



Australian Government
Immigration Assessment Authority

Decision and Reasons

Referred application

IRAN

IAA reference: IAA22/10281

Date and time of decision: 8 July 2022 15:39:00

P Tyson, Reviewer

Decision

The IAA remits the decision for reconsideration with the direction that:

- the referred applicant is a refugee within the meaning of s.5H(1) of the *Migration Act 1958*.

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

Background to the review

Visa application

1. The referred applicant (the applicant) claims to be a national of Iran, of Ahwazi Arab ethnicity. He was [a minor] at the time of his arrival in Australia in 2013. On 29 June 2017 he lodged an application for a Safe Haven Enterprise visa, a type of protection visa.
2. The visa was refused by a delegate of the Minister for Immigration in a decision dated 24 October 2017. The delegate rejected some integers of the applicant's claims, but accepted that he had suffered discrimination and harassment because of his Arabic heritage and Sunni religion, that members of the applicant's extended family had engaged in pro-Arab demonstrations in Iran, that his father had been arrested on multiple occasions and that his father's [relative] was a poet and political activist who has been arrested and tortured. However, the delegate found that the applicant did not have a profile that would bring him to the attention of Iranian authorities and concluded that the applicant would not face a real chance or risk of serious or significant harm on the basis of his real or imputed political views, ethnicity or religion, because he had not completed military service or as a failed asylum seeker.
3. A different IAA reviewer affirmed the decision of the delegate in a decision dated 18 July 2018. That decision was subsequently quashed and the matter remitted to the IAA for reconsideration by order of the Federal Circuit and Family Court of Australia, by consent, [in] March 2022.

Information before the IAA

4. I have had regard to the material given by the Secretary under s.473CB of the *Migration Act 1958* (the Act).
5. The previous reviewer obtained a report published by the Department of Foreign Affairs and Trade (DFAT) in 2018, which updated an earlier version of that report relied on by the delegate. DFAT since issued a further updated report in April 2020¹, which I have obtained. That report represents DFAT's most recent assessment of the situation in Iran, and was prepared specifically for the purpose of protection status determinations, with regard to the current Australian caseload. I am satisfied that there are exceptional circumstances to justify considering the 2020 DFAT report. Given that I now have before me the more current 2020 report, I am not satisfied there are exceptional circumstances to justify considering the 2018 report obtained by the previous reviewer.
6. The applicant's former representative provided legal submissions to the IAA on 17 November 2017. On 6 April 2022 the applicant's current representative provided a further submission which replicates much of the earlier submission, with some additions. Although the 2022 submission indicates that the applicant continues to rely on all submissions previously provided, the newer one is described as an 'amended previous submission to the IAA'. The 2022 submission was provided after the applicant had been advised in the IAA's Acknowledgment Letter of 4 April 2022 of the requirement in the Practice Direction that submissions be no longer than 5 pages and that any further submission would generally not be considered if it exceeded the 5 page requirement when considered together with the existing 2017 submissions, but that earlier submissions could be withdrawn or amended. I

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

accept the amended submission provided to the IAA in April 2022 in place of the earlier submission.

7. The submission includes a number of statements about the treatment of Sunni Muslims in Iran, punishment for military desertion and treatment of Arabs during military service for which no source has been provided. In the absence of a citation, I am not satisfied that this material was before the delegate. The applicant has not complied with the requirements in the Practice Direction for providing new country information, specifically that it must be attached, and the source and date of the document must be identified. In the absence of a source or copy of the relevant material, those parts of the submissions are no more than unsubstantiated assertions and I have determined not to accept them. Even if I were to accept them, in the absence of further detail I am not satisfied that this information could not have been given to the delegate prior to the decision being made, or that it is credible personal information that, had it been known, may have affected consideration of the claims. I am also not satisfied there are any exceptional circumstances that would justify its consideration.
8. The submission also includes what I find to be a new claim that the applicant objects to doing military service for a regime that has occupied his homeland and persecuted his own family and fellow Arabs for decades. His evidence to the Department indicated that he feared harm because he had had left Iran prior to having performed military service, but as noted by the delegate, did not suggest that he had any particular objection to service as he now claims. He has not indicated this is a recent belief that has arisen only since the delegate's decision or otherwise explained why he did not claim it to the delegate, which I find particularly concerning given that he was specifically asked whether there was any reason he did not want to do military service. The new claim is no more than an unsubstantiated assertion; the applicant has not provided any detail about whether or how he would voice his objection to military service, or what he fears would occur if he did so. I am not satisfied that the information could not have been given to the delegate prior to the decision being made, or that it is credible personal information that, if known, may have affected consideration of the claims. Nor am I satisfied that there are any exceptional circumstances to justify its consideration.
9. The applicant has submitted a letter from the chair of [Organisation] dated [April] 2020 which attests to his membership of the community, attendance at cultural and religious gatherings and commitment to the Arab cause. The applicant did not previously disclose his involvement with this group, and the letter indicates that the author has known him for eight years, which would suggest he knew the applicant in Iran or perhaps shortly after his arrival in Australia. However, it is not clear whether the author is suggesting that the applicant has been involved with the group for that length of time, or even prior to the delegate's decision, indicating only that he has been attending gatherings 'for a number of years'. Some of the information in the letter, such as the applicant's views and reasons for not engaging in political activity in Australia, is broadly consistent with the applicant's own evidence, and the letter also provides new evidence about the applicant's activities in Australia, all of which is capable of being believed. I am satisfied that the letter could not have been provided to the delegate, given it post-dates the decision and attests to the applicant's beliefs and activities over a period including a number of years after the decision, that it is credible personal information that was not previously known and, had it been known, may have affected consideration of the claims, and, considering all of these matters, that there are exceptional circumstances to justify considering it.

