



Australian Government

Immigration Assessment Authority

Decision and Reasons

Referred application

IRAN

IAA reference: IAA17/04077

Date and time of decision: 13 August 2018 11:52:00

F Kerr, 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 citizen of Iran. On 2 May 2016 he lodged an application for a Safe Haven Enterprise Visa (SHEV). On 8 December 2017 a delegate of the Minister for Immigration and Border Protection (the delegate) refused to grant the visa.

Information before the IAA

2. I have had regard to the material given by the Secretary under s.473CB of the *Migration Act 1958* (the Act).
3. On 14 January 2018 the applicant's representative provided a submission to the IAA. The submission reiterates the applicant's claims which were before the delegate and takes issue with the delegate's findings. To that extent, I do not consider the submission to be new information. The submission also refers to and extracts from an Amnesty International report which was before the delegate and which is not new information.
4. The submission cites and extracts from another country information source which was not before the delegate and which is new information. The extract does not contain what may be regarded as personal information in the s.473DD sense. The source of the extract is a report which pre-dates the delegate's decision and no explanation has been provided as to why it could not have been provided to the delegate before he made his decision. At the beginning of his SHEV interview, attended by his former representative, the delegate explained the importance of the applicant providing all his claims and information in support as soon as possible because if his application was refused he may not have another opportunity to do so. He was also told that any additional information he wished to provide may be taken into account if provided before the decision was made. Subsequently, his representative provided a detailed submission to the delegate which referred to a number of relatively recent country information reports dealing with the issue of religion and apostasy in Iran including another report on religious freedom in Iran. In his decision, the delegate considered a more recent version of the International Religious Freedom report extracted from and referred to in the submission to the IAA and I am not satisfied that there are exceptional circumstances to justify my consideration of this extract/report.
5. The submission includes references and hyperlinks to five items of country information. This information was not before the delegate and I find it is new information. Under the *Practice Direction for Applicants, Representatives and Authorised Recipients* (the Practice Direction), if new information such as country information reports or media articles are referred to, a copy of the information or extract must be provided; hyperlinks to publicly available documents are not acceptable. The country information linked to and on which the applicant wishes to rely has not been provided nor have relevant extracts. While the information linked to is said to be relevant to the submission that the applicant's political beliefs could be construed as anti-government, its relevance to the applicant's particular claims for protection is not apparent. For these reasons and as the hyperlinks to country information do not comply with the Practice Direction, I have decided under s.473FB(5) not to accept them.
6. The submission makes the new claims that the applicant has been attending protests and has been active on his social media sharing "imputed political opinions" which has made a profile for himself with the authorities to such an extent that he is at risk of harm. These claims have

not been previously made by the applicant. There is no suggestion in the information presented to the Department that the applicant has been involved in protests or that he is active on social media sharing his political opinions. These are bare assertions with no details, and no explanation about the activities and their significance or relevance to his profile, or why these claims are only being made now. I am not satisfied that the information could not have been provided before the delegate's decision was made or that it is credible personal information that if known may have affected consideration of the applicant's claims. I am therefore unable to consider it.

Applicant's claims for protection

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

- He does not adhere to Islam, notwithstanding his religious upbringing.
- He started withdrawing from going to the mosque and religious gatherings. This came to be well-known in his suburb of Tehran and led to his being targeted by the Basij.
- The Basij picked him up and questioned him about 20 or 30 times until around 2005.
- In 2005 he and his friend, [were] picked up by the Sepah, questioned and, in the applicant's case, tortured. The Sepah broke his [body part].
- He was released for treatment but required to report to them weekly.
- He stopped reporting when six months later he found out [his friend] had died. [His friend's] family was told it was a car accident but they think it was the Sepah.
- He went into hiding until deciding to leave Iran for his own safety.

