



Australian Government
Immigration Assessment Authority

Decision and Reasons

Referred application

IRAN

IAA reference: IAA17/03367

Date and time of decision: 10 May 2018 09:16:00

Belinda Mericourt, Reviewer

Decision

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

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

Background to the review

Visa application

1. The referred applicant (the applicant) claims to be an Iranian national. On 30 June 2016 she lodged an application for a Safe Haven Enterprise Visa (SHEV). In a decision dated 9 August 2017 the delegate of the Minister of Immigration and Border Protection (the delegate) refused to grant the visa.
2. The delegate accepted that the applicant is an atheist and does not practice Islam. He also accepted that she was involved in the Mousavi campaign during the 2009 elections but that she was not of adverse interest to the Iranian authorities for reasons of her imputed or actual political opinions prior to her departure from Iran. The delegate accepted that the applicant had been making enquiries about her father who had passed away when she was only an infant but did not accept that she had been threatened or harassed by Iranian authorities prior to her departure. The delegate was not satisfied that there was any real chance or real harm the applicant would suffer serious or significant harm for any of these reasons if she were to be returned 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. The IAA received a submission from the applicant's representative on 27 August 2017. To the extent that this engaged in argument with the delegate's decision based on information which was before the delegate, I have had regard to it. The submission did not include any new information.

Applicant's claims for protection

5. The applicant's claims can be summarised as follows:
 - The applicant fears persecution for reasons of her atheist religious views. At the time of arrival in Australia the applicant claimed to be agnostic. She said that she read banned books and mixed with similar minded people in Iran to discuss their religious beliefs. Her curiosity about other religions resulted in her suspension from university for a semester on one occasion and for half a year on another occasion. Since her arrival in Australia she has been involved in atheist groups on Facebook and social media. She fears she will be accused of apostasy and consequently be imprisoned, harmed or killed;
 - The applicant fears persecution for reasons of her imputed and actual political opinions. She participated in the Mousavi campaign in the 2009 elections. She and some like-minded friends were arrested when they were in a coffee shop and she was detained in a detention centre. Her family paid a bribe to have her released;
 - The applicant's father disappeared during the Iraq/Iran war when she was an infant. As an adult she started investigating his disappearance, particularly with the Martyr Foundation. She was unable to obtain any information and was told it was not a good idea to keep investigating her father's disappearance;

- On several occasions she was harassed by the authorities. In one incident she and her friend tried to escape from a car following them. They went to a police station but when they stopped the car, the people in the following car got out, smashed her friend's car window, pulled her hair and threatened them. The police did nothing to stop them. About 10 days before she left Iran she noticed the front door had been vandalised with acid and graffiti painted on the walls. After this incident she decided to leave Iran;
 - The applicant believes she cannot relocate to any other part of Iran to escape the harm she fears, nor obtain protection from the relevant authorities as it is the authorities who are the perpetrators of the harm.
6. The applicant did not make any claims of fear of harm related to her membership of a particular social group – failed asylum seekers who have sought protection in a Western country. However, I consider this claim arises on the material before me and have given consideration to this claim.

Factual findings

7. The applicant's claims as to her identity and nationality have been consistent since her arrival in Australia. She conducted interviews in Farsi and has submitted a copy and translation of her national birth record (shenasnameh) and [Australian state] driver's licence. I accept the applicant's nationality and identity are as claimed and find Iran to be the receiving country for the purpose of the application. There is no evidence before me to suggest that the applicant has a right to enter and reside in any country other than Iran and I am satisfied she does not: s.36(3).
8. I am satisfied the applicant was born in Tehran and lived most of her life in Ahwaz, Khuzestan Province, Iran and she is of Persian ethnicity.
9. I am satisfied the applicant departed Iran lawfully by plane as the holder of a valid genuine passport and that her passport was taken from her by the people smuggler in Indonesia.

Refugee assessment

10. 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

11. 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.

