



**Australian Government**  

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**Immigration Assessment Authority**

**Decision and Reasons**

**Referred application**

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IRAN

IAA reference: IAA17/03344

Date and time of decision: 4 May 2018 12:45:00

Joanne Jennings, 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 Iranian citizen. In July 2013 he lodged an invalid application for a Subclass 866, Protection visa. On 17 March 2016 he lodged an application for a Temporary Protection Visa (TPV), Subclass 785. He claims that he fears discrimination in Iran as an Ahwazi Arab and that he will be harmed by the authorities because of his pro-Arab political opinion.
2. On 4 August 2017 a delegate of the Minister for Immigration and Border Protection (the delegate) refused to grant the visa. The delegate was not satisfied that the applicant would face a real chance of serious harm or a real risk of significant harm in 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 31 August 2017 the IAA received a submission on behalf of the applicant accompanied by a letter from the police issued in 2005. In part the representative's submission addresses the delegate's decision and findings, and to that extent, may be referred to as argument rather than new information.
5. The submission seeks to put forward new information and states there are exceptional circumstances without specifying these. The submission states that the applicant does not know why an important incident which occurred in 2005 was not included in any of his statements of claims and can only assume his agent or representative omitted it inadvertently. The new claim is that in 2005 the applicant and his cousin attended the protest against the treatment of Ahwazi Arabs in Iran and that there was a clash with police at this protest and following this the applicant and his cousin received a letter from the police requesting they attend in relation to the protest. The applicant attended as requested, was imprisoned for two days, was beaten by police and asked questions about his own activities and those of associates of his uncle. In support of this new claim the applicant has forwarded what purports to be a copy of the police letter requesting he attend the police station. The submission advised that when the applicant received the delegate's decision he noted that this incident does not appear to have been before the delegate.
6. The applicant has completed two statements of claims, the first in 2013 (in support of his earlier invalid protection visa application) and the second in 2016. Each of the statements was completed with the assistance of a lawyer and registered migration agent. These statements put forward the applicant's claims that his uncle was involved with an Ahwazi Arab group and that as a result the applicant came to the attention of the authorities in Iran. The statements detail his arrest in 1998 following his uncle's death and his fear he was being monitored by the authorities. The claim regarding the 2005 incident is not included in the statements, nor did the applicant mention this at his Arrival interview or at his TPV interview.
7. I have difficulty accepting that the applicant would fail to mention such a significant incident as attending the 2005 protests at both his Arrival and TPV interviews. It is apparent from the material before me that the 2005 protests were a significant turning point in the political situation for Ahwazi Arabs in the Khuzestan area. The Arab reaction to rumoured government

policy to change the ethnic composition in Khuzestan was mass protest and widespread rioting. The authorities took strong steps to quell the protests and many protesters were arrested and questioned; Arab riots in the region resulted in security forces reportedly killing at least 50 protesters and detaining hundreds more. Each anniversary events are held to commemorate the 2005 protests.<sup>1</sup> Considering the importance of the 2005 protests and the significance of the claim now made to the IAA that the applicant was detained and beaten at the time I find it difficult to accept that the applicant would not mention this incident at his interviews with departmental offices. Furthermore, in the Arrival interview the applicant was asked "Were you or any members of your family involved in any activities or protests against the government?" to which he replied that he was in 1997 when he was sent to prison and that he did not participate after this time as he was under surveillance. At the same interview when asked "Were you ever arrested or detained by the police or security organisations" the applicant referred to only the one incident when he was detained for one month, being the 1997/1998 incident. At the TPV interview the delegate put the applicant on notice of the importance of putting forward all his claims for protection and cautioned him that he may not have a further opportunity to do so. At the conclusion of the TPV interview the delegate asked the applicant if he had anything further to add or if there was any matter the delegate had not covered in his questioning at the interview or if there were any matters the delegate had not raised that the applicant would like to address. The applicant did not take the opportunity to put forward or discuss this significant claim at this time.

