



Australian Government

Immigration Assessment Authority

Decision and Reasons

Referred application

IRAN

IAA reference: IAA18/04174

Date and time of decision: 30 November 2018 12:15:00

B Mericourt, Reviewer

Decision

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

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

Background to the review

Visa application

1. The referred applicant (the applicant) claims to be an Iranian national. On 11 November 2016 he lodged an application for a Safe Haven Enterprise Visa (SHEV). In a decision dated 16 January 2018 the delegate of the Minister of Immigration and Border Protection (the delegate) refused to grant the visa.
2. The delegate was satisfied the applicant is a non-practicing Muslim and that he had participated in two political protests in 2000 and 2009. He was not satisfied there is a real chance or real risk the applicant will suffer serious or significant harm for reasons of his religion or actual or imputed political opinion. The delegate did not find the applicant's claims to be credible about his marriage and subsequent harm he suffered as a result from his wife's brothers whom the applicant claimed are members of the Basij, Sepah [or another organisation]. He found the applicant was of no adverse interest to the Iranian authorities at the time of his departure from Iran in February 2012 and that there is no real chance or real risk the applicant will suffer serious or significant harm for reasons of his relationship with his wife or as a person returning to Iran as a failed asylum seeker from a Western country.

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 from the applicant's representative on 9 February 2018. To the extent that this engaged in argument with the delegate's decision based on information which was before the delegate, I have had regard to it. There was no new information in the submission.
5. The IAA received new information from the applicant's representative on 18 July 2018. The new information is that the applicant has converted to Christianity and was baptised at the [Church 1] [in] June 2018. A certificate of baptism and statutory declaration made by the applicant on 4 July 2018 were attached. The applicant could not provide this information prior to the delegate's decision as his conversion occurred after the decision. It is personal information that is capable of being believed. Given that in Iran conversion to Christianity may give rise to the chance or risk of harm I accept there are exceptional circumstances to give consideration to this new information and that it meets s.473DD(a).
6. The IAA received further new information from the applicant's representative on 28 September 2018 – a letter from [Doctor A], consultant psychiatrist, dated [in] September 2018 stating that the applicant is suffering from depressive symptoms since a work-related [injury] in December 2016. He is on [specified] medication. In [Doctor A's] opinion the uncertainty about his visa application and future in Australia is perpetuating his psychological condition. The applicant has not provided any explanation about why this information could not have been provided before the delegate made his decision. Nor has he said how his depression has any relevance to his claims of persecution or harm, except that it was his chronic pain that led him to his conversion to Christianity. The applicant has not satisfied me that there are exceptional circumstances to justify consideration of this new information.

7. The IAA may exercise its discretionary power to get any documents or new information (new information) that was not before the Minister (delegate) at the time of the primary decision and that the IAA considers may be relevant: s.473DC(3). I have obtained a new country report on Iran by the Department of Foreign Affairs and Trade (DFAT) published on 7 June 2018.¹ This 2018 DFAT report contains current information on the situation for people with a profile similar to the applicant's in Iran. It replaces and updates the previous DFAT report on Iran, published on 21 April 2016, which was both before and relied upon by the delegate. The 2018 DFAT report has been specifically prepared for the purpose of assisting with determination of protection obligations in Australia. I am satisfied there are exceptional circumstances to justify considering this information.

Applicant's claims for protection

8. The applicant's claims can be summarised as follows:
- The applicant fears persecution as a non-practicing Muslim who will be accused of apostasy;
 - When the applicant was a child his father protested against the eviction of residents in the apartment building he was managing and was detained and beaten resulting in permanent injuries;
 - The applicant participated in two political protests in about 2000 and in 2009 during the Green Movement demonstrations. He has never been arrested or questioned in relation to these protests but fears he was identified and will be imputed with an anti-government political opinion;
 - In October 2010 he secretly married a girl (M) from a religious family and they started living together. They married secretly as they knew M's family, who is very religious, would object to the relationship. M has [brothers] who work for the Basij, Sepah [or another organisation]. A few months after they married the brothers found where they were living, came to the apartment and took M back to their home. A month or two later the applicant was attacked by four members of the Basij, one of whom [injured him] with a knife. Another month or two later he was pushed into a car by members of the Basij, taken to a Basij station where he was severely beaten, [injured] and forced to sign a blank sheet of paper. On his release he went into hiding in friend's houses for about six months. After six months, M called him and told him her brothers were using the blank document he had signed to build a case against him and he should leave the country. He organised to obtain his military exemption card, then his passport and departed a month later. A friend has told him his parents' house has been searched three times since he left and on one occasion his father was assaulted. His father told him he has been questioned about the applicant's whereabouts. The applicant fears harm from members of his wife's family, in particular her brothers, and that they would be able to find him anywhere in Iran as they belong to powerful organisations in Iran and they would seek revenge and kill him for reasons of their family honour;
 - The applicant fears harm as a consequence of returning to Iran as a failed asylum seeker from a Western country;
 - Since the delegate made his decision the applicant claims to have converted to Christianity. He was baptised [in] June 2018 at [Church 1] and intends to find a Farsi speaking church to attend in [his city]. He intends to let other people know about the

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

Good News of Jesus and will not deny Jesus if he returns to Iran and he therefore believes he will be killed on his return.