12. Real chance is a substantial chance as distinct from a remote or far-fetched possibility.¹

Claims of fear of persecution for reasons of religion

13. At her arrival interview on 4 March 2013 the applicant claimed she was agnostic. In her written statement of claims lodged on 30 June 2016 the applicant also stated she is agnostic. She said that since her childhood she had been interested in knowing more about other religions and as she learnt more she gradually lost her faith and thought about Islam more critically. She had the opportunity to know other people with different views towards religion and participated in debates and study around this topic. However, none of these discussions were openly and freely allowed in the academic arena. During her time at university she read many books and articles that were banned in Iran and realised that what she was interested in was not tolerated by the totalitarian regime. Being curious about Islam got her into trouble in university and she was suspended for one semester. Although she used to practice Islamic rituals regularly she started to doubt Islam. She was asking lots of questions in class. After a heated debate in the classroom her religious studies lecturer was so furious he asked her to leave the class and yelled that people like her are apostates and infidels. After this incident she was harassed and put under a lot of pressure so she had to drop out of that unit and the Examination Unit failed her in all her subjects. The next semester she was suspended for half a year and was taken to the University's "Principle Committee" twice during that semester where she was interrogated in relation to her behaviour arising from asking unnecessary questions about Islam and she was accused of anti-religious sentiments. The applicant believes she would be arrested, interrogated, tortured and imprisoned if she returns to arms as renouncing Islam is a crime and punishable by the death penalty.
14. At her SHEV interview on 19 June 2017, the applicant stated she is now an atheist. She provided consistent evidence with that in her written application about questioning her university teachers about religion, her suspensions from classes, and being a non-practising Muslim. She stated that she had discussions with like-minded people in places like coffee shops and once or twice they had been arrested. (I discuss this claim in further detail under political opinion below as the applicant claimed her increasing adverse political and religious profile led to her arrest at the time).
15. In her written application for protection the applicant claimed that her laptop was stolen while she was on her front doorstep. The laptop included articles and e-books with forbidden contents that would be considered anti-Islamic. The applicant considered that if this had been an ordinary robbery they would also have taken her mobile phone which she was using at the time and her purse. When asked by the delegate at her interview why she kept forbidden material on her laptop if it is considered to be criminal the applicant said that she was only downloading information on her personal computer to read it. She said the robbery occurred at around the same time as her arrest in the coffee shop and the pursuit of her and her friend whilst they were driving that is, about three months prior to her departure from Iran.

¹ *Chan v MIEA*, (1989) 169 CLR 379 at 389.

16. At her SHEV interview the applicant said that since her arrival in Australia she has joined [an atheist] group on Facebook and social media. She did not provide any supporting evidence of her participation in any social media discussions.
17. Based on the applicant's consistent evidence I am satisfied she was a non-practising Muslim prior to her departure from Iran, and at that time identified as an agnostic. The applicant has provided no further detail about her move from agnosticism to atheism since her arrival in Australia, however, I am prepared to accept that she now identifies as an atheist. The applicant has not provided any evidence to the Department or the IAA of her participation in social media or on Facebook in [an atheist] group, or any other social media discussions about atheism or religion. I am therefore not satisfied that the applicant has developed a public profile as an atheist on social media. The applicant has not claimed that she has any desire to 'convert' other people to atheism or been engaged in any activities to promote atheism either in Australia or in Iran.
18. I am not satisfied that the applicant had an anti-Islam or otherwise adverse religious profile prior to her departure from Iran. I consider that if her computer had been stolen by the Basij or any other Iranian authorities or their agents and it had had anti-Islamic material on it that she would have been contacted prior to her departure which was not until three months later. I consider that this incident was more likely to be an opportunistic robbery and the applicant was not deliberately targeted by authorities for the purposes of threatening her.
19. The Department of Foreign Affairs and Trade (DFAT) advises that Iranian interpretation of Sharia law provides that Shia Muslims are not permitted to renounce their religion or convert to another religion and if they do so they can be charged with apostasy². Apostasy is not codified in Iran's Penal Code, but the Constitution allows judges to turn to Sharia if Iranian law is not clear about an issue. According to Article 160 of the Iranian Penal Code, confessions, the testimony of two male witnesses or the "knowledge of the judge" can each be the basis for a conviction. Convictions for apostasy are not common. However, some judges have applied Sharia to hand down sentences of the death penalty and lengthy imprisonment for apostasy. The last time the death penalty was carried out for apostasy was in 1990. The most recent case of the person charged with apostasy and sentenced to death was in 2011. As a result of sustained international pressure the conviction of apostasy was commuted to proselytization and the death sentence was dropped. Whilst a Muslim person who leaves his or her faith to practice atheism can be potentially charged with apostasy, DFAT considers it unlikely that individuals will be prosecuted on charges of apostasy.³
20. DFAT considers it highly unlikely that the government would monitor religious observance by Iranians – for example, whether or not a person regularly attends mosque or participates in religious occasions such as Ashura or Muharram – and thus it would generally be unlikely that it would become known that a person was no longer faithful to Shia Islam. Perceived apostates are only likely to come to the attention of Iranian authorities through public manifestations of their new faith, attempts at proselytization, attendance at a house church or via informants.⁴ Other sources indicate that many people in Iran do not regularly attend mosque with many young people identifying themselves as secular and agnostic.⁵

² Department of Foreign Affairs and Trade (DFAT), "DFAT Country Information Report Iran April 2016", 21 April 2016, p.14, CIS38A8012677

³ Ibid

⁴ Ibid

⁵ Danish Immigration Service, 'Update on the Situation for Christian Converts in Iran', June 2014, CIS28931, p.12;

21. The applicant has not claimed that she promoted her agnostic beliefs in Iran or that she would promote atheism if she returned. I accept the applicant's evidence that she met other young people in informal gatherings in places such as coffee shops to discuss religion and religious beliefs but that their meetings were not publicised and they did not actively recruit members to this group unless they already expressed interest in their ideas. I am not satisfied that if the applicant were to continue to attend such informal meetings that these would be perceived by the Iranian authorities to be a threat to national security such that there would be a real chance that the applicant will suffer serious harm as a consequence of participating in such gatherings.
22. Based on the applicant's evidence I am satisfied she will not publicly declare or promote her non-belief in Islam/atheism on return to Iran and I am satisfied she not will not do so due to lack of interest rather than fear of persecution. I am not satisfied that the applicant's non-belief in Islam/atheism has, or there is a real chance that it will, come to the adverse attention of the Iranian authorities or community on return to Iran such that she will face a real chance of harm. I am not satisfied the applicant faces a real chance of serious harm on return to Iran for reasons of her non-belief in Islam and/or disagreement with the way Islam is practiced in Iran and/or stated personal atheism.

