



Australian Government
Immigration Assessment Authority

Decision and Reasons

Referred application

IRAN

IAA reference: IAA17/03645

Date and time of decision: 2 July 2018 12:07:00

M Currie, 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 citizen of Farsi (Persian) ethnicity. He arrived in Australia in June 2013. In February 2017 he lodged an application for a Safe Haven Enterprise Visa (SHEV). A delegate of the Minister for Immigration and Border Protection refused to grant the visa in September 2017 on the grounds that Australia did not owe protection obligations to the applicant. On 26 September 2017 the matter was referred to the Immigration Assessment Authority (IAA).

Information before the IAA

2. I have had regard to the material given by the Secretary under s.473CB of the *Migration Act 1958* (the Act). On 12 October 2017 a migration agent, acting on behalf of the applicant sent an email to the IAA. The email contained a five page legal submission (the IAA legal submission). The submission presented argument against the delegate's findings. I have had regards to the argument in the submission.
3. I observe that the principal argument in the IAA legal submission is that the delegate failed to assess the claims of the applicant cumulatively. I have read the delegate's s.65 decision. I am not persuaded that the IAA legal submission fairly characterises the delegate's decision and I conclude the delegate's decision gave fair hearing to the applicant's claims and did consider the applicant's cumulative profile. In any case, I note that the task of the IAA is to conduct a *de novo* review of the applicant's claims and, as such, I am not bound by any of the delegate's decision or reasoning. I have made findings that are different to those made by the delegate. For the sake of clarity, I note that I have, in this decision, considered the applicant's various claims individually, and cumulatively.

Applicant's claims for protection

4. The applicant's claims can be summarised as follows:
 - The applicant is an Iranian citizen of Farsi (Persian) ethnicity. He was born on [date] in Tehran. He lived his entire life in Tehran, except for the period of his compulsory military service between April 2002 and September 2003. Though nominally Shia Muslims, the applicant came from a modern, non-religious family.
 - The applicant has two tattoos. The first tattoo was obtained around 2001/02 and was [of a particular image]. The second tattoo was of [details of second tattoo deleted], and was obtained during his military service.
 - After completing his military service, the applicant obtained a position with [Government Agency 1]. He commenced employment there in late 2003.
 - The applicant, like many Iranians, became incensed with the result of the June 2009 Iranian elections when the conservative incumbent was re-elected under suspicious circumstances. The day after the election, the applicant attended a protest.
 - The protest became violent, the applicant was severely injured, and arrested by the Iranian authorities. He was blindfolded and taken away. He spent several days in a Government Hospital receiving treatment for his wounds and was then transferred to a detention centre where he spent a further three to four days in detention. He was

questioned, and forced to sign an undertaking that he would not take part in any further anti regime protests.

- The applicant participated in another protest, around December 2009 with his brother, who had returned from Australia for this purpose. The applicant did not want to attend this protest, but felt he should in order to protect his brother.
- During the December 2009 protest, the applicant was confronted and briefly detained by members of the Basij, but was able to escape with the assistance of his brother.
- The applicant attended to further protests on the anniversary of the first protest he attended (i.e. June 2010, and June 2011). He did not have any difficulties at these protests.
- Throughout this period, the applicant continued to be employed at [Government Agency 1]. In early 2013, a new Manager was appointed at [Government Agency 1]. This manager was religiously zealous. He instigated changes at the workplace including compulsory staff attendance at prayers on Monday mornings, formal attire for employees and he encouraged the growth of facial hair.
- The applicant, a non-practising Muslim refused to comply with the changes made by the new manager. His refusal brought him into conflict with the manager who called him an infidel and threatened to denounce him as an apostate to the Iranian authorities. The applicant departed work and did not return.
- Several days later, a summons was delivered to his father for the applicant. The applicant fled to his father's home village. Though the applicant did not see the summons, he asserts it required him to surrender to the Revolutionary Court of Iran within 48 hours. His family home was searched; his father was taken into custody overnight.
- Whilst the applicant was away, his father obtained a passport for the applicant, which though obtained from the official Iranian passport office, was not issued in the applicant's name. His father arranged for him to depart Iran via [Airport 1] with the assistance of unknown facilitators. He came to Australia.
- The applicant fears that if returned to Iran, he would face arrest, questioning and detention because of his cumulative political and religious profile.

