



Australian Government
Immigration Assessment Authority

Decision and Reasons

Referred application

IRAN

IAA reference: IAA17/03964

Date and time of decision: 23 August 2018 14:48:00

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 and of Arab ethnicity. On 31 August 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 the application in a decision dated 21 November 2017.
2. The delegate did not accept the applicant's claims that he had been involved with an Ahwazi Arab political party and was wanted by Iranian authorities for that reason, or that he left Iran on a false passport. The delegate accepted the applicant was not a practicing Muslim and had explored Christianity out of curiosity in Australia but did not accept that he had converted or had a genuine commitment to practicing Christianity. The delegate concluded there is no real chance or risk of harm to the applicant for these reasons, or as a failed asylum seeker from Australia. The delegate accepted the applicant had experienced discrimination on account of his ethnicity but found there is not a real chance or risk of the applicant suffering harm that would amount to serious or significant harm.

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. On 21 December 2017 the IAA received a submission from the applicant's migration agent. In addition to containing argument in response to the delegate's decision, which I have considered, the submission contains what I find to be new information.
5. The submission makes a claim that the applicant's brother and family have been unable to gain employment on the basis of their Arab ethnicity. At the protection visa interview on 26 October 2017, the applicant gave evidence that as far as he was aware, his father was retired and of his five brothers, one was retired, one was working, two were students and one was physically unfit and remained at home. He made no mention of any of his family members being unable to gain employment. The submission includes no further particulars of the claim and does not indicate that this is a recent development or had only recently come to the applicant's attention. I find the claim in the submission to be new information and am not satisfied that the information could not have been provided to the delegate or that it is credible personal information that, if known, may have affected consideration of the claims. Further, I am not satisfied there are any exceptional circumstances to justify considering it.
6. The submission includes information regarding the applicant's involvement with Christianity different to earlier evidence given by the applicant and to that extent is new information. Firstly, it is stated that the applicant had been involved with Christianity for a short period of time at the time he was released from detention, and to having attended a Christian church since his release from immigration detention. Secondly, it is stated that prior to moving to [Suburb 1] the applicant attended a church in [Suburb 2], which was close to where he lived at the time, on a weekly period over four to five months. Thirdly, it is stated that the applicant attended a church in [Australian city 1] for a period of 12 months.
7. The applicant has not previously claimed to have been involved in Christianity while in immigration detention or to have been attending church since the time of his release, or to

have attended a church in [Suburb 2]. The applicant's evidence at the protection visa interview was that he had started attending a church in [Australian city 1] around a year prior to the interview, which would be around October 2016, and that he had moved to [State 1] around six months prior to the interview, so around February 2017, suggesting his attendance in [Australian city 1] was for around six months. He did not mention attending any church before that. He also said that he had been attending a church in [Suburb 1] but that he had not been going long because he had only moved from [Australian city 1] a few months previously. He made no claim to have been attending a different church in [State 1] prior to the one in [Suburb 1].

8. Before the delegate, the applicant was represented by a (different) registered migration agent who attended the protection visa interview by telephone. The applicant was asked a number of times at the end of the interview if there was anything else he would like to add and if he had put forward all of his claims. His migration agent submitted information to the Department following the interview. I consider that the applicant has had an opportunity to present his claims and do not accept the suggestion in the submission that the applicant could not have provided the information because the delegate did not ask for more details. The claims in the submission are unsubstantiated assertions unsupported by any evidence. The information regarding involvement with Christianity during and after immigration detention is contradictory to the applicant's own claimed history, and it is not believable that the applicant would have omitted to mention his attendance at a church in [Suburb 2] for four or five months, or attendance at a church in [Australian city 1] for a year, if those things were true. I am not satisfied that the information now submitted could not have been provided prior to the delegate's decision being made, that it is credible personal information or that there are exceptional circumstances to justify considering it.
9. The submission refers to and attaches a letter from the Senior Minister of [Church 1]'s [Suburb 1], dated [December] 2017 and states that the applicant's practise of Christianity and attendance at church has continued in the period since the primary decision. The letter confirms that the applicant began attending [Church 1]'s in June 2017, that he attends morning service and English language classes and has begun baptism preparation. It also states that [Church 1]'s supports his visa application. The letter contains credible personal information, in the sense it is capable of being believed, about the applicant's engagement with [Church 1]'s. There was no supporting evidence before the delegate of the applicant's religious engagement and I accept that the information, if known, may have affected consideration of the claims. The applicant was represented before the delegate and clearly could have provided a letter of this nature prior to the decision being made. No explanation is given for his failure to do so. However, the letter itself post-dates the decision, represents the most recent evidence of the applicant's religious engagement and demonstrates a progression, indicating that he has begun baptism preparation. It is the only supporting evidence that has been provided in relation to the applicant's religious claim. Having regard to these matters, I am satisfied there are exceptional circumstances to justify considering it.
10. The submission requests that the IAA interview the applicant if not satisfied in relation to his evidence but does not outline any specific additional evidence the applicant is able to provide. The delegate questioned the applicant in detail about his claims and put concerns to him for response. As I have said above, the applicant was represented before the delegate by a registered migration agent, was asked a number of times at the end of the interview if there was anything else he would like to add and if he had put forward all of his claims, and his migration agent took the opportunity to submit further information to the Department following the interview. The applicant has availed himself of the opportunity to provide submissions in response to the decision, and I have considered some of the new information

