



**Australian Government**  
**Immigration Assessment Authority**

**Decision and Reasons**

**Referred application**

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IRAN

IAA reference: IAA17/03257

Date and time of decision: 27 March 2018 17:42:00

Rosie Mathlin, Reviewer

**Decision**

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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

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### Visa application

1. The referred applicant (the applicant) claims to be an Arab from Ahwaz in Iran. He arrived in Australia by boat, undocumented, on 14 February 2013. On 16 December 2016 he lodged an application for a Safe Haven Enterprise visa (SHEV application) claiming that he faced racism and prejudice as an Arab, and that he was wanted by the *basij* following an argument with government officials.
2. On 26 July 2017 a delegate of the Minister for Immigration and Border Protection refused the grant of the visa. While the delegate accepted some of the applicant's claims, he did not accept that there was a real chance that he would face serious or significant harm on 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).
4. On 21 August 2017 the applicant's representative provided a submission to the IAA. The submission restates and clarifies some of the applicant's claims, and contains legal and other arguments addressing the delegate's findings and reasons. To this extent it is not new information and I have considered it.
5. The submission states that the applicant was unable to properly present his claims when he was interviewed by the delegate<sup>1</sup> because the telephone interpreter used was an Egyptian Arabic speaker. It was submitted that both the applicant and the interpreter indicated at the interview that interpretation was a problem because Ahwazi Arabs have a very distinct dialect. It was submitted that the applicant had no choice but to speak in English even though he is not sufficiently proficient; and that he felt obliged to continue with the interview because he did not want to further delay the processing of his application. It was submitted that the delegate did not attempt to simplify his questions, despite being aware of the language difficulties. It was submitted that for all of these reasons the applicant could not effectively participate in the interview and in these circumstances, the IAA was requested to conduct an interview with the applicant.
6. The IAA does not ordinarily conduct interviews with applicants. It is under no obligation to get, request or accept any new information<sup>2</sup> (that was not before the Minister's delegate when the decision was made), and may only consider new information if there are exceptional circumstances to justify doing so.<sup>3</sup> I have listened to the recording of the SHEV interview and am not satisfied that the submission accurately reflects what happened there. Although it does appear that some discussion about interpreting took place before the interview formally commenced, I am satisfied that the delegate accurately represented what was said "off line" when he restated it for the purposes of the recording. I note that the applicant was asked whether he had any objection to the interpreter and indicated that he did not; the delegate says that the applicant had indicated that he would be comfortable speaking in English and he was invited to do so if he wished, but it was emphasised that he should use the interpreter and ask for clarification if there was anything he did not understand. The delegate emphasised that

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<sup>1</sup> At the SHEV interview, held on 30 June 2017

<sup>2</sup> Section 473DC(2) of the Act

<sup>3</sup> Section 473DD(a); see also s.473DD(b)

if the applicant did not do so, he would not be able to complain later that there were communication difficulties. At various times throughout the interview the applicant asked for a question to be either interpreted or rephrased; it is evident that he was aware of the importance of understanding what was being said, and that he felt able to seek clarification when necessary. Contrary to the assertion in the submission, the delegate did, in fact, rephrase questions throughout the interview where it was apparent that the applicant or the interpreter was unable to understand what he meant. Significantly, the applicant's representative was present at the interview, as was his partner, as a support person. No issues as to interpretation or communication were raised by the representative at the interview, or in the representative's oral submission at the end of the interview, or in the written post-interview submission. I consider that the problems now raised in the submission would have been apparent at the time, and would have been raised at the time, had they genuinely reflected the applicant's experience at the interview. I do not consider that, if the assertions made in the submission accurately reflected what happened at the interview and had affected the applicant's capacity to participate in the interview and put forward his claims, this would only have become apparent after the delegate's decision was notified. The IAA submission has not identified any particular areas where the delegate's findings are based on a misunderstanding of the applicant's claims or evidence due to confusion or an inability to express himself. Overall, I consider that the applicant was given a full and fair opportunity to put forward his claims before the delegate, and I do not consider it appropriate or necessary to conduct an interview with the applicant to obtain new information.

