



Australian Government

Immigration Assessment Authority

Decision and Reasons

Referred application

IRAN

IAA reference: IAA17/03853

Date and time of decision: 26 July 2018 09:04:00

S McNeill, 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 a referred applicant, or their relative or other dependant.

Background to the review

Visa application

1. The referred applicant (the applicant) is a national of Iran. On 2 January 2017 he lodged an application for a Safe Haven Enterprise Visa (protection visa (PV) application). He claims to fear persecution in Iran because he is an atheist and has been threatened by the family of his ex-wife for divorcing and abandoning her.
2. On 1 November 2017 a delegate of the Minister for Immigration and Border Protection (the delegate) refused to grant the visa. The delegate accepted the applicant held agnostic beliefs but that he did not have a well-founded fear of persecution on the basis he was a non-practising Muslim. Nor did the delegate accept he would be at risk of harm from his ex-wife's family if he returned to Iran.

Information before the IAA

3. I have had regard to the material given by the Secretary under s.473CB of the *Migration Act 1958* (the Act).
4. No further information has been obtained or received.

Applicant's claims for protection

5. The applicant's claims can be summarised as follows:
 - He was born in Isfahan, Iran in [year] and is of Persian ethnicity.
 - Although he was born a Shia Muslim he lost his religion at [age] and is now an atheist.
 - It was whilst undertaking his military service he realised that religions tell their followers to kill people who do not agree with them. He disagrees with his and thinks religion should teach love, not hate and murder. The Mullahs who enforce Islam in Iran themselves do not behave in ways that following Islamic teachings; they steal money, are dishonest and smoke drugs.
 - When he was [age] ([year]) he was arrested by the Basij (Iranian domestic intelligence) for drinking water on the street during Ramadan. They took him to their headquarters and started beating, kicking and punching him in the face and stomach. They asked him to sign a statement that he would not drink water during Ramadan again. As a visitor to town they forgave him and he was spared the usual punishment of 80 lashings.
 - As an atheist he is in constant danger of arrest and arbitrary sentencing; in Iran apostasy is punishable by death.
 - Since living in Australia he has become more critical of the Iranian regime. Having access to social media and the free press, he has discovered the level of corruption in the government, particularly the religious authorities. In Iran he was fully absorbed in his work and family and did not pay attention to such things. If he went back to Iran he would not be able to be quiet about it and he would quickly run into trouble with the authorities.

- Because he has been in Australia for more than three years he would be scrutinised if he were to return to Iran and expects the government to question him as they suspect returnees to be spies.
- In addition his ex-wife's family has threatened to kill him. In 2014 he discussed returning to Iran with the Department of Immigration after an assault left him with a broken nose and he had trouble breathing and needed medical treatment. His family told him they had been contacted by his ex-wife's family who said that if he went back, they would kill him for having divorced her and abandoning her.

Refugee assessment

6. 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

7. 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.
8. There is no issue as to the nationality of the applicant. I accept that the applicant is a national of Iran and that Iran is the receiving country for the purpose of this review.

Atheist - non-practising Muslim and Apostate

9. The applicant claimed he became an atheist at [age]. In Australia he has become more critical of the Iranian regime and the religious authorities and if he went back to Iran he would not be able to be quiet and this would get him into trouble with the authorities.
10. At his PV interview on 16 August 2017 the delegate asked the applicant why he left Iran. The applicant said that when he first left Iran it was because of his wife's freedom, she was not happy in Iran. She wanted to have freedom from her Hijab; she used to watch Christian programs and would say she wanted to become a Christian. He didn't mind this as he had lost his religion and the most important thing in his life was his wife and for this reason he left

Iran. Asked about his own religious beliefs and why he became an atheist, the applicant said that when he spoke to his lawyer and had said he had lost his religion, she had told him he was an atheist. He did some research and had seen a few websites about atheism. Atheists did not believe in God and then there were agnostics. He didn't want any religion or to follow a religion. Asked whether he believed in God, the applicant said there was no proof or evidence to believe in God.

