



Australian Government

Immigration Assessment Authority

Decision and Reasons

Referred application

IRAN
IAA reference: IAA17/02860

Date and time of decision: 29 March 2018 16:02:00
Rebecca Mikhail, Reviewer

Decision

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

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

Background to the review

Visa application

1. The referred applicant (the applicant) claims to be a citizen of Iran. [In] April 2016 he lodged an application for a Safe Haven Enterprise Visa (application for protection). [In] June 2017 a delegate of the Minister for Immigration and Border Protection (the delegate) refused the grant of the visa.

Information before the IAA

2. I have had regard to the material given by the Secretary under s.473CB of the *Migration Act 1958* (the Act)(the review material).
3. On 26 June 2017 the IAA received a submission on behalf of the applicant.
4. The submission includes legal argument, references to the delegate's decision, the protection visa interview and claims that were already raised by the applicant before the delegate. I am not satisfied that the above is new information and I have had regard to it.
5. The submission also refers to country information reports that were not before the delegate and which I consider to be new information. In response to the delegate's finding that it was likely the applicant's [Business 1] was closed down by [Government Body 1] due to their enforcement of Islamic values in public establishments rather than as a result of the applicant insulting the Supreme Leader in an event in [Year 1], the submission refers to a number of reports about [Government Body 1] in Iran. The delegate did not raise any concerns or put any adverse information to the applicant during the protection visa interview, including in respect of his finding above, and I am satisfied this information has been provided in response to the delegate's finding in his decision which the applicant did not have the opportunity to respond to. The submission relies on these country information reports to argue that [Government Body 1] also puts pressure on students and political activists and so their targets are not solely public places. Even if this country information had been before the delegate, the delegate also relied on the applicant's claim that he had been told that his [Business 1] had been shut due to being "a corruption shop" and country information before the delegate also indicates that [Government Body 1] concerns itself with the interaction between the sexes in public places and various forms of perceived the behaviour which has not been disputed by the applicant. The applicant provided no other supporting corroborative credible evidence to indicate that the closure of [Business 1] was due to the events in [Year 1]. I am not satisfied that, had the delegate had the above country information before him, that it would have impacted the outcome of his decision. I am not satisfied there are exceptional circumstances to justify considering this country information.
6. The submission also claims that [the type of business that Business 1 is] in Iran is a place where men attend and women are not legally allowed to enter and attaches an article and a Google result page indicating a number of headlines about the ban on women entering [a particular type of business] and their accredited translations. I am satisfied this claim and the evidence provided are new information as they were not raised with, or given, to the delegate. The submission argues that, as women are not allowed to enter [these types of business], nothing can be done against Islamic values in these shops and therefore the case officer's conclusion referred to above is purely based on personal assumption rather than fact. I am satisfied the above information is new information and, for reasons already stated, I am satisfied this

information could not have been provided to the Minister before the decision was made. However, I note the Google search result provided of a number of headlines indicating a ban on women in [a particular kind of business] does not indicate when this ban came into effect and the articles from this search result have not been provided. The other article dated [in] 2017 states that the [a particular government body] emphasised that the entry of women into [a particular kind of business] is illegal and serving [women] in traditional places is not allowed but the article does not indicate when this came into effect. I also have concerns with the credibility of this claim as, during the protection visa interview, when the applicant was asked why he thinks that the closure of his [Business 1] was in relation to the events of [Year 1], he referred to the fact that all his paperwork was in order and he had the permission to run the [business] and paid the council rates and there were no complaints that from the neighbours but the applicant did not refer to the fact that his customers were only men even though he had been accused of running “a corruption shop”. For these reasons I am not satisfied there are exceptional circumstances to justify considering the above new claims and information.

