



**Australian Government**  

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**Immigration Assessment Authority**

**Decision and Reasons**

**Referred application**

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IRAN

IAA reference: IAA21/10211

Date and time of decision: 17 February 2022 10:56:00

P Tyson, Reviewer

**Decision**

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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

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### Visa application

1. The referred applicant (the applicant) claims to be a national of Iran. On 5 July 2017 he lodged an application for a protection visa. The applicant initially claimed to fear harm in Iran because of his involvement in post-election protests in 2009. He later raised a claim that he was gay and also feared harm for this reason.
2. The visa was refused by a delegate of the Minister for Immigration (the delegate) in a decision dated 15 December 2021. The delegate did not find the applicant's political or sexuality claims to be credible and was not satisfied that he had a real chance or risk of being harmed in Iran.

### 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. The applicant's representative provided a submission to the IAA on 18 January 2022. In addition to legal argument in response to the delegate's decision, which I have considered, the submission contains and attaches new information.
5. A central part of the delegate's reasons for rejecting the applicant's claimed relationship with a man named 'H' in Iran was an inconsistency arising from his 2017 protection visa application. In response, the submission provides and attaches new information relating to the preparation of that application. The information includes a decision of the Office of the Migration Agents Registration Authority (OMARA) dated [in] May 2018 cancelling the registration of 'RR', the migration agent who assisted the applicant at that time. Some of the conduct of the agent outlined in the OMARA decision includes providing inaccurate information to the Department as part of clients' protection applications. The submission asserts that the delegate ought to have been aware of the OMARA decision and of the gravity of the former representative's misconduct and raised the matter with the applicant. However, there is otherwise no explanation as to why the applicant could not have provided the new information about the preparation of the application and the OMARA decision to the delegate. Given that the applicant was represented before the delegate, and the OMARA information predates the decision, I am not satisfied that he could not have provided it to the delegate prior to the decision (s.473DD(b)(i)). However, I accept that it is credible personal information that, if known, may have affected consideration of the claims (s.473DD(b)(ii)). Although the information could have been provided earlier, the conduct of the former agent is a matter out of the applicant's control that goes to the reliability of the detail in his 2017 application and I am satisfied that there are exceptional circumstances to justify considering this new information.
6. The submission states that 'C', the applicant's claimed boyfriend, migrated to Australia as a refugee when he was a small kid. This is new information. During his protection visa interviews the applicant was asked several times for detail about C and put on notice of the delegate's concerns about his lack of knowledge about his claimed boyfriend. He was directly asked about C's visa status and at that stage said he did not know and they had not discussed it. He was given an opportunity to provide further information after the interview, but the applicant's representative later emailed the delegate to advise that the applicant would not

be making a post-interview submission and requested that the Department delete any relevant photos of C (submitted by the applicant) in its database. Even if the applicant was unaware of this new information at the time of the interview, he had ample opportunity to provide the information sought by the delegate prior to the decision being made (s.473DD(b)(i)). I am satisfied that the new information is credible personal information that was not previously known and, had it been known, may have affected consideration of the claims given that the delegate was concerned about the lack of information given by the applicant about C (s.473DD(b)(ii)). The information is submitted in response to a statement in the delegate's decision that '[C] has not been identified in Departmental systems and I am satisfied that this relationship is a fabricated claim made to falsely strength[en] the applicant's claim. All photos have remained on the applicant's file.' The submission states that the fact that the delegate has not been able to identify C using his photograph is irrelevant to the applicant's credibility in relation to his relationship. It is not apparent to me that C's migration status or presence in Departmental systems has any bearing on the claims and I do not share these perceived concerns. While I take into account that the new information regarding C's migration status satisfies s.473DD(b)(ii), it appears to be provided to explain C's migration status and why he was not located in Departmental databases, factors I consider irrelevant to assessing the claims. I am not satisfied that there are any exceptional circumstances to justify its consideration.

