



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

**Decision and Reasons**

**Referred application**

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IRAN

IAA reference: IAA17/03724

Date and time of decision: 16 March 2018 09:35:00

Belinda Mericourt, Reviewer

**Decision**

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

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

## Background to the review

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### Visa application

1. The referred applicant (the applicant) claims to be an Iranian national. [In] September 2016 he lodged an application for a Temporary Protection Visa (TPV). In a decision dated [October] 2017 the delegate of the Minister of Immigration and Border Protection (the delegate) refused to grant the visa.

### 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).
3. No new information has been obtained or received by the Immigration Assessment Authority (IAA).

### Applicant's claims for protection

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4. The applicant's claims can be summarised as follows:
  - The applicant fears harm from Iranian authorities for reasons of his religion as he has a 'total lack of faith in Islam', did not practice Islam in Iran and since coming to Australia has converted to Christianity;
  - The applicant fears harm from Iranian authorities for reasons of his actual and imputed political opinion as a result of his participation in the Green Movement demonstrations in 2009 and subsequent detention and abuse. He also stated he is not willing to lie about his strong anti-regime and anti-Islam opinions in Iran;
  - The applicant believes that the discrimination he experienced in Iran and will continue to experience denies him the capacity to earn a livelihood and threatens his capacity to subsist;
  - The applicant fears that he will be targeted by Iranian authorities and suffer serious or significant harm on his return to Iran as a failed asylum seeker who has lived in Australia for a lengthy period; and
  - The applicant does not believe he can obtain protection anywhere in Iran as it is the state who will harm him.

### Factual findings

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5. The applicant's claims as to his identity and nationality have been consistent since his arrival in Australia. He conducted interviews in Farsi and has submitted copies and translations of his national birth record, national identity card, driver's licence, international drivers licence, Iranian military discharge documents and a copy of his Iranian passport. 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 he does not: s.36(3).

6. I am satisfied that the applicant departed Iran legally as the holder of a valid passport and the people smuggler in Indonesia took the passport from him.

### **Refugee assessment**

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7. 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**

8. 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.
9. Real chance is a substantial chance as distinct from a remote or far-fetched possibility.<sup>1</sup>
10. In assessing the applicant’s claims I have had regard to his migration representative’s submission at his TPV interview in July 2017. The applicant’s representative stated that the applicant is a ‘simple person’ who is unable to clearly articulate his claims. He was very stressed about attending the interview and this further compromised his ability to articulate his claims. He gave examples of the applicant’s failure to remember accurately how many years he had been in Australia and that he used a soft copy (online) Bible. I note that the applicant appears not to have completed high school although he attended until he was at least 18 years old and then started work in casual employment for [Employer 1]. He undertook compulsory military training and his role in the army included serving [in two occupations]. The applicant stated he is able to speak, read and write in English as well as Farsi. He frequently asked the delegate to repeat her questions as he had not understood them. Nevertheless, his answers were usually relevant to the questions. I note that he did not appear to have difficulty expressing his ideas and opinions at his entry interview and was at times laughing with the interviewing officer. Overall, I am not satisfied that the applicant was unable to articulate his claims. I consider that the times he struggled to provide explanations or comments in response to the delegate’s concerns were not a result of poor memory or

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<sup>1</sup> *Chan v MIEA*, (1989) 169 CLR 379 at 389.

being unable to express himself as he was clearly able to do so at other times during the interview and in his written statement of claims for which he had the assistance of a legal representative.