Applicant's claims for protection

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

- The applicant is an ethnic Arab and Sunni Muslim from Ahwaz, Khuzestan Province.
- The applicant's family and tribe has resisted efforts to disrupt their culture and force them to assimilate. Members of his tribe and his family regularly demonstrate actively in protests. One of his father's [relatives] is a well-known poet and political activist who is regularly pre-emptively arrested and detained before Eid to prevent him from speaking at the Eid gatherings about Arab identity and culture, as he had done in the past. He has been tortured and the applicant has seen marks on his body from receiving lashings.
- The applicant's father is also a poet and an active protester and was politically active when the applicant was in Iran. He was well known within the community, holds a high position in the tribe as a point of contact with other Arab tribes and is a close friend of the head of the tribe. He has been arrested, detained and tortured on a number of occasions while the applicant was still in Iran and subsequently.
- In around 2014 the applicant's father was stopped by police and in the ensuing altercation his father broke a policeman's hand. His father was severely beaten, his arm broken and the car badly damaged. The applicant's father was arrested, detained, tortured and received lashings. The applicant's father has been arrested and imprisoned multiple times since the applicant left Iran, and on one occasion was pulled over on his motorbike and severely beaten.
- The applicant attended a private boarding school in Iran where he was mistreated, teased, insulted, humiliated and degraded by teachers and students because of his ethnicity and because Farsi is not his first language. He and other Sunni Arab students were excluded from sports and activities at school. Persian students would start physical altercations with him, but only he would be blamed, physically punished and suspended. On one occasion he and other Sunni Arab boarders defended an Arab mother and her child who were being physically attacked by Persian boys when leaving the school. The applicant was also discriminated against and humiliated for being Sunni Muslim and because of the way he performed his ablution before prayer.
- The applicant's father wanted him to leave Iran for his safety, so he travelled to Australia. He was around [Age] years of age when he arrived.
- The applicant fears serious harm including arbitrary arrest, imprisonment and physical harm including execution because of his real and imputed political opinion, ethnicity and religion. He would be perceived as a traitor because he is a failed asylum seeker.
- The applicant left Iran without having performed military service. He would be imprisoned because of the history of his family and fact he has not done military service.

Refugee assessment

11. 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

12. 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.
13. According to DFAT, Arabs constitute around 2 per cent of the Iranian population and predominantly live in the south-western province of Khuzestan, of which Ahwaz is the capital. Based on the documents submitted to the Department and the applicant's consistent evidence I accept that the applicant is a national of Iran and of Ahwazi Arab ethnicity. There is no evidence before me to suggest that the applicant has a right to enter and reside in any country other than Iran, and I find that he does not. Section 36(3) of the Act does not apply.
14. The applicant has said that his tribe, which consists of around 1500 people, have political problems with the Iranian government and have been discriminated against and insulted by the Persian community. He said that people from his tribe participate in protests against the government, and have been arrested. He referred to a particular example of protesting against attempts to change their traditional Arab clothing, and said his father, uncles and cousins had participated in this protest, and the Iranian regime were able to identify and look for them and had arrested some of them during the protests or come to their houses looking for them.
15. The applicant has said, and I accept, that his father's [relative] is a well-known poet and political activist. In his statement, he described him as very active in protests, as a poet and political activist whose poems are about Arab ethnicity and identity, full of pride about being Arab. He described him as a good orator who would attend protests and inspire the protesters, growing gatherings and mobilising people effectively. Because he was well known and influential among the Arab population, he is known to the authorities. The applicant specified that every year, his father's [relative] would attend gatherings held around Eid, prepare something to say about Arab identity and pride in Arab culture. Because the authorities knew he would speak at these gatherings and were aware of his influence, they would pre-emptively arrest him before Eid and detain him until afterwards. These claims are consistent with country information about the treatment of Ahwazi Arab poets suspected of using their poetry to raise awareness among the Arab people.² The applicant said at the

