



Australian Government
Immigration Assessment Authority

Decision and Reasons

Referred application

IRAN

IAA reference: IAA20/08295

Date and time of decision: 12 June 2020 14:35:00

J Maclean, Reviewer

Decision

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

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

Background to the review

Visa application

1. The referred applicant (the applicant) claims to be an Iranian national. On 22 August 2017 he lodged an application for a safe haven enterprise visa (SHEV). A delegate of the Minister for Immigration refused to grant the visa on 22 April 2020 on the basis that the applicant is not owed protection.

Information before the IAA

2. I have had regard to the review material given by the Secretary under s.473CB of the *Migration Act 1958* (the Act). No further information has been obtained or received.

Applicant's claims for protection

3. The applicant's claims can be summarised as follows:
 - He grew up in a non-practising Muslim family and abandoned religious ideas when he was 17 or 18 years old. He was known among his friends and family as a non-believer. Several times he got into trouble with school authorities for spreading his anti-religious ideas among other students. Whilst at university he received several warnings from university authorities and was sent to the disciplinary committee and ordered to stop spreading controversial ideas about the universe and creation among students. He also had confrontations with a few lecturers about religion. This led him to withdraw his study and return to Tehran.
 - He attended demonstrations against the regime after the presidential election in 2009, during which he was beaten, but was not arrested.
 - After leaving university he refused to do compulsory military service because he was afraid he would be forced to attend prayers every day and engage in other religious ceremonies, or risk being disciplined. He feared he would be court-martialled if authorities suspected he did not believe in God. He started an underground gathering with like-minded people debating and exchanging ideas about creation of the universe, God, religion, and scientific theories. He was aware if authorities found out about his secret meetings his life would be in danger, and his family would also suffer.
 - As he had not completed military service he was unable to get a permanent job or a passport, so he tried to leave Iran illegally and go to [Country] in 2012, however he was arrested and his family had to pay a hefty penalty for his release. He was warned the next time he would go to prison.
 - He was easily provoked by the moral police and was arrested a few times for half a day or overnight. At the Basij station he was insulted and humiliated so that he lost control and answered back and as a result was beaten very badly. He suffers head and ear aches from that incident.
 - He left Iran using a fraudulent completion of military service document to obtain a passport. On return he will be arrested and sentenced to imprisonment because he did not attend compulsory military service, and for leaving the country with fraudulent documents. On release from prison he will be forced to attend military service.

- In Iran he will not have the freedom to express himself as an atheist. He is fundamentally against the core ideology of the Iranian regime, and if they find out about his atheistic ideas he will not be protected and may be killed.

Refugee assessment

4. 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

5. 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.
6. The applicant has provided documentary evidence to support his identity, in the form of his Iranian National Identity Card and birth certificate. I accept he is an Iranian national, born in Tehran in [Year], and Iran is the receiving country for the purpose of this assessment.
7. Included with the review material is an email titled ‘Copied in error please ignore’. That document contains information regarding a different applicant, and I have not had regard to it. Also included in the review material is the SHEV application for another applicant (‘[Mr A]’), who arrived in Australia on the same boat as the applicant. The delegate noted the similarity between [Mr A]’s SHEV application and a number of the applicant’s claims. During the SHEV interview the applicant said he and [Mr A] share similar views, and that is why they are close friends, but that he is not sure about [Mr A]’s reasons for escaping, and does not know what he put in his application. In the post-SHEV interview submission the applicant’s representative said the two applicants are old friends, who together found someone to provide them with false military service completion documents so as to apply for passports, found a smuggler to take them to Australia, and left Iran together, and they remain close friends. Of note both applicants’ SHEV applications were prepared by the same representative, who also attended the SHEV interview with the applicant. Although I have considered the information relating to [Mr A], I do not share the delegate’s concerns regarding the similarities between some of the claims, and make no adverse finding in that regard.

