



Australian Government

Immigration Assessment Authority

Decision and Reasons

Referred application

IRAN

IAA reference: IAA18/04466

Date and time of decision: 4 October 2018 10:50:00

M Simmons, Reviewer

Decision

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

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

Background to the review

Visa application

1. The referred applicant (the applicant) claims to be an Iranian national. On 16 July 2016 he lodged an application for a safe haven enterprise visa. On 23 February 2018 a delegate of the Minister for Immigration and Border Protection refused the application.

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 22 March 2018 the applicant's representative forwarded submissions to the IAA. To the extent these contain legal argument and explain why the applicant disagrees with the findings of the delegate, the submissions do not constitute new information and I have had regard to them.
4. The submissions refer to an Economist article published in February 2015 and attach a copy. However the relevant section of this article referred in the submissions, discussing the exchange of telephone numbers through car windows, does not appear in the attached article. Without context, this extract is of little probative value as it is unclear whether it is an accurate extract from the article as claimed. Further no explanation has been provided as to how this article meets the requirements of s.473DD. It significantly predates the delegate's decision. At interview the applicant was reminded of need to provide all relevant information prior to a decision being made. He also indicated that he read and understood an information sheet which sets out the same requirement. The applicant has had the benefit of legal representation throughout the visa process. The applicant has not claimed that there are any exceptional circumstances which justify my consideration of the information in this article, nor am I satisfied that any otherwise arise. The applicant has not explained why the information from the article could not have been provided before the delegate's decision, and as it significantly predates that decision they have not satisfied me of this requirement. Nor have they satisfied me that the information from the Economist article is credible personal information, noting it relates to general dating practices in Iran. Section 473DD is not met and I have not considered the information in this article.
5. The submissions refer to a Mehr News article published in February 2016 in support of a proposition disputing youthful marriage. No copy of this article was submitted, only a hyperlink to an article in Farsi which is contrary to the IAA practice direction. No translation of the article has been provided. In the circumstances I am not prepared to accept this information per s.473FB.
6. The submissions also attach a blog post discussing Article 630 of the Criminal Code. It does not contain personal information; it is an analysis of this provision. This post was made on 18 August 2012, a number of years before the delegate's decision. The applicant has not provided any submissions explaining how the requirements of s.473DD(b) are met in respect of this blog post and none are apparent on its face. The applicant has not satisfied me that either limb of that provision are met. I have not considered this blog post.
7. The March 2018 submission enclosed a photo depicting a statement, written in Farsi, from the applicant's parents and also showing both of their national ID cards. A translation of this

statement and the ID cards were forwarded to the IAA on 12 April 2018. These show that the statement was prepared on 21 March 2018, after the delegate's decision. It sets out the applicant's parents' asserted knowledge of the events causing the applicant to flee Iran in 2013, namely the purported cessation of his relationship and the consequence that flowed from that. It is not apparent why such a supporting statement was not sought earlier given the statement discusses events that occurred 5 years ago. The applicant was on notice that the events which the statement seeks to verify were in issue as he was questioned by the delegate about these at interview, a number of weeks before she made her decision. The applicant has had assistance from a legal representative in preparing his visa application and at the delegate's interview. The delegate emphasised to both the need to provide all relevant information before to them making their decision, and asked whether they wished to make written submissions following the interview, which they did not elect to do. It is not exceptional that the applicant's parents may wish to corroborate these claimed events. The applicant has not explained what exceptional circumstances may exist that would justify my consideration of this statement and its translation, nor are any evident. I am not satisfied s.473DD(a) is met. I have not considered this statement or the national ID cards.

