



Australian Government
Immigration Assessment Authority

Decision and Reasons

Referred application

IRAN
IAA reference: IAA20/08496

IRAN
IAA reference: IAA20/08499

IRAN
IAA reference: IAA20/08497

IRAN
IAA reference: IAA20/08498

Date and time of decision: 16 July 2020 20:13:00
G Deal, Reviewer

Decision

The IAA affirms the decision not to grant the referred applicants protection visas.

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 applicants claim to be from Ahwaz, Iran. The applicants comprise a father (IAA20/08496) (the applicant), the applicant's wife (IAA20/08498), their [age] year old son (IAA20/08499) and [age] year old son (IAA20/08497). [In] July 2013 the applicant his wife and their eldest son arrived by boat in Australia. The youngest son was born in Australia on [date]. On 29 August 2017 they lodged

an application for Safe Haven Enterprise Visas (visa application) with the Department of Immigration, now part of the Department of Home Affairs. The applicant made claims for protection. His wife and children applied as members of the applicant's family making no claims of their own.

2. On 16 June 2020 a delegate of the Minister for Immigration (the delegate) refused to grant the visas. The delegate accepted the applicant was a non-practising Muslim and the applicant's work history including that he worked in [a certain role] at [Company 1] and that he was a trade union member and participated in some protests, but did not accept he held a prominent role or that he was wanted by the authorities when he left Iran on account of this finding this aspect of his claims fabricated. Based on the country information and vague evidence provided the delegate also did not accept the applicant bribed officials at the airport enabling him and his family to leave without issue. Overall, the delegate found the applicant did not meet the relevant definition of refugee and did not face a real risk of significant harm and that the applicant, his wife and children were not persons in respect of whom Australia had protection obligations.

Information before the IAA

3. I have had regard to the review material given by the Secretary under s.473CB of the *Migration Act 1958* (the Act).
4. By email from the applicant's migration agent dated 10 July 2020 the IAA received a submission, a statutory declaration declared by the applicant, an explanation as to why there are exceptional circumstances to justify considering the new information and a report concerning the applicant's mental health from [Organisation 1]. The submission and statutory declaration mostly contain information provided to the Department and arguments and I have had regard to this. They also contain limited details which are new information as is the report, which I consider below.
5. In her decision the delegate did not accept the applicant came to the adverse attention of the authorities because of his involvement in protests in 2011 and 2013 as she found his oral testimony in the visa interview somewhat scripted, among other things. The delegate also indicated that the timing of the applicant's social media posting, shortly after lodging his visa application, raised concerns for her. In the submission and statutory declaration it is now asserted that the applicant suffers from post-traumatic stress disorder (PTSD) and that he was highly anxious during the visa interview. It is also submitted that the applicant's social media posts were only made in 2018 because he had no access to the internet while in detention and from 2015 to 2018 his counsellor at [Organisation 1] recommended he limit his social media activity to assist with recovery and he was also dealing with financial issues and could not afford the internet. Provided in support of these claims is a copy of a report dated 9 July 2020 from a "team leader" at [Organisation 2] (who has also worked as a counsellor although it appears was not the applicant's counsellor). The report states that the applicant attended counselling with another counsellor at [Organisation 2] from about 2016 to 2018, had sleeping difficulties, met the criteria for PTSD and showed some signs of depression and that they recommended he limit his [social media] activity at the time. This is new information. The applicant submits that the delegate who interviewed the applicant was different to the delegate who made the decision, which is correct. The applicant's migration agent points out that in the visa interview the delegate undertook in the visa interview to raise any issues he had with the applicant's evidence with them to allow them a response before making his decision although he did not do this. They submit they are providing this information in relation to concerns first raised by the delegate in her decision and for this reason it could not have been provided before the delegate made her decision. They also submit the information is highly material and relevant to the applicant's claims and is credible personal

information which, had it been known, may have affected consideration of the applicant's claims. The [Organisation 2] report also post-dates the delegate's decision.

