



Australian Government
Immigration Assessment Authority

Decision and Reasons

Referred application

IRAN

IAA reference: IAA20/08719

Date and time of decision: 23 November 2020 17:20:00

J Bishop, Reviewer

Decision

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

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

Background to the review

Visa application

1. The referred applicant (the applicant) claims to be an Iranian citizen. He arrived in Australia [in] May 2013.
2. On 24 August 2017 the applicant lodged an application for a Safe Haven Enterprise Visa (SHEV). On 15 October 2020 a delegate of the Minister for Home Affairs (the delegate) refused the applicant's visa. The delegate determined the applicant did not face a real chance of serious harm or a real risk of significant harm now or in the foreseeable future in Iran.

Information before the IAA

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

Applicant's claims for protection

4. The applicant claims to fear harm in Iran because of his:
 - Imputed anti-government political opinion – protest activities, name, photograph and what his wife told the Iranian authorities;
 - imputed religion – the applicant's wife showing some of her hair in public;
 - claiming asylum in Australia; and
 - being absent from Iran for a long period of time.

Factual findings

5. The applicant provided copies of his Iranian national identification card, Iranian driver's licence and English translation, birth certificate and English translation, and his Iranian passport. Based on the evidence before me, I accept the applicant is who he claims to be and is an Iranian citizen. I find his receiving country is Iran.

Political activities

6. The applicant's statutory declaration dated 22 August 2017 (2017 statutory declaration) states that around 2000 he was attending a political rally when he was attacked from behind by a member of Sepah. The applicant was grabbed, punched and pushed to the ground. He was forced into a van with about 13 other people from the rally and taken to a Sepah centre. He was put in a room by himself and interrogated about his involvement in politics and about other people who were involved. He told them he was not involved, that he did not organise the rally and that he was there to show his support. He was detained for two days, interrogated and psychologically abused. He was threatened not to be involved in politics again or any political movements.
7. During the applicant's SHEV interview, which was conducted over the telephone, he said he did not attend and was not involved in the 2000 protest. He was aware of a crowd but wasn't aware it was a protest. He was walking to work and was 'just passing through' the protesting crowd when

he felt something - was grabbed - from behind. He turned around and four Sepah members grabbed his hair and he fell to the ground. He was hit with batons and taken in a van.

8. The applicant's written evidence is that he attended a political rally and told Sepah he was there to show his support. His oral evidence was that he was 'just passing through' and didn't know the crowd was a protest. He provided details about where the protest was and how he had to go through the crowd to get to his place of work. I prefer the applicant's detailed oral evidence that he was unintentionally caught up in a protest in 2000, that he was grabbed from behind, hit with batons and taken in a van by Sepah with other protestors. I accept the applicant was detained for a period of time after he was taken in the van.
9. The applicant's 2017 statutory declaration states that, about 20 days later (after being caught up in the protest) he was returning home from work and carrying some [computer equipment]. Sepah members stopped him, searched him and found the equipment. He was asked what secrets he was hiding. He was pushed into a car and taken to another Sepah centre. He was questioned about what secrets were on the video tape (one piece of equipment he was carrying looked like a video tape) and what secrets he was hiding. He told them he wasn't hiding anything and there was nothing on the tape. He was let go after a few hours.
10. During the applicant's SHEV interview, he said he was detained for two days when Sepah thought he had some information on a backup tape. The applicant explained that in 2000 computer backups were saved onto tapes. Sepah told him that he had 'protesting things' on the tape and he was kept for two days. After two days he was released and his identification documents were returned to him. He told Sepah that they knew where he lived and worked and could have access to him at any time.
11. The applicant's written evidence was that he was held for two days after he was grabbed at the 2000 protest. He was detained a second time for a few hours, about 20 days after the first incident, when he was found with computer equipment. However, his oral evidence was that he was kept for two days when he was found with computer equipment. I find it implausible and do not accept, that if the applicant was detained for a two-day period – when he was purportedly interrogated and psychologically abused – that he would confuse the circumstances that led to that detention. I accept the applicant was detained a second time and questioned about his computer equipment. However, I am not satisfied the applicant was ever detained for a period of two days.
12. On 6 August 2020 the delegate wrote to the applicant and invited him to comment on the following information:
 - *“On [a day in] June 2013 you participated in an arrival interview. During this interview you were asked to provide detail of your protest activity in Iran. You stated that you had protested in Iran “4-5 times” including during Mr Khatemi’s presidential election maybe 12 or 13 years ago and Mr Mousavi’s elections.*
 - *When asked how this protest activity had affected your life you responded: “Not actual effect on my normal life but when it came to the emotional part of your life when you protest for something and you don’t get it it was negative”.*
13. The delegate outlined that the information was relevant to the applicant's claims because in *“your Safe Haven Enterprise Visa application, and at your interview with me on 14 July 2020, you stated that as a direct result of being apprehended by the Sepah at a protest around the year 2000, you held a significant and ongoing political profile with the Iranian authorities which included several instances of detention and the temporary confiscation of your passport. It would appear you had*

