



Australian Government

Immigration Assessment Authority

Decision and Reasons

Referred application

IRAN

IAA reference: IAA18/04485

Date and time of decision: 12 June 2018 15:25:00

S McNeill, 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) is a national of Iran. On 30 August 2016 he lodged an application for a Temporary Protection Visa (protection visa application). He claims to fear persecution from the Iranian authorities because he attended a house church in Iran which was raided by the authorities.
2. On 26 February 2018 a delegate of the Minister for Immigration and Border Protection (the delegate) refused to grant the visa. The delegate did not accept the applicant's claims that the house church he attended was raided by the police.

Information before the IAA

3. I have had regard to the material given by the Secretary under s.473CB of the *Migration Act 1958* (the Act).
4. On 23 March 2018 the IAA received a submission from the applicant's representative. The submission mostly consists of legal argument as to why the applicant's decision was wrong and to that extent it may be considered as argument rather than information, and which I have noted. It also reiterates the applicant's claims made to the delegate.
5. In the submission, the applicant's representative has asserted the applicant is an 'atheist' who does not believe in any religion and that he is not a 'non-practising Muslim' as the delegate misunderstood. He states the delegate failed to consider the applicant had been living in Australia for the past five years living free of religion, that he spoke freely against Islam and he does not believe in the God portrayed by the Islamic scripts. Furthermore, he was in a relationship with a non-believer and expresses his renunciation of Islam to his family members and friends. Despite the representative's assertions, the applicant has not, during the protection visa process, identified himself as an atheist. He has described himself as a non-believer in Islam. I consider this to be a new claim. I note the delegate in her decision in considering the applicant's claim to not practise Islam considered it under the wider subject heading of "Being a non-believer (atheist)/non-practising Muslim" and considered a wide variety of reputable country information sources and quoted various extracts from these sources to reflect the situation of atheists in Iran. One of these sources is the Australian Department of Foreign Affairs and Trade (DFAT) 2016 country information report on Iran and the delegate's extract stated '[a]theists are unlikely to come to the attention of the security authorities unless they seek to publicise their views.'¹ I consider the applicant's new claim that he is an "atheist" and speaks freely against Islam is a direct response to this as this quote is included in the submission. The migration agent gave a detailed verbal submission on behalf of the applicant after a natural justice break and prior to the conclusion of his PV interview and no mention was made of his fear of harm for being an atheist, which one would expect if indeed it was the case.
6. In support of his claim to be an atheist four country information extracts have been provided in the submission. A fifth extract is also provided to support his argument the applicant would fear harm as a failed asylum seeker from a Western country. The country

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

information extracts, and their source documents, were not in the review material and is new information. Although these extracts have not been properly footnoted the source organisation and year of publication have been provided. All extracts pre-date the delegate's decision and contain general country information rather than personal information and no reasons have been provided as to why it could not have been provided prior to the delegate's decision. Again the migration agent quoted various country information extracts in quite some detail in his verbal submission and I submit he could have provided this information at the same time or in writing prior to the decision being made given the delegate made her decision almost three and a half months after the applicant's interview. Apart from possibility the assertion that the delegate misunderstood the applicant's claims - which I reject - no exceptional circumstances have been advanced and none are evident on the material before me.

7. I am not satisfied that there are any exceptional circumstances to justify considering this new information.

Applicant's claims for protection

8. The applicant's claims can be summarised as follows:
 - He was born in [year] in Tehran, Iran and is of Azeri ethnicity.
 - He grew up in a Muslim family; his parents were practising Muslims who expected him to follow an Islamic way of life. He never practised Islam and does not believe in it. This was a matter of contention with his parents.
 - [In] November 2012 his friend S a Christian convert invited him to attend a house church. They went to an apartment located on the first floor; half an hour after their arrival it was raided by the police. He jumped out of the window into the street and ran. A police officer chasing him was hit by a car and fell to the ground.
 - He called his father who told him to stay away from home as his friend S who had not been able to escape would divulge his identity to the authorities under interrogation. He hid at his father's friend.
 - Two days later security agents searched his parents' house looking for him. They arrested his father detaining him for 24 hours and interrogated him about his whereabouts. They told his father he was charged with escaping police officers and for attending illegal religious gatherings.
 - After his release his father told him that he should leave Iran. After the first raid until he fled Iran the authorities security agents visited his home three more times.
 - His father approached a people smuggler to arrange a passport as he had not completed his military service. The agent organised a fake passport during the three weeks he was in hiding and took him to the airport [in] December 2012.
 - In Australia he pursued Christianity but it did not appeal to him and he remained a non-believer.
 - He fears harm on his return to Iran because of his unlawful departure, his attendance at a house church and for evading police officers.

