



Australian Government

Immigration Assessment Authority

Decision and Reasons

Referred application

IRAN

IAA reference: IAA17/04046

Date and time of decision: 7 August 2018 10:08:00

J Jennings, Reviewer

Decision

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

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

Background to the review

Visa application

1. The referred applicant (the applicant) claims to be an Iranian citizen. On 13 December 2016 he lodged an application for a Safe Haven Enterprise Visa (SHEV), Subclass 790. He claims that he came to the attention of the authorities as a non-believer and will be harmed for this reason in Iran.
2. On 6 December 2017 a delegate of the Minister for Immigration and Border Protection (the delegate) refused to grant the visa. The delegate was not satisfied that the applicant would face a real chance of serious harm or a real risk of significant harm in 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. The IAA received a submission on behalf of the applicant on 18 January 2018. The applicant's representative advised his submission encompasses legal arguments on why the applicant disagrees with the delegate's decision and highlights claims or matters the applicant presented but were not considered. To that extent the submission may be referred to as argument rather than new information.
5. The submission refers to the delegate's finding that the applicant's claims were inconsistent with the information he provided at his Arrival interview. The applicant's representative advanced that, among other reasons, the applicant did not mention some matters at his Arrival interview because the interpreter did not interpret part of the applicant's response; in the submission the representative provides a transcription of the missing discussion at the Arrival interview. While the transcription of the relevant section of the Arrival interview was not before the Minister, the interview from which it was transcribed was before the Minister and I find that this transcript is not new information.
6. The submission notes that at the SHEV interview the applicant "answered several important questions ... in 'broken English' without the help of the interpreter". The representative notes that the applicant was not represented at the time of, or after, the interview and does not possess competent English skills and the representative expresses his concern that the applicant was not asked to speak in Farsi and that "the delegate decided to rely on his accounts spoken in 'broken English' while a Farsi interpreter was present at the interview". The representative submits "that the delegate erred in law by assuming that what the applicant stated was what he meant to say without checking it with the interpreter."
7. I have had regard to the audio recording of the SHEV interview and in parts the discussion is conducted in English; there is a period of approximately 18 minutes at the beginning of the interview where this occurs and it is apparent in intermittent and short periods throughout the interview. The initial and longest period of discussion in the English language relates to questions about the applicant's bio-data, being his name and identity, ethnicity and religion, employment, residential addresses for the applicant and his family and his contact with his family. Throughout this interchange the interpreter intervenes on multiple occasions to clarify responses and questions and to assist with a date calculation from the Persian calendar. In later periods in the interview the applicant responded to a few questions in

English before they were interpreted into Farsi, however these are mostly single sentence responses and then the discussion reverted back to using the interpreter. I note the delegate's finding that the applicant's evidence of his relationship with a specific person in Australia reflected "adversely towards his credibility as a witness". Part of the discussion about the applicant's relationship with this person was conducted in English. However, I have not had regard to this information in my decision or in assessing the credibility of the applicant's claims. I have considered whether any exceptional circumstances exist that justify the IAA obtaining new information in this regard, however I find that the applicant was able to engage in the SHEV interview and the periods of discussion in English did not hamper his ability to advance his protection claims.

8. At the SHEV interview the applicant was shown photographs of other people, in addition to the person discussed immediately above, and asked about his relationship with them. The delegate has not had regard to this information in his decision and I conclude that this information is not relevant to the applicant's claims for protection. I have not had regard to it.
9. I have obtained new information, specifically information regarding Iranians returning to Iran who have claimed asylum, and used social media while overseas, who have tattoos, and have used alcohol, from the most recent Department of Foreign Affairs and Trade (DFAT) country report for Iran which was published on 7 June 2018.¹ This report was published after the delegate's decision and the delegate relied on the 21 April 2016 DFAT report for Iran which the 7 June 2018 report has updated. I am satisfied that there are exceptional circumstances to justify considering this new information.