the opportunity to detail these claims during your arrival interview and did not do so. Given this information it appears you have exaggerated your political profile in Iran following your arrival interview. This may impact on the credibility of your claimed political profile...

14. On 31 August 2020 the applicant's representative provided a written response stating:

- *"The problem here is that the delegate has selected the applicant's statement in the entry interview out of context. The applicant, in his entry interview, stated that he was arrested 2-3 times, and, on each occasion, he was held for one day. In his entry interview, he referred to the emotional impact of being arrested and interrogated on several occasions. The fact that the applicant stated in his interview that as a result of his protest activity his normal life was not affected does not necessarily suggest that he did not hold an ongoing political profile with the Iranian authorities. People have different ideas about the notion of "normal life". By saying that it did not affect his normal life, he meant that it did not affect his livelihood. He was able to work and make a living. It appears from the applicant's oral testimony in the entry and protection visa interviews that he was emotionally abused because of being arrested and interrogated on multiple occasions.*
- *The delegate also noted that the applicant had the opportunity to detail these claims during his arrival interview and did not do so. This is not correct. The entry interview was for the purpose of obtaining some basic information not an opportunity to provide details.*
- *The applicant has been consistent about his activity in Iran during his entry interview and his protection visa interview. He was candid about his participation in protests in Iran. The applicant fears persecution on the basis of his implied political opinion..."*

15. During the SHEV interview the delegate asked the applicant if he had ever attended a protest in Iran and he responded no. The delegate asked the applicant if he had ever been politically active in Iran and he responded that he hadn't. The delegate asked the applicant if he had been a member of any groups in Iran and he initially stated no and then stated maybe when he was [age range]. He said maybe he was in the 'people party' for the people. He was participating in that but nothing after that. The delegate asked the applicant why he didn't remember if he was or was not involved in any groups when he was younger and he responded that maybe at the time he was in a location or studying and maybe at that time there was a party of the people and they were coming and promoting the party and maybe he listened to a couple of lectures or meetings. He then stated that he wasn't involved.

16. During the applicant's entry interview, he said he protested four to five times and gave specific details about when. However, during his SHEV interview his evidence was that, apart from the applicant inadvertently being caught up in a protest in 2000, he never attended or was involved in political protests. I do not accept the applicant's submission that his oral evidence about his activities in Iran has been consistent. And, his oral evidence was inconsistent with his written evidence that he was at the 2000 protest to show his support. I find the inconsistencies about whether the applicant did or did not attend protests and/or whether he was at a protest to show support or because he was caught up in a crowd are significant and raise doubts about whether the applicant is a reliable witness.

17. Based on all the evidence before me, I prefer the applicant's oral evidence given during his SHEV interview that – apart from the 2000 protest, he was not involved in any other protests or any other political activities in Iran.

