



Australian Government
Immigration Assessment Authority

Decision and Reasons

Referred application

IRAN

IAA reference: IAA17/03138

Date and time of decision: 11 October 2017 11:59:00

Belinda Mericourt, 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 an Iranian national. [In] January 2017 he lodged an application for a Safe Haven Enterprise Visa (SHEV). In a decision dated [in] July 2017 the delegate of the Minister of Immigration and Border Protection (the delegate) refused to grant 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).
3. No new information has been obtained or received by the Immigration Assessment Authority (IAA).

Applicant's claims for protection

4. The applicant's claims can be summarised as follows:
 - The applicant claims to have renounced Islam and is an apostate
 - He faces persecution due to his actual and imputed political opinion as a result of his involvement in the Green Movement protests in 2009;
 - He has been detained, arrested, questioned and threatened by the Basij on numerous occasions for his involvement in the Green Movement protests and due to an anti-religious tattoo on his body, Western dress and appearance and for drinking alcohol;
 - He fears persecution as a failed asylum seeker and a person who has lived in a Western country for some time.

Factual findings

5. The applicant's claims as to his identity and nationality have been consistent since his arrival in Australia. He conducted interviews in Farsi and has submitted copies and translations of his national birth certificate and passport. I accept the applicant's nationality and identity are as claimed and find Iran to be the receiving country for the purpose of the application. 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 am satisfied he does not: s.36(3)
6. I accept that the applicant departed Iran lawfully by plane to [Country 1] using his own genuine passport and he had no difficulty doing so.

Refugee assessment

7. 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

8. 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.

Claims related to having renounced Islam and being an apostate

9. The official religion of Iran is Shia Islam and this is the religion indicated on the applicant's birth certificate provided to the Department.
10. The applicant has consistently stated at his entry interview, in his written statement and at both his SHEV interviews that although he was brought up in a strict Muslim family in Tehran he is not religious, does not agree with the tenets and practice of Islam in Iran and feels that religious authorities do not adhere to the principles of Islam themselves. He stated that he only prays with his mother out of respect for her but otherwise does not attend the mosque, observe Ramadan or other religious festivals. The applicant has not claimed that he publicly renounced Islam, but simply stated within his own family that he is not a religious person. The applicant has consistently described an incident at Ramadan in 2009 when he attempted to [drink water] on the street and was then arrested and detained by the Tehran Morality Police (Ershad) for not observing the requirement to fast.
11. DFAT considers it highly unlikely that the government would monitor religious observance by Iranians – for example, whether or not a person regularly attends mosque or participates in religious occasions such as Ashura or Muharram – and thus it would generally be unlikely that it would become known that a person was no longer faithful to Shia Islam. Perceived apostates are only likely to come to the attention of Iranian authorities through public manifestations of their new faith, attempts at proselytization, attendance at a house church or via informants.¹ In this matter the applicant has not claimed to have converted to Christianity or any other religion. Other sources indicate that many people in Iran do not regularly attend mosque with many young people identifying themselves as secular and agnostic.²

¹ DFAT, "DFAT Country Information Report Iran", 21 April 2016, CIS38A8012677, p.14

² Danish Immigration Service, 'Update on the Situation for Christian Converts in Iran', June 2014, CIS28931, p.12;

12. I am satisfied that the applicant is not religious and does not adhere to the outward practices of Islam in Iran. I accept that at home he prays with his mother from time to time. I accept that on one occasion he was detained for a brief period for attempting to [drink water] and not fasting during Ramadan. I am satisfied that he has not been detained or harassed by the Basij or any Iranian authorities specifically for being an apostate. Based on his evidence I am satisfied the applicant has not publicly declared or promoted his non-belief in Islam prior to his departure and that he will not do so on return to Iran. I am satisfied he not will not do so due to lack of interest rather than fear of persecution. I am not satisfied that the applicant's non-belief in Islam has, or there is a real chance that it will, come to the adverse attention of the Iranian authorities or community on return to Iran such that he will face a real chance of serious harm. I am not satisfied the applicant faces a real chance of serious harm on return to Iran for reasons of his non-belief in Islam and/or disagreement with the way Islam is practiced in Iran.