7. In his decision, the delegate found that it was more plausible that the applicant was rejected for a loan from the government in respect of his [Business 2] because his previous [business] had [failed], rather than as a result of the [Year 1] incident. In response to this finding, the submission claims that [the reason for his business failing is] a recurrent annual problem and the applicant’s friend who received the loan had a similar situation as the [reason for his business failing] happened throughout Tehran. In support it refers to an article about [removed]. The submission also claims that the applicant’s [Business 2] was insured and the applicant was reimbursed. It also claims that the Iranian government provides loans to the operators of [Business 2] without requesting documents for assets or any guarantor and refers to an article and its translation in regards to this. It further claims the standard procedure at the time was to allocate the fund to the [Business 2] operators through [an intermediary] which would act as a guarantor. The [intermediary] would purchase and provide the [supplies] and other needs and in return the [goods are] sold to the government through the [intermediary]. The money is not given to the operator directly. The submission also refers to an article which supports the claim already raised by the applicant that there is a government fund specifically to support [similar businesses].
8. I am satisfied the above is new information as it was not before the delegate. For the reasons already stated, I am satisfied that the above claims and information could not have been provided to the Minister before the decision as it is in direct response to the delegate’s findings in his decision based on concerns that were not raised with the applicant for response. No evidence has been provided in support of the claim that the applicant’s friend suffered the same [problems] and I note the applicant did not previously claim that [that specific problem caused the applicant’s business to fail] and the academic article provided about this [problem] does not support the claim that this [problem] happened throughout Tehran and around the period the applicant sought this loan from the government in 2003. The article [is] concerned with a study that investigated the frequency of [a particular issue] between 2009 and 2010. I am also concerned that the claim that the applicant was insured and reimbursed for [Business 2] appears inconsistent with this claim raised during the protection visa interview that he went broke after [Business 2 failed] and lost all his savings. The article provided about loans for [businesses such as Business 2] states that [a particular individual] announced that loans for [particular types of businesses] will not require real estate as security bond. I note the article is not dated and therefore is unclear when this announcement was made and if it was made prior to the applicant’s application around 2003. The submission has also not provided any independent corroborative information in regards to how this loan operated through the [intermediary] as claimed. Even if the loan was orchestrated through the [intermediary], as the applicant claimed, there was still an application process and the bank had final say and

therefore the fact that the [intermediary] was involved in this process appears to be irrelevant. I also note that the delegate did not dispute that there was a government fund available to support [businesses such as Business 2] so the provision of an article about this would not have impacted the delegate's decision. For these reasons I am not satisfied there are exceptional circumstances to justify considering the above new information and claims.

9. In his decision the delegate accepted that the applicant's [Business 3] was closed down but found that it was more plausible that the Iranian authorities did not grant him permission to operate his business due because he previously infringed their regulations for operating without permission. The submission claimed that the applicant's [Business 3] was reopened and is still offering services without permission and, in support of this claim, has provided two images of the alleged business sign and claims the images were taken recently and notes that there is no registration number on the sign. I am satisfied the above claims and documents are new information as they were not before the delegate. For reasons ready given I am satisfied that the above new information has been provided in response to the delegate's decision and could not have been provided to the Minister before the decision was made. The images provided of the applicant's alleged former [Business 3] are not dated and no evidence has been provided to support the claim that this shop was the applicant's former shop and no translation of the shop signs have been provided to support the claim that there is no registration number on the signs. For these reasons I am not satisfied there are exceptional circumstances to justify considering this new claim and evidence.
10. In his decision, the delegate found it more plausible that the applicant's failure to obtain permission to [work] was as a result of this lack of affiliation with Sepah as it is plausible that the [workers] who [worked] out of those sites were managed by Sepah or closely affiliated to that organisation. In response to this finding, the submission claims that this is an incorrect assumption and refers to an article in support. I am satisfied the article was not before the delegate and is new information. For reasons already stated I am satisfied that this article could not have been provided to the Minister before the decision was made. The submission states that the article indicates that General Abdolahi, one of the high-ranking Sepah generals who manages its largest construction company, states that out of 135,000 employees only a small percentage is Sepah and the rest are contractors and people from the public sector. I note the translation of this article did not translate the entire article but only highlighted paragraphs but nonetheless the translation refers to a statement by "Commander Abdollahi" who claims that 3% of the workforce of "Khatamol-Anbia Corporation" are "members" and the remaining are contractors and people from the public sector. Even if I accept that the reference in this article to "members" is a reference to Sepah members, there is no evidence connecting the information about this particular corporation with the [particular work] managed by Sepah in the applicant's claims. I also note that the delegate found that the [workers] who operated out of the sites were either managed by Sepah or closely affiliated but did not find that they had to be members of Sepah so I find the provision of an article about an unrelated corporation managed by Sepah who has both Sepah employees, contractors and public-sector employees would not have impacted the delegate's assessment of this claim. For these reasons I am not satisfied there are exceptional circumstances to justify considering this article.
11. The submission also claimed that the applicant cannot remove bullets from his body in Iran because doctors are afraid to accept surgeries to remove bullets. This is a very sensitive issue and requires legal permission from the forensic department and security officers in Iran. If the applicant returns to Iran, the bullets might cause serious infection because he cannot remove them or at least has to undergo a serious complicated process to obtain permission to remove them and the applicant will suffer terribly as the Basij have denied there are bullets in his body.