Factual findings

9. I am satisfied the applicant was born into the Shia Muslim faith and that his family was not religious.
10. I am satisfied the applicant departed Iran legally with a valid passport.

Refugee assessment

11. 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

12. 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.
13. Real chance is a substantial chance as distinct from a remote or far-fetched possibility.²

Claims of fear of persecution for reasons of the applicant’s actual or imputed political opinions as a consequence of his father’s involvement in political activism and his own involvement in political protests

14. The applicant has consistently stated since his entry to Australia that when he was about [age] years old (in 1999) his father objected to the proposed eviction of all the tenants in the apartment building he managed, including his own family and he was then arrested, physically mistreated / tortured and after his release the family was evicted from the building. As a consequence the applicant “hated” the authorities for what they had done to

² *Chan v MIEA*, (1989) 169 CLR 379 at 389.

his father and his father was very cautious about any members of the family becoming involved in political protests, demonstrations or activism. His father did not suffer any harm after this event as a result of his own activities, although the applicant claims his father was questioned about his activities.

15. The applicant also stated that he attended two demonstrations. The first was when he was about [age] years old (in about 1999). It was a protest about the increasing costs of living. A person protesting in front of him was shot in the back. A helicopter circled low over the protesters and the applicant thought they were videoing them. After the protest his neighbour was arrested and the applicant feared photos of [him] had also been taken and so he stayed away from his family home and stayed with friends for the following two weeks. He was not arrested, detained or questioned about his participation. Ten years later the applicant participated in a Green Movement protest in 2009. He was cautious and kept [himself] covered. He was not detained, arrested, questioned or harmed for participating in this protest. He has not been involved in any other protests, demonstrations or anti-regime political activities.
16. I accept the applicant's father protested against the eviction of families in the apartment block he managed and he suffered some harm at the time. The applicant was not harmed himself and there is no suggestion that his familial relationship with his father means he has been imputed with an adverse political opinion.
17. I accept the applicant was involved in the two demonstrations in 1999 and 2009 as he described and that he was never detained, questioned, arrested or charged as a result. This strongly suggests he was not identified as a participant in the demonstrations and that he has not been imputed with having an adverse political profile by the Iranian authorities as a consequence. I am satisfied the applicant has not been identified as a political activist by the authorities.
18. I note the Department of Foreign Affairs and Trade (DFAT) reports that political activists are subject to mistreatment by the Iranian authorities who routinely suppress free speech and punish public criticism of the regime.³ As I am satisfied the applicant does not have any profile as a political activist or that he has been imputed with an adverse political opinion or activities, I am satisfied there is no real chance the applicant will suffer serious harm for reasons of his actual or political opinion, if he is returned to Iran now or in the reasonably foreseeable future.

Claims of fear of persecution for reasons of the applicant's religion

19. At his arrival interview on 8 October 2012 and entry interview on 4 December 2012 the applicant stated he was a Shia Muslim. He made no claims that he feared harm on the basis of his religion or failure to practice Islam.
20. In his SHEV application lodged on 11 November 2016, the applicant stated he was born a Shia "but never really accepted this religion". His family was not very religious and he now considers himself to be without a religion. He did not state whether he identified as agnostic or atheist. At his protection interview on 14 August 2017 he stated that he had to practice Islam in Tehran because he was "forced to" but he hated Islam.
21. On 18 July 2018 the applicant provided new information to the IAA that he had converted to Christianity after the delegate made his decision. He provided a baptismal certificate from

³ Department of Foreign Affairs and Trade (DFAT), "DFAT Country Information Report – Iran", 7 June 2018, CIS7B839411226

[Church 1] dated [in] June 2018. In his statutory declaration dated 4 July 2018 the applicant stated he was introduced to the church through a friend after his friend saw how much he was suffering since his work accident over 18 months earlier which has resulted in chronic pain. He went on to state *"The church where I was baptized gave me an introduction to the teachings of Christ but now I really want to know more, so I am moving to a Persian speaking church like [two named churches]. When I go back to Iran I will not deny Jesus. I reject Islam completely. And I must let other people know about the Good News of Jesus. I will do this."*