11. The applicant said he started to move away from Islam during his military service. He was born into a Muslim family and was a strong believer and a good Muslim. At [age] he attended Quran classes and was able to read the Quran nicely. Whilst undertaking his military service, out of [many] people he came third for reading the Quran and he was sent to [city] to become a teacher of the Quran. He saw a lot of hypocritical things and at the end of his military service he decided to run away from Islam. His parents were strict Muslims but recently they had changed. They would go to Mecca in Saudi Arabia and to Iraq to visit mosques but in the last two years after he had questioned his father about spending money to make himself depressed they had stop going and his relatives were questioning them. He thought he had convinced them to be happier. Asked whether he had explored other religions, the applicant said Christianity. After he came to Australia he went to church and had contact with Christian people but he realised all religions were the same, Christians like Muslims hurt people. He even went to a Sikh temple. He didn't want to be a religious person.
12. The delegate referred the applicant to his application where he said he was once arrested. The applicant said he thought it had been twice or more. Once when he was singing under a bridge to a friend after he had finished his military service, they wanted to share their happiness. The authorities took him to court and tried to find someone to punish him. They decided they could not send him to jail but instead they got him to write down that he would not sing again. Another time when he travelled to Shahid-Shirudi city in Mazandaran province in the north of Iran he was arrested for drinking water during Ramadan. He could not remember the year but believed it was about two years after his military service and before he got married. He was walking in the town when two people approached him; they put him in their car by force and took him to the Basij station. They started kicking him, talking to him and swearing at him. They held him for two to three hours but did not charge him. They forgave him as he was a visitor. He believed the man who owned the supermarket where he had bought the bottle of water from had reported him as he saw him at the station. He knew it was Ramadan. Asked if he thought it might be risky, the applicant said in Ramadan a visitor can eat or drink but not in public. It had not been his intention to get someone's attention; he drank because he was thirsty.
13. Asked whether he would be at risk if he returned to Iran because he was an atheist, the applicant said previously he had been quiet and busy in his job. He hadn't realised what was going on in Iran and what people were doing. When he came to Australia and saw everything on social media and Facebook he could no longer be quiet. Asked in what way he would not be quiet, the applicant said there were a lot of mourning periods in Iran and during those times he would be saying something. He would talk to people and ask them why they were doing it; he would do this in public and be executed for it. In Australia he had freedom of religion, before he had been blind but now he could see. Asked whether he had been critical of the regime since arriving in Australia, he said he was but did not want to do it in public as he did not want to be involved in any crime in Australia or in Iran he just wanted to have freedom of living. In Australia there was no mourning so he didn't need to.
14. Towards the end of the interview the delegate asked the applicant whether he was a strong atheist or agnostic, the applicant stated agnostic yes. Asked to explain, the applicant said it

meant he did not want to say there was no God. He was not pretending there was no God but he believed in a higher power somewhere. He repeated his belief in a higher power. He also believed his ex-wife's [relative] M who was a member of the Basij would know of his atheist beliefs and this would cause him problems. Again he stated the environment in Iran would make him talk. If he saw people undertaking their mourning prayers he would ask them what that would achieve, if they slapped their heads what would it do. He could no longer be quiet.