7. The report refers to a number of items of country information that were not before the delegate. With one exception – a Reuters report “In Iran Islamic State seeks to fan militancy among minorities”, 16 August 2017<sup>4</sup> - these reports pre-date the delegate's decision. I am not satisfied that the reports could not have been given to the delegate before the decision was made, or that they are credible personal information not previously known which may have affected consideration of the applicant's claims, because they contain general information about the situation of Ahwazi Arabs, and security and legal procedures in Iran, and are similar in content to other information that was before the delegate. I am also not satisfied that there are exceptional circumstances which justify considering these reports.
8. I am satisfied that the Reuters report, which post-dates the delegate's decision, could not have been given to the delegate before the decision was made. It refers to terrorist attacks in Tehran in June 2017 carried out by Kurdish Iranian Sunnis linked to Islamic State (IS), and reports that sectarianism is increasingly an element in nationalist struggles by some Sunni minority groups. Moreover, it reports that IS had released a propaganda video featuring Ahwazi Arabs and calling on them to rise against the Iranian Shia government. It reported that the government had arrested 100 people linked to IS since the attack, and had used the attack as an excuse to crack down on minorities. Given that the treatment of Ahwazi Arabs in general is relevant to consideration of the applicant's claims, and given that this report is more recent than some of the material before the delegate, I consider that there are exceptional circumstances to justify considering this recent information.
9. The submission raises one issue which I am satisfied is new information that was not before the delegate. The submission argues that the delegate gave insufficient weight to the fact that the applicant is in a de facto relationship with an Australian citizen who is a Christian and a feminist with a [child] who has a close bond with the applicant. It argues that the woman and her child could not reasonably be expected to return to Iran with the applicant; that the

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<sup>4</sup> Reuters, “*In Iran, Islamic State seeks to fan militancy among minorities*”, 16 August 2017, available at <https://www.reuters.com/article/us-iran-security-militancy-idUSKCN1AV1CJ>

applicant and his partner cannot reasonably be expected to get married in order to comply with Iranian law; and that the applicant cannot reasonably be expected to modify his behaviour by foregoing the relationship. The delegate considered the claims that were made or arose on the information before him about the consequences for the applicant of being in a relationship with a Christian woman, but I consider that the matters now raised go well beyond the claims that were before the delegate and constitute new information. I am satisfied that the information is credible personal information and that, in its entirety it was not previously known to the delegate, and that it may have affected consideration of the claims, as the delegate would have had to consider it had it been raised. However, as I consider that the future of the relationship and the factors that might impact on any decision made by the applicant and his partner as to whether or not to marry, or whether the partner and her son could and would wish to return to Iran with the applicant are matters of speculation, and of marginal relevance to the applicant's protection claims, I am not satisfied that there are exceptional circumstances which justify considering the information. Moreover, given that the applicant's partner and his legal representative were both present at the SHEV interview, and that oral and written submissions were made at the end of the interview, I am not satisfied that all claims relating to the applicant's relationship with his Australian partner could not have been given to the delegate before the decision was made. Even though this goes to s.473DD(b)(i), which does not need to be satisfied because I have found that s.473DD(b)(ii) is satisfied, I consider that it is relevant to my consideration of whether there are exceptional circumstances, overall, to justify consideration of the new information.

### **Applicant's claims for protection**

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

- He is of Arabic background and speaks Arabic and Persian.
- Prior to his departure he resided with his family in Ahwaz, Khuzestan, where his family remains, except for a brother who lives in [Country 1].
- His parents are Sunni Muslims although they do not say this publicly.
- The applicant does not believe in Allah or Islam, or any other religion. In Iran if he does not perform religious obligations like fasting, celebrating Moharram, and not drinking he will get into trouble.
- The applicant spent a number of years studying in [Country 1] where he obtained a Bachelor's degree. After returning to Iran he was unable to have his degree recognised, despite years of trying, and this meant he could not get a job and had no future in Iran.
- The main reason he left Iran was because as an Arab he was constantly subject to racism and prejudice.
- His father worked in [a] business and it was very hard to get supplies because of the trade embargo. The applicant had to go to Tehran to request [Item 1] from government owned companies. At the entry interview he explained that he saw how the government distributed [Item 1] unfairly and favoured other customers because the applicant and his father were Arab. He said at the entry interview that this meant that they could not supply [Item 1] and his father could not continue in his job. At the SHEV interview, however, he said that his father's business was still operating.
- There were constant reports of Arabs being harassed, detained and killed. Soon after he arrived in Australia five Arabs were arrested and executed. Two months before he left a