he has provided. In my view the applicant has had an opportunity to present his claims and I have decided to make a decision without inviting any new information.

Applicant's claims for protection

11. The applicant's claims can be summarised as follows:

- The applicant is an ethnic Arab from Ahwaz and was born Shi'ite/Shia Muslim.
- The applicant experienced a number of problems because of his ethnicity. In around 1990, during his military service, one of the army officers found out he was of Arab background and sent his name to Sepah intelligence and he and others of Arab ethnicity were asked to present to the intelligence services security office in Tehran. He was kept there for a week and interrogated and beaten and then posted to a different area to continue his service in what he claims was a form of exile. In 1997 the applicant was fired from his job when a mullah came to the company where the applicant worked and said Khuzestani Arabs were not allowed to work. The applicant's family were targeted because of their ethnicity and political activities and the applicant was harmed in many ways and subject to limitation, discrimination, surveillance and vulnerability.
- The applicant met a member of Al-Ahwaz party, H, through work and helped this man to spread notices and flyers about the activities of the party. The flyers contained declarations against the government and encouraged separatism. He met the man once or twice a week and had this involvement for one or two months. The applicant then heard that officers had attended the worksite and arrested H. A few days later officers attended the applicant's home asking questions about him. On hearing about this from his family, the applicant immediately left town and went to hide in a village with a relative for around a month. He was afraid he would be arrested and detained for his activities and left Iran. At the protection visa interview he added that he had used a passport in a different name as his details were on the airport watchlist.
- Since the applicant left there have often been visits from the authorities to his home. They continue to come to the home asking about his whereabouts and why he left.
- The applicant's activity reflects opposition to the Iranian regime and its leaders and means they do not recognise the legitimacy of the Iranian government and Supreme Leader. The applicant fears he would be arrested by Etelaat or Sepah, interrogated, imprisoned, tortured, killed or executed because of his opinion and activity. The authorities monitor everything, all social media and communications are strictly monitored and controlled. The applicant will be treated more harshly because of his ethnicity. The government is very tough towards people like the applicant and this has increased the risk of significant harm to him. The applicant cannot obtain protection and nowhere in Iran would be safe for him.
- At the protection visa interview the applicant stated that in Australia he has become interested in Christianity and has started attending church.

Refugee assessment

12. 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

13. 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.
14. The applicant has provided copies and translations of Iranian identity documents and I am satisfied that his identity and nationality are as claimed.
15. I have some difficulties with the applicant's claims to have handed out flyers for the Al Ahwaz party and to have been pursued by Iranian authorities as a result. My first concern with this claim is that the applicant did not refer to it at his arrival interview conducted in December 2012. At that interview, the applicant was asked about the reasons he left Iran and spoke about discrimination in employment as an Arab and the relationship between Arabs and Persian speakers¹. Asked about his political involvement and activities, he said he did not have any.
16. When the delegate raised omissions from the arrival interview with the applicant at the protection visa interview, the applicant said that he had not lied but had not told the whole truth and had kept some information to himself because he was afraid of the consequences of mentioning things related to the political aspect of his reasons for leaving the country and at that time had not yet built trust in the people he was talking to. He referred to not trusting the interpreter and being afraid the information would be given to Iranian authorities. The submission to the IAA refers to his fear that his family would be harmed if he was overly critical of the regime. He has also given an explanation for his responses at the arrival interview in his statement of claims submitted with the visa application, although that explanation varies from the one provided at the interview. He said in the statement of claims that he was not made aware before or during the interview that the information would be used for the purposes of assessing his claims for protection, and that he was instructed to provide only a summary of his claims.