² Ahwazi Center for Human Rights, "Arrest and prison sentences against Ahwazi poets", 25 May 2016, CX6A26A6E16351.

interview that his father and this [relative] would meet sometimes weekly, sometimes fortnightly or monthly, because they were relatives, for occasions and religious occasions with poets gathering. He was not sure if there were any meetings that used to happen secretly or if they would arrange political activities. He thought his father's [relative] may have been a member of a political group but did not have any information.

16. The applicant said at the protection visa interview that his father was also a poet. He did not raise this claim in his statement, but after the interview submitted a video said to show his father speaking and reading poetry at an Ahwazi Arab gathering. I am willing to accept that the person in the video is his father, and that he has written and performed Arab nationalist poetry as the applicant says, notwithstanding his failure to mention this in his statement submitted with the visa application.
17. The applicant has also said that his father has participated in protests and been arrested at various times. Although he could not recall specific demonstrations, he remembered visiting his parents from boarding school, that there would be protests on and his father would participate in them, and that he would hear about it at other times as well. He claimed that after he left Iran, whenever he called his mother or cousins, they would tell him that his father had been arrested after protests and activities.
18. In his statement, the applicant recalled his father being arrested and detained while he was in Iran. At the interview, the applicant said that he recalled one occasion when he was in Iran that his father had been arrested and the applicant went with his mother to visit him. He said his father was arrested more than once while he was in Iran, but he recalled that time specifically because his father had been physically harmed and the applicant could see that on his body. He estimated that his father was arrested six or seven times while he was still in Iran, for periods of up to a week or two. On some of these occasions he was physically harmed, but did not require hospitalisation. He said his father had been arrested maybe five or six times since he left Iran, for period of up to a month.
19. The applicant describes two specific incidents in his statement which are said to have occurred since his departure from Iran. In one, his father was stopped by police in his car, which led to a physical altercation in which a policeman's hand and the applicant's father's arm was broken, with his father then being arrested, detailed and tortured. The applicant described a further incident when his father was stopped by authorities while riding a motorbike and beaten severely. At interview, the applicant was asked about the incident when the policeman's hand was broken and provided an account generally consistent with that in the statement. He said that after this incident, his father was detained for about a month and then released on bail and not charged because he did not do anything wrong and it was the police who started the fight.
20. The applicant spontaneously mentioned and gave evidence about the other occasion described in his statement when his father was stopped and assaulted by authorities while riding a motorbike. He referred to having a photograph of his father's injuries, which he submitted following the interview. While I accept that this photograph shows the applicant's father having been injured, it does not evidence that these injuries occurred in the circumstances he claimed. In any event, on the basis of the applicant's consistent evidence I am willing to accept that the applicant's father was stopped while riding his motorbike and assaulted.
21. At the protection visa interview, the applicant also described a further incident, which seems to have taken place while he was still in Iran, in which police came early in the morning and

surrounded the front of the block where their house was with police cars, jumped over the gates and entered, searching for his father, but his father had been able to escape through the back. His father came home two days later, the police returned and he was arrested on that occasion because he was asleep at the time. He said that his father was not charged with anything but they had to pay a big bail amount because he had fled on the first occasion. He did not know why his father was arrested. As the delegate found, it is somewhat unbelievable that the applicant's father would successfully evade arrest in what seems to have been a major and targeted police operation, only to return to the house a mere two days later. Further, despite this seeming to be a significant event, involving a large scale planned policing operation at the applicant's home specifically to detain the applicant's father, there is no mention of it in the applicant's statement. The applicant's explanation for this at the protection visa interview was that his statement was prepared during a short interview and while he was tired. I accept that the statement clearly does not purport to provide an exhaustive account of all the times his father was arrested. I am willing to accept that the applicant's father was arrested at their home on one occasion, although I have some doubts about the credibility of the dramatic sequence of events the applicant has described.