22. I had regard to the fact that the applicant sent the IAA a further submission on 28 September 2018 in which he provided no further information about his church attendance at either of the churches he claimed he was going to attend. Apart from his baptismal certificate, he has provided no other supporting evidence of his claim to convert to Christianity. His previous statements only refer to his rejection of Islam and not to any interest in any religion or even that he continued to believe in a God. Furthermore he has only claimed to have converted since the Department's decision to refuse to grant him a protection visa. In the submission dated 17 July 2018 the applicant's representative provided no supporting information about the applicant's claimed conversion and simply stated that "his conversion was a 'natural' progression from his discontentment with Islam. He has found in Christianity a personally fulfilling religion. The purpose of the applicant's religious activities is not to strengthen his claim; it has become a central part of his identity". No supporting information was provided.
23. I do not find anything about the applicant's conversion to be credible. I note the baptismal certificate was provided by an English speaking [denominational] church with no supporting statements from the church pastor about the applicant's conversion, commitment or understanding of Christianity. I also note there is no supporting information over the past five months since his baptism that confirms that he has acted on his stated intentions to attend a Farsi speaking church. He has provided no information which would suggest he has any understanding of Christian beliefs or tenets. All this suggests the applicant's conversion has been fabricated solely for the purpose of strengthening his application for protection. I am not satisfied he has converted to Christianity or has any genuine commitment to do so or any commitment to tell others about Jesus when he returns to Iran.
24. I am prepared to accept the applicant is a non-practicing Muslim and assess his claims of fear of harm for reasons of his religion on that finding alone.
25. DFAT advises that Iranian interpretation of Sharia law provides that Shia Muslims are not permitted to renounce their religion or convert to another religion. Apostasy is not codified in Iran's Penal Code, but the Constitution allows judges to turn to Sharia if Iranian law is not clear about an issue. According to Article 160 of the Iranian Penal Code, confessions, the testimony of two male witnesses or the "knowledge of the judge" can each be the basis for a conviction. Convictions for apostasy are not common. However, some judges have applied Sharia to hand down sentences of the death penalty and lengthy imprisonment for apostasy. The last time the death penalty was carried out for apostasy was in 1990. The most recent case of the person charged with apostasy and sentenced to death was in 2011. As a result of sustained international pressure the conviction of apostasy was commuted to proselytization and the death sentence was dropped. Whilst a Muslim person who leaves his or her faith and is openly atheist can be potentially charged with apostasy, DFAT considers it unlikely that individuals will be prosecuted on charges of apostasy⁴.

⁴ Department of Foreign Affairs and Trade (DFAT), "DFAT Country Information Report Iran", 21 April 2016, p.14, CIS38A8012677

26. DFAT considers it highly unlikely that the government would monitor religious observance by Iranians – for example, whether or not a person regularly attends mosque or participates in religious occasions such as Ashura or Muharram – and thus it would generally be unlikely that it would become known that a person was no longer faithful to Shia Islam. Perceived apostates are only likely to come to the attention of Iranian authorities through public manifestations of their new faith, attempts at proselytization, attendance at a house church or via informants.⁵ Other sources indicate that many people in Iran do not regularly attend mosque with many young people identifying themselves as secular, agnostic or atheist.⁶
27. The applicant has not claimed that he failed to practice Islam or promulgated his dissatisfaction with Islam in Iran. I am satisfied that he would not do so if he returns to Iran due to lack of interest rather than fear of persecution. I am not satisfied that the applicant's non-belief in Islam and failure to practice Islam has, or there is a real chance that it will, come to the adverse attention of the Iranian authorities or community on return to Iran such that he will face a real chance of harm. I am not satisfied the applicant faces a real chance of serious harm on return to Iran for reasons of his religion, religious beliefs or failure to practice Islam.

Claims of fear of harm from his wife's brothers as a consequence of their disapproval of the applicant's marriage