8. Along with the SHEV application the applicant provided two country information reports, and a copy of the United Nations Universal Declaration of Human Rights. The first report is a brief article from The Atlantic, published in December 2013, concerning 13 countries where atheism is punishable by death, of which Iran is one. The second is an undated article titled 'Apostasy & Atheism – Middle East & Iran' from Progressive Atheists Inc, and which suggests that legislation that criminalises apostasy is against the fundamental principles of the United Nations Universal Declaration of Human Rights, Article 18 which espouses freedom of thought, conscience and religion. The second report also suggests atheists suffer extreme hardship in their daily life, and in particular that Iranian atheists fear persecution in their home country, including Muslims and non-Muslims being sentenced to death. The reports provided by the applicant pre-date DFAT's April 2020 report by at least two or three years. DFAT's more recent assessment of the situation in Iran is based on on-the-ground knowledge and discussions with a range of sources in Iran, and has been prepared specifically for protection status determination. I am satisfied the DFAT report is an authoritative and credible document, providing recent and cogent information on the situation in Iran for people with a profile similar to the applicant. Although I have considered the reports provided by the applicant, I afford the DFAT reports greater weight.
9. The applicant claims to fear harm on the basis of religion. The record of the Entry interview indicates he has 'No religion'. In his SHEV application he refers to his religion as atheism, and claims to have grown up in a non-practising Muslim family, and to have abandoned religious ideas when he was 17 or 18 years old. He claims he was known to his family and friends as a non-believer and got into trouble several times because of that, including with school authorities for spreading his anti-religious ideas, and whilst at university he had several confrontations with university authorities regarding the Islamic Code of Conduct and with a few lecturers about religion. He received several warnings and was sent to the disciplinary committee, where he was ordered to stop spreading controversial ideas about the universe and creation among students. These issues led him to leave university. After leaving university he started an underground gathering with like-minded people debating and exchanging ideas about creation of the universe, God, and religion. He felt it was his mission to talk to the younger generation, give them an awareness and encourage them to break the taboo about religion in general, and Islam in particular. By discussing new scientific theories, like Steven Hawking's new theory, he started to think independently and without fear. He was aware if authorities found out about him and the secret meetings his life would be in danger and his family would also suffer.
10. At the SHEV interview the applicant referred to growing up in a 'medium religious family', and suggested he did not have a choice but to follow the Islamic religious rituals and perform the obligations, and as a result losing his confidence and always feeling in danger. He said he renounced Islam at the age of 17, and he studied 'how the world was created and Stephen Hawking', and that it opened his mind about the God that was introduced to him. He said that people who turn away from Islam are labelled as apostates and are executed. When asked by the delegate if he had come to the adverse attention of Iranian authorities prior to his departure, the applicant referred to getting into discussion with some religious people and them taking it personally. He described sometimes being called an infidel as a result of religious discussions with people in the local area. On one occasion, whilst he was relaxing in a sauna at the swimming pool, he got into a religious discussion with five or six people who came with their long beards and started talking about religion, and going through verses of the Quran, to which he objected. The post-SHEV interview submission suggests the applicant's family were not very religious, they were anti-Islamic revolution, and pro-Shah, and that the applicant was very studious and read many scientific books, and the more he read the more he doubted religion. When he entered university he was very active in finding a group of students for underground gatherings, where they criticized the regime and discussed religion and science. A few months before he left university he had a feeling he was under surveillance. A friend told him the university Basij were

suspicious and asking about him, and he left the university without giving notice and returned to Tehran. In Tehran he became active in a movement against the Islamic regime and their religious doctrine, becoming a leader of an underground movement of young non-believers. Despite fearing for his life for a few years, he continued his anti-religious activities. He was informed the Basij had him on their radar and he was going to be arrested soon, and he and his best friend decided to leave Iran as soon as possible.