8. A number of hyperlinks are included at the end of the submission. Some are referred to in the body of the submissions and I have addressed these above. For others, notably the LA Times and Marta Rajkova articles, only hyperlinks were submitted. The Practice Direction states that hyperlinks are not acceptable and that an extract or copy of the material must be provided. It is not apparent how or if each is relevant to the applicant's matter as this has not been articulated in the submissions. I have decided not to accept any of the new information provided by either of these hyperlinks, as these have been supplied by a legal representative who ought to be aware of the requirements of the Practice Direction.
9. Also provide was a link to a YouTube video. This video appears to be in Farsi and no translation has been provided. The content and relevance of this which I cannot ascertain on its face, nor has this been explained in the submissions and there is no explanation of how the requirements of s.473DD are met. The submissions addressing extra martial sexual relationships state "Please view the youtube links". This is the only Youtube link in the submission as such its possible this may be the subject matter of the video, however it is not possible for me to ascertain this. The absence of a translation and an explanation of the relevance of this material and how it satisfies s.473DD is contrary to the Practice Direction. I have decided not to accept this new information.
10. On 7 June 2018 the Australian Department of Foreign Affairs and Trade (DFAT) released an updated Country Information Report on Iran.¹ This report postdates the delegate's decision and contains more recent details on the situation for returnees to Iran. It is a report prepared specifically for the purposes of protection determination in Australia and updates the report relied upon by the delegate. I am satisfied exceptional circumstances exist which justify consideration of this report.
11. I have also obtained information in relation to courtship in Iran.² I am satisfied that there are exceptional circumstances which justify consideration of this information. These include that the delegate's findings are based on generalisations about Iranian society which do not appear to be supported by country information. I have also reached a different conclusion

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

² Shahram Khosravi, "Precarious Lives: Waiting and Hope in Iran", University of Pennsylvania Press, 7 February 2017, p 160; Thomas Erdbrink, "In Iran, Fatal Porsche Crash Unleashes Middle-Class Anger at Elites", New York Times, 30 April 2015.

to the delegate on the plausibility of a relationship commencing in the circumstances described by the applicant.

12. On 12 September 2018 the IAA invited the applicant to provide information in relation to representations he made regarding his religion and religious activities after arriving in Australia. A response to this invitation was received on 25 September 2018. This response conveyed new information including in relation to the applicant's disclosure of his religious beliefs shortly after he entered Australia. I am satisfied there are exceptional circumstances which justify my consideration of the new information in that response. These include that the delegate did not raise the applicant's prior statements with him at hearing where he presented a contradictory narrative, nor were they addressed in the decision record.

Applicant's claims for protection

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

- The applicant was born in Tehran and is Persian.
- He is an atheist. His family are nominally Muslim.
- In September 2012 the applicant met a woman, E, while driving home. The two exchanged phone numbers began communicating and later commenced a relationship. Over time they became intimate.
- On occasion E would come to the applicant's home when his parents were away. His parents were aware of the relationship. The applicant did not go to E's house as she told him that her parents and brother would not accept their relationship.
- In mid-February 2013 the applicant's parents travelled to Karaj. The applicant asked E to come to his house, which she did. Around an hour after she arrived the couple were in the applicant's bedroom when the front door was broken down. Police and plain clothes security forces entered the house and came into the bedroom. The applicant and E were arrested.
- One of the men that stormed the house was E's husband. He abused both of them and threatened the applicant. He beat E. During this time some of the men searched the house. They seized alcohol, books, antiques, and a satellite dish.
- The applicant was taken to the Monkarat Office, which deals with immoral and non-Islamic behaviour. He was threatened by the authorities including members of the Basij. He was held overnight then taken to Tehran public court the next morning.
- With the help of a lawyer the applicant was able to secure bail. His father had to pay a bribe and give a title deed for property he owned in Karaj as security. That property was later seized.
- The lawyer advised that the applicant would be recalled to court in a few days and that he should leave the country as soon as possible. His parents arranged for his departure and he left Iran in a matter of days.
- Around 2 weeks after the incident the applicant was summoned to court. His mother received the summons but she did not keep it. The applicant does not know the exact charge against him, but his mother told him it was adultery.

