



Australian Government

Immigration Assessment Authority

Decision and Reasons

Referred application

IRAN

IAA reference: IAA17/03203

Date and time of decision: 13 March 2018 15:58:00

Dione Dimitriadis, Reviewer

Decision

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

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

Background to the review

Visa application

1. The referred applicant (the applicant) claims to be a national of Iran. [In] March 2016 he lodged an application for a Safe Haven Enterprise visa (SHEV) claiming to fear harm for reasons of his race, religion, imputed political opinion and membership of a particular social group.
2. A delegate of the Minister for Immigration and Border Protection (the delegate) refused to grant the visa [in] July 2017 and found that the applicant did not have a well-founded fear of persecution and there was not a real risk of significant harm upon his return to Iran.

Information before the IAA

3. I have had regard to the material given by the Secretary under s.473CB of the *Migration Act 1958* (the Act). The material included the SHEV application, submission by the representative, the invalid Subclass 866 Permanent Protection visa application, Statutory Declarations declared [in] September 2013 and [in] March 2016, and the protection visa interview recording.
4. No further information has been obtained or received.

Applicant's claims for protection

5. The applicant's claims can be summarised as follows:
 - The applicant is a national of Iran.
 - He is an Arab and was born in [birth date]. Before arriving in Australia, he lived all his life in Ahwaz, Khuzestan Province, Iran.
 - His parents [and siblings] were all born in Ahwaz, Khuzestan. Except for one [sibling] who now lives in Australia, all his siblings and parents lived in Iran at the time the SHEV application was lodged.
 - In the SHEV application, he stated that he speaks, reads and writes in the Farsi language but only speaks in the Arabic language.
 - He experienced discrimination and adverse attention from the Iranian authorities, in particular the Basij in part because of his Arab background.
 - The applicant and his girlfriend were harassed by the Basij.
 - On one occasion, he and his brothers were [in a vehicle] and were stopped by the Basij and fired upon, then taken into detention and only released the next day when his father lodged a friend's land title deeds. Money was also paid.
 - The applicant is a Shia Muslim but did not follow any Muslim practices while in Iran.
 - He is unable to live under the political regime in Iran.
 - He departed Iran legally [in] August 2012 using his own Iranian passport which he obtained in Ahwaz, Iran.
 - He is considering becoming a Christian.

- The applicant stated at the Arrival interview [in] December 2012 that he will kill himself if he is sent back to Iran.
- He fears returning to Iran due to his religious beliefs which are also then his political views and because is an ethnic Arab living in Ahwaz in Khuzestan Province. He is identifiable as an Iranian Arab by his dialect.
- He fears being targeted by the Iranian authorities and subjected to random arrests, beatings, extortion and being falsely accused of committing crimes. He fears being killed by the Iranian authorities.
- The applicant fears harm for being a non-practising Muslim if he were to return to Iran.

Refugee assessment

6. 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

7. 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.
8. The applicant’s identity is not in issue and I accept on the basis of the identity documents that the applicant submitted to the Department of Immigration and Border Protection (now part of the Department of Home Affairs) (the Department) that he is a national of Iran and that his identity is as claimed. I find Iran to be the receiving country for the purpose of this decision. There is nothing before me to suggest that the applicant has a right to enter and reside in any country other than Iran, and I find for the purpose of s.36(3) of the Act that he does not.
9. The applicant claimed that he has been discriminated against and harassed from the time he was very young because of his ethnicity. He is an ethnic Arab and was born in Ahwaz, Khuzestan Province, Iran and lived there all his life until he departed Iran for Australia.