Factual findings

Disillusionment with Islam and problems with the authorities

8. The applicant's claims centre on his status as a non-believer in Iran. He has been consistent in claiming that he stopped believing in Islam at an early age and I accept that this is the case. He claims that everyone in his large suburb of Tehran came to know of his non-belief and questioning of Islam which, in turn, led to isolation from his extended family and problems with the authorities.

Basij

9. In the written statement submitted with his SHEV application the applicant claimed the Basij picked him up and took him for questioning about 20-30 times during the period he was working in his own business transporting passengers.

10. His evidence about this period was generally somewhat unclear and I found his specific evidence about being picked up by the Basij undetailed and repetitive. He made the new claim in his SHEV interview that the Basij was responsible for getting him fired from various [Occupation 1] jobs and he was forced to work as [Occupation 2] to make ends meet. Later in the interview, he appeared to suggest that while he was working during the day as [Occupation 1], he [did work] at night to make ends meet and it was on those occasions the Basij picked him up. He said that typically he'd be picked up at checkpoints in his neighbourhood because they knew about his non-belief, they'd keep him for 7-8 hours, persecuting, insulting and

mocking him, then release him. He said he was never kept overnight but it sometimes happened at night because that's when he was [doing another job]. Later in his interview, he said he left his [Occupation 1] job and worked as [an Occupation 2] all the time so sometimes he'd be taken during the day. He said it happened all the time in his neighbourhood; sometimes he'd be stopped on the street because they knew about him. When asked to describe in detail any particular occasion, he repeated the incident described in his written SHEV statement but appeared unable to recall any other specific incidents with the Basij.

11. The only reason he provided for this treatment was his non-belief. He stated in his SHEV interview that his family and friends became aware that he had turned away from Islam in his teens. He does not claim that he was an activist or that he otherwise sought to publicise his views which might result in a person coming to the attention of the authorities.¹ His evidence was that the Basij people changed all the time and I do not find it credible that in a city the size of Tehran the applicant and his otherwise private non-belief, albeit known among family and friends, would be so notorious in the wider community that he would be singled out repeatedly for attention.
12. Nor do I find it plausible that he could be picked up on so many occasions and not recall with any specificity what happened to him other than on the one occasion he referred to in his SHEV statement and repeated in his SHEV interview involving an old man in his car who wanted him to turn off the tape cassette he was listening to. He repeatedly referred to being insulted and persecuted by the Basij but his evidence was otherwise vague about what happened when they took him. He did not refer to a number of matters in his SHEV statement such as the Basij swearing at him with references to his mother and sister, or that they would hit and slap him with whatever they picked up in their hand. I am prepared to accept that he may have, on occasion, been picked up by the Basij and questioned. This much is consistent with information given in his entry interview. On that occasion, when asked whether the police, security or intelligence organisations impacted on his day to day life, he said yes; that, for example, when you are driving and listening to music, they stop you and ask you questions and do inspections.
13. Country information indicates the Basij often patrol the streets and conduct checkpoints, particularly when there is a heightened security atmosphere or after large events.² Western music has been banned since the revolution in 1979 and is not meant to be listened to although, in practice, many young Iranians do and DFAT has regularly observed and heard western music being played in places such as coffee shops, restaurants, taxis and private cars.³ Basij members often receive very little formal training; at times they operate without orders or objectives, resulting in unpredictable interactions with civilians and enforcement of rules.⁴ Youth, in particular, can experience low-level harassment from security authorities such as being subjected to searches, car checks and verbal warnings for dress or behaviour⁵ all of which I consider overall consistent with what the applicant said in his entry interview he'd experienced.
14. I consider it entirely plausible that the applicant would have experienced harassment from time to time from the Basij if, for example, he was playing music in his car deemed 'western'

¹ Department of Foreign Affairs and Trade (DFAT) "DFAT Country Information Report Iran April 2016" 21 April 2016 CIS38A8012677 at 3.57

² DFAT "DFAT Country Information Report Iran" 29 November 2013 CIS26780

³ DFAT "DFAT Country Information Report Iran April 2016" 21 April 2016 CIS38A8012677 at 3.83

