



Australian Government

Immigration Assessment Authority

Decision and Reasons

Referred application

IRAN

IAA reference: IAA17/03156

Date and time of decision: 14 May 2018 15:31:00

Natalie Becke, Reviewer

Decision

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

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

Background to the review

Visa application

1. The referred applicant (the applicant) claims to be an Iranian citizen of Ahwazi Arab ethnicity. On 27 February 2017 he lodged a valid application for a Safe Haven Enterprise Visa (SHEV). On 14 July 2017 a delegate of the Minister for Immigration and Border Protection (the delegate) refused to grant this 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. On 8 August 2017 the IAA received a submission on behalf of the applicant ('the IAA submission'). The IAA submission reiterates claims made to the delegate that are contained in the review material. It also contains arguments in relation to issues before the delegate, which I have noted.
4. Attached to the IAA submission is a letter of support from the Pastor of [Church 1], dated [in] August 2017. The apparent purpose of the letter is to provide an update on the applicant's understanding of, and commitment to, Christianity. The same pastor also provided an earlier letter of support for the applicant, which was before the delegate, regarding his intention to convert to Christianity.
5. Also attached to the IAA submission is a baptism certificate from [Church 1], which attests that the applicant was baptised as a Christian [in] July 2017. The IAA submission also raises a new claim on behalf of the applicant, which is that his father has threatened to kill him.
6. Given the date of the new letter of support and the baptism certificate, as well as the nature of the new claim regarding his father, the applicant has satisfied me this new information could not have been provided before the delegate's decision and I am satisfied exceptional circumstances exist to justify consideration of the new information.
7. The IAA submission also raises another new claim on behalf the applicant, which is that he will be imputed to be a spy or a terrorist upon return because several weeks ago there was a terrorist attack in Iran and one of the perpetrators was an Ahwazi Arab. I note the IAA submission itself was prepared only several weeks after the delegate's decision, and the IAA submission does not state when the terrorist attack took place or provide any other contextual details, or provide any evidence to support the assertion, which appears purely based on claimed shared ethnicity. Overall, I am not satisfied exceptional circumstances exist to justify consideration of this new information.

Applicant's claims for protection

8. The applicant's claims can be summarised as follows:
 - In [year] the applicant was born in Ahwaz, Khuzestan Province.
 - In [year] the applicant completed his military service, but could not find a job. He began to sell [goods] in the market with his cousin.

- The Iranian authorities used to confiscate their products, humiliate, and verbally and physically abuse them. On many occasions the applicant was held at the police station overnight.
- In late May 2013, just prior to the presidential election, some of the applicant's political activist friends asked him and his cousin to distribute pro-Ahwazi Arab [goods] to their customers for a small wage. The applicant agreed to do this because of his anti-Iranian government and pro-Ahwazi Arab political views.
- Six days later the Iranian authorities raided the applicant's family home searching for the [goods], but did not find any. The applicant and his cousin were taken to an unknown location where they were interrogated about the [goods] and beaten. They consistently denied any knowledge of the [goods].
- After five days the applicant and his cousin were forced to sign an undertaking that they would not engage in such activities again, and their families had to hand over the title deeds to their homes in exchange for their release. The pair was told they would be called to attend court soon.
- The applicant's political activist friends left the country fearing for their lives and warned the applicant he could end up in jail, or sentenced to death for assisting Iran's enemies.
- The same day the applicant and his cousin left Ahwaz for Tehran and the next morning departed Iran legally.
- Two weeks later the parents of the applicant's cousin received written notification of their court date. The applicant's uncle ripped up the document because of his anger and desperation.
- The authorities still have the title deeds to the house of the applicant's parents which prevents them for selling their property.
- Since the applicant has been in Australia he has been participating in pro-Ahwazi Arab protests, which he believes are monitored by the Iranian government.
- The applicant fears the Iranian authorities will detain, interrogate, torture or kill him because: he has a pro-Ahwazi Arab and anti-Iranian government political opinion; he is a person of adverse interest because of the [goods] and for failing to respond to the court summons; since he has been in Australia he has engaged in pro-Ahwazi activities and been baptised as a Christian; and would be returning as a failed asylum seeker from Australia.

