



**Australian Government**  

---

**Immigration Assessment Authority**

**Decision and Reasons**

**Referred application**

---

IRAN

IAA reference: IAA20/08118

Date and time of decision: 12 May 2020 13:08:00

C Wilson, 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 Shia Muslim and Sufi from Iran. She arrived in Australia as an unauthorised maritime arrival [in] June 2013. She applied for a Temporary Protection Visa (TPV) on 26 July 2017.
2. A delegate of the Minister for Home Affairs (the delegate) refused the application on 2 April 2020. The delegate found the applicant was a low level member of a Sufi sect, but did not accept she or her father had been targeted for this reason. The delegate did not accept she had been in an abusive relationship with a Basij officer. The delegate found the applicant did not face a real chance or real risk of harm for reason of her religion, gender, or returning as a failed asylum seeker.

### Information before the IAA

3. I have had regard to the material given by the Secretary under s.473CB of the *Migration Act 1958* (the Act).
4. On 27 April 2020 the applicant's representative provided a written submission with seven attachments. The written submissions contained legal argument and comment on the delegate's decision. Four of the attachments were country reports already before the delegate and are not new information. Three of the attachments however are new information in the form of articles regarding the registration of marriages in Iran.
5. The new information, that is the three articles, date from 2001, 2009 and 2019<sup>1</sup>. They are not credible personal information as they are not about identifiable individuals. They all pre-date the delegate's decision. The representative has not provided any submissions on why they could not have been provided prior to the decision being made, and I do not accept that they could not have been. They have been provided in support of a submission to the IAA that the date of the registration of the applicant's sister's marriage in 2006 was not inconsistent with a religious ceremony being held in 2005. The applicant was notified by the delegate under s.57 that they considered the sister's marriage ceremony and registration occurred on the same date in 2006. I consider therefore the applicant had the opportunity to provide these articles then to the delegate to make the point the ceremony could have occurred in 2005 before the registration in 2006. I am not satisfied either s.473DD(b)(i) or (ii) are met and therefore I must not consider this new information.
6. A new report on Iran<sup>2</sup> was released on 14 April 2020 by the Department of Foreign Affairs and Trade (DFAT) shortly after the delegate's decision was made. I have considered whether to obtain that report. The new DFAT report replaces the 2018 DFAT report relied on by the delegate, and includes more recent information on the applicant's claimed religion and the situation for women in Iran. In these circumstances I am satisfied there are exceptional circumstances to justify considering the new information in the most recent DFAT report.

---

<sup>1</sup> The article from Wikiprocedure was printed on 22 April 2020, but the article was last updated on 14 August 2019.

<sup>2</sup> DFAT, Country Information Report Iran, 14 April 2020.

## Applicant's claims for protection

---

7. The applicant's claims can be summarised as follows:

- The applicant is a single woman from Tehran. Her mother and brother live in Tehran, and one sister lives in [another country] and [sisters] live in Australia.
- Her religion is Shia Muslim and she follows the Nematollahi Gonabadi Sufi sect. Her father was born in Gonabad, and her parents were followers of the sect. Their house had Sufi writing, poetry and symbols on the walls and her father explained the concepts of Sufism to her from childhood. She has attended Sufi services since she was very young, and committed to Sufism since high school. She was warned by her father to keep quiet about Sufism at school.
- At high school she was punished for allegedly insulting the Prophet Muhammad's daughter. This incident prevented her from being accepted by university to study [her preferred subject] and she struggled to find employment. Eventually, two years after finishing high school, she started an administrative job with the [named] Organisation with the assistance of an influential neighbour. She worked for this organisation, which subsequently merged with the [State Agency 1], from [year] to 2013. During her employment she was able to study [another subject] at the university, completing an associated degree in [year] and a bachelor degree in [year].
- In 2005 her father was arrested for his activities as a Sufi, after police came to their house when they heard the applicant's sister was being married in a ceremony at home by a Sufi celebrant. Her father was detained overnight and was interrogated and mistreated by the officers. He was forced to sign a declaration that he would not practice Sufism. However he continued to practice Sufism and a few weeks later he was fired from his job.
- In 2006 his father was hosting a Sufi gathering at home to celebrate Eid. Police officers raided the house on the grounds they were hosting a mixed party with forbidden music and other Haram acts being committed. They insulted her father, and when a relative came to his defence that relative was assaulted and arrested. The following day her father [had a medical condition] and died.
- They held a memorial ceremony for her father and she invited her work colleagues. Although she had always hid her Sufism from them, on this occasion she told them about her religious beliefs and practices.
- The Herasat office at her work learnt of her Sufism from her colleagues. From that time on they issued her with unprecedented disciplinary warnings regarding her hijab, make-up, and behaviour in the office. She was marked low in performance assessments, and lost some of her privileges and benefits at work. However neither her behaviour nor work performance had changed since before they learnt of her Sufism. As a permanent employee the Herasat could not dismiss her for being Sufi but planned to falsely accuse her of poor behaviour and performance to justify a dismissal. The Herasat also frequently called her in for religious interviews and would ask questions about her prayer activities.
- In 2010 she met [Mr A] through a friend. He was an employee of [another state agency] and she later learnt he was a member of the Basij. They got engaged in 2010 and entered into a temporary marriage in 2012 so as not to be harassed by the moral police. Over time she saw him become aggressive and he was verbally and physically abusive to her. A few months before she left Iran, she decided to end her relationship with [Mr A]. He began threatening her and hired people to break into her car and steal documents. She was genuinely fearful of him.