- After he left E's husband visited his parents' home multiple times and threatened them and asked about the applicant. Because of this they had to leave Tehran a few months after the incident and moved to Karaj.
- In Iran it is prohibited to be an atheist, to convert to other religions or to renounce Islam. Those who do not believe in Islam must always remain silent and never talk about what they believe. Renouncing Islam is punishable by prolonged imprisonment and in some cases execution.
- Since arriving in Australia, the applicant has had the freedom to participate in some religious gatherings and get to know about other religions.
- If he returns to Iran he will be arrested, interrogated, tortured and executed. If he is forced to return his life will be in danger. The government mistreats people who return from other countries.
- He will be persecuted for being in a relationship with a woman without being married to her. E's husband will seek to harm him. He is a member of [a government agency].
- The judicial system in Iran is not proper, fair trials are routinely denied. For cases including adultery the sentences are disproportionate and offenders face lashes and long terms of imprisonment.

Factual findings

Identity and nationality

14. The applicant provided various identity documents from Iran and has undertaken a number of interviews in Farsi. I am satisfied his identity and Iranian nationality is as claimed. There is no evidence before me to indicate he has a right to enter and reside in any other country. I am satisfied that Iran is the receiving country for the purpose of this assessment.
15. I note that the delegate found the applicant to be Kurdish, and of mixed Kurdish and Turkish Ethnicity, and considered the risk of harm to the applicant due to his Kurdish ethnicity. However, in his entry interview, visa application form and statement of claims the applicant has consistently indicated his ethnicity is Farsi or Persian. He has not advanced any protection claims himself regarding Kurdish ethnicity. I accept he is of Persian ethnicity as claimed.

Relationship with E

16. The applicant claims that he first met E while driving through Tehran. After their vehicles pulled alongside each other they quickly struck up a conversation and exchanged telephone numbers through the car window. Information before me indicates that this practice is known in Farsi as "dor dor" (literally "turn turn") meaning to cruise. Young Iranians drive up and down certain streets, when they see a person of the opposite sex who takes their interest they drive slower, exchange phone numbers through the open window or wait at the road side.³ I consider the applicant's explanation of how he first came in to contact with E to be plausible.

³ Shahram Khosravi, "Precarious Lives: Waiting and Hope in Iran", University of Pennsylvania Press, 7 February 2017, page 160; Thomas Erdbrink, "In Iran, Fatal Porsche Crash Unleashes Middle-Class Anger at Elites", New York Times, 30 April 2015.

17. The delegate found it implausible that the applicant would meet someone and start a relationship in such a casual manner in Iran, when he was aware that Iranian females could be already married at a young age, and also when he was aware of the severity of the penalty for extra-marital relationships in Iran. I have come to a different conclusion on these matters. The delegate suggests the applicant should have considered whether E may already be married solely due to her young age because females in Iran could already be married at a young age, which suggested constructive knowledge of adultery. Information before me does not support this conclusion. The DFAT report referred to the by the delegate noted that pre-marital and extra-marital relations were common in Iran and unmarried couples appearing together in public was very common, particularly in the middle and upper classes.⁴ I agree with the representative's submission that although some women may marry young in Iran it cannot be generalised that this is the case for all women.
18. The applicant asserted that he was not aware that E was married until their relationship ended. The delegate asked him at interview "You say you found afterwards that she was married" to which the applicant responded "Yes I found out when it was too late". I do not consider knowledge of the potential punishment for adultery makes the applicant's entering into the relationship implausible. He has consistently indicated he did not know he was entering a relationship with a married woman.
19. I am prepared to accept that the applicant entered into a relationship with E around 6 months prior to his departure from Iran. The applicant's evidence on this matter has been consistent since his arrival in Australia. I accepted that the pair exchanged phone numbers while out driving and subsequently began communicating, noting this practice is consistent with country information before me.
20. However I have a number of doubts as to the plausibility of the applicant's narrative in respect of his arrest, bail, and his departure from Iran. Cumulatively I am not satisfied his has provided a truthful narrative regarding these matter.
21. The applicant has not provided any indication that there has been any outcome in relation to the charges laid against him. It is not apparent whether, for example, the charges were dropped or he has been tried in absentia. Reports before me suggest if a person departs the country while on bail, he or she may be tried in absentia.⁵ The applicant as not indicated that the authorities have had any dealings at all with either his family or his lawyer in respect of this matter. The applicant remains in regular contact with his family, and the lawyer who represented him was a family friend. I consider the applicant would be made aware of any developments in relation to the charges against him and that it would be relatively simple for him to enquire about these. Yet there is no information before me to suggest that the matter has progressed in any way since his departure. I have doubts whether the Iranian authorities would simply cease taking any action in relation to a criminal matter due to an applicant's departure from Iran and not communicate with the defendant's lawyer or family at all.
22. The applicant has provided no official documents corroborating his Court appearance. In addition, he indicated that his family surrendered a deed for a property to secure bail and that he believes this property has now been seized. I accept that the authorities often compelled detainees and their families to submit property deeds to post bail.⁶ However, no