*Claims of harm for reasons of the applicant's actual and/or imputed religion*

11. At his entry interview the applicant stated that he had no religion. He was born a Shia Muslim but no longer believed in Islam. He only believed in God.
12. In his written application for protection the applicant stated he was born and raised in a Muslim family but he never had any faith in Islam. When he reached maturity and could decide religious matters for himself he decided he had no belief in Islam. He sees the ruling Islamic regime as the main and only cause of all his problems. Making a confession that he has no religion could have fatal consequences in Iran and it is only since arriving in Australia that he has felt free to say this. His fear of harm in Iran relates to his total lack of faith in Islam. He will not lie to the authorities about his political and religious beliefs.
13. At his TPV interview the applicant claimed that he had become a Christian. He provided the delegate with a Baptismal Certificate from [a church] dated [July] 2016. On further questioning the applicant stated he attended this church with a friend on one occasion. Most of the attendees were Iranians who were attending the church in order to obtain visas. He attended on one more occasion at which he was baptised. He did not attend again as he disliked the 'environment' in the church as they were insulting Islam all the time. He thought that no religion should insult another religion so he stopped attending. The delegate questioned how he could have been baptised after only attending the church on one occasion. She also raised concerns about why he did not include his claim to have converted to Christianity in his written statement of claims which were lodged in September 2016 [after] his baptism and claimed conversion. The applicant stated he did not like the teachings at that particular church (he could not remember the name of the church) and so did not present the certificate as part of his claims. At the end of the TPV interview the applicant's migration representative stated that the applicant only started attending a church on a regular basis in December 2016 and so at the time of his written statement his claim was only that he had no religion and was strongly opposed to the Islamic regime in Iran.
14. The delegate asked the applicant a number of questions about his knowledge and practice of his Christian faith. In summary, the applicant could not identify any of the major tenets or beliefs of Christianity. He was able to outline the stories in the Bible of the good Samaritan and Jesus being merciful to a woman who was a prostitute. He saw both these stories on videos or YouTube. When asked what he learned about the Christian religion from the movie about the good Samaritan he said he thought it was important to help people. He did not own a Bible although later his representative said he misunderstood the question as he had a soft copy of the Bible (online). He does not attend church services as he is busy with work and has a casual job in which he is employed on Sundays. He sits in a church by himself two or three times a week and feels calm. He thought it was [a certain church]. He thought it was a Catholic church. He does not interact with any other Christians or discuss his Christian faith with people, although he claimed his work colleagues, a housemate and his family in Iran know that he is a Christian. He had no witness statements, letters from a Minister of the church or any other substantiation that he is a Christian. He decided he believed in Christianity because Jesus is merciful and Islam is punitive.
15. When the delegate put her concerns to the applicant about his lack of knowledge of Christianity and the fact that he does not attend any church or interact with Christians, he said

that it thought it should be enough that it all comes from the heart and he feels good and comfortable with Christianity. The delegate put to him that he appears to practice his faith 'quietly' in private and does not talk to others about his faith. She put to him that country information indicates that he would not face harm in Iran if he practiced his Christian faith in the same way there and did not proselytise. The applicant did not understand what evangelism or proselytisation meant. However, he said he could not lie to the Iranian authorities about his religious beliefs.

16. The applicant has provided consistent evidence that he rejected Islamic beliefs in Iran before his arrival in Australia and although he believed in God he had no religion. He stated that he believed he would be harmed if he ever expressed his religious beliefs or opinions in Iran. However, he did not make any claims that he suffered harassment or harm for failing to practice Islam. I accept that the identified as 'agnostic' at the time of his arrival in Australia and that he had rejected Islam whilst he was still in Iran.
17. I accept that the applicant finds Christianity to be a more attractive religion than Islam as he believes the Christian religion is 'merciful' whereas he believes Islam (particularly how it is practised in Iran) is 'punitive'. However, based on the applicant's own evidence, I am not satisfied that he has converted to Christianity.
18. I have taken into account the applicant's migration representative's submission at his TPV interview that the applicant is a 'simple person' who is unable to clearly articulate his claims. However, the applicant was unable to describe any Christian tenets or beliefs even in the most basic terms. He himself called into question the baptismal certificate and stated, that as he did not agree with the teachings of that particular church, he had not wanted to include it in his statement of written claims. Moreover, he was baptised on the second and last occasion that he attended, clearly without understanding the nature of baptism. He only provided the certificate at the interview with the encouragement of his representative. The applicant is not a member of any Christian church, congregation or community and the only practices associated with his faith that he could identify was sitting in a church and feeling calm and occasionally watching short videos on YouTube if his work commitments allowed. He does not talk to other people about his Christian faith although he claimed his work colleagues and family in Iran know he is a Christian.
19. For the above reasons I am not satisfied that the applicant has converted to Christianity or that he has told his family in Iran that he is a Christian. However, I gave consideration to his claims to fear harm as a result of his strong opposition to Islam as it is practiced in Iran and his stated agnosticism.
20. DFAT advises that Iranian interpretation of Sharia law provides that Shia Muslims are not permitted to renounce their religion or convert to another religion. 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 and is openly

atheist can be potentially charged with apostasy, the Department of Foreign Affairs and Trade (DFAT) considers it unlikely that individuals will be prosecuted on charges of apostasy<sup>2</sup>.