22. Much of the evidence the applicant has given about the nature of his father's activities and the proximity of these arrests or incidents to any political activity his father may have been engaged in has been quite general. Beyond saying that his father would participate in protests and recite nationalist poems against the regime at events such as weddings and tribal gatherings, the applicant has provided very little detail about his father's claimed activities either before or after his departure from Iran. He has said that his father is close to the tribal leader and has an important role in relationships with other tribes, but has not indicated how this might lead to official interest in him. Particularly the occasions when the applicant's father was stopped on the road, it is not evident why he was initially stopped by authorities or if they knew his identity at the time, and in the absence of further explanation it seems more likely to me that at least the initial apprehension may have been random rather than targeted. I note that a letter from the chair of [Organisation], discussed below, suggests that the author may have known the applicant in Iran and refers to the applicant's family's involvement in the Al Ahwaz cause, but does not provide any further detail of that involvement or explain whether the author has personal knowledge of the family. In contrast to the information about his father, the evidence in the statement about the activities and interest in his father's [relative] was comparatively more detailed.
23. I accept the applicant's explanation that he had only limited understanding of his father's activities and arrests while in Iran. He was aged around [Age] at the time of his departure, and had lived away from his family at a boarding school for two years prior to that. No doubt his young age and physical distance contributed to his lack of awareness of his father's activities while he was in Iran. I also accept his claim that at the time of the incidents he was more concerned about his father's health than obtaining information about things such as the reasons for his arrest, but this does not explain why he did not obtain further information once his father had recovered. The applicant was an adult by the time of his protection visa interview and I find it concerning that he did not attempt to obtain further information from his family about his father's activities and arrests before the interview or subsequently, particularly given that he has said they are in regular contact, he has claimed that the interest in his father is ongoing, and these matters are a large basis of his claim for protection.
24. Considering the evidence as a whole, I am willing to accept that the applicant's father and other family members have engaged in protest activity and that his father performs poems at gatherings as the applicant has claimed. Given the lack of detail from the applicant about his father's activities, I do not accept that his father has any sort of leadership or other high

profile role among the Arab community or as a political activist, or that he is a member of any sort of political group. However, the country information set out below confirms that Arabs who engage in political activity can be subject to arrest, detention and mistreatment, even in the absence of any high profile role. While I am not satisfied on the evidence that the particular incidents the applicant described where his father was stopped on the road were necessarily targeted attacks due to his political profile, I accept that his father has been arrested, detained and mistreated in the past because of his political views.

25. The applicant has made claims that at the Shia/Persian majority boarding school he attended he was mistreated, including being beaten, insulted and discriminated against, by both teachers and students on the basis of his ethnicity, the way he spoke Farsi, and his Sunni religion. The applicant submitted documentary evidence of his enrolment at this selective school and at the protection visa interview gave evidence about his experiences at school which was consistent with the claims made in his statement. As would be expected since he was speaking about his personal experiences, this evidence was more detailed than that about his father. I accept the applicant's claims about his experiences while at school.
26. The applicant spoke with conviction at the interview about his cultural rights and I accept from information set out in the applicant's statement and his evidence at interview that the applicant's Arab ethnicity is a core part of his identity and he wishes to practice his culture, including through wearing traditional dress, speaking his Arab language and attending Arab gatherings. I accept that he holds views against what he describes as the Iranian government's forced assimilation, discrimination against and mistreatment of Arab people and erosion of Arab culture.
27. The applicant has submitted a letter from the chair of [Organisation], dated [April] 2020. The letter attests that the applicant is a member of the community, has been attending cultural and religious gatherings for 'a number of years'. The applicant was asked at the interview if he had promoted the Ahwazi Arab cause since he had been in Australia, and referred to speaking about it with friends but did not mention involvement with [Organisation], which suggests that he commenced that association after the August 2017 interview. I draw no adverse inference from this timing considering that the applicant did not purport to rely on this involvement in support of his claims before either the delegate or the previous IAA reviewer, and could not have known at that time that there would be a further opportunity to now do so.
28. The letter states that the applicant has shown commitment and dedication to the Ahwazi Arab cause, assessed to be genuine and strong. He has gained more knowledge of the cause in Australia and has further strengthened his conviction and desire to be more active. The letter says that the applicant has not been active publicly against the Iranian regime due to fear of the repercussions for his family in Iran. This is consistent with the applicant's evidence at interview that he has not participated in any kind of protests in Australia because he is concerned that Iranian authorities may get information about him and harm his family. The author of the letter believes that the applicant will continue his political activities in the future and strive for the independence of Ahwaz. On the basis of this letter, I accept that the applicant has been engaged with this group in Australia, and holds the views set out in the letter, which are consistent with his other evidence. It is apparent from this letter and the applicant's own evidence that he has not been engaged in any public sort of political activity or opposition to the Iranian regime. There is some tension between the applicant's explanation that he fears his family would suffer repercussions if he were to engage in political activity in Australia, and his claims that they themselves are politically active in Iran, and that he would become politically active if he were to return to Iran. While I accept

concern for his family may play a part, I do not accept this is a complete explanation, and am of the view that he has simply not had any strong motivation to engage in political activity in Australia.