6. The interviewing delegate told the applicant that he might not be the delegate making his decision and that a decision may be made without further contact with the applicant. The interviewing delegate asked the applicant a number of questions and appears to have attempted to elicit more detail from the applicant in relation to claims that appeared vague and subtly suggested a couple of concerns with the evidence, although none of this was very clearly articulated. Toward the end of the interview the applicant's migration agent asked the interviewing delegate whether he had any concerns so that they could respond to these and the interviewing delegate said he would have to consider the information before he could comment. The migration agent asked the interviewing delegate if he could put any concerns he may have to them for comment before he made his decision and the interviewing delegate said that he could "definitely" do that. However he did not subsequently put any concerns for comment as he had undertaken to do and I consider the applicant and his migration agent may have been taken by surprise by the significant issues subsequently raised in the delegate's decision. I am satisfied that the information could not have been provided to the delegate before her decision was made. I am also satisfied that the information is credible personal information which, had it been known, may have affected consideration of the applicant's claims. I am satisfied that there are exceptional circumstances to justify considering the information.

Applicants' claims for protection

7. The applicant's claims can be summarised as follows:
 - He and his family are from Ahwaz, Iran. They have a large number of family members in Ahwaz and keep in regular contact with them.
 - After three years of secondary schooling and completing his compulsory military service he worked for [Company 2] in [a certain role] from about 1997 to 2003. He was then self-employed as a [Occupation 1] for a period of three years. From 2006 to about April 2013 he worked for [Company 3] and from May 2009 to May 2013 he also worked at [Company 1] in [certain role].
 - In 2011 he was detained, interrogated and forced to sign an undertaking by authorities or those working with them, after taking part in protests while working at [Company 1] in relation to unpaid wages.
 - In about April 2013 he helped stage another protest about unpaid wages at [Company 1] and attracted the adverse attention of the managers. Shortly after this a colleague was arrested and he was warned by another colleague not to return to work and he hid with family in [City 1] with his wife and child. They paid someone to help them leave the airport and fled Iran in fear of their safety [in] July 2013. His family were subsequently harassed by plain clothed people wanting to arrest the applicant. They raided the homes of family members, arrested his brother and interrogated him in relation to the applicant and seized some of the applicant's property.
 - Shortly after arriving in Australia on [date] his second son was born. Since being in Australia he has established a business which includes [undertaking specified work] and he has a couple of people working for him.
 - The applicant has renounced Islam and is an atheist.

- Since being in Australia the applicant has been trying to expose the treatment of workers in Iran and has made social media posts about this as well as anti-regime social media posts.
- He will be harmed because of his membership of particular social groups failed asylum seekers and returnees from the West.

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. Based on the evidence, including the documentary evidence, I accept the applicants are Iranian nationals from Ahwaz, Iran. They have a large number of family members in Ahwaz and I consider if they were to return it would very likely be to there. I also consider Iran the receiving country. The applicant has also made submissions about relocation although I have not had to consider this issue.
11. Turning to the applicant’s claims, based on the documentary evidence and consistency of his background information I accept his education history and that he completed his military service in [year]. His claims regarding his working history have also been consistent. In the visa interview the interviewing delegate asked the applicant if he had any evidence of his work history like a payslip, however, the applicant said that he did not. He has provided some detail about his roles and I am willing to accept he worked for [Company 2] from 1997 to 2003, as a [Occupation 1] from 2003 to 2006, for [Company 3] from 2006 to 2013 and for [Company 1] from May 2009 to May 2013. The applicant has also provided a copy of a “[trade union]” membership card, indicating this was his trade union, which displays his name and a photo in his likeness and expired on April 2014. While the copy provided is of poor quality there is nothing to suggest it is not genuine and I am willing to accept he was a member.