21. 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.<sup>3</sup> Other sources indicate that many people in Iran do not regularly attend mosque with many young people identifying themselves as secular and agnostic or atheist.<sup>4</sup>
22. The applicant has not claimed that he would promote his atheist beliefs if he returns to Iran. Whilst he has stated it is not safe to express an anti-Islamic religious opinion and it is only in Australia he has felt the freedom to do so, I have had regard to the fact that he has not claimed to have promoted his atheist or anti-Islamic beliefs in Australia either in person or on social media despite having the freedom to do so. A senior research fellow in Iranian studies at a university in Germany advised the Austrian Centre for Country of Origin and Asylum research and Documentation (ACCORD) that “atheists usually do not express their views in public and are thus able to lead normal lives in Iran without facing any further restrictions. Whereas atheists obviously cannot discuss their opinions in public, they often use the internet to present their views anonymously. They have a number of active internet pages and blogs including a Facebook page with more than 187,000 followers.”<sup>5</sup> I am satisfied that the applicant will not promote his atheist or anti-Islamic beliefs in Iran, not out of fear of persecution but rather for lack of interest in doing so. I am not satisfied that there is a real chance that the applicant’s non-belief in Islam/atheism will come to the adverse attention of the Iranian authorities or community on return to Iran such that he will face a real chance of serious harm, having regard to the extensive examples of serious harm in s.5J(5) of the Act. I am not satisfied the applicant faces a real chance of serious harm on return to Iran for reasons of his non-belief in Islam and/or disagreement with the way Islam is practiced in Iran and/or personal atheist opinions.

*Claims of harm for reasons of the applicant’s actual and/or imputed political opinion*

23. The applicant has consistently stated that he opposes the Islamic regime which he believes does not respect individual human rights, restricts personal freedoms and cheats and lies to people. He is not a member of any political parties as no dissident political parties can be legally registered. He is not a member of any activist group in person or on-line. He stated that in Iran he never had the courage or freedom to voice his opposition to the regime.
24. At his entry interview the applicant stated that he *“took part in a few demonstrations in the Green November in 2009 against Mousavi. They were attacking people. I was scared and ran away and escaped from being attacked. I didn’t dare leave the house.”* The only incident related to his being arrested and detention was about two years before his entry interview (2011) when he was arrested for reckless driving of his motor bike when he went near a girls’ school. He had done this before and most of the time he escaped. On the occasion he was

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<sup>2</sup> Department of Foreign Affairs and Trade, "DFAT Country Information Report Iran", 21 April 2016, CIS38A8012677, p.14

<sup>3</sup> Ibid.

<sup>4</sup> Danish Immigration Service, 'Update on the Situation for Christian Converts in Iran', June 2014, CIS28931

<sup>5</sup> Austrian Centre for Country of Origin and Asylum Research and Documentation (ACCORD) "Iran: Freedom of Religion; Treatment of Religious and Ethnic Minorities COI Compilation", 28 September 2015, CISEC96CF13622

arrested he was detained for one night. He was not charged and did not pay a fine. He received a single slap on the face from the police when he was released.

