church. In his letter he indicates that he had known the applicant for about six months as one of the parishioners of the church. He indicated that the applicant came to the church and has regularly attended from about June 2019 which I note corroborates the applicant's claim as to when he started attending. He also corroborates the applicant's claim that he was baptised [in] October 2019 after professing his faith in Jesus Christ as the Lord and Saviour. [Reverend A] also wrote that, now that the applicant is a member of the church, he continually attends the Sunday morning service and is active in various aspects of church life. He claims the applicant has shown a steadfast personality as a devout Christian and also has been

in a friendly relationship with other fellow Christians in this church. He confidently commends the applicant as a sincere Christian.

36. I have some concerns with some aspect of this letter. [Reverend A] stated the applicant is active in various aspects of the church but does not indicate what those aspects are and the applicant has not himself referred to other activities he participates in the church other than attending church on Sundays and his previous course attendance. In his letter, [Reverend A] also states that the applicant has shown a steadfast personality as a devout Christian but, again, he does not state how the applicant has done that. He also states that the applicant was baptised after professing his faith in Jesus Christ and makes no reference to the applicant having to attend a course prior to baptism, providing little other information to indicate what else was required from the applicant prior to baptism. I accept, as credible, the information in the letter about when the applicant started attending church, his baptism and attendance since then, but given the concerns I have noted, I give [Reverend A]'s assessment in regards to the applicant's religious sincerity little weight.
37. I also have concerns that the applicant decided to convert to Christianity after only four months of attending church and attending classes for two months, which I find to be a relatively short period of time. Although he demonstrated a general understanding of Christianity, I did not find his oral evidence particularly compelling nor did he provide comprehensive reasons for his conversion and mostly referred to the differences between Islam and other religions and Christianity. When asked about how his conversion had affected his life, he said that he was less aggressive and calmer and did not refer to any other significant transformative changes.
38. The applicant has also not provided any other supporting evidence from members of this church, including his Kurdish friend, to support his claims about his alleged spiritual journey to convert to this religion.
39. On the evidence before me, I am not satisfied the applicant has genuinely converted to Christianity. Given this, I also do not accept that he has told his family in Iran about his Christian conversion. I am not satisfied the applicant has attended church and been baptised in Australia otherwise than for the purpose of strengthening his claims to be a refugee.

COVID19 consideration

40. In his decision, the delegate assessed whether the applicant would face a real risk of significant harm in Iran due to the COVID19 epidemic. However, the applicant has not raised any claims in this regard before the delegate nor in submissions to the IAA in response to this aspect of the delegate's decision. Given this, I have not considered this issue in my assessment nor have I considered it necessary to obtain any further information in this regard.

Refugee assessment

41. 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

42. 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.

43. As the applicant has not satisfied me that he has attended church and been baptised in Australia otherwise than for the purpose of strengthening his claims to be a refugee, I have disregarded this conduct in Australia in assessing whether he has a well-founded fear of persecution in Iran under s.5J(6) of the Act.

44. I have not accepted any of the applicant's claims of being interrogated and monitored by the Intelligence Ministry after he returned from a trip to [Country 1] or his claims in relation to his family's political history in Ilam. I have also not accepted any of his claims in relation to having a Baha'i girlfriend and being threatened and harassed by [Mr A] and the PJAK. I have also not accepted that he broke his employment contract by departing Iran or that he departed Iran on a fraudulent passport. I am not satisfied the applicant has a well-founded fear of persecution in Iran in relation to these claims.

45. The applicant also claims to fear harm in Iran as he is no longer a practising Muslim. I have accepted that the applicant no longer believes or practises Islam. In its 2018 report on Iran, the Australian Department of Foreign Affairs and Trade (DFAT) noted Iran is a theocracy that, with the possible exception of The Holy See, mixes religion and state more completely than any other country in the world. Article 4 of the Iranian Constitution requires that all of the country's laws and regulations be based on (Shia) Islamic principles. In practice, government policy and legislation heavily favours the majority Shia population, leading to pervasive structural discrimination against non-Shia Muslims and religious minorities and under Iranian law, a Muslim who leaves his or her faith or converts to another religion can be charged with apostasy but this is not an everyday occurrence in Iran and death sentences for apostasy and blasphemy are rare.⁴ Despite being a theocracy, country information before me indicates that Islam plays a smaller role in public life in Iran today than it did a decade ago and Iran is one of the least religious countries in the Middle East.⁵ A recent study indicates that the regulation of religious belief in Iran has led to a decrease in religious participation by its people.⁶ Many Iranians are non-practising, do not attend mosque regularly and do not perform their daily prayers and, for