7. The submission refers to and attaches a psychologist's report in respect of the applicant. It is dated 13 January 2022 and refers to an appointment attended by the applicant on 11 January 2022. It provides an overview of his current mental health status and gives information about the applicant's sexuality and personal history consistent with that given to the delegate. It is significantly more detailed than the earlier medical information before the delegate. I am satisfied that this report could not have been provided prior to the delegate's decision and that it is credible personal information not previously known and, had it been known, may have affected consideration of the applicant's claims. It potentially corroborates the applicant's claims regarding his sexuality, mental health concerns and claimed struggle with his identity, which were not accepted by the delegate. In light of these matters, I am also satisfied that there are exceptional circumstances to justify considering the new information.

### **Applicant's claims for protection**

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8. The applicant's claims can be summarised as follows:
  - The applicant participated in 2009 post-election protests in Iran with five friends. He was arrested and imprisoned in a Sepah detention centre for 28 days. Several of his friends later disappeared and another was detained for 14 months. The authorities searched for the applicant and he lived away from his family with an aunt for two years. He was unable to get a job so returned home, finding a job a year later. Authorities were again after the applicant so he lived and worked in a friend's shop for about five months. On two occasions the applicant's brother was mistakenly detained and tortured. The applicant feared arrest and death and decided to leave Iran.
  - The applicant grew up in a traditional religious family. In the year prior to undertaking military service he began to realise he was attracted to men. He formed a relationship with an old neighbourhood friend, H. He was unable to speak to his family about his sexual identity due to their attitudes, and lived with a sense of guilt, considering himself a sinner which led to depression.

- H's mother caught the applicant and H being intimate. She beat them and told the applicant to leave the home and not return. She said she would not tell his family about what had happened as she was aware how religious they are and that they would end his life.
- H later visited the applicant at work, with a damaged face. H's father had learnt of the incident but had not been told of the applicant's identity. H said he was under constant surveillance and asked the applicant not to contact him. H contacted the applicant on occasion and said he had been forced to see a psychologist and was doing 'shock therapy'.
- The applicant was afraid of the possibility of H's father learning his identity, or of his own family learning what had happened. He feared what would happen to H and himself. His mental health was at its worst and he feared honour killing or execution.
- His family were attempting to introduce him to women for marriage which he did not want.
- The applicant took the opportunity to leave Iran with his sister and her husband.
- In Australia the applicant has had some boyfriends and has visited gay clubs on occasion. He has been in contact with a man named C but has not been able to have much physical contact because of Covid.
- The applicant fears he will be imprisoned, tortured and killed, at risk of persecution and significant harm. He has been subject to limitation, discrimination, surveillance and vulnerability. He was psychologically harmed. The authorities are everywhere in Iran and there is nowhere safe to go. He would be targeted due to his activities against Islam and problems with the government.

## **Refugee assessment**

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9. 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**