- Her relationship with [Mr A] was reported to the Herasat office. They accused her of having an unlawful relationship and gave her another written warning. They also found her mobile phone at work and accessed it to find photos of her with [Mr A], messages to Sufi friends, and photos of the 2009 protests.
- Her manager at work was told by the Herasat to force her to resign. He pressured her to become his mistress in turn for him protecting her from the Herasat. She refused and he terminated her employment.
- She fled Iran because it would be impossible to find employment again after being fired for being a Sufi and because she was threatened by a mentally unstable ex-fiancé who as a member of the Basij had influential contacts within the Iranian regime.
- In Australia she has continued to follow Sufism. She looked for a group in [her city] but it was difficult to find such a group. In 2016 she found a small group of Nimatullahi Gonabadi Sufis holding gatherings in [her city] and joined them.
- She fears returning to Iran as she will not be able to freely practice her faith and will face discrimination and harm from the authorities for doing so. She also fears [Mr A] will cause her serious harm as he has threatened to destroy her for leaving him.

## Refugee assessment

---

8. 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

9. 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.
10. I accept the applicant is a citizen of Iran, based on the identity documents she provided to the Department, including a copy of her Iranian passport. I find Iran is her receiving country. I also find Tehran is the place she is likely to return to, as she always lived there in Iran and her family in Iran still live there.