11. The applicant's evidence on these issues was extremely generalised, referring a number of times to discussions about religion, creation, and Stephen Hawking, without providing any further substance about those discussions. It appeared to me he was simply repeating learned phrases, rather than having genuine interest in or engagement with the subjects. In addition, the evidence lacked specificity about when such discussions occurred, the identity of those he had the discussions with (other than suggesting they were friends, local people and like-minded students), the identity of who informed him the university Basij had been asking about him, or who told him the Basij were going to arrest him or how the person became aware of that. Given the applicant claims he had expressed his views during his schooling and in public settings, and whilst at university he came to the attention of university authorities for engaging in activities involving expressing his views, and that he had been arrested a few times by the Basij, I am rather surprised by the timing of the purported interest by the Basij which caused the applicant to fear arrest and to leave Iran. I can accept he may hold some anti-Iranian government views, including in relation to religion, however, I do not accept he publicly renounced Islam or became an atheist, that he made his views known publicly, or that he was a leader of, or engaged in, discussion groups, or that he would engage in such discussions if returned to Iran. I do not accept the applicant was of adverse interest to Iranian authorities for expressing his views, including religious or anti-regime views, that he was arrested for that reason, or that he left Iran as a result of fears related to that reason. I also note the applicant left Iran on a genuine Iranian passport in his name, which I consider is indicative he was not of interest to authorities at that time.
12. Although the applicant suggested during the SHEV interview that after arriving in Australia he was comfortable and free to express his views to a number of people, his evidence was similarly vague and unconvincing on that issue, lacking any information about the nature of such discussions, when and where they were held, or the identity of the people involved. No information has been provided to support the applicant has posted any material online. I do not accept the applicant has publicly expressed any religious or political views in Australia. In relation to his family not being very religious and having anti-Islamic revolution and pro-Shah views, the applicant said about eight of his 13 family members stopped believing in Islam as well, however no information about how they express their anti-regime and pro-Shah views. There is nothing in the information before me to support any family member has been of adverse interest for those reasons, and I do not accept they have been. At the SHEV interview the applicant also referred to the majority of his friends 'accepting and believing' what he said to them, presumably indicating they no longer believe in Islam, however he did not suggest they had been of adverse attention for that reason. I can accept the applicant did not practise the Muslim religion at the time he left Iran, that he has not done so whilst in Australia, and that he is not likely to do so on return to Iran. I acknowledge the country information reports that a Muslim who renounces Islam and becomes atheist is considered apostate and risks state persecution, and potentially the death penalty.¹ However, I am not satisfied the applicant has done so, in Iran or whilst in Australia, or that he would do so if returned to Iran, such that he would be considered apostate and be at risk of any harm for that reason. I consider the applicant will be considered a non-practising Muslim if returned to Iran.

¹ DFAT 'DFAT Country Information Report Iran', 14 April 2020, 20200414083132

13. According to local sources secularism is widespread, particularly in the major cities and among younger and wealthier Iranians, and a significant proportion of the population does not attend mosque or pray on a regular basis. Official sources told DFAT religion was a private matter, and beyond the expectation that people do not eat in public or hold parties during the holy Muslim month of Ramadan, how one wished to observe Islam was an individual choice, and was not a matter for the state. DFAT assesses that non-practising Iranian Muslims face a low risk of official and societal discrimination, particularly in the major cities.² Overall, I am not satisfied there is a real chance of any harm to the applicant in Iran for reason of religion, or that he would be imputed with an anti-Iranian government political opinion for being a non-practising Muslim.
14. The applicant provided a broadly consistent account of his early education in Iran, completing high school in 2003. However, his account about his later studies, and whether he completed his university education, and when he commenced employment, were inconsistent. The written record of his Entry interview indicates that after completing a one year pre-university course he studied [Subject] for two years. In his SHEV application, in the Education details section he records attendance at the pre-university course from [September] 2003 until [June] 2004, and that he 'Completed (Passed)' a [Subject] course at university in Yazd, from [September] 2004 until [May] 2006. In the section of the SHEV application where he describes the reason he left Iran he refers to 'withdrawing his study and returning to Tehran' as a result of the unbearable 'intensive surveillance of the moral police at the university'. In addition to the internal inconsistency within the SHEV application, at the SHEV interview he said the pre-university course was of two years duration, that he attended university for three or three and a half years, and left university without any documents. He explained that if he had withdrawn from university his name would have gone on the list for military service, but because he left in the way he did he could go back and complete his course later. The applicant's representative sought to clarify during the SHEV interview, indicating he attended a free university and had to pay tuition, and as long as he paid tuition his name would be kept at the university as a student. However, In regard to employment in Iran, the record of the Entry interview refers to the applicant being employed as [an Occupation] in [Employer 1] for one or two months in 2008; then working in his own [workplace] making [products] during 2008 to 2009; and working for [Employer 2] from 2009 to 2001. The SHEV application reports the work with [Employer 1] for a longer period, from [May] 2006 to [September] 2008; followed by work as a [product] maker from [October] 2008 to [December] 2010; and work with [Employer 2] from [January] 2011 to [May] 2013.
15. Country information reports military service is compulsory for men aged between 18 and 40, and usually lasts between 18 and 24 months. The Iranian constitution states that the military must be Islamic, must be committed to Islamic ideals, and must recruit individuals who are committed to the objectives of the Islamic Revolution. Authorities can grant an individual exemption from military service on several grounds, including for medical reasons or outstanding scholastic abilities. In the past exemptions could be purchased legally, through payment of an absence fine, which in 2015 ranged from about UDS6,500 to 13,000. However, that policy was scrapped in 2019. Students entering university at 18 can defer their military service until they complete their studies. Draft evaders are liable for prosecution. An individual who evades military service by leaving the country must complete their service on return if they are under the age of 40.³
16. Given the applicant appears to have entered university when he was 18 years of age, I can accept his military service obligation may have been deferred during his studies. However I find it

