



Australian Government
Immigration Assessment Authority

Decision and Reasons

Referred application

IRAN

IAA reference: IAA17/03763

Date and time of decision: 12 July 2018 10:55:00

P Tyson, 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 a national of Iran. On 18 November 2016 he lodged an application for a Safe Haven Enterprise visa (protection visa). A delegate of the Minister for Immigration and Border Protection (the delegate) refused to grant the visa in a decision dated 16 October 2017. The delegate found the applicant's claim that he had been wrongly accused of participation in a riot and was wanted by Iranian authorities not credible. The delegate concluded there is not a real chance of the applicant being persecuted or a real risk of him suffering significant harm because of his political activism on social media, departure from Iran, tattoos or as a non-practising Muslim.

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. On 9 November 2017 the IAA received a submission and documents from the applicant's representative. To the extent the submission contains argument in response to the delegate's decision I have considered it.
4. The submission attaches and refers to a [media outlet] Persian news article dated [2013], and accompanying translation. The [media outlet] article relates to the arrest of gang members in Tehran, including the area where the applicant lived, in [2013]. The submission also contains links to photographs on the [news] website which show what look to be a group of men, some who seem to be the same men photographed in the [media outlet] article, being arrested. Some of the men are wearing short sleeves and have visible tattoos. This material is relevant to the applicant's claim that he and a friend were suspected to have been involved in a group of men who carried out assaults and property damage in Tehran in [2012] on the basis that they had similar tattoos to those captured on surveillance footage of the incident.
5. The submission argues that the photographs confirm that cold weather would not stop rioters wearing short sleeves, and that it indicates that some of the riot participants were arrested in [2013], shortly after the applicant departed Iran and also after he was summoned. It is said that the applicant was not represented by a migration agent before the Department and was unaware that he could provide further information, including third party information and news, in support of his claims, and was also unaware that the incident had been published in major local and overseas websites, and so could not have provided the information to the delegate. It is argued that as a result, there are exceptional circumstances to consider the information, and that it would have affected the delegate's decision.
6. I accept the applicant was not represented before the Department. However, I do not accept he was unaware that he could provide further information such as third party information or news. At the protection visa interview conducted on 16 June 2017, the applicant presented documents to support his claims. He was told by the delegate during the interview that it was his responsibility to raise his claims and provide evidence in support, and that if the application was refused he may not have another chance to provide further information. The delegate requested that the applicant provide certain further information after the interview, and told him that any additional information he provided before an application was made, including the requested material, would be considered. The applicant availed himself of that opportunity

and submitted some of the requested material to the delegate following the interview. While the delegate did not specifically tell the applicant he could provide material such as news articles, nor did he place any limits on the type of material the applicant could submit. The [media outlet] article is in Persian and the [news] website is also in Persian and I do not accept the applicant would have been unable to locate this material or submit it to the delegate.

7. Further, in my view the new information does no more than generally corroborate the plausibility of the applicant's claims that groups of men, some of whom have tattoos, were carrying out criminal activities in his area of Tehran and were wanted by authorities for that reason, and that men in Tehran may wear t-shirts in winter (which I note the delegate ultimately accepted was plausible). Contrary to what is said in the submission, the events depicted in the article and photographs do not appear to relate to a specific incident of gang violence or rioting. The article states some of the arrestees had committed extortion on citizens and inflicted terror and thuggery, but provides no information as to when that occurred. It describes the arrests as being part of a three-stage operation which commenced the previous autumn, whereas I note the incidents described by the applicant took place approximately two weeks before his departure from Iran at the end of December. The information neither supports nor undermines the applicant's claims that in the incident in question drunken men were smashing windows, yet there were many Basij in the area who did not apprehend them as they were asleep (which the delegate found internally inconsistent). The article and photographs do not evidence the particular incident to which the applicant has referred, or suggest that the authorities continue to seek specific persons over that incident. I do not accept the applicant's reasons for only now submitting the new information or the arguments in the submission regarding the claimed exceptional circumstances, and having regard to this along with the nature and content of the material, I am not otherwise satisfied there are exceptional circumstances that would justify considering the new information. I am not satisfied of the requirement in s.473DD(a).
8. The email also attaches an Iranian court summons and translation. These documents were not included in the material given to the IAA by the Secretary, and the delegate has stated in his decision that the applicant had not produced evidence of the summons he claimed to have received. However, it is evident from the recording of the protection visa interview that the applicant showed the delegate a summons and translation during that interview. I accept that, as stated in the submission, the documents now given to the IAA are the same documents shown to the delegate and are not new information within the meaning of s.473DC(1).