Applicant's claims for protection

10. The applicant's claims can be summarised as follows:
 - The applicant is an Iranian citizen from Teheran, Iran.
 - The applicant was born a Muslim but no longer believes in Islam although he still believes in God.
 - The applicant was arrested in Iran for consuming alcohol, was taken to a mosque where he was kept for a number of days and received 105 lashes. The applicant was also lashed for being seen in public with his girlfriend.
 - The applicant worked as [an Occupation 1] in Teheran and established his own [business]. He was successful and had a high income. He used his income to support needy people living in the community in the poor areas of south Teheran. He asked other high income businessman to contribute. In 2012 he attended a charity event in Teheran and agreed to provide support to a number of orphans; this support involved pledging a substantial amount of money.
 - After this event the applicant was visited by men from Sepah, the Islamic Revolutionary Guards. He believes Sepah were at the charity event where they identified wealthy businessman as possible donors to a religious charity. The Sepah officers asked the applicant to donate money to a religious charity; he refused.
 - Over a period of time Sepah officers returned to visit the applicant to make further demands that he donate to the charity. The applicant continued to refuse. Sepah

¹ Department of Foreign Affairs and Trade (DFAT), "DFAT Country Information Report Iran", 7 June 2018, CIS7B839411226

officers said to him if he was a true Muslim he would agree to donate, to which the applicant replied that he was willing to give money to the living but not to dead imams who were buried in gold graves. After this the Sepah accused the applicant of being an infidel, or “kaaffar”.

- A few months after the charity event Sepah broke into the applicant’s office and ransacked it. The applicant knows it was Sepah as the building security guard recognised one of the Sepah officers.
- The applicant became fearful for his safety and did not return home. The applicant took important documents from his office safe at night and returned these to the property owners the next day.
- Within two weeks of the incident at his office the applicant left Iran. He was fearful that he would be detected if he attempted to leave legally and he made arrangements with a person he knew who was [a Country 1] refugee now living in Iran. The applicant travelled to the [Country 1] border with a people smuggler and crossed the border in the back of a van. He was then taken to [a Country 1 city] airport where he left using his genuinely issued Iranian passport and travelled initially to [Country 2] and from there to Australia via [Country 2]. His passport was taken from him by the people smuggler in [Country 2].
- After the applicant’s departure people came to the family home and spoke to his parents and asked about the applicant. His father has been taken by the authorities on two occasions. Although he has regular contact with his mother he does not know where his parents are living as they have moved residence.
- The applicant fears that because of his religious opinion he will face harm on return to Iran, he will be arrested and killed as an infidel. The applicant had a relative who spent many years in prison in Iran resulting in insanity and the applicant fears similar harm.
- The applicant has tattoos and he believes he could be questioned about these in Iran.
- Since being in Australia the applicant has been active online posting information which is critical of Islam and which disparages religious practices in general and Islam specifically. He fears he will be targeted by the authorities as a result of this activity.

Factual findings

11. The applicant has consistently claimed to be an Iranian citizen and has provided identity documents in support of his claimed identity. At the SHEV interview the applicant stated a different date of birth from that he had previously stated and which conflicts with the date of birth on identity documents he has provided. I accept the applicant’s identity and date of birth as stated by the delegate and supported by Iranian identity documents and that Iran is the receiving country for the purpose of this review.
12. I accept the applicant was born a Muslim but no longer believes in Islam although he still believes in God.
13. I accept that the applicant had his own successful [business].
14. The applicant claims he was detained and lashed for drinking alcohol and for being in public with his girlfriend. I accept that the morality police in Iran take steps to control what is seen as westernised behaviour, particularly amongst Iranian youth, however I am not satisfied that the applicant was lashed as a result of his behaviour as he claims. The country information

does not indicate that lashing punishment for breaches of the moral code in this regard is widespread or commonly carried out.