² DFAT 'DFAT Country Information Report Iran', 14 April 2020, 20200414083132

³ DFAT 'DFAT Country Information Report Iran', 14 April 2020, 20200414083132

improbable he would have continued to pay university fees, or that he would have been able to defer that obligation for the six or seven years he remained in Iran after purportedly leaving university in 2006. I note the discrepancy between the duration of the work he commenced after leaving the university, the record of the Entry interview specifically indicating he did that work only for one or two months in 2008, but in his SHEV application extending that work to cover the period of time from shortly after ceasing his university studies [in] May 2006, to the time he commenced work as a [product] maker [in] October 2008, a period of over 28 months.

17. During the SHEV interview the applicant said that when he was interviewed on Christmas Island he was not really comfortable and was confused, not knowing what to disclose and what not to disclose. He also referred to rumours in the detention centre that if you are submitting a political case that might impact your case, or create issues with the Iranian government. I am aware of the caution that needs to be exercised when relying on interviews, such as the Entry interview conducted with the applicant shortly after his arrival to Australia, the purpose of which was not for assessment of protection claims. I also note I do not have the audio recording of the interview before me. Noting the applicant did mention during the Entry interview that he participated in protests in 2009, which were political in nature (and will be discussed further below), and that he was able to provide cogent evidence on other issues, such as his address history and family composition, I do not accept the explanations satisfactorily account for the difference in his evidence regarding the duration of employment and his schooling. I consider it most likely the applicant was telling the truth at the Entry interview regarding the duration of his employment with [Employer 1], and in his SHEV application sought to alter his evidence to extend his employment to include the period during which he actually completed military service.
18. The applicant claims he could not obtain an Iranian passport because he had not completed compulsory military service, and that he obtained a fraudulent document confirming completion of military service to enable him to obtain a passport. He fears being arrested for obtaining that document fraudulently, and that on return to Iran he will be imprisoned for evading military service, and be forced to complete military service. His evidence during the SHEV interview on this issue was vague and unconvincing. Initially he said he obtained a passport from 'people who were working for the government' who 'by the trick they did' enabled him to get the original passport. When asked how he managed to get a fraudulently issued genuine passport, he said he 'paid some money to some people'. When asked who the people were, he said: one of the people was a friend or sports colleague who knew someone in the department who could do it for him; they took him to the front entrance of the passport office and he was given a paper which was another person's military service completion document but had his name on it; he was told what to say when submitting the document; he told them where he did his military training and answered other questions and was given a paper to take to the police, along with a photograph and application, which was submitted to the passport office so they could issue him with a passport. The delegate also questioned the applicant about whether he had any problems at the airport when leaving Iran, and he said he did not have any major issues, but when he was going through customs he was in the queue of an officer who was questioning about where military service had been done, and what rank was held, and he did not feel comfortable and got permission to move to another queue of a lady who was not questioning that much. Noting the applicant indicated he answered questions about his military service when questioned previously, it is not apparent to me why the applicant would not have been able to answer such questions again at the airport, or why he would have felt the need to change queues and potentially draw attention to himself at the airport.
19. The applicant claims that whilst he has been in Australia the group of people who worked for him to get the military service completion document and passport have been arrested, and the names of the people they provided fake documents most probably have been disclosed to the