Claims related to persecution as a result of being a member of a particular social group, that is, young persons with a 'Western' appearance, including wearing 'fashionable' clothing, having tattoos and an earring and engaging in behaviour such as drinking alcohol

13. The applicant has been consistent about the fact that he enjoys dressing in fashionable clothes, having a fashionable hairstyle and wearing an earring. The delegate noted that his appearance at the interview was consistent with his stated preferences. The applicant has also been consistent in his descriptions of being detained by the Basij or Ershad usually briefly, due to his appearance and demeanour, and on one occasion because he was suspected of having drunk alcohol.

14. The applicant described a number of incidents in which he was detained by the Ershad or the Basij. The first incident was in 2006 when he and his friend were detained for wearing an earring and having unacceptable hairstyles. He described being detained for 4-5 hours and beaten with open hands and fists and having his head put under cold water. His hair was cut and he was forced to sign an undertaking that he would not wear an earring or have long hair. The applicant found this incident very distressing. About two months later he and his friend went to buy fashionable clothing and he claims to have been picked up by the Ershad and driven around for a couple of hours before being left on the street. He told the delegate that despite receiving warnings about the way he dressed and his appearance, he loved fashion so much that he continued to wear an earring and the clothing he preferred and would so do if he returned to Iran.

15. On another occasion in [2012] he and his friend were standing on the corner of a street smoking. They smelt of alcohol which they had been consuming at home and they were speaking loudly and laughing. Two police officers approached them and were suspicious they had been drinking. Although the applicant denied he had been drinking they didn't believe him (probably because they could smell the alcohol) and he was beaten and thrown into a car and taken to the police station where he was kept overnight. His friend's father came to the police station, paid a bribe and they were released.

16. After this incident the applicant stated that he became frustrated and decided to express this frustration and protest by having a tattoo inscribed [details of tattoo]. The applicant stated that his mother saw the tattoos at home while he was changing his clothes and asked him the meaning of it. He explained what it meant and why he did it. Although she was shocked she

didn't say anything. However, unbeknownst to the applicant, his younger brother had heard the conversation from the next room. His brother came into the room in which the applicant and his mother were and threatened him. His mother argued with him but his brother was ranting and raving how he could not bear to live under the same roof as the applicant and he should be thrown out. The applicant said that initially he did not take his brother's threats seriously because he was his younger brother. However about a month later, [friends] of his brothers who had recently joined the Basij, approached him and stated they knew about the tattoo and people were talking about it. They threatened they would follow it up with senior people in the Basij and it would "cost him heavily." The applicant became very frightened. He went home and had a fight with his brother who threatened him and told him that he didn't consider him to be his brother because of his tattoo and his obvious renouncement of Islam and he would talk to his friends in the Basij to deal with him. It was after this incident that the applicant started to make plans to leave Iran.