Although the applicant previously raised the fact that the Iranian authorities did not accept that there were bullets in his body, I am satisfied that the remainder of the above claims are new information as they were not raised before the delegate. No explanation has been given for why these claims were not raised before the delegate and no independent credible evidence has been provided in support of these new claims. I am not satisfied there are exceptional circumstances to justify considering this information.

12. The submission also claimed that the applicant continued to express his anti-regime and anti-Supreme Leader activities including via posts on [social media]. One of his posts is a [post] directly targeting the Supreme Leader and he has also published posts in support of [particular controversial public figures]. It claims the Iranian authorities will be very sensitive about these posts because the applicant already has an adverse record and because Iranian authorities are very active and target individuals who are active on social media and cites a Wikipedia page on "Propaganda in Iran". I am satisfied this information and claims are new information as they were not raised or provided to the delegate. No explanation has been provided as to why this claim was not raised before the delegate. I also have concerns about the credibility of this claim as, during the protection visa interview, the applicant said he had not publicly voiced his opinion in relation to the Iranian regime since the incident in [Year 1] and no evidence has been provided of the applicant's alleged [social media] posts. For these reasons I am not satisfied there are exceptional circumstances to justify considering this new claim and information.
13. The cover email attaching the submission to the IAA states that it would be appreciated if the applicant could be informed of any adverse information in order for him to respond. The legislative framework governing the IAA provides for an exhaustive statement of the natural justice hearing rule. Pursuant to s.473DB(1) of the Act the IAA must review a fast track reviewable decision referred to it under s.473CA by considering the review material provided to the IAA under s.473CB without accepting or requesting new information and without interviewing the referred applicant. There is also no obligation on the IAA to conduct a hearing if adverse credibility findings are to be made. I am satisfied the applicant has had an opportunity to present his claims to the delegate and orally at the protection visa interview, and although the delegate did not raise any adverse concerns during that interview, I am satisfied the applicant has had opportunity to provide his response to the delegate's decision to the IAA. I am not satisfied in the circumstances of this application that an interview, or the provision of adverse information to the applicant for his comment, is required.

Applicant's claims for protection

14. The applicant's claims can be summarised as follows:
 - He was born in Tehran and is a citizen of Iran.
 - In [Year 1], during the period in which the applicant was undertaking military service, he attended [a particular event] known as [Event 1] during which he was stopped by the Basij who insulted the [event] and referred him to the beliefs of the Supreme Leader, Ayatollah Khamenei. In response the applicant got into an argument with them and questioned the authority of, and insulted, the Supreme Leader. One of the Basiji [assaulted] him and when the applicant tried to defend himself, he was shot by [other] Basiji officers ([Year 1] incident). He was then taken to a hospital run by the Sepah in order to cover up the fact that he had been shot by the Basij. The applicant was at the hospital for [a number of] days and was not adequately cared for. He was told that

there were no bullets in him even though there were. He was stitched up and sent home and still has a bullet inside [a particular part of his body].