28. This claim has been the applicant's stated primary reason for departing Iran and for his fear of returning to Iran since his arrival in Australia.
29. The applicant claims he met his wife, M, about March 2010 when she was pointed out to him as a good person whom he should meet by a friend of his mother's who was the neighbour of M's aunt. He was not formally introduced to her for the purpose of marriage as she came from a religious family and he did not. They secretly saw each other about twice a week, either driving around in the applicant's car or at a café. The applicant and M fell in love and they decided to secretly marry as they knew that M's family would never give their approval.
30. The applicant provided the Department with a copy of his marriage certificate indicating they were married [in] October 2010 and that M's father, the applicant's father and brother were witnesses to the ceremony. The applicant also provided the Department with his original shenasnameh on which M's name appears as his wife.
31. The applicant stated that they paid [an amount] toman bribe to a sheik to marry them at a notary office in Tehran without his wife's father's permission. He claimed all the signatures on the marriage registration are false. Although he had told his own family he intended to marry he did not tell them when it would occur or ask them to attend the ceremony as he knew they would not agree to a marriage to M due to her family's strict religious views.
32. The applicant claimed M's brothers all work for the Iranian authorities. One is a member of the Basij, another member of Sepah and he thought [another] brother worked for [an organisation]. All are very religious and all would have disapproved of their relationship.

⁵ Department of Foreign Affairs and Trade (DFAT), "DFAT Country Information Report Iran", 21 April 2016, p.14, CIS38A8012677

⁶ Boston Review, "Iran's Other Religion", 1 January 2003, CX262833; Qantara, "A Tsunami of Atheism" 7 February 2013, CX304005; Gunes Murat Tezcur, Taghi Azadarmaki and Mehri Bahar, "Religious Participation among Muslims: Iranian Exceptionalism", in *Critique: Critical Middle Eastern Studies*, Vol.15, No 3, 1 January 2006, CIS21784; Asia News IT, "Young Iranians affected by the embargo, tired of political Islam", 1 April 2015, CXBD6A0DE4714

33. The applicant claimed that immediately after they were married in the registry office they moved to a house to live together, which he had rented in advance in another part of Tehran. She had never told her family about the relationship or the marriage and simply 'disappeared' from her home after her marriage. About two months later, (in about December 2010) there was a knock at the door of the applicant's house and when he asked who it was the answer was the water inspector. When he opened the door M's brothers and three other men all in plain clothes forced their way into the house. They beat him and called him an infidel and apostate and took M back to the family home with them. Soon after that he moved back to his father's house.
34. The applicant claimed to have never met M's brothers though he had seen them from afar. When the delegate asked the applicant at his protection interview how they would know who he was if M had never told them about her relationship with him or where they were after their marriage, the applicant said he didn't know, but it was very easy for people like that to find someone when they wanted to. The only person he had told about his marriage was the friend who had put him in contact with the sheik.
35. About two months later (in about February 2011) when he was coming home from work, four men jumped out of a car and attacked him calling him an apostate. One of them pulled a knife and tried to cut his throat. He [was cut elsewhere]. He thought he was saved because people came to help him when he fell on the ground and the men escaped. He had to go to hospital to have [stitches].
36. About two months after this incident (in about April 2011) when he was on the street a car stopped and three people got out and forced him into the car. They blindfolded him and told him to keep his head down while they drove him to a Basij base. His blindfold was a little loose so he could see where he was taken. When they arrived they kicked him in the side and he was thrown downstairs. He was beaten with sticks when he reached the bottom of the stairs and his body was very hurt and bruised. He later discovered they had [injured him]. They then sat him at a table and put a blank piece of paper with the logo of the Basij at the top and demanded that he sign it. They pushed his face on the table. Eventually he couldn't take it anymore and signed the blank paper. After he signed it he saw one of M's brothers in the room smirking at him. They blindfolded him again, put him back in the car with his head down and after a little bit of driving threw him out of the car near where they had picked him up. He was too scared to go to hospital because he had signed the blank piece of paper so did not seek treatment for his [new injury] until he arrived in Australia. He returned to his father's house only to pick up his things and then went to stay in his friend's house about half an hour away. He lived with friends for the remaining time he was in Iran.
37. About five or six months after he had signed the paper (about October 2011), the applicant called him and asked him what he had signed. She said they are making a big case against him and he should leave Iran. When he asked how she was doing and where she was she just hung up. He has not seen M since the day she was taken from their home by her brothers in December 2010 and has not heard from her since the phone call she made to him to warn him in about October 2011. He thought that if he rang her, this would create trouble for her so he has not done so.
38. After he received the phone call from M he immediately applied for a passport and then left Iran. He had no difficulty obtaining the passport or departing Iran at the international airport. He claimed the people smuggler told him what gate to depart from. The applicant's passport was issued [in] 2012 and he departed Iran [in] February 2012. Earlier in the interview the applicant had stated that he needed to obtain his medical exemption from military service

before he could obtain a passport so he arranged to get the exemption first. It was granted on mental health grounds after the payment of a bribe. I note that his medical exemption certificate is dated [in] February 2011, almost a year before his passport was granted.