10. 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.
11. The applicant's initial claims submitted with his 2017 protection visa application raised a fear of harm due to his involvement in the 2009 post-election protests. The claims regarding his sexuality were raised for the first time in a statement submitted to the Department of Home Affairs (the Department) the evening prior to his 12 August 2021 protection visa interview. He later had a second interview, with a different officer of the Department (the delegate), on 22 October 2021.
  12. The applicant had previously been invited by the Department to attend protection visa interviews on 11 January and 1 February 2021. These were postponed for medical reasons. The first postponement was supported by medical certificates issued by a GP indicating an unspecified medical condition and a GP Mental Health Treatment Plan. In requesting a second postponement, the applicant submitted the letter from [Psychiatrist A] detailed below. The Department agreed to a postponement of at least ten weeks to allow the applicant to prepare and receive medical treatment and requested that the applicant prepare any additional information relevant to how his medical condition affects his ability to participate in an interview, including a psychiatric assessment or report concerning his condition. It is not apparent that any such report was provided.
  13. In assessing the applicant's evidence I have taken into account this medical evidence. A letter from [Psychiatrist A], consultant psychiatrist, dated 29 January 2021 indicated that the applicant had been suffering from severe anxiety symptoms, had been unable to work, was not psychologically fit to attend an interview and that his symptoms would persist for at least a few months. The letter stated that he had been started on medication and would need psychological treatment in the next few months and would continue to regularly see the doctor for monitoring of his mental state and treatment. The Department agreed to a postponement of at least ten weeks to allow the applicant to prepare and receive medical treatment and requested that the applicant prepare any additional information relevant to how his medical condition affects his ability to participate in an interview, including a psychiatric assessment or report concerning his condition. No such report appears in the material before me. Despite [Psychiatrist A's] indication that the applicant would require regular appointments, it was unclear from his evidence at the interviews that he had received any ongoing treatment after that time. He said at the first interview that he was supposed to have seen the psychiatrist but had cancelled his appointment due to the interview, although said he had been under treatment and taking medication. At the second interview he said he had to go to the doctor again, that it was about 6 months since he had last seen his psychiatrist, but indicated he had only seen him once. He said the doctor had discussed medication and flagged that it might be prescribed in the future if he was not better, although it seemed he was saying he was not on any at that time.
  14. In any event, the applicant indicated at the first interview that he was feeling very well, a lot better. To the IAA the applicant has submitted a report from [Psychologist A], psychologist, dated 13 January 2022. The report indicates that the applicant had self-referred and at the time of the report had had one session on 11 January, and has scheduled future appointments. The report refers to ongoing symptoms reported by the applicant that cause clinically significant distress and impairment in his social, personal and daily functioning. However, the report does not refer to or express any opinion on the applicant's ability to participate in interviews in August and October 2021. On the evidence I am satisfied that the applicant was able to participate in the interviews at the time they took place. I note that the

applicant has not made claims about his ability to obtain medical or psychological treatment for his mental health conditions in Iran.

15. In rejecting the applicant's claims, the delegate relied on an inconsistency arising between the two statements of claims submitted by the applicant. Pivotal events in both statements take place in connection to a store where the applicant claimed to work, but the timeframes are vastly different. His 2017 statement says that in 2012 he found a job in a [product 1] shop, that his brother came to see him and was forcibly taken into a car and tortured, mistaken for the applicant. In his 2021 statement, the applicant claims that his relationship with H developed when H would visit a [product 1] store where he worked. In the statement and at interview, he says this was prior to his military service which, according to documents he submitted, commenced in 2005. There is a fundamental inconsistency in these timelines. The claims in the 2017 statement relate to events that took place following the 2009 protests and the 2021 statement to events prior to his 2005 military service. The work history given by the applicant in his protection visa application indicates the applicant's employment in a [product 1] shop was between 2007 and 2010, a third timeframe that also places this job after his military service. The applicant confirmed at the second interview that he had only worked in one [product 1] store and had not worked in other similar shops.
16. Asked about the discrepancy at the protection visa interview, the applicant referred to the length of time that has since passed and suggested the error could be one of conversion between the Persian and Gregorian calendars, translation, or a typographical error. In his submission to the IAA the applicant attributes the error to the conduct of his former agent, saying that the 2017 statement of claims was completed after a short conversation and was not read back to him. However, the applicant has not explained what the correct version of events in the 2017 statement should be. The submission to the IAA states that the applicant's entry interview correctly says that he worked in a [product 1] store prior to military service, but in fact the written record of that interview reports him as saying that he worked in welding prior to military service and a [product 1] shop between 2007 and 2010, which is consistent with the employment history given in the visa application, but inconsistent with the claims in both the 2021 and 2017 statements.
17. Given the OMARA information regarding his former agent, I accept the applicant's claims about the preparation of the statement. However, the applicant maintains that the 2017 claims are true. This is not a case of an incorrect date; there remains a significant inconsistency in the timelines which the applicant has not resolved. This casts some doubt over both the claimed pursuit of the applicant by authorities prior to his departure, and his relationship with H which is said to have evolved during visits to the store where the applicant worked.
18. I have additional concerns with the applicant's evidence regarding his involvement in the 2009 demonstrations and events said to have followed. The applicant claimed at the second interview that he had not been taken to court or charged with any offence but had secured his release by signing an agreement that he would not participate in demonstrations or political activities. He claimed that after this he did not engage in any further activities. Yet on his evidence both in the statement and at the second interview, he was then pursued by the government for around three years, including visits to his home, surveillance of his relatives and mistaken capture and torture of his brother. These claims are not easily reconciled with his initial release and later ability to depart legally on his own genuinely issued passport. Further, the applicant was questioned at both interviews about whether he was maintaining the 2017 claims and confirmed that he was, but said they were not the 'main reason' for leaving Iran or his 'main claim'. He stated in the second interview that other people with