11. The applicant claims to be a Shia Muslim who is a follower of the Nimatollahi Gonabadi order of Sufism (Gonabadi Sufi order), which is the largest Sufi order in Iran. She says her parents followed this order, as her father was born in Gonabad where one of the order's grand masters was born. Their house was said to be decorated with Sufi poetry and symbols and she was taken to Sufi gatherings from childhood. She says it was in high school when she really committed to the religion. Her mother is still a follower, however her siblings are not.
12. The Gonabadi Sufi order is said to have between 2 and 5 million followers in Iran. Sufis, also known as Dervishes, practice a mystical form of Islam that includes rituals of music, dance and song to have a direct encounter with their god. Iran does not recognise Sufism as an official religion. The Gonabadi Sufi order has historically been tolerated by the authorities, however the order has come under increased pressure from the authorities in recent years. Country information indicates the harassment of Sufis increased from 2005, when President Ahmadinejad took office, with further restrictions from 2009. This was reportedly because the Gonabadi Sufi grand master supported an opposition candidate when Ahmadinejad was re-elected. There are reports of Gonabadi Sufi lodges being destroyed by local authorities and groups of Basij militias. Some followers have lost their employment and been banned from universities. Gonabadi Sufi websites have been shut down. Gonabadi Sufi order followers are unable to freely practice their religion, and to access employment and education they must misrepresent themselves on official documents. The current grand master of the Gonabadi Sufis is Nour Ali Tabandeh, a former culture minister and deputy justice minister of Iran. He has been under house arrest since February 2018. When Gonabadi Sufis protested against his house arrest in February 2018, around 300 of them were arrested. During the protest 5 security officers were killed, including 3 killed when a bus struck them. The bus driver was reportedly executed in June 2018. According to Amnesty International more than 200 protestors received prison sentences ranging from 4 months to 26 years.<sup>3</sup>
13. The applicant claims her father was targeted by the authorities from 2005 for reason of his practice as a Sufi. The first incident was said to have occurred on the day her sister was getting married. The celebrant, a Sufi, had been detained by the police and he told the police he was officiating a wedding that night. The police turned up at the family home and tried to arrest her father. A relative intervened and the police left when the father promised to attend the police station later. He did so and was detained overnight. He was physically mistreated whilst in detention and forced to sign a document stating he would no longer attend or hold Sufi gatherings at home, or let his family members practice Sufism, and would take down photos of Sufi masters at home. However, upon release he continued to practice his religion. The applicant claims that for this reason her father lost his employment from a job he had held for 27 years. The second incident occurred in 2006 when her father was hosting an Eid celebration at home with fellow Sufi followers. Police raided the home under the pretext of stopping a party with mixed genders and forbidden music. Her father was insulted, but not arrested, however another relative was arrested. She claims her father [had a medical condition] and passed away the following day.
14. I find aspects of the applicant's account are unlikely. Given the alleged incident in 2005, where her father was allegedly forced to sign a document stating he would not practice Sufism, I do not accept he would have been merely 'insulted' in the home raid in 2006 when he was found to be hosting a Sufi gathering with Sufi pictures still on his walls. That he was not arrested in

---

<sup>3</sup> DFAT, Country Information Report Iran, 14 April 2020: Immigration and Refugee Board of Canada, Iran: Information about the Gonabadi dervishes, including their origin, history in Iran, leaders, ideology, practice; and the treatment of dervishes and their family members by society and authorities in Iran, including whether dervishes can practice their faith in Iran, 23 September 2014 (IRB Canada report); Ceasefire Centre for Civilian Rights, Minority Rights Group International and Centre for Supporters of Human Rights, Rights Denied: Violations against ethnic and religious minorities in Iran, 13 March 2018.

2006 suggests either that incident, or the incident in 2005, did not occur. As referred to in country information, the authorities were less tolerant of Sufis from 2005 and I do not accept they would not have arrested him in 2006 if he had already been detained and warned in 2005, particularly given the claim another relative at that party in 2006 was arrested. I am also not persuaded the applicant's father lost his job after the first alleged incident in 2005. The applicant's father was over retirement age, usually 65<sup>4</sup>, in 2005. Her father was born in [year], which meant he would have been in his [age range] in 2005. Although this was raised with the applicant, no explanation or evidence was provided on why her father was still employed past the usual retirement age. I note also the applicant has not provided any evidence to support the claims regarding her father. There is no medical evidence, death certificate, statements from other family members, evidence of employment in 2005 prior to the alleged arrest, or photographs that may show Sufi symbols or photographs in their family home. The only document provided was a document from 2019 regarding her mother's pension which is purported to show the mother was receiving payments from Social Security rather than a Civil Servants Pension Fund, which is claimed she would have been entitled to had her husband merely retired and not been dismissed from his employment. But no country information or other evidence has been provided to support this claim either, and I do not accept the receipt of Social Security payments is evidence her late husband was dismissed from his employment.