12. In her decision the delegate found the applicant's evidence in relation to his claim to have attracted the adverse attention of the authorities because of his protesting activities, unconvincing and vague and his oral testimony in the visa interview somewhat scripted. The applicant has submitted to the IAA that his performance in the visa interview was impacted as he was "highly anxious" in the interview and suffers PTSD. He has provided a [Organisation 2] report written by the team leader. The report states it is based on case notes (the applicant's counsellor left in 2018) and has been provided at the request of the applicant's migration agent. The report states the applicant attended 15 counselling sessions with [Organisation 2] from 2016 to the beginning of 2018. It states that at that time the applicant had difficulties sleeping and suffered nightmares, avoided reliving past experiences, and met the criteria for PTSD and showed some signs of depression. The report provides very brief details in relation to claimed events in Iran stating his symptoms are consistent with the nature of the events he described, although I note that I consider other events could also lead to a person suffering symptoms of depression and PTSD, including the perilous boat journey to Australia and I place limited weight on these comments. Other than briefly mentioning he has nightmares reliving his past detention and interrogation and dreams a co-worker was killed and that he ruminates on whether that co-worker is alive or not it does not detail his past experiences in Iran. The writer expresses the opinion that the visa interview would have been highly anxiety provoking for the applicant. While it is plausible the applicant would be anxious the visa interview I note the writer does not claim to have counselled the applicant and I place limited weight on these comments. Neither the applicant nor the migration agent mentioned during or after the visa interview, that the applicant was "highly anxious", despite opportunities. Having listened to the interview he appeared able to comprehend the questions and mostly responded meaningfully. I accept that in 2016 the applicant experienced the mental health issues detailed in the report and that he attended 15 counselling sessions over a two year period, however given their infrequency, that he discontinued some two years prior to the visa interview, has not otherwise indicated he sought any further treatment and has since established his own business, I consider he has managed his condition without further treatment and I do not accept his condition was or is acute or debilitating or meant he was unable to meaningfully engage in the visa interview.
13. The applicant claims he fled Iran in fear of his life by bribing someone to let him and his family through at the airport, as he was wanted by the Heresaat and the authorities or those working with them for his involvement in protests while working at [Company 1]. He claims the first time he came to their attention for protesting was in 2011 when he was interrogated and forced to sign an undertaking. The second time was in 2013, after he helped organise a protest and was the workers' representative and acted as a spokesman at the protest. He claims that a number of days after this, a colleague who helped organise the protest was arrested and another colleague called the applicant warning him not to return to work and this was when the applicant and his family hid with family in [City 1] before fleeing Iran. His mother told him that after he fled these people looked for him almost every day, were eager to arrest him, and have since told his mother that some people had testified against him and that the applicant was an apostate. It is also claimed these people have harassed his family and arrested and interrogated his brother in connection with him and seized the deed to the applicant's home and his car.
14. In his bio data interview conducted a couple of months after his arrival in Australia. When asked why he left Iran the applicant said that his employer was not paying him and after protesting he was arrested for a few hours with others on two occasions and that the first time they required him to sign an undertaking not to do it again and that he had escaped. In his arrival interview, which was conducted in two parts and at around the same time as the bio data interview, the applicant said that while working at [Company 1] they were not paid and while that did not matter much to him because he had another job at that time they had protested because of this. They

went after his friend and they would have gone after him and he said that if anyone criticises the government they come after you.

15. In his visa application the applicant said that after not being paid for some seven months he and his colleagues at [Company 1] protested and after four days they were told they would be paid. The following week he was directed to the Heresaat at the company and when he went there he was met by three plain clothed men who blindfolded him and took him elsewhere where they threatened him and were rough and aggressive and questioned him about what groups he was involved in, releasing him after he signed an undertaking essentially not to do it again. After not being paid for about seven months between 2012 and early 2013 the workers agreed to protest again. In his visa interview he said he and his friend were the main organisers and in his visa application he said that they presented their ideas to the other workers and one said he did not want to participate that that they should put their faith in God and the applicant was discouraging of these comments stating they should not focus on God or Imam Ali and instead on their wages. After staging a number of peaceful protests sitting in the company yard management spoke with them accompanied by Heresaat. Management indicated they were aware some people were encouraging others to protest indicating they needed to be united in the name of the regime and against enemies who were imposing harsh sanctions. As the workers' representative the applicant said he spoke up and said they were not gathering to talk about the revolution. He said that the destitute person is without religion or faith. Their children were hungry and they could not afford medical expenses. He told them this was about their basic rights and asked them to please pay their wages and was then somewhat critical of the regime and its leaders including the supreme leader. Then his colleague who helped him organise the protest also spoke. The manager said they would be paid the following month. When the manager left the other workers thanked him for speaking up but also warned him to be more careful in the future. Four days later, when the other colleague who helped organise the protest was arrested, he was warned not to return to work and he hid with his family.
16. In refuting the delegate's findings in her decision that the applicant's evidence appeared scripted, the applicant submits his responses were directed to the questions posed, which often related to the information in his visa application. I accept this was sometime the case and note that these events occurred some time ago and I also consider that when a story is re-told on more than one occasion it can appear repetitive. I also note the [Organisation 2] report, which was not originally submitted by the applicant as part of his application, but has since come to light and corroborates that in 2016 he was telling others that he had been detained and interrogated and feared for the fate of a colleague. The country information before me also indicates independent trade unionised are banned in Iran and [certain] industries reportedly have large active trade unions and members and protestors have been jailed and flogged in the past and that the authorities do not always act predictably or consistently.¹
17. I accept the applicant was a union member and worked at [Company 1] as claimed. I also note that the applicant became emotional when talking about his interrogation in 2011 in the visa interview and the [Organisation 2] report indicates he was interrogated by authorities in the past and feared for the fate of a colleague. Based on this and the country information detailed above, including the strong independent trade union movement in that industry and that the authorities cracked down on these activities and the consistency and detail provided I accept the applicant was briefly detained and questioned and possibly aggressively treated and threatened by authorities with other workers after participating in peaceful protests in 2011 and that he also participated in a peaceful protest in 2013 and that one of his colleagues may have been arrested