17. The delegate was not satisfied that the applicant's evidence was consistent about this incident. However, having listened to both the entry and SHEV interviews and read both the applicant's written statements, I am satisfied that the applicant has consistently stated that his brother, whilst not a member of the Basij himself, has [friends] in the Basij and it was these people that he feared would report him to senior Basij members who would harm him if they discovered what would be deemed to be an anti-religious tattoo [details of tattoo].
18. Since his arrival in Australia the applicant had several more tattoos [details of tattoos]. They are visible even when he is clothed. There is no evidence before me that these tattoos are anti-religious or offensive.
19. According to the applicant's written statement dated [in] June 2017 he has been picked up by the Ershad on four occasions between [date] 2006 and [date] 2012 for reasons related to his appearance and/or behaviour (drinking alcohol). (The applicant also claims to have been detained by members of the Basij in 2009 during the elections and these claims are discussed below). In his written statement he said that on three of the four occasions the applicant claims to have been hit or beaten. He has not claimed that he was injured on any of these occasions and has provided very little specific detail about the claimed assaults. On the fourth occasion he was simply driven around in the car and then released. During all incidents he was warned to change his behaviour and/or appearance. At his interview he claimed he was beaten on two of the four occasions. Early in the interview he spoke of being detained when he was caught [drinking water] during Ramadan and made to clean the Basij centre before he was released after three or four hours. Towards the end of the interview he claimed that he was beaten badly for breaking the fast. I have concluded that there is some element of exaggeration or fabrication to the applicant's claims related to being beaten and do not accept the applicant's claims of suffering serious physical mistreatment. However, I accept that he was detained for short periods, harassed and warned during each of the four incidents he has described.
20. Based on the applicant's consistent evidence I am satisfied that the applicant is a young man who likes to dress in 'fashionable' clothes, wear an earring and have a hairstyle and general appearance which is 'fashionable'. I am satisfied that he has tattoos on visible parts of his body. I accept that on two occasions, one in 2006 and one in 2012 his appearance and demeanour attracted the adverse attention of religious authorities in Iran and he was briefly detained. During his detention he was harassed and threatened. I accept the applicant's evidence that he was hit and had his head placed under cold water on one occasion but that he was not injured. Before he was released he was forced to sign an undertaking not to wear an earring/have an unacceptable haircut/drink alcohol again. I accept the applicant's evidence

that after a brief period he continued to dress and have his hair styled as he wished. I accept the applicant's evidence that the tattoo [details of tattoos].

21. DFAT has reported that authorities can take a heavy-handed approach when they periodically enforce standards of Islamic conduct in the community, including Islamic dress and public displays of affection with non-family members of the opposite sex.³ DFAT is aware of international media reports describing the banning of hairstyles 'of a spiky and unorthodox nature' because they were deemed to be 'devil worshipping'.⁴ At the same time, Western clothing is legally available for purchase, particularly in Tehran, and Western style dress is tolerated, particularly for men.
22. Tattoos are not illegal in Iran⁵ and are increasingly common, particularly among youth. They are usually done by 'underground' tattoo artists in Iran. France 24 International News reported in 2014 that tattoos have become popular with the young generation although the tattoo scene remains underground and whilst there is no specific law against tattoos, the Iranian authorities use Islamic law to denounce it, as they do with many other trends considered too "Western"⁶. Other new sources indicate that tattoos have become increasingly common in Iran, particularly in Tehran.⁷ In June 2016 a famous actress openly displayed a tattoo on her arm. Whilst she was criticised by Islamic conservatives for being pro-Western and "pro-choice" she was not arrested.⁸ Members of the Iranian national football team have had tattoos including one member who has a full 'sleeve' tattoo. He has received little more than chastisement for not covering his tattoos.⁹ DFAT is unaware of any recent, specific report of people being targeted by security forces **solely** (*my emphasis*) for having a tattoo, but states

*"it is possible that a person with a visible tattoo could come to the attention of security forces and result in low-level harassment. While DFAT is not aware of specific penalties that could be imposed for having a tattoo, it is likely that such penalties would be similar to those imposed for dress or hairstyles that are deemed 'improper'. In these circumstances, the usual penalty is a warning or fine. DFAT believes it unlikely that authorities would maintain an interest in someone who had previously come to their attention for having a tattoo, unless the tattoo gave evidence of another crime (e.g. related to national security)."*¹⁰

23. Article 265 of the new Islamic Penal Code clearly states that the punishment for alcohol consumption is 80 lashes, regardless of whether consumption caused drunkenness or not. The applicant stated that on the occasion members of the Ershad detained him for suspected consumption of alcohol he was not formally charged with drinking alcohol, nor was he flogged. DFAT reports that the consumption of alcohol remains relatively widespread in Iran. In 2014 and 2015 the Health Ministry launched a number of alcohol treatment and rehabilitation centres throughout the country which suggests some acknowledgement of reasonably widespread consumption of alcohol in society. Whilst the applicant may have come to the