10. He claimed in his Statutory Declaration declared [in] September 2013 (also referred to as the 2013 Statutory Declaration) that he was beaten several times and treated differently to other Farsi speaking children, by his Iranian teachers. The applicant believed it was because he is an Arab. However, in his Statutory Declaration declared [in] March 2016 (also referred to as the 2016 Statutory Declaration), the applicant claimed that he was harassed and humiliated by the Farsi speaking Iranian students who used to try and upset him, and hit him. The applicant stated that the “teachers were not interested in helping” him. He went to two different schools and he finished school when he was [young].
11. At the protection visa interview [in] June 2017, the applicant claimed that the teachers constantly beat him up and that is why he could not have a good education. I have considered the inconsistencies in the evidence as to whether the teachers beat him or not. In his Statutory Declaration declared [in] March 2016, he did not claim that his teachers beat him and only claimed that the students used to try and upset him, and hit him. In light of the inconsistencies, I do not accept that the applicant was beaten constantly or at all by his teachers. Whilst he may have suffered some bullying at school, I do not accept that his teachers were not interested in helping him. The applicant is [much older] now. I am satisfied that the applicant does not fear harm in Iran because of events that took place when he was at school.
12. I have significant concerns about the applicant’s claims that he was harassed and beaten by the police and/or the Basij. In his Statutory Declaration declared [in] March 2016, the applicant stated that the police in Ahwaz were not Arabs and were not sympathetic to local Arabs. Yet he claimed that his father paid the police to discipline the applicant and his brother. The applicant was [a young age] at the time and the applicant claimed that [a senior member of the] police hit [him]. I do not accept as credible that the applicant’s father would have sought the assistance of police to discipline his [young] son.
13. The applicant provided different versions of a claimed incident involving the Basij. The different versions were at the Arrival interview [in] December 2012, in the 2013 Statutory Declaration, in the 2016 Statutory Declaration and at the protection visa interview [in] June 2017. In the Statutory Declaration declared [in] September 2013, the applicant stated that, in 2011, together with his brothers ([Mr A] and [Mr B]), he was transporting goods in his [vehicle]. They had to stop at a Basij checkpoint where the officer signalled that they could move on. However, there was another Basij check point, and as they passed the second checkpoint, the Basij officers at the second check point followed [them] and opened fire and one of the rear tyres was struck by a bullet. The applicant’s [vehicle] came to a halt and the applicant and his brothers stepped out and the Basij officers fired two other bullets close to their feet. The [vehicle] was confiscated and they were taken to the Basij [base] where they were falsely accused by the cleric in charge that they had argued and fought with the Basij and had attempted to take their guns away. The applicant and his brothers denied the allegations. The cleric threatened to imprison them and confiscate the [vehicle]. The applicant’s father brought a friend’s land title deeds and lodged them with the Basij and the applicant and his brothers were released the next day as the title deeds were deposited and they also paid [an amount of] “tomans” at the time of release. The applicant and his family paid a total of [total amount of] tomans (including the [amount] paid initially) over a 12 month period in order to release the title deeds.
14. In his Statutory Declaration declared [in] March 2016, the applicant stated that he was constantly harassed by the “Nirooie Entezemat” and Basij. (In the invalid Subclass 866 application, the applicant indicated that for his compulsory military training he was attached to Nirooie Entezemat which is a branch of the police.) The applicant stated (in his 2016 Statutory Declaration) that employment was hard to find so his brother and he bought a [vehicle] and

tried to work for themselves. They [undertook a particular commercial activity]. Four or five times the Basij police tried to stop them or to take their [vehicle] from them. One night he and his brothers, [Mr A] and [Mr B], were on their way home when the Basij stopped them and tried to take away their [vehicle]. The Basij searched the [vehicle] but could not find anything illegal or stolen. One of the Basij said that he had suspicions and had to take the [vehicle] and the applicant's brother told the applicant to "go", started the [vehicle] and they tried to get away but the Basij shot at the tyre of the [vehicle] to make them stop. When they heard the shot, they stopped and the Basij fired two more shots just missing their feet. After the shots, the Basij sprayed their faces, confiscated the [vehicle] and took [Mr A] to their [base]. The applicant and [Mr B] went to the base to get [Mr A] back, but as soon as they entered the Basij station, they were blindfolded and handcuffed. At the base, the person in charge falsely accused them of having fought with the Basij and attempted to take their guns. The applicant and his brothers denied the allegations but were threatened with imprisonment and were interrogated. In the end they could not find anything and told the applicant and his brothers that they had to pay the cost of the bullets which was [a particular amount]. The applicant's father came to the prison and brought a friend's title deeds and the applicant and his brothers were released the following day. [A number of] days later they paid the money to have the title deed released.