⁴ The Australian Department of Foreign Affairs and Trade (DFAT), "DFAT Country Information Report – Iran", 7 June 2018, CIS7B839411226

⁵ "Religion: Take it or leave it", The Economist, 1 November 2014, CX1B9ECAB7499

⁶ Pejman Abdolmohammadi, "The Revival of Nationalism and Secularism in Modern Iran", LSE Middle East Centre, 1 November 2015, CISEC96CF14725

this reason, not attending engaging in such practices would not necessarily arouse suspicion.⁷ In a 2016 report on Iran, DFAT assessed that it is highly unlikely that the 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 thus it would generally be unlikely that it would become known that a person was no longer faithful to Shia Islam. Perceived apostates are only likely to come to the attention of Iranian authorities through public manifestations of their new faith, attempts at proselytisation, attendance at a house church or via informants. Atheists are also unlikely to come to the attention of security authorities unless they seek to publicise their views and its more recent 2018 report has not indicated a change in this assessment.⁸ There are reports before me of Iranians being punished for being caught eating in public during Ramadan but they do not indicate they were imputed to be apostates for doing so. In his statement, the applicant claimed to have pretended to be Muslim in Iran but during his arrival interview and at the protection visa interview he claimed he only believed in God and not Islam and provided no further evidence of how he pretended to be Muslim in Iran. He has also not provided any examples of coming to the adverse attention of the community or the Iranian authorities for lack of belief in Islam or lack of Shia practice in Iran. I am not satisfied there is a real chance the applicant’s lack of belief in Islam will come to the adverse attention of the community or Iranian authorities in Iran and I am satisfied on the evidence that the applicant will not promote his religious views in public in Iran and I am satisfied this will not be due to a fear of persecution. I am not satisfied the applicant faces a real chance of harm in Iran from the Iranian authorities or any other group or person because of his religious opinion.

46. I have not accepted that the applicant was monitored and questioned by the Information Ministry because of his Kurdish ethnicity or his alleged family’s political history in Ilam and I have not accepted his claims about his alleged family’s political history in Ilam. Other than these claims, the applicant has not raised any other claims of fear of harm in his application for protection or at his protection visa interview in relation to his Kurdish ethnicity. Country information before me indicates that Kurds in Iran report political and socioeconomic discrimination, particularly in their access to economic aid, business licenses, university admissions, job opportunities, permission to publish books, and housing and land rights.⁹ In 2018 DFAT assessed that ethnic minority groups face a moderate risk of official and societal discrimination, particularly where they are in the minority in the geographic area in which they reside. This may take the form of denial of access to employment and housing, but is unlikely in most cases to include violence on the grounds of ethnicity alone.¹⁰ However, I note the applicant was able to complete a relatively high degree of education at the tertiary level in [a subject] and was able to secure employment as an [Occupation 1] with [a] company in Tehran in 2006, a job he maintained until he left Iran in 2012. He has not described any other instance of discrimination or harm he faced as a Kurd whilst living in Iran, including Tehran. Country information before me also indicates that Kurds who are involved in political and cultural activities are targeted by the Iranian authorities¹¹ but I am not satisfied the applicant has such a profile. I am not satisfied the applicant will face a real chance of harm in Iran from any group or person on the basis of his Kurdish ethnicity.

⁷ Danish Immigration Service, “Update on the Situation for Christian Converts in Iran”, June 2014, CIS28931; ACCORD, “Iran: Treatment of atheists by State and non-State actors”, 12 June 2017, CISED850AD4616; Pejman Abdolmohammadi, “The Revival of Nationalism and Secularism in Modern Iran”, LSE Middle East Centre, 1 November 2015, CISEC96CF14725

⁸ DFAT, “DFAT Country Information Report Iran April 2016”, 21 April 2016, CIS38A8012677

⁹ US Department of State, “Country Reports on Human Rights Practices for 2017 – Iran”, 20 April 2018, OGD95BE927451

¹⁰ DFAT, “DFAT Country Information Report – Iran”, 7 June 2018, CIS7B839411226

¹¹ Danish Immigration Service and Danish Refugee Council, “Issues concerning persons of ethnic minorities, Kurds and Ahwazi Arabs”, 1 February 2018, CIS7B83941872; DFAT, “DFAT Country Information Report – Iran”, 7 June 2018, CIS7B839411226