⁴ DFAT, "Country Information Report Iran April 2016", , 21 April 2016, CIS38A8012677.

⁵ 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.

⁶ US Department of State, "Iran – Country Reports on Human Rights Practices 2016", 3 March 2017, OGD95BE926964.

proof of the family ever owning property in Karaj nor the bail transaction or the seizure of the property has been submitted. This lack of corroborative evidence causes me to doubt the veracity of the applicant's claims regarding these matters.

23. The applicant indicated that he departed Iran lawfully through a major airport without incident. I have some doubt as to whether he would be able to depart given he claims to have been released on bail. Reports before me indicate that the authorities often imposed travel bans on individuals released on bail or pending trial.⁷ I have some doubts as to the plausibility of the applicant's departure from the country in the circumstances he has described.
24. In his visa application the applicant states that his mother received a summons addressed to him around two weeks after the incident, by which time he had departed Iran. The applicant stated he did not know the charges against him but that his mother told him he was charged with adultery and that he was asked to attend a court hearing. He claims his mother destroyed this document because she did not want to keep it as proof of his guilt. I do not accept that explanation as plausible.
25. I also have doubts whether the applicant would be released on bail without knowing the charges against him, particularly as his bail was secured with the help of a lawyer. He claims he only knew the charges against him were adultery after his mother received the summons - some weeks after he had apparently been taken to Court and released on bail. However at interview the applicant indicated at court his lawyer received a summons letter requiring him to attend court on another date. If charges had not been laid at this time, it is not apparent why the family were required to surrender a property deed as surety to ensure his subsequent attendance at court on a later date. No documents relating to any of these matters have been provided
26. I also consider that the representative submissions in response to the delegate's findings as to why the conditions for retaliation under Article 630 of the Iranian Penal code are difficult to reconcile with the applicant's narrative as to the circumstances of his claimed arrest. The representative submits that the delegate did not consider that the conditions under which retaliation is allowed did not exist because the husband is only allowed to kill an adulterer when observing the act of adultery or immediately after the act. The applicant claims that he and E were in bed together undressed when the authorities broke down the front door and stormed into the bedroom. It is unclear how the conditions set out in the representative's submissions are not met on the applicant's narrative, as it seems E's husband observed the applicant and E in engaging in adulterous intercourse and/or immediately after such an act.
27. I do not consider the applicant's account of the end of his relationship with E and the consequences that flowed from it to be plausible. I am not prepared to accept that his relationship with E was an adulterous one. I do not accept that the applicant experienced any adverse treatment or attention from the Iranian authorities due to his relationship with E. I do not accept that E had a husband who is a member of [a government agency] or that he has strong ties to the authorities, or that she had any partner whilst in a relationship with the applicant. I do not accept that the applicant's home was ever raided or that he was ever arrested or charged. I consider that the applicant has fabricated the adultery claims in their entirety.

⁷ US Department of State, "Iran – Country Reports on Human Rights Practices 2016", 3 March 2017, OGD95BE926964.