25. In his written statement of claims dated [September] 2016 the applicant stated that he participated in the street protests and rallies following the 2009 election (the Green Movement). I note that he commenced his compulsory military service in [date] in Esfahan and after his initial training moved to Dezful for the remainder of his military service until[date]. He claims that he was arrested once in late 2009 when he was participating in a street protest in Ahwaz. At the time he was on leave from his military service and his younger brother encouraged him to attend. About half an hour after the applicant and his brother arrived, lorries and minibuses came with uniformed anti-riot police and plain clothes Basij. They heard shots being fired and the crowd started scrambling for cover. He lost his brother in the melee. He felt a sharp pain in his leg which stopped him running and a person tied his wrists with plastic cable and he was put into a minibus already full of young male protesters. His captors took his mobile phone and wallet. He was detained for three days and nights during which he was beaten on 4 or 5 occasions and he and another person were sexually molested on one occasion. His abuser told him that he would be released but if he ever said what had happened to him he would be found and abused again. He was told that taking part in anti-government protests whilst serving in the army is prosecutable and he could be court martialled. When he was released he had to sign a document to the effect that he must not tell anyone about what happened. He noticed that the document indicated he had been kept in [prison].
26. The applicant felt he was never the same person after his arrest. He never told anyone in Iran what had happened to him for the 3½ years he remained in Iran. He was very embarrassed about what happened and felt he could not mention this in his arrival interview especially in the presence of the interpreter. He thought if other detainees (in Australia) found out about what had happened to him he would be stigmatised and harassed by them.
27. At his TPV interview the delegate raised his concerns that he had not made any mention of his arrest, detention or harm at his entry interview. The applicant said that when he first arrived he did not trust anyone and he was scared of being deported. He was not sure if he would be staying in Australia. The immigration officer told him to be brief and not tell him all his issues.
28. I have listened to the applicant's entry interview conducted [in] June 2013, a month after the applicant's arrival. The immigration officer did not tell him to be brief when he asked the applicant to tell him the reasons he left Iran. He allowed the applicant to speak for a while about his problems with Sepah and finding employment. The officer asked the applicant why the Sepah made life hard for him and the applicant expanded on how he was picked on for his hair, clothes and appearance and forced to say prayers at school. The officer asked if there were any other reasons he left Iran and the applicant said not in particular – "its within what I said because they (Sepah) made life very, very hard for us." Later in the interview the officer asked the applicant for details about when he took part in the Green Movement demonstrations. The applicant clearly stated twice he escaped from being attacked. Still later the officer asked the applicant about what happened on the occasion he was arrested for reckless driving. The applicant described what he had been doing (driving past a girls' school) implying he had done this more than once, but only been caught once. He was locked up overnight and released the next morning. He described being slapped on the face by a police officer on his release.
29. I consider that the applicant was given ample opportunity at his arrival interview to provide details about his claims and treatment in Iran. I understand that for various reasons the

applicant may have been unwilling to admit he had been sexually molested during the time he was detained. However, as he freely discussed his dislike of the rules and laws in Iran, his contempt for Sepah, his arrest when he was only driving past a girls' school and his participation in political demonstrations in 2009, I do not accept that he was embarrassed to admit he had been arrested and detained at that time or that he was beaten during his arrest.

30. DFAT notes in its 2016 country report on Iran that in 2009 and 2010 thousands of Green Movement demonstrators were detained and thousands beaten and harassed by security forces – so many in fact, that it has not been possible to credibly estimate how many individuals were detained during this period.<sup>6</sup> I consider that, given the applicant's strongly stated opposition to the Iranian regime, that if he had been arrested during the Green Movement protests he would have mentioned this during his entry interview, even if he withheld the details of the abuse he claims to have suffered at that time. Instead he spoke about seeing uniformed police and Basij arrive and hearing shots and fleeing to his home where he remained as he was scared. I also note that the applicant also refers to speaking a fellow detainee six months after the event who told him he was leaving for the US. The applicant took no steps to leave Iran at that time, instead completing his compulsory military service and then seeking work and working for another 2½ years. I also had regard for the fact that the applicant was undertaking his compulsory military service at the time he claims to have been arrested and detained for three days. He had only started his training a few months beforehand in July 2009. He said that he had come home for two days leave. I consider that had he participated in the demonstrations and been detained for three days that his superiors in the army would have been aware of his detention and that there would have been some repercussions for him in the military. The applicant has made no reference to the military being aware that he was on leave for longer than two days or of his arrest and detention.
31. Based on the above anomalies and inconsistencies in the applicant's evidence I do not find his evidence credible that he was arrested and detained for three days following his participation in a demonstration in late 2009. I accept that he was arrested and detained for one night in 2011 when he was picked up for driving his motor bike past a girl's school and that he was not charged or fined and he did not suffer any serious or significant harm.
32. The applicant was able to depart Iran legally using his own passport which was issued on 16 June 2012. This suggests that he was not of adverse interest to the authorities at the time of his departure.
33. On balance, although I accept that the applicant strongly dislikes the current regime in Iran, and its rules and regulations, I am not satisfied that he has been imputed with an anti-regime political opinion such that he has in the past or will in the foreseeable future attract the adverse attention of attention of the Iranian authorities or any other person. I consider the primary reason the applicant departed Iran was, as he stated at his entry interview, for work. I am not satisfied that there is a real chance that the applicant will suffer serious harm, having regard to the extensive examples provided in s.5J(5) of the Act, for reasons of his actual or imputed political opinion if he is returned to Iran now or in the reasonably foreseeable future.