Refugee assessment

9. 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

10. 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.
11. There is no issue as to the nationality of the applicant. I accept that the applicant is a national of Iran and that Iran is the receiving country for the purpose of this review.

Attendance at house church

12. The applicant’s core claim is that he attended a house church with his Christian friend S which led to his fleeing Iran. The applicant stated in his application that he did this out of curiosity and that his friend told him it would be enlightening and interesting for him. The applicant provided very limited evidence in his written claims as to the half hour spent at the house church prior to it being raided by the police; only that it was on the first floor of an apartment building. Whilst he himself was able to flee he stated his friend S could not escape. The applicant provided no substance to flesh out his claims to make them credible. No evidence was provided as to what was discussed in that initial half hour, whether there was a pastor or church leader guiding the service, whether they had bibles, what was discussed or if he learned anything interesting or was enlightened in that short period of time. The applicant did not describe the room how it was that he could escape but S could not. Similarly, at his PV interview the applicant provided very little additional detail of this half hour experience to persuade me that he did in fact attend a house church. When asked what happened at the house church he attended, the applicant merely stated that when he entered the building it was a house church and he noticed that there were 10 or 12 people in that place who had changed their religion; about half an hour past and the security officers were knocking and asking them to open the door. In this regard the only additional information the applicant provided was there were 10 or 12 people present. I am not persuaded he did in fact attend a house church. Country

information suggests that house churches are small in size and kept small, they usually operating with less than 10 people, more often five to six people in order to be able to act in a more discrete and less threatening manner; a group of 10 would typically split two groups when an eleventh member joins.² The content of the gatherings is a simple version of the classic elements of Christian worship of the Classic elements of Christian worship: Songs of worship (they do sing, but have to do silently so they cannot be heard by neighbo[u]rs), reading of scripture, preaching and teaching from the bible, prayers, sharing the holy communion and intercession for each other, often with the laying on of hands.³ The applicant's unsatisfactory evidence, the robotic nature in which he merely repeated his written claims does not convince me that this event actually occurred.

13. The applicant participated in an entry interview on 18 December 2013. Asked by the interviewing officer his reasons for leaving Iran the applicant provided the incident of his attendance at the house church, that he went with his friend and that after half an hour it was raided, he jumped from the window and one of the authorities following him was hit by a car. I accept the applicant has been consistent in this claim; however, when recounting the incident at his PV interview he was mostly restating his written claims verbatim as if he was reading from a script. His inability to digress from his written claims did not convince me that he was recounting from an experience he had actually lived. Likewise in recalling the events that followed his departure from the scene, the officer being hit, the authorities coming to his house, his father's arrest and detention, his oral narrative again followed the script of his written claims.
14. Likewise the applicant's written claim that he pursued Christianity in Australia but it did not appeal to him was totally lacking in any detail. The applicant has not stated when and where he pursued Christianity, whether he attended a church either whilst in immigration detention or in the community. I also find it strange that someone so adamant about their lack of faith in Islam and religion in general; who purportedly chose to attend the house church in Iran merely out of curiosity would decide to 'pursue Christianity' in Australia. I also do not accept that the whereabouts of his friend S who was only a Christian convert but not a church leader would still be unknown. The applicant's evidence in relation to S I did not find persuasive. He provided no evidence as to what steps either he or S's family had taken in order to contact or look for S. S was not a church leader and country information indicates while low level harassment cannot be discounted, the mere fact of conversion and worship in a house church is insufficient to attract the attention of the authorities, additional activities such as proselytising or speaking out against the principles of the Islamic Republic or conducting sermons is generally required.⁴ That S would still be imprisoned almost six years after the event I consider is far-fetched.
15. Taking all of the above into consideration, I reject the applicant's claim that he attended a house church in Iran, which he fled following a raid, that a policeman was hurt pursuing him and that the authorities came looking for him at his family home, arrested and interrogated his father and have continued to do so since his departure from Iran in its entirety. I also reject the applicant's claim that there are charges against him for illegally escaping a police officer or for attending an illegal religious gathering. I am also not satisfied the applicant has pursued an interest in Christianity in Australia. I am of the view the applicant has fabricated this claim.