Refugee assessment

9. Section 5H(1) of the Act provides that a person is a refugee if, in a case where the person has a nationality, he or she is outside the country of his or her nationality and, owing to a well-founded fear of persecution, is unable or unwilling to avail himself or herself of the protection of that country; or in a case where the person does not have a nationality—is outside the country of his or her former habitual residence and owing to a well-founded fear of persecution, is unable or unwilling to return to it.

Well-founded fear of persecution

10. Under s.5J of the Act 'well-founded fear of persecution' involves a number of components which include that:
- the person fears persecution and there is a real chance that the person would be persecuted
 - the real chance of persecution relates to all areas of the receiving country
 - the persecution involves serious harm and systematic and discriminatory conduct
 - the essential and significant reason (or reasons) for the persecution is race, religion, nationality, membership of a particular social group or political opinion
 - the person does not have a well-founded fear of persecution if effective protection measures are available to the person, and
 - the person does not have a well-founded fear of persecution if they could take reasonable steps to modify their behaviour, other than certain types of modification.
11. The applicant has been consistent in stating his identity since his arrival in Australia. In support, the applicant provided his original Iranian birth certificate, national identity card, military service completion card, and drivers licence to the delegate during the SHEV interview. On the basis of the information before me I am satisfied the applicant's identity is as claimed and that Iran is the receiving country for the purposes of this assessment.
12. The applicant is an Ahwazi Arab from Khuzestan Province. The Department of Foreign Affairs and Trade (DFAT) assesses that there is a high level of societal discrimination against Arabs in Iran. This can lead to unfair day-to-day treatment, such as in employment and access to housing and services. DFAT considers that such discrimination is usually a result of patronage, nepotism and favouritism reflecting social attitudes rather than official or state-directed policies. Such discrimination against Arabs is rarely coupled with community-level violence.¹
13. In 2015, the government reportedly arrested at least 78 people suspected of playing leadership roles in mobilising local protests in Khuzestan Province, and human rights organisations have expressed concern that some may have been arrested merely on the basis of an imputed opinion, for peacefully expressing dissent or openly exhibiting Arab identity and culture.² Expressions of Ahwazi Arab culture have been targeted by the Iranian authorities with increasing severity in recent years, and those arrested tend to be charged with crimes relating to national security. Elements of Arab cultural identity said to be especially sensitive to the authorities include holiday celebrations, and the authorities conflate cultural activity with political activism, leading to arrest and detention and in extreme cases, even death sentences.³ According to DFAT most Arabs do not come to the attention of the authorities; however this risk increases dramatically for Arabs who attempt to publicly assert cultural or political rights.⁴
14. I accept the applicant's claim he and his friends were teased at school for being Ahwazi Arabs and that they were not allowed to wear their cultural clothing; however I note that he completed primary, middle and high school in Ahwaz and there is no evidence before me that he was unable to access university level education. The applicant claimed that once he finished

¹ Department of Foreign Affairs and Trade (DFAT), "Country Information Report Iran", 21 April 2016, CIS38A8012677

² Ibid.

³ Iran Human Rights Documentation Centre, "A Framework of Violence: Repression of the Arab Ethnic Minority in the Islamic Republic of Iran", 25 September 2014, CIS2F827D91379

⁴ DFAT, "Country Information Report Iran", 21 April 2016, CIS38A8012677

his military service he began searching for an entry level job as a security guard or driver, but that when prospective employers saw his name they would “just place his file under everyone else’s.” However, I do consider it credible that he knows he was denied employment because his name indicated he is of Ahwazi Arab ethnicity. While I accept that Iran’s Arab population, and Ahwazi Arabs in particular, can face discrimination, on the evidence I am satisfied the applicant was not denied an education or employment because of his ethnicity.