*Claims of economic harm that threatens his capacity to subsist*

34. The applicant stated that he comes from Ahwaz in Khuzistan province and he is of Bakhtiari ethnicity. He has not made any claims based on his ethnicity. His father is also Bakhtiari and

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<sup>6</sup> Department of Foreign Affairs and Trade (DFAT), "DFAT Country Information Report Iran April 2016", 21 April 2016, p.15, CIS38A8012677

was employed in the public service for 35 years. The applicant has claimed that he experienced 'discrimination' when seeking government employment for reasons related to his lack of connections within Sepah or the Basij and his arrest and detention in 2009. As discussed above, I am not satisfied that the applicant was detained in 2009 after participating in Green Movement demonstrations or that his detention in 2011 for one night was for reasons related to his imputed or actual political opinion.

35. The applicant stated that since leaving school he has been employed on a casual basis [with Employer 1]. He also was employed in a similar role whilst doing his compulsory military service. His father helped him to purchase a car which he used as a taxi to supplement his income. At both his entry interview and in his written application he described applying unsuccessfully for government positions. He said that every job he applied for required him to be a member of the Basij or be a member of a war veteran family. He was neither of these things. Nor could he obtain a letter from Sepah which was often another requirement. In his written application he stated that he enlisted for and completed his military service because his father, who is a retired [government] employee with 35 years' service, told him if he had his military service completion certificate he could help him get a public sector position. After finishing his national service in January 2011 he applied for three public sector positions unsuccessfully despite his father's attempts to assist him. At his entry interview the applicant clearly stated that the main reason he came to Australia was work, because he couldn't make a living and also lack of security.
36. Country information indicates that demographically a high proportion of Iran's population is under 30 years. In recent years there has been high inflation and weak growth due to a drop in oil prices and the on-going effects of sanctions. Although the official unemployment rate is 10%, informal estimates that it is much higher especially among young people.<sup>7</sup> DFAT also confirms that the Sepah play an important role in Iran's economy and has interests in many facets of the Iranian economy, particularly in infrastructure and oil. Corruption is endemic.<sup>8</sup>
37. Based on the above country information, and the applicant's evidence that he has no qualifications and appears to have not completed high school, I accept that he had difficulty finding employment that he preferred in the government or oil sectors. However, I am satisfied that he was not denied a '*capacity to earn a livelihood of any kind, where the denial threatened his capacity to subsist*' as he was able to earn a livelihood continuously, albeit in casual work (as he has in Australia), and remain living in his family home since leaving school. I am also satisfied that the discrimination that he may have experienced in seeking employment was not based on a Convention reason, but rather is a result of poor employment opportunities for young people, especially those with no qualifications, and possible corruption.
38. I am therefore satisfied that the discrimination the applicant experienced in seeking his preferred employment does not amount to serious harm or persecution. I am also satisfied that there is no real chance the applicant will suffer serious harm, having regard to the extensive examples of serious harm provided in s.5J(5) of the Act, when seeking employment if he is returned to Iran now or in the reasonably foreseeable future.

*Claims of harm for reasons of being a member of a particular social group, that is, failed asylum seekers who have resided in a Western country for a lengthy period*

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<sup>7</sup> Department of Foreign Affairs and Trade, "DFAT Country Information Report Iran April 2016", 21 April 2016, p.5, CIS38A8012677

<sup>8</sup> Ibid

39. I am satisfied that the applicant departed Iran lawfully as the holder of a valid passport and that he will be returned to Iran on temporary documents as he no longer has possession of his passport. I accept that there is a real chance he will be assumed by Iranian authorities to have sought protection in Australia.