Claims for fear of persecution for reasons of imputed and/or actual political opinion

23. At her entry interview on 4 March 2013 the applicant stated the reason she left Iran was that she was scared as she had had threats made to her life as a result of making enquiries about her father who had gone missing during the Iraq/Iran war. She believed that her insistence on making enquiries had resulted in her arrest by the Sepah for 24 hours and various incidents in which she was threatened with harm. She had also been arrested by the police once about four years ago for not wearing her hijab correctly. When asked whether she or any members of her family have been associated or involved with any political group or organisation she stated that her brother was involved during the elections in 2009 and that her maternal uncle had some kind of involvement in activities or protests against the government. She was not sure what kind of involvement but they came and took his computer and threatened him.
24. In her written statement of claims lodged on 30 June 2016 the applicant stated that she was working for the Mousavi campaign during the presidential election. At that time she was introduced to a group of young like-minded people who had gatherings about every two weeks to talk about political and religious subjects. She later found out that one of them was caught by Ettela'at. At one of these gatherings, the applicant and her friends were arrested by three police in plainclothes in October 2012 in a coffee shop. One of them called her by her surname. The police forced all of them into a van and took them to a detention [centre]. She was pushed around, insulted and threatened. The coffee shop owner who knew her brother told her family about the incident. The family started making phone calls to find someone to get her out of the detention centre. Her brother paid a [bribe] so she could be released. The authorities wanted documents like house ownership title for her bail but her father's friend managed to have her released with money instead.
25. At her protection interview in June 2017 the delegate asked what had changed in 2012 that led to her being targeted for arrest. The applicant said that she thought the authorities' interest in her had been intensifying over time. She does not know how she was identified. She and her friends met in a coffee shop and only contacted each other by phone about the meetings so

that no one would know who attended the discussions. When asked by the delegate what crime she was charged with, the applicant said "you don't need to have a crime and when authorities arrest you they don't need to explain what the charges are". The delegate asked again what crime she was charged with and she responded "none". When asked how she was released, the applicant said a family friend paid money as bail. She had to sign a statement saying she had made a mistake and promise not to repeat the offence. When asked why she would be released from custody if she was of ongoing interest to Iranian authorities, she added that her family friend who provided bail had a strong connection with people who worked in government. The delegate put to her that after she was released she was able to leave Iran without difficulty and this would suggest she was not of ongoing interest to Iranian authorities. The applicant's migration representative submitted that while the applicant was arrested for a period of time and released she was not involved in court hearings and was likely to have been released on the payment of a bribe rather than bail.

Fear of harm for reasons of imputed political opinion as a result of investigating what happened to her father during the Iraq/Iran war

26. This is the substantive claim that the applicant made at her arrival interview in March 2013. She provided a great deal of detail at that interview and has been largely consistent about those details in her written statement of claims and at her SHEV interview. As she was only very young when her father disappeared during the Iraq/Iran war she became curious about what happened to him. At her entry interview in March 2013 she said she started making enquiries in about May 2012. At her protection interview she said she started making enquiries about her father about 7 or 8 years ago and stopped doing so about a year before she left Iran. This is the only significant inconsistency in her evidence. The applicant first went to the Martyrs' Foundation (Bonyad-e Shahid) in Ahwaz, as this organisation and the Sepah Pasdaran (Islamic Revolutionary Guard Corps (IRGC)) were the only two places enquiries could be made about people missing in action in the Iraq/Iran war. She found their response to her enquiries to be inappropriate, in that they strongly discouraged her from making the enquiries, became angry with her, refused to say whether they had any information about her father or not, and told her it would be better for her if she did not make any more enquiries. On one occasion she also went to Tehran to enquire at an organisation that has information about anyone involved in the war, but they wouldn't let her in and she couldn't ask any questions. At this point she ceased asking about her father.
27. The applicant believes that she was threatened on the phone and on the street as a result of her enquiries. She gave examples of a number of incidents which she believed was a result of both her search for her father and her increasingly adverse political /religious profile with the authorities. She stated that one time she was "blocked" on the street and hassled. On another occasion, the applicant was detained for 24 hours by the Sepah. On yet another occasion, she was robbed of her laptop while she was trying to open the door of her home. She had articles and e-books on her laptop that would be regarded as forbidden in Iran. About 3 to 5 months before she departed Iran, when she was driving with a friend another car followed them and they became frightened so they went to the police station. When they stopped at the police station and got out of the car the people in the car following them got out and threatened them, pulling her hair and told her to stop looking for information. They attacked the car with a bat in front of the police station and the police did nothing. Just before she departed Iran acid was thrown on the front door of her home, graffiti painted on the walls of the house and a message left saying that whatever happened to her family she would be responsible.
28. The delegate asked the applicant whether she had approached politicians or journalists to help her make her enquiries about her father. The applicant said she had not because in Iran you

can't do anything like that as all the organisations and politicians back each other up. If there is information considered to be classified no one will help you get it. The only information she had been able to find out that her father went missing [in] 1985.