15. The applicant has claimed that because of his lack of success in finding a job he turned to selling [goods] in a market with his cousin. The applicant stated the security forces of the local mayor used to regularly confiscate their wares, which were displayed on the ground. The delegate asked the applicant if this had occurred because they were supposed to sell their goods in a licensed shop, rather than on the ground, and the applicant confirmed this was correct, and added that he didn’t have the money to obtain a licence and open a shop. The delegate asked the applicant if other Ahwazi Arabs owned shops in the market and the applicant responded that most Arabs were forced to put their wares on the ground to sell them. The applicant gave full and detailed responses to the delegate’s questions regarding his work in the markets, but contrary to his written SHEV statement he did not claim that the authorities had ever humiliated him, physically or verbally abused him, or detained him for placing his wares on the ground. On the evidence I am prepared to accept that the Iranian authorities regularly confiscated his wares because he was not trading out of a shop.
16. The applicant has also claimed that in 2009 he participated in the country-wide anti-government protests, known as the ‘Green Movement’. When asked exactly what his role had been, the applicant responded that a lot of people went out and raised their voice because they wanted regime change and that he had joined them. Country information before the delegate indicates that the 2009 Green Movement protests were large scale and widely attended, and the applicant has not claimed to have been detained, or otherwise harmed, because of that attendance in the subsequent years he remained in Iran. Overall the applicant spoke consistently throughout his SHEV interview about the Iranian government infringing on the rights of Ahwazi Arabs, and I accept he holds a pro-Arab, and anti-Iranian government, political opinion and that he was a low level participant in the 2009 Green Movement protests.
17. However, I have difficulty accepting the applicant’s claims that two weeks prior to his departure from Iran some friends of his from the markets, Ahwazi Arab political activists, asked him and his cousin to distribute pro-Ahwazi political [goods]. In light of the applicant’s evidence that the authorities regularly confiscated their wares, and that security had been tightened in the lead up to the June 2013 presidential elections, I do not consider it plausible that the applicant and his cousin would agree to partake in this activity, despite his evidence that he had done so because he was tired of racism towards Arabs.
18. I also have serious concerns with the applicant’s claim that five or six days after they began to distribute the [goods], the authorities raided his family home late at night. The applicant claims that the men began to hit him and his and his cousin, then blindfolded and handcuffed them. The applicant claims they were taken to an unknown location where they were interrogated about the [goods], threatened and assaulted. The applicant claims he consistently denied any possession or knowledge of the [goods], but that he and his cousin were forced to sign an undertaking that they would not engage in such activities again and were told they would receive a summons to attend court at a later date; however they were not charged with any offence. The families of the applicant and his cousin were required to hand over the title deeds of their respective homes in exchange for the pair’s release five days later.

19. Their families then decided that they should leave Iran immediately, and the applicant's political activist friends, arranged their airline tickets to depart Ahwaz for Tehran that same day, and then depart Tehran for [other countries] the day after. When the delegate asked the applicant how his friends were able to make these arrangements so quickly he responded that they had already started while the applicant was in custody, and that he had obtained his passport after completing his military [service]. However, I note the transcript of his arrival interview indicates he obtained his passport in April or May 2013, which suggests he had specific intentions to depart Iran prior to the purported incident with the pro-Ahwazi [goods]. I note in the applicant's written SHEV statement he has claimed that his political activist friends, realising that the [goods] could be linked to them, also left the country. I do not consider it credible that these people, who had paid the applicant and his cousin a very small wage for a period of five or six days, would be prepared to organise and pay for them to also leave Iran.
20. During the SHEV interview the applicant claimed that after his departure the Iranian authorities delivered several summonses to his family for him to attend court, but his mother ripped these up in order to protect the applicant's father who has a heart condition. The applicant told the delegate he does not know many summonses were received in total, or their contents, because his parents are illiterate but that he believes they were summonses. The applicant also stated that he doesn't know when his family received the last summons. I do not consider it credible that the applicant's mother would rip up documents which had been delivered by government officials, particularly if she did not know what they contained, or that their arrival would come as a surprise to his father, given they had handed over the title deeds to their family home to secure the applicant's release. I also consider this contradicts the applicant's written SHEV statement in which he refers to only one summons, received by his cousin's parents two weeks after their departure, and that it was his uncle who ripped the document apart "in fear and desperation". The applicant has not presented any documentary evidence to support his claim that his family surrendered the title deeds to their home, and asserts this is because the authorities refused to issue his family a receipt or any other kind of paperwork. I consider the applicant's claim in this regard to be lacking credibility.
21. When the delegate put to the applicant that his ability to depart Iran using a genuine passport issued in his own name indicated that he was not a person of interest to the authorities, the applicant responded that he had the right to leave Iran prior to the court order being issued. However, I note that the applicant has also claimed that while they were in custody, the Iranian authorities accused them of working with Iran's enemies by distributing the [goods], and the country information cited above indicates that the Iranian authorities generally view pro-Ahwazi activities as a national security threat, and that suspects are liable to be treated extremely harshly, including the death penalty.
22. I do not consider it credible that after five days in custody the authorities would release the applicant and his cousin without charge on the basis of a signed undertaking that they would not distribute pro-Ahwazi [goods] again, advise that they would receive a court summons in due course, seize the title deeds to their family homes and take no steps to prevent them departing the country. Overall, I do not accept that the applicant was involved in distributing pro-Ahwazi [goods] a week prior to his departure from Iran, that he was detained after his activities came to the attention of the Iranian authorities or that his family were required to hand over the title deeds to their house. On the evidence, I am satisfied the applicant was not a person of adverse interest to the Iranian authorities at the time of his departure from Iran.
23. During the SHEV interview the delegate asked the applicant if, prior to the incident with the [goods], he had ever had any other issues with the Iranian authorities. The applicant responded that he had been previously detained for two or three hours for gathering with