15. While the Penal Code provides for penalty of 80 lashes for the use of alcohol and the media reports prosecutions for alcohol consumption exist, these are not common. DFAT advise that the police will act if the activity comes to public attention or if instructed to crack down on it, but overall the government has changed its approach to the use of alcohol in recent years from a purely law and order focus to one emphasising treatment and rehabilitation. This is in response to widespread use of alcohol across Iranian society with the World Health Organisation reporting that Iran had the 19th highest rate of alcohol consumption in the world, with an annual average of 25 litres per person.² The indications are that Iranians wishing to obtain and consume alcohol can do so relatively easily, and I take into account the applicant's statement that his father is a regular user of alcohol and there is no indication his father has come to harm as a result of his alcohol consumption.
16. Similarly, while "the government enforced gender segregation in many public spaces ... and prohibited women from mixing openly with unmarried men or men not related to them"³, the indications are that punishment for mixing in public is not widespread. In its 2016 report DFAT advised that "unmarried couples appearing together in public is very common" and that the "authorities generally turn a blind eye to such couples" and that generally such couples may be stopped, questioned and taken to the police station and warned. DFAT advises that the police have a morality control department charged with enforcing Islamic rules and standards and that youth in particular can experience some form of low-level harassment from security authorities, and given verbal warnings for behaviour.⁴ However, at the time he claims to have been lashed, being 2009⁵ and 2012, the applicant was [age] years of age older, and was already a successful and wealthy businessman with his own company. The applicant was not a youth and of the profile of young Iranians who are reported as being harassed by the moral police or other authorities for their behaviour.
17. Considering the country information that indicates that youth in particular can attract adverse attention for breaches of the moral code, but that punishment is usually a warning, and that the applicant was a [age] year old successful businessman living in urbanised Teheran at the time he claims to have first been lashed, I am not satisfied that he was lashed as claimed. The country information indicates that if detected and acted upon by the authorities transgressions of the moral code generally result in a warning about behaviour. I do not accept that the applicant was lashed on two occasions as he claims and I find he has fabricated this claim in an attempt to enhance his protection claims.
18. I have accepted that the applicant ran a successful business and I accept that he supported needy people in the community. However I do not accept that he attended an event where he attracted the attention of Sepah who then pursued and harassed him as claimed. I place significant weight on the applicant's inability to name the charity or the event which he stated was the cause of coming to the attention of Sepah. In his statement of claims he stated that he attended a charity event for a private society and that at the event there were "14 children who needed care. Some were orphans, some were fostered, some lived with parents who had disabilities which prevented them from caring for the children. I said I would take them under my wing. I was then required to fund their education and living expenses until they go to university". The applicant claims to have committed to supporting a group of

² DFAT, "DFAT Country Information Report Iran", 7 June 2018, CIS7B839411226

³ US Department of State, "Iran – Country Reports on Human Rights Practices 2016", 3 March 2017, OGD95BE926964

⁴ DFAT, "DFAT Country Information Report Iran", 7 June 2018, CIS7B839411226

⁵ As stated at the Arrival interview

children over an extended period of time as they progress through their education at significant monetary outlay. Yet the applicant is unable to name the relevant charity. I do not accept the explanation in the submission to the IAA that it is “normal if the applicant could not recall the exact name of the charity event that was held over five years ago. Nevertheless, the applicant remembered that the event was held on the memorial day of one of the Imams”. At his SHEV interview the applicant stated that up to the time of the event he worked alone in his charitable activities, and while he did seek to enlist other businessmen, he did not work with any organisations. I therefore do not accept that the first and only time the applicant engaged with a charitable organisation in his endeavours he cannot recall the name of the organisation, notwithstanding this being over five years ago. From his account he recalls other details, being the number of children he agreed to support and how and the place and time of the event, and I do not accept that he would fail to recall the name of the charity to which he agreed, if true, to pledge such substantial funds. Furthermore, in his statement of claims he claims the organisation was a “charity for the needy”, yet at his SHEV interview he described the organisation as supporting people on dialysis and I find it difficult to reconcile this with his statement about supporting orphans and fostered children. I do not accept that the applicant attended a charity event in 2012 which brought him to the attention of Sepah who then harassed him to support religious based charities. It follows that I do not accept that Sepah made a number of visits to the applicant to harass him into supporting religious charities and that as a result he told them he was not religious and that from this Sepah labelled him as “kaaffar”, a non-believer, and ransacked his office.