15. On the information before me, I am not satisfied the applicant's father was targeted as claimed for any practice of Sufism. I do not accept any of his family, including the applicant, face a risk because of his profile, because I do not accept he had an adverse profile. Country information indicates some family members of Gonabadi Sufis have been harassed and abused by security forces or put under surveillance.<sup>5</sup> Yet the applicant and her family members have been free to travel in and out of Iran without issues, numerous times. This includes the applicant's mother, who is claimed also to be a follower of the Gonabadi order, who travelled from Iran to Australia and returned to Iran without any attention or problems. There is no evidence of her mother or siblings suffering any adverse attention or harm since the father's death, and for reasons given below I do not accept the applicant received any adverse attention. The lack of evidence of targeting of the applicant's family supports a conclusion that neither her father, nor other family members, have profiles as followers or as relatives of followers of the Gonabadi Sufi order.
16. When the applicant was interviewed for her Entry Interview, about a month after arriving in Australia, she gave her religion as Shia Muslim. She made no mention of being a Sufi at any time during the interview, even after being asked questions such as why she left Iran and whether she belonged to any particular groups. She made no mention of herself, or any family members, facing harm or harassment for following a Sufi order. Her representative submits no weight can be given to these omissions, consistent with the Full Federal Court decision in *MZZJO*.<sup>6</sup> I do not accept the submission that the decision in *MZZJO* stands for the proposition that omissions during Entry Interviews cannot be relied upon. I acknowledge however that caution should be given to such reliance for the reasons set out in that decision.<sup>7</sup>
17. The delegate raised the concern in the TPV interview that the applicant had not raised her Sufism in the Entry Interview. In post interview submissions the representative relied on the *MZZJO* decision. Little explanation was given as to why she concealed her Sufism except that she 'was not confident that making any comments against the Islamic regime to the Australian authorities during her Entry Interview would remain confidential in case of her deportation to

---

<sup>4</sup> Small Media, Hard Labour: Workers' Rights in Iran, 12 January 2016.

<sup>5</sup> IRB Canada report.

<sup>6</sup> *MZZJO v MIBP* [2014] FCAFC 80.

<sup>7</sup> *DWA17 v MIBP* [2019] FCAFC 160.

Iran'. I do not accept this explanation. She could have said she followed a Sufi order without making comments against the Islamic regime. In any event she did make comments at the Entry Interview that can be seen as comments against the Islamic regime, when she complained about how police and security treat women in Iran. I note that in the applicant's case her Entry Interview was held around a month after she arrived in Australia, which gave her some time to recover from the journey. I accept she may not have had legal advice at that time nor appreciated what weight may be given to the information she gave at that interview in a later visa application, but I consider her silence on an issue that would form a large part of her claims is concerning. Whilst she was asked to be brief when responding to the question 'why did you leave your country of nationality' she was also asked follow up questions after she detailed an abusive ex-partner as her reason for leaving. She was asked 'is there any other reason you left Iran' and 'apart from this situation, did anything else happen to you or your family to make you want to leave'. In response she spoke only of her ex-partner and the treatment of women in Iran, and never raised Sufism or that her father was targeted. She was specifically asked if she belonged to any particular social or religious groups and she still did not mention the Gonabadi Sufi order. When asked later in the interview if she wanted to add anything she talked about discrimination in the workplace and generally against women in Iran. There was no mention of the particular discrimination she now claims to have suffered because of her religious activities. I consider her lack of mention of anything related to the Gonabadi Sufi order is suggestive that she was not a follower of this order in Iran and that it was not a reason she left or feared returning to Iran.

18. The applicant claims she has been a committed follower of the Gonabadi Sufi order since she was a teenager. However she did not provide any documentary evidence to demonstrate she, or her parents, were followers of the Gonabadi Sufi order in Iran. In relation to her practice in Australia the applicant says she only joined a group in Australia in 2016 with whom she meets weekly. She provided two documents reportedly signed by these fellow Gonabadi Sufis in [her city of residence in Australia]. The first document, undated, was provided to the Department with the TPV application in June 2017. It states she 'is one of the founding members and an active practising Sufi of the Gonabadi Sufi Order in [that city]...[and] participates in our weekly prayer session regularly. She is a devout Sufi and an invaluable member of the Sufi community in [her city]'. The document is signed by 4 people in [that city] and another person said to be the '[a leader of the order] in Australia' who lives in [another state]. When the delegate asked the applicant for more evidence that she was a founding member the applicant responded that the words 'founding member' was meant to signify she was 'a very important and key member of the group'. A second statement dated [in] December 2019 was provided from the group stating the applicant 'is one of the respected and active members of our group who has been practising Sufism with us in [city]'. It was signed by 5 people, 3 of whom had signed the previous statement. It was submitted she only joined this group in 2016 because there is only a limited number of Gonabadi Sufis in [her city] and the applicant had to do a lot of networking in the community to find this group. There is no evidence about how long this group has been meeting or how she eventually found them. I consider the 3 year gap between arriving in Australia and allegedly joining a Gonabadi Sufi group is not consistent with a claim to be a devout follower. I note no other evidence was provided to show the 'Gonabadi Sufi Order in [her city]' is a genuine group or that the people signing the statement are also followers of the Gonabadi Sufi order. This is despite the delegate sending a request to the applicant for more information on 19 February 2020, including asking for information about the persons who signed the statement and their association to the Gonabadi Sufi Order in [her city]. I give these statements little weight, given the embellishment in the first statement, describing the applicant as a 'founding member' when she was not, the lack of evidence beyond the statements to show there is such a group as the 'Gonabadi Sufi Order in [that city]' or that the people signing the statements are also members, and the lack of detail in the statements about