similar experiences were still in Iran and living their lives, and agreed with the first interviewing officer that the Iranian government was not too interested in people who had protested in 2009. It is difficult to believe that he would downplay the political claims to the extent he did during the interview if in fact he had been detained for 28 days, sought after for years, had friends detained for over a year, and if his brother had twice been detained and tortured. I have taken into account that the applicant has made these claims with broad consistency since his arrival in Australia, but on the evidence overall I do not find them credible. I do not accept that the applicant was involved in the 2009 protests, detained or sought after or that he was a person of any interest to Iranian authorities at the time of his departure.

19. Turning to the applicant's claims regarding his sexuality, I draw no adverse inference from the delay in making these claims. If true, it would be entirely understandable that the applicant may not have been comfortable to disclose those claims at his arrival interview or even at the time of making his 2017 application which he claims his sister was involved in. I note that at one point in the second interview the delegate asked the applicant for his boyfriend C's phone number in order to contact him, and indicated that if he did not provide it at that time there could be a perception that he had colluded with C. The applicant was clearly uncomfortable and said he did not want to provide it without C's permission, referring to C's background and family situation. There are any number of reasons that a person would be unwilling to provide somebody else's phone number to the Department without first seeking their permission and I draw no adverse inference from the applicant's reluctance to provide the phone number at that time.
20. The applicant's evidence at both interviews regarding his sexuality, including his realisation of his same-sex attraction and relationship with H in Iran was generally consistent with the claims made in his 2021 statement. However, in addition to the timeline issues identified above, there are some aspects of the applicant's claims about H that are difficult to reconcile. Firstly, the applicant has said that H's mother did not reveal the applicant's identity to H's father and instead told him that the person she discovered with H was a 'known friend', yet he also states that H told his father that it was a boy he found in the street and it was their first meeting. Secondly, he says that H was able to visit him at his store shortly after they were discovered, but also says that H was under 'constant surveillance' and had messaged the applicant only days earlier to say he would not see him again.
21. In support of his claims, the applicant has submitted over 20 photographs which I accept show him attending LGBTQI nightclubs or events on various occasions. From signage visible in the photos, these include [named] nightclubs, which he referred to in his oral evidence. The applicant is wearing different clothing in many of the photos, suggesting they were taken over a number of different outings. In some photos he appears with other men, including one which shows him being embraced from behind by a person who he identified as C, his claimed boyfriend. The applicant has stated that the other men are not close friends but they see each other at the club.
22. The applicant's claims are also corroborated by the psychologist's report submitted to the IAA. That report contains information generally consistent with the applicant's evidence to the Department, including his stress and anxiety around his sexuality and the pressure he felt in Iran, his fears about his family's reaction and that he continues to hide his sexuality from his family and the Iranian community in Australia. The report indicates that the applicant has severe and extremely severe scores of depression, anxiety and stress and that the main trigger for his depressive and anxiety symptoms is his inability to freely express his sexual orientation especially within his family and within his community. Consistently with his

evidence, it states that although he says he came to Australia to be able to live freely as a homosexual person, he still finds it difficult to be his true self and is very sensitive to themes that trigger the idea of being judged and not accepted.