other Ahwazi Arabs, which is inconsistent with his evidence at his arrival interview that he had been “arrested” three or four times previously for two or three hours at a time. I am prepared to accept the applicant was detained on several occasions, and note he has not claimed that he was physically or verbally abused. The applicant told the delegate that it was forbidden to have a girlfriend, or smoke a water pipe, and that when they came to the authorities’ attention for these reasons, the authorities then would assault them because they were Ahwazi Arabs. The applicant spoke in the plural when recounting these incidents, and did not specify when or how often they occurred, or whether he was referring to his own specific experiences or those of other Ahwazi Arabs that he knew. The applicant claimed not to have ever been charged with an offence in Iran, and on the evidence, I consider he was talking generally about the Ahwazi Arab community.

24. Country information before the delegate indicates that unmarried men and women cannot fraternise alone in public in Iran, and I am prepared to accept that it is illegal to smoke a water pipe. DFAT reports that the official enforcement of Iran’s morality laws governing can be unpredictable and dependent on the prevailing political atmosphere of the time, with poorly trained Basij units (a voluntary paramilitary force) often operating without orders from superiors to physically intimidate civilians accused of moral offences.⁵ While young men, such as the applicant, can experience low-level harassment from security authorities, such as being subjected to searches, car checks, verbal warnings for dress or behaviour, the information before me does not indicate that Ahwazi youth are targeted in particular.⁶
25. Furthermore, in 2016 DFAT observed the Basij were less visible on the streets than was previously the case and noted credible sources which report the Basij have become less assertive and generally more respectful in their interactions with Iranians. While I accept the applicant upon return to Iran may congregate with other Ahwazi Arabs, find a girlfriend, or smoke a water pipe, on the evidence I am not satisfied the applicant faces a real chance of harm for these reasons.

Activities in Australia

26. The applicant has claimed that following his release from Australian immigration detention he began to meet with other Ahwazi Arabs. The applicant also claimed that he participated in an anti-Iranian government protest outside the Iranian embassy in Canberra, which I accept. In the applicant’s written SHEV statement he has claimed to have heard that the Iranian government had employed people in Australia to monitor the activities of such groups and keep track of participants. After a break in the SHEV interview, during which the applicant consulted with his representative, he then added that embassy staff had taken photos of the protestors. The applicant has not provided any evidence to support his claim in this regard, and given the timing with which it was raised, I consider it lacks credibility.
27. The applicant said that after some time he left this group because he felt he had come to Australia to start a new life, and he didn’t want to cause stress for his father who has a heart condition. When the delegate asked the applicant if he feared his activities in Australia would come to the attention of the Iranian authorities he responded that he was, but he also clearly stated that he left the group because he doesn’t believe that demonstrating against the Iranian government in Australia helps the situation in Iran. I accept the applicant’s claims in this regard and note that he has not been involved in this group for a number of years now.