Factual findings

5. Since his arrival in Australia the applicant has provided Australian authorities with copies of a number of documents in order to establish his identity. These documents include an Iranian Birth Certificate (and translation), an Iranian National Identity Card (with translation), an Iranian Drivers Licence (with Translation) and copies of several educational certificates issued in his name (with translations). These documents establish the applicant's identity to my satisfaction. I accept that he is an Iranian citizen of Farsi ethnicity who was born in Tehran on [date]. For the purposes of this decision, I find that Iran is his receiving country.
6. The applicant asserts that he was married in 2006, and divorced in 2011. He has not provided any documentary proof of these claims. Nevertheless I accept that the applicant was married during this period and is now divorced. In any case, the applicant's ex-wife does not feature at all in his claims for protection.

Tattoos

7. The applicant claims to have two tattoos on his body.[Details of first tattoo deleted]. The applicant has not indicated that there is any particular significance to this tattoo. He specifically stated at his Protection Visa Interview that his second tattoo was of [details deleted]and was obtained because his brother (B1) had departed Iran to live in Australia and he (the applicant) missed his brother. In his Protection Visa Interview, the applicant said he was in the process of having his [second tattoo] removed. He said that his tattoos were not a problem whilst he was in the military as many soldiers had tattoos. I accept that the applicant has two tattoos on his body.

Non-practising Muslim

8. The applicant has indicated that his family, though nominally followers of mainstream Shia Islam was not a particularly religious family. He has characterised his religious faith whilst he was in Iran as being '*in name only*'. In his February 2017 SHEV application he stated that he did not have any religion and has not attended religious services in Australia. I accept that the applicant is a non-practising Muslim.

The Green Movement

9. The applicant claims that in Iran, he attended a number of protests against the government. The applicant says that he first became interested in politics in 2001. At that time he voted for the 'reform' candidate Khatami. The applicant says he became disillusioned with Khatami and did not vote in the 2005 elections. But by the time of the 12 June 2009 election, he had taken more interest in politics again (though did not consider himself to be a political activist), and chose to vote for Mir Mousavi, another reform candidate.
10. The applicant has put forward claims that he attended several 'Green Movement' protests in Iran. The applicant's attendance these protests are a key element of his claims for protection, and are a foundation for some of his other claims to have been of interest to the authorities. However, the information the applicant has submitted not been entirely consistent. The applicant has presented information about his attendance on three separate occasions. Firstly, in his SHEV application of February 2017, secondly in his Protection Visa Interview of June 2017 and finally in his Post Interview Submission to the Department, of July 2017. The accounts in his SHEV application and his Protection Visa Interview are largely (though not entirely) consistent; however, the version put forward in his Post Interview submission contradicts and undermines several of his earlier claims.
11. In the SHEV application, the applicant indicates that he attended three protests.
 - The first protest: the applicant says he first attended a protest the day after the June 2009 elections (i.e. 13 June 2009). This was the first day of protests in Iran, and he took time off work in order to attend. He says he arrived at the protest in the afternoon and spent approximately four to five hours protesting. This particular protest turned violent as Government forces sought to contain the crowd. The applicant claims that he was stabbed in the chest during this protest. He says that he did not realise that he had been stabbed and continued protesting. Later he was surrounded and detained by plainclothes members of the regime who had infiltrated the crowd. He was beaten with a baton and his arm was broken. He was arrested and blindfolded. He was taken to an unknown location where it was identified that he was seriously injured. He was

transferred to a hospital where he received treatment for his wounds. After three days, he was transferred to an unknown detention centre. He was held for three days and interrogated. He was forced to sign an undertaking that he would not protest against the regime again. The next day he was taken to a local mosque and released.