¹ Amnesty International, 'Time to end the repression of Iran's trade unions', 1 May 2009, CX225434 ; Human Rights Watch (HRW), 'New Arrests of Labor Activists', 30 January 2012, CX281021.

in connection with this. He remained in Iran and continued to work for the same employer long after his release in 2011 and I consider he was not of on-going adverse interest to authorities on release at that time.

18. For the reasons that follow I also find it difficult to believe the applicant attracted the adverse attention of the authorities as one of the main organisers, the workers' representative or spokesperson at the 2013 protest, as claimed, or that he fled Iran in fear of his life because of this:

- The applicant claims they were not paid from July 2012 to March 2013 and he and his colleagues protested and he told the manager at this protest they were entitled to their wages "for the past 9 months" indicating they protested in March 2013. The applicant claims he was subsequently paid in April 2013 and continued working at the company until May 2013. While I acknowledge the applicant's submission that they may not have wanted to arrest them at the protest for any number of reasons including to avoid a scene I note that his timeline of events are inconsistent, given that on the one hand he claims he protested in March 2013 and remained working at the company until May 2013 and yet on the other that some four days after the protest his colleague was arrested and the applicant was warned not to return to work and he immediately went into hiding because the authorities were aggressively pursuing him. While I acknowledge he claims to have been in hiding I also note he remained in Iran until July 2013, some months after protesting. Notwithstanding he was away from his home at that time in his visa application he also said he took his car to a mechanic during this period and waited for it to be fixed as it was "playing up" which I consider somewhat at odds with his claim to have been in hiding in fear of his life at that time.
- When questioned in the visa interview in more detail about the applicant's claimed role in the 2013 protest the applicant appeared unable to elaborate and largely repeated what was already in his visa application, vaguely stating his role was to put the group together and voice their objection and he was the speaker of the group. At one point he also said that he and his colleague were the main organisers but did not elaborate despite the opportunity.
- Despite the applicant claiming he was forced to flee Iran with his family and stating in his visa application that his mother told them they looked for him almost every day, that someone had testified against him and the authorities accused him of apostasy and insulting the prophet, and that they were eager to arrest him, had raided the homes of his family, arrested and interrogated his brother, seized the deed to the applicant's house and his car, when asked in the visa interview if an arrest warrant or anything else official had been issued the applicant indicated nothing official had been issued or received to date stating the Heresaat did not operate that way. In her decision the delegate found it difficult to believe that no warrant for his arrest had been issued and I agree and find it difficult to believe in the circumstances that nothing official has been issued and note he keeps in regular contact with his family in Iran and has been represented by the same migration agent throughout the visa application process. I also note his brother's claimed arrest and interrogation and the seizing of the deed to the applicant's home and his car, despite being significant and more recent events were not mentioned by the applicant in the visa interview, even after returning from a break after speaking with his migration agent at the visa interview.
- In a statutory declaration provided to the Department after his visa interview, the applicant said that he sold his car to pay for his and his family's journey to Australia. This appears at odds with his claim in his visa application that the authorities or those working with them seized his car after he left Iran.