29. The applicant believes that the treatment she received was a result of both her enquiries about her father and her student profile as being anti-Islamic. On one occasion when making enquiries at the Martyrs' Foundation she found out that they had all her personal information in their records including her file regarding her misconduct at university. At her entry interview the applicant stated the main reason she left Iran was she had become scared because her life was threatened and if she stayed she believed her family's lives would be threatened also.
30. Based on the applicant's consistent evidence relating to her search for information about her father's disappearance during the Iraq/Iran war at the Martyrs' Foundation in Ahwaz and Tehran, and despite the inconsistency in the dates she provided relating to this search, I accept that her search was actively discouraged by the Foundation for reasons unknown to the applicant and that she was unsuccessful in finding any more information other than the date of her father's disappearance in 1985.
31. At her entry interview the applicant only identified her brother as being involved in the elections in 2009. In her written statement of claims and at her protection interview she stated she was also involved in Mousavi's campaign "making propaganda". She did not claim that she suffered any harm as a result of this activity in 2009. I am prepared to accept that she was involved in the election campaign, working for Mousavi's election. I also accept that she joined other young people in political and religious discussions in informal settings such as coffee shops during the time that she was involved in the campaign and that these gatherings continued after elections.
32. Although the applicant's evidence was a little confusing, it appeared that the incidents she described relating to being followed by people in a car and then assaulted by them outside a police station whilst the police refused to intervene, her arrest at a coffee shop with a number of her friends and subsequent detention and the theft of her laptop all occurred roughly 3 to 5 months prior to her departure from Iran. The only incident which the applicant claimed to have occurred immediately prior to her departure, that is, one to two weeks before she left, was when her family home was vandalised with graffiti and acid thrown on the front door.
33. I had regard to the fact that in her written statement of claims the applicant stated that when she and her friends were pulled over in their car, the four men in plain clothes who got out of the car following them told them that all the girls in the car had to get out. They were scared and since the men had no uniform they didn't know who they were dealing with so they decided to escape. They then drove to the nearest police station where they intended to ask for help. When they stopped out the front of the police station, the men in the car behind got out, attacked her friend's car with a bat, swore at them and threatened them and pulled her hair with her scarf warning her that they would kill them. The men then left. The police did nothing to stop or arrest any of them. At her entry interview the applicant said that when the men pulled her hair they told her to stop looking for information in respect of her father. They said they wanted to show her what a threat was and that when they said to stop looking she should stop.
34. I accept the incident occurred as the applicant has been consistent in her evidence about what happened in this incident. However, I am not satisfied that the applicant has provided persuasive reasons for the attack. As the applicant was unable to obtain any information about her father, it is possible that she was threatened in such a manner in order to discourage any

further attempts on her part to discover what had happened to her father, but given she had already ceased asking about her father after she had gone to Tehran to unsuccessfully make enquiries, it would seem unlikely that Iranian authorities would go to such extremes to further discourage her. It is also possible that members of the Basij were in the following car and saw boys and girls in a car together. The Department of Foreign Affairs and Trade report that from time to time *“authorities can take a heavy-handed approach when they periodically enforce standards of the Islamic conduct in the community, including Islamic dress and public displays of affection with non-family members of the opposite sex. Youth in particular can experience some form of low-level harassment from security authorities, such as being subjected to searches, car checks and verbal warnings for dress or behaviour... Enforcement can be unpredictable and related to the prevailing political atmosphere of the time.”*⁶

35. I have some concerns about the applicant’s evidence relating to her arrest with her friends at a gathering at a coffee shop in October 2012. The applicant made no mention of this incident at her entry interview despite providing extremely detailed evidence in response to the question about why she left Iran, including about the incident above and the acid thrown on the front door of her home. When asked whether she had ever been arrested she said yes - once for 24 hours when she was detained by the Sepah after enquiring about her father and once for not wearing her hijab correctly about four years earlier. I consider that if she had been arrested only three months prior to her departure, verbally abused and threatened, detained for three or four days and only released after the payment of a bribe, that she would also have mentioned this incident at the time of her entry interview given the amount of detailed evidence she provided at the time.
36. At her protection interview the applicant was vague about the details of any charges made against her during this period and the reasons for her arrest. She initially told the delegate that “you don’t need to have a crime and when authorities arrest you they don’t need to explain what the charges are”. The delegate asked again what crime she was charged with and she responded “none”. When asked why the authorities would arrest her at that time, the applicant thought it was possible that her negative profile with the authorities had been gradually intensifying. However, the history of questioning her religious teachers was all prior to her graduation from [university], her involvement in Mousavi’s election campaign was in 2009, and apart from meeting her friends in coffee shops for discussions from time to time, and embarking on the search for information about her father which she had apparently already ceased by October 2012, there are no other reasons to account for the development of an increasingly adverse political profile with the authorities.
37. I am satisfied the applicant has never been formally charged with any offence, including any political and/or religious offence and that she was not sought by the authorities for any offence at the time of her departure in January 2013.
38. The applicant’s evidence about acid being thrown on the front door of her family home has been consistent and I accept that this event occurred shortly before her departure. However, again it is difficult to know what the reasons might have been for such an attack. I do not consider her assertions persuasive that the authorities would have done such a thing either to discourage her from searching for further information relating to her father after she had already ceased making enquiries or because she had an increasingly adverse political and/or religious profile as discussed above.