- The second protest: This protest was held on the one-year anniversary of the June 2009 protest. The applicant, and B1, his Australian brother attended. During this protest, the applicant came to the attention of the Basij, and they attempted to detain him. However, his brother sneaked up behind the Basij officer who held him and was able to effect the applicant's release. The applicant and B1 escaped. Afterwards the applicant did not face any particular difficulties associated with his attendance (and escape from) this protest. Whilst no exact date for the anniversary protest was given the applicant's evidence suggests it was held around June 2010.
 - The third protest: This protest was held on the two-year anniversary of the June 2009 protest. The applicant attended this protest with his other brother B2. He did not face any particular difficulties arising from his attendance at this protest. Whilst no exact date for the anniversary protest was given the applicant's evidence suggests it was held around June 2010.
12. This version was largely repeated in his Protection Visa Interview of June 2017. However, during that interview the delegate indicated to the applicant that Australian records indicated that B1 was present in Australia between January 2010 and November 2010 and so he could not have attended the second protest in June 2010, as claimed by the applicant. The delegate clearly put the applicant on notice about this issue and indicted that it raised significant doubts about the applicant's credibility. The applicant was unable to provide any clarity about this discrepancy at the interview.
 13. In a Post Interview submission to the department, the applicant claimed that, in fact, he attended a second protest with his brother, B1 on [date] December 2009. This is a significant variation upon the earlier claims made by the applicant in his SHEV application and his Protection Visa Interview where he had maintained that he had only attended protests in June, and the second and third protests he attended were on the anniversary of the first (2009) protest. The Post Interview submission argues that the variation in the applicant's accounts arose due error arising from the passage of time, and that there had been no intent to deceive.
 14. There are other inconsistencies in the applicant's evidence about his attendance at the protests. The applicant says he was shocked about the result of the election when he heard the results announced on the radio whilst he was at work. In his February 2017 SHEV application he said that protests started the '*very next day*', but stated that, he '*did not get involved*' and went home that day. He indicated the first protest he attended was held on another occasion. However, in his Protection Visa Interview of June 2017 he said that he attended his first protest, on the day after the election and gave an account of leaving work early and taking a part day's leave.
 15. The applicant stated that during this first protest, he was stabbed in the chest. When asked to describe his injury, he says that he suffered a knife wound [that] was so serious it required surgery. Furthermore he indicated that he has scarring on his [body] where more surgery was also required arising from this wound. The applicant stated in his SHEV application and his Protection Visa Interview that at first he did not notice that he had been stabbed. The applicant has indicated that after he was stabbed he continued with the protest and was beaten and detained by members of the Basij. This resulted in him being hit [with] a baton and in his [limb] being broken. He was detained and blindfolded at this time and driven to an

unknown holding location. He says that he was held in this location for approximately half an hour to an hour before the severity of his wounds were recognised and he was taken to a hospital. The applicant does not know which hospital he attended, and claims to believe it was a special hospital run by the Iranian Revolutionary Guards Corps (IGRC). At the hospital, he was treated for the knife wound, and for his broken arm. He says his lungs were damaged by the stabbing. He says he received a pin in his arm. He says they advised him he could expect serious complications to arise in the future arising from the knife wound to his lungs. After three days in hospital, the applicant claims he was transferred to another unknown detention facility. There he was interrogated about his participation in the first protest, and what, if any links he had to the group which organised the protests. The applicant claims to have told them that he was only in the vicinity of the protest to purchase a book, and that he became entangled in the protest by accident. He was not believed. After three days, he was forced to sign an undertaking that he would not participate in further protests, or do anything against the regime. He signed the document, and was released the next day. The applicant implied at interview that his father, who he suggests was held some official role, had used his contacts and influence to establish the whereabouts of the applicant and to have him released.

16. After his release, the applicant attended a Doctor's office where he sought further assistance related to his injured arm, since he claims that the pin inserted in the IRGC hospital was protruding from his arm and was required to be removed. He says his father obtained a doctor's certificate for him that indicated that he had been injured in a car accident, and he was able to return to work within a few days.
17. The Green Movement is the name given to the demonstrators who protested against official claims that Mahmoud Ahmadinejad won the 2009 presidential election¹. Protests held in 2009 and 2010 saw thousands of Green Movement demonstrators detained and thousands beaten and harassed by security forces. DFAT is unable to credibly estimate the number of political activists who were detained in this period and still remain in prison. Likewise, DFAT is unable to credibly estimate how many individuals were sentenced to death because of their involvement in the protests. It is estimated that hundreds fled Iran as an immediate result of the crackdown and hundreds more in subsequent years².
18. High profile activists and members of the Green Movement continue to face monitoring and harassment. For example, since 2011, opposition movement leaders Mir-Hossein Musavi, Mehdi Karrubi and Musavi's wife, political activist Zahra Rahnavard, have been under house arrest without formal charge or trial after calling for Iranians to protest in support of the Arab Spring. Other high-profile people punished for expressing political opinions include veteran activists, journalists, student activists and former MPs. Higher profile activists released from detention are more likely to be subject to on-going surveillance and varying levels of harassment, depending on their activities³.
19. Lower profile activists have also been detained and prosecuted for expressing political beliefs, including for participating in political rallies. Punishments in the past have included prison sentences and corporal punishment (lashing). There are also credible reports of abuses in prison, including torture, in the aftermath of the protests. Most lower profile activists arrested

¹ Department of Foreign Affairs and Trade (DFAT), "Country Information Report: Iran April 2016", CIS38A8012677, 3.64

² DFAT, "Country Information Report: Iran April 2016", CIS38A8012677, 3.65

³ DFAT, "Country Information Report: Iran April 2016", CIS38A8012677, 3.66

in the 2009 and 2010 protests and subsequently released are unlikely to face serious on-going harassment, and should normally be able to go about their daily lives unmolested⁴.