⁴ DFAT "DFAT Country Information Report Iran" 29 November 2013 CIS26780

⁵ Department of Foreign Affairs and Trade (DFAT) "DFAT Country Information Report Iran April 2016" 21 April 2016 CIS38A8012677 at 3.80

and therefore banned. But while I accept he may have experienced interest from the Basij from time to time (questioned about his music, subjected to inspections) in view of the generally vague nature of his evidence I consider the applicant has probably exaggerated the number of his interactions with the Basij. However, even if I accept that he may have encountered them up to 30 times, I do not consider it plausible that the reason for this interest was related to his status as a non-believer.

15. Information before the delegate indicates that non-practising Muslims form a large part of the population of Iran's cities and abstaining from Muslim rituals such as not attending mosque would not necessarily arouse any suspicion as many in Iran do not regularly attend mosques.⁶ Tehran Iranians, in particular, make a distinction between their religious faith and religious duties as demanded by the Islamic Republic, possibly as a reaction to the politicisation of religion in contemporary Iran.⁷ The result is that while Iranian society remains deeply religious under theocratic rule, this religiosity does not translate into attendance at Friday congregations organized and controlled by state authorities.⁸ Furthermore, DFAT's assessment is that it is highly unlikely that the government monitors religious observance by Iranians.⁹
16. In view of this country information and as he does not claim to be an activist or that he publicised his views outside his immediate circle, I do not consider it credible that the applicant's status as a non-believer would have come to the attention of the Basij and I do not accept that he was subjected to insults or hit, slapped and sworn at on up to 30 occasions because he was a non-believer.
17. The claim that the Basij was responsible for getting him fired from various [Occupation 1] jobs was not made until the applicant's SHEV interview. Other than the bare assertion that this was the case, he has provided no evidence in support of that claim and I do not accept that the applicant was fired from various [Occupation 1] jobs because of action by the Basij related to his status as a non-believer or otherwise.
18. While I have accepted he experienced some interest from the Basij (although not related to his non-belief) I do not accept that this treatment continued until 2005. The applicant's SHEV application form indicates that he ceased working as [Occupation 2] in 2001 and from 2002 until 2006 he worked as [another occupation]. As he claims this treatment only happened during the period he worked as [Occupation 2], I find any interactions he had with the Basij did not continue past 2002.

2005 Sepah incident, death of[his friend] and going into hiding

19. Having considered the applicant's evidence about this claim, I have formed a different view to that of the delegate and I do not accept any of the applicant's claims relating to the Sepah including that immediately before coming to Australia he was in hiding from the authorities for six years. I have come to this view for a number of reasons.

⁶ 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 at 1.5.4

⁷ Gunes Murat Tezcur, Taghi Azadarmaki and Mehri Bahar Critique: Critical Middle Eastern Studies, "Religious Participation among Muslims: Iranian Exceptionalism" vol.15, iss.3, 2006 CIS21784

⁸ *ibid*

⁹ DFAT "DFAT Country Information Report Iran April 2016" 21 April 2016 CIS38A8012677 at 3.55