39. At his protection interview on 14 August 2017 the delegate asked the applicant if the authorities had been looking for him since he departed. The applicant said the authorities had been to his father's house a couple of times looking for him. His friend told him that his father had been beaten and once they took his father to the Basij office. His father did not admit to knowing he had left the country. The last time the applicant saw his father was on the last day he was in Iran when he went to collect his things from the house.
40. The delegate asked the applicant why he thought the authorities would still be looking for him five years after he had left. The applicant stated that because the family honour had been damaged M's brothers would seek revenge and have no compassion. He thought they would kill him. The delegate put to the applicant that the last attack on him appeared to occur about 10 months before he left Iran and queried why it would take members of the Basij 10 months to prepare a case against him if he had signed a blank document and why they simply didn't make another attempt to kill him. The applicant's representative suggested that it was a matter of family honour and it would be better for M's family if they could discredit him and his family. It would not have been enough to just kill him.
41. At the end of his protection interview, the applicant provided the delegate with two documents and translations he claimed to be invitations to attend a police station in response to complaints lodged by M's mother [in] October 2011 and father [in] February 2012. Neither document provides any details about the nature of the complaints. This was the first time the applicant had claimed he had been requested to attend the police station or that formal complaints had been made about him.
42. I have a number of concerns about the credibility of the applicant's claims relating to his fear of harm as a result of his marriage as follows:
43. Country information indicates both women and men are vulnerable to honour related violence in Iran. Family members who have damaged the family reputation by their actions such as extramarital sex, refusal to an arranged marriage, choosing one's own spouse without the family's approval and so on, may be punished or even killed. Due to cultural reasons, women and girls are the most likely victims of honour killings.⁷ Honour killings are more likely to occur in rural areas and tribal groups than in the cities or amongst more well educated people.⁸ Whilst I accept that men may be the subject of honour related violence it is far more likely that the woman in this particular situation would be the subject of such violence.
44. The applicant has indicated that M was aware that her family, in particular her brothers whom she knew worked for the Iranian authorities, would not approve of the relationship because the applicant was not from a religious family. She never told her family that she was going out with or seeing the applicant for a period of six months or that she intended to marry him.
45. Country information also indicates that women require their father's permission to get married, although no such requirement exists for men.⁹ Furthermore, marriages may be valid

⁷ UK Home Office, "Country Policy and Information Note: Iran: Honour crimes against women", 25 October 2017, p.8, OG6E7028861

⁸ Ibid, pp. 8-9

⁹ Iran Human Rights Documentation Center, "Gender Inequality and Discrimination", 8 March 2016, CIS36DE0BB2557

and legally binding without witnesses.¹⁰ This suggests that it would only have been necessary to have M's father's signature on the marriage registration and that M herself would have to have been willing to have it falsified.

46. I find the applicant's evidence somewhat implausible that M, being aware of both her brothers' extreme religious views and their alleged positions in the Basij, Sepah and possibly [another organisation], would be willing to enter a marriage to a man she had met only 6 months earlier that she knew they would not approve, using her father's falsified signature and then "disappear" from the family home and move to another suburb of Tehran not far from her family home knowing they would look for her and punish her, and possibly kill her for damaging the family's reputation. I also find it somewhat implausible that the applicant would go to the trouble of having his father's and brother's signatures falsified as witnesses when this was not necessary under the law. Although he moved house after his marriage he continued working at the same place of employment which, if M's brothers were as powerful as he suggests, would pose a risk to both M and himself. Furthermore, he continued working at this place of employment after his first assault by M's brothers despite believing that they were trying to have him killed. The applicant was unable to even hypothesise how they were able to discover who he was within 2 months of their marriage when he had not told anyone except one friend about the marriage. When the delegate asked him how he thought M's brothers had discovered where they were living given he had not provided their address to anyone, the applicant said he thought his workplace may have given his address to them. After M was taken back to her family by her brothers the applicant moved back to his father's address, which presumably would also have been known to M's brothers as they had been able to discover who he was and where he lived.
47. Finally, I also find the applicant's evidence implausible that six months after he allegedly signed the blank piece of paper, and 10 months after M's brothers had discovered where they were living, M called him to tell him that her brothers were making a case against him but had not yet done so. I note that the complaints allegedly made to the police by M's mother in October 2011 and then by her father in February 2012 were also made almost a year after her brothers had discovered she had married the applicant without the family's approval. The applicant claimed that he had seven or eight requests to attend the police station on the basis of these complaints. The delegate put to him that if a case was being made against him by members of the Basij, Sepah and/or [another organisation] and seven or eight complaints had been made to the police about him, it did not seem credible that he would be able to obtain a passport in his own name without any difficulty and depart Iran without any difficulty. The applicant claimed it would take some time to have his name blacklisted as they were still building a case against him.
48. It also seems unlikely that applicant would be issued seven or eight requests to attend a police station on the basis of complaints being made about him without any follow-up by police for his non-attendance. I note that the first time the applicant claimed that he had been summoned to attend the police station in response to complaints about him was at his protection interview. The two documents he provided were dated prior to his departure. He claimed they were delivered to his father's address and the others were issued after his departure. The delegate noted the translations of the documents are near identical, with the exception of the complainant's names and inclusion of the suburb in the applicant's address on one document. They purportedly originate from the same police station and are signed by the same officer. However, there are inconsistencies in terms of the print font size and