- He claims that the Basij created a file on him as a result of this incident and his subsequent business and employment history was affected by this incident.
- After a few months of unemployment the applicant started [Business 1]. Before long, officers from an Iranian government authority, [Government Body 1], closed the shop without reason but referred to it as “a corruption shop”.
- [In] 2000 the applicant got married then applied for a marriage loan from the government but his application was rejected even though the only requirement for the loan was to be married.
- In 2002 the applicant started a small business providing [particular services]. This was a leased business and the applicant had to return the business to the business owner and terminate the lease after the business owner realised that the applicant had made the business successful.
- In 2003 the applicant applied for a government loan to support [Business 2]. The applicant spent his savings and prepared the paperwork for the loan but the bank advised him that he could not get the loan for reasons that were out of their control and it was better that he did not waste his time. Two of the applicants friends applied for the same loan with the same material and received everything they applied for.
- In 2004 the applicant opened [Business 3]. After eight months this business was closed down as the applicant’s business did not have a license to operate although the majority of similar businesses did not have such permission. He believes it was shut down for political reasons.
- In approximately 2008 the applicant was in a car with others on the way to participate in a demonstration when the Basij threw tear gas into the car.
- In 2008 the applicant got a job with a private business but was paid less than the minimum wage and for three years could barely meet his family’s basic needs. In 2011 it became impossible for the applicant to cover his family’s expenses.
- In May 2012, with his father’s assistance, the applicant purchased a [work vehicle] on finance. The applicant faced problems as the [work sites] were exclusively managed by Sepah and he could not [work]. The applicant had to get [work] using other [worker’s] names and the other [workers] would charge the applicant half the fare. The applicant was working twice as much as other [workers] and getting less money.
- In 2012 the applicant realised that he had exhausted all his resources and that the Basij and Sepah were depriving his wife and children from a basic living. The applicant noticed this discrimination and unfair treatment was beyond his control and decided to leave Iran. He departed Iran legally in 2013.
- The applicant believes that if he goes back to Iran he will be prosecuted, imprisoned and deprived of his rights more severely than before.
- The Basij have found out that the applicant has come to Australia. The Basij recently visited his father’s shop and told the applicant’s father that they were aware that the applicant was in Australia. As a result of this visit, the applicant’s wife and children feared for their safety and have moved to new [accommodation].

- The applicant is at risk of prosecution and imprisonment in Iran for seeking asylum in Australia. Iranian authorities will be concerned that the applicant has been talking about them while he has been in Australia.

Refugee assessment

15. 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

16. 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.

17. The applicant has provided a number of identity documents from Iran and I accept his identity as claimed and that he is a citizen of Iran. I am satisfied that Iran is the receiving country for the purpose of this assessment.

18. The applicant claims he has an open file with Iranian government authorities as a result of questioning the authority, and insulting, the Supreme Leader during the [Year 1] incident. This open file has resulted in the applicant being denied the right to get proper employment, to get loans, to get licences and having businesses closed down. The applicant has been denied his rights on a continuous basis since the [Year 1] incident.

19. Since the applicant’s arrival interview held [in] March 2013 he has provided a very consistent account of the [Year 1] incident. The applicant provided medical evidence from his period in Australian immigration detention which identified that he had bullet injuries and shrapnel in his body. I accept that the applicant got into an argument with the Basij at a [particular event] in [Year 1] during which he insulted the Supreme Leader and was subsequently attacked by the Basij and shot by them. Country information before me indicates the Basij, a volunteer paramilitary group with local organizations in cities and towns across the country and often engaged in crackdowns on political opposition elements without formal guidance or

supervision from superiors.¹ I accept that he was subsequently taken to hospital run by Sepah in order to cover up the incident and was told that there were no bullets in him. He also claimed that at the time of the incident the head of the Basij officers took their gun away and claimed they did not have a gun even though they did. During his arrival interview he claims that after being released from hospital, and after he returned to military service, he was not permitted to leave the base for [a period of time] even though he was previously allowed to go home regularly and he claims that this was done to prevent him from contacting anyone and telling them what happened as he was told not to talk about it to other people. I consider the above to be plausible, particularly considering country information before me which indicates that corruption is endemic in Iran and the government made few and limited attempts to investigate allegations of physical abuse by the authorities.² I accept these claims.