how and when the group was formed, how many members it has, and when the applicant joined it.

19. The applicant claims she was harassed at work from 2006, when she told her colleagues about her Sufi beliefs and practice after her father's death. She claims that from this time on the Herasat at her workplace took an adverse interest in her. She claims to have been called in regularly for interviews, to have received written disciplinary warnings for things that had never previously been of concern (her hijab, make-up or behaviour) and to have received low performance assessments. She also claims to have lost benefits and privileges such as bonus payments and holiday allowances. She said they could not fire her because she was a permanent employee, however this appears inconsistent with country information that states Sufi followers have been dismissed from jobs for reasons of their religious practices.<sup>8</sup> This includes reports of Sufis being dismissed from government jobs.<sup>9</sup> The applicant has not provided any documentary evidence to support her claim to have received written warnings and low performance appraisals. Even if I accepted her employer was unable to fire her for her religious beliefs, which I do not, I consider it implausible it would have taken them 7 years to finally fire her. That is, I do not accept it required 7 years of disciplinary warnings and low performance assessments from 2006 to 2013 to fire her for reason of poor discipline and performance. Particularly as she claims these disciplinary warnings and interviews occurred regularly. I note also that during the period she claims to have been under such scrutiny and harassment from the Herasat, she also completed a [specified] degree in [year] whilst working for the [State Agency 1]. This suggests her employer supported her to do this and also did nothing to prevent her from studying, such as advising the university she was a Sufi. Taking into account the applicant's employment from [year] to 2013 in a government Ministry, her access to university education during that time, her senior position, the lack of documentary evidence of any disciplinary proceedings against her, and the unlikelihood of an employer taking 7 years to fire an employee especially given they were simultaneously supporting her in higher education, I do not accept the applicant was harassed and of adverse interest to the Herasat in her workplace. I do not accept the harassment by the Herasat is evidence of her Sufi practice and beliefs because I do not accept this harassment occurred.
20. The only evidence I have before me that the applicant is a Sufi, apart from the two statements that I give little weight to, is her written claims and oral evidence at the TPV interview. As noted in the delegate's decision, at the TPV interview the applicant demonstrated some knowledge of the order and its beliefs. Based on this I accept the applicant has some experience or knowledge of the Gonabadi Sufi order. I am not persuaded however by the evidence before me that she is a devout, long term and committed member of Sufism as claimed. For a person who claims to have been a follower for over 30 years she has provided minimal documentary evidence of this, and for the reasons given above I give little weight to the only documentary evidence provided in the form of 2 statements. I note the three year gap in Australia where she admits she had no contact with other followers of the Gonabadi Sufi order, which indicates she is not as committed a follower as claimed. She hasn't detailed how else she actively practised her religion during this gap. I also give weight to the failure to mention any belief or activity with the Gonabadi Sufi order in her Entry Interview. Taking into account all the information before me, I accept the applicant has some knowledge of the Gonabadi Sufi order, but I do not accept she is an active follower or that she would be in the reasonably foreseeable future. If she has had contact with or attended any Gonabadi Sufi gatherings in [her city] I do not accept this would be known by the Iranian authorities. I do not accept she will be prevented from freely practising her religion in Iran, as I do not accept she is an active follower

---

<sup>8</sup> Al Jazeera, Iran's Gonabadi Dervishes: A 'long history' of persecution, 28 February 2018.