¹⁰ Alavi and Associates Legal Counsels and Attorneys at Law, "Book 7 of the Civil Code of the Islamic Republic of Iran – Chapters relating to marriage and divorce", 1 January 2008, CX10382

appearance, signatures and letterhead. The documents have no security features and the delegate was unable to assess whether or not they are genuine. The applicant has not claimed that he has been summoned to court or charged with any offence since he departed Iran. Furthermore when asked if anyone came to his parent's house looking for him whilst he was in hiding at his friend's house he said that he didn't know, even though these documents had allegedly been issued before he departed. He said that when he came to Australia he asked someone living in his neighbourhood who told him that the authorities had come to look for him at his parents' home while he was in [a transit country] (between February and September 2012) yet the applicant has not suggested he was issued further documents about his non-appearance at the police station. On balance, I consider the documents have been manufactured in support of the applicant's claims and place no weight on them.

49. I also had regard to the fact that the applicant remained in Iran for 12 months after the alleged attempt to [severely injure him] and yet he stated he continued working at the same workplace until after he was forced to sign the blank piece of paper two months later. Furthermore, he remained in Tehran for six months after he signed a blank paper with a Basij logo or heading, despite fearing he would be killed by M's brothers whom he believed were in powerful positions in government. M's brothers had the opportunity to kill him when they first came to his home in December 2010 and again when they allegedly abducted him and took him to their office and beat him in April 2011.
50. I also had regard to other discrepancies in the applicant's evidence such as initially stating at his protection interview he had to get his military exemption card first so he could then apply for a passport, yet the date on his military exemption card indicates it was issued almost a year before his passport was issued. The delegate noted that the military exemption card was an original document with no unusual features and the translation was provided by a NAATI accredited interpreter. She therefore considered the card to be genuine.
51. On his SHEV application the applicant stated that he was unemployed from February 2011 to February 2012. He had money from when he was working and he lived at his two friends' houses in Tehran from July 2011. At his protection interview he stated he did cease working after he signed the blank papers in about April 2011 and did not tell his workplace the reason he stopped work. He moved to his friends' houses after signing the blank piece of paper as he was too frightened to remain at his father's house.
52. Based on the delegate's observation of the scar on the applicant's [body] and the medical evidence relating to the surgery on his [other body part] after his arrival in Australia, I accept the applicant was injured on his [specified body parts] in Iran prior to his departure. Given M's name appears on his shesnameh as his wife and he has a marriage certificate which appears genuine, I accept the applicant is legally married to M.
53. However, having taken into consideration all the above concerns about the credibility of the applicant's evidence in respect of his claims of harm and threats of harm from his wife's family, I do not accept that his injuries were perpetrated by his wife's brothers or at the instigation of his wife's brothers for reasons of revenge or for any other reason. I do not accept the applicant's brothers-in-law are members of the Basij, Sepah and/or [another organisation]. I do not accept the applicant signed a blank piece of paper with a Basij logo or heading. I am not satisfied that the applicant's wife's family members intend to take revenge on the applicant either legally through the courts or by inflicting serious or significant harm on the applicant for any reason if he returns to Iran now or in the reasonably foreseeable future.

54. I am not satisfied that there is any reason to suggest the applicant is at risk of being charged with apostasy as a consequence of his marriage or for any other reason by the Iranian authorities.
55. I am not satisfied the applicant was of any adverse interest to the Iranian authorities including members of the Basij, Sepah or Ettalaat prior to his departure or that there is any chance he will be of adverse interest to the Iranian authorities, or charged with apostasy or suffer serious harm if he returns to Iran now or in the reasonably foreseeable future.