18. The applicant's oral evidence about whether he had or had not been involved in any groups in Iran and/or whether he had or had not listened to a couple of lectures or meetings was given in response to a specific question from the delegate. The applicant had not raised this claim before the SHEV interview and his evidence was equivocal and unconvincing. Overall, I am not satisfied the applicant ever listened to a couple of lectures or meetings for any group in Iran.
19. The delegate asked the applicant if he has been politically active in Australia in any way and he responded no. He said he is not a member of any groups and has not attended any protests or rallies. I accept the applicant's evidence that he has not been politically active in Australia in any way.

The 2000/2001 incident

20. The applicant's 2017 statutory declaration states that after these two incidents as outlined above he kept to himself. He would spend long hours at work and, when he was not at work, he would stay at home and rarely left. A few months later the applicant drove to the shops and 'felt' like he was being followed. When he stopped at the shops a van stopped in front of him and Sepah members told him to empty his pockets and get in the van. The applicant was scared and complied. The Sepah members searched him and took his mobile phone, some money and his car keys. He was driven to the Sepah centre and forced inside. He was left in a room by himself for about an hour. When the Sepah members came into the room he was interrogated about why he had so many contacts in his phone and who the contacts were. The applicant explained that it was part of his job because he sold [products] to these people. Sepah didn't believe him and continued to interrogate him. The applicant was allowed to leave after five hours but was told he had to give them his identification documents. He told them he didn't have those documents with him and they already had his mobile phone. He was told he couldn't leave without giving them his identity documents. The applicant called his brother-in-law and he was allowed to bring the documents to him. Sepah took these documents and made copies.
21. During the SHEV interview the applicant said he was going from home to work and was being followed. He was asked to get out of the car and asked for his identification. He gave them his identification and was taken for questioning and interrogated. He was provided with some names and the applicant told them he didn't know any of them and was let go.
22. The applicant's written evidence was that he didn't have his identification documents with him, he had to call his brother in law to bring them to him and that copies of those documents were made. However, his oral evidence was that he gave them his identification documents before being taken for questioning and interrogation. The applicant has given inconsistent evidence and, on his own evidence, Sepah knew where he worked and lived. If Sepah wanted to question and interrogate the applicant it is not apparent to me how spending long hours at work or home and rarely going out could reduce his risk of harm from Sepah members if Sepah had an adverse interest in him. Nor is it apparent to me why Sepah would choose to follow the applicant in his car before taking him to a Sepah centre. I am prepared to accept the applicant was questioned by Sepah after he stopped at the shops and, during that questioning, he was asked for his identification. I am prepared to accept the applicant was asked about contacts on his telephone. I am prepared to accept he was asked to empty his pockets and had his money taken. But, based on the evidence before me, I am not satisfied the applicant was ever followed, taken in a van for a third time, questioned and interrogated about names at a Sepah centre and then released as claimed. And, I do not accept that the applicant – in an attempt to keep a 'low profile' – spent long hours at work and/or home and barely went out.

The 2002 incident

23. The applicant's 2017 statutory declaration states in 2002 he left the house with his wife and Sepah stopped them because his wife's hair was showing 'a little bit'. Sepah pushed and punched the applicant and forced him to go with them in a car to the Sepah centre. He was interrogated about his religion and told he must not be of the Muslim faith for allowing his wife to show her hair. They threw other religions at the applicant stating that he must be following them. The applicant denied the allegations and told Sepah it was an accident. He was scared because if Sepah thought he followed another religion he would lose his job and be harmed. He was threatened that this should not happen again.
24. When the delegate asked the applicant if he had ever been given any documentation after any of the times he had been detained, he responded no.
25. Regardless of the religion practiced, all women in Iran are required to follow a strict Islamic dress code that requires covering "all strands of hair (in some public places with black chador), loose clothing that hides their shape, and only exposing the roundness of their face, their hands below the wrist, and their feet below the ankle."¹ Although women appearing in public without a proper hijab can be punished with lashes those penalties are rare. Women with a 'bad hijab' (that is some hair is showing) are ordered to adjust their headscarves and warned against future indiscretions. Sometimes, a woman can be taken to a police station and asked to sign a declaration undertaking not to wear a bad hijab again. Repeat offenders can incur fines and/or a criminal record.²
26. Based on the country information before me, I accept the applicant and his wife could have been stopped and questioned by Sepah members because his wife was showing a 'little bit' of hair. I accept the applicant's wife could have been directed to correct her headscarf or warned of future indiscretions. However, Iranian women face persistent societal discrimination and restrictions and their 'worth' is less than a man.³ I find it implausible and do not accept that the applicant – as opposed to his wife – would be interrogated about his religion because of his wife's behaviour. I do not accept the applicant was pushed, punched, taken and interrogated as claimed because of his wife's bad hijab. Nor do I accept the applicant was ever imputed with any anti-Muslim opinions as claimed.