8. The statements of claims submitted by the applicant are otherwise detailed in the information put forward about relevant incidents and I have difficulty accepting that an incident as significant as the 2005 protest and subsequent mistreatment by the police would have been inadvertently omitted by the two separate representatives who assisted him complete the statements. In the 2016 statement the applicant refers to the 2013 statement and states "I confirm that the information declared in that document is true and correct in every particular and I continue to rely upon it for the purposes of my application for a Temporary Protection Visa. I take this opportunity to provide additional information in relation to my claims for protection." There is no information before me to explain why the applicant did not notice the omission of the 2005 incident in the 2013 statement and include this in the 2016 statement. He was assisted by an Arabic interpreter to complete his 2016 statement. In the 2016 statement he added further details that he had not included in the 2013 statement; these being that he attended protests prior to 1998 but when he was detained he was made to sign an undertaking not to be involved in political activity. Noting that he added this detail updating his 2013 statement I am surprised that he did not add the 2005 claims, if true. I am not satisfied that the applicant's former representatives inadvertently omitted the 2005 claims from the statements of claims.
9. In regard to the purported police letter submitted in support of his claim the IAA submission states that the applicant contacted his cousin after receiving the delegate's decision and requested his cousin send a copy of this to him in Australia. There is limited information on the letter as to its purpose; there is no indication of the office/police station issuing the letter, the plaintiff details are blank and the reason to attend is given only as "altercation". On the original Farsi language version there is no indication of any letterhead or stamps verifying the letter was issued by an official body in Iran. The applicant stated he was requested to attend the police about two months after the protest, yet the 2005 protests occurred in April<sup>2</sup> and the purported police letter is dated August. I am also concerned by the statement in the

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

<sup>2</sup> British Ahwazi Friendship Society, "Mass arrests on second anniversary of the Ahwazi Intifada", 15 April 2007, CX175615; DFAT, "DFAT Country Information Report Iran", 21 April 2016, CIS38A8012677

submission that when the applicant attended the police station the letter was taken from him yet he claims his cousin had a copy which he was able to provide to the applicant when requested. Considered overall I am not satisfied that this document corroborates the applicant's claim or that it is a genuinely issued letter requesting the applicant's presence because of he attended the 2005 protest.

10. On the basis that the applicant did not have a copy of the letter until after receiving the delegate's decision this information could not have been provided to the Minister, but the document was issued in 2005 and there is no information before me to explain why the applicant did not obtain a copy of this letter earlier.
11. Weighing the evidence before me, and in the absence of any satisfactory reason as to why such a significant claim was not mentioned on any of the earlier occasions when the applicant put forward his claims, and the contradictions in his various accounts I am not satisfied that this new information is capable of being believed. I am not satisfied that the new information, including the copy of the purported police letter, is credible personal information. Nor am I satisfied that the new information could not have been provided to the Minister. As I am not satisfied that this information has met the requirements of s.473DD(b) I cannot consider it.
12. The submission puts forward further information about the applicant's travel overseas prior to his departure from Iran in 2012. The applicant had declared prior travel to [Country 1] and [Country 2] in his Arrival interview and TPV application. However the information that his [travel] to [Country 1] did not cost him any money as he was supported with food and accommodation by [locals], and that the real purpose for his visit to [Country 2] was to earn money so that he could save sufficient funds to eventually leave Iran, and that he worked there illegally for one month is new information that was not before the Minister. I have had regard to the TPV interview and the delegate asked the applicant why he did not seek to stay in either [Country 1] or [Country 2], or travel to a third country from there if he was concerned for his safety in Iran and I find the applicant had an opportunity to put this information to the delegate.
13. Although there are some inconsistencies in the various accounts of his travel to [Country 2] (in the IAA submission it is stated he travelled for work and stayed there illegally working for one month whereas at his Arrival interview he stated that he travelled for a holiday and stayed for only 10 days) this information may be credible personal information. However I am not satisfied had it been known it may have affected the consideration of the applicant's claims. The submission contends that the delegate had not considered the circumstances surrounding the applicant's travel and the reasons why he returned to Iran. However, I note the delegate in his decision record referred to the applicant's "claimed lack of money and resources to leave" and had regard to the applicant's statement that he had only a "visa for tourism". The delegate also cites the applicant's response to the question why he waited a number of years before leaving Iran to seek protection in Australia, being "Where can I go? No money, I didn't have money. I didn't have work, no money, because I wanted to go out, but yeah. I didn't have the facilities". I have had regard to the contention that the delegate had not considered the applicant's circumstances however it is apparent from the material before me that the delegate took the applicant's circumstances into account in his considerations.
14. I am not satisfied that the new information is credible personal information that had it been known may have affected the consideration of the applicant's claims. Nor am I satisfied that the new information could not have been provided to the Minister. As I am not satisfied that this information has met the requirements of s.473DD(b) I cannot consider it.