Applicant's claims for protection

9. The applicant's claims can be summarised as follows:
 - When the applicant was in high school he was beaten by a member of the Revolutionary Guard school moderator who accused the applicant of wanting to steal his gun. The applicant ran away and never returned to that school.
 - In around 2009 or 2010 the applicant was stopped by police while with his girlfriend. He was questioned about their relationship, detained for 24 hours and released after signing an undertaking.
 - In 2011 the applicant was arrested by the morality police for his style, held in custody for eight hours and released after signing an undertaking. He was told that if he was arrested again he would be lashed, fined and imprisoned.

- In late 2012 a group of masked men were causing trouble in Tehran, causing damage, vandalising cars and assaulting people, including a pregnant woman who later miscarried. These men had tattoos similar to those of the applicant and his friend A. The applicant was away from Tehran at the time of these events, but A was arrested and the applicant received a call from friends telling him not to return home or else he would also be arrested. The applicant hid at his uncle's house and organised funds for travel. The applicant has learnt that A was imprisoned for 18 months and tortured and, after being released on security, fled Iran and is now in [another country].
- The applicant departed Iran legally on his own passport. After his departure, in around January 2013, a summons to appear in court about an investigation into a possible assault was raised by the Iranian government.
- Around two years prior to leaving Iran the applicant was upset by the Iranian government and stopped believing in Islam. In Australia, he has been involved in a Facebook page that posts anti-government content which the government can read.
- The applicant fears he would be arrested at the airport and jailed for an uncertain amount of time. He has been threatened that he would be lashed and tortured. He fears he would be executed because of the statements on Facebook, as has happened to some people in Iran already. He no longer believes in Islam and changing religion in Iran is a crime punishable by execution. He also fears harm for leaving Iran and not returning. As it is the government forces who will arrest and harm him, he cannot obtain protection, and nor could he move elsewhere in the country as the Revolutionary Guard and Ministry of Intelligence would be able to track him down.

Factual findings

10. As evidence of his identity and nationality, the applicant has provided copies of his Iranian drivers licence, birth certificate, military service exemption card and national identity card. I accept his identity and nationality as claimed and find Iran to be the receiving country for the purpose of this assessment.

Past events in Iran

11. The applicant has said that while he was at school, he was beaten by an officer there who was from the intelligence organisation and accused of wanting to steal his gun. The applicant ran away and did not return to school after that. I am willing to accept this incident occurred as he claims. The applicant referred in the protection visa interview to having previously had 'a case' where he complained about somebody and ended up being accused himself, although provided no further details about this or claimed to fear any future harm because of it. The applicant also claims that he has been arrested by Iranian authorities on two occasions. At the interview, he said that the most recent arrest, which was because of the way he had his hair, took place in [2011]. He was released after writing an undertaking not to style his hair and dress the way he had. In the statutory declaration submitted with his visa application, he says he was detained for around eight hours on this occasion and was told that if he was arrested again he would be lashed, fined and imprisoned. On the applicant's evidence, the first arrest took place around 18 months earlier. He was stopped while walking with his girlfriend and was kept at a police station for 24 hours, again released after writing a letter that it would not happen again. Country information¹ confirms that Iranian authorities can take a heavy-handed approach when enforcing standards of Islamic conduct, including Islamic dress and public

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

displays of affection with members of the opposite sex and I am willing to accept the applicant's evidence regarding these arrests. However, I am not satisfied on the evidence that the applicant experienced any further repercussions or was of any ongoing interest to Iranian authorities as a result of any of these incidents.