20. The applicant did not refer to any incident with the Sepah¹⁰ in his entry interview, let alone one as serious as being detained for a period of around 10 days, during which he was tortured so severely that his [body part] was broken requiring two surgeries. When some other discrepancies between his entry interview and his evidence in his written SHEV statement and interview were put to him at his SHEV interview, the applicant claimed he wasn't asked in his entry interview about any of his claims and told the delegate he was only asked about his details (address, education, etc) and when he asked the interviewers on that occasion whether they wanted to know about his claims, he was told no.
21. I have before me as part of the review materials both a recording and a written record of the applicant's entry interview conducted on 8 November 2012 and I have listened to the recording of that interview. At approximately 39 minutes into the interview the delegate asked the applicant why he left his country of residence; she told the applicant she did not want to know about the country or other people but specifically why he personally left. He referred to the issue of his non-belief and other "problems" he had in his life. The interviewer prompted him by asking what type of problems and he said "economical, unemployment and financial".
22. I accept the applicant was not specifically asked about torture or whether, immediately before he left Iran, he had been in hiding. However, in addition to being asked why he left, the applicant was asked in that interview whether the police, security or intelligence organisations impacted on his day to day life and in response, he referred only to being stopped when driving and listening to music, being asked questions and being subject to inspections.
23. I have borne in mind that entry interviews are generally conducted shortly after arrival in circumstances where applicants may be at a significant disadvantage. However I do not consider these circumstances adequately account for the applicant's failure to refer during that interview to any of his very significant later claims particularly as he claims in his written statement that they were the prompt for him to leave Iran. In my view, the question about why he left Iran and the impact of the security forces on his day-to-day life gave the applicant ample opportunity to disclose the claims of his detention, torture, resulting injury, reporting obligations, and the claim to have gone into hiding, if not in detail then at least in generality.
24. There were other problems and discrepancies with the evidence he gave during his SHEV interview about these claims:
- In his SHEV statement he said his family put in the house deed and one of his workmates put in his monthly work cheque to secure his release. In his SHEV interview he said it was the title deed to his own house that was put up and it was somebody he didn't know personally but whom his parents found (an acquaintance of a relative) who put in the money. Even if I accept that it was his own house title deed that was in fact referred to in his SHEV statement, the change in the identity of the person (from a workmate to someone he didn't know) who put up bail money is a material change in his evidence.
 - He gave contradictory and confusing evidence about what happened to the house when he failed to report and whether the Sepah resumed it. Initially he stated that when he didn't report to the Sepah as required, they sent notices to the home and then kicked his wife out, although this took a couple of years. When the delegate put to him that

¹⁰ The Army of the Guardians of the Islamic Revolution – see DFAT "DFAT Country Information Report Iran" 29 November 2013 CIS26780

there was nothing about that in his SHEV statement, he said they didn't kick her out and she remained living in their home from 2006 to 2012. The changes in his evidence about whether or not the Sepah acted on his failure to report by resuming his house does not reflect well on the applicant's credibility.

- The applicant was asked whether he had any of the notices he claimed the Sepah had sent to his home. He said his representative had asked him to provide them so he got them sent from Iran; he received them but then misplaced them; they are with his driver's licence, probably at home but he may have lost them. I find it hard to accept that having gone to the trouble of asking for important documents to be sent from Iran and receiving them, he would not have provided them immediately to his representative or, that realising they were lost, would not have requested replacement copies be sent from Iran. I also note that on 21 April 2016 his representative provided a certified copy of his Iranian driver's licence together with an English language translation which is at odds with his claim to have misplaced the notices along with his driver's licence.
 - In his SHEV statement he said he was in hiding with friends he knew from his early working days. In his SHEV interview he said when he could get a job he'd stay at the workplace if possible and if he couldn't he'd stay at a hotel.
 - The applicant's evidence was that his friend [was] with him at home when they were taken in 2005 and it was finding out about the death of [his friend] that prompted him to cease reporting to the Sepah. However, he claimed that he had no idea that his friend had died until six months later when he was walking past [his friend's] house and saw the flyers indicating he had died. I have difficulty believing that the applicant would not have made some enquiries about his friend, if not of the Sepah when he was routinely reporting, then certainly of [his friend's] family about what had happened to K after they were taken together by the Sepah and then separated.
25. I have also taken into consideration the changing nature of his evidence about what he did during the period he claimed to be in hiding. In the written SHEV statement he said he took a job in the western part of Tehran and only his wife knew he was working there. In his SHEV interview he said during that time he only worked "sometimes ... anywhere he could". Leaving aside that change in his evidence, I note that in his SHEV application form he stated that he worked for the same employer, [from] 2006 until August 2012. Even if I accept that this is the same employer he referred to in his written statement (the place where only his wife knew of), it is not credible that if he was wanted by the authorities over such a lengthy period of time for any reason that they would not have been able to find him through that employer. In addition, he provided contradictory information about where he was living during this period. In his SHEV application form he stated he was living at various places in the south east of Iran whereas in his entry interview he gave the [name] address as his most recent address before leaving Iran and when asked in that interview how long he'd lived there he said ten years. When this was put to him in his SHEV interview he denied it stating that it was only his address immediately before departing Iran. The delegate also asked him why he didn't state in that interview that he'd been in hiding immediately before leaving Iran and the applicant stated it was because he wasn't asked.
26. As discussed above, having listened to the applicant's entry interview I do not accept that. His former representative submitted to the delegate that when asked about what his most recent address was in Iran, the applicant understood the question to refer to his most recent permanent address and he did not consider the addresses between 2006 and 2012 to be permanent as he lived at various addresses. I find this hard to reconcile with the applicant's