29. In post-interview submissions to the delegate, the applicant claimed that if he returned to Iran, he would actively oppose the treatment of Ahwazi Arabs and be politically active. He says that he strongly believes in the cause that his father and extended family members are devoted to, and would join his father, extended family and other community members in advocating for and demanding equal rights for Ahwazi Arabs, including by attending protests and other events. It is submitted that this would occur despite his lack of prior political activity, as on return to Iran he will be living with his politically active family and amongst his tribe. This is also suggested by the letter from the chair of [Organisation], which is said to have been submitted to support the claim that the applicant intends to become politically active on return to Iran. While the applicant does not currently have any strong interest in engaging in political activity in Australia, I accept that his circumstances in Iran will be different to what they are here. On my findings, he genuinely holds views against the Iranian regime and their treatment of Arabs and I accept that these may further crystallise once he is living in Iran. According to DFAT, protests in Khuzestan province are common, with recent examples including demonstrations over issues such as reduction of petrol subsidies, water shortages and poor water quality, issues perceived by Arabs to arise from discriminatory practices.³ On return, the applicant will have greater proximity to the political environment in Ahwaz and Iran more generally, and matters affecting the Arab population will impact him at a more personal level than they do currently. The applicant was young when he left Iran and on his own evidence had little involvement with or knowledge of his father's activities at that time. I accept that returning as an adult, he will have greater exposure to the views and activities of his family than he did prior to his departure. I consider that in an environment where family members and particularly his father is writing and performing Arab nationalist poetry at gatherings and engaging in protest activity, the applicant will have more political exposure and engagement than he does currently, and will probably be subject to a degree of familial pressure or expectation to participate himself. In these circumstances, although somewhat borderline, I consider it more likely than not that he will accompany his father and other family members to protests.
30. According to DFAT, no Iranian laws discriminate on the basis of ethnicity. However, official and societal discrimination against ethnic minorities nonetheless occurs. Human rights observers claim that minorities are subjected to more severe mistreatment than other prisoners in pre-trial detention, and ethnic minorities are said to account for a disproportionate number of political prisoners and executions on national security-related charges. While minorities have generally sought greater rights rather than autonomy or succession, authorities are highly sensitive to political activism, particularly in border provinces (which include Ahvaz) and when they perceive the activism to be a threat to the Islamic republic, and have targeted minority activists for arrest and prosecution on national security grounds.⁴
31. As noted above, protests in Khuzestan Province are common. There were protests over the reduction of petrol subsidies in November 2019 which occurred throughout Iran and DFAT assesses that further unrest is possible, given the ongoing economic hardship. Khuzestan is identified by DFAT as an area where these were particularly intense, riotous and violent, with some deaths and at least 80 arrests. Hundreds were also arrested in Khuzestan during 2018

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

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

protests relating to water shortages and poor water quality. In 2017-18, protests relating to economic hardship and health and livelihood challenges emanating from ecological damage and environmental degradation, were strongest in border areas and most protest-related deaths occurred in majority Kurdish and Arab areas. DFAT further refers to large numbers of arrests of Arabs in Ahwaz in April 2015 in the lead up to the 10th anniversary of deadly 2005 protests, which the applicant has referenced in his claims. According to DFAT, Arab cultural activities are tolerated, and Arabs can freely wear traditional Arabic dress and are afforded considerable space to express their ethnic identity. However, DFAT also refers to claims by human rights organisations that during past periods of political sensitivity such as the 10th anniversary of the 2005 protests, Arabs have been targeted for openly exhibiting their Arab identity and culture. Amnesty International refers to complaints that authorities repress expressions of Arabic culture including dress.⁵