- I have found the applicant's claim he bribed someone to depart at the airport varied and at times difficult to believe and vague, despite opportunities to elaborate, and have overall found his evidence in respect of this significant aspect of his claims unconvincing. In his arrival interview he indicated they left Iran on their genuine passports but as he could not get out of the country he found someone who could let him out. He never saw him and did not know his name but his friend introduced them and instructed him to leave the money, \$4,500 American dollars, on the plate at a restaurant after he finished eating. In his visa application he indicated they left Iran legally at the airport on their genuine passports. In his accompanying statement he merely said "through my friend's father's contacts, we could find someone at the airport to help us to pass the airport gates and leave Iran". When asked in the visa interview how he could leave if he were wanted the applicant appeared to state that the father of a friend was a retired army person and indicated he paid him \$4,500 American dollars to let them pass through the airport, without elaborating further. While the applicant has indicated they were desperate I still find it difficult to believe the applicant would leave the large sum of \$4,500 American dollars on a plate at a restaurant after eating, as he claimed in his arrival interview.² Additionally, the country information before me indicates that while it is not impossible to bribe officials at the airport, particularly if a person had contacts, there was strict security and one source said it would be extremely difficult.³ I also note he was also travelling with his family in tow. I do not accept the applicant bribed someone to help him and his family pass through the airport as claimed. I consider that in light of the country information which indicates the authorities have been known to impose travel bans on those of adverse interest and that he left Iran with his family some four months after protesting, that he was not of interest or sufficient interest to the authorities to be detained at that time.⁴
- The applicant has indicated that he was not an activist and not even particularly political but that he was pushed to participate in protests because they were not paid for lengthy periods and they had no other option. While the authorities do not always act in a predictable manner and protestors may be arrested and questioned and flogged, the country information before me⁵ indicates prominent union members and activists were particularly targeted and suffered more severe punishment.

19. Based on the country information, inconsistencies, vague evidence, that the claim is unsupported and that I do not accept he bribed officials at the airport when he left Iran on his genuine passport I do not accept the applicant was one of the main organiser of the 2013 protest, the workers' representative or spoke at the protest publicly as claimed, that someone testified against him or that the authorities of those working with them wanted to arrest him, that he hid, that they harassed his family, raided their homes, arrested his bother and interrogated him or seized the applicant's property, as claimed.

20. In the visa interview the applicant said that other than the 2011 and 2013 protest, when he had no choice but to peacefully protest because they had not been paid for some time, he had not otherwise been in trouble with the Heresaat and has not claimed to have otherwise been involved in politics or protesting in Iran. The applicant claims to have made social media posts critical of

² It is also indicated that such bribes at that time were in order of 8,000 to 10,000 Euros in The Danish Refugee Council, Landinfo and Danish Immigration Service (DIS), 'Iran: On Conversion to Christianity, Issues concerning Kurds and Post-2009 Election Protestors as well as Legal Issues and Exit Procedures', 1 February 2013, CIS25114.

³ DIS, 'Iran: On Conversion to Christianity, Issues concerning Kurds and Post-2009 Election Protestors as well as Legal Issues and Exit Procedures', 1 February 2013, CIS25114.

⁴ Department of Foreign Affairs and Trade (DFAT), 'DFAT Country Information Report - Iran', 14 April 2020, 20200414083132.

⁵ Amnesty International, 'Time to end the repression of Iran's trade unions', 1 May 2009, CX225434; HRW, 'New Arrests of Labor Activists', 30 January 2012, CX281021.

workers' conditions in Iran and Islam and the regime. On the evidence provided he has made a handful of these posts since being in Australia. Save for one post, where the year it was made is unclear, all the others were made in 2018. This posting commenced some three months after he lodged his visa application and this, and that they appear to have ceased in 2018 and their infrequency in 2018 raises concerns for me regarding the applicant's motivation for making these posts. The applicant told the IAA that he only started posting in 2018 because he was in detention and without access to the internet until 2015, then on release he was working on his mental health issues and was advised by his counsellor to limit [social media] activity and had limited funds to pay for the internet and was only able to commence in 2018. However none of this explains the limited nature of his posts (a handful of the offending posts in 2018) and the lack of any social media activity in the years that followed, including more recently. The applicant has also only shared material, not authored it himself, and has not otherwise engaged in any political activity since being in Australia. I am not satisfied the applicant has made these social media posts in Australia otherwise than for the purpose of strengthening his claims for protection. I have disregarded this conduct for the purposes of my assessment of s.36(2)(a), as required by s.5J(6).