statement that he had lived at the address he gave as his most recent one, the [name] address, for ten years.

27. His (former) representative also sought to explain the issue of the non-resumption of his house by the Sepah by stating that it appeared the Sepah did not follow proper criminal procedure in charging the applicant by not providing paperwork to the courts for the posting of bail which prevented them from legally evicting his wife from the home. Even if I accept that this is the case, firstly, it does not address the contradictory evidence the applicant gave about whether or not his wife had been evicted from their house. Secondly, there would appear to be an inherent contradiction between the Sepah not having acted in accordance with the law by posting bail through the judicial system and the applicant nonetheless being subject to some outstanding legal notices, the nature of which were not clear.
28. Finally, passport control checks in Iran are sophisticated and while it is possible to leave Iran to flee arrest warrants or charges, this is usually accomplished overland rather than through the main airports.¹¹ It is simply not plausible that if the applicant was in any way subject to charges, bail, or another kind of court order, he would have been permitted to depart Iran on his own passport which on his evidence he did.
29. Overall, I do not consider the applicant has provided a truthful account of the events which caused him to leave Iran. Taking into account the problems identified above – the implausibilities, inconsistencies, contradictions and country information before me - I do not accept the applicant's claimed reasons for leaving Iran and I find he has fabricated the claims concerning the Sepah and an incident in 2005 in which he was taken, tortured and suffered a [body part]. I do not accept that the applicant is wanted by the Sepah, that he was in hiding for six years, or that he was a person of interest at the time he left. It follows that I do not accept the Sepah continue to come to his house and harass his wife and family or that in 2015 they threatened his son and I find the applicant has similarly fabricated these claims in order to bolster his claims for protection. While I am prepared to accept that his friend [is] dead, I am not satisfied that [his friend's] death has any relevance for the applicant's claims for protection.

Christianity

30. In the post-interview submission to the delegate the applicant's former representative referred to the applicant's renunciation of Islam and conversion to Christianity. I have accepted that the applicant does not follow or observe the Islamic faith. The reference to his conversion to Christianity, however, appears to be a mistake. In his SHEV interview the applicant stated he doesn't believe in religion but has faith in God; he was researching Christianity to see if he could follow it in future; he had not visited churches only asked friends about it. The applicant did not claim to have converted to Christianity and when the delegate queried his representative about this reference, his representative confirmed to the delegate in an email on 5 December 2017 that the applicant had not converted to Christianity. On that basis I find that the applicant has not converted to Christianity.

Leaving Iran

31. The applicant's SHEV application form indicates that he departed Iran legally on his own passport which was also his evidence at his SHEV interview. I accept this is the case. He stated

¹¹ DFAT "DFAT Country Information Report Iran" 21 April 2016 CIS38A8012677 at 5.29

his passport was taken from him by people smugglers at the hotel in Jakarta. I accept this is plausible.

Refugee assessment

32. 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

33. 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.

Renouncing Islam and imputed political opinion

34. The applicant claims to fear harm from the Sepah and that he will end up next to his friend, [who] is dead. I have not accepted any of his claims regarding the Sepah including that he and [his friend] were taken by the Sepah in 2005 and I am not satisfied there is a real chance the applicant would suffer harm from the Sepah now or in the reasonably foreseeable future if he returns to Iran.