government. He claims a letter was sent to his home in Iran telling him to report to the police, or if they catch him he will be put in jail. The applicant provided a document titled 'Summons' and English translation. The document is signed by the Immigration and Passport Chief – Tehran, and shows the date of issue was [Date 1] April 2015, it was served on [Date 2] April 2015, and summonses the applicant to attend the South West Passport Office in Tehran on [Date] May 2015, and that failure to attend will result in his arrest. The applicant's evidence on this issue was vague, providing little details about the people, or how he obtained the information about them being arrested, and appeared entirely speculative about the people providing a list of names of those who were provided fake documents. I also find it extremely surprising the applicant did not indicate there had been further interest in him, or that his family had been contacted, in the years following his failure to attend in response to the summons.

20. The applicant claims he attempted to leave Iran without a passport through a land border to [Country] in 2012, but he was arrested. His evidence during the SHEV interview was extremely vague, contained apparent inconsistencies, and was overall unconvincing. He initially suggested when he was arrested in 2012, because he was trying to go to [Country] from the land border, he was acquitted by the court because of the fraudulent documents, but he was told if they catch him again he would be imprisoned for one and a half years. The delegate then referred to the SHEV application, and the applicant's statement earlier in the interview that he attempted to leave for [Country] without any passport, and the applicant said he did not have any fraudulent documents, or any documents with him when he tried to go to [Country], and that people need to destroy all their documents, and he destroyed all his documents. He went on to say if he had been arrested with fraudulent documents he would have gone to jail straight away, but he destroyed it before. The delegate suggested that was not what he said in his SHEV application, where he said he attempted to go to [Country] without a passport, and did not mention destroying documents, but rather that he did not have documents. The applicant then referred to the smuggler who was trying to take him to [Country] taking a photo and putting it in a passport with a different name and giving him that document, and that is the document he destroyed. It is not apparent to me exactly when the applicant claims he destroyed the document, or why having gone to the trouble of obtaining a passport in another person's name he would destroy it before crossing the border using it.
21. Iranian identity documents include sophisticated security features and are difficult to manufacture for fraudulent use. While it may be possible to obtain a genuine identification document with the intention of impersonating another person, DFAT assesses that sophisticated border control procedures would make it difficult to use such a document in order to leave Iran. There are multiple layers to protect against the issuance of fraudulent documents in Iran. In addition to being prohibitive financially, the potential consequences for officials involved in the fraudulent procurement of primary or secondary forms of identification, if caught, act as a major deterrent, including imprisonment. While DFAT cannot discount the existence of corruption in relation to official documentation, it does not assess it to be prevalent, particularly in relation to primary and secondary forms of documentation. Secondary forms of documentation like military exemption cards are technically more vulnerable to fraud, as they have less robust security features, but are expensive to obtain. DFAT assesses the chances of obtaining a fraudulent Iranian passport or a genuine passport through fraudulent means are low. However, paper-based documents, such as court documents and summonses, are relatively easier to obtain through fraudulent means.⁴
22. Noting that overall I found the applicant's evidence to be vague and unconvincing, and the concerns noted above regarding his evidence, including the inconsistencies, I am satisfied the

⁴ DFAT 'DFAT Country Information Report Iran', 14 April 2020, 20200414083132

applicant completed his compulsory military service obligation after leaving university in 2006, and I am not satisfied he would have any outstanding military service obligation on return to Iran, or be prosecuted for that reason. Given the applicant completed his military service some years prior to 2012, he would have been able to obtain a passport in his own name and use that to leave Iran, I am not satisfied the purported attempt to leave Iran occurred in 2012, that he obtained any fraudulent documents to do so, or that he was arrested for that reason. I am also not satisfied he obtained a fraudulent military service completion document to obtain a passport for use when leaving Iran in 2013, or that he would be arrested or imprisoned on return to Iran for procuring a fraudulent document. I do not accept the applicant received a summons for the reason claimed, and I consider the document provided is not genuine. I am satisfied the applicant was issued a genuine Iranian passport in his name after completing his military service, and he left Iran from the airport without problem using that document. I consider his ability to do so is indicative he was not of interest to Iranian authorities at that time, and I am satisfied the applicant was not of adverse interest to Iranian authorities for any reason at the time he departed Iran.