20. Although the delegate accepted that the applicant had been rejected for loans and had his business shut down by the Iranian authorities, on the evidence before me, I have come to a different view about the credibility of a number of these claims.
21. I find the applicant has provided inconsistent evidence about some of these incidents. In his arrival interview he referred to the fact that the authorities closed [Business 1] and declined his loan application for [Business 2] and marriage. But when asked by the officer if anything else happened apart from these things he said no. He did not refer to the closure of [Business 3] that he opened in 2004 or that he was prevented from getting [work] from sites managed by the Sepah in 2012. In fact, he has indicated in this arrival interview and in his application for protection form that he owned [Business 3] from 2004 until 2008 which appears inconsistent with his claim that this business was "interrupted" after eight months by the Iranian authorities and that he failed to get permission to operate the business.
22. Although the applicant has claimed that these incidents were as result of the [Year 1] incident, other than his claim that all his paperwork was in order and he met the requirements for loans or that it was typical for certain businesses to not have a license and he had not done anything wrong in respect of [Business 1], he has not provided any other credible supporting evidence that these incidents were linked to the [Year 1] incident beyond his own speculation. He has also not provided any supporting documentary evidence in respect of these claims even though he would likely have received documents from the Iranian authorities in respect of his rejection for government loans and the closure of his businesses. The applicant has remaining family in Iran and has demonstrated an ability to acquire a number of original identity documents from Iran since he arrived in Australia so I have concerns that he has not provided any documentary evidence in support of the above claims.
23. During the protection visa interview the applicant claimed he operated [Business 1] between 6 to 9 months before it was closed down but I find it hard to believe that, had the authorities wanted to put pressure on him because of the [Year 1] incident, they would wait for 6 to 9 months before closing down his business. In regards to the [business] in 2002, he has claimed that he had to return this business to the owner as the owner was jealous of his success which suggests that he was able to operate a business without government interference as a result of the [Year 1] incident and there is no credible evidence before me that he had to return this business to the owner as result of this incident.

¹ UK Home Office, "Country Information and Guidance - Iran: Background Information, including actors of protection and internal relocation", 16 December 2015, OG8F59D8D35

² Australian Department of Foreign Affairs and Trade (DFAT), "DFAT Country Information report – Iran", 21 April 2016, CIS38A8012677; UK Home Office, "Country Information and Guidance - Iran: Background Information, including actors of protection and internal relocation", 16 December 2015, OG8F59D8D35