23. The applicant's main expression of his claimed sexuality and interaction with the LGBTQI community in Australia appears to have been through attending clubs. He claimed he used to go to gay clubs in Perth when living there with his sister. He said since living in Melbourne he has been busy with work but when he was free and had time he would go to these clubs. At the second interview, the applicant said beyond going to the club, he was trying to participate more in LGBTQI community activities. However, he was not able to identify what activities he might participate in. Asked about what connection he had to the community since 2015, when his sister had moved away from Melbourne, he said that first he was under a lot of stress and was shy and embarrassed, but for the past two years was more confident and had met people. When he was questioned about what community activities he wanted to participate in, he said he meant going to the club, enjoying life and dancing with his partner, and finding friends who are like him and think like him. Asked at the first interview about whether he had used apps such as Grindr to meet men, he said he did not like to waste time on them and preferred to meet in person.
24. The applicant claimed that he had met his now boyfriend C at the beginning of the pandemic. The applicant identified that C is [age] years and from [Country 1] and works in a [specified] shop. Asked about C's visa status, he said he had not asked him personal questions and that because of Covid restrictions there had been a distance between them, but he thought it would be better after restrictions were removed. He said they intended go out together once restrictions were eased. He said he and C messaged every two or three days, that at the moment they were getting to know each other but may go deeper later, that the relationship would possibly become more serious. However, he confirmed he would consider C to be his boyfriend and that C felt the same. Asked when they had expressed to each other that they were boyfriends, he said they had started communicating more and the relationship became more serious, friendly and deeper when the lockdown started, around June. He confirmed they had had sexual contact at the club and also said that some of the phone communication was sexual. On the one hand the applicant seemed to describe their relationship as in a very preliminary stage of getting to know each other, with the possibility it would become more serious, but on the other hand said that they viewed each other as boyfriends and described the relationship as having already grown deeper and more serious some months earlier.
25. The applicant was asked a number of times for detail about C, including being asked to tell the delegate as much detail as he could, everything he knew about C and his life. He again emphasised that their relationship had been restricted because of the lockdown but knew that he lived with his family, in a particular suburb. He also later indicated that C's family are Muslim and do not know he is gay. Asked how many times the applicant had physical contact with C over the past two years, he said referred to lockdowns and also to travelling to Adelaide and Sydney. Asked again how many times he had physically seen C over the past two years aside from the time he first met him, he said two. The applicant said he had not had other boyfriends in Australia aside from C, but said in the club he knows some people and they say hello to each other. Asked about other men in the photos he had submitted, he said they are not close friends but see each other at the club.
26. The delegate told the applicant he would be given seven days after the interview to provide evidence of phone contact over a two year period, which could be messaging or phone records. At the request of the applicant's representative, an extension of this period was agreed to. However, on 11 November 2021 the representative emailed the delegate to state



'[a]fter a long, detailed conversation with the client, he informed me that he came to the decision to not submit any post-interview submission letter, and leave everything as it is, and he stands by all he provided during two SHEV interviews. Moreover, my client also mentioned that his boyfriend was very unhappy about revealing more details about their relationship to any third party, and asked my client to ask the DHA to delete any relevant photos of him in the DHA database.' I do not draw any adverse inference from the request to remove C's picture from the databases. However, the applicant was on notice of the delegate's concerns over his claims relating to C. While I accept that he may have been reluctant to submit any sort of identifying information about C, such as his full name or phone number, I do not accept that he could not have submitted some sort of de-identified information such as redacted screen shots of messages.