20. Overall, DFAT assesses that, whilst official concerns about the Green Movement have receded from public view with the passage of time, the regime remains highly sensitive to the movement, labelling it as 'sedition'. People who were actively involved in the movement remain at some risk, depending on their degree of involvement, of on-going official attention⁵.
21. Like the delegate, I find the many inconsistencies in the applicants account are damaging to his credibility. In particular, I found the applicant's account of his injuries, and his detention at the first protest to be unimpressive and unconvincing. I find that it is implausible that the applicant, upon receiving a wound to his sternum severe enough to warrant surgical intervention from the front, and from the back and three days of hospitalisation could be unaware of this wound. I am not persuaded the applicant is telling the truth. Likewise, his account to have required three days of hospitalisation, to have had lung damage arising from his knife wound, but not to have received any medication or antibiotics seems far-fetched.
22. His claim to have been taken to an IRGC hospital is, on his own evidence, not supported by any facts. It is merely his suspicion. He has not provided any independent medical evidence to support his claims to serious injury. He has claimed that he was advised he would suffer from serious complications, but was unable to outline what these complications might entail, or whether he has actually had any complications in the almost ten years since the events he claims occurred. The post interview submission argued that the only reason medical documents were not being provided to the Department was because such medical documents would not 'corroborate' the applicants claims of 'causation' (i.e. that the wounds were caused at a protest by agents of the Government). I found this reasoning to be unpersuasive.
23. I consider the claims in the applicant's post interview submission, where he substantially revised his account of the protests to include attendance at a protest in December 2009 to undermine his earlier written claim to have only attended protests in June 2009, 2010 and 2011 on the anniversary of the first protest. I do not accept his explanations for the discrepancies in his accounts.
24. I found his account of detention to be vague and to lack credible detail. His answers at interview were implausible. I am willing to accept that the applicant was, in general, a supporter of reform in Iranian politics, and that as a consequence he voted for reformist politicians such as Khatami and Mousavi. However, overall I found the applicant's claims about these events to be unconvincing. I am willing to accept that the applicant attended a single 'Green movement' protest in 2009 and that he attended anniversary protests in 2010 and 2011. However, I find that his other claims are far-fetched, vague and exaggerated. I do not accept that the applicant attended a protest in December 2009 as claimed in the post interview submission, and I conclude that he invented attendance at this event in order to alleviate the damage to his credibility arising from his earlier, disproved claim. I do not accept that the applicant was stabbed, or was beaten and arrested. I do not accept that he was detained for a week, hospitalised and questioned. I am not persuaded that the only reason the applicant has failed to produce medical documents is because they do not 'corroborate' the applicant's claims to 'causation' as argued in the Post Interview submission. I do not accept that his father exerted influence in order to have him released and that he signed an

⁴ DFAT, "Country Information Report: Iran April 2016", CIS38A8012677, 3.67

⁵ DFAT, "Country Information Report: Iran April 2016", CIS38A8012677, 3.69

undertaking that he would not attend protest. I conclude that the applicant has invented these aspects of his claims in order to enhance his claims for protection in Australia.

25. The evidence I have accepted was that the applicant attended protests, along with many thousands of other demonstrators. As I have not accepted his claims that the authorities detained or questioned him, I conclude that the applicant was not of any interest to the Iranian authorities at any time as a consequence of his attendance at protests. Rather, I find he invented the claim to strengthen his claim for protection.
26. Furthermore, the applicant's evidence is that the protests he attended were not organised by him. He says he is not a political activist, and has not provided any evidence to suggest that he did anything more than attend protests along with many thousands of other protestors. Whilst I have accepted that he attended protests, I conclude that the applicant was a low-level protester and would not be of any further interest to the authorities, almost ten years later.