15. At the protection visa interview, the applicant stated that he and his two brothers were [in his vehicle]. They had been working and they had [goods in] the [vehicle] as he is a [particular occupation]. The applicant stated that a [vehicle] came and stood just next to them, the person turned the [vehicle] off and took the key and the person said that he is from the Basij and accused the applicant of having stolen goods on his [vehicle]. The applicant confirmed that the Basij took the key but this happened very close to the applicant's home and the applicant pushed the [vehicle] and took it to their place while his two brothers were with the Basij. The applicant claimed that he came back and then there was shooting and the Basij sprayed them. The Basij shot next to the applicant's foot and shot once to the sky and this went on the side of the applicant's face and then they sprayed them and he shot again.
16. There are inconsistencies as to whether the amount paid to the Basij for the release of the applicant and his brothers and the release of the title deeds was paid [days] after the brothers were released or whether it was paid over a twelve month period. Given the applicant's claim (in the Statutory Declaration declared [in] September 2013) to have been involved in making the payment, I am satisfied he would have known whether the [amount] was paid over 12 months or [days] after the applicant and his brothers were released.
17. There were significant inconsistencies in the different versions of the claimed incident including whether there was one Basij checkpoint or two. In the 2013 Statutory Declaration the applicant referred to passing two checkpoints. However, in the 2016 Statutory Declaration, he only referred to one checkpoint. At the protection visa interview, the applicant stated that there was only one checkpoint.
18. A further significant inconsistency concerned whether the applicant and his brothers tried to get away from the Basij. In the 2016 Statutory Declaration, the applicant stated that after being stopped by the Basij and the [vehicle] being searched, one of the Basij said that he had suspicions and had to take the [vehicle] and the applicant's brother told him to "go", started the [vehicle] and they tried to get away but the Basij shot at the tyre of the [vehicle] to make them stop. However, in the 2013 Statutory Declaration, there was no mention of the applicant and his brother trying to get away from the Basij.

19. A further significant inconsistency concerned whether the applicant's brother, [Mr A], was the only one taken by the Basij to the [base] or whether all three brothers were taken there. In the 2013 Statutory Declaration, the applicant stated that the [vehicle] was confiscated and the applicant and his brothers were taken to the Basij [base]. However, in the 2016 Statutory Declaration, he stated that [Mr A] was taken to the Basij base in Ahwaz and [Mr B] and the applicant went to the base to get [Mr A] back, but as soon as they entered the Basij station they were blindfolded and handcuffed. There was also no mention in the 2013 Statutory Declaration of being handcuffed and blindfolded.
20. Another significant inconsistency related to the evidence about whether a member of the Basij came [in a vehicle] and stood just next to them, turned the [vehicle] off and took the key. The applicant did not state, in either the 2013 Statutory Declaration or the 2016 Statutory Declaration, that the Basij took the key from the [vehicle]. The applicant also did not state in either Statutory Declaration, that he pushed the [vehicle] to his place after the key was taken.
21. The delegate brought to the applicant's attention, at the protection visa interview [in] June 2017, that there were inconsistencies in the evidence about this claimed incident. The applicant claimed that he had said the same thing and he does not lie. He claimed that there were interpretation errors. However, there were significant inconsistencies between the two Statutory Declarations that the applicant provided to the Department. He was represented by a migration agent at the time the invalid Subclass 866 application and the 2013 Statutory Declaration were provided to the Department and he was also represented by a migration agent when the SHEV application and the 2016 Statutory Declaration were provided to the Department. I am not satisfied that the significant inconsistencies in the applicant's evidence can be explained by a claim that they were caused by interpretation errors.
22. Because of the significant inconsistencies in the applicant's evidence about the incident relating to his detention and his brothers' detention by the Basij, I do not accept that this incident took place. I do not accept that the applicant and his brothers were stopped by the Basij or that they tried to get away or that the tyre of the [vehicle] was shot at by the Basij. I do not accept that the applicant or his brothers were shot at, sprayed at or detained, that the [vehicle] was confiscated, that the brothers were interrogated, or that the applicant or his brother were blindfolded or handcuffed. I do not accept that the applicant and his brothers were falsely accused of having fought with the Basij or of having attempted to take their guns. I do not accept that money had to be paid for the applicant's and his brothers' release from detention or that land title deeds were deposited at the prison, because I do not accept that the applicant or his brothers were detained.
23. I have carefully considered the applicant's evidence but because of the significant inconsistencies in the evidence I do not accept that he was constantly harassed by the Iranian authorities including the Basij or Nirooie Entezemat.
24. The applicant claimed to fear harm in Iran because he is an ethnic Arab living in Ahwaz in Khuzestan Province. The Department of Foreign Affairs and Trade (DFAT)¹ reported in April 2016 that the '[t]reatment of Arabs by the state is usually consistent with that of other ethnic minorities, but can be unpredictable. According to the prevailing political environment, Arabs may unexpectedly face increased adverse attention.' The report also stated that broadly there is a high level of societal discrimination against Arabs which could lead to unfair treatment in employment and access to housing and services. DFAT assessed that this discrimination was