27. The applicant made a number of statements in his interviews about freedom, acceptance and a lack of discrimination in Australia. He said he felt very happy in Australia because he can comfortably walk with another boy in the street, in contrast to Iran. He gave evidence that when he realised his same sex attraction, life became difficult and he wanted to isolate himself from society, gatherings and community but his family would not let him do so. In Australia he was initially also not comfortable because he was around Iranian people, but little by little he could mention his identity. He said that in Iran one of the main questions people ask is sexuality and if you are gay they will not give you a job and may hurt you. He said he now realises in Australia that people do not ask about sexuality and if they do you can tell them. He said that he might not be able to disclose it to his family but with society and the public, he can mention it. He said that he is happy to be talking about his identity without shame, and that everybody respects him, at his work people respect him and do not have any objection.
28. Despite these sentiments, the applicant's evidence at the interviews is that very few people are aware of his sexuality. The only people he has disclosed it to are his lawyer, his doctor (clarified to mean the psychiatrist), the interviewers and interpreters, and people such as C that he has met at clubs. The applicant expressed reluctance and fear about engaging with the Iranian community and understandably may not wish to disclose matters of sexuality to them or family. However, his evidence was that his non-Iranian housemates and colleagues at the company where he has worked since 2015 do not know he is gay. At the first interview he said this was because he had not had the opportunity to sit and talk about sexual orientation, that he did not see his housemates very often. He said at the second interview that nobody knows, it is his secret.
29. I accept the representative's submissions that particularly in the case of a person coming from a society such as that in Iran, it may take a significant period of time to disclose one's sexuality. I am mindful that sexuality is a deeply personal matter and there may be many reasons that a person does not disclose this aspect of their life to friends or colleagues. On one view of the evidence, supported by the psychologist's report, it may be that the applicant is still undergoing a very gradual process of coming to terms with his sexuality and becoming comfortable with disclosing it to others.
30. However, he has been in Australia for over eight years now, and has been living in a separate city to his sister for over five years. On his evidence he is happy and feels safe and knows he will not be discriminated against and told the delegate that in Australia he was able to disclose such matters to others outside his family. Although not determinative of his sexual identification, there is very little evidence, even on his own oral testimony, of any engagement with the LGBTQI community, of any sort of public identification, beyond what seem to be occasional visits to nightclubs. While I accept his ability to engage in activities and

spend time with C over the past few years would have been limited by lockdowns, as the delegate pointed out, there have also been periods of unrestricted movement. Most concerning, the applicant has not provided evidence of those aspects of his claims not so hampered by the pandemic and which I would expect him to be able to substantiate. The applicant is saying that he has been in phone contact with C for a period of around two years and that in the period prior to the interview they were communicating every two or three days. In circumstances where the applicant has said that he has disclosed his sexuality to very few people and has had only very limited involvement with the LGBTQI community, his claimed relationship with C is a central part of his claims. His failure to provide evidence to substantiate the claim casts significant doubt on its credibility. Further, as detailed above, much of his evidence about C and their relationship was shifting and vague. I note also that the psychologist's report details matters such as the applicant's family background, living arrangements and employment in Australia but makes no reference to C or their claimed relationship. Nor does it make any reference to H or to the applicant having any same sex relationship in Iran, despite describing the applicant's feelings about his sexuality and the limitations he faced while in Iran.

31. While the psychologist's report corroborates aspects of the applicant's claims, the detail in the report about his life and sexuality is based on what he has told the psychologist. The inconsistency between the applicant's 2017 and 2021 claims casts doubts over his claimed relationship with H and his general credibility. The fact that a person has not been in numerous or significant relationships is not indicative of the credibility of their claimed sexuality but it is the applicant who has referred to his relationship with C as a part of his claims and I have serious concerns over his evidence in this regard. Considering the evidence overall, I am not satisfied that the applicant's claims regarding his sexuality are credible, or that he has been in the relationships with H or C that he claims.
32. I accept that the applicant has been to a number of LGBTQI clubs in Australia and claimed to various professionals that he is gay, but I am not satisfied that he did this because he identifies as a gay man. The applicant has not satisfied me that he has engaged in this conduct otherwise than for the purpose of strengthening his claims to be a refugee and I have disregarded it in accordance with s.5J(6). There is no real chance of the applicant being harmed for reasons of his sexuality.
33. The applicant has made claims that he has been under significant pressure from his family and that they have attempted to make arrangements for him to marry or introduce him to suitable women. The applicant's evidence suggested that he had avoided these proposals by changing the subject or, in Iran, saying that he was not ready and making excuses such as the person being in another city. While these claims were raised in the context of the claims about his sexuality which I have rejected, I am willing to accept that he has come under pressure from his family about marriage and that if he returns to Iran that they may again introduce him to women with the intention of arranging a marriage. However, despite this pressure, the applicant was not married in the past. Asked how his family reacted, he said that his mother was concerned and worried, his sisters would insist they knew good girls for him, and his father usually had the same advice. While he has described his family as strictly religious, there is no credible evidence that they are violent or coercive. I accept he may face pressure to marry but I am not satisfied that this amounts to serious harm or that there is a real chance of him being forced into marriage or harmed for refusing to marry.
34. The applicant has said at the first interview that he is Shia Muslim but does not practise. He said that he believes in God. He then clarified that he was Muslim born but in Iran would say that he was Muslim because if he did not he would be considered an apostate and subject to