Passport being confiscated in 2004 or 2005

27. The applicant's 2017 statutory declaration states that he travelled to [Country 1] in 2004 and, when he returned to Iran, his passport was taken at the airport. He was told his name was similar to a name on the list of people they were looking for. He was told his passport would be sent to the courts and he had to go there to collect it. The applicant went to the courts to collect his passport and was told to wait. He asked why his passport was taken and was told it was because he either hadn't paid his taxes or he had a dishonest check. He responded that 'this is not true' and was made to sit in a room for hours by himself. He was asked questions about other names on the list they had and asked if he knew or was involved with them. The applicant responded that he did not, that he was not and that he didn't know what they were talking about. He was told his passport had been sent to another state and he couldn't get it back until they had done their investigations. The applicant got his passport back about five months later. And during those five months he was brought in and questioned twice about other names on the list. The applicant states that his name was not even on the list but a similar name way.

¹ 'The Iranian women's quest for equality: History, strategies, & demands', *Change for Equality*, 8 June 2010, CX254797

² 'DFAT Country Information Report – Iran', Department of Foreign Affairs and Trade, 14 April 2020, 20200414083132

³ The Iranian women's quest for equality: History, strategies, & demands', *Change for Equality*, 8 June 2010, CX254797; 'DFAT Country Information Report – Iran', Department of Foreign Affairs and Trade, 14 April 2020, 20200414083132

28. During the SHEV interview, the applicant repeated his claim that his passport was confiscated when he returned from [Country 1] in 2004 or 2005. He was told that to get his passport back he would need to go to the passport office and obtain a letter to explain the process. He then had to go to the Sepah intelligence office and a list of names was put in front of him. He was asked if he knew any of the names and he responded that his name was on the list and the other names were of people who were politically active. He told Sepah that he was not involved in any political activities. His passport was returned seven or eight months later. He believed his passport was taken because his name was similar to a person on death row.
29. The applicant's written evidence is that he had to go to court to collect his passport, that his name was not on the list but a similar name was and that he was brought in twice and questioned about the names on the list. His oral evidence is that he went to the passport office and then the Sepah office where he was questioned about a list. He said his name was on the list. Despite these inconsistencies, I am prepared to accept the applicant's passport was confiscated in 2004 for a period of time because his name was similar to the name of a person of interest. I am prepared to accept the applicant was questioned - perhaps on more than one occasion - about other names on a list before his passport was returned after a number of months.