Difficult manager, summons, passport

27. The applicant commenced working the [Government Agency 1] in late 2003. He worked there for almost 10 years. His exact role is not entirely clear, since he has variously outlined his duties as including [details deleted]. On the whole, I understand him to have a [specialised] role within [Government Agency 1].
28. In early 2013, a new manager was employed by [Government Agency 1] to supervise the applicant and his colleagues. The new manager made many changes at [Government Agency 1]. The applicant has described the new manager as a very religious person. Amongst the many changes instituted by the new manager were some that had an overtly religious context; compulsory prayer sessions were introduced on Monday mornings, on other days workers were strongly encouraged to stop for prayer at the usual times mandated by Islamic doctrine. Facial hair and beard growth was encouraged. Staff were required to wear more formal attire.
29. The applicant says that he found these new rules difficult to comply with as he was non-religious. He did not attend prayer sessions, was reluctant to wear more formal attire and did not grow a beard. Also, his tattoos came to be seen as problematic for the new manager since the applicant habitually wore a T-Shirt. Over time he says that these difficulties developed in to open conflict between him and his manager and resulted in him being called into the manager's office on two or three occasions for reprimands. On the third occasion the applicant and the new manager engaged in a heated argument. The applicant claims he told the manager that he *'did not want to go for prayer and did not believe it'*. The manager criticised the applicant for his comment, and for his tattoos and called him an unbeliever and said he would report the applicant to the authorities. He threatened to fire the applicant. The applicant claims that because of the argument, the manager said he would call security. No date was provided for this incident, though the applicant said it occurred in the second month of 2013. The applicant left work, and did not return.
30. In his SHEV application, the applicant wrote that several days after he departed the [Government Agency 1], he was away from home. He says that his father rang him to inform him that a summons bearing his (the applicant's name) had been delivered to the family home. The summons indicated that the applicant was required to appear before the Enghelab Court (the Revolutionary Court). The applicant reports that this is the court used to try 'political crimes' in Iran. Afraid, the applicant did not return to his home, but instead fled by bus to his father's [hometown] in north-eastern Iran. He says he did so as he feared he would be arrested. He claims that on that same evening the authorities raided his family's Tehran home

looking for him, searched the house, confiscated their satellite dish and detained his father and held him over night. The purpose of the search, seizure and detention of his father was to find the applicant. He says that the Iranian authorities were after him because he believed his new manager had denounced him, and when the manager's information was coupled with his previous file which was created after he was detained in 2009 he became of interest to the authorities.

31. After his father was released from custody, he (applicant's father) started to make arrangements for the applicant to depart Iran since he knew the applicant was no longer safe. His father used his contacts to obtain a fake passport for the applicant which was issued from the Iranian Passport Office. The passport contained a photo of the applicant, and his other details (such as date of birth) were recorded correctly, but it was issued in a fake name. All the other security features of the passport were genuine. As the passport was issued by the proper Iranian agency, and contained all the normal modern passport security measures (though it was not issued in his name) the applicant has chosen to characterise the passport as genuine.
32. The applicant says he returned to Tehran after his father had organised his travel and obtained the passport. He spent one final day in Tehran, and then went to the airport where his father had arranged his travel. He says his father advised him that a secret person at the airport had been arranged to ensure the applicant was able to depart safely. The applicant did not face any issues at the airport and was able to depart Iran without incident.
33. The applicant claims that sometime after his departure, further court documents were delivered to his family home. Though he reports that these were subsequently destroyed by his family out of fear. It is not clear when these documents arrived. At his Protection Visa Interview, the applicant indicated that further documents were received by his family in 2016.
34. Country information indicates that in Iran the Revolutionary Courts deal with cases concerning internal and external security (including political cases) and drug smuggling. They do not use juries, and trials are frequently closed to the public (though show trials have occurred). Defendants have the right to legal representation in Revolutionary Courts, and can appeal sentences to the Supreme Court. The Government has stated that all trials should be held in open courts and all political and press offences should be tried in the presence of a jury, but Revolutionary Courts are exempt from this rule. Revolutionary Courts are not required to release their documents to the public. Human rights defenders and those arrested in protests, including following the 2009 election, are usually tried in the Revolutionary Courts. Credible sources have told DFAT that those suspected of political crimes – threatening the constitutional foundations or territorial integrity of the Islamic Republic are most likely to be tried in Revolutionary Courts. Other cases are generally tried in civil or criminal courts⁶.
35. DFAT reports that it is difficult to ascertain the real independence of Iran's judiciary, but DFAT considers it to be a key arm of Iran's overall system of government under the ultimate authority of the Supreme Leader. Importantly, the judiciary operates separately from the President who is not able to exercise any control over it. There are credible NGO reports that trials are sometimes held in closed session, present a lack of evidence, and do not conform to fundamental standards of due process. It is unlikely that judges are free from external pressure at all times, and may self-censor⁷.