15. The applicant participated in an arrival entry (entry) interview on 23 July 2013. Asked why he left Iran, the applicant said because of the conditions the government made for them they couldn't live there. He left Iran because of his wife; she was getting depressed in Iran. He really wanted to be a father and have kids. It was not a good situation to have children in Iran, to gain money you had to lie and he didn't want to lie. Whenever they went out they had to commit not to show his wife's hair or wear short sleeves. She could not wear tight clothes and she wanted to work but she couldn't. He did not want her to be depressed and she was not now. Asked what he thought might happen if he returned to Iran; he said his wife would become depressed. In Iran there was fighting and conflict on the streets, he was not involved. There was a lot of mental pressure on people in Iran. People in Iran could not protest against the government so they fought each other. The sanctions on Iran caused problems, today rice was 18000 and the next it was 56000. The Iranian currency was worthless. The Iranian culture did not respect women and he did not want to raise children in that culture. Asked whether he had ever been arrested or detained by the police or security, the applicant said he had been detained for one day by the police in Isfahan because they were singing under the bridge with his military service friends after the completion of his service. I also note at the end of this interview the applicant said to the interviewing officer he wished to divorce his wife. She was not taking care of her responsibilities here as she was free here.
16. I accept that the applicant departed Iran because of pressure from his wife and her mental health concerns. I also accept the applicant was generally unhappy himself with life in Iran, the poor economic situation and the lack of freedom. I accept that he was detained for a brief period following an incident when he was caught singing under a bridge after the completion of his military service. The applicant has been consistent in this regard. I note no harm came to the applicant as a result of this incident.
17. As to the incident of him being detained for drinking water during Ramadan in approximately 2007 I am not so persuaded. I find it implausible the applicant would randomly walk through the centre of an unfamiliar town and drink water knowing it was Ramadan. I consider it a discrepancy that he stated he had no intention of coming to the authorities' attention yet he chose to drink in the open publically during an important religious period in Iran. I also note this incident was not raised in his entry interview despite it being the only time in his life when he said he had actually been physically assaulted by the authorities. I consider the applicant has fabricated this claim in order to strengthen his protection claims in this regard. I do not accept that this incident occurred.
18. I accept the applicant no longer practises Islam. The applicant has generally been consistent in this claim; however, he still appears somewhat confused about his beliefs given he still believes in a higher power and I am of the view he has not fully resolved his actual beliefs in God. According to DFAT under Iranian law, a Muslim who leaves his or her faith or converts to

another religion or atheism can be charged with apostasy.¹ The punishment for apostasy is subject to judicial discretion. There is no provision in Iran's Penal Code criminalising the act, but the constitution allows judges to turn to Sharia if Iranian law is not clear about the 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.² The most recent case that DFAT is aware of a 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 one of proselytization and the death sentence was dropped. The last known time the death penalty was carried out for apostasy was in 1990.³ DFAT considers it unlikely that individuals will be prosecuted on charges of apostasy.⁴

19. Other information in the review material indicates non-practising Muslims form a large part of the population of Iran's cities. They lead normal daily lives and are rarely called upon to answer direct questions about Muslim religious practice and are rarely pressured to observe Muslim precepts.⁵ Islam plays a smaller role in public life today than a decade ago and the power of the clerics has waned.⁶ There is a significant level of non-attendance in mosques in Iran and even people with strong religious beliefs do not attend Friday congregational prayers.⁷ DFAT also considers it highly unlikely that the government would monitor religious observance by Iranians – for example, whether or not a person regularly attends mosque or participates in religious occasions such as Ashura or Muharram – and thus it would generally be unlikely that it would become known that a person was no longer faithful to Shia Islam. Perceived apostates are only likely to come to the attention of Iranian authorities through public manifestations of their new faith, attempts at proselytization, attendance at a house church or via informants.⁸ Atheists are unlikely to come to the attention of security authorities unless they seek to publicise their views.⁹ Other reports suggest there are more and more atheists in Iran and that this is more accepted among some Iranians.¹⁰ Atheists usually do not express their views in public and are thus able to lead normal lives in Iran with 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.¹¹ The applicant has presented no evidence that he has been active on the internet on Facebook or other webpages promoting his atheist beliefs either here or in Iran. I am not satisfied that he has done so or, for the reasons given below, he will choose to do so on his return to Iran.

20. I accept the applicant no longer practises Islam and despite some hesitation as to his beliefs in a higher power I accept he considers himself to be an atheist. Whilst the applicant has

¹ Department of Foreign Affairs and Trade (DFAT), "DFAT Country Information Report Iran", 21 April 2016, CIS38A8012677, 3.52.

² Ibid 3.53.