## Applicant's claims for protection

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

- The applicant is a citizen of Iran. He is an Ahwazi Arab and a Shia from Khuzestan Province.
- His mother was an Iraqi and one of the applicant's maternal uncle's was involved with an Ahwazi Arab political group. He does not know his uncle's position in the group except that he was well known and active, his uncle travelled regularly to Kuwait for conferences and other business connected with the group. His father was also a member of this group. The applicant was not a member as he was too young.
- The applicant's uncle died in a motor vehicle accident 1998 and the applicant believes he was killed by the Iranian authorities, specifically the secret services. The applicant believes the car had been tampered with by the secret services which caused the accident and his uncle's death. Secret services seized his uncle's car after the accident.
- Soon after this incident authorities came to the family home in search of the applicant's father. His father was not home and the applicant was taken by the authorities and detained. He was held for approximately one month, beaten by the authorities while held, and questioned about his father's association with the Ahwazi Arab group. He was forced to sign an undertaking not to be involved in any political activities and was blindfolded and released on the street.
- After this incident his father was arrested and held for five months was tortured while detained and as a result lost a number of teeth. In the same year his mother had a [medical condition].
- The family was suspected by Ettela'at and were monitored; their telephone calls to his mother's family were tapped. His father was detained a number of times and the applicant was monitored, he was stopped on the street and checked.
- As an Ahwazi Arab the applicant is discriminated against in Iran, he is recognisable as an Ahwazi Arab by his name and his accent. He has been discriminated against in employment; he has been refused employment opportunities in preference to less qualified Persians. He has worked in various positions, sometimes as an [occupation], but also as [another occupation] and has worked illegally installing satellite dishes.
- Family members have not been able to obtain employment because they are Arab; his brother has graduated [but] cannot find employment. Arabs cannot be educated in the Arab language and the applicant was not allowed to wear traditional Arabic clothes as a young person in Iran.
- The applicant decided to leave Iran and departed in May 2012 using his own passport. He travelled first to [Country 2] then onwards to Australia via [Country 3]. He told the authorities that he was going to [Country 2] only. If he had told them he was travelling to Australia to seek asylum his passport would have been confiscated and he would have been put under surveillance; this has happened to other Ahwazi Arabs. His passport was taken from him by the people smuggler in [Country 3].
- His family continue to be under surveillance and the authorities came to the family home; his family told them the applicant had gone to [Country 2]. The applicant fears his telephone conversations with his family are monitored.
- In Australia the applicant was contacted by an Ahwaz Arab activist and encouraged to be politically active but he was too fearful to participate. The Iranian government has

spies in Australia who report back on activities and a lawyer in Australia has case documents of Iranians in Australia and has sent these to Iran.

- The applicant fears he will be harmed by Ettela'at and other Iranian authorities should he return to Iran because he is an Arab with political opinions with respect to the liberation and independence of Ahwaz. He talks to people about his views. These political views are intolerable to the Iranian regime and will be aggravated because the applicant has sought asylum in a western country and he will be labelled as political activist by the Iranian regime upon return and be put on trial and sentenced to long prison terms or even harsher punishments.

## Refugee assessment

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16. 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

17. 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.
18. The applicant has consistently claimed to be an Iranian citizen and has provided identity documents in support of his claimed identity. I accept the applicant's identity as stated and that Iran is the receiving country for the purpose of this review. The applicant speaks Arabic in addition to Farsi and I accept he is an Ahwazi Arab as claimed.
19. I accept that Ahwazi Arabs face discrimination in Iran.<sup>3</sup> While the Iranian Constitution provides for equal rights for minority groups, in practice minorities are subject to discrimination particularly in access to education and employment and there are reports of lack of adequate

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<sup>3</sup> Minority Rights Group International, UNHCR Refworld, "State of the World's Minorities and Indigenous Peoples 2009 – Iran", 6 July 2009, CX230497; US Department of State, "Iran 2016 Human Rights Report", 3 March 2017, OGD95BE926964

housing and sanitation and a restriction on cultural practice. Reports indicate that Ahwazi Arabs in Khuzestan face poverty and poor living conditions.<sup>4</sup>