12. The delegate did not accept that the applicant was wanted by Iranian authorities because of his participation in a riot. The delegate had concerns over the plausibility of rioters breaking windows and smashing cars in an area said to have many Basij members, the applicant's failure to go to the police and offer evidence of his alibi, and his failure to produce evidence of the summons he said had been issued by Iranian authorities. The submission to the IAA provides the applicant's reasons for disagreeing with these findings.
13. I accept the delegate was incorrect in stating that the applicant had failed to give evidence of the summons. It is evident from the recording of the interview that the applicant showed the delegate a copy of the summons and a translation. I do not draw any adverse inference from the applicant's failure or inability to submit the original following the interview, as requested by the delegate. The summons consists of two pages. Consistent with the applicant's claims, the document records that it was issued in January 2013 and was left with the applicant's father in the applicant's absence. It requests that the applicant attend the Criminal Branch of the Dispute Resolution Council court [in] February 2013, with regards to a complaint by the Army of the Guardians of the Islamic Revolution against him for causing injuries.
14. It is the applicant's claim that he was in the north of Iran for three or four days at the time that trouble-makers came into his area. He said one of those people had tattoos on his hand, which was visible on security footage. The applicant had a similar tattoo and was accused. The store owners located in the area were largely Basij people and the applicant and his family had lived in the area for many years so people knew him. As the applicant was returning to Tehran, he received a call from a friend who told him not to come back. He was informed that his friend A, who was in Tehran at the time, had been arrested the day after the riots. A also had tattoos similar to the trouble-makers.
15. The delegate asked the applicant if the police had come to speak to him, and he said no. He claimed that after receiving the phone call, he did not return home and instead stayed at his uncle's house. He claimed to have heard that the police went to the area where he used to go or 'get together' but said police did not come looking for him at his uncle's place, because no one knew it and it was located in the middle of Tehran. A summons was sent only after he left Iran.
16. On the applicant's evidence, it is unclear what, if anything, occurred following his failure to attend court on the day requested in the summons. The delegate asked the applicant if he had heard anything more and he claimed that his parents had not informed him of anything. The applicant gave a number of different responses regarding contact with his family, initially claiming that they did not inform him of anything because he did not speak to them much, then that he did not speak to them about such things, then when it was put to him that he had indicated in his visa application form that he spoke to them three times a week, he claimed that he spoke with his mother and not his father and that his mother never asked him about what he is doing. The applicant also claimed that he had not told his parents much about his reasons for coming to Australia and had only informed them he was leaving on the same day that he departed and had told them that he had a problem, did not believe in Islam and that was why he was leaving. He claimed that when his father received the summons, he had just told the applicant he received it and asked what is happening, the applicant said he did not know and requested to be informed by email.

17. I find this improbable. If, as the applicant said, he was identified by people in the area because he was known there and learnt of these details through friends, it is very unlikely that his parents would not have also heard about the incident and suspicion over the applicant at that time, prior to his departure. The applicant himself acknowledged that he thought other people would have informed his father about what had happened. I find the applicant's evidence regarding contact with his family to be shifting and evasive and do not accept the applicant's claim that he does not speak to his father much or discuss such matters with his parents. I do not accept that the applicant's parents would have been unaware of the suspicion over him at the time he left Iran or would not have kept him informed of any developments either prior to his departure or following it, noting that on his claims, his parents allegedly informed him of the court summons and sent him a copy of it.
18. The applicant learnt of the accusations against him through a friend and appears to have made the decision to depart Iran on the basis of that information, despite having been in a different city at the time the events in question occurred. On the applicant's evidence the incident took place approximately two weeks prior to his departure, which was in late December. It does not appear from the applicant's evidence that the authorities went to his own home or otherwise attempted to locate him in the period prior to his departure, other than apparently going to an area where he used to go. The summons was not issued until approximately a month after the incident, and required the applicant's attendance at court the following month. This timing does not suggest any sort of urgency in apprehending the applicant, in contrast to the claimed immediate arrest and detention of his co-accused friend the day following the incident. There does not appear to have been any further action taken against the applicant or attempt to locate him despite his failure to appear at court on the requested date. If the authorities had identified the applicant as a suspect as he claims, it seems implausible that they would not have taken greater and more immediate action firstly after the incident itself and secondly after he failed to attend court.
19. In addition, the applicant claims to have left Iran lawfully through the airport after approximately two weeks. Country information² indicates that while it is possible to leave Iran to flee arrest warrants or charges, this is usually accompanied overland rather than through the main airports. The applicant has said that the authorities did not know he was escaping and had not banned him from leaving the country. While I accept that he does not claim that an arrest warrant had been issued, he had no way of knowing what information might have been given to airport authorities. His action in departing through the airport on his own passport seems inconsistent with his claimed belief that he was wanted by the authorities.
20. While I have taken into account the fact that the applicant has been generally consistent in his claims, having given similar reasons for leaving Iran when questioned at an arrival interview conducted in February 2013, and that he has presented what purports to be a summons as evidence, considering all of the above together, I do not find the applicant's claims regarding the alleged interest in him to be plausible. The consistency and the existence of the summons document do not outweigh my concerns. I do not accept that the applicant was wrongly identified as one of a group of men rioting and causing damage and injury, was wanted by authorities for that reason and summoned to appear in court.
21. I do not accept that the applicant was a person of any interest to Iranian authorities at the time of his departure from Iran because of these claimed events or the earlier incidents I have considered above.