23. The record of the Entry interview indicates the applicant said he attended the presidential election protests in Iran in 2009 but was not arrested. In the post-SHEV interview submissions his representative refers to those protests, the 'Green Movement', occurring in 2008, and that during the protests the applicant was beaten and injured, but not arrested. The applicant did not indicate during the SHEV interview that he feared harm as a result of his attendance at these protests, nor were any details provided about how many times he attended protests, or what his role was. At the end of the interview he said he was not one of the high-profile political activists who would have been on a blacklist and unable to depart from the airport.
24. Country information reports that following the June 2009 presidential election, up to 3 million supporters of reformist candidate Mir Hossein Mousavi took to the streets of Tehran to protest the official verdict that conservative candidate Mahmoud Ahmadinejad had been re-elected in a landslide, in what became known as the 'Green Movement'. Green Movement protesters used public holidays and national commemorations as opportunities to rally, chanting slogans that challenged both the system and the Supreme Leader himself. In response, the government despatched security forces, including the Islamic Revolutionary Guards Corps (IRGC), Basij units (volunteer paramilitary force that operates under the command of the IRGC), and plain-clothed paramilitary forces. These forces beat thousands of protesters and arrested hundreds, while snipers killed dozens. By early 2010, the government had succeeded in quashing public displays of opposition. The Green Movement has little profile in Iran today. Local sources told DFAT that ordinary participants in the Green Movement are not of interest to the authorities. One source noted that a family member who had been briefly detained and arrested for their participation in the Green Movement, and had subsequently secured asylum abroad, returns to Iran regularly without experiencing any harassment. DFAT assesses that participants who were arrested and released without prosecution are unlikely to be of ongoing interest to the authorities, however those who had a high-profile role in the movement may face discrimination when applying for government employment. The authorities would generally not have records of, nor interest in, participants who avoided arrest at the time. DFAT assesses that ordinary participants who avoided arrest face a low risk of official discrimination.⁵
25. DFAT reports that Iranians are able to criticise the government of the day robustly, both in public conversation and online in social media, although this freedom is not unlimited and a number of well-established 'red line' topics are off-limits and critical commentary may lead to prosecution under national security legislation. Authorities are more likely to crack down on dissent during

⁵ DFAT 'DFAT Country Information Report Iran', 14 April 2020, 20200414083132

times of political uncertainty, such as during ongoing political demonstrations, and may restrict the ability of individuals to comment or communicate online at such times. Local sources told DFAT that it is common for Iranians to be critical of the government in public places, including supermarkets, shopping malls and taxis. However, people remain cautious about crossing well-understood 'red lines', like insulting the Supreme Leader, in their public interactions beyond close family and friends.⁶