20. Country information supports his claim Arabs in Khuzestan are prohibited from teaching in the Arabic language, but I take into account that despite this prohibition the applicant is literate in Arabic and that this prohibition did not prevent the applicant obtaining an education. I accept that the applicant's education was disrupted, but note that he attributed this to the disruption caused by the revolution and that despite the disruption he was able to train as an [occupation]. Furthermore, despite discrimination against Arabs the applicant's brother has been able to complete [a] degree.
21. When asked at his TPV interview to explain how he had been discriminated against in employment opportunities the applicant stated that Ahwazi Arabs cannot work for the government and he stated he had applied unsuccessfully for jobs in the major oil companies. Various agencies report that the government systematically discriminates against Arabs in employment. Due to a range of factors Iran faces a difficult economic situation with weak growth, high inflation and high unemployment. Officially, unemployment stands at 10 per cent, although DFAT advises in reality it is considerably higher "by some estimates up to 20 per cent with informal estimates suggested to be even higher at 40%". Substantial underemployment exists, particularly amongst young people and women.<sup>5</sup> Although the applicant was not able to obtain employment with oil companies when he applied there is no indication that he has been denied the opportunity to earn a livelihood. I note the difficult economic situation, however the applicant was able to work in a range of jobs, albeit often casual and unskilled, while in Iran.
22. I accept that discrimination against Ahwazi Arabs is widespread. However I am not satisfied that the applicant would experience significant economic hardship or that the discrimination the applicant has experienced such as when wearing traditional dress, or would experience should he return to Iran, amounts to serious harm. There is no threat to the applicant's life or liberty, or physical harassment or ill treatment, or significant economic hardship, denial of access to basic services to capacity to earn a livelihood that threatens the applicant's capacity to subsist, or other form of harm that may be considered serious harm. I find that the applicant does not have a well-founded fear of serious harm on this basis.
23. I accept that as one of his past jobs the applicant installed satellite dishes and that these are illegal in Iran. Western media and television are perceived as a corrupting influence and as a result satellite dishes are banned and in 2016 it was reported 100,000 satellite dishes were confiscated and destroyed.<sup>6</sup> Country information advises that satellite dish owners and the dish distributors and installers can face fines.<sup>7</sup> Despite this, satellite use has increased rapidly and people can replace confiscated satellites quickly and DFAT estimated there are 8 million satellite dishes in Iran.<sup>8</sup> There is no indication that the applicant came to any harm as a result of installing satellite dishes in the past, or that he would do so should he return to Iran now, for reason of his past installations or should he become involved in such work on return. Furthermore, I find that questioning and prosecution and being fined for installing a satellite dish in Iran is a law of general application. That law is not discriminatory on its terms. Case law

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<sup>4</sup> DFAT, "DFAT Country Information Report Iran", 21 April 2016, CIS38A8012677; US Department of State, "Iran 2016 Human Rights Report", 3 March 2017, OGD95BE926964

<sup>5</sup> DFAT, "DFAT Country Information Report Iran", 21 April 2016, CIS38A8012677

<sup>6</sup> US Department of State, "Iran – Country Reports on Human Rights Practices 2016", 3 March 2017, OGD95BE926964

<sup>7</sup> US Department of State, "Iran – Country Reports on Human Rights Practices 2016", 3 March 2017, OGD95BE926964; DFAT, "DFAT Country Information Report Iran", 21 April 2016, CIS38A8012677

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

states that a generally applicable law will not ordinarily constitute persecution because the application of such a law does not amount to discrimination. In this case, the evidence does not support a conclusion that the law is selectively enforced or that it is applied in a discriminatory manner. I find that any questioning, prosecution and fine imposed on the applicant in this regard would be the result of a law of general application and does not amount to persecution for the purpose of the Act.