close friend was killed by police who stopped him in his car late at night, accused him of speeding, and shot him for no reason.

- At that time the applicant was involved in trying to obtain money at a favourable exchange rate to send to his brother who was studying in [Country 1]. The applicant needed to obtain approval from a certain government office. After making numerous trips to Tehran for this purpose and being confronted with various obstacles, he was told that nothing could be done for them. The applicant became very angry and accused the official of discriminating against them because they were Arab. The official told the applicant that if he continued speaking in this way it would be a big problem for him. At the SHEV interview the applicant said that as well as accusing the officers of being racist, he told them that the government was always trying to push Arabs down but he was not going to be quiet, he was going to fight for his rights.
  - Three weeks after he returned home two men came to his father's office and asked for the applicant. The applicant's father recognised them as *basij* because of their dress and beards. He told them that the applicant was away travelling and warned the applicant not to come to the office.
  - When the applicant told his father what had happened in Tehran, his father said that this would be a big problem for the family and the applicant should leave the country.
  - Two days later the men returned to his father's office and were told that the applicant was still travelling. As of December 2016, when the applicant made the statutory declaration setting out his claims for the SHEV application, he stated that to his knowledge they had not returned since his departure. However, at the SHEV interview in June 2017 he said that he had asked his family again, and they told him that the *basij* had been to the office a few times since he left, and the last time was after Persian new year (in March 2017).
  - The applicant never returned to the office and stayed at his uncle's house until he left Iran. In the statutory declaration he indicated that this was two weeks after the first visit to the office, but at the SHEV interview he said that he left three or four weeks later.
  - He fears that if he returns he will be arrested and killed by the *basij*. In any case he will struggle to survive because he will face discrimination in relation to employment and finding a place to live. Because the *basij* operate throughout Iran there is no way he could avoid being targeted.
  - At the SHEV interview and in a further statutory declaration submitted after the interview, he said that he would be profiled because he is educated, he has lived outside Iran, he comes from a wealthy family, he has been outspoken in criticising the government's policies towards Arabs and he would be perceived as person with influence who could encourage others to protest.
  - He is in a relationship with an Australian citizen who is a Christian. This would cause problems with his family if they found out and he would probably not be able to live at home. He would not be able to have his partner return to Iran with him because she is Christian and they are not married; if he were to return without her this would cause lots of issues for them.
11. In a submission dated 12 July 2017 the applicant's representative argued that he faced persecution in Iran because of his race, his political opinion, his religion, and as a failed asylum seeker returnee from a western country.

## Refugee assessment

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12. 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.

### Identity and nationality

13. The applicant has provided a number of identity documents, including a copy of an expired passport. I am satisfied that his identity is as claimed and that he is a national of Iran. There is no information before me to suggest that he has the right to enter and reside in any other country. I am satisfied that Iran is the receiving country for the purposes of the Act.

### Well-founded fear of persecution

14. 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.