capital punishment. I accept that the applicant does not practise Islam. A report<sup>1</sup> from the Department of Foreign Affairs and Trade (DFAT) states that Shia Islam is the official state religion and a Muslim who renounces Islam and becomes atheist is considered apostate and risks persecution and potentially the death. However, in practice secularism is widespread, particularly in major cities and among younger and wealthier Iranians. A significant proportion of the population does not attend mosque or pray on a regular basis. While there is an expectation that people do not eat in public or hold parties during Ramadan, beyond this how one wishes to observe Islam is an individual choice. Atheists are unlikely to come to the attention of authorities unless they widely publicise their beliefs, although those from conservative families may face pressure and potential ostracism. DFAT has assessed that non-practising Iranian Muslims face a low risk of official and societal discrimination. I am not satisfied on the evidence that the applicant has previously come to any harm on account of his religious views or non-practise of Islam. While the applicant stated that in Iran he would say that he was Muslim because if he did not he would be considered an apostate and subject to capital punishment, he also initially identified as Muslim in the interview. There is no credible evidence that he publicly identifies as non-Muslim in Australia or publicly discusses his religious beliefs in any way. I am not satisfied that the reason the applicant identifies as Muslim in Iran is to avoid harm, or that he has any genuine intention or desire to identify as non-Muslim or publicise his religious beliefs in Australia or in Iran. In the applicant's circumstances I consider the chance of him suffering any harm in connection with his religious beliefs and non-practice of Islam to be no more than remote.

35. Although not expressly raised by the applicant, the delegate considered whether the applicant would be harmed on the basis of being a failed asylum seeker from a western country. I find that if the applicant were to return to Iran, it would be as a voluntary returnee travelling on temporary documents (*laissez-passer*). This is because he is no longer in possession of his passport and Iran does not issue travel documents to facilitate involuntary returns in respect of persons such as the applicant who arrived in Australia before March 2018.<sup>2</sup> According to DFAT<sup>3</sup>, Iranian authorities pay little attention to failed asylum seekers on their return to Iran. Where a person is issued a *laissez-passer*, authorities in Iran are forewarned of their imminent return and the person will be questioned by immigration police at Imam Khomeini International Airport in Tehran about the circumstances of their departure and why they are travelling on temporary documents. This questioning usually takes less than an hour, but may be longer where the returnee is considered evasive in their answers and/or immigration police suspect they have a criminal history. DFAT states that arrest and mistreatment are not common during this process. DFAT assesses that the treatment of returnees to Iran, including failed asylum seekers, depends on their profile before departing Iran and their actions on return. Unless they were the subject of adverse official attention prior to departing Iran, returnees are unlikely to attract attention from the authorities and face a low risk of monitoring, mistreatment or other forms of official mistreatment. While country information cited by the delegate<sup>4</sup> refers to various examples of returnees to Iran

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<sup>1</sup> Department of Foreign Affairs and Trade (DFAT), 'DFAT Country Information Report - Iran', 14 April 2020, 20200414083132.

<sup>2</sup> Ibid.

<sup>3</sup> Ibid.

<sup>4</sup> For example, Human Rights Activists News Agency (United States), "An Arab Asylum Seeker Sentenced to Jail after Returning to Iran", 30 May 2017, CXC9040668619; Center for Human Rights in Iran (United States), "Reformist Political Activist Turned Refugee Briefly Arrested Upon Return to Iran", 18 October 2017, CXC90406615858; Iran Human Rights (Norway), "Woman Asylum Seeker Lashed 80 Times After Being Deported to Iran From Norway", 20 September 2017, CXC90406614387; Human Rights Activists News Agency (HRANA), "Zahra Majd Sequestered for Opinions of her Dissident Spouse", 15 October 2018, CXBB8A1DA36878; Radio Zamaneh, "Iranian poet/activist arrested at Tehran airport", 8 January 2016, CX6A26A6E140; International Campaign for Human Rights in Iran, "New Video: Iranian Expats Face Arrest upon Return to their Homeland", 23 April 2015, CXBD6A0DE5203.

facing adverse treatment on return, consistent with DFAT's assessment most of those cases seem to involve persons with an existing profile with Iranian authorities. The applicant is not such a person.