¹ Department of Foreign Affairs and Trade, 'DFAT Country Information Report Iran April 2016', 21 April 2016, CIS38A8012677, 3.10.

‘usually a result of patronage, nepotism and favouritism reflecting social attitudes rather than official or state-directed policies’, and stated that such ‘discrimination against Arabs is rarely coupled with community-level violence.’² DFAT also assessed that ‘most Arab Iranians do not come to the attention of authorities and are subject to only low levels of adverse attention by the state’.³

25. DFAT assessed that ‘Arabs who become known to Iranian authorities through attempts to enhance or assert cultural or political rights may face harassment on account of their activities if they are perceived to threaten the constitutional foundations or the territorial integrity of the Islamic Republic.’⁴
26. There is no evidence that the applicant ever tried to assert cultural or political rights in Iran. He has not identified as being politically active or vocal as an Arab from Iran, and I find that he does not have and he has not ever had a political profile in Iran associated with being an Ahwazi Arab. His employment history shows that he has worked with relatives and others from 1998 to 2010 in different jobs including [various occupations]. The applicant departed Iran legally on an Iranian passport issued in his own name and I am satisfied he did not have an adverse profile at the time he left Iran.
27. There were also significant inconsistencies in his evidence about being in public with his girlfriend which brought him to the attention of the police and the Basij. In his Statutory Declaration declared [in] March 2016, the applicant stated that he and his girlfriend were caught by the police in [a particular public location] and they were taken separately in different cars to the police station. The applicant claimed that the police officers grabbed him and shoved him into their car while beating him up, kicking and slapping him, “and then again out of the car, while kicking and bashing into the small police station” (sic). They let him go [a number of] hours later and that was when the kicking and bashing stopped. About a year later he and his girlfriend met up again and the same thing happened. There were plain clothes police officers around. The applicant stated that the “experience of the arrest - of being kicked and beaten, and of [his girlfriend] being taken separately to the station - was very much the same as last time.” He was taken by corrupt police who did not send the matter to court. The applicant paid [an amount] as a bribe. However, in the Statutory Declaration declared [in] September 2013 the applicant stated that when he was around [age], he was walking with his girlfriend but was stopped by the Iranian moral police. As they told the police officers that they were married, they were taken to the police [station]. As soon as the police officers realised that they were not married, the applicant was beaten severely and the police officers [assaulted him in a particular way] which left a scar on [a particular part of his body]. His father was able to secure his release after paying a large sum of money and handing the vehicle registration book to the police officers.
28. The applicant claimed in his 2016 Statutory Declaration that he and his girlfriend were caught twice by the police and taken to the police station but in the 2013 Statutory Declaration, he only stated that he and his girlfriend were caught once and taken to the police station. The applicant also claimed in his 2016 Statutory Declaration that he and his girlfriend were taken separately in different cars to the police station but in the 2013 Statutory Declaration, he made no mention of being taken in different cars to the police station. In the 2016 Statutory Declaration, the applicant claimed that he had to pay a bribe the second time he was detained. However, in the 2013 Statutory Declaration, he stated that his father paid a large sum of

² Ibid, 3.11.