² 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", 01 February 2013, CIS25114, p. 18-19.

³ Ibid p.19.

⁴ DFAT, "DFAT Country Information Report Iran", 21 April 2016, CIS38A8012677,3.48-3.49

Non-practising Muslim/being a non-believer (atheist)

16. I accept the applicant does not practise Islam and does not believe in Islam despite his parents being Muslims and that he was born into a Muslim family and considers himself more broadly to be a non-believer. The applicant has been consistent in this respect and it is also supported by country information. In his entry interview the applicant identified as having no religion. In his claims he stated he grew up in a Muslim family and that his parents were practising Muslims and expected him to follow an Islamic way of life but as a child he was disobedient and never practised and never believed in that religion and this was a matter of contention with his parents. At his PV interview he confirmed despite his parents being Muslim he had never been a Muslim and never practised; this caused his friends, neighbours and colleagues not to socialise with him as they did not respect him, considered him an infidel and this caused him to be alone. He also stated he was afraid to undertake his military service as they would find out he was a non-believer, they might imprison him or send him to a dangerous border area.
17. Whilst I accept the applicant no longer believes in Islam I consider he has exaggerated this ostracism he experienced from his family, friends and colleagues in order to embellish his claims. As noted in the country information before the delegate people are turning away from Shia Islam and leaving the mosques in droves.⁵ Whilst under Iranian law a Muslim who leaves his faith or converts to another religion or atheism can be charged with apostasy; in practice, cases of apostasy are rare, with the last known death penalty being carried out almost 40 years ago in 1990. DFAT considers it unlikely that individuals will be prosecuted on charges of apostasy and perceived apostates are only likely to come to the attention of the authorities through public manifestations of their new faith, attempts at proselytization, attendance at house church or via informants.⁶ The applicant does not have a new faith, has never proselytised and I have not accepted he ever attended a house church and I do not envisage this happening in the future given his lack of belief in religion in general.
18. According to the Austrian ACCORD of 2015 ordinary Iranian citizens seem fairly tolerant, and, when left without the interference from authorities, more curious about digressing religious belief and practice than condemning. Many Iranians also have a secular attitude, rejecting all religions, Islam included; Iranian citizens appear to be ashamed and embarrassed of religious discrimination and persecution.⁷ Islam plays a smaller role in public life today than it did a decade ago.⁸ Abstaining from Muslim rituals such as not attending mosque would not necessarily arouse the any suspicion as many Iranians do not regularly attend mosque.⁹ Non-practising Muslims form a large part of the population of Iran's cities, they lead normal daily lives and are rarely called upon to answer direct questions about Muslim religious practice and are really pressured to observe Muslim precepts although there are some exception.¹⁰ Lack of religious observance whilst undertaking one's military service is not listed as an exception. I am not satisfied the applicant would face mistreatment whilst undertaking his military service as a non-practising Muslim or as a non-believer. Furthermore the ACCORD indicates the number of atheists in Iran is growing and this is becoming more accepted among some Iranians.

⁵ "Turning away from Shia in Iran - 'A Tsunami of Atheism'", Qantara, 07 February 2013, CXC28129415432.

⁶ DFAT, "DFAT Country Information Report Iran", 21 April 2016, CIS38A8012677, 3.52-3.55.

⁷ Austrian Centre for Country of Origin and Asylum Research and Documentation (ACCORD), "Iran: Freedom of Religion; Treatment of Religious and Ethnic Minorities COI Compilation September 2015", 1 September 2015, CISEC96CF13622, p.15.

⁸ Ibid p. 30.

⁹ Ibid p. 31.

¹⁰ Ibid 31.

Atheists usually do not express their views in public and lead normal lives in Iran without facing restrictions.¹¹ DFAT is also unaware of any recent charges of individuals for being atheist.¹²

19. On the evidence before me, I am not satisfied the applicant will publicise his non-religious views or lack of belief in Islam or that he is a non-believer, or he has any desire to do so, on his return to Iran. Given the above country information and taking into account the applicant's own personal circumstances I am not satisfied the applicant faces a real chance of harm arising from his being a non-believer or his failure to practise Islam. I am not satisfied the applicant faces a real chance of harm on this basis.