32. In September 2018 gunmen attacked a military parade in Ahwaz, killing 25 people. Both the Ahwaz National Resistance, an Arab separatist umbrella group, and ISIL both claimed responsibility for the attack. The following month, authorities launched a major security sweep in Khuzestan Province, with Freedom House claiming there were up to 800 arrests and some executions. DFAT states it is unable to verify these claims and understands that some of the arrested were subsequently released. DFAT states that since the September 2018 terrorist attack, the Arab population in Khuzestan Province has been a sensitive topic for the government. The current DFAT report assesses that Arabs who are politically active are likely to attract adverse attention from the authorities, particularly those in border provinces (such as Khuzestan). Those who advocate for greater rights and autonomy face a high risk of official harassment, monitoring, imprisonment and mistreatment.⁶
33. DFAT states that Iranian authorities commonly use arbitrary arrests to impede perceived anti-government activities by a range of actors, including ethnic minority activists. Individuals under arrest often remain in detention facilities for long periods without charge, without being able to access legal counsel or inform others of their whereabouts. DFAT reports that according to international human rights organisations, torture and other mistreatment of detainees occurs in Iranian detention facilities, especially as a means to extract information. International sources report that common methods of torture used in Iranian prisons include threats of execution or rape, sexual humiliation, sleep deprivation, electroshock, burnings, the use of pressure positions, and severe and repeated beatings. Allegations of forced confessions through torture, denial or delayed access to legal representation, and mistreatment while in detention are common in the case of individuals charged with national security offences. DFAT assesses that the authorities use violence or other pressure tactics to extract confessions from defendants, including those charged with national security-related offences, which Amnesty International reports are used against minority rights activists and others engaged in peaceful protests. DFAT further assesses that individuals suspected or found to be guilty of national security-related offences are vulnerable to mistreatment that may amount to torture inside prison.⁷ Country information extracted in post-interview submissions on behalf of the applicant provides numerous examples of Ahwazi Arabs, including those with apparently low political profiles, being arrested, detained, mistreated and in some instances executed over the past decade.

⁵ DFAT, 'Country Information Report - Iran', 14 April 2020, 20200414083132; Amnesty International, "Amnesty International Report 2016-2017", 23 February 2017, NG2A465F54.

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

⁷ DFAT, 'Country Information Report - Iran', 14 April 2020, 20200414083132; Amnesty International, "Amnesty International Report 2016-2017", 23 February 2017, NG2A465F54.

34. Considering the above information, I am satisfied that there is more than a remote chance that, as a result of engaging in the protest activity against the Iranian regime, the applicant will experience arrest, detention and physical ill-treatment at the hands of the Iranian authorities to a level that rises to serious harm within the meaning of s.5J of the Act. I am satisfied that this treatment would involve systematic and discriminatory conduct, being for the essential and significant reasons of his Ahwazi Arab ethnicity and political opinion, and amounts to persecution within the meaning of s.5J(4). As the harm would be inflicted by the Iranian authorities who exercise control throughout the country, I am satisfied that effective protection measures would not be available to the applicant, and that the real chance of harm relates to all areas of Iran. I consider that there are no reasonable steps the applicant could take to modify his behaviour so as to avoid a real chance of persecution that would not require him to conceal his true political beliefs, contrary to s.5J(3). I am satisfied that the applicant has a well-founded fear of persecution within the meaning of s.5J.

Refugee: conclusion

35. I am satisfied the applicant is outside the country of his nationality and, owing to a well-founded fear of persecution, is unable or unwilling to avail himself of the protection of that country. The applicant meets the requirements of the definition of refugee in s.5H(1).

Decision

The IAA remits the decision for reconsideration with the direction that:

- the referred applicant is a refugee within the meaning of s.5H(1) of the *Migration Act 1958*.

Applicable law

Migration Act 1958

5 (1) Interpretation

In this Act, unless the contrary intention appears:

...

bogus document, in relation to a person, means a document that the Minister reasonably suspects is a document that:

- (a) purports to have been, but was not, issued in respect of the person; or
- (b) is counterfeit or has been altered by a person who does not have authority to do so; or
- (c) was obtained because of a false or misleading statement, whether or not made knowingly

...

cruel or inhuman treatment or punishment means an act or omission by which:

- (a) severe pain or suffering, whether physical or mental, is intentionally inflicted on a person; or
- (b) pain or suffering, whether physical or mental, is intentionally inflicted on a person so long as, in all the circumstances, the act or omission could reasonably be regarded as cruel or inhuman in nature;

but does not include an act or omission:

- (c) that is not inconsistent with Article 7 of the Covenant; or
- (d) arising only from, inherent in or incidental to, lawful sanctions that are not inconsistent with the Articles of the Covenant.

...

degrading treatment or punishment means an act or omission that causes, and is intended to cause, extreme humiliation which is unreasonable, but does not include an act or omission:

- (a) that is not inconsistent with Article 7 of the Covenant; or
- (b) that causes, and is intended to cause, extreme humiliation arising only from, inherent in or incidental to, lawful sanctions that are not inconsistent with the Articles of the Covenant.

...

receiving country, in relation to a non-citizen, means:

- (a) a country of which the non-citizen is a national, to be determined solely by reference to the law of the relevant country; or
- (b) if the non-citizen has no country of nationality—a country of his or her former habitual residence, regardless of whether it would be possible to return the non-citizen to the country.