³ Ibid, 3.12.

⁴ Ibid, 3.13.

money and handed the vehicle registration book to the police officers on the only occasion that he was detained.

29. Because of the significant inconsistencies in this evidence I do not accept that the applicant and his girlfriend were ever taken to the police station for appearing together in public, or that the applicant was beaten or that a sum of money had to be paid for his release or that his father handed the vehicle registration book to the police officers.
30. The applicant claimed at the protection visa interview that he was going to the hospital one day because he had [a particular medical condition] but the police stopped him and accused him of causing problems with a girl. They took him to a police station and beat him up and [further humiliated him]. Because of the significant inconsistencies in the applicant's evidence and because he did not make this claim until the protection visa interview, I do not accept that this incident took place.
31. I have carefully considered all the evidence but am not satisfied that the applicant was of any adverse interest to the Basij or the Iranian authorities or that he has been detained, beaten, or harassed by the Basij or the Iranian authorities.
32. On the evidence before me I am not satisfied that the applicant experienced mistreatment or harm of any kind in Iran because he is an Ahwazi Arab. On the evidence before me I am not satisfied that the applicant faces a real chance of harm in Iran because he is an Ahwazi Arab.
33. The applicant stated in his Statutory Declaration [in] March 2016 that he is a Shia Muslim because he was born into a Muslim family in a Muslim country. He claimed that, in Iran, he did not pray or do any of the rituals or follow any teachings. He claimed that in terms of faith he was always in the middle. He believed in God. The applicant stated that, in Iran, people say they are Muslim but they do not respect or follow Islam and they do not follow any of its teachings.
34. The applicant stated in his 2016 Statutory Declaration that he had made the decision to become a Christian despite his family's objections, after thinking for a long time and searching for spiritual meaning for his hard life. The applicant claimed that he is "seriously seeking further information about studying and baptism".
35. The representative stated in a submission dated [in] March 2016 that the applicant is at a stage of his life where he cannot curtail or suppress his beliefs because they are a fundamental part of who he is.
36. However, by the time of the protection visa interview, the applicant had not become a Christian and stated that he had looked into it but he did not like Christianity. The applicant claimed that his adviser told him not to look into Christianity because the Department would think that he was doing it because of the visa. I am satisfied that the applicant falsely claimed that he had made the decision to become a Christian. I am satisfied that he did not convert to Christianity and that he only considered converting to enhance his claims for protection.
37. The applicant claimed at the protection visa interview that although he was brought up in a Muslim country as a Shia Muslim, others would attack him because he does not practise his faith, or say his prayers, he drinks and he eats pork and bacon. He stated that he does not even know Islamic prayers. The applicant claimed that, when his father died in Iran, this was the first time the applicant knew what a mosque is. I do not find it credible that, growing up in the Islamic Republic of Iran in a Muslim family, where his mother and possibly [a number of his

siblings] were religious and said prayers, that the applicant did not know what a mosque is until his father died. He stated at the protection visa interview that his father died [a number of] months before the interview which was held [in] June 2017.