⁶ Department of Foreign Affairs and Trade (DFAT), "Country Information Report: Iran April 2016", CIS38A8012677, 5.15

⁷ DFAT, "Country Information Report: Iran April 2016", CIS38A8012677, 5.17

36. According a joint report issued by the Danish Immigration Service and the Norwegian LANDINFO a family member can receive the summons in place of a person in Iran. However, there are no consequences for the family member if the accused does not show up in court⁸.
37. If the person in question is not present, a family member can receive the summons in his or her place. The same procedures for receiving the summons apply in that the family member signs the copy which must go back to the court and keeps the original. There are no consequences for the family member if the accused does not show up in court.
38. Section 150 of the Iranian labour code indicates are required to provide suitable place in the workplace for performing prayers⁹. However, compulsory prayer sessions in workplaces are not legal in Iran¹⁰. Some country information suggests that in Iran tattoos are can be seen as problematic by some conservative elements of Iranian establishment. Nevertheless, tattoos are increasingly common in Iran- particularly among youth - and DFAT has regularly observed male Iranians with visible tattoos. DFAT is unaware of any recent, specific report of people being targeted by security forces solely for having a tattoo. However, it is possible that a person with a visible tattoo could come to the attention of security forces and result in low-level harassment. While DFAT is not aware of specific penalties that could be imposed for having a tattoo, it is likely that such penalties would be similar to those imposed for dress or hair styles that are deemed 'improper'. In these circumstances, the usual penalty is a warning or fine. DFAT believes it unlikely that authorities would maintain an interest in someone who had previously come to their attention for having a tattoo, unless the tattoo gave evidence of another crime (e.g. related to national security)¹¹.
39. Passport control checks are sophisticated in Iran. An outstanding warrant for arrest would not go undetected at the main airports but it is theoretically possible that an individual could convince an airport officer to allow them to proceed. Some charges, for example national security or media-related charges, result in confiscation or black-listing of passports. However, even in these cases, there are credible reports from a range of sources that many have been able to successfully cross borders overland¹².
40. DFAT reports that applicants for a passport are required to provide completed copies of the application form; their original Iranian Birth Certificate (shenasnameh); photocopies of all the pages of the Birth Certificate (containing an ID photo); the original and a copy of their Residence Permit card (IND issued document); and three passport photos taken within the past six months¹³. DFAT also reports that exit from the Imam Khomeini International Airport with a forged passport would be difficult, although not impossible if bribery were involved¹⁴.
41. On the whole, I did not find the applicant to be a persuasive witness. I found his explanations of these events to be unconvincing, and to rely on his supposition, rather than on his direct knowledge of events. Some of his claims contradict the country information cited above.

⁸ Danish Refugee Council, Landinfo and Danish Immigration Service, "Iran: On Conversion to Christianity, Issues concerning Kurds and Post-2009 Election Protestors as well as Legal Issues and Exit Procedures", Danish Refugee Council, Landinfo and Danish Immigration Service, 01 February 2013, CIS25114, 5.1.2

⁹ "Islamic Republic of Iran Labour Code", Islamic Republic of Iran, 20 November 1990, CX267679

¹⁰ "Iranian Glue Company's Rules Attract Scrutiny for Possible Rights Violations", Center for Human Rights in Iran (United States), 23 August 2017, CXC90406612680