24. The applicant's claim that one of his maternal uncles was involved with an Ahwazi Arab group is plausible noting that the family are Ahwazi Arabs with family connections in [Country 1]. I accept the applicant's claim that his uncle was an active member of this group. The country information before me reports political repression of the Ahwazi Arabs since the 2005 riots, but the indications are that the hostility pre-dates this and noting country information reporting the significant distrust of Ahwazi Arabs by the authorities it is plausible that the applicant's uncle was of interest at the time of his death in 1998. But I note the applicant's claim that his uncle was able to travel on multiple occasions to Kuwait as part of his role with this group and there is no indication that the authorities attempted to stop his travel. Nor is there any indication that he was detained or charged with any offences as a result of his involvement and I have difficulty accepting that he was of such a significant interest and concern that the secret services sought to kill him as claimed. Furthermore, I consider it implausible that they would seek to do so in the manner claimed by the applicant.
25. In his TPV interview the applicant was asked to explain why the circumstances of his uncle's death were suspicious and he stated they did something to his car. When asked to explain who did this he stated the secret service and that after the accident "we examined the car" and found they did something wrong, the car went down a mountain. When asked what was done to the car the applicant stated the police who attended the accident scene told them there was something wrong with the car. He later stated that the secret services took the car and no one was allowed to say anything about the incident. I find the applicant's account of the motor vehicle accident in which his uncle died and the role of the secret service in the accident to contain contradictions and to be incoherent. Furthermore, if the uncle had a high profile that attracted this level of attention and the authorities wanted to kill him I am not satisfied that they would not have done so by more certain means than tampering with his car, or that they would not simply have arrested and detained him, noting his travel to Kuwait would have provided an opportunity to detect and detain him. I find it is speculation on his part that the authorities were responsible for his uncle's death. I accept that the applicant's uncle died in a motor vehicle accident in 1998 but I do not accept that was due to the actions of the authorities.
26. I have accepted that the applicant's uncle was a member of an Ahwazi Arab group and I accept that his father was also a member of this group. I accept that in 1998 the authorities came to the family home in search of his father and that they took the applicant for questioning and detained him for one month. I accept that he was physically mistreated while held. The applicant stated in his 2016 statement that he attended protests before 1998 but that after being detained he was made to sign an undertaking not to be involved in politics. The applicant was not a member of the Ahwazi Arab group and I have difficulty accepting that he was of ongoing interest to the authorities and was monitored or kept under surveillance as he claims. I accept as plausible that his father, who was a member of the group, was questioned by the authorities after the 1998 incident however I note that the applicant was able to travel to [Country 1] and [Country 2] indicating that the authorities were not concerned at him leaving the country. There is no indication that the applicant was further detained or arrested and questioned and from his account he was able to live and work openly. When asked at his TPV interview why he felt he was being monitored he replied that he was sometimes stopped on

the street and checked. I am not satisfied that the applicant was monitored and kept under surveillance as he fears. Being stopped and checked on the street is a common experience for many Iranians; country information reports that the authorities can be invasive and checks by the authorities, and in particular the moral police occur regularly<sup>9</sup> and this in itself does not indicate the applicant was being monitored or was under surveillance. The applicant was not further detained and as noted was able to leave the country and return and I am not satisfied that he had a profile that was of ongoing interest to the authorities after the initial questioning in 1998.

27. I accept that the applicant may not have been in a position to leave Iran until 2012 but I place significant weight on the applicant's ability to live and work openly for 13/14 years in Iran since the detention and questioning in 1998 and I find this indicates the applicant was not of ongoing interest to the authorities. It follows that I do not accept that the authorities visited the family home after his departure to enquire about the applicant, or that his telephone calls are monitored.
28. I have had regard to the applicant's stated political views regarding the treatment and circumstances for Ahwazi Arabs in Iran. I accept that the applicant is critical of the Iranian government and that he has spoken about his views with his friends and associates. When asked at his TPV interview if he had made any public statements he stated that he had although when asked to explain what this involved he referred to his private discussions. I am not satisfied that the applicant holds strong political views as stated, I note he was not a member of the Ahwazi Arab group and that he has not attended any protests since 1998. I take into account that he stated he had not joined the Ahwazi Arab group as he was too young, but note that he was an adult man of [age] in 1998 when his uncle died and I find his decision not to become a member of the group, despite the involvement of his father and uncle, indicates his low level of interest in political activities. Nor am I satisfied that he has any desire to behave in a different manner. He has stated that he has had no involvement since 1998 when he was made to sign an undertaking not to be involved in politics. But his involvement before this time was low-level as an attendee at some protests; he was not a member of the group, and I do not accept as plausible his explanation that he was not a member because he was too young. I am satisfied his behaviour is a reflection of his opinion and does not involve him taking any steps to modify his behaviour. I am not satisfied that the applicant has a well-founded fear of persecution in Iran on the basis of his political opinion.
29. The applicant fears that spies in Australia report activity to the authorities in Iran and I accept there have been reports of arrest of returnees to Iran.<sup>10</sup> However considered overall reports of asylum seekers being arrested on return largely relate to those involved in anti-government activities, either in Iran or during their time abroad<sup>11</sup> and "member[s] of an oppositional political party or involved in political activities in other ways"<sup>12</sup>, or have been student activists.