¹ I note that, as pointed out in submissions to the IAA, the delegate's decision inaccurately states that the applicant gave this information in his statement of claims. However when putting this information to the applicant during the protection visa interview the delegate correctly identified that it was from the arrival interview.

17. At the arrival interview, the applicant was advised that it was important he provide honest and accurate information, and he agreed to do so. While the applicant was told at the start of the interview that it was an opportunity to provide an 'overview' of information regarding his circumstances, when asked for the 'main reason' he had left Iran he was not limited in the response he was permitted to give, and was asked there were any other major reasons. I note that despite his claim to have been afraid, he made comments that could be perceived as critical of the Iranian government, such as when asked if police, security or intelligence agencies impacted his day to day life, saying that if that had been the case, the problem would double because he was Arab. He referred to it being 'terrible' in Iran and claimed he would go to gaol and be investigated because he used a smuggler to get to another country.
18. There is also another element of the applicant's evidence that has been inconsistent. As the delegate has indicated in her decision, the applicant said at the arrival interview that he had left Iran on his own genuine passport and indicated in his visa application form and statement of claims that he had departed Iran legally, whereas at the protection visa interview he raised a claim to have used a passport with his photograph but a different name. The inconsistency detracts from his credibility and the information that he left Iran legally undermines his claim to have been wanted by authorities at that time.
19. In addition to the omissions and inconsistencies, I did not find the applicant's evidence at the protection visa interview regarding his political involvement and the events that had led him to leave Iran persuasive. The applicant claimed that he had met a man through his work on a construction site who was a member of the Al Ahwaz party and spread notices and flyers about the party's activities. This man asked the applicant to help him. The applicant's evidence was that he met this man once or twice a week over a period of around two months, and that he was the only person from the party that the applicant saw. I found the applicant's evidence regarding this man to be vague and to shift in response to the delegate's questions. The applicant could not remember the name of the man, saying it was '[a particular name]', but was not his real name because all these people used nicknames. When the delegate asked the applicant if this man had called himself by a nickname at work, the applicant changed his evidence to say he was unsure if it was a real name or a nickname.
20. The applicant said he agreed to hand out the flyers because of all his personal experiences, that it was a way of showing his dissatisfaction with the discrimination he had received because of his ethnicity, and also referred to the poverty in Khuzestan despite its resources. While I accept the applicant may well hold these views, he indicated that prior to this he had never had any form of political activity in Iran. He said he did like to not wear Arab clothing much because people would make fun of those who wore such costumes, and while he had participated in Arab cultural events, there weren't many except for things like weddings. Asked about whether he had been involved in any activity in Australia in support of the party, any demonstrations regarding the situation in Ahwaz, or in Arab cultural events or interests, he said that he did not have the capacity to do anything here, and referred to his worries and concerns, being sad and depressed because of the situation of his family and concerns over his daughter who is very sick, and lack of sleep and energy. On the applicant's evidence, the flyers encouraged separatism and Arab independence, his activity was considered illegal and people caught doing such activities were punished, including by execution without trial. He said that he handed the flyers out in a crowded area in the centre of the city. That the applicant would undertake such a public and risky activity at the behest of a man he does not seem well acquainted with seems implausible, completely at odds with the applicant's lack of prior engagement in political activity or with the Arab cause.