40. The 2016 DFAT country report on Iran states;

*“Iran says it does not accept involuntary returnees. However, in practice, border authorities regularly accept Iranians with valid Iranian travel documents returned involuntarily or even those without documentation if persuaded they are Iranian. Iranian overseas missions will not issue travel documents to an Iranian whom a foreign government wishes to return involuntarily to Iran. 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 or with passports).*

*From DFAT’s anecdotal observation at airports, a voluntary returnee (complete with IOM bags) does not attract much interest from authorities amongst the large regular international movements of Iranians. Credible sources have told DFAT 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 two.”<sup>9</sup>*

41. The UK Home Office Country Information and Guidance relating to Illegal Exit from Iran states that Iranians who return with their passports will not face any problem at the airport even if they have stayed away a lengthy period. The report cites the Danish Refugee Council, Landinfo and the Danish Immigration Service February 2013 report which noted that ‘Mr Hossein Abdy, Head of Passport and Visa Department, stressed that the Iranian Constitution allows for Iranians to live where they wish. It is not a criminal offence in Iran for any Iranian to ask for asylum in another country. He further stated that approximately 60% of Iranians who have asylum in other countries, travel back and forth between Iran and other countries’.<sup>10</sup> An Attorney at Law was also quoted as stating that there is a fine for leaving Iran illegally of around USD200-300. If the person has outstanding issues with the authorities other than leaving illegally he or she may very likely be punished for these upon return and the punishment may be more strict if the person has left illegally.

42. Considering the country information before me I am not satisfied the Iranian authorities impute failed asylum seekers from Western countries or people who have resided in Western countries as holding an anti-regime, Western sympathiser or anti-government opinion in Iran or seek to prosecute or otherwise harm them for reasons of having made a claim for asylum. I am satisfied the applicant had no difficulty departing Iran using his own passport which suggests he was of no interest to Iranian authorities prior to his departure. I am satisfied that that he has no outstanding issues with the authorities that may attract punishment other than

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<sup>9</sup> DFAT, "DFAT Country Information Report Iran", 21 April 2016, CIS38A8012677, p.28-29

<sup>10</sup> UK Home Office, "Country Information, Iran: Illegal Exit, Version 4", p.13, 4 July 2016

the fine for his illegal departure. Being questioned does not meet the standard of serious harm in s.5J(5) of the Act.

43. I have had regard to the applicant's migration representative's submission at the applicant's TPV interview in which he stated that if an Iranian citizen was returned to Iran and he did not have valid travel documents he would have to apply for a temporary "travel pass" which would involve answering questions about why he left Iran and went to Australia, what he did here and he would also be asked about his religion. The Iranian government has the same expectations as the Australian government that applicants for a travel pass will tell the truth. The application document is therefore an incriminating document and the applicant's answers would result in his immediate arrest, imprisonment and harm on his return to Iran. The applicant's representative offered to provide the delegate with a translated copy of the application form but did not do so before the delegate made his decision 10 weeks later. Consequently I am unable to make definitive findings about what questions are on the application form.
44. However, I have found that the applicant is a non-practising Shia Muslim who believes in God and that the primary reason he came to Australia was to seek work. Iranian authorities consider that if born a Shia Muslim that is what a person is. I am satisfied that the applicant would be able to complete such questions about his religion and purpose for coming to Australia and what he has been doing here without being untruthful and there is no real chance that he would suffer serious harm as a consequence.
45. As I am not satisfied the applicant was of adverse interest to the authorities prior to his departure and there is no information before me that the applicant has done anything in Australia that may attract the adverse attention of authorities in Iran, I am satisfied that he may be questioned for a brief period on his arrival at the airport and he would then be released.
46. Although I accept that the applicant will be likely to be questioned on return to Iran by the Iranian authorities, I am not satisfied this amounts to serious harm having regard to the extensive examples provided in s.5J(5) of the Act. I am not satisfied the applicant faces a real chance of serious harm on return to Iran on the basis of being a failed asylum seeker from Australia and/or because he resided in a Western country for a lengthy period, if he is returned to Iran now or in the reasonably foreseeable future.