Religious views

28. When the delegate asked the applicant when he became an atheist, he responded since [age] or [age] years of age he did not believe in god but at that time he did not know this meant he was an atheist. He is now around [age] years of age, and he travelled to Australia when he was around [age] years of age.
29. I have listened to the recording from the applicant's Entry Interview completed in March 2013. When asked what his religion was during that interview, the applicant responded "Muslim, Shia". He did not express any concerns during that interview should he return to Iran because of his claimed atheism. The applicant also undertook a Case Assessment and Biodata Interview in March 2013. The transcript from that interview indicates that he gave his religion as Islam / Shia.
30. In his June 2016 visa application form the applicant indicated that he had no religion and that he had renounced Islam. In his statement the applicant indicated he considered himself an atheist and that he did not believe in any religion, in particular Islam. He also stated since being in Australia he has had the freedom to participate in some religious gathering and got to know more about other religions. The applicant referred to receiving Islam without choice as that was the religion of his parent. He mentioned that renouncing Islam was a sin and also a crime, and that those who did not believe in Islam must remain silent about their true beliefs. However his statement does not indicate whether he has actually renounced Islam, and if so when. He stated that "people like me" were called apostates and would be sentenced to imprisonment.
31. The applicant was invited to comment on his self-identification as a Shia Muslim in the two interviews following his arrival in Australia. He responded that on entry to Australia he gave his personal information including his religion as it appeared on his Iranian identity documents and not based on what he personally believed. He indicated that he believed while he was in detention the Australian government may share his information with the Iranian authorities, and as such he could not disclose his atheism or his renunciation of Islam for fear of adverse consequences were he returned to Iran.
32. It is not implausible that the applicant may have been apprehensive in disclosing information to officials shortly after arriving in Australia. However, I note that he readily and consistently confessed to an adulterous relationship and to having departed Iran while subject of pending charges. These disclosures are at odds with his explanation of fearing information from these interviews would be shared with the Iranian authorities. In this context I am not prepared to accept that he felt disclosing his true religious views would expose him to further danger.
33. The applicant has been vague about his religious beliefs. It is unclear how long he has held his atheist views. He expressed dissatisfaction with being born into Islam, but did not give any particulars about how he left that religion and the consequences that flowed from that renunciation. The applicant has not indicated that he has ever experienced any harm while in Iran due to his claimed atheism. He did not seek asylum because due to being an atheist during his numerous trips abroad prior to travelling to Australia. He stated in his visa application that neither he nor his family members have any religion. His parents and brother remain in Iran and the applicant remains in contact with them. There is no indication that any of his relatives have experienced any difficulties due to their atheism.

34. The applicant has provided an imprecise and unclear narrative in relation to his religious views. I am not prepared to accept that he is an atheist as claimed. I prefer his answers the Entry Interview and the Case Assessment and Biodata Interview that he is a Shia Muslim and I am not satisfied that he has renounced Islam. Given the applicant has consistently expressed dissatisfaction with Islamic teaching and practices, and he described his family as nominally Muslim, I am prepared to accept that he is not a devout or strict Muslim and that he may be non-practising.
35. The applicant claims while he has been in Australia he has observed different places of worship and religious gatherings. This interest in religions other than Islam was motivated in part by the restrictions in Iran on exploring other faiths. While he has provided little detail about these inquiries, it is plausible that given he is free to do so in Australia he may have attended different religious ceremonies. He has not indicated that he fears harm in Iran for this reason.

Returning asylum seeker

36. I accept that were the applicant to return to Iran he would do so after having requested asylum in Australia. Country information indicates that Iranian overseas missions will not issue travel documents to Iranian nationals whom a foreign government wishes to return involuntarily to Iran. The Australian government has reached an agreement with the Iranian authorities to facilitate the return of Iranians who arrived in Australia after 19 March 2018.⁸ As the applicant arrived in Australia in 2013 those arrangements do not apply to him. I am not satisfied the applicant will be involuntarily returned to Iran from Australia and any return to that country would be on a voluntary basis.

Refugee assessment

37. 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

38. 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

⁸ DFAT, "DFAT Country Information Report Iran", 7 June 2018, CIS7B839411226.

- 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.

39. I have not accepted that the applicant had an adulterous relationship while in Iran. As such I am satisfied that he does not have a real chance of being subject to any harm for any reason related to any such relationship were he to return to Iran.