### Does the applicant face discrimination amounting to persecution as an Ahwazi Arab?

15. I accept that the applicant is of Arab ethnicity. The country information considered by the delegate indicates that Ahwazi Arabs are marginalised and may experience systematic discrimination in housing, education and employment; this appears to be particularly the case for Ahwazi Arabs in their home area of Khuzestan, where they are more politically active than other Arabs; indeed, DFAT assesses that there is a high level of societal discrimination against Arabs.<sup>5</sup> Arabs are also subjected to restrictions on their ability to engage in some cultural and Sunni religious practices.<sup>6</sup> The applicant claims that his parents are Sunni, but he said that he did not in Iran, and would not in the future, wish to follow any religious practice. This claim is dealt with further, below, however, I am not satisfied that the applicant faces religious discrimination as a result of not being able to follow Sunni religious practices in circumstances where he has no wish to do so. The applicant said that Arabs are not allowed to wear traditional dress, speak or study Arabic, or celebrate Arab festivals. He was not asked for

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<sup>5</sup> Department of Foreign Affairs and Trade (DFAT), "DFAT Country Information Report Iran", 21 April 2016, CIS38A8012677

<sup>6</sup> Ibid at 3.11

further details about this and has not provided information about the impact this had on him, however even accepting that the applicant would have wished to wear Arab dress or celebrate cultural events, I am not satisfied that not being able to do so is discrimination which reaches the threshold for serious harm. The applicant speaks Arabic and gave evidence that his family spoke it at home. I am not satisfied that the applicant has been subjected to harm in this regard either. Based on his evidence about his past experiences, I am not satisfied that he has experienced in the past, or would in the reasonably foreseeable future, experience discrimination amounting to serious harm in relation to cultural practices, religion or language.

16. The applicant is tertiary educated, having studied in [Country 1]. I accept that he was unable to have his qualifications recognised in Iran and I am willing to accept that this was the result of discrimination, although I consider that it was most likely the result of arbitrary action by individuals in the relevant departments, rather than a formal government policy. Nonetheless, while this is unfair and frustrating, I am not satisfied that being unable to have an overseas tertiary qualification recognised, even as a result of discriminatory treatment based on race or ethnicity, amounts to serious harm; nor am I satisfied that the applicant would thereby be denied the capacity to earn a livelihood or be subjected to significant economic hardship, although I accept that he might not be able to obtain the kind of employment he aspired to when he undertook his studies. I am not satisfied that the applicant has been subjected to discrimination amounting to serious harm in relation to education.
17. There is no suggestion that he faced discrimination in relation to housing, as he lived in the family home, where his parents still reside with some of his siblings; other siblings live independently. He said that the family resides in a mixed Arab/Persian area. The applicant's father owns his own business which is still operating, contrary to the claim apparently made at the entry interview that because of discriminatory practices in relation to the supply of [Item 1], his father was not able to continue the business. The applicant agreed at the SHEV interview that his family was in a reasonable financial position, and while I accept that the family was large, that it may have been difficult for family members, as Arabs, to obtain outside employment, and that the business had to support a large number of family members, nevertheless the applicant's own evidence about the circumstances of his family does not support a finding that as a result of economic or other discrimination their capacity to subsist was threatened, they were subjected to significant economic hardship or they were denied basic services, or that they faced any other form of serious harm.
18. I accept that the applicant may have encountered a level of discrimination in other ways in daily life, although other than the instances cited in this decision record, he has not provided any specific examples to support his claims of constant harassment and discrimination. On the evidence before me, I am not satisfied that the applicant has been subjected to any form of racially motivated discrimination either by society at large, or government officials, which reaches the threshold for serious harm.
19. Overall, I am not satisfied that the applicant has suffered discrimination amounting to persecution on account of his Arab ethnicity or for any associated reason. In particular, I am not satisfied that he has suffered restrictions on his right to practise his religion; nor has he been forced to undertake religious practices against his will. I am not satisfied that he has suffered economic hardship or the denial of basic services threatening his capacity to subsist, nor has he been denied the capacity to earn a livelihood. There is no basis to conclude that this situation would change so that there is a real chance that he would suffer more serious harm in the reasonably foreseeable future if he were to return to Iran.