² Ibid.

Tattoos

22. The applicant has claimed to have tattoos and it is evident from the recording that some of those were sighted by the delegate. The applicant's Facebook profile picture and other photos, which appear in the material before me, show large [tattoos]. He said at the interview that he had obtained some [in] Australia. I accept the applicant has tattoos including in visible places such as his hands.

Religious and political views and activity

23. The applicant has claimed in his statutory declaration that two years before leaving Iran he started to be upset by the government and stopped believing in Islam. At the protection visa interview, he expressed his disagreement with being forced to believe in god and be Muslim, and said he had lost his belief. He clarified that he still believes in God but not Islam. He claimed that he had told his family his views and had been blamed and questioned about why he was not practicing, praying and fasting. The delegate asked the applicant who knew he was not a Muslim and he said not many people because he was not able to tell people because he would not be here if the government had found out. He claimed that he could not disclose his beliefs and was pretending, such as not eating during Ramadan. He stated that changing religion in Iran is a crime and serious offence, with the consequence being execution. The applicant was able to explain and justify his opinions and I accept he holds the views he claims.
24. The applicant claims in his statutory declaration that since being in Australia he has been involved in a Facebook page that posts anti-government messages and posts that the government can read. At the interview, he said that he had been a political activist and shared his opinion on Facebook, such as things relating to Islam, blaming the government and the consequences for those who do not follow the rules such as during Ramadan or not abiding what the government says. Following the interview the applicant submitted screenshots of a number of posts he has made on social media, with some translations. The posts appear to depict harm inflicted on persons by the Iranian government, including in one case for not observing Ramadan. I accept they would be perceived as anti-government and potentially anti-Islamic in content and that they reflect the applicant's views. The posts the applicant has submitted seem to consist of him 'sharing' other persons' or pages' posts, or in one case a news article, without adding commentary of his own. I am not satisfied on the evidence that the applicant has any activity with a Facebook page that posts anti-government messages, as claimed in the statutory declaration, beyond having shared such content on his own personal page.

Refugee assessment

25. 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

26. 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.

27. I do not accept that the applicant was a person of any interest to the Iranian authorities at the time he departed Iran or that there is a real chance of him being harmed in the reasonably foreseeable future in connection with any of the past events he has referred to.

28. The applicant referred during the interview to facing restrictions such as, as a single man, not being able to easily meet with friends in a public area such as a park and talk openly. I accept that he has in the past been arrested because of his appearance and conduct such as being with his girlfriend in public. I also accept that the applicant visible tattoos.

29. According to the Australian Department of Foreign Affairs and Trade (DFAT)³, youth in Iran can experience low level harassment from authorities such as searches, car checks and verbal warnings for dress or behaviour, and that enforcement can be unpredictable. Authorities usually turn a blind eye to unmarried couples together in public, although if arrested, they would usually be taken to a police station, have parents or guardians summoned, and be released after making a written statement and, sometimes, paying a fine. DFAT has said that while certain hairstyles, grooming and tattoos are considered 'unIslamic', DFAT regularly sees young Iranian men with western hairstyles and visible tattoos, which it says are increasingly common. DFAT assesses that Iranians would be unlikely to come to the interest of authorities on the basis of 'western' or 'unIslamic' grooming along, or be targeted by security forces solely for having a tattoo, although it assesses that it is possible that person with a visible tattoo could receive low-level harassment. Penalties for improper dress or hairstyles, which DFAT assesses would also apply to tattoos, would usually be a warning or a fine, and DFAT has said it is unlikely authorities would maintain an interest in someone who had previously come to their attention for having a tattoo, unless it gave evidence of another crime. As found above, I do not accept the applicant's claims to have been linked with crimes because of his tattoos. The delegate and submissions to the IAA cite a UK-based academic with expertise in Iranian law who suggests harsher treatment for men who disrespects social mores in their appearance, including by having tattoos, saying they would be arrested on a regular basis by police and harassed until they ceased defying the norms⁴. However, this does not appear to have been the applicant's experience in the past and I place greater weight on DFAT's in-country assessment.

30. The applicant's past encounters with authorities were 18 months apart, and the most recent was approximately 18 months prior to his departure from Iran. They appear to have been

³ Ibid.