40. Over 5 years have now lapsed since the applicant's 6 month relationship with E. DFAT reported in 2016 that extra marital relationships are common in Iran and unmarried couples often appear together in public, particularly in the middle and upper classes.⁹ There is no indication on the information before me to suggest that the situation in Iran in respect of such relationships has changed. I do not accept that of itself the applicant's relationship with E will expose him to a real chance of harm in the foreseeable future were he to return to Iran.

Religion

41. There is no suggestion that the applicant or his family ever came to the adverse attention of the Iranian authorities because of their religious practise or attitudes. This is generally consistent with country information, which indicates that non-practising Muslims form a large part of the population of Iran's cities, lead normal daily lives and are rarely pressured to observe Muslim precepts.¹⁰ DFAT considers it is unlikely that the government would monitor religious observance such as whether a person regularly attends mosque or participates in religious occasions. As such it would be unlikely for it to become known that a person was no longer faithful to Shia Islam.¹¹ There are some reports that disclosure of non-practising status may impact on a person's employment prospects including if they are seeking to obtain employment with a government agency.¹² I note that the applicant successfully secured employment while in Iran and there is no indication that any of his relatives have faced any difficulty in this regard on religious grounds. There is no indication that he experienced any harm for failure to observe the Muslim faith while in Iran and I am not satisfied he would experience any harm for this reason in the foreseeable future were he to return to that country.

42. The applicant has not indicated that he fears harm in Iran because he attended some unspecified religious gatherings in Australia, and I am not satisfied there is a real chance of him being harmed for this reason. DFAT assesses that the Iranian authorities have little interest in prosecuting failed asylum seekers for activities conducted outside Iran, including in relation to protection claims.¹³

Returning asylum seeker

⁹ DFAT, "DFAT Country Information Report Iran", 21 April 2016, CIS38A8012677.

¹⁰ ACCORD, "Iran: Freedom of Religion; Treatment of Religious and Ethnic Minorities: COI Compilation", 1 September 2015, CISEC96CF13622.

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

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

¹³ DFAT, "DFAT Country Information Report Iran", 7 June 2018, CIS7B839411226.

43. DFAT reports that credible sources have advised that returnees will generally only be questioned if they had done something to attract the specific attention of the Iranian authorities.¹⁴ Reports indicate that persons who have engaged in anti-regime activism overseas, or who have a known anti-regime profile in Iran, may be subject to arbitrary arrest, detention and mistreatment upon return to Iran.¹⁵ There is no indication he has become politically engaged while in Australia and I am not satisfied he has otherwise engaged in any conduct that would be of interest to the Iranian authorities while in Australia. Furthermore, the material before me does not suggest a real chance of harm should the authorities come to know he previously sought asylum in a western country.¹⁶

Refugee: conclusion

44. 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

45. 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

46. 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.

47. The requirement for there to be a "real risk" of significant harm applies the same standard as the "real chance" test.¹⁷ I have concluded for the reasons set out that the applicant does not face a real chance of any harm for reason including because of his relationship with E, for being a non-devout Muslim or a returning asylum seeker. As such, I am also satisfied that there is not a real risk that he would face harm, including significant harm, for any of these reasons were he to return to Iran.

¹⁴ DFAT, "DFAT Country Information Report Iran", 7 June 2018, CIS7B839411226.

¹⁵ Amnesty International, "We are ordered to crush you': Expanding Repression of Dissent in Iran", 28 February 2012, CIS22610.

¹⁶ 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; DFAT, "DFAT Country Information Report Iran", 7 June 2018, CIS7B839411226.

¹⁷ *MIAC v SZQRB* (2013) 210 FCR 505.

Complementary protection: conclusion

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

Decision

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

Applicable law

Migration Act 1958

5 (1) Interpretation

In this Act, unless the contrary intention appears:

...

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

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

...

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

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

...

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

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

...

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

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

...

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

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

...

5H Meaning of refugee

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

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

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

...

5J Meaning of well-founded fear of persecution

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

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

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

5K Membership of a particular social group consisting of family

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

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

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

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

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

5L Membership of a particular social group other than family

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

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

5LA Effective protection measures

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

...

36 Protection visas – criteria provided for by this Act

...

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

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

...

Protection obligations

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

Determining nationality

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