19. I do not accept that the applicant was pursued by Sepah or other authorities and I do not accept that he left Iran illegally as he was concerned he had been blacklisted and may have been detected had he attempted to leave legally. In this regard I place significant weight on the fact the applicant obtained an international driver licence within the last one to two days he was in Iran.⁶ I note his comment that it was easy to obtain this as he did not have to contact the authorities because international licences were issued by a private, independent company. However, at this same time the applicant claimed his office had been ransacked by Sepah, that he went into hiding to avoid Sepah, did not go home, he only went back to the office at night to obtain important client documents, and he made arrangements with someone to be smuggled illegally out of Iran. I find the applicant’s interest in obtaining an international driver’s licence “for the purposes of driving in another country, which I thought I may need to do after I left Iran”, belies his claim of being in hiding and making swift arrangements to leave Iran because of fears for his safety.
20. Furthermore, had the applicant departed Iran illegally as he claims I am surprised he did so by entering [Country 1] and from there travelling to [Country 2] via [a Country 1] airport using his genuine Iranian passport. From the applicant’s account at his SHEV interview, where he was asked to recount his departure in full, he stated he was in a van at night when he entered [Country 1]; from his account he did not pass any Iranian authorities on exit, or any [Country 1] authorities on entry. As such he would have then attempted to travel from [Country 1] to [Country 2] without there being any record of his entry into [Country 1]. While this may not entirely preclude someone taking this travel path I note the 2016 DFAT report which provides information on illegal border crossings from Iran stated “many Iranians travel to Turkey where there is no visa requirement for Iranians and from there travel onwards using forged documents”. From his account I am not satisfied that the applicant’s claim of his illegal departure from Iran is genuine. Considered together with my finding that he was not of interest to Sepah or other authorities when he departed Iran I do not accept that the applicant departed Iran illegally.

⁶ SHEV form, Question 80; stated date of departure 22 January 2013

21. As I have not accepted that the applicant was of interest to the Iranian authorities I do not accept that Sepah, or other authorities, have made visits to the family home to pursue the applicant. Nor do I accept that they have taken the applicant's father on two occasions.
22. I accept that the applicant no longer has his passport.
23. I accept that the applicant has tattoos.
24. I accept that the applicant has posted information which is critical of Islam on social media.

Refugee assessment

25. Section 5H(1) of the Act provides that a person is a refugee if, in a case where the person has a nationality, he or she is outside the country of his or her nationality and, owing to a well-founded fear of persecution, is unable or unwilling to avail himself or herself of the protection of that country; or in a case where the person does not have a nationality—is outside the country of his or her former habitual residence and owing to a well-founded fear of persecution, is unable or unwilling to return to it.

Well-founded fear of persecution

26. Under s.5J of the Act 'well-founded fear of persecution' involves a number of components which include that:
 - the person fears persecution and there is a real chance that the person would be persecuted
 - the real chance of persecution relates to all areas of the receiving country
 - the persecution involves serious harm and systematic and discriminatory conduct
 - the essential and significant reason (or reasons) for the persecution is race, religion, nationality, membership of a particular social group or political opinion
 - the person does not have a well-founded fear of persecution if effective protection measures are available to the person, and
 - the person does not have a well-founded fear of persecution if they could take reasonable steps to modify their behaviour, other than certain types of modification.
27. In summary I have accepted that the applicant no longer believes in Islam and has posted information which is critical of Islam on social media, has tattoos, has consumed alcohol and been in public with his girlfriend, no longer has his passport and should he return to Iran would be returning as a failed asylum seeker.
28. I note the applicant's concern about a relative who lost his sanity after being detained in Iran and I accept that as a result he may have a subjective fear of harm in Iran. However I am not satisfied that the applicant would be imprisoned in Iran or that there is a real chance he would experience harm.
29. The country information indicates that many Iranians do not regularly attend mosque or Friday prayers. In 2014 the Danish Immigration Service quoted an advocacy officer of the United Council of Iranian Churches who "assessed that there are more and more atheists in