⁶ Department of Foreign Affairs and Trade (DFAT), “DFAT Country Information Report Iran April 2016”, 21 April 2016, p.17-18, CIS38A8012677

39. Iran's Constitution provides that "no-one may be molested or taken to task simply for holding a certain belief"⁷. However, country information from various sources confirms the applicant's assertions that Iranian authorities routinely suppress free speech and punish public criticism of the regime.⁸ Nevertheless, DFAT reports that "*Within limits well known to Iranians, daily life is vibrant and sophisticated. The government of the day may be criticised robustly, both in public (for example, during conversations on the street and in workplaces) and online (for example, on social media). Media organisations represent different political views and do so forcefully, provided they do not cross understood 'red lines', which include respect for the Supreme Leader, the constitutional and territorial foundations of the Islamic Republic and the place of Shia Islam in Iran. Iran has an active civil society, with more than 17,000 groups working on human rights issues, as well as more than 230 political parties, 400 trade unions and specialized associations and 60 religiously affiliated societies..... Political activists who are perceived to cross red lines (especially if they are seen to criticise the nature of and key institutions in the regime) are often charged and sentenced under offences such as 'propaganda against the State', 'insulting Islamic values or the Prophets', and 'insulting the Supreme Leader', which can carry lengthy prison terms*".⁹
40. I am satisfied that the applicant has not engaged in any political activism other than being involved in the Mousavi campaign and participating in informal discussions with other young people about politics and religion. I am not satisfied that these activities have led to the applicant being identified as a political activist or dissident who was of adverse interest to the authorities. I am satisfied the applicant engaged in a search for information about her father and that she was discouraged from doing so by the authorities. She ceased this search some months prior to her departure. I am not satisfied that her earlier persistence in seeking information about her father led to her being identified as someone who had an adverse political profile with the authorities in Iran, such that there is a real chance that she would suffer serious harm if she returns to Iran.
41. Having regard to the totality of the applicant's evidence and relevant country information, I am satisfied that there is no real chance the applicant will suffer serious harm, having regard to the extensive examples of serious harm in s.5J(5) of the Act, for reasons of her imputed or actual political opinion if she returns to Iran now or in the foreseeable future.

Claims of fear of persecution for reasons of the applicant's membership of a particular social group – failed asylum seekers who have sought protection in a Western country

42. The applicant has not explicitly made this claim. However, I consider this claim arises on the material before me. I have found that the applicant departed Iran legally and that her passport was taken from her by the Indonesian people smuggler. I am therefore satisfied there is a real chance that she may be returned to Iran on a temporary travel document. In 2013, the International Organisation for Migration (IOM) stated that Iranians who have left the country on their passports and are returned on a *Laissez-passer* will be questioned by the Immigration Police at the airport for a few hours.¹⁰ DFAT advised in 2016 that officials provide assistance to Iranians who wish to voluntarily return to Iran, even if they left irregularly. Strong anecdotal evidence suggests that officials do not attempt to prosecute a voluntary returnee—largely because most failed asylum seekers leave Iran legally (e.g. regular departure through airports

⁷ Alavi and Associates Legal Counsels and Attorneys at Law, 'Iran – Constitution', n.d, p.42, CIS22595

⁸ Ibid; Amnesty International, 'We are ordered to crush you': Expanding Repression of Dissent in Iran', 28 February 2012, CIS22610

⁹ Department of Foreign Affairs and Trade (DFAT), "DFAT Country Information Report Iran April 2016", 21 April 2016, p.15, CIS38A8012677

¹⁰ UK Home Office, "Country Information and Guidance - Iran: Illegal Exit", 16 December 2015, OG8F59D8D34, p.7

or with passports). Where temporary travel documents have been issued by Iranian diplomatic representatives overseas, authorities at the airport will be forewarned about a person's return because of Iran's sophisticated government systems. Irrespective of whether a returnee is travelling on a temporary travel document or their ordinary passport, credible sources have told DFAT that they will generally only be questioned if they had done something to attract the specific attention of the authorities. The vast majority of people questioned would be released after an hour or two.¹¹ DFAT has commented that it consider it unlikely that authorities would prosecute someone simply for claiming asylum overseas. In 2013 Mr Hossein Abdy, Head of the Iranian Passport and Visa Department, also stated that it is not a criminal offence in Iran for any Iranian to ask for asylum in another country.¹²

43. I am therefore satisfied that there is no real chance the applicant will suffer serious harm, having regard to the extensive examples of serious harm in s.5J(5) of the Act, for reasons related to being a member of a particular social group – 'returned failed asylum seekers who have sought protection in a Western country' if she is returned to Iran now or in the reasonably foreseeable future.