21. While I have had regard to the applicant's explanations and the submissions on credibility, I do not accept that the applicant omitted mention of his claimed political activities or being wanted by Iranian authorities or his claimed unlawful departure from Iran from the arrival interview for the reasons he claims. These matters undermine the applicant's credibility and the other concerns I have identified above strengthen my view that the applicant has embellished this part of his claim. I do not accept that the applicant was involved in any political activity in Iran, that he went into hiding or that authorities came in search of him either before or after his departure. I am not satisfied there is any chance of the applicant being harmed in connection with any of these claimed events.
22. The applicant's claimed interest in Christianity was raised for the first time at the protection visa interview. He said that he had been attending a protestant church in [Suburb 1], usually about once a week, and claimed that prior to that he had attended an Arabic-speaking [church] in [Australian city 1] once or twice a month since about a year prior to the interview. He said he had not yet been baptised. The applicant said he had started going to church because he felt dissatisfied with Islam because of all the things the Islamic government does in Iran, and had decided to consider a different religion. He referred to having seen war and conflict amongst Muslims but that Christians were peaceful and respectful and that was what had attracted him to Christianity.
23. The applicant was unsure of the name of the church he was currently attending. Asked if he considered himself a Christian, the applicant said not yet, that he was interested but had only recently started investigating. Asked to speak about a story from the life of Jesus or from the bible that he particularly liked or which had meaning in his life, and said that so far what he had learnt of Jesus was his guidance of people to the right path, to not lie, not fight, and had learnt of his miracles. He identified Jesus bringing the dead to life and his birth from a virgin mother as miracles. He said he had a Persian bible but asked what was the last thing he had read in it, he said that when he goes to church he prays to God and Jesus to help his family to stay safe and be their guardian.
24. The letter from [Church 1]'s [Suburb 1] confirms that the applicant has been attending church there and also states he has commenced preparation for baptism and that the church supports his visa application. The letter does not state when he commenced that preparation, but I note that the applicant provided no evidence to the delegate in the period between the interview and decision to indicate that he was preparing for baptism. The applicant's evidence at the interview, less than two months prior to the date of letter, was that he was only at the stage of exploring Christianity and did not at that point consider himself a Christian. I find the timing of the commencement of his preparation for baptism to suggest that it may have been influenced by the receipt or expectation of a negative decision.
25. I accept the applicant has been attending church as he claims and that this is in some part out of curiosity rather than solely because of a desire to strengthen his claims for protection. While I have taken into account that on the evidence before me, the applicant had not yet been baptised and at the time of the interview did not yet consider himself a Christian, I found the applicant's responses to questions about the religion to be quite vague considering his claimed interest in the religion for a period commencing around a year prior to the interview. My impression from the applicant's evidence is that he has been exploring Christianity but has not formed any sort of real commitment to the religion and the letter from [Church 1] does not outweigh my concerns in this regard. I am not satisfied on the evidence before me that the applicant has or will genuinely convert to the religion or would wish to practise it in Iran. The applicant's evidence is that only his wife is aware that he has been attending church. I do not accept on the evidence before me that the applicant was a

person of any interest to authorities in Iran at the time of his departure and I consider it remote that his attendance at church in Australia has or would come to the attention of Iranian authorities.

26. I accept the applicant's evidence that he was born Shia but is 'not strict' about religion and that there are things about Islam he perceives as negative. Country information before me² indicates that while apostasy (conversion from Islam) is punishable by death under Iranian law, 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. 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.³
27. The applicant does not claim to have been harmed in the past because of any lack of belief in or adherence to Islam. He is not a person of any interest to Iranian authorities or other persons and I do not accept that he has converted to another religion. I am not satisfied that his Ahwazi Arab ethnicity, views about the Iranian regime and/or return as a failed asylum seeker, considered below, would heighten his profile such that the authorities would monitor or take an interest in his religious beliefs or activity. The chance of the applicant being harmed because of any lack of belief in or non-practise of Islam or otherwise because of his religious views and activity, including that in Australia, is no more than remote.
28. I accept the applicant is an Ahwazi/Khuzestani Arab. The applicant has referred to experiencing discrimination, limitations, surveillance and vulnerability on account of his ethnicity, and to Arabs being treated more harshly by authorities. The applicant claims that while he was doing his military service in Ahwaz in around 1990, he and other people of Arabic ethnicity were requested to report to intelligence services in Tehran. There, he was kept for a week, interrogated and beaten and then posted to do the remainder of his service in Abadan, which he claims was a form of exile. The applicant has also claimed that in around 1997 he was fired because he is a Khuzestani Arab. The claims are broadly consistent with the country information set out below. I am willing to accept these claims regarding his experience in military service and losing his job as credible.
29. Country information⁴ indicates that ethnic minorities, including Ahwazi Arabs, are subject to entrenched discrimination in areas such as education, employment, housing and land rights, access to services and economic aid, business licences and political participation. Despite Khuzestan's rich natural resources, economic neglect further entrenches poverty and

² 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; The Middle East Institute, "The Iranian Revolution at 30", 29 January 2009, CIS17095; Danish Immigration Service, "Update on the Situation for Christian Converts in Iran", June 2014, CIS28931; UK Home Office, "Country Information and Guidance Iran: Christians and Christian Converts", Version 2.0, December 2015.

³ Department of Foreign Affairs and Trade (DFAT), "Country Information Report Iran", 21 April 2016, CIS38A8012677.