⁵ Ibid.

⁶ Ibid.

28. DFAT indicates there is a relatively robust environment for political discussion in Iran and that citizens vigorously criticise the government of the day both publicly and online, although political activists who are perceived to cross red lines may be punished.⁷ I accept the applicant holds a pro-Ahwazi and anti-Iranian government political opinion and I have had regard to the country information cited above regarding the Iranian authorities' harsh treatment of Ahwazi Arabs who attempt to assert cultural or political rights. However, I am satisfied the applicant has not engaged in any anti-regime activities apart from his low level participation in the mass 2009 Green Movement protests, and the protest outside the Iranian Embassy in Canberra. Nor is there any credible evidence before me that the applicant has engaged in specific pro-Ahwazi activities in Iran, or that he would do so upon return. On the evidence overall, I consider the applicant does not have an interest in being politically active.
29. At the beginning of the SHEV interview the applicant claimed he had been attending unspecified churches in Australia, including one that had been recommended to him in [Suburb 1], which he had now attended three times. The applicant also stated that while he is researching other religions, he has not yet made up his mind which one to take up, because he was waiting for a response from the Holy Spirit. The applicant also stated that although his cousin has introduced him to Christianity he may ultimately decide not to convert to any other religion and that although the degree of his belief in Islam is lessening, he has not completely left that religion yet. He also stated that this is something his family won't be able to accept, but he did not claim to fear harm from them.
30. One week after the SHEV interview the delegate received a letter of support from the Pastor of [Church 1] dated [in] July 2017 ('the first church letter'). The letter, which appears to be a pro-forma into which the applicant's details have been inserted, states that the pastor has known the applicant since 29 June 2017 when he visited their Bible class. The first church letter also states the applicant:
- attends their Sunday morning church service and has requested to be baptised [in] July 2017;
 - has completed five out of 184 subjects in an unspecified course;
 - has watched 14 videos in the 'Bible Video Certificate';
 - has brought one new person to the church, and this person has since received Jesus Christ as his saviour; and
 - is a true Christian and has exhibited a serious interest in learning the Bible
31. The first church letter asserts that many Iranians have come to know that the applicant is a Christian, and the applicant wants all Muslims to see the errors of Islam and become Christians, which would endanger him if he returned to Iran.
32. Attached to the IAA submission is a second letter from the Pastor of [Church 1], dated [in] August 2017 ('the second church letter'), three weeks after the delegate's decision. The second church letter also appears to be a partial pro-forma into which the applicant's details have been inserted.
33. The second church letter acknowledges that the delegate did not accept the applicant could have genuinely converted from Islam to Christianity in the space of three days, but argues this is because the delegate has most likely never sat in [Church 1]'s five hour gospel presentation to appreciate the power of this program "in removing Islam from Muslims' minds and

⁷ Ibid.

converting them to Christ.” The second church letter also states the applicant is “showing great evidence of becoming a strong Christian” because:

- he has attended four Bible studies classes a week and stayed behind to move chairs and clean up;
 - he has now brought six people to the church and they have received Christ as their saviour;
 - he was baptised [in] July 2017;
 - he now completed 12 out of 184 subjects in the ‘Basic Bible Certificate’, one subject in the ‘Bible Characters Certificate’, 14 subjects in the ‘Bible Video Certificate’, and 25 subjects the ‘Must Know Certificate’; and
 - his cousin is a dedicated Christian at [Church 1].
34. The new letter refers to an attached sheet regarding these courses; however a sheet was not provided. Also attached to the IAA submission is a baptism certificate for the applicant from [Church 1]. The certificate attests that the applicant was baptised as a Christian on 16 July 2017, two days after the delegate’s decision.
35. I am prepared to accept that the church in [Suburb 1] the applicant referred to during his SHEV interview was [Church 1]; however, in relation to the first church letter, which was written just one week later, I do not find it credible that he could have completed all the activities which are listed therein during that period. Furthermore, given the pastor had only known the applicant for three days at the time of writing the first church letter, I do not find his statements regarding the number of people the applicant had purportedly told about his new faith, or the applicant’s “serious interest” in the Bible, to be compelling.
36. While the second church letter provides more detail regarding the applicant’s activities at [Church 1], its contents do not allay my concerns that at his SHEV interview, only six weeks earlier, he gave evidence that he had not yet decided to pursue any new religion in particular, and that he may not to take up any new religion at all.
37. I am prepared to accept that during the six week interval between the two church letters the applicant was baptised a Christian, became more involved with [Church 1] and completed more of their study units. However, given the rapidity of the applicant’s increasing involvement, I am not satisfied he has demonstrated a genuine commitment to Christianity. As noted below, I accept the applicant’s family may not be pleased with his decision to leave Shia Islam; however, in the circumstances, I do not consider it credible that his father has threatened to kill him because of his baptism or involvement with Christianity. Overall I am not satisfied the applicant has engaged in this conduct (baptism and involvement with church) otherwise than for the purpose of strengthening his claims to be a refugee, and I have disregarded that conduct under s5J(6).
38. However, on the basis of the applicant’s evidence at SHEV interview, I consider it plausible that he may no longer consider himself to be a Muslim. Many Iranians are becoming increasingly disenchanted with the Islamic regime and have moved away from institutionalised religion. DFAT indicates the Iranian government does not monitor religious observance, for example mosque attendance, and Islam plays a smaller role in public life than it has in the past.⁸ Apostasy is a crime in Iran and in rare cases has resulted in the application of the death penalty; however perceived apostates or atheists are only likely to come to the attention of

⁸ Ibid.

Iranian authorities through things such as manifestations of a new faith, through informants or if they seek to publicise their views.⁹ As noted above, the applicant also told the delegate that his lack of religion is something his family cannot accept, but he did not claim to fear harm from them for this reason. Overall I am not satisfied the applicant faces a real chance of harm in Iran for reasons of religion.

Returning Asylum Seeker from Australia/Western Country

39. I accept in June 2013 the applicant departed Iran legally, using a genuine Iranian passport, and sought asylum in Australia. I also accept that if the applicant were to return to Iran the government may be aware of this, given that he is no longer in possession of his passport and his return would require a temporary travel document issued by Iranian diplomatic representatives.¹⁰
40. According to DFAT, Iran says it does not accept involuntary returnees and Iranian overseas missions will not issue travel documents to an Iranian whom a foreign government wishes to return involuntarily to Iran. Officials provide assistance to Iranians who wish to voluntarily return to Iran, even if they left irregularly. Strong anecdotal evidence suggests that officials do not attempt to prosecute a voluntary returnee—largely because most failed asylum seekers leave Iran legally (a regular departure through airports or with passports).¹¹
41. 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 – usually Tehran Imam Khomeini – 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 majority of people questioned would be released after an hour or two.¹²
42. With reference to the applicant’s particular circumstances, I am not satisfied he was of a person of adverse interest at the time of his departure, or that his Ahwazi Arab ethnicity, or his political or religious views, would lead to any differential treatment on re-entry. Nor does the country information before the delegate support a finding that persons who have sought asylum in Western countries, such as Australia, are imputed to hold an anti-Iranian government political opinion. Overall, I am not satisfied the applicant had a profile of interest to the Iranian authorities for any reason prior to his departure, or would attract the adverse attention of the Iranian authorities as a returning asylum seeker.
43. While I accept the Iranian authorities may question and even briefly detain the applicant as a returnee, I am not satisfied this treatment would amount to serious harm. Based on the applicant’s personal circumstances, I am also not satisfied the applicant faces a real chance of harm for any of the above reasons, should he return to Iran. The applicant does not have a well-founded fear of persecution within the meaning of s.5J.

Refugee: conclusion

⁹ Ibid.

¹⁰ Ibid.

¹¹ Ibid.

¹² Ibid.

44. 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

45. 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

46. 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.

47. I accept that the applicant is an Ahwazi Arab who holds an anti-Iranian government and pro-Arab political opinion, that in 2009 he attended a Green Movement protest, and that after his arrival in Australia he attended a protest outside the Iranian embassy. I accept the applicant has had previous encounters with the Iranian authorities in the market where he worked, and that on several occasions he was detained for two or three hours. I also accept the applicant may no longer consider himself a Muslim. However I have not accepted that the applicant, with this background, would face a real chance of harm in relation to any of these reasons upon return. For the same reasons I also find there is not a real risk he will suffer significant harm.