³ Department of Foreign Affairs and Trade (DFAT), "DFAT Country Information Report Iran April 2016", 21 April 2016, CIS38A8012677, 3.74

⁴ Ibid 3.75

⁵ IranWire, 'Authorities call for Ban on Tattoos' 28 April 2015, CXBD6A0DE5338

⁶ France 24 International News, "Working underground: the life of an Iranian tattoo artist", 1 July 2013, CIS26056

⁷ Radio Zamaneh, "Tattooing, a lucrative business in Iran", 30 June 2014, CX322591; Al Monitor, 'Tattooed in Tehran', 9 December 2013, CX322591

⁸ Agence France Presse (AFP) - France, "Tattoo lands Iranian actress in feminism controversy", 1 June 2016; CX6A26A6E4897

⁹ Radio Zamaneh, 'Explanations demanded for football players' tattoos', 7 September 2015, CXBD6A0DE13224

¹⁰ DFAT, "DFAT Country Information Report Iran April 2016", 21 April 2016, 3.77 CIS38A8012677

adverse attention of authorities because he smelt of alcohol on one occasion, I am satisfied he does not have a recorded history of use of alcohol with the authorities.

24. DFAT assesses *“it is difficult to make an overall assessment of the treatment of what are sometimes labelled ‘Westernised’ Iranians. This term is very limited usefulness in a society where up to one third of the people, middle-class and above, mostly in urban areas, aspire to and try to live what could be called a modern lifestyle. However, youth in particular can experience some form of low-level harassment from security authorities, such as being subjected to searches, car checks and verbal warnings for dress or behaviour. It is important to note the significance of the sizable youth population in Iran in this regard. Enforcement can be unpredictable and related to the prevailing political atmosphere of the time”*.¹¹
25. Based on the applicant’s evidence I am satisfied that the applicant was not so fearful of the adverse attention of the Iranian authorities that he was willing to modify his dress or appearance during the time he remained in Iran.
26. I do not accept that anyone would be aware of the meaning of the tattoo [details of tattoo] given it is [details of tattoo]. However, I am satisfied that as his tattoos are now more extensive and visible that, during a period of enforcement of Islamic standards of conduct, he would be more likely to come to the adverse attention of the authorities. I accept that he did not have these tattoos solely for the purpose of strengthening his application for protection but because he genuinely likes having tattoos and has had the freedom to have them done in Australia.
27. At his SHEV interview the applicant has claimed that on the first occasion he was detained in [2006] 2006 he was warned that he should not look like a Westerner or a girl which he thought was because he was wearing an earring and had an unacceptable hairstyle. He was made to wash his hair and sign a written statement promising that he would not do it again. He was then released without charge. The applicant has not made any claims that he has been threatened because of his perceived sexuality as a homosexual or as a transvestite. He did not state again in his SHEV interview or at any time during his entry interview or in his written statements that he feared harm as a result of his imputed sexuality. He continued to dress and style his hair as he preferred after this incident. I am satisfied that the applicant has not been detained, arrested, charged or harmed for reasons of his imputed sexuality and that he does not have a well-founded fear of persecution for reasons of his imputed sexuality due to his appearance.
28. Real chance is a substantial chance as distinct from a remote or far-fetched possibility.¹²
29. Having regard to the instances of serious harm in s.5J(5) I consider that the cumulative effect of the applicant’s appearance, that is, clothing, hairstyle and earring and visible tattoos which may from time to time be nonconformist and behaviours such as drinking alcohol in private settings, that there is a low level of risk that he will occasionally be perceived by the authorities to be not conforming to appropriate and acceptable Islamic standards. Consequently he may be harassed, possibly detained for several hours and possibly fined during the periods in which the authorities in Iran periodically enforce standards of Islamic conduct. I accept that it is possible he may have to sign an undertaking not to dress in Western clothing, have unacceptable hairstyles and to cover up his tattoos. However, having regard to the relevant country information about “Westernised” Iranians who may have tattoos and dress in Western