Between 2004 and 2013

30. The applicant's 2017 statutory declaration states that after these incidents he was scared he was being followed or monitored by Sepah or the government because they believed he was against the government and had different political opinions. He wanted to leave Iran because he was scared that he would be detained again and harmed. He wanted to flee with his family but didn't know how so he fled in 2013 by himself. Between 2004 and 2013 he states that he rarely left his house or place of work because he was scared that he would be detained or harmed.
31. The applicant's SHEV application indicates that he left Iran and went to [Country 1] in 2007, 2009 and 2010 and he left Iran on route to Australia in 2013. During the SHEV interview the applicant confirmed he used his passport to travel to [Country 1] and Australia and never had any problems exiting Iran. He confirmed he had just one problem when his passport was taken in 2004. The Iranian authorities often impose travel bans on Iranian citizens because of security concerns, debts, outstanding taxes, crimes committed abroad, and outstanding sentences awaiting enforcement. DFAT reports⁴ that civil and political activists are particularly likely to face travel bans and people are often unaware that travel bans are in place until they are at the airport and attempt to leave. Iranian authorities have the power to impose a travel ban without going to the judiciary.⁵ If the applicant was of any adverse interest to the Iranian authorities as claimed, I find it astounding that he would have been able to exit Iran on several occasions without any difficulties. I am of the view the applicant was able to leave Iran without difficulties because he was of no adverse interest to the Iranian authorities after he had been investigated in 2004 because of his name. The applicant has not claimed, and there is no evidence before me to indicate, that he experienced any problems with any Iranian authorities after his passport was returned to him in 2004 until he left Iran in 2013. This is consistent with my finding that I did not accept the applicant rarely left the house or place of work. And, I do not accept the applicant 'kept a low profile' because he was scared of being detained or harmed.

Attitude to the Iranian government

⁴ 'DFAT Country Information Report – Iran', Department of Foreign Affairs and Trade, 14 April 2020, 20200414083132

⁵ Ibid

32. The applicant's 2017 statutory declaration states that all the incidents he experienced in Iran made him hate the Iranian government. The Iranian authorities are intimidating and controlling and people cannot live freely. The applicant would never be able to express his opinion freely in Iran and he lived in constant fear that 'they' may suspect him to be opposing them. He couldn't keep living this way.
33. During the SHEV interview the applicant said he believes the Iranian government is an oppressive regime with tyrants who are plundering Iran. However, he never discusses his opinions of the Iranian government with anyone. I am prepared to accept the applicant holds anti-Iranian regime opinions and that he has never discussed those opinion with anyone. The applicant has not claimed and there is no evidence before me to indicate, that he intends to make his anti-Iranian government opinions known to anyone now or in the future.

Since the applicant left Iran

34. The applicant's 2017 statutory declaration states he will be interrogated about where he has been since he left Iran. He will be arrested, imprisoned and harmed because he fled Iran. The Iranian authorities will think he is against the Iranian government because his wife told them he had sought political asylum so she could get a divorce without needing the applicant's permission. When the delegate asked the applicant if his wife had reported him to the Iranian authorities to facilitate her divorce, he responded that he had never said 'such a thing' and his wife would never do 'such a thing'. When the delegate put to the applicant what was contained in his 2017 statutory declaration about his wife telling the Iranian government he had sought political asylum he responded that the Iranian authorities approached his wife and she had not reported him. He said Sepah members came to her work asking about the applicant about two years after he left Iran. His wife told them she has nothing to do with him and was concerned she would lose her job. She needs an income to sustain her life. She had to separate herself from him or resign from her job. He said his wife is [an occupation 1] who holds a very high position in Iran. It would not be a good 'reflection' for her to be interrogated and questioned in [her professional field]. His wife has relationships with [clients who] might have the impression she is a 'kind of like' political operative.
35. The applicant's written evidence is inconsistent with his oral evidence about whether his wife did or did not tell the Iranian authorities the applicant had sought political asylum. On the evidence before me, I am not satisfied that the applicant's wife ever reported to the Iranian authorities that the applicant had sought political asylum. I prefer the applicant's oral evidence which sounded spontaneous and emphatic. I find that the applicant's wife did not tell the Iranian authorities that the applicant sought political asylum to facilitate a divorce.
36. During the SHEV interview, the applicant said four years ago his wife told him that she wanted a separation because his position (in Australia) was not certain and she would lose her job. She couldn't come to Australia and he couldn't come to Iran so it was best to separate. The applicant didn't want a separation but his contact with her reduced over time and he hasn't spoken to her for about three years. When the delegate asked if there was a particular event that prompted his wife wanting a separation, he responded that he didn't know for sure but he gathered it was the constant questioning about where he was and the constant looking for him.
37. I find it implausible that if the applicant's wife was being visited by members of Sepah at her place of work and/or asked constant questions about the applicant and his whereabouts that he would fail to include that significant information in his 2017 statutory declaration. I am not satisfied the applicant's wife was ever visited or questioned by members of Sepah or any Iranian authorities about the applicant as claimed.