...

torture means an act or omission by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person:

- (a) for the purpose of obtaining from the person or from a third person information or a confession; or
- (b) for the purpose of punishing the person for an act which that person or a third person has committed or is suspected of having committed; or
- (c) for the purpose of intimidating or coercing the person or a third person; or
- (d) for a purpose related to a purpose mentioned in paragraph (a), (b) or (c); or
- (e) for any reason based on discrimination that is inconsistent with the Articles of the Covenant;

but does not include an act or omission arising only from, inherent in or incidental to, lawful sanctions that are not inconsistent with the Articles of the Covenant.

...

5H Meaning of refugee

(1) For the purposes of the application of this Act and the regulations to a particular person in Australia, the person is a refugee if the person:

- (a) in a case where the person has a nationality—is outside the country of his or her nationality and, owing to a well-founded fear of persecution, is unable or unwilling to avail himself or herself of the protection of that country; or
- (b) in a case where the person does not have a nationality—is outside the country of his or her former habitual residence and owing to a well-founded fear of persecution, is unable or unwilling to return to it.

Note: For the meaning of *well-founded fear of persecution*, see section 5J.

...

5J Meaning of well-founded fear of persecution

- (1) For the purposes of the application of this Act and the regulations to a particular person, the person has a well-founded fear of persecution if:
 - (a) the person fears being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion; and
 - (b) there is a real chance that, if the person returned to the receiving country, the person would be persecuted for one or more of the reasons mentioned in paragraph (a); and
 - (c) the real chance of persecution relates to all areas of a receiving country.
Note: For membership of a particular social group, see sections 5K and 5L.
- (2) A person does not have a well-founded fear of persecution if effective protection measures are available to the person in a receiving country.
Note: For effective protection measures, see section 5LA.
- (3) A person does not have a well-founded fear of persecution if the person could take reasonable steps to modify his or her behaviour so as to avoid a real chance of persecution in a receiving country, other than a modification that would:
 - (a) conflict with a characteristic that is fundamental to the person's identity or conscience; or
 - (b) conceal an innate or immutable characteristic of the person; or
 - (c) without limiting paragraph (a) or (b), require the person to do any of the following:
 - (i) alter his or her religious beliefs, including by renouncing a religious conversion, or conceal his or her true religious beliefs, or cease to be involved in the practice of his or her faith;
 - (ii) conceal his or her true race, ethnicity, nationality or country of origin;
 - (iii) alter his or her political beliefs or conceal his or her true political beliefs;
 - (iv) conceal a physical, psychological or intellectual disability;
 - (v) enter into or remain in a marriage to which that person is opposed, or accept the forced marriage of a child;
 - (vi) alter his or her sexual orientation or gender identity or conceal his or her true sexual orientation, gender identity or intersex status.
- (4) If a person fears persecution for one or more of the reasons mentioned in paragraph (1)(a):
 - (a) that reason must be the essential and significant reason, or those reasons must be the essential and significant reasons, for the persecution; and
 - (b) the persecution must involve serious harm to the person; and
 - (c) the persecution must involve systematic and discriminatory conduct.
- (5) Without limiting what is serious harm for the purposes of paragraph (4)(b), the following are instances of **serious harm** for the purposes of that paragraph:
 - (a) a threat to the person's life or liberty;
 - (b) significant physical harassment of the person;
 - (c) significant physical ill-treatment of the person;
 - (d) significant economic hardship that threatens the person's capacity to subsist;
 - (e) denial of access to basic services, where the denial threatens the person's capacity to subsist;
 - (f) denial of capacity to earn a livelihood of any kind, where the denial threatens the person's capacity to subsist.
- (6) In determining whether the person has a **well-founded fear of persecution** for one or more of the reasons mentioned in paragraph (1)(a), any conduct engaged in by the person in Australia is to be disregarded unless the person satisfies the Minister that the person engaged in the conduct otherwise than for the purpose of strengthening the person's claim to be a refugee.

5K Membership of a particular social group consisting of family

For the purposes of the application of this Act and the regulations to a particular person (the **first person**), in determining whether the first person has a well-founded fear of persecution for the reason of membership of a particular social group that consists of the first person's family:

- (a) disregard any fear of persecution, or any persecution, that any other member or former member (whether alive or dead) of the family has ever experienced, where the reason for the fear or persecution is not a reason mentioned in paragraph 5J(1)(a); and
- (b) disregard any fear of persecution, or any persecution, that:
 - (i) the first person has ever experienced; or

- (ii) any other member or former member (whether alive or dead) of the family has ever experienced;

where it is reasonable to conclude that the fear or persecution would not exist if it were assumed that the fear or persecution mentioned in paragraph (a) had never existed.

Note: Section 5G may be relevant for determining family relationships for the purposes of this section.