48. I also accept that the applicant has been baptised as a Christian, and note that the first church letter claims "many Iranians" know about this. However, I have not accepted that the applicant's interest is at all genuine, and I am not satisfied he would be involved with the practice of Christianity upon return. Nor does the country information before the delegate indicate that merely attending church and undergoing baptism overseas, without anything further, would bring an Iranian citizen to the adverse attention of the Iranian authorities. I am not satisfied that there is a real risk that the Iranian authorities would learn of the applicant having attended Christian churches in Australia or of his having been baptised in Australia, or that he would face significant harm for this reason.

49. I accept that as an asylum seeker returning to Iran without a passport the applicant may be questioned on his return for a few hours, but I do not consider that this would amount to significant harm. The applicant will not be arbitrarily deprived of his life or subject to the death penalty. The applicant will not be subject to torture, cruel or inhuman treatment or degrading treatment or punishment.

50. I find that there is no real risk that the applicant would suffer significant harm from the Iranian authorities upon his return.

Complementary protection: conclusion

51. 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.

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5J Meaning of well-founded fear of persecution

- (1) For the purposes of the application of this Act and the regulations to a particular person, the person has a well-founded fear of persecution if:
 - (a) the person fears being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion; and
 - (b) there is a real chance that, if the person returned to the receiving country, the person would be persecuted for one or more of the reasons mentioned in paragraph (a); and
 - (c) the real chance of persecution relates to all areas of a receiving country.

Note: For membership of a particular social group, see sections 5K and 5L.

- (2) A person does not have a well-founded fear of persecution if effective protection measures are available to the person in a receiving country.

Note: For effective protection measures, see section 5LA.

- (3) A person does not have a well-founded fear of persecution if the person could take reasonable steps to modify his or her behaviour so as to avoid a real chance of persecution in a receiving country, other than a modification that would:

- (a) conflict with a characteristic that is fundamental to the person's identity or conscience; or
- (b) conceal an innate or immutable characteristic of the person; or
- (c) without limiting paragraph (a) or (b), require the person to do any of the following:
 - (i) alter his or her religious beliefs, including by renouncing a religious conversion, or conceal his or her true religious beliefs, or cease to be involved in the practice of his or her faith;
 - (ii) conceal his or her true race, ethnicity, nationality or country of origin;
 - (iii) alter his or her political beliefs or conceal his or her true political beliefs;
 - (iv) conceal a physical, psychological or intellectual disability;
 - (v) enter into or remain in a marriage to which that person is opposed, or accept the forced marriage of a child;
 - (vi) alter his or her sexual orientation or gender identity or conceal his or her true sexual orientation, gender identity or intersex status.

- (4) If a person fears persecution for one or more of the reasons mentioned in paragraph (1)(a):

- (a) that reason must be the essential and significant reason, or those reasons must be the essential and significant reasons, for the persecution; and
- (b) the persecution must involve serious harm to the person; and
- (c) the persecution must involve systematic and discriminatory conduct.

- (5) Without limiting what is serious harm for the purposes of paragraph (4)(b), the following are instances of **serious harm** for the purposes of that paragraph:

- (a) a threat to the person's life or liberty;
- (b) significant physical harassment of the person;
- (c) significant physical ill-treatment of the person;
- (d) significant economic hardship that threatens the person's capacity to subsist;
- (e) denial of access to basic services, where the denial threatens the person's capacity to subsist;
- (f) denial of capacity to earn a livelihood of any kind, where the denial threatens the person's capacity to subsist.

- (6) In determining whether the person has a **well-founded fear of persecution** for one or more of the reasons mentioned in paragraph (1)(a), any conduct engaged in by the person in Australia is to be disregarded unless the person satisfies the Minister that the person engaged in the conduct otherwise than for the purpose of strengthening the person's claim to be a refugee.

5K Membership of a particular social group consisting of family

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

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

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

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

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

5L Membership of a particular social group other than family

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

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

5LA Effective protection measures

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

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36 Protection visas – criteria provided for by this Act

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

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

...

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.