Iran and that this is more accepted among some Iranians".⁷ A November 2014 article of the Economist newspaper notes that "Islam plays a smaller role in public life today than it did a decade ago" and the power of clerics has "waned" and while "Iranians remain a spiritual people who see Islam as part of their identity", many have moved away from "institutionalised" religion.⁸ While apostates can be punished under sharia law for leaving the Muslim faith prosecution of cases is rare⁹; DFAT advises apostasy and blasphemy cases are no longer an everyday occurrence in Iran and that death sentences are rare. However, DFAT reported that in March 2017 the Supreme Court upheld the decision of a criminal court to sentence a 21 year old man to death for apostasy following his arrest for social media posts considered critical of Islam and the Koran while on military service. As at March 2018 the death sentence had not been carried out. The court also convicted two co-defendants of posting anti-Islamic material on social media, sentencing them to prison.¹⁰ Notwithstanding this case, overall the country information supports that apostasy and blasphemy cases are rare; reporting in 2016 DFAT advised that the last known application of the death penalty for apostasy occurred in 1990 and in 2011 an apostate was sentenced to death however, following international pressure, the conviction was subsequently commuted and the death penalty was dropped.¹¹ The Austrian Centre for Country of Origin and Asylum Research and Documentation reported the execution in 2011 of an IRGC Commander who was convicted of apostasy but I note that this person was also claiming to be God and that he was charged with apostasy and "encouraging prostitution" and the "nature of [his] activities and religious claims are not clear".¹² DFAT "considers it unlikely that individuals will be prosecuted on charges of apostasy"¹³ and the Danish Immigration Service noted that it was not aware of recent cases.¹⁴ Country information indicates that apostates may come to the attention of the authorities through public manifestation of a new faith¹⁵; however the applicant has not adopted a new faith. Overall the country information does not point to the applicant experiencing harm on return to Iran for reason of his religious opinion.

30. I have accepted that the applicant has posted information critical of Islam on social media however I am not satisfied that he would come to the adverse attention of the authorities as a result. I note that many social media tools are blocked in Iran, but that despite this there were an estimated 42 million internet users in Iran in 2012 and 17 million Facebook users in 2017.¹⁶ While there have been reports of ordinary citizens coming to attention for their use of social media the reports overall indicate that high profile activists and journalists are the focus of the authorities charged with monitoring social media.¹⁷ Reporting more recently in

⁷ Danish Immigration Service, "Update on the Situation for Christian Converts in Iran", June 2014, CIS28931

⁸ 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", 1 September 2015, CISEC96CF13622

⁹ Danish Immigration Service, "Update on the Situation for Christian Converts in Iran", June 2014, CIS28931

¹⁰ DFAT, "DFAT Country Information Report Iran", 7 June 2018, CIS7B839411226

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

¹² ACCORD, "Iran: Freedom of Religion; Treatment of Religious and Ethnic Minorities COI Compilation September 2015", 1 September 2015, CISEC96CF13622

¹³ DFAT, "DFAT Country Information Report Iran", 21 April 2016, CIS38A8012677

¹⁴ Danish Immigration Service, "Update on the Situation for Christian Converts in Iran", June 2014, CIS28931

¹⁵ DFAT, "DFAT Country Information Report Iran", 7 June 2018, CIS7B839411226

¹⁶ United Kingdom: Upper Tribunal (Immigration and Asylum Chamber), "AB and Others (internet activity – state of evidence)", 30 April 2015, CISEC96CF1903; Techrasa, "Infographic: Facebook Usage Statistics in Iran", 16 August 2017, CXC90406614703

¹⁷ International Campaign for Human Rights in Iran, "Security Agencies and the Prosecution of Online Activists", 11 November 2014, CX1B9ECAB9307; Brookings Institution, "Anti-blasphemy offensives in the digital age: When hardliners take over", 29 September 2016, CIS38A80122258; Article 19, Amir Bayani, "Iran's War Against Its Citizens", 24 July 2014, CX323685; The Independent, 'British woman Roya Nobakht could be executed in Iran after insulting Islam on Facebook', 2 April 2014, CX319658; Human Rights Activists News Agency, '8 Facebook Activists Sentenced to 133 Years Imprisonment', 28 January 2015, CXBD6A0DE783

2018 DFAT advised that international observers report that Iranian authorities have little interest in prosecuting failed asylum seekers for activities conducted outside Iran, including in relation to protection claims, which includes posting critical social media comments.¹⁸ I am not satisfied that the applicant would experience harm for reason of his social media posts, and, noting the widespread use of social media in Iran and the few reports of harm to users, I am not satisfied he would experience harm should he continue to post on return to Iran.