47. The applicant also claims to fear harm from the Iranian authorities as he will be returning to Iran after spending a long period of time in a western country and he will be seen to be a sympathiser to the west and anti-Islam.
48. I accept that the applicant no longer has his genuine Iranian passport that he used to depart Iran. Country information before me indicates that Iranian overseas missions will not issue travel documents to an Iranian whom a foreign government wishes to return involuntarily to Iran.¹² In its 2018 report, DFAT indicated that it reached an agreement with the Iranian government to facilitate the return of Iranians who arrived after 19 March 2018,¹³ however the applicant does not fall within this category. If the applicant were to return to Iran, I am satisfied it would only be on a voluntary basis.
49. Country information before me indicates that it is not a criminal offence in Iran for any Iranian to ask for asylum in another country and DFAT has noted that Iranian authorities pay little attention to failed asylum seekers on their return to Iran and have little interest in prosecuting failed asylum seekers for activities conducted outside Iran, including in relation to protection claims.¹⁴
50. There are few very recent reports before me that allege mistreatment of failed asylum seekers on return to Iran. There are two 2017 articles which refer to the sentencing to prison of an asylum seeker on return to Iran but it notes that he had been arrested for an offence prior to his departure from Iran and was related to a political activist with little other detail about the case provided. A 2015 article by the Guardian refers to the return of two Iranian asylum seekers from Papua New Guinea who, after return, were forced to surrender their documents and were told to report to police though no further details about their circumstances were provided. Other recent articles refer to the arrest of returning political activists, artists, PHD students, and journalists or those who had been previously convicted of an offence and fled the country. I am also not satisfied, on the information before me, that the Iranian authorities impute failed asylum seekers from western countries with a political opinion against the Iranian government or with a pro-western or anti-Islam opinion. I am not satisfied the applicant has a profile such that there is a real chance he will attract the adverse attention of the Iranian authorities on his return.
51. A number of older reports before me indicate that Iranians who have left the country on their passports and return on a temporary travel document will be questioned by the Immigration Police at the airport which may take a few hours,¹⁵ however, in its 2018 report, DFAT has stated that the Iranian 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. I am not satisfied the applicant was of adverse attention to the Iranian authorities when he left Iran and have not accepted that he departed Iran on a fraudulent passport or committed any other offence that would cause him to be of adverse interest. Even if the applicant were to be

¹² Danish Immigration Service, "Human Rights Situation for Minorities, Women and Converts, and Entry and Exit Procedures, ID Cards, Summons and Reporting, etc.", 1 April 2009, CIS17329; DFAT, "DFAT Country Information Report – Iran", 7 June 2018, CIS7B839411226

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

¹⁴ Danish Refugee Council, Landinfo and Danish Immigration Service, "Iran: On Conversion to Christianity, Issues concerning Kurds and Post-2009 Election Protestors as well as Legal Issues and Exit Procedures", 1 February 2013, CIS25114; DFAT, "DFAT Country Information Report – Iran", 7 June 2018, CIS7B839411226

¹⁵ UK Home Office, "Country Information and Guidance - Iran: Illegal Exit", 20 July 2016, OGD7C848D28; Danish Immigration Service, "Human Rights Situation for Minorities, Women and Converts, and Entry and Exit Procedures, ID Cards, Summons and Reporting, etc.", 1 April 2009, CIS17329

questioned by the authorities on return, I do not consider this to amount to harm and I am not satisfied he will face a real chance of harm during questioning for any reason.

52. I am not satisfied the applicant will face a real chance of harm from the Iranian authorities or any other group or person due to being a failed asylum seeker from a western country.

Refugee: conclusion

53. 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

54. 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

55. 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.

56. 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.

57. I have not accepted any of the applicant's claims of being interrogated and monitored by the Information Ministry after he returned from a trip to [Country 1] in 2011 or his claims in relation to his family political history in Ilam. I have also not accepted any of his claims in relation to having a Baha'i girlfriend and being threatened and harassed by [Mr A] and the PJAK. I have also not accepted that he broke his employment contract by departing Iran in 2012 or that he departed Iran on a fraudulent passport. I am not satisfied the applicant will face a real risk of harm in Iran in relation to these claims.

58. Although I accept that the applicant has attended church and been baptised in Australia, I have not accepted that the applicant has genuinely converted to Christianity or that he has told his family in Iran about his conversion. Given this, I am not satisfied there is a real risk he will practice Christianity, attend church or identify as a Christian if he were to return to Iran. I am not satisfied that the Iranian authorities are aware of his church attendance and baptism in Australia or that there is a real risk they will become aware of this. Even if his family were to become aware of these activities, on the evidence before me, I am not satisfied the applicant will face a real risk of significant harm from them. I am not satisfied the applicant will face a real risk of significant

harm in Iran from the Iranian authorities or his family or any other group or person as a result of the above activities conducted in Australia.