38. The Department of Foreign Affairs and Trade (DFAT) reports⁵ that the Iranian interpretation of 'sharia' provides that Shia Muslims are not permitted to renounce their religion or convert to another religion. DFAT states that: 'The official religion of Iran is Shia Islam and legislation and Government policy often favours the Muslim majority, leading to pervasive structural discrimination against non-Muslim minorities.'⁶ On the evidence I am satisfied that the applicant has not converted to another religion from being a Shia Muslim. However, I accept that he is not an avid practitioner, he does not attend mosque regularly and he does not pray regularly. I am satisfied that, while he lived in Iran, he knew what a mosque is.
39. I have had regard to country information⁷ which indicates that there is a low level of attendance at mosques in Iran. *The Guardian* newspaper reported in September 2001 that '[m]any of yesterday's revolutionaries who form the reformist ranks now bemoan the fact that attendance at mosques has dropped in the last 20 years despite the growth in the number of mosques.'⁸
40. It was reported by the Austrian Centre for Country of Origin and Asylum Research and Documentation (ACCORD) that a 'senior research fellow in Iranian studies at a university in Germany' advised ACCORD in August 2015 that 'non-practising Muslims form a large part of the population of Iran's cities. They lead normal daily lives and are rarely called upon to answer direct questions about Muslim religious practice and are rarely pressured to observe Muslim precepts.'⁹ However there are exceptions including applicants for certain jobs (including in the public media or the military) and during Ramadan, when everyone has to observe the Islamic precepts and is not allowed to eat, drink or smoke in public. Here, any visible act of non-observance can entail punishment under the law.
41. ACCORD also reports¹⁰ that the June 2014 Danish Immigration Service (DIS) fact-finding-mission quotes the NGO Elam Ministries as saying that "abstaining from Muslim rituals such as not attending mosque [...] would not necessarily arouse any suspicion as many in Iran do not regularly attend mosques" (DIS, 23 June 2014, p. 12).
42. DFAT also assessed that it was '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.'¹¹
43. I am satisfied that the applicant has not been harmed in Iran because he is not an avid practitioner, he does not attend mosque regularly and he does not pray regularly. I am satisfied based on all the evidence, including the findings of fact and the country information, that there is not a real chance that the applicant will be harmed in Iran because he is a non-practising Muslim. On the basis that the applicant does not have a significant profile with any

⁵ Department of Foreign Affairs and Trade 'DFAT Country Information Report Iran', 29 November 2013, CIS26780, 3.34.

⁶ Ibid, 3.28.

⁷ Gunes Murat Tezcur; Taghi Azadarmaki; Mehri Bahar, "Religious Participation among Muslims: Iranian Exceptionalism", *Critique: Critical Middle Eastern Studies*, 01 January 2006, CIS21784.

⁸ *The Guardian*, Haleh Anvari, 'Iran then and now', 25 September 2001, CX318825.

⁹ Austrian Centre for Country of Origin and Asylum Research and Documentation (ACCORD), 'Iran: Freedom of Religion; Treatment of Religious and Ethnic Minorities COI Compilation September 2015', 1 September 2015, p.31, CISEC96CF13622.

¹⁰ Ibid, p.31.

¹¹ Department of Foreign Affairs and Trade 'DFAT Country Information Report Iran', 29 November 2013, CIS26780, 3.55.

groups or persons in Iran and noting the country information outlined above, I find that the applicant does not have a well-founded fear of persecution on the basis of being a non-practising Muslim.