³ DFAT, "DFAT Country Information Report Iran", 21 April 2016, CIS38A8012677, 3.54

⁴ Ibid 3.55.

⁵ Austrian Centre for Country of Origin and Asylum Research and Documentation (ACCORD), "Iran: Freedom of Religion; Treatment of Religious and Ethnic Minorities COI Compilation September 2015", 01 September 2015, CISEC96CF13622, p.31.

⁶ Ibid p.30.

⁷ Critique: Critical Middle Eastern Studies, "Religious Participation among Muslims: Iranian Exceptionalism", 1 January 2006, CIS21784, p.217.

⁸ DFAT, "DFAT Country Information Report Iran", 21 April 2016, CIS38A8012677,

⁹ Ibid 3.57.

¹⁰ Danish Immigration Service, "Update on Christian Converts in Iran", June 2014, p.13.

¹¹ ACCORD, "Iran: Freedom of Religion; Treatment of Religious and Ethnic Minorities COI Compilation September 2015", 01 September 2015, CISEC96CF13622, p.51.

claimed that he would be outspoken about Islam and those participating in its mourning rituals and more critical of the regime after having access to social media and the free press in Australia, I am of the view that the applicant has exaggerated his desire to speak out about his true beliefs in order to embellish his claims. The applicant has not been vocally active whilst in Australia against Islam or the Iranian regime. There is no pattern of him being outspoken in the past in Iran, the applicant lost his religion nine years prior to departing Iran and apart from his claim to have drunk water openly during Ramadan which I have not accepted; there is no evidence of other public behaviour to show he no longer believes in Islam. His singing under a bridge following his completion of his military service I consider was a celebration of having finished his obligations not a public manifestation of any un-Islamic behaviour. I consider the applicant is not political in nature but more focused on his work and desire to lead a relatively normal life. In Iran he was busy with his [repair] business and in Australia he has established a similar business as he advised in his PV interview. Other than private discussions with family members to dissuade them from traveling to Mecca there is no evidence of any public criticism of Islam or the Iranian regime on behalf of the applicant. Furthermore, according to DFAT, within limits well known to Iranians, daily life is vibrant and sophisticated. The government of the day may be criticised robustly, both in public (for example, during conversations on the street and in workplaces) and online (for example, on social media).¹² However, authorities continue to routinely suppress free speech and punish public criticism of the regime. DFAT assesses that the treatment of human rights defenders, political activists, lawyers and journalists remains particularly parlous.¹³ The applicant does not fit any of these profiles.

21. I am not satisfied that the applicant faces a real chance of harm in connections with his religious beliefs.

Threats of harm from his ex-wife's family

22. The applicant claimed that his ex-wife's family have threatened to kill him. In 2014 he discussed with the Department the possibility of returning to Iran for medical treatment following an assault in [Town 1] which left his nose broken and he had difficulty breathing. His family told him his ex-wife's family had contacted them and if he went back they would kill him for divorcing and abandoning her.
23. At his PV interview the applicant stated he met his ex-wife when she was a customer in [his business], he gave her some administrative work to do at home so he could get to know her better. After they had known each other for about two years they married. Her family were 'a bit weird' and they did not talk to their first daughter because they had an issue with the son-in-law because he was not religious. Her father was religious but that sister was a trouble maker, wherever she went she made trouble and she had been divorced twice. His wife was one of [many] siblings. She had two types of relatives, one side of the family were in the Basij and the other [side] were opposite, drinking alcohol. Asked why he had asked to be separated from her whilst in immigration detention, the applicant said that instead of being with him she would stay up all night talking to the guards and then sleep all day and he would have complaints from other people. He changed his mind the next day and gave her a second chance.
24. They separated in Australia on 14 January 2014. He was assaulted in [Town 1] in March 2014 by Australians who were drunk and after that he wasn't able to breathe properly. When he

¹² Ibid 3.60.