**Does the applicant face harm because he is perceived as a pro-Arab activist?**

20. The applicant claims that following a verbal argument in a government office in Tehran in which he accused the officials of racism and said that Arabs were smarter and would pursue their rights, he was persuaded to leave the country because the *basij* came twice to look for him and he feared arrested or execution. The delegate accepted that the verbal altercation occurred and that subsequently the *basij* sought him out at his workplace; he did not accept that the *basij* continued to search for the applicant after his departure, or that he would be at risk of harm if he returned to Iran now, many years after the incident. The delegate did not accept that, even having regard to the applicant's level of education and time spent overseas, the argument with officials would lead to him being attributed with the kind of profile as an Arab activist that would lead to a real chance of harm; he considered that, had the *basij* located the applicant at the time, he would most likely have been warned, reprimanded or fined. He did not think the applicant would continue to be of adverse interest. In the applicant's submission to the IAA it was argued that the delegate's finding about what punishment the applicant might have received had the *basij* found him was purely speculative and not based on evidence. It was submitted that the evidence from DFAT suggested that the applicant could be viewed as a person who sought to assert his national or cultural rights or express an anti-government political opinion, and could thus be at risk of serious harm.
21. I have serious doubts about the applicant's account of the claimed consequences of the altercation in the government office. Although the applicant's account at the SHEV interview of the difficulties concerning the foreign exchange issues and the incident in the office appeared plausible, and he mentioned the argument and the fact that *basij* had been looking for him at the entry interview, he did not explicitly state at the entry interview that the *basij* had been looking for him because of that argument: in fact, he said that he did not know why the *basij* were looking for him. Nor did he state that it was specifically because of that incident and the subsequent interest in him by the *basij* that he had decided to leave Iran; and these particular events were only mentioned at the end of a series of reasons and incidents that he gave for his decision to leave, in which he first referred to the problem with having his degree recognised as one of the main reasons for his departure. This variation in the applicant's account leads me to suspect that he has embellished the significance of the altercation over the currency issue, although I accept that the incident itself occurred.
22. Another discrepancy which leads me to have doubts as to whether the applicant has been truthful about the interest in him by the *basij* is that, as noted above, at the entry interview, he did not explicitly state that the *basij* had been looking for him because of the argument; he said that he did not know why the *basij* were looking for him. In the statutory declaration dated December 2016 which was submitted with his SHEV application, he stated that "to his knowledge" the *basij* had not been looking for him again since his departure. At the SHEV interview six months later, he said that in fact there had been further visits that his family had not told him about until he insisted that they do so because it was important for his application. Given that the applicant was represented and appears to understand the importance of providing complete and up to date information, I do not accept that he would not have requested the information from his family when he prepared his SHEV application in December 2016, rather than six months later, when he was interviewed. Even accepting that, on his current claims, one visit occurred during the period between the preparation of the application and the interview, it is not suggested that all the visits took place during this six month period. In these circumstances, I have significant doubts that the new claim about the additional visits is true. Moreover, like the delegate, I consider it highly implausible that, even if the *basij* had been looking for the applicant in the immediate aftermath of the argument,

they would have continued to pursue him subsequently, for a number of years, and in circumstances where investigation could have revealed that he was not in Iran.

23. While it is possible that the argument could have led to a complaint about the applicant's conduct by the particular officials involved, I do not accept that it led to his being imputed with the profile of a pro- Arab activist or a dissident, even having regard to the nature of his claimed comments, his level of education, his family's position and his time overseas, and taking a broad view of conduct which might be perceived by the Iranian authorities as representing an expression of political opinion or an attempt to assert Arab rights or identity. DFAT assesses that while most Arab Iranians do not come to the attention of authorities and are subject to only low levels of adverse attention by the state, the risk increases dramatically for Arabs who attempt publicly to assert cultural or political rights. DFAT assesses that Arabs who become known to the Iranian authorities by seeking to assert political or cultural rights may face harassment if they are perceived to threaten the constitutional foundations or the territorial integrity of the Islamic Republic, and depending on the profile or activities of the person (as well as the prevailing political environment – in regard to which I accept that recent activity by IS could result in additional monitoring and perhaps increased risk to the Arab and particularly the Sunni Arab community, and sometimes the personalities of individual security officials), this harassment could include monitoring, summons for questioning, or arrest.<sup>7</sup> Aside from the argument with officials over the currency issue, the applicant has not claimed to have ever expressed his political opinion or engaged in political activity of any kind, including in relation to Ahwazi Arab issues. I accept that the dispute between the applicant and the official over the currency issue could possibly have been construed as an assertion of his cultural or political rights; however, I am not satisfied that it would have resulted in the applicant being attributed with the profile of an Arab activist. I note DFAT's assessment 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"<sup>8</sup> and I do not consider that there is any chance that the applicant's profile, even considered cumulatively, would result in him being viewed in this way. While it is possible, though I consider it unlikely, that the *basij* sought out the applicant in the immediate aftermath of the altercation in the ministry, I am not satisfied that had they found him at the time, the result would have been arrest or detention, let alone execution or any other serious harm. Nor am I satisfied that this one off incident would have led to the applicant coming under ongoing scrutiny as a perceived Arab activist. I do not accept that the applicant continued to be of interest to the *basij* following the two visits to his office that he first claimed – even accepting that those were related to the altercation in the ministry. It follows that I am not satisfied that there is a real chance that he would be at real risk of harm of any kind on return arising from events prior to his departure.