44. I have also considered whether the applicant is imputed to have a political opinion that he is opposed to the Iranian authorities. The applicant claimed that he is unable to live under the political regime in Iran and he fears returning to Iran due to his religious beliefs which are also then political views and because he is an ethnic Arab living in Ahwaz in Khuzestan Province. The applicant stated that he is identifiable as an Iranian Arab by his dialect.
45. According to DFAT¹² the 'Ahwazi Arab Solidarity Network claims that around four million Arabs live in Khuzestan (a province in southwest Iran)', although statistics concerning the size of the Arab population, particularly in Khuzestan Province, are disputed. DFAT stated that it is 'aware of reports by credible human rights organisations that indicate large numbers of arrests are carried out each year against Ahwazi Arabs around the anniversary of the April 2005 protests. Whilst not able to independently verify instances of violence in Khuzestan province, DFAT nevertheless assessed that some of the claims of violence and arrests by security forces are likely to be credible. DFAT stated that the 'risk of attracting the interest of authorities is dependent upon being perceived as a threat to the Islamic Republic's constitutional underpinnings or territorial integrity.'
46. I am satisfied that the applicant will not be perceived as a threat to the Islamic Republic's constitutional underpinnings or territorial integrity. Whilst I accept the applicant's evidence and the representative's submissions that the applicant might be seen as Arab in part because of his looks and in part because of his accent or dialect, I am not satisfied that the applicant has an adverse profile in Iran or that he would be perceived as a threat. I am satisfied based on all the evidence, including the findings and the country information, that there is not a real chance that the applicant will be harmed in Iran because he is an Ahwazi Arab. I am not satisfied on the evidence that he would be imputed to have a political opinion that he is opposed to the Iranian authorities.
47. The applicant claimed at the protection visa interview that he would be harmed if he were to return to Iran. The delegate considered the claim that the applicant would be harmed by the Iranian authorities if he were to return to Iran as a failed asylum seeker. I have also considered whether the applicant will be harmed if he returns to Iran as a failed asylum seeker.
48. I am satisfied that the applicant departed Iran as the holder of an Iranian passport. He gave evidence, including at the protection visa interview, that he departed Iran as the holder of an Iranian passport. He stated in the SHEV application that he departed Iran legally from Imam Khomeini Airport (in Tehran) on his own passport which he obtained in Ahwaz. He claimed at the protection visa interview that, if he arrives at the airport in Iran, the Basij will take him. He stated that they have files on you and when they know what happened, they will take you and imprison you for a long time or they will cause so many problems for you that you kill yourself or hang yourself. When asked what outstanding problems or charges there were against him in Iran, the applicant stated that they have information and accusations against him and they have information in their system, the same way that the Australian authorities have information in their system about the applicant. The applicant stated that the Iranian authorities can access the information very easily.

¹² Department of Foreign Affairs and Trade 'DFAT Country Information Report Iran', 29 November 2013, CIS26780, 3.14, 3.19.

49. The applicant did not state prior to the protection visa interview that he had had any problems departing Iran. However, at the protection visa interview, he stated that he told them at the airport in Iran that he was going away for [a particular reason], but one of the Basij stopped him and accused of being a drug dealer and accused of him of taking drugs and they [forced him to undertake a particular action]. The applicant stated that because they are Basij, they are able to get this position at the airport and the Basij are the ones who are running the country.
50. I am satisfied that the applicant is not a credible witness. There were significant inconsistencies in his evidence about the harm he claimed to have suffered in Iran as set out in this decision. As well, he claimed in the Statutory Declaration [in] March 2016, in paragraph 15, that he had made a decision to become a Christian “despite [his] family's objections, after thinking for a long time and searching for spiritual meaning for my hard life.” However, at the protection visa interview, the applicant stated that he looked into Christianity but he did not like it.
51. I am satisfied that the applicant was not of any adverse interest to the Iranian authorities at the time he departed Iran. I do not find it credible that he was made to [undertake a particular action] at the airport because of accusations he was on drugs and was a drug dealer and he then was [made to undertake a further action]. I do not accept that this claim is true because of the delay in making it and because of the significant inconsistencies in his evidence.
52. I am satisfied that when the applicant left Iran, he left on an Iranian passport issued in his name. I accept that the applicant does not have a passport any more. He stated that he tore it up in front of the people smuggler who wanted it. I am satisfied that if he were to return to Iran, he would require a temporary travel document issued by Iranian diplomatic representatives¹³. DFAT reports that where temporary travel documents have been issued by Iranian diplomatic representatives overseas, authorities at the airport will be forewarned about such a person’s return because of Iran’s sophisticated government systems.¹⁴ I consider that in these circumstances, the Iranian authorities may infer that the applicant has sought asylum in Australia. I do not accept that he had an adverse profile when he departed Iran and I do not accept that he will have an adverse profile if he were to return to Iran in the reasonably foreseeable future on the basis of the claims he has made. As the information also states that the Iranian authorities do not issue these documents to involuntary returnees,¹⁵ I find that if the applicant is returned to Iran, it will be on a voluntary basis.
53. DFAT reports that, based on ‘strong anecdotal evidence’, Iran does not attempt to prosecute voluntary returnees¹⁶ and DFAT’s sources advise that returnees will generally only be questioned if they have done something to attract the specific attention of authorities, and the vast majority of people questioned would be released after an hour or two.¹⁷
54. I place considerable weight on the DFAT report and I am not satisfied on the evidence that returning asylum seekers are necessarily imputed with adverse religious or political views or harmed because they have claimed asylum or lived outside Iran for a period in a Western country such as Australia. The applicant left Iran legally on his own genuine Iranian passport. I do not accept that he was a person of any adverse interest to the Iranian authorities at the time of his departure. While I accept that the applicant might be questioned because of his travel document, I am not satisfied there is a real chance that he will otherwise attract any adverse attention when he returns to Iran or subsequently in the reasonably foreseeable