¹¹ Ibid 3.80

¹² *Chan v MIEA*, (1989) 169 CLR 379 at 389.

clothing, particularly in Tehran where the applicant's family home is located, I am satisfied there is only a remote risk that he would actually be arrested and charged with an offence that would result in serious harm such as lashing, flogging, significant physical ill-treatment [s5J(5)(c)], significant physical harassment [s5J(5)(b)], or threats to his life or liberty [s5J(5)(c)] or any other treatment that may be regarded as serious harm.

Claims related to being a participant in the Green Movement protests in 2009

30. The applicant has been consistent in his claims about being detained by authorities for being in possession of a dark green wristband or cloth during the lead up to the elections and on election day in 2012. I accept that he was picked up at checkpoints by members of the Basij on several occasions and that he was warned about having a dark green wristband or other identifying material related to the Green Movement protests and threatened with harm if he continued to do so. On one occasion he was made to sign an undertaking that he would not participate in other demonstrations before he was released. He claims he was prevented from voting on election day, however, clarification at his SHEV interview suggests that he was told he could not vote if he continued to keep the Green armband on and he chose not to vote as a form of protest.
31. DFAT has stated that high-profile activists and members of the Green Movement continue to face monitoring and harassment.¹³ Although lower profile activists have also been detained and prosecuted for expressing political beliefs, including for participating in political rallies, most lower profile activists arrested in the 2009 and 2010 protests and subsequently released are unlikely to face serious ongoing harassment. People who are actively involved in the movement remain at some risk, depending on the degree of their involvement, of ongoing official attention.¹⁴
32. The applicant has not made any claims that he was an organiser or leader of any of the Green Movement protests. He has not claimed that he was arrested, charged, imprisoned or physically mistreated during the protests. He has not claimed that he has been visited by Iranian authorities after the election in respect of his participation in the protests. He was granted a passport in 2013 and was able to leave Iran using this passport without any difficulty which suggests that he was not of adverse interest to the Iranian authorities for reasons of his imputed or actual political opinions.
33. Based on the applicant's own evidence I'm not satisfied that he was a high-profile activist or member of the Green Movement. He has not claimed to have been arrested, detained or prosecuted for expressing political opinions or participating in protests and I consider that his degree of involvement was like thousands of others who marched in protest about the elections and who wore green to symbolise their dissatisfaction with the government of the day and the outcome of the election.
34. I am therefore not satisfied that there is a real risk that the applicant will suffer serious harm for reasons of his imputed or actual political opinions due to his participation in the Green Movement protests in 2009 and brief detainment in the lead up to the elections in 2009.

¹³ DFAT, "DFAT Country Information Report Iran April 2016", 21 April 2016, 3.66 CIS38A8012677

¹⁴ Ibid 3.67, 3.69

Claims related to actual or imputed political and/or religious opinion due to the cumulative effect of his failure to meet his religious obligations, his Westernised appearance and tattoos and his participation in the Green movement protests