24. The applicant has claimed that when the Iranian authorities want to put pressure on somebody they do it indirectly rather than tell them specifically the reason, but he has not provided any country information in support of this claim. I also note that the applicant claims that he was able to complete the remainder of his military service after the incident, and other than being required to stay at the base for [a period of time], has not claimed that he suffered any other penalty, threat or harm from the Iranian authorities during the remainder of his military service as a result of this incident.
25. As a result of the concerns that I have raised above, I do not accept that the applicant has provided a credible account of what happened to him since the [Year 1] incident. I do not accept that he was rejected for a marriage loan or a business loan in regards to his [Business 2]. I accept that he had [Business 1] but I do not accept that it was closed down by the Iranian authorities. I am not satisfied that [Business 3] was shut down in 2004 by the Iranian authorities or that he worked for minimum pay in a company from 2008 or was prevented from getting [work] from sites managed by Sepah when he worked as [a particular occupation] from 2012 or otherwise suffered financially for the thirteen years since, or as a result of, the [Year 1] incident. I do not accept that the Basij recently approached his father and said that they know that the applicant is in [a particular Australian city] and, as a result, his wife and child have gone to live somewhere else.
26. On the evidence before me, although I accept that the [Year 1] incident occurred and that shortly after the authorities tried to cover it up, I am not satisfied the applicant has been of any further adverse interest to the Iranian authorities or has an open file with the Basij as a result of this incident. The applicant has not claimed that he raised a complaint about this incident with the Iranian authorities or that he wanted to or will do so on return to Iran. I am not satisfied he faces a real chance of harm from the Iranian authorities as a result of this incident if he were to return to Iran.
27. The applicant claimed that he has participated in [Event 1] every year since [Year 1] but not in his neighbourhood and would [only participate for a short time] and return indoors. I have not accepted that the applicant was of further adverse interest to the authorities because of the [Year 1] incident and he has not claimed, and there is no country information before me to suggest, that others have been recently harmed or arrested for participating in this event. I do not accept that he deliberately avoided his area during this event or acted discreetly or was of any adverse interest to the Iranian authorities for participating in these events since [Year 1]. I am not satisfied the applicant faces a real chance of harm from the Iranian authorities if he were to continue to participate in [Event 1] on return to Iran.
28. During the protection visa interview the applicant claimed that, in approximately 2008, he was in a car with others on the way to a demonstration against the government when the Basij threw tear gas into their car. He was assisted by others in the area who put fire under his face to reduce the effects of the tear gas. As a result of this incident he did not participate in the demonstration as the bystanders warned him that the authorities could recognise his car. At the arrival interview the applicant denied being involved in any activities or protests against the government and did not refer to this incident in his application for protection. Nonetheless, the applicant described this incident in detail and with little exaggeration during the protection visa interview so I accept this incident occurred. However, I am not satisfied on the evidence before me, that he was of any adverse interest to the authorities as a result of this incident or that it was connected to the [Year 1] incident. I am not satisfied he faces a real chance of harm if he were to return to Iran from the Iranian authorities as a result of this incident.

29. During the protection visa interview the applicant claimed that he did not publicly express views about Iranian leaders or institutions after the incident in [Year 1] because he was too scared, however, I am not satisfied on the evidence that he did so prior to that incident or whilst he has resided in Australia. Although I accept that he attempted to attend a demonstration in approximately 2008 he claims he did not in fact attend and has not claimed to have attended any other demonstrations in Iran. I am not satisfied the applicant will publicly express views against the Iranian regime if he returns to Iran out of lack of interest rather than a fear of persecution. I am not satisfied he faces a real chance of harm from the Iranian authorities on the basis of his political opinion.
30. I accept that the applicant departed Iran legally in 2013.
31. The applicant claims he is at risk of prosecution and imprisonment in Iran for seeking asylum in Australia. Iranian authorities will be concerned that the applicant has been talking about them while he has been in Australia. At the protection visa interview, the applicant's representative submitted that some of the people who go back to Iran as failed asylum seekers are hired by the Sepah to give information about asylum seekers in Australia but admitted this information has not been verified and therefore I do not give it any weight in my assessment. The applicant also speculated that an Iranian who returned to Iran from Australia and who [is an associate of his] father was the source that caused the Basij to know that he was in Australia, however for reasons already given, I have not accepted that the Basij approached his father in relation to this so I also do not accept this claim.
32. The Australian Department of Foreign Affairs and Trade (DFAT) stated that Iran says it does not accept involuntary returnees. However, in practice, border authorities regularly accept Iranians with valid Iranian travel documents returned involuntarily or even those without documentation if persuaded they are Iranian. Iranian overseas missions will not issue travel documents to an Iranian whom a foreign government wishes to return involuntarily to Iran. The applicant claims that he no longer has his Iranian passport which was thrown in the water on route to Australia and I accept this claim. As he does not have an Iranian travel document he would require new travel documents to be issued by the Iranian mission if he were to return to Iran. On the basis of the above country information which indicates that such missions will not issue travel documents for involuntary returnees, I am not satisfied there is a real chance the applicant will be involuntarily returned to Iran.
33. DFAT also further stated that strong anecdotal evidence suggests that officials do not attempt to prosecute a voluntary returnee—largely because most failed asylum seekers leave Iran legally³ and I have given weight to the fact that the applicant did leave Iran legally. From DFAT's anecdotal observation at airports, a voluntary returnee does not attract much interest from authorities amongst the large regular international movements of Iranians. Credible sources have told DFAT that returnees will generally move quickly through airports without official interest. Where temporary travel documents have been issued by Iranian diplomatic representatives overseas, authorities at the airport will be forewarned about a person's return because of Iran's sophisticated government systems. Irrespective of whether a returnee is travelling on a temporary travel document or their ordinary passport, credible sources have told DFAT that they will generally only be questioned if they had done something to attract the specific attention of authorities. The vast majority of people questioned would be released after an hour or two.⁴