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<sup>9</sup> US Department of State, "Iran – Country Reports on Human Rights Practices 2016", 3 March 2017, OGD95BE926964; DFAT, "DFAT Country Information Report Iran", 21 April 2016, CIS38A8012677

<sup>10</sup> Amnesty International, "AMNESTY INTERNATIONAL - URGENT ACTION: UA 125/11: Student activists held in Iran", 6 May 2011, CX264288; Iran Human Rights, "IRAN: The Kurdish asylum seeker Rahim Rostami, charged with 'actions against the nation's security' released on bail", 19 June 2011, CX274950; Amnesty International, "'We are ordered to crush you': Expanding Repression of Dissent in Iran", 28 February 2012, CIS22610

<sup>11</sup> Radio Zamaneh, "Iranian poet/activist arrested at Tehran airport", 8 January 2016, CX6A26A6E140; International Campaign for Human Rights in Iran, "New Video: Iranian Expats Face Arrest upon Return to their Homeland", 23 April 2015, CXBD6A0DE5203; Radio Zamaneh, "Jailing of returning journalists called part of anti-Rohani plan", 31 July 2014, CX324017; Committee to Protect Journalists, "Rouhani has yet to deliver on press reforms in Iran", 13 March 2014, CX318970

<sup>12</sup> Danish Refugee Council and Danish Immigration Service, "Iranian Kurds: On Conditions for Iranian Kurdish Parties in Iran and KRI, Activities in the Kurdish Area of Iran, Conditions in Border Area and Situation of Returnees from KRI to Iran", September 2013, CIS26587

The International Organization for Migration was cited by the UK Home Office as reporting “Iranians who have left the country on their passports and are returned on a Laissez-passer will be questioned by the Immigration Police at the airport. This questioning may take a few hours, but according to IOM nobody has been arrested when travelling back on a Laissez-passer”.<sup>13</sup> The country information does not support the applicant’s contention that returning asylum seekers are routinely imputed with an anti-government political opinion or labelled as political activists or harmed because of being in a western country or for reason of their extended absence. I am not satisfied that he would face any harm as an asylum seeker from a western country who has been absent for an extended period should he return in the foreseeable future.

30. I accept the applicant no longer has his passport and to return to Iran the applicant would require documentation to be issued to facilitate his travel but country information advises that the Iran does not accept involuntary returnees and does not issue travel documents to involuntary returnees.<sup>14</sup> I find that if the applicant is returned to Iran it would be on a voluntary basis and there is no indication in the information before me that voluntary returnees face harm on return. Country information indicates that people of interest may be questioned on return but the applicant has not been involved in activities in Australia that would raise concern or be of interest to the Iranian authorities. I accept the applicant may be questioned because of his travel document, but I do not accept this would result in any adverse interest in the applicant or that he would be harmed during that questioning or process or that such would amount to serious harm, or for having only declared an intention to travel to [Country 2] when he departed in 2012. I am satisfied that he would not face any harm on this basis should he return.
31. The applicant’s representative has advanced that the cumulative effect of the applicant’s situation and experiences is that the real chance of him being persecuted or suffering serious harm is now greater than when he left Iran. However the applicant has not been involved in activities in Australia that would cause the authorities to impute him with a political opinion and I do not accept that he would be so imputed for reason of his extended absence in a western country and for being an asylum seeker. The applicant was able to live openly in Iran for many years after being detained and questioned in 1998 and I have not accepted he was of ongoing interest or monitored or kept under surveillance, for reason of either his own activities or those of his uncle or father.
32. I have considered the applicant’s circumstances as whole, and the assertion of the effect of the length of time he has been in a western country would have on an imputed political opinion, however I am not satisfied there is a real chance of the applicant suffering persecution in the reasonably foreseeable future in Iran on the basis of his ethnicity, political opinion, having installed satellite dishes and returning to Iran after an extended absence as a returnee asylum seeker from a western country.

#### **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).

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<sup>13</sup> UK Home Office, “Country Information and Guidance – Iran: Illegal Exit”, 20 July 2016, OGD7C848D28

<sup>14</sup> DFAT, “DFAT Country Information Report Iran”, 21 April 2016, CIS38A8012677

## 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. I have found that the applicant's claims of discrimination and being questioned on return to Iran or being fined for installing satellites do not amount to serious harm. I also find that, either considered alone or together, this does not amount to significant harm as defined.

37. I have found that there is not a real chance that the applicant faces harm on the basis of his ethnicity, political opinion, being an asylum seeker in a western country or because of his extended absence. Noting that the "real risk" test for complementary protection is the same standard as the "real chance" test,<sup>15</sup> and 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.

### Complementary protection: conclusion

38. 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>15</sup> *MIAC v SZQRB* (2013) 210 FCR 505

## Applicable law

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### **Migration Act 1958**

#### **5 (1) Interpretation**

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**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.