⁴ Austrian Centre for Country of Origin and Asylum Research and Documentation (ACCORD), "Iran: Women, children, LGBTI persons, persons with disabilities, "moral crimes": COI Compilation", 1 December 2015, CISEC96CF14191.

isolated and random and involved only short periods of detention. I accept it is possible that the applicant may again have very occasional encounters with the Iranian authorities because of his appearance and conduct, and have taken into account that he claims to have been threatened he would be lashed, fined and imprisoned if it occurred again. However considering the above country information, I find there is no more than a remote chance that he would face any greater harm than warnings, fines or, at most, brief periods of detention pending release on paying a fine or signing an undertaking. I find that even taken together, isolated harm of this nature does not amount to serious harm. I am not satisfied there is a real chance of the applicant being seriously harmed for reasons of his appearance, including his tattoos, or his conduct.

31. I accept that the applicant has made posts on Facebook that would be viewed as anti-government and anti-Islamic. The applicant said that he does not have freedom of speech in Iran but does in Australia, and has spoken of things here, including through his Facebook. He said it would be easy for the government to find out and he fears he will be harmed, including potentially being executed.
32. The delegate has referred to a range of country information⁵ regarding the monitoring of social media in Iran, which I have also considered. Although the Iranian government blocks many websites, including Facebook, there is reportedly an active 'blogosphere' in Iran and large social media use, with many using VPNs to circumvent blocks and anonymise their activities. There are estimates that up to 17.2 million Iranians have a Facebook account and many more use other social media platforms such as Telegram. There are units within the Islamic Revolutionary Guard Corps specifically tasked with identifying and prosecuting online activists and bringing down websites perceived to pose a challenge to the authority of the state. They reportedly use a range of methods which include hacking, phishing, malware or otherwise capturing information or account access and, most frequently, infiltration such as using fake profiles to make friends with social media users, writing provocative comments to encourage a response and monitoring public interactions between users. However, it appears from the assessments of some commentators⁶ that the Iranian regime does not have the capability to successfully monitor online communications other than those they are able to infiltrate through these methods, or which are visible due to low privacy settings, and that the regime's rhetoric around its cyber power is intended to discourage online activism through fear rather than reflecting its actual capability.
33. DFAT⁷ assesses that within limits well known to Iranians, daily life is vibrant and sophisticated and the government of the day may be criticised robustly, including online, although there are 'red lines' around respect for the Supreme Leader, constitutional and territorial foundations of the Islamic Republic, the place of Shia Islam, and also institutions such as the Islamic Revolutionary Guard Corps or Basij. Political activists perceived to cross such lines can be

⁵ Techrasa, "Infographic: Facebook Usage Statistics in Iran", 16 August 2017, CXC90406614703; United Kingdom: Upper Tribunal (Immigration and Asylum Chamber), "AB and Others (internet activity – state of evidence)", 30 April 2015, CISEC96CF1903; DFAT, "Country Information Report Iran ", 21 April 2016, CIS38A8012677; MotherBoard, "Young Iranians Are Using These Apps to Bypass Government Oppression", 7 August 2017, CXC90406611741; Guardian UK, "Telegram: the instant messaging app freeing up Iranians' conversations", 8 February 2016, CX6A26A6E960; Article 19, "Tightening the Net Part 2", 3 February 2017, CISED50AD446; US Department of State, "Iran 2016 Human Rights Report", 3 March 2017, OGD95BE926964; International Campaign for Human Rights in Iran, "Security Agencies and the Prosecution of Online Activists", 11 November 2014, CX1B9ECAB9307; Article 19, "Computer Crimes in Iran: Risky Online Behaviour", 2 July 2015, CISEC96CF12755.

⁶ Article 19, "Tightening the Net Part 2", 3 February 2017, CISED50AD446; Article 19, "Computer Crimes in Iran: Risky Online Behaviour", 2 July 2015, CISEC96CF12755; Radio Free Europe / Radio Liberty (RFE/RL), "In Iran, Beware Of New Facebook 'Friends'", 8 June 2011, CX266913.