38. During the SHEV interview, the applicant said his brother-in-law (his wife's brother) is [employed in an industry] in Iran and, in an effort to help his sister obtain a divorce, he provided a photograph of the applicant that gave the impression he was working for a political group or something. The delegate asked the applicant if the photograph was of him at a protest and he responded that he hadn't seen it. The delegate asked how he found out about the photograph and he responded that he didn't really know. He said his brother-in-law is a supporter of the Iranian regime. The delegate asked the applicant that if there was a photograph of him attending a protest what protest was it and he responded that he didn't know. The applicant didn't know how he became aware of the photograph and didn't know what the photograph depicted. His evidence was vague and lacking in detail. And, on the applicant's own evidence, he had never attended a protest or been involved in political activities in Iran or Australia. In Iran, a wife can obtain a divorce without her husband's consent if she can establish in a court that, amongst other things, her husband has been absent for a certain period.⁶ The divorce is granted when a final judgement to that effect has been issued.⁷ The applicant's wife could obtain a divorce in Iran without the applicant's approval on the basis of his prolonged absence. I am not satisfied the applicant's brother in law ever provided to the Iranian authorities a photograph of the applicant that gave the impression he was working for a political group or 'something'.
39. The applicant told the delegate that he has heard his wife has divorced him. His sister went to court as a witness to declare that the applicant and his wife had no relationship and his sister had no information about him. He asked his sister for a transcript or evidence of the divorce so he could be confident the separation has taken place but nothing has been provided. When the applicant left Iran in 2013, his intention was for him to come to Australia and then facilitate his wife and child coming later. That has not eventuated and the applicant has been absent from Iran for more than seven years. The applicant is in regular contact with his sister and I find it implausible that if his wife had been granted a judgment to divorce the applicant, that no corroborating documentation could be provided. I accept the applicant and his wife could be separated but I am not satisfied that they are divorced.

Refugee assessment

40. 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

41. 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

⁶ 'The Iranian women's quest for equality: History, strategies, & demands', *Change for Equality*, 8 June 2010, CX254797

⁷ Ibid

- 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.

42. I accepted the applicant came to the attention of the Iranian authorities in 2000, 2002 and 2004 as outlined in detail above. I found that between 2004 to 2013 the applicant was of no adverse interest to the Iranian authorities for any reason and was of no interest to them when he left Iran.

43. I have found that the applicant was an Iranian citizen when he left Iran legally. I accept the applicant no longer has his passport and in order to return to Iran he would need to obtain documentation to facilitate his travel. While officials provide assistance to Iranians who wish to voluntarily return, Iranian overseas missions will not issue travel documents to an Iranian whom a foreign government wishes to return involuntarily to Iran. However, Iran and Australia signed a Memorandum of Understanding (MOU) on Consular Matters on 19 March 2018 to facilitate the return of Iranians who arrived after that date and who have no legal right to stay in Australia.⁸ The applicant does not fall into this category and I am satisfied there is not a real chance he will be returned to Iran involuntarily.

44. If the applicant did return to Iran in the foreseeable future, then it would only be on a voluntary basis, using a temporary travel document issued by the Iranian authorities.

45. The applicant said if he is forced to return to Iran, he will be arrested and imprisoned. He will be harmed because he fled Iran and has been away for a long time. The Iranian authorities will think he is against the Iranian government and he will be interrogated about where he has been for the last four (not seven) years and what he has done.