35. The applicant has described being increasingly dissatisfied with the restrictions and requirements imposed on him by the authorities, including the Basij and Ershad. I accept that he believes he has few rights to free speech and freedom of expression in Iran and that this has been frustrating for him. I accept that he, perhaps somewhat impulsively, chose to have a tattoo [details of tattoo] done by a friend to express these frustrations. The applicant describes the trigger event for his departure as involving an argument with his younger brother whom he believes to be somewhat religiously fanatical and whom he believes has connections with [a number of] powerful people in the Basij. He claims to fear that as his brother's reaction was so strong to discovery of the tattoo that he will have reported him to senior members in the Basij who will perceive him to be an apostate, with unacceptable religious and political views and who will arrest, imprison and physically harm him, and possibly kill him as a result.
36. The applicant has described in detail what happened after the argument. He said that he did not initially take his brother's threat seriously but about a month later [number] of his brother's Basij [friends] threatened him. He confronted his brother who threatened him himself and said he didn't consider the applicant to be his brother because of his tattoo and his "obvious renouncement of Islam" and he would talk to his (over-zealous) Basij friends who would "have no mercy on him and his days would be numbered".
37. The applicant then claims he took steps to protect himself. He said he first went to the Australian Embassy in Tehran to ask for assistance but saw a sign which said 'don't ask for protection'. He then went to see his friend who said he had a friend in Australia and he would call him to see how he could flee from Iran. After the applicant's friend spoke with the person in Australia he gave the applicant this person's phone number and the applicant called him who told him who to approach in Tehran. This person advised him to apply for a passport which he did. He arranged for his mother to secretly assist him financially and he finally left Iran [in] July 2013. All these arrangements, including the application and grant of his passport must have taken some time. According to the applicant's evidence the chronology of these events are that he had his tattoo in about November or early December 2012 which his brother found out about a few days later. After the initial argument with his brother another month passed before the applicant was accosted by [number] of his brother's Basij friends who threatened him. From his account this event must have occurred in [date] 2013 at the latest. At his entry interview the applicant stated he started making arrangements to leave Iran 2-3 months prior to his departure, which would have been April/May 2013. This chronology of events means the applicant was in Iran for [a number of] months after the event which led to him deciding to depart Iran. He did not make arrangements to leave until three or more months after he claims he was accosted by his brother's friends. The applicant has not claimed that he was threatened, harassed or harmed in any way during the [number] months between being accosted by them and his departure. This suggests to me that his fear is not well-founded as, if his younger brother had indeed reported him to senior Basij people who were going to take action against him, it is reasonable to expect that something would have occurred within the [number]-month period he remained at home.
38. I am therefore not satisfied that the applicant's fear of persecution is well-founded or that there is more than a remote risk that he will suffer serious harm as a result of the cumulative effect of his being a member of a particular social group – "Westernised Iranians", and/or for reasons of his being a non-practicing Muslim or imputed apostate and/or his imputed or actual political opinion.

Claims related to being a returned failed asylum seeker who has resided in Australia for some time

39. I have accepted that the applicant departed Iran legally with his own genuine passport which he says was issued [passport details]. I accept that he lost his bag with his personal effects and passport when boarding the boat to [Country 1]. I am therefore satisfied there is a real chance that he may be returned to Iran on a temporary travel document. In 2013, the International Organisation for Migration (IOM) stated that Iranians who have left the country on their passports and are returned on a *Laissez-passer* will be questioned by the Immigration Police at the airport for a few hours.¹⁵ In 2016 DFAT stated that 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 the authorities. The vast majority of people questioned would be released after an hour or two.¹⁶ A report issued by a Swiss refugee agency quotes an unnamed judge as saying that asylum seekers are interrogated on return to Iran, whether or not they have been political activists in Iran or abroad. If they have tried to conduct propaganda against Iran, then they are culpable and are detained until a judge decides the sentence. Returnees will therefore be held for a few days until it is clear to the police, that they have not been involved in political activity. This report followed an article written by a former Supreme Court judge which appeared in Iran government newspaper on 17 February 2011 which stated that failed asylum-seekers could be prosecuted for making up accounts of alleged persecution.¹⁷ A 2013 Country of Origin Information report on Iran published by the Austrian Centre for Country of Origin & Asylum Research and Documentation quotes the Swiss Refugee Council (SRC) as stating in a 2011 report that the Iranian authorities' practice of dealing with returned asylum-seekers is "'arbitrary' and 'unpredictable'".¹⁸ However, DFAT has commented that it consider it unlikely that authorities would prosecute someone simply for claiming asylum overseas. However, it is possible that a known dissident would be prosecuted in this way.¹⁹ In 2013 Mr Hossein Abdy, Head of the Iranian Passport and Visa Department, also stated that it is not a criminal offence in Iran for any Iranian to ask for asylum in another country.²⁰ I have also considered a relatively small number of reports before the delegate of student activists, journalists and political activists, some of whom were returning as failed asylum seekers, being arrested on return to Iran at the airport. I consider that the applicant does not fall into any of these categories.