¹¹ DFAT, "Country Information Report: Iran April 2016", CIS38A8012677 3.77

¹² DFAT, "Country Information Report: Iran April 2016", CIS38A8012677 5.29

¹³ DFAT, "Country Information Report: Iran April 2016", CIS38A8012677 5.47

¹⁴ DFAT, "Country Information Report: Iran April 2016", CIS38A8012677 5.47

42. I accept that the applicant had a new manager appointed over him in the workplace in 2013. I am willing to accept that the new manager was difficult and religiously zealous and that this led to conflict with the applicant, who I have accepted, was a non-practising Muslim. I observe that difficult managers are an unpleasant fact in many workplaces. Whilst I am sympathetic with the applicant's predicament, I am conscious that managers, even in Australia, are expected to provide advice on what is appropriate workplace dress, grooming and appearance of staff and to reprimand staff who do not meet expectations. I do not accept that the changes the applicant has claimed in this regard go beyond normal management practices. Country information indicates that employees in Iran cannot be required to attend compulsory prayer sessions at work.
43. In any case, the central issue arising from these claims is the applicant's assertion that his manager threatened to report him to the authorities and that this denouncement, coupled with the files which the Iranian Government held on him from his earlier arrest in 2009, resulted in the applicant being summoned to appear before the Revolutionary Court several days later. I found the applicant's explanation of this summons to be vague and fanciful. On his own evidence, the applicant never saw any summons (or any of the other court documents) as he was in hiding in his father's hometown. He says that his family has destroyed the court documents (and all subsequent documents) out of fear. The applicant says he is disappointed by the destruction of all of this documentation as he is unable to submit the documents to the Australian authorities in support of his claims, though I note at the end of the applicant's Protection Visa Interview he told the delegate that he would be easily able to obtain a copy of the summons (though none has been provided).
44. Like the delegate, I am sceptical of the applicant's account. I am not persuaded that he is telling the truth. I note that the applicant himself indicates that the summons was, in part predicated on the applicant already being of some interest to the authorities in Iran due to his prior arrest. I have already dismissed this claim and I do not accept that there was any prior interest in the applicant. I find his account of the summons, which he concedes he never actually saw, and the reason offered for its claimed destruction to be fanciful. I do not accept that the applicant was ever reported to the authorities by his new manager. I conclude that the applicant has fabricated these events in order to enhance his claims for protection. I do not accept that the applicant was ever summonsed before the Revolutionary Court in Iran or that he ever went into hiding. It follows that I do not accept that there was ever a search at his home, or that his father was detained overnight or that there have been follow-up court documents delivered to his family home.
45. The applicant claims he left Iran on a passport that did not bear his real name. The country information summarised above indicates that Iran maintains a sophisticated passport, travel and immigration protocols. I found the applicant's explanation of how his father used his influence and paid bribes to obtain the passport fanciful. I found the claim that an unidentified person secretly facilitated the applicant's transition through airport to be farfetched and unbelievable. More importantly, I have found that the applicant was not of interest to the authorities in Iran at any time, and so I conclude the applicant would not have required a false passport in order to leave Iran. I am not satisfied that the applicant has told the truth about the false passport. I conclude he has fabricated this element of his claims to add weight to his other claims of being of interest to the authorities in Iran. I find that the applicant departed Iran, legally on a valid Iranian passport, issued in his own name.

Refugee assessment

46. 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

47. 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.

48. I have found that the applicant has fabricated large portions of his claims for protection. I am not satisfied that these distortions could have been made in error and I conclude that this effort was deliberate and intended to maximise his claims for protection. Overall, I did not find him to be a credible witness. I have accepted that the applicant was a non-practising Muslim in Iran, and that he attended some green movement protests between 2009 and 2011 and that he has tattoos. However, I do not accept that he was ever, personally of interest to the authorities in Iran.

Non-practising Muslim, tattoos

49. I have accepted that in Iran the applicant was a non-practising Muslim. I also accept that he has not practised his religion in Australia. I conclude that if returned to Iran the applicant would continue to be a non-practising Muslim as he was when he departed that country.

50. Country information indicates that under Iranian law a Muslim who leaves his or her faith or converts to another religion or atheism can be charged with apostasy. While cases of apostasy are rare, Muslim-born converts to Christianity, Baha’is, Muslims who challenge the prevailing interpretation of Islam, and others who espouse unconventional religious beliefs have been charged with apostasy in the past¹⁵. However, in 2014, the Danish Immigration Service reported that abstaining from Muslim rituals such as not attending mosque for example after having converted would not necessarily arouse any suspicion as many in Iran do not regularly

¹⁵ DFAT, “Country Information Report: Iran April 2016”, CIS38A8012677 5.52

attend mosques¹⁶. A 2015 report by the Austrian Centre for Country of Origin and Asylum Research and Documentation indicates that non-practising Muslims form a large part of the population of Iran's cities¹⁷. DFAT considers it unlikely that individuals will be prosecuted on charges of apostasy. DFAT also 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 if they publically manifest their religious beliefs¹⁸.

51. I have not accepted that the applicant's former manager did report him to the authorities in 2013. I conclude that the Iranian authorities would not beware of the applicant's religious views (or of his tattoos). As the applicant does not claim he would espouse or publicise his religious views I am not satisfied that he has any interest in doing so and I conclude that there is little chance the applicant would come to the attention for these views in the future. Given these circumstances, and the prevalence of non-practising Muslims in Iran outlined in the country information, I am not satisfied that the applicant would face a real chance of harm arising from his status as a non-practising Muslim if returned to Iran.
52. The applicant has two tattoos. [Details deleted]. At the time of his Protection Visa Interview the applicant indicated his intention to have his second tattoo removed, and advised the delegate he was part way through the process. The applicant has claimed that his colleagues in the [Government Agency 1] (including his new manager) were aware of the tattoos, because he habitually wore T-Shirts working in the Warehouse. Whilst the country information cited above does indicate there are some sensitivities to tattoos in Iran, I have not accepted that the applicant's manager reported him to the authorities in Iran. So I do not accept that the authorities there are aware of his tattoos. I observe that the applicant's remaining tattoo is located on his left shoulder. Such positioning is unlikely to be publically visible except in intimate circumstances, even wearing a T-Shirt. In any case, the evidence suggests that tattoos are increasingly common in Iran. In these circumstances I am not satisfied that the applicant would face a real chance of harm arising from his tattoos, if returned to Iran.