Drinking in Iran and non-observance of Islamic mores

20. Although the applicant did not specifically claim in his PV application to fear harm because he liked to drink, this was articulated in his PV interview. The applicant stated that as he had stopped practising Islam if there was the smallest problem he would have to go to jail. Islam says that he cannot drink alcohol, or have a girlfriend or touch someone from the opposite gender unless they were a relative and he would have to go to jail. He stated the authorities would not harass him until he did something against Islam again reiterating alcohol was forbidden but if he drank he would face major problems. The applicant said he had drunk alcohol in Australia and also mentioned having a girlfriend in Australia. The delegate told the applicant that laws forbidding alcohol were laws of general application.
21. According to DFAT, article 265 of new Islamic Penal Code clearly states that the punishment for alcohol consumption is 80 lashes, regardless of whether consumption caused drunkenness or not. The old Penal Code had an additional article which stated that when a man is flogged on two separate occasions for alcohol consumption, he is sentenced to death the third time he is arrested for drinking alcohol. The article has been removed in the new Islamic Penal Code.¹³ While media reports suggest that punishment for alcohol consumption is carried out, the use of alcohol still remains relatively widespread in Iran. The use and manufacture of alcohol among recognised religious minorities in their own gatherings is tolerated and there is some leakage of supplies into the wider community. Iranians who wish to obtain alcohol can do so relatively easily and alcohol smuggling is widespread. According to a report by the World Health Organisation in 2014, Iran has the 19th highest alcohol consumption in the world, with an annual average of 25 litres per individual. In 2013 the Police Chief said Iran had 200,000 alcoholics though experts quoted in the media suggested the figure was much higher. In 2014 and 2015 the Health Ministry launched a number of alcohol treatment and rehabilitation centres throughout the country.¹⁴ The applicant has not been punished in the past for drinking alcohol in Iran. I accept there is a possibility the applicant may be punished if caught drinking alcohol however on the information before me that I am not satisfied that it amounts to a real chance.
22. I accept that alcohol is widely available in Iran. The consequences of being caught drinking alcohol may be 80 lashes, but not imprisonment. The applicant has not claimed to have been caught in the past for drinking in Iran but given the prevalence of alcohol, his age ([age]), the fact he has been drinking alcohol in Australia, I accept the applicant may drink alcohol on his return to Iran. The law with regards to drinking alcohol in Iran is clear and

¹¹ Ibid p. 51.

¹² DFAT, "DFAT Country Information Report Iran", 21 April 2016, CIS38A8012677, 3.57.

¹³ Ibid 3.84.

¹⁴ Ibid 3.85.

the applicant is aware that he would be breaking the law if he consumed alcohol. The country information indicates that the law prohibiting the consumption of alcohol is not discriminatory. I do not accept that any punishment the applicant may if he is caught consuming alcohol amounts to persecution but rather it would be the non-discriminatory application of a law of general application.

23. With regards to the applicant being caught with a girlfriend the applicant has also claimed that he will have to go to jail. According to DFAT pre-marital and extra-marital relations are common and unmarried couples appearing together in public is very common, particularly in the middle and upper classes. DFAT assesses that the authorities generally turn a blind eye to such couples, in part because – if questioned – such couples may suggest they have a religiously-sanctioned temporary marriage. While there are reports of contracts being signed or papers issued for temporary marriages, DFAT has been advised that temporary marriages do not require formal documentation. If such couple are arrested they would usually be taken to a police station, where parents or guardians are summoned. They are usually released after making a written statement and can sometimes be required to pay a fine. Even if the applicant were to be caught with his girlfriend the country information indicates that he would be taken to the police station, where his parents would be summoned and he would be required to pay a fine. The evidence does not suggest the applicant would go to jail as claimed if caught with a girlfriend or person from the opposite gender. Overall I am not satisfied the applicant would face a real chance of harm on this basis.