46. DFAT's assessment is that Iranian authorities pay little attention to failed asylum seekers on their return and have little interest in prosecuting failed asylum seekers for activities conducted outside Iran, including in relation to protection claims.⁹ Millions of Iranians travel into and out of Iran each year without difficulty, including the large Iranian diaspora residing in North America and Europe.¹⁰ And, there is nothing before me to indicate that a person would face a real chance of any harm in Iran for residing in a western country for a long period of time. Those who return on temporary travel documents are questioned by the Immigration Police at the airport about the circumstances of their departure and the reasons for travelling on a temporary travel document. This questioning takes between 30 minutes and one hour but can take longer if the returnee gives evasive answers or is suspected of having a criminal history. Arrests and mistreatment are not common during this process. I accept the applicant would be questioned by the Iranian Immigration Police if he returned to Iran on temporary travel documents. And, I accept that questioning could include where he has been since he left Iran. However, I did not accept the applicant had an adverse profile when he left Iran and, based on the country information, I do not accept the Iranian authorities will think he is against the Iranian government because he left Iran and has lived in Australia for a period of time.

⁸ DFAT Country Information Report - Iran', Department of Foreign Affairs and Trade, 13 April 2020, 20200414083132

⁹ Ibid

¹⁰ Ibid

47. People with an existing high profile may face a higher risk of coming to official attention on return to Iran, particularly political activists.¹¹ The applicant indicated in his SHEV application that he has never been charged and/or convicted of an offence in any country and I accept that evidence. He did not have an adverse political profile when he left Iran and I find he does not have an adverse political profile now. I am not satisfied the applicant would face a real chance of any harm from being questioned by the Immigration Police on his arrival in Iran.
48. Based on the evidence before me, I am not satisfied the applicant will face a real chance of any harm from the Iranian authorities or anyone else for any imputed political opinions now or in the reasonably foreseeable future. Nor am I satisfied the applicant will face a real chance of any harm from the Iranian authorities or anyone else for being a failed asylum seeker returnee who has lived in a western country for a period of time.
49. Taking into consideration the applicant's claims which I have accepted on a cumulative basis, I am not satisfied he would face a real chance of serious harm amounting to persecution, now or in the reasonably foreseeable future in Iran for any of his claimed reasons.

Refugee: conclusion

50. 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

51. 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

52. 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.
53. 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.

¹¹ DFAT Country Information Report - Iran', Department of Foreign Affairs and Trade, 13 April 2020, 20200414083132

Qualifications to the real risk threshold

54. Section 36(2B) provides that there is taken not to be a real risk that a person will suffer significant harm in a country if:

- it would be reasonable for the person to relocate to an area of the country where there would not be a real risk that the person will suffer significant harm
- the person could obtain, from an authority of the country, protection such that there would not be a real risk that the person will suffer significant harm, or
- the real risk is one faced by the population of the country generally and is not faced by the person personally.

55. I have accepted the applicant would be questioned by the Iranian Immigration Police if he returned to Iran on temporary travel documents. But, I was not satisfied he would be returning with an adverse profile and I am not satisfied there is a real risk that the applicant being questioned would amount to suffering significant harm within the meaning of s.5(1) and s.36(2A) upon his return to Iran now or in the foreseeable future.

56. I accepted the applicant would probably be identified as a failed asylum seeker who has lived in a western country for a long period of time should he choose to return to Iran but I was not satisfied he will face a real chance of any harm for that reason. As the “real risk” test in the complementary protection provisions imposes the same standard as the “real chance” test applicable to the assessment of “well-founded fear”,¹² I also find the applicant does not face a real risk of any harm for that or any of his other claimed reasons.

57. Considering the applicant’s claims for protection altogether, I am not satisfied that he faces a real risk of significant harm for any reason should he return to Iran now or in the reasonably foreseeable future.

Complementary protection: conclusion

58. 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.

¹² *MIAC v SZQRB* (2013) 210 FCR 505 per Lander and Gordon JJ at [246], Besanko and Jagot JJ at [297], Flick J at [342].

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

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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.

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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.

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36 Protection visas – criteria provided for by this Act

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- (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.

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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.