21. The country information before me⁶ indicates protests have been on the rise in Iran for a number of years, with the emergence of a heterogenic protest movement that was gathering strength, particularly among the younger generation. Amnesty International reports that the authorities cracked down on this by beating unarmed protestors, using live ammunition, tear gas and water cannons against them, and that thousands were arbitrarily detained and arrested in 2018. It reports those swept up in the wave of arrests were students, human rights defenders and journalists. Visible women's rights defenders were also targeted. After thousands went into the streets to protest about worker's rights in 2018, the authorities arrested some 467 workers and summonsed others for questioning and subjected many to severe mistreatment. DFAT⁷ also reports that in May 2019 a number of protestors, mostly bus drivers, were reportedly arrested and taken into custody after demonstrating and in December 2019, nine labour rights activists were reportedly sentenced to five years in prison after peaceful protests for workers' rights at the Haft-Tepah Co. sugar mill in Khuzestan and that those sentenced included journalists. DFAT assess that those in leadership roles in independent trade unions face a moderate risk of official discrimination which may include arrest, monitoring, harassment and travel bans. The applicant has indicated they were afraid of protesting while at [Company 1] because others who did in the past had been harmed. In the [Organisation 2] report the writer also states that the applicant expressed a strong sense of justice. However, I note that he has not claimed to be a political activist or leader in the trade union and consistent with this his political activities in Australia have been limited and somewhat dated and it is for this reason that I do not consider he will be any more active in Iran, now or in the reasonably foreseeable future, than he was in the past. While he may seek to join a trade union and protest should his wages not be paid based on the country information detailed above I consider the chances of this and of him being harmed in connection with this, remote. I do not accept the applicant was wanted by the authorities or those working with them on account of his protesting in Iran. I am not satisfied the applicant faces a real chance of harm on account of his past experiences in Iran or his political views.
22. The applicant claims he has abandoned Islam, is an atheist and will be viewed as an apostate. The applicant has consistently claimed to have been born into the Shia faith but not to follow Islam and I accept he no longer follows Islam. In this regard, in his visa application he briefly stated he

⁶ The Media Express, 'News from inside Iran: major protests against police, unpaid wages, and municipal contractors', 10 July 2020; Amnesty International, 'Iran's 'year of shame': More than 7,000 arrested in chilling crackdown on dissent during 2018', 24 January 2019; LSE Middle East Centre, Pejman Abdolmohammadi, 'The Revival of Nationalism and Secularism in Modern Iran', 1 November 2015, CISEC96CF14725; Industriall Global Union, 'Iran: 10 detained after protests over unpaid wages of 4,000 steel workers', 6 March 2018.

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

had renounced Islam and was an apostate and had been accused of insulting the Supreme Leader and regime. In the visa interview he said he was not that religious in Iran. When asked when he renounced Islam the applicant said that he believed that his managers at work picked up on the fact he was not that religious based on what he had said at the 2013 protest. The question was rephrased twice, after his migration agent interjected stating the question was unclear, and eventually the applicant said that to be honest he did not even know how to pray in a mosque, that at 24 years of age he read a lot of books and realised he was not that "into it at all". It was a change he made in his heart and mind. In a post interview submission he added he was an atheist and it was unreasonable to expect him to hide his atheism. I do not accept the claimed events at the 2013 protest, including that he publicly insulted the regime, supreme leader or Islam or that someone subsequently testified against him in this regard or that the authorities accused him of apostasy or wanted to arrest him in this regard, or otherwise, when he left Iran in 2013. On the evidence I accept the applicant is a non-practising Muslim but I do not accept he is viewed as an apostate, to have insulted Islam or the Prophet or that he is or would be perceived as an atheist.