<sup>9</sup> IRB Canada report.



of the Gonabadi Sufi order. I do not accept the applicant faces a real chance of harm as a perceived Gonabadi Sufi order follower because I do not accept she has such a profile. Relying on my findings above in relation to her father, and the lack of any problems for other family members, including her mother who was also said to be a Gonabadi Sufi follower, I also do not accept she faces a real chance of harm as the relative of a Gonabadi Sufi order follower.

21. The applicant claims to fear harm from her ex-partner [Mr A]. She claims to have been in a relationship with him from 2010 until a few months before leaving Iran in 2013. She provided evidence that she entered into a temporary marriage for 16 months from [May] 2012 to a man called [Alias A]. She claims this is the same person as [Mr A], but there is no explanation as to why he has two very different names. For the purpose of this assessment I have assumed [Alias A] is the man she calls [Mr A]. She says they entered into the temporary marriage to avoid problems with the moral police. Temporary marriages allow couples to openly have a relationship, without a conventional marriage. They can be entered into for a period as short as a few hours to several years.<sup>10</sup> The applicant says she entered into a temporary marriage to avoid problems with the moral police. She doesn't explain why, after allegedly getting engaged in 2010, they chose a temporary marriage and not an actual marriage two years later. She also doesn't explain why a temporary marriage was needed in 2012 when for the previous two years there is no claim of any issues with the moral police. I note also her ex-partner was allegedly a member of the moral police himself.
22. The applicant claims [Mr A] was a member of the Basij, and for this reason he is well connected to the security services in Iran and accordingly is a greater threat to her. She has given different accounts of when she discovered he was a member of the Basij. She stated in her written claims that she learnt this months after meeting him in 2010. At her TPV interview however she said she only learnt that he was a member of the Basij near the end of the relationship in 2013. I consider it unlikely she would only have known this at the end of their relationship, after she had become engaged to him and even entered into a temporary marriage with him, or that the friend who introduced her to him might not have mentioned this important information. DFAT reports most Basij members are age between high school age and mid-30s. [Mr A] was in [an older age range] when the applicant met him, and although men of this age can be Basij members it is less common. In the unlikely event he was a member of the Basij, he did not use that position or his security contacts to prevent the applicant from departing Iran, or otherwise cause difficulty for her or her family. On the information before me, I consider the claim that her ex-partner was a member of the Basij is an embellishment and I do not accept that he was.
23. If the applicant was in a relationship with an abusive and unstable ex-partner, I do not accept she faces a real chance of harm from him now. It has been 7 years since she ended the alleged relationship, and there is no evidence he has contacted her since she left Iran. She says her car was broken into and papers stolen from her car after they broke up, and she believes [Mr A] paid people to do that. Even if this occurred, there have been no such incidents since 2013 targeting her or her family. At the TPV interview she said people had called her mother's house, but her evidence regarding this was vague and lacking detail. There is no evidence her mother or other family members have been directly threatened or harmed since she left. I find the chance of [Mr A] looking for the applicant and harming her 7 years after the relationship ended, in circumstances where there has been no contact between them for 7 years, is too remote to amount to a real chance.

---

<sup>10</sup> Qantara, Temporary Marriage in Iran, 4 April 2013.