Claims related to fear of persecution for reasons of being a member of a particular social group, that is, failed asylum seekers who have sought protection in a Western country

56. I have had regard to the country information¹¹ that Iran has historically refused to issue travel documents to allow the involuntary return of its citizens, such as the applicants who arrived in Australia in 2013, from abroad, and find that if the applicant was to return to Iran it would be on the basis it was voluntary.
57. I am satisfied that the applicant departed Iran lawfully as the holder of a valid passport and that he will be returned to Iran on temporary documents as he no longer has possession of his passport. I accept that there is a real chance he will be assumed by Iranian authorities to have sought protection in Australia.
58. The 2016 DFAT country report on Iran states;

“Iran says it does not accept involuntary returnees. However, in practice, border authorities regularly accept Iranians with valid Iranian travel documents returned involuntarily or even those without documentation if persuaded they are Iranian. Iranian overseas missions will not issue travel documents to an Iranian whom a foreign government wishes to return involuntarily to Iran. Officials provide assistance to Iranians who wish to voluntarily return to Iran, even if they left irregularly. Strong anecdotal evidence suggests that officials do not attempt to prosecute a voluntary returnee—largely because most failed asylum seekers leave Iran legally (e.g. regular departure through airports or with passports).

From DFAT’s anecdotal observation at airports, a voluntary returnee (complete with IOM bags) does not attract much interest from authorities amongst the large regular international movements of Iranians. Credible sources have told DFAT that returnees will generally move quickly through airports – usually Tehran Imam Khomeini – without official interest. Where temporary travel documents have been issued by Iranian diplomatic representatives overseas, authorities at the airport will be forewarned about a person’s return because of Iran’s sophisticated government systems. Irrespective of whether a returnee is travelling on a temporary travel document or their ordinary passport, credible sources have told DFAT that they will generally only be questioned if they had done something to attract the specific attention of authorities. The vast majority of people questioned would be released after an hour or two.”¹²

¹¹ Department of Foreign Affairs and Trade, "DFAT Country Information Report - Iran", 7 June 2018, p.49, CIS7B839411226; Department of Foreign Affairs and Trade (DFAT), "DFAT Country Information Report Iran April 2016", 21 April 2016, p.28, CIS38A8012677

¹² Department of Foreign Affairs and Trade (DFAT), "DFAT Country Information Report Iran", 21 April 2016, CIS38A8012677, p.28-29

59. Furthermore other reports from DFAT over the years indicate that failed asylum seekers are unlikely to be targeted by the Iranian authorities solely for having sought asylum overseas or in a Western country.¹³
60. Although there are reports available which refer to failed asylum seekers being arrested on return to Iran, these refer to people who have been involved in anti-regime political activities either previously in Iran or during the period they were seeking protection in another country.¹⁴
61. Amnesty International has reported on failed asylum seekers being detained, arrested and charged on their return. These have been people who have been actively involved in political activities and have a profile as a political dissident in Iran or who have a profile of being involved in anti-regime activities overseas¹⁵.
62. Considering the country information before me I am not satisfied the Iranian authorities impute failed asylum seekers from Western countries or people who have resided in Western countries as holding an anti-regime, Western sympathiser or anti-government opinion in Iran or seek to prosecute or otherwise harm them for reasons of having made a claim for asylum. I am satisfied the applicant had no difficulty departing Iran using his own passport which suggests he was of no interest to Iranian authorities prior to his departure.
63. As I am not satisfied the applicant was of adverse interest to the authorities prior to his departure and there is no information before me that the applicant has done anything in Australia that may attract the adverse attention of authorities in Iran, I am satisfied that he may be questioned for a brief period on his arrival at the airport and he would then be released.
64. Although I accept that the applicant will be likely to be questioned on return to Iran by the Iranian authorities, I am not satisfied this amounts to serious harm having regard to the extensive examples provided in s.5J(5) of the Act. I am not satisfied the applicant faces a real chance of serious harm on return to Iran on the basis of being a failed asylum seeker from Australia if he is returned to Iran now or in the reasonably foreseeable future.

Cumulative consideration of the applicant's claims

65. As discussed above, I am not satisfied that the applicant will be imputed with having an anti-regime political opinion or as being an apostate as a result of any personal vendettas by members of his wife's family. I am not satisfied there is a real chance the applicant will suffer serious harm on his return to Iran now or in the reasonably foreseeable future for reasons of his imputed or actual political opinion.
66. I accept the applicant is not a practising Muslim. I do not accept he has converted to Christianity. Based on relevant country information, I am not satisfied that there is a real chance the applicant will suffer serious harm, having regard to the extensive examples of

¹³ Department of Foreign Affairs and Trade (DFAT), 'CIS Request No. IRN9025: Iran: Return of failed asylum seekers', 14 June 2007, CX179204; Department of Foreign Affairs and Trade (DFAT), 'Response to CIS Request No. IRN11072: Return of failed asylum seekers', 22 December 2010, CX255525; Department of Foreign Affairs and Trade (DFAT), 'Response to IRN 11738: Iran - Article on returned asylum seekers and people exiting Iran with false documents', 19 April 2011, CX263145