23. In 2015 the Middle East Centre⁸ reported Iran was undergoing a time of demographic and ideological change with a shift away from the Shi'a Islamic ideology and a revival of interest in democracy, nationalism, secularism and constitutionalism and a growing protest movement, particularly among the younger generation, who are increasingly gaining dominance in Iran. It reported that several indicators suggested that a significant number of young Iranians no longer considered themselves Muslims. It also reported Iran had one of the lowest mosque attendances compared to ten other important Muslim countries. The US Department of State⁹ reports abandoning Islam or converting (apostasy), insulting the prophet (blasphemy) and proselytisation may result in the death penalty and that overwhelmingly it was Muslim born Christian converts and members of unrecognised religions and religious minorities, who were targeted and discriminated against and mistreated by Iranian authorities. It also indicates the authorities ensure public adherence to religious Islamic behaviour and dress, breaches of which can attract floggings and that some Shia leaders critical of government policies had also been targeted in the past. DFAT¹⁰ reports the authorities continue to use the religious charges against a diverse group including Shia members of the reform movement, Muslim-born converts to Christianity, Bahai, and Muslims who challenge the prevailing interpretation of Islam or who espouse unconventional religious beliefs but that charges of apostasy and blasphemy are no longer an everyday occurrence and death sentences for these were rare. DFAT also notes that local sources have reported that secularism in Iran is widespread and that a significant proportion of the population do not attend mosque or pray on a regular basis and that consumption of alcohol is common. Official sources told DFAT that religion was a private matter and that beyond not eating in public or holding parties during Ramadan how one wished to observe Islam was an individual choice and not a matter for the State. Anecdotally DFAT had also heard many Iranians did not observe Ramadan strictly and ate, drank and smoked at home and some restaurants even served food, albeit discretely, during this holy period. It is also reported that unless an atheist widely publicises their non-belief they were unlikely to come to the attention of the authorities. DFAT relevantly assesses that non-practising Iranian Muslims face a 'low risk' of official and societal discrimination which they explain indicates there are incidents but that they have insufficient evidence to conclude they form any pattern. While in the applicant's post interview submission it was submitted that the applicant could not be expected to hide his atheism, I note I do not accept he is an atheist and in the visa interview the applicant indicated that his religious beliefs were privately held in his heart and mind and he did not elaborate on these views other than stating he had not been religious for some time and

⁸ LSE Middle East Centre, Pejman Abdolmohammadi, 'The Revival of Nationalism and Secularism in Modern Iran', 1 November 2015, CISEC96CF14725.

⁹ US Department of State, 'International Religious Freedom Report for 2017 - Iran', 29 May 2018, OGD95BE927512.

¹⁰ DFAT, 'DFAT Country Information Report - Iran', 14 April 2020, 20200414083132.

he was not into it and it is for these reasons (rather than because of a fear of harm), that I do not consider he will publicly share his views on religion in Iran, now or in the reasonably foreseeable future. The applicant has said that for most of his adult life he was not particularly religious, including in Iran, and he has not specified any instances of harm in Iran in connection with this. Based on the applicant's profile and the country information detailed above I am not satisfied the applicant faces a real chance of harm on account of his views on Islam or for not practising Islam.

24. I accept the applicant may be identifiable as having sought asylum in a Western country. His claims in relation to this have been brief, in his visa application and post interview submission the applicant claimed to fear harm as a failed asylum seeker and "returnee" "from the west". He has also consistently claimed his passport was taken by the smugglers and I accept this. He submitted to the IAA that this may also attract the attention of authorities on his return. DFAT¹¹ reports that Iran has historically refused to accept the return of involuntary returnees and as such I consider if the applicant was to return it would be on a voluntary basis.¹² For those without valid travel documents a *laissez-passer* can be obtained from an Iranian diplomatic mission on proof of identity and nationality. DFAT is not aware of any social or legislative barriers to voluntary returnees finding work or shelter in Iran. Authorities reportedly pay little attention to failed asylum seekers on their return. Those who return on a *laissez-passer* are questioned by Immigration police at the airport about the circumstances of their departure and why they are travelling on a temporary travel document and this can take up to an hour, and may take longer if they are evasive or suspected of a criminal history. Arrest and mistreatment is reportedly not common during this process. Those with an existing profile may face a higher risk of coming to the attention of Iranian authorities on their return and their treatment on return largely depends on their profile before departure and their actions on return. The biggest challenges facing returnees are reportedly reintegrating economically and finding meaningful employment. I consider if the applicant were to return it would be on *laissez-passer*. I do not accept the applicant was wanted by authorities, or those working with them when they left Iran in 2013. I do not consider the applicant has a profile of adverse interest to the authorities. While he may be questioned for up to an hour in relation to his return on a *laissez-passer* I am not satisfied there is a real chance he will be further questioned, detained or otherwise harmed in this regard. I consider that if he were to return he would very likely return to Ahwaz. The applicant worked in Iran in various capacities including in [a certain role] and has established a business since being in Australia and there is nothing to suggest he is unable to work. He and his family also have a large extended family in Ahwaz, and Iran more broadly. Based on the applicant's claims, the country information detailed above and his profile I am not satisfied the applicant faces a real chance of harm on account of being a failed asylum seeker or returnee from the west on temporary travel documents. His wife and children have not made their own claims and relied on the applicant's however I also note they do not have adverse profiles of interest with the Iranian authorities and I also do not consider they face a real chance of harm on account of being failed asylum seekers from the west or for returning on temporary travel documents.
25. When discussing the applicant's identity documentation in the visa interview the applicant made very brief mention of an "apologetic letter" from the Department when "their" details were revealed to the public. He did not further elaborate at the visa interview and has not otherwise made any submissions in regard to this to the Department or the IAA, despite the delegate not considering this issue in her decision. It is unclear whether the letter specifically related to the applicant or was a general letter sent to all applicants and I strongly suspect it was the latter given