The Green Movement

53. I have accepted that the applicant was a supporter of reformist politicisms in Iran, and that following the 2009 Presidential election that he attended three protests in Iran between June 2009 and June 2011. On my findings above, the applicant was never more than a low profile attendee at these protests and did not have any organisational role with the movement. Likewise, I have found he never came to the attention of the authorities for his attendance at the protests. On his own evidence, he has not participated in any other 'Green Movement' activities since 2011. He has not taken part in any other Iranian political movements in Iran, or in Australia after his arrival in 2013. Country information suggests that attendees with the applicant's profile are unlikely to be of ongoing interest to the Iranian authorities. Given the circumstances, and the passage of time, I am not satisfied that the applicant would be of any interest to the Iranian authorities now, almost a decade later. I am not satisfied that the

¹⁶ Danish Immigration Service, "Update on the Situation for Christian Converts in Iran", June 2014, CIS28931, p.12

¹⁷ Austrian Centre for Country of Origin and Asylum Research and Documentation (ACCORD), "Iran: Freedom of Religion; Treatment of Religious and Ethnic Minorities COI Compilation September 2015", Austrian Centre for Country of Origin and Asylum Research and Documentation (ACCORD), 01 September 2015, CISEC96CF13622, p.31

¹⁸ DFAT, "Country Information Report: Iran April 2016", CIS38A8012677 3.55

applicant would face a real chance of harm for any of his 'Green Movement' activities, if returned to Iran.

Failed asylum seeker from a Western Country

54. In his SHEV application, the applicant claimed to fear harm arising from his status as a failed asylum seeker from a Western country. In the application, the applicant grounds this fear on his cumulative profile arising from his political, workplace and religious claims, coupled with the Iranian Government becoming aware that he has been in Iran for the last five years. I find this reasoning rather dubious having dismissed many of these claims, and found he would not face a real chance harm from the others.
55. Like the delegate, I have found that the applicant actually departed Iran, legally, on a passport issued in his own name. Country information indicates that many millions of Iranians travel to and from Iran each year without difficulty, including the large Iranian diaspora and Iranians with citizenship or residence abroad, including in North America, Europe and Asia as well as regional countries, such as the United Arab Emirates. While direct connections from Iran are limited, Iranians generally are able to travel onto third countries freely¹⁹. DFAT reports that voluntary returnees do not attract much interest from authorities amongst the large regular international movements of Iranians. DFAT goes on to state that 'credible sources' have advised that returnees will generally move quickly through airports – usually Tehran Imam Khomeini – without official interest. Where temporary travel documents have been issued by Iranian diplomatic representatives overseas, authorities at the airport will be forewarned about a person's return because of Iran's sophisticated government systems. Irrespective of whether a returnee is travelling on a temporary travel document or their ordinary passport, credible sources have told DFAT that they will generally only be questioned if they had done something to attract the specific attention of authorities. The vast majority of people questioned would be released after an hour or two²⁰. The head of the Iranian Passport and Visa Department has stated that Iranian constitution allows for Iranians to live where they wish and that it is not a criminal offense in Iran for any Iranian to ask for asylum in another country²¹.
56. Given the applicant's profile and circumstances, and noting the country information, I am not satisfied that the applicant would face a real chance of harm arising from his status as failed asylum seeker from a Western country.

Refugee: conclusion

57. 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

58. 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

¹⁹ DFAT, "Country Information Report: Iran April 2016", CIS38A8012677 5.28

²⁰ DFAT, "Country Information Report: Iran April 2016", CIS38A8012677 5.34

²¹ Danish Refugee Council, Landinfo and Danish Immigration Service, "Iran: On Conversion to Christianity, Issues concerning Kurds and Post-2009 Election Protestors as well as Legal Issues and Exit Procedures", Danish Refugee Council, Landinfo and Danish Immigration Service, 01 February 2013, CIS25114, 6.1

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

59. 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.

60. I have found above the applicant would not face a real chance of harm arising from any of his claims that I have accepted, including his attendance at three 'Green Movement' protests, his status as a non-practising Muslim, his tattoos or his status as a failed asylum seeker from a western country. As 'real chance' and 'real risk' have been found to meet the same standard, it follows that the applicant would not face a real risk of significant harm arising from any of these claims if returned to Iran.

Complementary protection: conclusion

61. 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

In this Act, unless the contrary intention appears:

...

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.