⁷ DFAT, "Country Information Report Iran ", 21 April 2016, CIS38A8012677.

charged and sentenced with offences which carry lengthy prison terms. There are a range of examples in the country information⁸ of persons arrested for online activity. Many appear to be bloggers, administrators of pages or websites with large followings, persons working for particular websites and journalists. Other examples include women who had posted photographs of themselves online that did not adhere to Islamic dress requirements, an artist who posted a cartoon, journalists, and students including some who were bloggers or had a past history of arrest for political activism. There have been also been instances of 'ordinary' citizens being targeted on the basis of social media activity and charged with national security, political and religious offences. In one case, a blogger and Facebook user who had posted comments across a number of Facebook accounts was convicted on a range of charges and sentenced to death, although the sentence was later commuted. In 2014, eight Facebook users including a British-Iranian woman were sentenced to prison terms for blasphemy and insulting officials (it is suggested they were arrested over remarks made on Facebook).

34. DFAT has said that journalists do not have to be particularly high profile to be subject to adverse attention, and cites examples of bloggers with only a 'handful of readers' being arrested and imprisoned, although the more high profile, the more likely a person will be subject to adverse attention. Although not always the case, the information suggests that persons targeted by authorities for online activities tend to have a pre-existing profile. In a report examining the correlation between online and offline behaviour of online activists and likelihood of arrest, Article 19⁹ found that the majority of persons they interviewed, all of whom had been prosecuted for online activity, said their online activity was only monitored after they had been flagged for offline activities. Those summoned exclusively because of online activity had either criticised the Supreme Leader, organised gatherings or had a significant number of followers. Authorities seemed particularly sensitive to group activities, advocacy for armed struggle and assemblies in universities.
35. I have also given particular consideration to information in a UK Tribunal decision¹⁰ suggesting that persons being returned to Iran, particularly those travelling on special travel documents, may be interrogated, during which they may be asked about their internet activity and for their social media passwords, and authorities may conduct searches for online activity. As the applicant is no longer in possession of his passport, I accept that he would be returning to Iran on a temporary travel document. However, I note that in contrast to the information in the UK decision, DFAT¹¹ has indicated that voluntary returnees (which I find would be the applicant's circumstance if he were to return to Iran, since DFAT says Iran does not issue travel documents to involuntary returnees) do not attract much interest among the large regular international movements of Iranians and even those travelling on temporary documents will generally only be questioned if they have done something to attract the specific attention of authorities.

⁸ Article 19, "Tightening the Net Part 2", 3 February 2017, CISEDB50AD446; Freedom House, "Freedom on the Net 2016 - Iran", NGE43874C612; US Department of State, "Iran 2016 Human Rights Report", 3 March 2017, OGD95BE926964; International Campaign for Human Rights in Iran, "Security Agencies and the Prosecution of Online Activists", 11 November 2014, CX1B9ECAB9307; DFAT, "Country Information Report Iran ", 21 April 2016, CIS38A8012677; International Campaign for Human Rights in Iran, "Negligence by Major Tech Companies like Google and Telegram Aiding Iran's Cyber Army", 3 June 2016, CX6A26A6E4864; Brookings Institution, "Anti-blasphemy offensives in the digital age: When hardliners take over", 29 September 2016, CIS38A80122258; Article 19, "Iran's War Against Its Citizens", 24 July 2014, CX323685; The Independent, "British woman Roya Nobakht could be executed in Iran after insulting Islam on Facebook", 2 April 2014, CX319658; Human Rights Activists News Agency, "8 Facebook Activists Sentenced to 133 Years Imprisonment", 28 January 2015, CXBD6A0DE783; Article 19, "Computer Crimes in Iran: Risky Online Behaviour", 2 July 2015, CISEC96CF12755.

⁹ Article 19, "Computer Crimes in Iran: Risky Online Behaviour", 2 July 2015, CISEC96CF12755.

¹⁰ United Kingdom: Upper Tribunal (Immigration and Asylum Chamber), "AB and Others (internet activity – state of evidence)", 30 April 2015, CISEC96CF1903.

¹¹ DFAT, "Country Information Report Iran ", 21 April 2016, CIS38A8012677.