36. I have not accepted the applicant's claims regarding his previous political involvement or pursuit by Iranian authorities. There is no credible evidence that the applicant was a person of any interest to the authorities at the time he left Iran for these or any other reasons, or that he has subsequently come to their attention. I find that if the applicant returns to Iran, he will very likely be questioned for a brief period on account of his travel documents. The applicant departed lawfully on his own passport and has not indicated he has any criminal history, and I find that any questioning of the applicant will quickly establish that he is not a person of any interest to authorities. I am not satisfied that a brief period of questioning amounts to serious harm or that there is a real chance of the applicant otherwise being harmed during this process.
37. Considering as a whole what I accept of the applicant's circumstances, I am not satisfied there is a real chance of the applicant being harmed in the reasonably foreseeable future in Iran. While he may face familial pressure about marriage and a brief period of questioning, even taking these things together, I am not satisfied that they amount to serious harm within the meaning of s.5J(4). There is not a real chance of the applicant facing serious harm in the reasonably foreseeable future in Iran and he does not have a well-founded fear of persecution within the meaning of s.5J.

#### **Refugee: conclusion**

38. 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**

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39. 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**

40. 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.
41. 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.

42. I have accepted that the applicant may face pressure from his family to marry. While I accept that this pressure may be uncomfortable and unpleasant for the applicant, I am not satisfied that it involves the level of pain, suffering or humiliation described in the definitions of torture, cruel or inhuman treatment or punishment or degrading treatment or punishment. I have also found that the applicant will likely be questioned by Immigration Police if he returns to Iran on a laissez-passer. However, I am similarly not satisfied that this questioning, which I have found will be brief and will quickly establish that the applicant is not a person of any interest, meets the threshold of pain, suffering or humiliation described in those definitions, either alone or when considered together with the pressure to marry that he may experience. Nor does this treatment otherwise amount to significant harm within the meaning of s.36(2A).
43. In my assessment of the refugee criterion, I disregarded pursuant to s.5J(6) the applicant's conduct in Australia relating to his claimed sexuality. As s.5J(6) does not apply to the complementary protection criterion in s.36(2)(aa) I have considered whether there is a real chance of the applicant being harmed in Iran on account of his activities in Australia. On the applicant's own evidence he has not disclosed his activities to friends, family or the Iranian community in Australia. As I do not accept the applicant's claim to be gay I do not accept he would either identify as such in Iran or otherwise disclose his conduct in Australia. I do not accept that the applicant had a profile of any interest in Iran such that his activities in Australia, including attendance at LGBTQI venues, might be monitored or reported to Iranian authorities or other persons who might seek to harm him. There is no credible evidence to suggest that the applicant's activities are or would become known to any person in Iran. Furthermore, DFAT has stated that the Iranian authorities have little interest in prosecuting failed asylum seekers for activities conducted outside Iran, including in relation to protection claims such as engaging in LGBTI activities.<sup>5</sup> I am not satisfied there is a real risk of the applicant being imputed to be gay or otherwise harmed in Iran because of his conduct in Australia.
44. I have otherwise found there is not a real chance of the applicant suffering harm in the reasonably foreseeable future in Iran. The Federal Court has held that 'real risk' imposes the same standard as the 'real chance' test in the refugee criterion.<sup>6</sup> Having regard to the country information and reasoning set out above, I am not satisfied that there is a real risk of the applicant suffering significant harm in Iran.

#### **Complementary protection: conclusion**

45. 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**

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

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<sup>5</sup> DFAT, 'DFAT Country Information Report - Iran', 14 April 2020, 20200414083132.

<sup>6</sup> *MIAC v SZQRB* (2013) 210 FCR 505.

## Applicable law

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### ***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.