24. Country information considered by the delegate indicates that since demonstrations in Ahwaz in 2005 in support of Arab rights, there have been numerous arrests of demonstrators, and of perceived activists and organisers in the lead up to the anniversary of the 2005 protests; a significant number have been executed following flawed trials, extra-judicially executed, or have died in prison reportedly under torture.<sup>9</sup> I accept that individual Ahwazi Arabs may be subject to essentially random acts of violence or brutality, even if they are not engaged in overt political activity, in the context of the general discrimination against and repression of Ahwazi Arabs; I accept that this is what happened to the applicant's friend. However, I am not satisfied

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<sup>7</sup> DFAT, "DFAT Country Information Report Iran", 21 April 2016, CIS38A8012677

<sup>8</sup> DFAT, "DFAT Country Information Report Iran", 21 April 2016, CIS38A8012677 at 3.19

<sup>9</sup> Ibid; US Department of State, "Iran 2016 Human Rights Report", 3 March 2017, OGD95BE926964;

Freedom House, "Freedom in the World 2016 – Iran", 7 March 2016, NGE43874C130; Amnesty International, "Amnesty International Annual Report 2015-16 – Iran", 23 February 2016, NGE43874C95; Human Rights Watch, "World Report 2016 – Iran", 27 January 2016, NGE43874C3

that similar incidents happen so frequently that it may be said that any Ahwazi Arab is at risk of serious harm of this nature; and there is no information before me to suggest that the applicant's connection with this friend puts him at additional risk of harm. The applicant has referred to the execution of Arab activists, consistent with country information that was considered by the delegate. However, given the applicant's profile and past lack of engagement in Arab nationalist activities on the instructions of his parents, I am not satisfied that he is at risk of such harm now or in the reasonably foreseeable future. I am satisfied that on return to Iran, the applicant would continue not to engage in political activity, including any attempt to assert his cultural rights, as he has not in the past.

### **Does the applicant face harm for reason of his religion?**

25. The applicant claims that he does not believe in Islam and says that if he returns to Iran he will not follow Islamic religious practices. This, coupled with his relationship in Australia with a Christian woman, could lead to his being regarded as an apostate.
26. The applicant has said that when he lived in Iran before he did not believe in or follow Islam and only attended mosque for about one year when he was in middle school. He does not claim to have experienced difficulties because of this, and country information that was considered by the delegate indicates that he would not. Various sources report that a large sector of the Iranian population does not regularly attend mosque or practise Islamic rituals, without consequence - they are neither questioned about this by the authorities nor pressured to do so.<sup>10</sup> The country information indicates that generally the government does not monitor religious observance, and I am satisfied that if the applicant was not attending mosque or failed to observe other aspects of Islamic practice, this would not come to the attention of the authorities. I am not satisfied that there is a real chance that he would face harm for this reason.
27. I am not satisfied that the applicant's relationship with an Australian Christian woman would be known to the Iranian authorities, unless the applicant were to inform them in circumstances where, for example, he might want to return to Iran with her; however, in my view whether this would come about is a matter of pure speculation. While the applicant stated that it is not permitted for a Muslim to marry a non-Muslim and that he could be killed for having done so, I do not accept that this is the case. Country information considered by the delegate indicates that a Muslim man is permitted to marry a non-Muslim woman, including a Christian<sup>11</sup>, and I am not satisfied that, even if the applicant were to publicly reveal his marriage to a Christian woman, there is a real chance that this would result in any form of punishment or harm, or that it would result in his being considered an apostate.
28. While the applicant said that his parents would not be happy about his relationship with a non-Muslim, he has not claimed that this would result in consequences beyond possibly not being able to live in the family home. I am not satisfied that this constitutes serious or significant harm.