⁴ Amnesty International, "Report 2016-2017", 23 February 2017, NG2A465F54; DFAT, "Country Information Report Iran", 21 April 2016, CIS38A8012677; Middle East Eye, "Iran's Ahwazi Arab minority: dissent against 'discrimination'", 28 February 2015, CXBD6A0DE2098; US Department of State, "Iran 2016 Human Rights Report", 3 March 2017, OGD95BE926964; Human Rights Watch, "Iran: Sweeping Arrests of Ahwazi Arab Activists", 29 April 2015, CXBD6A0DE5399; Minority Rights Group International, "World Directory of Minorities and Indigenous Peoples - Iran Overview", 1 July 2014, CX324703; DIAC Country Research Section, "Country Guidance Note Iran", 17 June 2013.

marginalises minorities. Ahwazi Arabs have complained of the government repressing expressions of Arabic culture. Members of minorities who speak out against violations of political, cultural and linguistic rights face arbitrary arrest, torture and other ill-treatment. Treatment of Arabs by the state can be unpredictable, and according to the prevailing political environment, they may unexpectedly face increased adverse attention. DFAT⁵ assesses that there is a high level of societal discrimination against Arabs which can lead to unfair day to day treatment such as in employment and access to housing and services. While this is rarely coupled with community-level violence, DFAT assesses that some claims of violence and arrests by security forces in Khuzestan are likely to be credible. DFAT's view is that most Iranian Arabs do not come to the attention of authorities and are subject to only low levels of adverse attention, although the risk increases dramatically for Arabs who attempt to publicly assert cultural or political rights. According to DFAT, Khuzestani Arabs are more politically active than Arabs in other areas and subsequently face greater pressure from authorities. However, the risk of attracting the interest of authorities is dependent upon being perceived as a threat to the Islamic Republic's constitutional underpinnings or territorial integrity.

30. The applicant has said that apart from during his military service, he has not been questioned in connection with his ethnicity, and said none of his family have been targeted by authorities. Other than the claims I have rejected, the applicant does not claim to have asserted cultural or political rights, although has expressed views about the Iranian regime and treatment of Arabs. He said that he did not wear Arabic clothing much in Iran because especially in the Persian areas people would make fun of the costume. He participated in cultural events such as weddings, but does not claim any other engagement in Arab cultural or political activity in either Iran or Australia. He attributed this to his state of depression, concern and worry here and, in the case of his having not been active on social media, fear for his family. However, having regard to the applicant's history and evidence, I do not accept he actually has any interest in or intention to engage in Arab political or cultural rights or other political activity in Iran in the future. Nor do I accept he otherwise has a profile of interest to the Iranian authorities. While I accept the applicant has experienced loss of employment in the past on account of his ethnicity, the evidence indicates that he has subsisted on self-employment for a significant period of time, working as an electrician on various construction sites. He has not described discrimination in other areas such as education or housing. Apart from one brother who is physically unfit, he has said his other brothers are either working or studying. Considering the applicant's particular circumstances, while I accept the applicant may experience occasional instances of discrimination, I am not satisfied this would be at a level that would threaten his capacity to subsist or otherwise amount to serious harm. Nor am I satisfied there is otherwise a real chance of him being harmed on account of his ethnicity and/or any views he may hold in relation to the treatment of Arabs and Iranian regime.
31. The delegate also considered whether there is a real chance of the applicant being harmed because he would be returning to Iran as a failed asylum seeker from a western country. The applicant claims to be no longer in possession of his passport. DFAT⁶ states that where a person does not have their passport, they require temporary travel documentation issued by Iranian diplomatic representatives. Iran does not issue these documents to involuntary returnees and as such, I find that if the applicant does return to Iran, it will be on a voluntary basis. The information states that where a person has been issued a temporary document, authorities would be forewarned about their return because of Iran's sophisticated government systems.

⁵ DFAT, "Country Information Report Iran", 21 April 2016, CIS38A8012677.

⁶ Ibid.

In these circumstances, I accept that the Iranian authorities may infer that the applicant has sought asylum in Australia.