26. I can accept the applicant attended Green Movement protests, which the country information indicates occurred in 2009. Taking into account the country information, that the applicant did not indicate he or his family had been of interest to authorities after he attended those events, and the significant period of over 10 years that has elapsed since his participation, I am not satisfied the applicant would be of interest to Iranian authorities for having attended the events, or that he would suffer any harm for that reason on return to Iran. More generally regarding being imputed with an anti-regime political opinion, the applicant has provided no information to support that he has expressed any political opinions, or participated in any discussion groups or protests, since he has been in Australia, and where he would be free to do so. I consider this to be indicative he would also not do so on return. I am not satisfied the applicant was of adverse interest to Iranian authorities, or any group or person as a result of his political opinion whilst in Iran, or that he participated in any activity in Australia that heighten his profile. Although I have accepted the applicant attended protests in 2009, he has not indicated he has attended other protests since that time, either in Iran or in Australia, or indicate he intended to do so on return. I do not accept he would participate in protests on his return. I am not satisfied such non-attendance would be as a result of any fear of harm. Overall, I am not satisfied he would have a profile of interest as a result of any actual or imputed political opinion on return to Iran, and I am not satisfied he would be at risk of harm for that reason.
27. For the reasons given above, I am not satisfied the applicant faces a real chance of harm from Iranian authorities, or any other group or person, for any reason relating to religion, for any actual or imputed political opinion or involvement, or in relation to any claimed past events, now or in the reasonably foreseeable future.
28. The delegate considered the risk of the applicant being harmed for being a failed asylum seeker returning from a Western country. I am satisfied the applicant left Iran legally from the airport, using a passport in his name, which he longer has in his possession.
29. Iran has historically refused to issue travel documents (*laissez-passers*) to allow the involuntary return of its citizens from abroad. In March 2018, Iran and Australia signed a Memorandum of Understanding (MOU) on Consular Matters including an agreement by Iran to facilitate the return of Iranians who arrived after this date and who have no legal right to stay in Australia. The applicant does not fall within that category, and if returned to Iran in the foreseeable future, I am satisfied it would only be on a voluntary basis.⁷ I accept if he returned to Iran it would be done using temporary travel documents, and as a result it is likely Iranian authorities would assume he sought protection in Australia. The country information before me does not support a finding that persons who have sought asylum or spent time in Western countries, such as Australia, are imputed to hold a political opinion that is against the Iranian government for doing so.
30. In cases where an Iranian diplomatic mission has issued temporary travel documents, authorities will be forewarned of the person's imminent return. Those who return on a *laissez-passer* are

⁶ DFAT 'DFAT Country Information Report Iran', 14 April 2020, 20200414083132

⁷ DFAT 'DFAT Country Information Report Iran', 14 April 2020, 20200414083132

questioned by the Immigration Police at Imam Khomeini International Airport in Tehran about the circumstances of their departure and why they are traveling on a *laissez-passer*. Questioning usually takes between 30 minutes and one hour, but may take longer where the returnee is considered evasive in their answers and/or immigration authorities suspect a criminal history on the part of the returnee. Arrest and mistreatment are not common during this process. DFAT reports that Iranian authorities pay little attention to failed asylum seekers on their return. Iranians have left the country in large numbers since the 1979 revolution, and authorities accept that many will seek to live and work overseas for economic reasons. International observers report that Iranian authorities have little interest in prosecuting failed asylum seekers for activities conducted outside Iran, including in relation to protection claims, and unless they were the subject of adverse official attention prior to departing Iran, for example for their political activism, returnees are unlikely to attract attention from the authorities, and face a low risk of monitoring, mistreatment or other forms of official discrimination. DFAT is not aware of any legislative or social barriers to voluntary returnees finding work or shelter in Iran, or to return to their home region.⁸

31. I have found the applicant was not of adverse interest at the time he departed Iran for any reason. He has provided no information about his participation in any activity engaged in whilst in Australia that would be of interest to Iranian authorities. On the information before me, I am not satisfied the applicant has a profile such that he would be of interest to Iranian authorities on his return in the reasonably foreseeable future, that there is a real chance he would be harmed during questioning at the airport, or that such questioning amounts to serious harm. I am not satisfied the applicant is at risk of harm as a result of the process of returning to Iran, or for spending time in and having sought asylum in Australia.
32. Considering the applicant's background and profile, I am not satisfied there is a real chance he will suffer serious harm on return to Iran, for any reason, now or in the foreseeable future. I am not satisfied the applicant faces a real chance of persecution.

Refugee: conclusion

33. 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

34. 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

35. 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

⁸ DFAT 'DFAT Country Information Report Iran', 14 April 2020, 20200414083132

- 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.

36. 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.

37. I accept on arrival in Iran the applicant is likely to be briefly detained and questioned about his departure and why he is travelling on temporary documents, but that he will not be harmed during this process. I am not satisfied the process on return, or questioning, amounts to pain or suffering, severe pain or suffering, or extreme humiliation, or that there is a real risk of the death penalty, torture or arbitrary deprivation of life, for this applicant. I am not satisfied that in the process of returning to Iran there is a real risk he will suffer significant harm.

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

Complementary protection: conclusion

39. 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.