40. Considering all the country information before me I am not satisfied the Iranian authorities impute failed asylum seekers from Western countries or people who have resided in Western countries as holding an anti-regime, Western sympathiser or anti-government opinion in Iran or seek to prosecute or otherwise harm them for reasons of having made a claim for asylum. I am satisfied that the applicant had a low level involvement in protests in 2009 (the Green Movement) but he was not arrested, imprisoned, prosecuted, beaten or subjected to physical mistreatment as a result of his involvement in the Green Movement. He has not claimed to

¹⁵ UK Home Office, "Country Information and Guidance - Iran: Illegal Exit", 16 December 2015, OG8F59D8D34, p.7

¹⁶ DFAT, "DFAT Country Information Report Iran", 21 April 2016, CIS38A8012677, p.29

¹⁷ Amnesty International, "We are ordered to crush you' Expanding Repression of Dissent in Iran", 1 February 2012, CIS22610, p.56

¹⁸ Immigration and Refugee Board of Canada, IRN105089.E - Iran: Treatment by Iranian authorities of failed refugee claimants and family members of persons who have left Iran and claimed refugee status (2011-February 2015), 10 March 2015, OGFDFC61A11

¹⁹ DFAT, "Response to IRN 11738 Iran - Article on returned asylum seekers and people exiting Iran with false documents", 19 April 2011, CX263145

²⁰ UK Home Office, "Country Information and Guidance - Iran: Illegal Exit", 16 December 2015, OG8F59D8D34, p.11

have participated in any other protests or political activities in Iran since the Green Movement or to have been involved in protests or anti-Iranian regime political activities in Australia or on social media. I am satisfied the applicant had no difficulty departing Iran using his own passport which suggests he was not on any official black lists where he may have prevented from departing.

41. I accept that the applicant will be likely to be questioned on return to Iran by the Iranian authorities, however, I am not satisfied this amounts to serious harm having regard to the extensive examples provided in s.5J(5) of the Act. I am not satisfied the applicant faces a real chance of serious harm on return to Iran on the basis of being a failed asylum seeker from Australia and/or because he resided in a Western country.

Refugee: conclusion

42. I have considered the applicant's claims both individually and cumulatively. As discussed above, whilst I am satisfied that the applicant is a non-practising Muslim, who may be perceived as Westernised due to his appearance, tattoos and some of his behaviours and that he had a low level of participation in the Green Movement in 2009, I am not satisfied that the combination of these factors means there is a real chance that the applicant will suffer serious harm, having regard to the instances of serious harm in s.5(J)(5) of the Act. I have found that the applicant has not publicly renounced his religion or converted to a new religion. Apart from his participation in the protests in 2009 he has not been involved in any other anti-government political activities or protests in Iran or in Australia. I am not satisfied that anyone would understand the meaning of the tattoo [details of tattoo]. Furthermore I am not satisfied that the applicant's brother told anyone in the Basij about the meaning of this tattoo. I am therefore satisfied that there is no real risk that this particular tattoo, in and of itself, would result in any accusation of being an apostate or of imputing the applicant with having anti-regime political and/or religious opinions. I accept that there is a real chance that the applicant will occasionally attract the adverse attention of the authorities due to his "Westernised" appearance and visible tattoos, and possibly drinking alcohol in private homes. However, based on the available country information, I am satisfied that as a consequence there is only a very remote risk he will suffer serious harm, particularly in Tehran where it is not uncommon for young men to have tattoos, wear Western clothes, have Western hairstyles and drink alcohol in private situations and that the harm he may suffer (being fined, threatened with imprisonment, warned to behave/dress appropriately) does not meet the standard of serious harm having regard to the instances of serious harm in s.5J(5). I am not satisfied that there is a real chance of serious harm on return to Iran on the basis of being a failed asylum seeker from Australia and/or because he resided in a Western country. Accordingly, I am not satisfied that there is a real chance the applicant will suffer serious harm as a result of the cumulative effect of any of these factors.