Azeri Turk ethnicity

24. The applicant claimed to be of Azeri ethnicity. The applicant at his PV interview made no specific claims of persecution based on his ethnicity and his migration agent in the IAA submission stated that he did not suffer any significant harm that would exacerbate his fears of returning as an Azeri Turk. The matter, however, was considered by the delegate.
25. Azeri Turks (also known as Iranian Azerbaijanis, Iranian Azeris, Iranian Turks or Persian Azerbaijanis) are Iranians of Azerbaijani ethnicity speaking the Azerbaijani language, rather than Farsi, as their first language. There are an estimated 12 to 15 million Azeris in Iran.¹⁵ The Azeri community has significant economic weight, and several of its members hold important positions in the State apparatus, including in the armed forces. DFAT assesses that Azeris are well integrated and are generally accepted in Iranian society by the dominant Persian group.¹⁶ While ethnic Azeris are well integrated into government and society, Azeris report the government discriminates against them by prohibiting the Azeri language in schools, harassing Azeri activists and organisers, and changing Azeri geographic names. Azeri groups also claimed a number of Azeri political prisoners had been jailed for advocating cultural and language rights for Azeris. The government reportedly charged several of them with ‘revolting against the Islamic state’. Notwithstanding these reports, DFAT assesses that unless Azeris participate in some type of activity perceived to threaten the principles of the Islamic Republic, they are unlikely to come to the attention of the authorities.¹⁷ Based on the above country information and the applicant’s own personal circumstances, the fact he is not political and there is no evidence to suggest he has been advocating Azeri cultural or language rights, I am not satisfied he has a well-founded fear of serious harm based on his Azeri ethnicity.

¹⁵ Ibid 3.27.

¹⁶ Ibid 3.28.

¹⁷ Ibid 3.29.

Illegal departure and non completion of military service

26. The applicant claimed to have departed Iran on a false Iranian passport that a smuggler arranged for him. The applicant has been consistent in this claim from when he first arrived in Australia in his entry interview, PV claims and PV interview. I accept the applicant departed Iran on a fraudulently obtained passport and the reason he did this was because he had not undertaken his military service not because he was of any interest to the authorities. At his PV interview the applicant stated because he had had left illegally and not undertaken his military service he would have problems; he would be imprisoned for leaving illegally. The applicant's stated he will be indicted for his illegal escape from the country because he did not do his military service. His focus was on his departure being unlawful not so much on the fact he had not undertaken his military service. I am willing to accept the applicant might have to complete his military service but he has provided no evidence that he will be indicted for departing illegally for a failure to complete his military service. I am also not satisfied the requirement to complete his military service amounts to serious harm. There is no evidence that it involves systematic and discriminatory conduct.
27. A UK Home Officer report of 2016 in the referred material notes that although the law provides that a person can be fined on return or sentenced to between one or three years' imprisonment but current evidence is that returnees who left Iran illegally generally do not face prosecution. If prosecuted, the likely sentence is a fine, and there is not a real risk of imprisonment.¹⁸ I am not satisfied that an imposition of a fine for departing illegally amounts to serious harm.

Failed asylum seeker from a western country

28. I accept the applicant has spent over five years in Australia, a western country. I accept he will be returning to Iran having sought asylum in Australia. DFAT note many millions of Iranians travel to and from Iran each year without difficulty, including the large Iranian diaspora and Iranians with citizenship or resident abroad.¹⁹ If the applicant is returned to Iran given he is without an Iranian passport, a temporary travel document will need to be issued for him by the Iranian authorities. Officials provide assistance even if they have left irregularly.²⁰
29. The information in the review materials does not indicate failed asylum seekers have been arrested on their return to Iran for that reason. These reports generally reference cases involving individuals with pre-existing profiles in Iran/and or profiles abroad indicating activism against the Iranian regime.²¹ I do not consider the applicant to have such a profile; there is no evidence of him participating in activities against the Iranian government either in Iran or here in Australia. The reports before me do not indicate that returnees were harmed for reason only of having sought asylum abroad. Irrespective of whether a returnee is travelling on a temporary travel document or their ordinary

¹⁸ UK Home Office, "Country Information and Guidance - Iran: Illegal Exit", 20 July 2016, OGD7C848D28, p.4.

¹⁹ DFAT, "DFAT Country Information Report Iran", 21 April 2016, CIS38A8012677, 5.28.

²⁰ Ibid 5.33.