³ DFAT, "DFAT Country Information report – Iran", 21 April 2016, CIS38A8012677

⁴ Ibid.

34. There are also country information reports before me of a number of returnees, most of whom were political activists, who had been arrested on return to Iran and some charged with national security offences. The European Court for Human Rights, in the "Case of S.F. and Others v. Sweden," stated that Iranians returning from abroad are screened on arrival in Iran and that some of the factors which may lead to an inquiry by the Iranian authorities on return include being of "Kurdish and Persian origin, culturally active and well-educated".⁵ I am not satisfied the applicant fits within this profile or has a profile that will attract the adverse attention of the authorities. In making this assessment I have considered the [Year 1] incident but given this occurred eighteen years ago and he was not of any further adverse interest to the Iranian authorities as a result of this incident since then or as a result of his attempt to attend a demonstration in approximately 2008 and participation in [Event 1], I am not satisfied there is a real chance the applicant will attract the adverse attention of the authorities if he returns to Iran.
35. If the applicant were to return to Iran voluntarily, I am not satisfied there is a real chance he will be questioned or harmed by the Iranian authorities as a failed asylum seeker from Australia.

Refugee: conclusion

36. 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

37. 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

38. 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.

⁵ Immigration and Refugee Board of Canada, "IRN104730.E: Iran: Treatment of anti-government activists by authorities, including those returning to Iran from abroad; overseas monitoring capabilities of the government (2012-2013)", 20 January 2014, CIS27648; "IRAN The Kurdish asylum seeker Rahim Rostami, charged with "actions against the nation's security", released on bail", Iran Human Rights, 19 June 2011, CX274950; "Women's activist deported to Iran despite fear of persecution", Undefined, 7 December 2004, CX113754

39. For reasons already given, I have not accepted that the applicant was denied loans, business licences and other employment opportunities by the Iranian authorities or suffered financially since, or because of, the incident in [Year 1]. I have not accepted that he was of adverse interest to the Iranian authorities for participating in [Event 1] every year or as a result of the tear gas incident in 2008.
40. For reasons already stated, I am not satisfied the applicant will face a real chance of harm from the Iranian authorities because of the individual or combined factors of the [Year 1] incident, participating in [Event 1], having tear gas thrown in his car whilst on the way to a demonstration in approximately 2008, his political opinion or because he will return as a failed asylum seeker from Australia. As 'real chance' equals 'real risk',⁶ I am also not satisfied the applicant will face a real risk of significant harm from the Iranian authorities if he were to return to Iran for these reasons.

Complementary protection: conclusion

41. There are not substantial grounds for believing that, as a necessary and foreseeable consequence of being returned from Australia to a receiving country, there is a real risk that the applicant will suffer significant harm. The applicant does not meet s.36(2)(aa).

Decision

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

⁶ *MIAC v SZQRB* (2013) 210 FCR 505

Applicable law

Migration Act 1958

5 (1) Interpretation

...

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.