36. Considering the above country information, while I accept there have been instances of 'ordinary' Iranians being arrested because of comments made online, these seem to be few compared to the vast numbers of social media users in Iran. The country information does not indicate that the Iranian government conducts widescale monitoring of private social media accounts, as the applicant's appears to be. It is clear that the majority of persons who attract adverse attention because of their online activities either have already attracted adverse attention because of other, offline, activities, or have a significantly greater online presence than the applicant. Giving weight to the information from DFAT, I do not accept that Iranian authorities routinely interrogate voluntary returnees to Iran regarding their views or activities, even those travelling on temporary documents, unless they attract attention for other reasons.
37. I note the delegate considered that the applicant had a profile of minor adverse interest because of his previous arrests and as a 'failed asylum seeker'. However, I do not accept the applicant had a profile of any interest to the authorities at the time he left Iran and for reasons set out further below, I do not accept that the applicant will be viewed to have an adverse profile because of his departure from Iran and lengthy stay in Australia, including having sought asylum here. The applicant has submitted examples of what he has posted on Facebook. These consist of videos, photos, links or other posts that the applicant has 'shared' without adding any commentary of his own. Some of the content would appear to cross the 'red lines' DFAT refers to above. The delegate viewed the applicant's Facebook page and there are screenshots of the page, presumably taken by the delegate, before me. None of the posts submitted by the applicant appear to be publicly visible on his Facebook page and none of the visible content has any obvious political or religious significance, apart from a picture which shows a tick next to the former Iranian flag and a cross next to the current flag. As the delegate has pointed out, the applicant's evidence does not indicate that his family in Iran have come under any scrutiny because of his online activities or otherwise suggest that his views have attracted any adverse attention. While I have accepted earlier that the applicant may again in the future experience very occasional interactions with Iranian authorities, I am not satisfied that past such encounters entailed investigation into his political or religious views, or online activity. Considering the applicant's lack of profile and what I consider to be the low-level nature of his activities in the context of the above country information, I find the chance of his past or any future online activity coming to adverse attention in Iran, whether on his immediate return or subsequently in the reasonably foreseeable future, to be remote.
38. I note that the delegate's reasoning states that the applicant can further increase privacy settings on his account to prevent observation by the authorities if he chooses to do so. The applicant's representative has submitted to the IAA that this would be contrary to the applicant's wish to share his political and anti-Islamic beliefs and enjoy freedom of speech, and requiring him to conceal his religious and political views would be contrary to s.5J(3) of the Act. On the evidence before me it appears the applicant had already restricted visibility of his page at the time it was viewed by the delegate. There are many reasons that persons have privacy settings on Facebook and I am not satisfied on the evidence that the applicant has increased his privacy settings from what he might have otherwise had because of a fear of harm, that he is modifying his behaviour or has any intention or desire to broadcast his views more widely than he has done in while Australia. Given the applicant's lack of profile I am not satisfied there is a real chance of the applicant attracting adverse attention in Iran because of his past or any future expression of his views.
39. I have also considered the applicant's non-belief in Islam. The applicant has claimed that he could not disclose his beliefs to anybody and would have to pretend to observe Islamic practices. Country information confirms that apostasy (leaving Islam) is a crime in Iran and

charges of apostasy have resulted in the death penalty.¹² However, DFAT states such charges are rare.¹³ Information cited by the delegate¹⁴ indicates many Iranians have a secular attitude, rejecting all religions including Islam. A large proportion of the Iranian population does not publicly manifest the Islamic faith such as through participation in prayers or regular attendance at mosque and are rarely pressured to observe Muslim precepts, although an exception to this is Ramadan, where everybody in Iran is forbidden from eating, drinking or smoking in public. Consistently with this information, DFAT considers it highly unlikely that the government would monitor religious observance by Iranians 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 things such as manifestations of a new faith, through informants or if they seek to publicise their views.¹⁵

40. As discussed above, the applicant has shared material on social media which may be perceived as objecting to aspects of Islam, and I accept he may continue to do so in the future, but am not satisfied there is anything but a remote prospect of this attracting any adverse interest in Iran. The applicant is not a person of any interest to Iranian authorities and I do not accept that any occasional encounters I have accepted he may experience due to his appearance or conduct would involve investigations into his religious views. I am not satisfied on the evidence that he has any sort of intention or interest in expressing his views more broadly than he has while in Australia, such as on his Facebook page. While I accept he will be unable to eat, drink or smoke in public during Ramadan, this is a law of general application applying to all persons in Iran and does not involve discriminatory conduct as required by s.5J(4)(c). Given the country information regarding the lack of religious observance in Iran and the lack of monitoring of that observance, I consider it remote that the applicant's non-belief in or non-practice of Islam would come to adverse attention.
41. I am not satisfied on the evidence that there is a real chance of the applicant being persecuted (including being executed as he claims to fear) on account of his religious or political views or activity.
42. The delegate proceeded on the basis that the applicant made a claim to fear harm because he had departed Iran illegally. I accept the submission that the applicant made no such claim. The applicant was asked by the delegate what he thought would happen if he returned and the applicant said firstly, that leaving Iran and not coming back was a big crime offence. On my understanding, the applicant was claiming that he would be harmed because he had departed and remained outside of Iran. DFAT advises 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 western countries. From DFAT's anecdotal observation at airports, a voluntary returnee (complete with International Organisation of Migration (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. DFAT's sources advise that returnees will generally only be questioned if they have

¹² DFAT, "Country Information Report Iran ", 21 April 2016, CIS38A8012677.