Cumulative consideration of the applicant's claims

44. I am satisfied the applicant is currently an atheist and does not practice Islam. I accept that she has joined [an atheist group], however, I am not satisfied that she has engaged in social media forums and discussions in which she is identified on social media. I am satisfied that the applicant was agnostic prior to her departure from Iran and that she was suspended from her course at University on two occasions for expressing her doubts and asking questions about various issues related to the practice and doctrine of Islam in her University [classes]. I am satisfied the applicant participated in informal discussions with other students and young people in locations such as coffee shops where they discussed religious and political issues. I do not accept the applicant's evidence that roughly three months before her departure she and her friends were arrested when participating in these discussions in a coffee shop and that she was detained 3 or 4 days and released after a bribe was paid. I do not accept that when her laptop was stolen she had anti-Islamic or banned material on it which may have come to the notice of the authorities. I am not satisfied that the applicant suffered any serious harm as a consequence of her religious beliefs or failure to practice Islam prior to her departure. There is no information before me to suggest that the applicant has engaged in any conduct in Australia that would attract the adverse attention of the authorities in Iran. Based on relevant country information discussed above, I am not satisfied there is any real chance the applicant will suffer serious harm, having regard to the extensive examples of serious harm in s.5J(5) of the Act, for reasons of her religious opinions, beliefs and/or failure to practice Islam if she returns to Iran now or in the reasonably foreseeable future.
45. I accept that the applicant was involved in the Mousavi campaign during the 2009 election and that she did not suffer any harm at that time. I am satisfied the applicant engaged in a search for her father who went missing in the Iran/Iraq war and that she was discouraged from persisting with this search by the authorities for unknown reasons. I accept she was detained by Sepah for one day and told to stop her search and she felt intimidated and threatened by this treatment and she ceased her search some months before her departure from Iran in January 2013. I am not satisfied the incidents in which the applicant felt threatened, such as being hassled on the street, robbed of her computer when on her doorstep, and being attacked by men who followed her and her friends in a car were all motivated by her

¹¹ DFAT, "DFAT Country Information Report Iran", 21 April 2016, CIS38A8012677, p.28-29

¹² UK Home Office, "Country Information and Guidance - Iran: Illegal Exit", 16 December 2015, OG8F59D8D34, p.11

increasingly adverse political profile or by the authorities' desire to ensure she no longer engaged in a search for information about her father. I am not satisfied that her participation in informal discussions about politics and the situation in Iran combined with her initial persistence in searching for information about her father led to her having an adverse profile as a political dissident or activist with the Iranian authorities in 2012/13. I am satisfied the applicant was of no adverse interest to the Iranian authorities at the time of her departure in January 2013. Having regard to these findings I am satisfied there is no real chance the applicant will suffer serious harm for reasons of her actual or imputed political opinion if she returns to Iran now or in the reasonably foreseeable future.

46. I am satisfied that the applicant departed Iran lawfully as the holder of a valid passport and if she is returned to Iran as the holder of temporary travel documents she will be assumed by the authorities to be a failed asylum seeker who sought protection in a Western country. However, for reasons discussed above, I am satisfied that there is no real chance the applicant will suffer serious harm for reasons related to being a member of a particular social group – 'returned failed asylum seekers who have sought protection in a Western country' if she is returned to Iran now or in the reasonably foreseeable future.
47. Having regard to all the applicant's specific circumstances in the context of the country information about the current situation in Iran, I am not satisfied that there is a real chance of the applicant being seriously harmed by the Iranian authorities or by any other group or person. I am not satisfied that any of the treatment I accept she may experience will amount to serious harm having regard to the extensive examples of serious harm in s.5J(5) of the Act, when considered cumulatively.

Refugee: conclusion

48. 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

49. 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

50. 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.