5L Membership of a particular social group other than family

For the purposes of the application of this Act and the regulations to a particular person, the person is to be treated as a member of a particular social group (other than the person's family) if:

- (a) a characteristic is shared by each member of the group; and
- (b) the person shares, or is perceived as sharing, the characteristic; and
- (c) any of the following apply:
 - (i) the characteristic is an innate or immutable characteristic;
 - (ii) the characteristic is so fundamental to a member's identity or conscience, the member should not be forced to renounce it;
 - (iii) the characteristic distinguishes the group from society; and
- (d) the characteristic is not a fear of persecution.

5LA Effective protection measures

- (1) For the purposes of the application of this Act and the regulations to a particular person, effective protection measures are available to the person in a receiving country if:
 - (a) protection against persecution could be provided to the person by:
 - (i) the relevant State; or
 - (ii) a party or organisation, including an international organisation, that controls the relevant State or a substantial part of the territory of the relevant State; and
 - (b) the relevant State, party or organisation mentioned in paragraph (a) is willing and able to offer such protection.
- (2) A relevant State, party or organisation mentioned in paragraph (1)(a) is taken to be able to offer protection against persecution to a person if:
 - (a) the person can access the protection; and
 - (b) the protection is durable; and
 - (c) in the case of protection provided by the relevant State—the protection consists of an appropriate criminal law, a reasonably effective police force and an impartial judicial system.

...

36 Protection visas – criteria provided for by this Act

...

- (2) A criterion for a protection visa is that the applicant for the visa is:
 - (a) a non-citizen in Australia in respect of whom the Minister is satisfied Australia has protection obligations because the person is a refugee; or
 - (aa) a non-citizen in Australia (other than a non-citizen mentioned in paragraph (a)) in respect of whom the Minister is satisfied Australia has protection obligations because the Minister has substantial grounds for believing that, as a necessary and foreseeable consequence of the non-citizen being removed from Australia to a receiving country, there is a real risk that the non-citizen will suffer significant harm; or
 - (b) a non-citizen in Australia who is a member of the same family unit as a non-citizen who:
 - (i) is mentioned in paragraph (a); and
 - (ii) holds a protection visa of the same class as that applied for by the applicant; or
 - (c) a non-citizen in Australia who is a member of the same family unit as a non-citizen who:
 - (i) is mentioned in paragraph (aa); and
 - (ii) holds a protection visa of the same class as that applied for by the applicant.
- (2A) A non-citizen will suffer **significant harm** if:
 - (a) the non-citizen will be arbitrarily deprived of his or her life; or
 - (b) the death penalty will be carried out on the non-citizen; or
 - (c) the non-citizen will be subjected to torture; or
 - (d) the non-citizen will be subjected to cruel or inhuman treatment or punishment; or
 - (e) the non-citizen will be subjected to degrading treatment or punishment.

- (2B) However, there is taken not to be a real risk that a non-citizen will suffer significant harm in a country if the Minister is satisfied that:
- (a) it would be reasonable for the non-citizen to relocate to an area of the country where there would not be a real risk that the non-citizen will suffer significant harm; or
 - (b) the non-citizen could obtain, from an authority of the country, protection such that there would not be a real risk that the non-citizen will suffer significant harm; or
 - (c) the real risk is one faced by the population of the country generally and is not faced by the non-citizen personally.

...

Protection obligations

- (3) Australia is taken not to have protection obligations in respect of a non-citizen who has not taken all possible steps to avail himself or herself of a right to enter and reside in, whether temporarily or permanently and however that right arose or is expressed, any country apart from Australia, including countries of which the non-citizen is a national.
- (4) However, subsection (3) does not apply in relation to a country in respect of which:
- (a) the non-citizen has a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion; or
 - (b) the Minister has substantial grounds for believing that, as a necessary and foreseeable consequence of the non-citizen availing himself or herself of a right mentioned in subsection (3), there would be a real risk that the non-citizen will suffer significant harm in relation to the country.
- (5) Subsection (3) does not apply in relation to a country if the non-citizen has a well-founded fear that:
- (a) the country will return the non-citizen to another country; and
 - (b) the non-citizen will be persecuted in that other country for reasons of race, religion, nationality, membership of a particular social group or political opinion.
- (5A) Also, subsection (3) does not apply in relation to a country if:
- (a) the non-citizen has a well-founded fear that the country will return the non-citizen to another country; and
 - (b) the Minister has substantial grounds for believing that, as a necessary and foreseeable consequence of the non-citizen availing himself or herself of a right mentioned in subsection (3), there would be a real risk that the non-citizen will suffer significant harm in relation to the other country.

Determining nationality

- (6) For the purposes of subsection (3), the question of whether a non-citizen is a national of a particular country must be determined solely by reference to the law of that country.
- (7) Subsection (6) does not, by implication, affect the interpretation of any other provision of this Act.