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<sup>10</sup> Ibid; Danish Immigration Service, "Update on the Situation for Christian Converts in Iran", June 2014, CIS289312; Gunes Murat Tezcur, Taghi Azadarmaki and Mehri Bahar, "Religious Participation among Muslims: Iranian Exceptionalism", Critique: Critical Middle Eastern Studies, vol.15, iss.3, 2006, CIS21784; 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, CISEC96CF13622

<sup>11</sup> The International Campaign for Human Rights in Iran, "The Cost of Faith: Persecution of Christian Protestants and Converts in Iran", 2013, CIS25475; Danish Refugee Council, Norwegian Landinfo and Danish Immigration Service 2013, "Iran: On Conversion to Christianity, Issues concerning Kurds and Post-2009 Election Protestors as well as Legal Issues and Exit Procedures", February 2013, CIS25114; DFAT, "DFAT Country Report: Iran", 21 April 2016, CIS38A8012677

## Does the applicant face harm as a failed asylum seeker returning from a western country?

29. The applicant has not made the claim, but the delegate considered whether the applicant would face harm as a failed asylum seeker returning from a western country. The applicant left Iran legally using his own passport, but as he no longer has that passport and would therefore most likely be returning with a temporary travel document or laissez-passer, I accept that because of this, in combination with his long absence, he may be suspected on return of having applied for asylum overseas.
30. DFAT advises that where temporary travel documents have been issued by Iranian diplomatic representatives overseas, authorities at the airport will be forewarned about a person's return because of Iran's sophisticated government systems. However, the returnee 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.<sup>12</sup> The IOM, which runs a voluntary returns programme for people returning to Iran from countries including Australia, similarly states that people who left on their passport and return on a laissez-passer will be questioned at the airport, possibly for up to a few hours, but nobody has been arrested.<sup>13</sup>
31. There are some reports that failed asylum seekers have been harmed on return to Iran. In February 2012 Amnesty International reported that asylum seekers risk arrest if they return to Iran, particularly if forcibly returned, if their asylum application is known to the authorities. Amnesty referred to a report issued by a Swiss refugee agency quoting an unnamed Iranian judge as saying asylum seekers are interrogated on return, whether or not they have been political activists in Iran or abroad. The same report referred to articles which appeared in Iranian government run newspapers which expressed the view that Iranians are seeking asylum "on the pretext of supporting the opposition", and another which recommended the use of existing laws that enable Iran's judiciary to bring charges against Iranians for alleged violations of Iranian law committed while outside Iran.<sup>14</sup> DFAT commented on these reports, in April 2011, that it was not aware of the authorities implementing the stated policies.<sup>15</sup> The head of airport security at Tehran's international airport has reportedly stated that seeking asylum abroad is not a crime.<sup>16</sup>
32. DFAT's most recent 2016 Country Information Report on Iran states that Iranians are not perceived as political opponents simply because they sought asylum in a western country, nor do they face a real chance of harm on this basis. Given the range of credible sources consulted by DFAT, the currency of its report compared to some of the other reports, and the fact that its assessment is consistent with information from other sources, I give it significant weight. On the basis of this information I am satisfied that Iranians who return to Iran after having sought asylum in a western country will only be of interest to authorities if they have done something additional to attract the specific attention of authorities. To the extent that details of the cases where returning asylum seekers have been harmed are known, the majority concern returnees who have actually been politically active either inside Iran prior to departure, or outside. I do not accept that the applicant has done anything, either in Iran or in Australia, that would

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<sup>12</sup> Ibid at 5.34.