59. I have found the applicant will not face a real chance of any harm in Iran in relation to his other claims. Consequently he will also not face a real risk of any harm in Iran.¹⁶ I am not satisfied the applicant will face a real risk of significant harm in Iran.

Complementary protection: conclusion

60. 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.

¹⁶ *MIAC v SZQRB* (2013) 210 FCR 505.

Applicable law

Migration Act 1958

5 (1) Interpretation

In this Act, unless the contrary intention appears:

...

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

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

...

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

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

but does not include an act or omission:

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

...

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

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

...

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

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

...

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

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

...

5H Meaning of refugee

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

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

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

...

5J Meaning of well-founded fear of persecution

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

5K Membership of a particular social group consisting of family

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

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

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

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

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

5L Membership of a particular social group other than family

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

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

5LA Effective protection measures

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

...

36 Protection visas – criteria provided for by this Act

...

- (2) A criterion for a protection visa is that the applicant for the visa is:
 - (a) a non-citizen in Australia in respect of whom the Minister is satisfied Australia has protection obligations because the person is a refugee; or
 - (aa) a non-citizen in Australia (other than a non-citizen mentioned in paragraph (a)) in respect of whom the Minister is satisfied Australia has protection obligations because the Minister has substantial grounds for believing that, as a necessary and foreseeable consequence of the non-citizen being removed from Australia to a receiving country, there is a real risk that the non-citizen will suffer significant harm; or
 - (b) a non-citizen in Australia who is a member of the same family unit as a non-citizen who:
 - (i) is mentioned in paragraph (a); and
 - (ii) holds a protection visa of the same class as that applied for by the applicant; or
 - (c) a non-citizen in Australia who is a member of the same family unit as a non-citizen who:
 - (i) is mentioned in paragraph (aa); and
 - (ii) holds a protection visa of the same class as that applied for by the applicant.
- (2A) A non-citizen will suffer **significant harm** if:
 - (a) the non-citizen will be arbitrarily deprived of his or her life; or
 - (b) the death penalty will be carried out on the non-citizen; or
 - (c) the non-citizen will be subjected to torture; or
 - (d) the non-citizen will be subjected to cruel or inhuman treatment or punishment; or
 - (e) the non-citizen will be subjected to degrading treatment or punishment.

- (2B) However, there is taken not to be a real risk that a non-citizen will suffer significant harm in a country if the Minister is satisfied that:
- (a) it would be reasonable for the non-citizen to relocate to an area of the country where there would not be a real risk that the non-citizen will suffer significant harm; or
 - (b) the non-citizen could obtain, from an authority of the country, protection such that there would not be a real risk that the non-citizen will suffer significant harm; or
 - (c) the real risk is one faced by the population of the country generally and is not faced by the non-citizen personally.

...

Protection obligations

- (3) Australia is taken not to have protection obligations in respect of a non-citizen who has not taken all possible steps to avail himself or herself of a right to enter and reside in, whether temporarily or permanently and however that right arose or is expressed, any country apart from Australia, including countries of which the non-citizen is a national.
- (4) However, subsection (3) does not apply in relation to a country in respect of which:
- (a) the non-citizen has a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion; or
 - (b) the Minister has substantial grounds for believing that, as a necessary and foreseeable consequence of the non-citizen availing himself or herself of a right mentioned in subsection (3), there would be a real risk that the non-citizen will suffer significant harm in relation to the country.
- (5) Subsection (3) does not apply in relation to a country if the non-citizen has a well-founded fear that:
- (a) the country will return the non-citizen to another country; and
 - (b) the non-citizen will be persecuted in that other country for reasons of race, religion, nationality, membership of a particular social group or political opinion.
- (5A) Also, subsection (3) does not apply in relation to a country if:
- (a) the non-citizen has a well-founded fear that the country will return the non-citizen to another country; and
 - (b) the Minister has substantial grounds for believing that, as a necessary and foreseeable consequence of the non-citizen availing himself or herself of a right mentioned in subsection (3), there would be a real risk that the non-citizen will suffer significant harm in relation to the other country.

Determining nationality

- (6) For the purposes of subsection (3), the question of whether a non-citizen is a national of a particular country must be determined solely by reference to the law of that country.
- (7) Subsection (6) does not, by implication, affect the interpretation of any other provision of this Act.