¹³ Ibid 3.61.

moved out of [Town 1] to [City 1] he lodged the application for divorce, they were no longer together and he did not want to live together. His ex-wife didn't agree to the divorce and she didn't attend the court. Included with the applicant's PV application was a certified copy of the applicant's Divorce Order from the Federal Court of Australia declaring the applicant and his wife divorced on [date] June 2015. The applicant said he had last spoken to his ex-wife two years previously (approximately August 2015) but since then she had changed her number and he had no contact with her. He had told his parents three or four years ago when they were separated, in the beginning they had not been happy. His ex-sister in law (the middle one) warned his parents that she was going to get him in trouble. Asked in what way they warned him, the applicant said the middle sister had the authority in Iran to put in the divorce application and then claim for the dowry. They wanted to take action to get the dowry from him.

25. In October 2014 the applicant said he requested to return to Iran voluntarily because he needed to have medical assistance and couldn't breathe. The waiting time was 18 months in the public system and he was having trouble sleeping. He was afraid of returning to Iran but his family changed his mind. He felt he could be silenced because of the religion but his family warned him he would not be safe. His ex-wife's sister F told his brother Y that she was going to kill him. This was because they had left Iran without her, she had asked him to take her with them but he had not wanted the responsibility. Asked when this happened, the applicant said his brother had found out they were going and because they were close. After he told his brother he was coming back, he thinks he told his ex-sister in law and that he would also be in trouble with her [relative] who was in the Basij. Asked what they could do, he said because of the religion they were strict. Further in the applicant confirmed his ex-wife's sister F had been upset because he had not taken her and because he had divorced his wife; it had not been his intention he had loved her a lot and it had taken him a long time to get over the assault and his broken heart. He had managed to obtain surgery at [Town 2] hospital in about June 2015 and after that he opened a [business] in [Town 2] and his customers were happy.
26. Asked to elaborate on his wife's [relative] M in the Basij, the applicant said M could cause him trouble. Asked what he feared might happen, the applicant said his religion, they knew from his ex-wife. He didn't pray. Asked what he actually feared might happen with M, the applicant said that in Iran a person could get disappeared for no reason, if he said he was an atheist 100 per cent his life would be in danger and he would be executed. They would know because of his speech, before he was blind but now he could see. He had met M about two or three times. He did not think M knew he wasn't praying at the time, they had only gone to his father's house for a Nehrouz visit which is annually and M used to live with his father. Asked how he would know he wasn't praying, the applicant said that since his ex-wife's sister F knew, everyone knew. He (the applicant) was a very popular person in the city he came from. He had credit and he was a trustworthy person. His brother had only been friends with his ex-wife's sister but they were no longer in contact. Asked how his ex-wife's sister would find out if he returned to Iran, the applicant said they were not far from the place that they lived and as soon as he returned everyone would know.
27. The delegate advised the applicant that according to her Facebook page, his ex-wife's sister was now living in [Country 1]. The applicant said F went to the UN to be able to come to Australia according to his ex-wife. Asked, given she was in [Country 1], how would he be in danger if he returned to Iran, the applicant said it was the matter of a phone call to her [relative] M. This was not his main reason for fearing return to Iran, religion was, but this was another reason he feared returning. The applicant said when he returned to Iran he would not be quiet about his religion. The applicant stated he had no idea if his ex-wife's sister or

her [relative] M had put him on the black list and he might get arrested at the airport on his return to Iran.