¹³ Ibid.

¹⁴ ACCORD, "Iran: Freedom of Religion; Treatment of Religious and Ethnic Minorities COI Compilation September 2015", 1 September 2015, CISEC96CF13622; Gunes Murat Tezcur, Taghi Azadarmaki and Mehri Bahar, "Religious Participation among Muslims: Iranian Exceptionalism", Critique: Critical Middle Eastern Studies, vol.15, iss.3, 2006, CIS21784; Danish Immigration Service, "Update on the Situation for Christian Converts in Iran", June 2014, CIS289313; The Middle East Institute, "The Iranian Revolution at 30", 29 January 2009, CIS17095.

¹⁵ DFAT, "Country Information Report Iran ", 21 April 2016, CIS38A8012677.

done something to attract the specific attention of authorities, and even then the vast majority of people questioned would be released after an hour or two.¹⁶ On this information, I do not accept that the Iranian authorities take an adverse interest in persons because they have left Iran for lengthy periods, including those who authorities may infer from their possession of IOM bags or temporary travel document to have claimed asylum. The applicant left Iran lawfully and I do not accept he was a person of interest at that time, or that he has subsequently come to the attention of the authorities. I find there is no more than a remote prospect of the applicant being questioned, identified as a person of any interest and harmed, either on his return or subsequently. I am not satisfied there is a real chance of the applicant being harmed because he left and remained outside Iran and claimed asylum, or because of these things in combination with the other attributes and circumstances discussed above.

43. Considering the applicant's claims both individually and cumulatively, I am not satisfied there is a real chance of him being persecuted in the reasonably foreseeable future in Iran. The applicant does not have a well-founded fear of persecution within the meaning of s.5J.

Refugee: conclusion

44. 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

45. 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

46. 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.

47. I have not accepted the applicant's claims to have been wanted by Iranian authorities at the time of his departure from Iran, or to have otherwise been of adverse interest and am not satisfied there is a real risk of him being harmed in connection with any of the claimed past events.

48. I have accepted that the applicant may again have occasional encounters with Iranian authorities because of elements of his appearance such as his tattoos and hair, and for conduct

¹⁶ Ibid.

such as being in public with members of the opposite sex. However, I have found that such incidents would be isolated and there is no more than a remote chance that he would face any greater harm than warnings, fines or brief periods of detention pending release on paying a fine or signing an undertaking. The Federal Court has held that 'real risk' imposes the same standard as the 'real chance' test in the refugee criterion¹⁷ and having regard to the factual findings and country information above, I am satisfied there is not a real risk of the applicant suffering any harm beyond this. I find that even considered cumulatively, very occasional treatment of this nature does not involve the levels of pain, suffering or humiliation required by the definitions of torture, cruel or inhuman treatment or punishment or degrading treatment or punishment, and nor does it amount to arbitrary deprivation of life or the death penalty.

49. I accept that the applicant has expressed his anti-government and anti-Islamic views on social media and may continue to do so. I have also accepted that the applicant does not believe in or practice Islam. While I accept that the applicant will be unable to eat, drink or smoke in public during Ramadan, as I have said above this is a generally applicable law, and any risk he would face for not observing it is one faced by the population of the country generally and not the applicant personally. Under s.362B(c), there is taken not to be a real risk the applicant will suffer significant harm. Having regard to the applicant's lack of profile, the nature of his activities and the country information and reasoning I have set out above, I am not satisfied there is a real risk of the applicant's religious or political views, non-practice of Islam and/or past or future online activity coming to any adverse attention in Iran and him being executed or otherwise harmed.
50. I have found above there is not a real chance of the applicant being harmed because he left Iran and spent a period of time in Australia, where he has claimed asylum, and I similarly consider there is not a real risk of the applicant suffering harm.
51. Considering the applicant's claims as a whole, on the evidence before me I am not satisfied there is a real risk of the applicant suffering significant harm in Iran.

Complementary protection: conclusion

52. 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.

¹⁷ *MIAC v SZQRB* (2013) 210 FCR 505.

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.