²¹ "AMNESTY INTERNATIONAL - URGENT ACTION UA 125/11 Student activists held in Iran", 6 May 2011, CX264288; "Rouhani has yet to deliver on press reforms in Iran", Committee to Protect Journalists (CPJ), New York, 13 March 2014, CX318970; "Mousavi's campaign worker arrested upon return to Iran", Radio Zamaneh, 16 February 2014, CX318168; "Iranian poet/activist arrested at Tehran airport", Radio Zamaneh (Netherlands), 08 January 2016, CX6A26A6E140; "IRAN The Kurdish asylum seeker Rahim Rostami, charged with 'actions against the nation's security', released on bail", Iran Human Rights, 19 June 2011, CX274950; "An Arab Asylum Seeker Sentenced to Jail after Returning to Iran", Human Rights Activists News Agency (HRANA), 30 May 2017, CXC9040668619.

passport, DFAT notes returnees will only be questioned if they have done something to attract the attention of the authorities and the vast majority of people questioned would be released after an hour or two.²²

30. On the evidence before me I am not satisfied the applicant would attract the adverse attention of the Iranian authorities or is otherwise of interest to the authorities in Iran as I am not satisfied he has done something to attract the attention of the authorities either in Iran or Australia. I accept the applicant may be questioned and even detained for a brief period of time as a returnee. I am not satisfied that this treatment of being questioned or detained briefly would amount to serious harm in this case.
31. I find that the applicant does not have a well-founded fear of persecution on any of these bases.

Refugee: conclusion

32. 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

33. 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

34. 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.
35. I have rejected the applicant's claim in its entirety of having participated at a house church gathering which was subsequently raided by the authorities, that a police officer was harmed, that his father was detained and interrogated by the authorities and that any charges were made against the applicant. I am therefore not satisfied the applicant would face a real risk of significant harm on the basis of these claims.
36. I accept that that applicant is a non believer and will not practise Islam on his return to Iran. I have found the applicant does not face a real chance of any harm on this basis.

²² DFAT, "DFAT Country Information Report Iran", 21 April 2016, CIS38A8012677, 5.34.

Given real chance and real risk involve the same standard, I am not satisfied he faces a real risk of harm including significant harm on his return to Iran.

37. I have accepted that the applicant has drunk alcohol in the past and that he may drink alcohol on his return to Iran, and there is a possibility he may be punished by lashing as result; however, I have concluded he does not face a real chance of harm of this occurring. Likewise I am not satisfied he faces a real risk of him being punished. Furthermore, as I have already noted, the laws about alcohol consumption in Iran are laws of 'general' application. I conclude that the risks that I accept the applicant may face are faced by the population of Iran generally and not by the applicant personally and, as a consequence under s.36(2B)(c) the risk the applicant may face is taken not to be a real risk of significant harm in Iran for this reason.
38. I accept the applicant, if caught with a girlfriend in public by the authorities, may be arrested and briefly detained at a police station until his parents are summoned, be required to make a statement and pay a fine but I am not satisfied this would amount to significant harm. He will not be arbitrarily deprived of his life or subject to the death penalty. He will not be subject to torture, cruel or inhuman treatment or degrading treatment or punishment.
39. I have accepted the applicant is of Azeri ethnicity; based on his own evidence and the country information referred to above I am not satisfied this will give rise to a real risk of significant harm on his return.
40. I also accept that he may be required to undertake his compulsory military service. I am not satisfied that this amounts to significant harm. I am not satisfied that he would face the death penalty, be arbitrarily deprived of his life or face torture. Nor am I satisfied that he would face any treatment which would amount to cruel, or inhuman or degrading treatment or punishment.
41. I accept that, as an asylum seeker returning to Iran from Australia and who departed illegally, he may be questioned and briefly detained on his return for a couple of hours, and that he may have to pay a fine but I do not consider that this would amount to significant harm. He will not be arbitrarily deprived of his life or subject to the death penalty. He will not be subject to torture. I am also not satisfied that he would face any intention to inflict pain or suffering, severe pain or suffering or to cause extreme humiliation. I am not satisfied that he would face any treatment which would amount to cruel, or inhuman or degrading treatment or punishment.
42. I find that there is no real risk that the applicant would suffer significant harm from the Iranian authorities or any other persons upon his return.

Complementary protection: conclusion

43. 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

...

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.