¹³ Department of Foreign Affairs and Trade ‘DFAT Country Information Report Iran’, 29 November 2013, CIS26780, 5.34.

¹⁴ Ibid, 5.34.

¹⁵ Ibid, 5.33.

¹⁶ Ibid, 5.33.

¹⁷ Ibid, 5.34.

future. I am not satisfied that a short period of questioning amounts to serious harm or that there is a real chance that the applicant will be harmed during this questioning.

55. I am not satisfied there is a real chance that the applicant will be seriously harmed because he is a failed asylum seeker who has spent several years in Australia. I have also considered these factors together with the applicant's other circumstances, including that he will not practise Islam and that he is of Arab ethnicity. I have considered these matters cumulatively and I am not satisfied that there is a real chance that the applicant will suffer serious harm for these reasons or for any other reasons that he has claimed if he returns to Iran.

56. The applicant does not have a well-founded fear of persecution within the meaning of s.5J.

Refugee: conclusion

57. I have had regard to all of the evidence before me and I have considered the applicant's claims individually and cumulatively, as well as considering the personal circumstances of the applicant. I am not satisfied the applicant has a well-founded fear of persecution for reasons of his race, religion, nationality, membership of a particular social group or political opinion now or in the reasonably foreseeable future, if he returns to Iran.

58. 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

59. 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

60. 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.

61. I am not satisfied that there is a real risk that the applicant will suffer significant harm if he returns to Iran. I have found that there is not a real chance that the applicant will be harmed. The threshold for the 'real risk' element in the complementary protection criterion in s.36(2)(aa) is the same as that for the 'real chance' test in the refugee criterion in s.36(2)(a)¹⁸.

¹⁸ *MIAC v SZQRB* (2013) 210 FCR 505.

62. The applicant claimed that at [a young age], he was in [an] accident and it damaged his brain and he was in a coma for [a period of time]. The applicant claimed that he received exemption from military service in Iran by pretending that he is crazy. He also claimed that he had attempted suicide on [a number of] occasions in Iran. I have concerns about the applicant's claims but no medical evidence was provided to support these claims that he suffered an injury to his brain or that he had attempted suicide. There is no credible evidence before me that if the applicant returns to Iran, medical or psychological treatment would be withheld from him if he required it.
63. I am satisfied that the applicant appeared to understand the questions asked of him at the Departmental interviews. He appeared competent and capable of answering questions asked of him and he answered the questions. There is no credible evidence before me that any injury the applicant claimed to have suffered as a child impacted on his ability to give evidence or participate in the interviews.
64. The applicant worked in Iran for a number of years, including working for his father's business and the businesses of other relatives. The applicant provided to the Department an employment history for the applicant showing that he had worked with his relatives and others from 1998 to 2010 in different jobs including [various occupations]. I am satisfied that the applicant will be able to work and live in Iran where he has most of his family members, including his mother [and siblings].
65. Considering the factual findings and country information set out above, I am not satisfied that there is a real risk of the applicant being subjected to significant harm in the nature of the death penalty, arbitrary deprivation of life, torture, cruel or inhuman treatment or punishment, or degrading treatment or punishment, at the hands of the Iranian authorities.
66. I am satisfied that there is not a real risk that the applicant will suffer significant harm if he returns to Iran.

Complementary protection: conclusion

67. 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.