35. I accept that he experienced some interest from the Basij, although I consider he has exaggerated the number of times he came to their attention and I have rejected that the basis for his interactions with the Basij was because he is a non-believer. I have also found that he did not experience any issues with the Basij (questioned about his music, subjected to inspections) after 2002 and as I do not consider him to be a person of interest to the authorities for any other reason, I consider there is no more than a remote chance that he will be picked up in future by the Basij for playing western music or any other reason.

36. I accept that the applicant is not a believer in Islam and ceased observing and practising Islam in his teens. The applicant has not converted to Christianity and while he claims he has started researching Christianity, he did not claim to have done so in Iran and has not attended church in Australia, and there is nothing before me which would suggest his research into Christianity

has or would come to the attention of the authorities in Iran. In the submission to the IAA his representative submitted that his disillusionment with Islam means he is at risk of harm not only from the authorities but from his family who could report him to the authorities resulting in negative consequences to his mental health.

37. As discussed above, DFAT considers it highly unlikely the government of Iran monitors religious observance, for example, whether a person regularly attends mosque or participates in religious observance, and it is therefore unlikely that it would become known that a person was no longer faithful to Shia Islam.¹² Even if the applicant does not openly practise Islam, the country information referred to above indicates that many Iranians do not and I am satisfied that if the applicant had not been attending mosque or failed to observe or participate in other aspects of Islamic religious practice or that if he failed to do so on return to Iran this would not come to the attention of the authorities.
38. According to his SHEV application form, the applicant stays in regular contact with his immediate family. There is no evidence before me that his family could report him to the authorities resulting in negative consequences to his mental health and I consider this aspect of the submission speculative.
39. His representative also submitted to the IAA that it is risky to participate in anti-regime activity and the Iranian regime is ruthless in suppressing dissent, including by restrictions and crackdowns on media outlets. I accept that. However, I have not accepted that the applicant was targeted by the authorities due to his imputed political and religious beliefs as submitted. There is nothing in the material before me to indicate that the applicant has publicly expressed dissatisfaction with Islam or the Iranian regime in any way either in Iran or Australia and I am satisfied that he would not seek to publicly express views on religion that would attract the adverse interest of the Iranian authorities either in Australia or Iran.

Returning to Iran

40. Iran states it does not accept involuntary returnees.¹³ In practice, however, border authorities regularly accept Iranians with valid Iranian travel documents returned involuntarily or even those without documentation if persuaded they are Iranian.¹⁴ The applicant no longer has a valid travel document and DFAT advises that Iranian overseas missions will not issue travel documents to an Iranian whom a foreign government wishes to return involuntarily to Iran.¹⁵ On that basis, I am satisfied there is not a real chance the applicant will be returned to Iran involuntarily and that if he returns to Iran in the foreseeable future, it is highly likely it will be on a voluntary basis, using a temporary travel document issued by the Iranian authorities to assist him to do so.
41. I accept that the fact that he will be travelling on a temporary travel document means that the Iranian authorities will be forewarned of his return due to Iran's sophisticated government systems¹⁶ and that they will either know or suspect the applicant has sought asylum overseas.
42. His representative submitted to the IAA that, on the basis of information before the delegate¹⁷, failed asylum seekers risk arrest on return and it will not take long for the authorities to

¹² Department of Foreign Affairs and Trade (DFAT) "DFAT Country Information Report Iran" 21 April 2016 at 3.55