43. 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

44. 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

45. 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.

46. Real chance and real risk involve the same standard.²¹

47. As discussed I above I have made findings that the applicant is a young man who likes to have a 'fashionable' appearance which may be perceived to be a 'Westernised' appearance, particularly as the result of having a number of visible tattoos. I have accepted that he has been detained for short periods on several occasions due to his appearance, threatened about the consequences of his conduct/appearance, and made to sign undertakings agreeing not to dress/have hairstyles/wear earrings etc. I accept that the applicant has been frightened and distressed by these incidents but that he has continued to wear fashionable Western clothing, have Western style haircuts and wear an earring. I have accepted that he occasionally drinks alcohol with friends in private homes, (which is unlawful in Iran) and that he has been detained, threatened and warned against this behaviour on one previous occasion. I am satisfied that as a result of his appearance and behaviours there is a risk that he may be detained, harassed and threatened by the authorities in Iran at times when they decide to enforce Islamic codes of behaviour and clothing. However, I am not satisfied that this meets the standard of **significant** harm having regard to the definition of significant harm in s.36(2A) of the Act.

48. I am satisfied that the applicant is a non-practising Muslim and does not like the way Islam is practiced in Iran. I accept that on one occasion he was detained briefly and threatened as a result of not observing the Ramadan fast, but that there have been no other occasions when he came to the adverse attention of the authorities for reasons of his not practising Islam as required. He has not claimed that he publicly renounced his faith, proclaimed that he is a non-practising Muslim or converted to another religion. As stated previously, I have found he was not of adverse interest to the authorities when he departed Iran. I am satisfied the applicant will not publicly declare or promote his non-belief or disagreements with Islam as it is practiced in Iran due to lack of interest rather than fear of significant harm. I am therefore satisfied that there is no real risk that the applicant will suffer significant harm for reasons of his religious beliefs, failure to engage in Islamic religious practices or because he is perceived to be an apostate.

49. I accept that the applicant participated in the Green Movement protests in 2009 and was detained briefly on several occasions for wearing or being in possession of a dark green cloth. I am satisfied that he had a very low profile as a participant in the Green Movement and that he has not engaged in any political activity or protests in Iran or Australia. I am satisfied that he was not of adverse interest to the Iranian authorities prior to his departure from Iran for reasons of his actual or imputed political opinion or activities. I am therefore satisfied there is

²¹ *MIAC v SZQRB* (2013) 210 FCR 505

no real risk he will suffer significant harm for reasons of his actual or imputed anti-regime opinion or activities.

50. I am satisfied that the applicant is likely to be questioned for a few hours on his return to Iran as the holder of a *Laissez-passer* document. On the basis of the country information before me I am not satisfied the Iranian authorities impute failed asylum seekers from Western countries or people who have resided in Western countries as holding an anti-regime, Western sympathiser or anti-government opinion in Iran or otherwise take an adverse interest in such persons and I am satisfied that any questioning the applicant may undergo does not meet the definition of significant harm, having regard to the definition of significant harm in s.36(2A) of the Act.

51. Considering the applicant's claims both individually and cumulatively, I am not satisfied there is a real risk the applicant will suffer significant harm.

Complementary protection: conclusion

52. 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.

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.