51. Real chance and real risk involve the same standard.¹³
52. As discussed above I am satisfied the applicant is currently an atheist and does not practice Islam. I am not satisfied that she has any public profile as such in Australia on social media or in any other forum. I am satisfied the applicant was an agnostic at the time of her departure from Iran and engaged in informal gatherings and discussions with other young people about religious beliefs and practices in Iran. I do not accept the applicant's claims that about three months prior to her departure she and her friends were arrested and she was detained for 3 or 4 days and only released without charge after the payment of a bribe. I am satisfied the applicant did not suffer any significant harm, having regard to the definition of significant harm in s.36(2A) above, as a consequence of her religious beliefs, opinions or failure to practice Islam. Based on relevant country information I am satisfied that if the applicant is returned to Iran now or in the reasonably foreseeable future there is no real risk she will suffer significant harm for reasons of her personal belief as an atheist and/or failure to practice Islam.
53. I am satisfied the applicant did not have an adverse political profile with the Iranian authorities prior to her departure from Iran, notwithstanding her involvement in the Mousavi campaign during the 2009 elections, her participation in informal discussions about political and religious issues and her initial persistence in her search for information about her father. I am satisfied that the applicant has not engaged in any political activities in Australia which may attract the adverse attention of authorities in Iran. I am satisfied there is no real risk the applicant will suffer significant harm for reasons of her actual or imputed political profile.
54. I am satisfied that the applicant engaged in a search for information about her father who was missing in action in 1985 in the Iraq/Iran war and that the authorities discouraged her from doing so. I am satisfied that she felt intimidated and threatened by the authorities and consequently ceased her search some months before her departure in January 2013. However, I am satisfied that the threats, intimidation and harassment she experienced did not amount to serious harm as defined in s.36(2A) above. The applicant has not claimed that she will persist with her search for information if she returns to Iran. She stated the reason for her search was largely curiosity as she (understandably) wishes to know more about what happened to him and she had no political motivation for doing so. I am therefore satisfied that there is no real risk the applicant will suffer significant harm for reasons related to her past search for information if she returns to Iran now or in the reasonably foreseeable future.
55. I am satisfied that the applicant departed Iran legally on a valid and genuine passport and she was of no adverse interest to the Iranian authorities or any other person prior to her departure in January 2013. I am satisfied she has not engaged in any activities in Australia which may attract the adverse attention of the Iranian government or religious authorities. I accept that the applicant more than likely will be questioned on her return to Iran whether she returns on a valid passport or a temporary travel document. I am satisfied that this questioning does not amount to significant harm as defined in s.36(2A) of the Act. I am satisfied it is not a criminal offence in Iran to ask for asylum in another country and that there is no real risk she will be prosecuted for claiming asylum in Australia. There is no information before me to suggest that Iranian citizens who have sought asylum in Western countries are at risk of significant harm from members of the community or Iranian authorities unless they were of adverse interest to authorities or the community prior to their departure or have engaged in activities since their departure that would attract the adverse attention of the authorities. Based on the relevant country information discussed above, I am satisfied that there is no real risk that the applicant will suffer significant harm (having regard to the definition of significant harm in s.36(2A) of the

¹³ *MIAC v SZQRB* (2013) 210 FCR 505

Act) from the Iranian authorities or any other person if she is returned to Iran now or in the reasonably foreseeable future, as a consequence of having sought asylum in Australia.

56. Considering the treatment I have accepted the applicant will experience as a whole, I am not satisfied that it cumulatively amounts to significant harm. Nor am I satisfied that there is a real risk that the applicant will suffer significant harm based on the cumulative effect of her circumstances and profile.

Complementary protection: conclusion

57. There are not substantial grounds for believing that, as a necessary and foreseeable consequence of being returned from Australia to a receiving country, there is a real risk that the applicant will suffer significant harm. The applicant does not meet s.36(2)(aa).

Decision

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

Applicable law

Migration Act 1958

5 (1) Interpretation

...

bogus document, in relation to a person, means a document that the Minister reasonably suspects is a document that:

- (a) purports to have been, but was not, issued in respect of the person; or
- (b) is counterfeit or has been altered by a person who does not have authority to do so; or
- (c) was obtained because of a false or misleading statement, whether or not made knowingly

...

cruel or inhuman treatment or punishment means an act or omission by which:

- (a) severe pain or suffering, whether physical or mental, is intentionally inflicted on a person; or
- (b) pain or suffering, whether physical or mental, is intentionally inflicted on a person so long as, in all the circumstances, the act or omission could reasonably be regarded as cruel or inhuman in nature;

but does not include an act or omission:

- (c) that is not inconsistent with Article 7 of the Covenant; or
- (d) arising only from, inherent in or incidental to, lawful sanctions that are not inconsistent with the Articles of the Covenant.

...

degrading treatment or punishment means an act or omission that causes, and is intended to cause, extreme humiliation which is unreasonable, but does not include an act or omission:

- (a) that is not inconsistent with Article 7 of the Covenant; or
- (b) that causes, and is intended to cause, extreme humiliation arising only from, inherent in or incidental to, lawful sanctions that are not inconsistent with the Articles of the Covenant.

...

receiving country, in relation to a non-citizen, means:

- (a) a country of which the non-citizen is a national, to be determined solely by reference to the law of the relevant country; or
- (b) if the non-citizen has no country of nationality—a country of his or her former habitual residence, regardless of whether it would be possible to return the non-citizen to the country.

...

torture means an act or omission by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person:

- (a) for the purpose of obtaining from the person or from a third person information or a confession; or
- (b) for the purpose of punishing the person for an act which that person or a third person has committed or is suspected of having committed; or
- (c) for the purpose of intimidating or coercing the person or a third person; or
- (d) for a purpose related to a purpose mentioned in paragraph (a), (b) or (c); or
- (e) for any reason based on discrimination that is inconsistent with the Articles of the Covenant;

but does not include an act or omission arising only from, inherent in or incidental to, lawful sanctions that are not inconsistent with the Articles of the Covenant.