*Consideration of the applicant's claims cumulatively*

47. As discussed above, I am not satisfied that the applicant was arrested and detained in late 2009 for participating in Green Movement demonstrations. Whilst I accept his personal political opinion is anti-regime, and that he attended one Green Movement demonstration when he was home on leave from his compulsory military service in 2009, I am satisfied that he never attracted the adverse attention of the Iranian authorities in Iran for reasons of his actual or imputed political opinion. I am satisfied that the applicant has not engaged in any political activities in person or on-line in Australia which may attract the adverse attention of the Iranian authorities. I am therefore satisfied that there is no real chance that he will suffer serious harm, having regard to the extensive examples of serious harm in s.5J(5) of the Act if he is returned to Iran now or in the reasonably foreseeable future.
48. I am satisfied the applicant is a non-practising Muslim who believes in a God (is agnostic) and that was his belief prior to his departure from Iran. Based on his evidence I am satisfied that he did not suffer any harm in Iran as a result of his personal religious beliefs or his failure to

practice Islam. For the reasons discussed above I am not satisfied that the applicant has converted to Christianity. I am satisfied that the applicant has not promulgated his religious beliefs in Australia and will not do so in Iran for reasons related to lack of interest rather than fear of persecution. I am satisfied there is no real chance that the applicant suffer serious harm for reasons of his religious beliefs or practices (or lack of religious practice) if he is returned to Iran now or in the reasonably foreseeable future.

49. I accept that the applicant has subjectively experienced discrimination when seeking his preferred employment in the public sector. I do not consider the discrimination he has experienced is for Convention reasons or that it meets the standard of 'denial of his capacity to earn a livelihood of any kind, where the denial threatens his capacity to subsist': s.5J(5)(f) and is therefore not serious harm.

50. I am also satisfied there is no real chance the applicant will suffer serious harm if he returns to Iran as a failed asylum seeker who has sought asylum in a Western country and resided in Australia for a lengthy period.

51. Having considered all the applicant's claims cumulatively I am not satisfied that the applicant has a well-founded fear of persecution or that 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) if he returns to Iran now or in the reasonably foreseeable future.

#### **Refugee: conclusion**

52. The applicant does not meet the requirements of the definition of refugee in s.5H(1). The applicant does not meet s.36(2)(a).

#### **Complementary protection assessment**

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53. 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**

54. 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.

55. Real chance and real risk involve the same standard.<sup>11</sup>

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<sup>11</sup> *MIAC v SZQRB* (2013) 210 FCR 505

56. As discussed above I am satisfied the applicant is a non-practicing Muslim who believes in God. I am not satisfied that the applicant has converted to Christianity. 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 Act) as a consequence of his religious opinions, beliefs, practices or failure to practice if he returns to Iran now or in the reasonably foreseeable future.
57. I accept that the applicant has a personal opinion that is strongly opposed to the current Iranian regime. I accept that he attended one demonstration in 2009 during the Green Movement, but I am not satisfied that he was arrested, detained for three days and physically or sexually abused at that time. I am satisfied that he has never come to the adverse attention of the Iranian authorities for reasons related to his actual or imputed political opinion and that he has not engaged in any activities in Australia or on-line that would attract the adverse attention of the Iranian authorities for any reason. I am therefore not satisfied that there is a real risk the applicant will suffer significant harm as a consequence of his imputed or actual political opinions or activities if he returns to Iran now or in the reasonably foreseeable future.
58. I accept that the applicant has subjectively experienced discrimination when seeking his preferred employment in the public sector. I do not consider the discrimination he has experienced meets the definition of significant harm in s.36(2A) of the Act.
59. I am satisfied that the applicant departed Iran legally on a valid and genuine passport and the applicant was of no adverse interest to the Iranian authorities or any other person prior to his departure in May 2013 and 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 his return to Iran whether he 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 he 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 Act) from the Iranian authorities or any other person if he is returned to Iran now or in the reasonably foreseeable future, as a consequence of having sought asylum in Australia and/or having resided in Australia for a lengthy period.

*Cumulative consideration of claims*

60. 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 his circumstances and profile if he is returned to Iran now or in the reasonably foreseeable future.

**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**

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

## Applicable law

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### ***Migration Act 1958***

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

...

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

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

...

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

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

but does not include an act or omission:

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

...

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

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

...

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

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

...

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

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

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

...

#### **5H Meaning of refugee**

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

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

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

...

## 5J Meaning of well-founded fear of persecution

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

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

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

## 5K Membership of a particular social group consisting of family

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

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

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

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

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

#### **5L Membership of a particular social group other than family**

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

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

#### **5LA Effective protection measures**

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

...

#### **36 Protection visas – criteria provided for by this Act**

...

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

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

...

*Protection obligations*

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

*Determining nationality*

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