28. I am not persuaded by this claim that the applicant fears harm from his ex-wife's family including her F sister and her [relative] M. I consider again the applicant has embellished his claims in this regard. Firstly, according to his PV application and the NAATI accredited translation of his birth certificate the applicant married his ex-wife on [date] March 2009 when the applicant was almost [age] years old. The applicant at that stage had, based on his own account, been not practised Islam for almost five years. The couple departed Iran in June 2013. During that four year period they were married in Iran his ex-wife immediate family and relatives I consider it highly likely they would have known the applicant did not attend mosque or participate in religious gatherings or festivals; nothing happened to him. The country information noted above indicates that atheism is becoming more accepted in the cities and the applicant is from Esfahan, non-attendance at mosque is not uncommon and even religious people seldom attend. I am also not satisfied there is a real chance the applicant will be charged for apostasy. I also consider the applicant withheld information that his ex-wife's sister was residing in [Country 1] and only admitted this when presented with the information. The applicant also put forward contrasting reasons as to why his ex-wife's sister wished to harm him, firstly, his failure to bring her to Australia with them and then secondly, they were angry he had abandoned his ex-wife her sister. I did not find the applicant's responses to questions put forward to him about this aspect of his claims compelling. I am persuaded that he was searching for an explanation to put forward as to why he decided to withdraw his application to voluntarily return to Iran. The applicant and his ex-wife had marital problems from when they initially arrived in Australia and I can understand why their marital breakdown might cause animosity between the two families especially towards him the ex-husband but I am not satisfied that the applicant's ex-wife's sister F has threatened to kill the applicant or that she would endeavour to telephone her [relative] M a member of the Basij whilst residing in [Country 1] on learning the applicant had returned to Iran or that M would seek to harm him in any way or that any other members of her family has threatened harm. I am also not satisfied that F or her [relative] M have had the applicant's name put on any blacklist because he no longer practises Islam and is an atheist. I am not satisfied that applicant faces a real chance of harm on this basis.

Failed asylum seeker returning from a western country

29. The applicant arrived in Australia in June 2013. The applicant departed Iran on his own passport. The applicant and his wife departed Iran a couple of times on their own passports prior to their journey to Australia. Asked whether they had any problems at the airport leaving Iran, the applicant said no, not really. The applicant stated they usually ask if you have money, they usually stop people if they have no money (not stated in the sense they were asking for a bribe but that they have adequate funds to support themselves). They had a visa and were asked there reason for travel, for a holiday, if you have no money they think it is weird and stop you. Before he had tried to leave the country twice but they had no hotel booking so they sent them back and they arranged the flight for a few days later with a hotel booking and there was no problem leaving the second time because they had the hotel booking.
30. The applicant claimed that after more than three years in Australia there would be a lot of scrutiny on him if he were to return, he expects the government to question him as they expect returnees to be 'spies'. At his PV interview the applicant said the intelligence service in Iran would not leave him alone because they would ask him where he had been for four or five years; they will ask him what he did and where he was. They would not let him go easily,

even people who have a passport, when they return they are asked to do something. He saw on Facebook that many people got arrested at the airport because they didn't want to cooperate with the authorities, even when they were citizens of other countries.

31. I accept the applicant has spent just over five years in Australia, a western country. I accept he will be returning to Iran having sought asylum in Australia. I am mindful of the various reports referred to by the delegate which identify cases in which failed asylum seekers have been arrested on their return to Iran.¹⁴ However, those reports generally reference cases involving individuals such as students, journalists or political campaign workers with pre-existing profiles in Iran and/or profiles abroad indicating activism against the Iranian regime. I do not consider the applicant to have such a profile. The reports before me, including DFAT reports dating back to 2010, do not indicate that returnees are harmed for reason only of having sought asylum abroad.¹⁵
32. Iran currently does not accept involuntary deportees.¹⁶ From DFAT's anecdotal observation at airports, a voluntary returnee does not attract much interest from authorities amongst the large regular international movements of Iranians. Returnees will generally move quickly through airports without official interests. DFAT notes returnees even if traveling on a temporary travel document will only be questioned if they have done something to attract the attention of the authorities and the vast majority of people questioned would be released after an hour or two.¹⁷
33. On the evidence before me I am not satisfied the applicant, if he returns to Iran, would attract the adverse attention of the Iranian authorities or is otherwise of interest to the authorities in Iran as I am not satisfied he has done something to attract the attention of the authorities either in Iran or Australia. I accept the applicant may be questioned and even detained for a brief period of time as a returnee but I am not satisfied that this treatment of being questioned or detained briefly would amount to serious harm in this case. I am not satisfied the authorities would view the applicant as a spy.
34. I find that the applicant does not have a well-founded fear of persecution on any of these bases.