<sup>13</sup> Danish Refugee Council, Landinfo and Danish Immigration Service, "Iran: On Conversion to Christianity, Issues concerning Kurds and Post-2009 Election Protestors as well as Legal Issues and Exit Procedures", 1 February 2013, CIS25114, p.68-9

<sup>14</sup> Amnesty International, "'We are ordered to crush you' Expanding Repression of Dissent in Iran", February 2012, CIS22610, 56.

<sup>15</sup> DFAT, "Response to IRN 11738: Iran - Article on returned asylum seekers and people exiting Iran with false documents", 19 April 2011, CX263145.

<sup>16</sup> Danish Refugee Council, Landinfo and Danish Immigration Service, "Iran: On Conversion to Christianity, Issues concerning Kurds and Post-2009 Election Protestors as well as Legal Issues and Exit Procedures", 1 February 2013, CIS25114, p.68-9

attract adverse attention on return. I do not accept that the applicant's altercation with the ministry or the subsequent interest in him by the local *basij* in Ahwaz, which I am satisfied did not extend past his departure in early 2013, would be known to, or cause him to come to the adverse attention of the security forces at the airport on his return, even in conjunction with his possible identification as a failed asylum seeker and his ethnicity. I am not satisfied that the applicant has a profile with the authorities for any reason, including the fact that he is an Ahwazi Arab and a failed asylum seeker who has spent time in a western country, and who has been in a relationship with a Christian, that would cause him to be under suspicion on return, or to be subjected to additional scrutiny that might result in harm of any kind.

### **Refugee: conclusion**

33. 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**

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34. 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**

35. 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.

36. As discussed above, I have found that the applicant does not face a real chance of being harmed by the Iranian authorities because of any ongoing consequences of the altercation with officials over the currency dispute; or as an Ahwazi Arab; or as a person perceived not to follow Islam or as an apostate; or as a person in a relationship with a Christian; or as a failed asylum seeker returning from a Western country, now or in the reasonably foreseeable future. Based on the same information, and for the reasons set out above, I am also satisfied that there is not a real risk that he would face significant harm for these reasons, even considered cumulatively.<sup>17</sup>

37. I accept that the applicant encountered discrimination in relation to his dealings with government agencies and officials; and that country information indicates that members of

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<sup>17</sup> In *MIAC v SZQRB (2013) 210 FCR 505* the 19 the Full Federal Court held that the "real risk" test in the complementary protection provisions imposes the same standard as the "real chance" test applicable to the assessment of "well-founded fear" (The Court in that case was considering the language in the Refugees Convention.)

ethnic minorities including Ahwazi Arabs can experience a high level of societal discrimination. Based on his evidence about his own circumstances, I am not satisfied that the applicant has in the past experienced discrimination, including difficulty having his foreign degree recognised, that reaches the threshold for significant harm, including cruel or inhuman treatment or punishment, or degrading treatment or punishment, or that there is a real risk that he would in the future.

38. I accept that the applicant would be sad if his return to Iran meant that he would be separated from his partner. However, I am not satisfied that any suffering thereby caused to the applicant would constitute any form of significant harm as defined, including cruel, inhuman or degrading treatment or punishment, which requires an element of intention in relation to the infliction of harm which is absent here. I am not satisfied that the Australian authorities, in removing the applicant from Australia in accordance with the requirements of the Act, would intend to cause pain or suffering or extreme humiliation by doing so. Having regard to the Federal Court's decision in *SZRSN v MIAC*<sup>18</sup>, I do not consider that harm arising from the act of removal itself, such as separation from a partner, meets the definitions of "significant harm" in s.36(2A). As noted above, even if the applicant's parents were not happy about the relationship and the applicant was not allowed to live with them, I am not satisfied that this constitutes significant harm.

#### **Complementary protection: conclusion**

39. 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**

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

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<sup>18</sup> *SZRSN v MIAC* [2013] FCA 751

## Applicable law

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### ***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.