31. At his SHEV interview the applicant stated that he might be questioned about his tattoos but that these would not cause his death. I note that some commentary points to tattoos attracting adverse attention as they are deemed as disrespectful or western or they signify involvement in criminal gangs.¹⁹ However I note that tattoos are becoming more common, albeit still attracting some controversy.²⁰ I take into account DFAT advice in 2016 that it was unaware of specific penalties for having a tattoo, but considers that such penalties would likely be similar to those imposed for dress or hair styles that are deemed improper, such as a warning or a fine²¹ and more recently in 2018 that it is common to see men in public in western style attire, including with tattoos.²² I accept that the applicant could be questioned about his tattoos but I find that this would result in low-level harassment and does not amount to serious harm.
32. Similarly, should he continue to drink alcohol if he returned to Iran or go out in public with a girlfriend I find that he would not experience serious harm. I have noted above that the police have a morality control department charged with enforcing Islamic rules and standards. However the indications are that those who come to attention are given verbal warnings for their behaviour.
33. The applicant no longer has his passport and to return to Iran would require documentation to be issued to facilitate travel. However Iran has historically refused to issue travel documents to facilitate the return of involuntary returnees.²³ I find that if the applicant is returned to Iran it would be on a voluntary basis. The recent DFAT report notes that “according to international observers, Iranian authorities pay little attention to failed asylum seekers on their return to Iran”. Since the 1979 revolution many Iranians have left the country in large numbers to live abroad and “international observers report that Iranian authorities have little interest in prosecuting failed asylum seekers for activities conducted outside Iran, including in relation to protection claims.”²⁴ The country information does not indicate that returning asylum seekers from the west are routinely imputed with a profile of concern or harmed because of their asylum claim. Reports of asylum seekers being arrested on return relate to those with an existing high profile, particularly political activists.
34. I have not accepted that the applicant was lashed in Iran for moral code breaches or was of interest to the Sepah or other authorities in Iran or that he departed Iran illegally. I have found that any harm he may face for consuming alcohol, having tattoos or being with his girlfriend would not amount to serious harm. I have not accepted that he would experience harm on the basis of his religious opinion, including his social media activity, and considered

¹⁸ DFAT, "DFAT Country Information Report Iran", 7 June 2018, CIS7B839411226

¹⁹ Austrian Centre for Country of Origin and Asylum Research and Documentation (ACCORD), "Iran: Women, children, LGBTI persons, persons with disabilities, "moral crimes": COI Compilation", 01 December 2015, CISEC96CF14191

²⁰ France 24 Observers, "Working underground: the life of an Iranian tattoo artist", 15 July 2013, CIS26056; Agence France Presse (AFP) – France, "Tattoo lands Iranian actress in feminism controversy", 1 June 2016, CX6A26A6E4895; Radio Zamaneh, "Explanations demanded for football players' tattoos", 7 September 2015, CXBD6A0DE13224

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

²² DFAT, "DFAT Country Information Report Iran", 7 June 2018, CIS7B839411226

²³ *ibid*

²⁴ *ibid*

together with the applicant's circumstances as whole, that he would be returning to Iran as an asylum seeker from a western country, and taking these matters into account cumulatively, I am not satisfied there is a real chance of the applicant suffering persecution in the reasonably foreseeable future in Iran.

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 found that being questioned on return to Iran would not amount to serious harm. Similarly I have found that any harassment the applicant may experience for consuming alcohol, having tattoos or being with his girlfriend would not amount to serious harm. I also find this does not amount to significant harm. The harm does not include deprivation of life, the death penalty, or torture; nor am I satisfied he will be subject to cruel, inhuman or degrading treatment or punishment as defined.
39. I have found that there is not a real chance that the applicant faces harm on the basis of his religious opinion, including his social media activity, or returning to Iran as an asylum seeker from a western country. Noting that the "real risk" test for complementary protection is the same standard as the "real chance" test,²⁵ and based on the same information, and for the reasons set out above, I am also satisfied that there is not a real risk that he would face significant harm for these reasons.

²⁵ *MIAC v SZQRB* (2013) 210 FCR 505

Complementary protection: conclusion

40. 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.