Refugee: conclusion

35. 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).

¹⁴ Amnesty International, "Amnesty international - urgent action UA 125/11 Student activists held in Iran", 6 May 2011, CX264288; "Rouhani has yet to deliver on press reforms in Iran", Committee to Protect Journalists (CPJ), New York, 13 March 2014, CX318970; "Mousavi's campaign worker arrested upon return to Iran", Radio Zamaneh, 16 February 2014, CX318168; "Jailing of returning journalists called part of anti-Rohani plan", Radio Zamaneh, 31 July 2014, CX324017; Amnesty International, "'We are ordered to crush you' Expanding Repression of Dissent in Iran", 1 February 2012, CIS22610,

¹⁵ DFAT, "Response to CIS Request No. IRN11072; Return of failed asylum seekers", 22 December 2010, CX255525; DFAT, "Response to CIS Request No. IRN11738: Iran – Article on returned asylum seekers and people exiting Iran with false documents, 19 April 2011, CX263145.

¹⁶ DFAT, "DFAT Country Information Report Iran", 21 April 2016, CIS38A8012677, 5.33.

¹⁷ Ibid 5.34.

Complementary protection assessment

36. 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

37. 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.
38. I have rejected the applicants claim that his ex-wife's sister F or her family members have threatened to kill the applicant for divorcing or abandoning his ex-wife, or that her [relative] M is aware of the applicant's atheist beliefs or that they have reported him to the authorities and he is of a government black list. I have concluded that the applicant does not face a real chance of harm on these bases. Given real chance and real risk involve the same standard, I am not satisfied he face as a real risk of harm on these bases.
39. I accept that the applicant no longer believes in Islam and is an atheist. On country information referred to above I am not satisfied that he would be viewed as an apostate or that his non observance of Islamic practices will give rise to a real risk of harm on his return.
40. I accept that, as an asylum seeker returning to Iran from Australia without a passport he may be questioned and briefly detained on his return for a couple of hours but I do not consider that this would amount to significant harm. There is not a real risk he will not be arbitrarily deprived of his life or subject to the death penalty or that he would be subject to torture, cruel or inhuman treatment or degrading treatment or punishment.
41. I am not satisfied that there is no real risk that the applicant would suffer significant harm from the Iranian authorities upon his return.

Complementary protection: conclusion

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

Decision

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

Applicable law

Migration Act 1958

5 (1) Interpretation

In this Act, unless the contrary intention appears:

...

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

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

...

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

- (a) severe pain or suffering, whether physical or mental, is intentionally inflicted on a person; or
- (b) pain or suffering, whether physical or mental, is intentionally inflicted on a person so long as, in all the circumstances, the act or omission could reasonably be regarded as cruel or inhuman in nature; but does not include an act or omission:
 - (c) that is not inconsistent with Article 7 of the Covenant; or
 - (d) arising only from, inherent in or incidental to, lawful sanctions that are not inconsistent with the Articles of the Covenant.

...

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

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

...

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

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

...

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

- (a) for the purpose of obtaining from the person or from a third person information or a confession; or
- (b) for the purpose of punishing the person for an act which that person or a third person has committed or is suspected of having committed; or
- (c) for the purpose of intimidating or coercing the person or a third person; or
- (d) for a purpose related to a purpose mentioned in paragraph (a), (b) or (c); or
- (e) for any reason based on discrimination that is inconsistent with the Articles of the Covenant; but does not include an act or omission arising only from, inherent in or incidental to, lawful sanctions that are not inconsistent with the Articles of the Covenant.

...

5H Meaning of refugee

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

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

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

...

5J Meaning of well-founded fear of persecution

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

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

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

5K Membership of a particular social group consisting of family

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

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

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

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

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

5L Membership of a particular social group other than family

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

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

5LA Effective protection measures

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

...

36 Protection visas – criteria provided for by this Act

...

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

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

...

Protection obligations

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

Determining nationality

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