¹⁴ Danish Refugee Council, Landinfo and Danish Immigration Service, 'Iran: On Conversion to Christianity, Issues concerning Kurds and Post-2009 Election Protestors as well as Legal Issues and Exit Procedures', 1 February 2013, CIS25114

¹⁵ Amnesty International, 'AMNESTY INTERNATIONAL - URGENT ACTION: UA 125/11: Student activists held in Iran', 6 May 2011, CX264288; Amnesty International, 'We are ordered to crush you': Expanding Repression of Dissent in Iran', 28 February 2012, CIS22610

serious harm in s.5J(5) of the Act, for reasons of his actual or imputed religion or his failure to practice Islam, if he is returned to Iran now or in the reasonably foreseeable future.

67. I am satisfied the applicant was not of adverse interest to the authorities at the times of his departure in February 2012. I accept that the applicant will be returned to Iran with temporary travel documents and it is likely he will be assumed by authorities to be a failed asylum seeker who sought asylum in a Western country. I accept that he will be questioned on his return about his absence, reasons for his departure and his activities in Australia. There is no information before me to suggest that the applicant has engaged in any activities in Australia which would attract the adverse attention of the authorities in Iran. There is no information before to suggest that the Iranian authorities would be aware of the applicant's baptism. I am therefore not satisfied that any of the treatment I accept he may experience on his return to Iran without valid travel documents will amount to serious harm, having regard to the extensive examples of serious harm in s.5J(5) of the Act, when considered cumulatively.
68. Having regard to all the applicant's specific circumstances both individually and cumulatively in the context of the country information about the current situation in Iran, I am not satisfied that there is a real chance of the applicant being seriously harmed by the Iranian authorities or by any other group or person if he is returned to Iran now or in the reasonably foreseeable future.

Refugee: conclusion

69. 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

70. 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

71. 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.

72. Real chance and real risk involve the same standard.¹⁶
73. For the reasons discussed above, I am not satisfied there is any real risk the applicant will suffer significant harm for reasons of his actual or imputed political opinion or for his religion or failure to practice Islam.
74. I am not satisfied there is a real risk the applicant will suffer significant harm, having regard to the definition of serious harm in s.36(2A) and s.5(1) of the Act, from members of his wife's family, the Iranian authorities or any other person for reasons of his marriage, or that he will be charged with apostasy for having married a woman whose family did not approve of the marriage.
75. I am satisfied that the applicant departed Iran legally on a valid and genuine passport and the applicant was of no adverse interest to the Iranian authorities or any other person prior to his departure in February 2012 and has not engaged in any activities in Australia which may attract the adverse attention of the Iranian government or religious authorities. I accept that the applicant more than likely will be questioned on his return to Iran whether he returns on a valid passport or a temporary travel document. I am satisfied that this questioning does not amount to significant harm as defined in s.36(2A) of the Act. I am satisfied it is not a criminal offence in Iran to ask for asylum in another country and that there is no real risk he will be prosecuted for claiming asylum in Australia. There is no information before me to suggest that Iranian citizens who have sought asylum in Western countries are at risk of significant harm from members of the community or Iranian authorities unless they were of adverse interest to authorities or the community prior to their departure or have engaged in activities since their departure that would attract the adverse attention of the authorities. Based on the relevant country information discussed above, I am satisfied that there is no real risk that the applicant will suffer significant harm from the Iranian authorities or any other person if he is returned to Iran now or in the reasonably foreseeable future, as a consequence of having sought asylum in Australia.
76. Considering the treatment I have accepted the applicant will experience as a whole, I am not satisfied that it cumulatively amounts to significant harm. Nor am I satisfied that there is a real risk that the applicant will suffer significant harm based on the cumulative effect of his circumstances and profile.

Complementary protection: conclusion

77. 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.

¹⁶ *MIAC v SZQRB* (2013) 210 FCR 505

Applicable law

Migration Act 1958

5 (1) Interpretation

In this Act, unless the contrary intention appears:

...

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

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

...

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

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

...

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

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

...

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

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

...

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

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

...

5H Meaning of refugee

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

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

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

...

5J Meaning of well-founded fear of persecution

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

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

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

5K Membership of a particular social group consisting of family

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

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

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

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

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

5L Membership of a particular social group other than family

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

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

5LA Effective protection measures

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

...

36 Protection visas – criteria provided for by this Act

...

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

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

...

Protection obligations

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

Determining nationality

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