¹³ Ibid at 5.33

¹⁴ Ibid

¹⁵ Ibid at 5.33

¹⁶ Ibid at 5.34

establish the applicant has sought asylum in the west by making claims against the regime on the basis of his religious and political opinion. I accept that people who have been politically active while overseas are at risk of arrest and detention on return.¹⁸ However, the country information before me does not indicate that ordinary returning Iranian citizens as opposed to activists or those who have openly expressed dissent against the regime risk arrest on return. It is the case that those who left the country on their own passports and are returned on a Laissez-passer will be questioned by the Immigration Police at the airport and such questioning may take few hours.¹⁹ But according to the International Organisation for Migration no voluntary returnee travelling back on a Laissez-passer has been arrested other than if they have been involved in criminal activities abroad and their name is on an Interpol list.²⁰ There is no evidence before me that the applicant has been involved in protests against the state or criminal activities and I am satisfied he is not at risk of arrest or detention on return. DFAT's anecdotal observation is that, irrespective of whether a returnee is travelling on a temporary document or their ordinary passport, voluntary returnees attract little interest from the authorities; even if they have done something to attract the specific attention of the authorities and are subject to some questioning, the vast majority of people are released after an hour or two.²¹

43. I have taken into consideration the applicant's individual profile and I am not satisfied there is a real chance the applicant will be questioned by the Iranian authorities on return should he decide to voluntarily return to Iran. Even if he experiences some routine questioning on his arrival, I am not satisfied that such questioning amounts to serious harm and I am not satisfied he will face a real chance of harm from the authorities during questioning for any reason. I am not satisfied that he faces a real chance of serious harm from the Iranian authorities as a failed asylum seeker from a western country travelling on a temporary travel document.
44. I have also considered each of the applicant's personal characteristics against the country information before me. However, even considered together I am not satisfied there is a real chance of the applicant suffering harm in the reasonably foreseeable future in Iran for any reason including his previous experiences with the Basij, his non-belief in Islam, imputed political opinion or status as a returned asylum-seeker from a western country.

Refugee: conclusion

45. 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

46. 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

¹⁷ Amnesty International "We are ordered to crush you': Expanding Repression of Dissent in Iran" 28 February 2012, CIS22610

¹⁸ Ibid and see, for example, Radio Zamaneh "Iranian poet/activist arrested at Tehran airport" 8 January 2016, CX6A26A6E140; International Campaign for Human Rights in Iran "New Video: Iranian Expats Face Arrest upon Return to their Homeland" 23 April 2015, CXBD6A0DE5203;

¹⁹ UK Home Office "Country Information and Guidance – Iran: Illegal Exit", 20 July 2016, pp.7 and 13-15, OGD7C848D28;

²⁰ Ibid

²¹ Ibid at 5.34

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

47. 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.

48. I accept that the applicant has been questioned and subject to inspections by the Basij in the past. However, I have rejected his claims that the reason for this was his non-belief in Islam and I have found above that he is not at risk of harm because he is a non-believer or because of his status as a returning asylum seeker from the west. For the reasons set out above and on the basis of the same country information I am satisfied there is not a real risk that the applicant will suffer significant harm for these reasons should he return to Iran. I accept that under Iranian law, a person who leaves his or her faith or converts to another religion can be charged with apostasy.²² However, the applicant has not converted to Christianity nor sought to publicise in Iran or Australia his lack of belief in Islam. He has not claimed to have developed an interest in Christianity while in Iran and has not attended church in Australia. There is nothing otherwise in the material before me to suggest his research into Christianity has, or would, come to the attention of the authorities in Iran. Overall, I am not satisfied he would come to the attention of the authorities if he returns or be subjected to any form of significant harm including cruel, inhuman treatment or degrading treatment or punishment nor torture, arbitrary deprivation of life or the death penalty for any reason by members of his family or the authorities.

49. I have considered the elements of his personal profile and circumstances against the country information before me but even when taken together, I am satisfied on the evidence that the applicant does not face a real risk of significant harm for any reason should he return to Iran now or in the reasonably foreseeable future.

Complementary protection: conclusion

50. 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).

²² DFAT "DFAT Country Information Report Iran" 21 April 2016 at 3.52; US Department of State "2015 Report on International Religious Freedom – Iran" 10 August 2016, OGD95BE926723

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.