24. The applicant raised issues of harassment and discrimination she received in Iran in employment and education. Some of this was raised as related to her alleged religious beliefs and practices, but some was also due to her gender. The Iranian constitution commits the government to ensuring the rights of women, and women in Iran do enjoy considerable legal protections in areas including personal safety, participation in the workplace and mandatory schooling. However hard-line *sharia* interpretation and conservative culture can limit the extent to which women are able to participate in Iranian society.<sup>11</sup> The applicant claimed to face discrimination upon leaving high school in accessing university and employment, however she claims this was due to a comment made at high school that was interpreted as insulting Islam rather than because of her gender. Nevertheless, with the assistance of a neighbour she obtained her first job in [year] and from that time on was employed and able to access higher education. That is, from [year] to 2013 she completed two university qualifications and progressed her career to obtain a senior government position in the [State Agency 1]. If she encountered discrimination in her employment or education from [year], I do not accept it was significant.
25. The applicant claimed she was eventually fired from her employment in 2013 when she refused her manager's sexual advances. Whilst I do not doubt that such harassment can occur in the workplace, I do not accept the applicant was fired from her job for this reason. I make this finding relying in part on her Entry Interview, where this was not raised and in fact she spoke of working in her job until she left Iran. I also make this finding because I do not accept the underlying story of why her manager was inappropriately propositioning her. I rely on my findings above, where I do not accept she was being harassed and managed out of her job by the Herasat, and thus I do not accept the Herasat told her manager to force her to resign at which point the manager allegedly offered to protect her from the Herasat if she would be his mistress. The applicant has not claimed to fear any future harm from the previous manager, and I consider it too speculative to amount to a real chance that if sexual advances were made in 2013 for another reason, that she would face serious harm from him now or in the reasonably foreseeable future. I make this finding even if she were to return to work in the [State Agency 1], taking into account that it is speculative that she would even work with him again, and noting that she worked there for some years before sexual advances were made and rebuffed, and taking into account the passage of time since the incident occurred.
26. The applicant's mother and brother continue to live in Tehran and she confirmed at the TPV interview that she maintains frequent contact with them. I consider she would have their assistance and protection on return to Iran such that she would not be a woman living alone. As a mature, well-educated woman with family support, I find the applicant does not face a real chance of harm now or in the reasonably foreseeable future in Iran for reason of her gender.
27. The applicant did not claim to fear harm as a returning failed asylum seeker, however the delegate considered this arose from the materials. There are reports of returnees to Iran facing interrogation at the airport, arrest or other harassment. These reports however refer largely to persons with an existing profile, either in Iran or active against the Iranian regime whilst abroad.<sup>12</sup> For reasons already given I do not accept the applicant has a profile as a Gonabadi

---

<sup>11</sup> DFAT, Country Information Report Iran, 14 April 2020.

<sup>12</sup> 'Reformist Political Activist Turned Refugee Briefly Arrested Upon Return to Iran', Center for Human Rights in Iran (United States), 18 October 2017; 'Woman Asylum Seeker Lashed 80 Times After Being Deported to Iran From Norway', Iran Human Rights (Norway), 20 September 2017; 'AMNESTY INTERNATIONAL - URGENT ACTION: UA 125/11: Student activists held in Iran', Amnesty International (United Kingdom), 6 May 2011; 'Teenager imprisoned after being deported to Iran', Ny Tid (Norway), 23 March 2011; 'The Kurdish asylum seeker Rahim Rostami, charged

Sufi follower. There is no evidence the applicant attracted adverse attention from the authorities on previous exits and return to Iran, including an overseas holiday in 2009 and her departure in 2013. Her representative submits the presence of her sisters in Australia could expose her to a greater risk of questioning on return. However this has not occurred for any other family members. There is no evidence any of her family members have attracted adverse attention when departing and re-entering Iran, including her sister who travelled with her in 2013 to seek protection in Australia but who voluntarily returned to Iran in May 2017 and departed 10 months later to return to Australia on a [different] visa. It is not a crime in Iran to have sought asylum in another country. DFAT reports the Iranian authorities pay little attention to failed asylum seekers on return to Iran, and that Iranian citizens have left the country in large numbers since the 1979 revolution, and the authorities accept Iranians may choose to live and work overseas.<sup>13</sup> I consider there is nothing in the applicant's profile to raise adverse attention on her return. I find the applicant does not face a real chance of harm for reason of returning from Australia as a failed asylum seeker.

### **Refugee: conclusion**

28. 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**

---

29. 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**

30. 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.
31. 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.
32. I have found the applicant does not face a real chance of harm for reason of her religion, family, ex-partner, gender, or returning as a failed asylum seeker. 'Real chance' and 'real risk' has

---

with "actions against the nation's security", released on bail', Iran Human Rights (Norway), 19 June 2011.

<sup>13</sup> DFAT, Country Information Report Iran, 7 June 2018; DFAT, Country Information Report Iran, 14 April 2020.

been found to equate to the same threshold. For the same reasons given above, I find the applicant will not face a real risk of significant harm for any of the reasons claimed or at all.

**Complementary protection: conclusion**

33. 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.