¹¹ Ibid.

¹² In March 2018 Iran and Australia signed a Memorandum of Understanding under which Iran agreed to facilitate the return of Iranians who arrived after this agreement and have exhausted all legal and administrative avenues to regularise their immigration status in Australia.

the applicant has not sought to subsequently pursue this claim. Nonetheless even if some of his details were released in a Departmental data breach, based on his profile I consider the chances of him being harmed in connection with this, remote.

26. I am not satisfied the applicant has a well-founded fear of persecution whether on account of a data breach, his past experiences in Iran or in Australia or for having sought asylum in Australia and returning on a temporary travel document.

Refugee: conclusion

27. The applicants do not meet the requirements of the definition of refugee in s.5H(1). The applicants do not meet s.36(2)(a).

Complementary protection assessment

28. Under s.36(2)(aa) of the Act, 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

29. 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.

30. 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.

31. As detailed above, I accept the applicant made a handful of social media posts critical of the regime in 2018.¹³ However this activity was limited, he does not appear to have authored the material only shared it and his social media activity appears to have ceased in 2018 and he has not otherwise been involved in any political activity in the last seven or so years and in the circumstances I consider he will not engage in similar activity, now or in the reasonably foreseeable future. DFAT refers to a "well-placed source" and "international observers" who report the authorities have little interest in prosecuting returnees for activities conducted abroad, including social media posts critical of the regime. Based on the very limited and somewhat dated nature of the applicant's postings, his profile and the country information before me I am not satisfied the applicant faces a real risk of harm on account of his social media activity in Australia.

32. In considering the applicant's refugee status, I have otherwise concluded that there was no real chance the applicant would suffer harm on his return to Iran for the other reasons claimed (or consider his wife and children face a real chance of harm on account of being failed asylum seekers

¹³ The year in which one of the posts was made is not clear.

from the west or for returning on temporary travel documents). 'Real chance' and 'real risk' involve the same standard. For the same reasons, I am also not satisfied the applicant (or his wife and children) would face a 'real risk' of significant harm.

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 applicants will suffer significant harm. The applicants do not meet s.36(2)(aa).

Member of same family unit

34. Under s.36(2)(b) or s.36(2)(c) of the Act, an applicant may meet the criteria for a protection visa if they are a member of the same family unit as a person who (i) is mentioned in s.36(2)(a) or (aa) and (ii) holds a protection visa of the same class as that applied for by the applicant. A person is a 'member of the same family unit' as another if either is a member of the family unit of the other or each is a member of the family unit of a third person: s.5(1). For the purpose of s.5(1), the expression 'member of the family unit' is defined in r.1.12 of the Migration Regulations 1994 to include a 'spouse' and 'child' of the family head.
35. As none of the applicants meets the definition of refugee or the complementary protection criterion, it follows that they also do not meet the family unit criterion in either s.36(2)(b) or s.36(2)(c).

Decision

The IAA affirms the decision not to grant the referred applicants protection visas.

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.