32. There have been reports of persons returning to Iran, including asylum seekers from western countries, being detained or otherwise harmed or investigated on their return.⁷ However, many of these people appear to have existing profiles, taken part in political activities or other activities of interest outside Iran or to have departed illegally. DFAT⁸ observes that voluntary returnees to Iran do not attract much interest from authorities amongst the large regular international movements of Iranians, and generally move quickly through airports without interest. DFAT's sources advise that returnees will generally only be questioned if they have done something to attract the specific attention of authorities, and the vast majority of people questioned would be released after an hour or two. The International Organisation for Migration (IOM)⁹, which manages a program for voluntary returnees including those from western countries such as Switzerland, Norway, Belgium, the Netherlands and Australia, has similarly been quoted as stating that people who left Iran on their passport and return on a laissez-passer will be questioned by immigration police at the airport, possibly for up to a few hours, but that nobody has been arrested, although that may occur if they had been involved in criminal activities. IOM has also been quoted as saying a long stay abroad in itself is not an issue as long as the person has left the country legally.
33. On the above information, I do not accept that asylum seekers returning from western countries are imputed with adverse views or otherwise harmed simply because they have claimed asylum and spent time in the west. The applicant departed Iran lawfully on his own passport and the evidence before me does not suggest Iran takes an interest in the fact that a person has lost their passport or used a smuggler to travel on to another country, as the applicant suggested in his arrival interview. As set out above, on DFAT's assessment, while Khuzestani Arabs can face pressure from authorities, the risk of attracting interest is dependent upon being perceived as a threat to the Islamic Republic's constitutional underpinnings or territorial integrity. I do not accept that the applicant had any existing profile with the Iranian authorities at the time of his departure, that there is any prospect that his involvement with Christianity in Australia would have come to their attention or that he has engaged in any other activities that would be of interest to them. While I accept it is possible the applicant will be briefly questioned on return to Iran because of the nature of his travel document, considering his particular circumstances I find the chance of the applicant being identified as a person of adverse interest, or of such questioning entailing or amounting to any harm, to be remote.
34. Considering the applicant's circumstances as a whole, including his ethnicity as an Ahwazi/Khuzestani Arab, views regarding the treatment of Arabs and Iranian regime, non-practise of or lack of belief in Islam, involvement with Christianity in Australia and that he will be returning to Iran after having claimed asylum and spent a period of time in Australia, I find there is not a real chance of him being seriously harmed in Iran in the reasonably foreseeable future in Iran.

⁷ See, eg, Amnesty International, "AMNESTY INTERNATIONAL - URGENT ACTION UA 125/11 Student activists held in Iran", 6 May 2011, CX264288; Radio Zamaneh, "Mousavi's campaign worker arrested upon return to Iran", 16 February 2014, CX318168; Iran Human Rights, "The Kurdish asylum seeker Rahim Rostami, charged with actions against the nation's security, released on bail", 19 June 2011, CX274950; Amnesty International, "'We are ordered to crush you' Expanding Repression of Dissent in Iran", 1 February 2012, CIS22610; UK Home Office, "Country Information and Guidance - Iran: Illegal Exit", 20 July 2016, OGD7C848D28.

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

⁹ Danish Refugee Council, Landinfo and Danish Immigration Service, "Iran: On Conversion to Christianity, Issues concerning Kurds and Post-2009 Election Protestors as well as Legal Issues and Exit Procedures", 1 February 2013, CIS25114.

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).

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 not accepted the applicant's claimed political activity or that he was wanted by Iranian authorities at the time of his departure from Iran or subsequently. I do not accept that the applicant has genuinely converted to Christianity and have found there is no real chance of him being harmed because of his involvement with Christianity in Australia, any lack of belief in or practise of Islam, views regarding the treatment of Arabs and Iranian regime and/or as a failed asylum seeker returning from Australia. The Federal Court has held that 'real risk' imposes the same standard as the 'real chance' test in the refugee criterion¹⁰ and having regard to the factual findings and country information above, I am similarly not satisfied there is a real risk of the applicant suffering harm.
39. I have found that the applicant may experience discrimination but that this would not amount to serious harm and there is not a real chance of him otherwise being harmed because of his ethnicity. Having regard to the country information set out above and the applicant's particular circumstances including his lack of any engagement with Arab political or cultural rights, and history of self-employment as an electrician, I am not satisfied there is a real risk that any discrimination he may experience will involve the level of pain, suffering or humiliation contemplated in the definitions of torture, cruel or inhuman treatment or punishment or degrading treatment or punishment, or that it would involve the other types of significant harm as defined. Nor am I satisfied there is otherwise a real risk of him being significantly harmed.
40. Having regard to the applicant's circumstances cumulatively, I am not satisfied there is a real risk of him suffering significant harm.

¹⁰ *MIAC v SZQRB* (2013) 210 FCR 505.

Complementary protection: conclusion

41. 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.