...

5H Meaning of refugee

(1) For the purposes of the application of this Act and the regulations to a particular person in Australia, the person is a refugee if the person:

- (a) in a case where the person has a nationality—is outside the country of his or her nationality and, owing to a well-founded fear of persecution, is unable or unwilling to avail himself or herself of the protection of that country; or
- (b) in a case where the person does not have a nationality—is outside the country of his or her former habitual residence and owing to a well-founded fear of persecution, is unable or unwilling to return to it.

Note: For the meaning of *well-founded fear of persecution*, see section 5J.

...

5J Meaning of well-founded fear of persecution

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

Note: For membership of a particular social group, see sections 5K and 5L.
- (2) A person does not have a well-founded fear of persecution if effective protection measures are available to the person in a receiving country.

Note: For effective protection measures, see section 5LA.
- (3) A person does not have a well-founded fear of persecution if the person could take reasonable steps to modify his or her behaviour so as to avoid a real chance of persecution in a receiving country, other than a modification that would:
 - (a) conflict with a characteristic that is fundamental to the person's identity or conscience; or
 - (b) conceal an innate or immutable characteristic of the person; or
 - (c) without limiting paragraph (a) or (b), require the person to do any of the following:
 - (i) alter his or her religious beliefs, including by renouncing a religious conversion, or conceal his or her true religious beliefs, or cease to be involved in the practice of his or her faith;
 - (ii) conceal his or her true race, ethnicity, nationality or country of origin;
 - (iii) alter his or her political beliefs or conceal his or her true political beliefs;
 - (iv) conceal a physical, psychological or intellectual disability;
 - (v) enter into or remain in a marriage to which that person is opposed, or accept the forced marriage of a child;
 - (vi) alter his or her sexual orientation or gender identity or conceal his or her true sexual orientation, gender identity or intersex status.
- (4) If a person fears persecution for one or more of the reasons mentioned in paragraph (1)(a):
 - (a) that reason must be the essential and significant reason, or those reasons must be the essential and significant reasons, for the persecution; and
 - (b) the persecution must involve serious harm to the person; and
 - (c) the persecution must involve systematic and discriminatory conduct.
- (5) Without limiting what is serious harm for the purposes of paragraph (4)(b), the following are instances of **serious harm** for the purposes of that paragraph:
 - (a) a threat to the person's life or liberty;
 - (b) significant physical harassment of the person;
 - (c) significant physical ill-treatment of the person;
 - (d) significant economic hardship that threatens the person's capacity to subsist;
 - (e) denial of access to basic services, where the denial threatens the person's capacity to subsist;
 - (f) denial of capacity to earn a livelihood of any kind, where the denial threatens the person's capacity to subsist.
- (6) In determining whether the person has a **well-founded fear of persecution** for one or more of the reasons mentioned in paragraph (1)(a), any conduct engaged in by the person in Australia is to be disregarded unless the person satisfies the Minister that the person engaged in the conduct otherwise than for the purpose of strengthening the person's claim to be a refugee.

5K Membership of a particular social group consisting of family

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

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

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

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

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

5L Membership of a particular social group other than family

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

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

5LA Effective protection measures

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

...

36 Protection visas – criteria provided for by this Act

...

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

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

...

Protection obligations

- (3) Australia is taken not to have protection obligations in respect of a non-citizen who has not taken all possible steps to avail himself or herself of a right to enter and reside in, whether temporarily or permanently and however that right arose or is expressed, any country apart from Australia, including countries of which the non-citizen is a national.
- (4) However, subsection (3) does not apply in relation to a country in respect of which:
- (a) the non-citizen has a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion; or
 - (b) the Minister has substantial grounds for believing that, as a necessary and foreseeable consequence of the non-citizen availing himself or herself of a right mentioned in subsection (3), there would be a real risk that the non-citizen will suffer significant harm in relation to the country.
- (5) Subsection (3) does not apply in relation to a country if the non-citizen has a well-founded fear that:
- (a) the country will return the non-citizen to another country; and
 - (b) the non-citizen will be persecuted in that other country for reasons of race, religion, nationality, membership of a particular social group or political opinion.
- (5A) Also, subsection (3) does not apply in relation to a country if:
- (a) the non-citizen has a well-founded fear that the country will return the non-citizen to another country; and
 - (b) the Minister has substantial grounds for believing that, as a necessary and foreseeable consequence of the non-citizen availing himself or herself of a right mentioned in subsection (3), there would be a real risk that the non-citizen will suffer significant harm in relation to the other country.

Determining nationality

- (6) For the purposes of subsection (3), the question of whether a non-citizen is a national of a particular country must be determined solely by reference to the law of that country.
- (7) Subsection (6) does not, by implication, affect the interpretation of any other provision of this Act.