



Australian Government

Immigration Assessment Authority

Decision and Reasons

Referred application

IRAN

IAA reference: IAA18/04546

Date and time of decision: 17 October 2018 12:08:00

R Mikhail, Reviewer

Decision

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

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

Background to the review

Visa application

1. The referred applicant (the applicant) claims to be a citizen of Iran. On 25 May 2017 he lodged an application for a Safe Haven Enterprise Visa (application for protection). On 9 March 2018 a delegate of the Minister for Immigration and Border Protection (the delegate) refused the grant of the visa.

Information before the IAA

2. I have had regard to the material given by the Secretary under s.473CB of the *Migration Act 1958* (the Act) (the review material).
3. I have also considered a new report by the Australian Department of Foreign Affairs and Trade (DFAT) on Iran published on 7 June 2018. This report contains updated information on the situation for returnees, minority ethnic groups and military conscripts. It updates and replaces the DFAT report on Iran published on 21 April 2016 which was before, and relied extensively upon by, the delegate. I am satisfied there are exceptional circumstances to justify considering this information.

Applicant's claims for protection

4. The applicant's claims can be summarised as follows:
 - He is a citizen of Iran of Turkish ethnicity and Shi'a Muslim faith and born on [date].
 - He was arrested two times by the Basij for being with his girlfriend in public and for drinking alcohol.
 - He fears harm in Iran due to his work as a hairdresser who provided western/anti-Islamic hairstyles. He received a warning from the Iranian authorities to close his hairdressing salon due to the hairstyles he was providing. When he did not do so, his salon was forcibly closed but he reopened it. A few days later he was detained and beaten and taken to court where he was sentenced to three years in prison. After two weeks he was given a temporary release. He went into hiding for eight months and then departed the country on someone else's passport in December 2012.
 - After he left the country the Iranian authorities came to his home and asked his mother about his whereabouts because they were looking for him as he did not present himself to court for his prison sentence. They approached his home another two to three times and were aware that he had used someone else's passport.
 - He fears harm as a result of his outstanding jail sentence and for leaving the country on a false passport.
 - He fears harm as someone who has avoided military service and fears he will be forced to undertake compulsory military service.
 - He also fears harm due to his Azeri ethnicity.

Factual findings

Identity

5. The applicant provided a certified copy and translation of his Iranian driver's licence. The licence confirmed his claimed name and date of birth and the national identity number of his father. I accept that the applicant is a citizen of Iran. I am satisfied Iran is the receiving country for the purpose of this assessment.
6. The applicant has consistently claimed that he is of Turkish/Azeri ethnicity and I note country information which indicates approximately 12.3 million Iranians are Azeri.¹ I accept this claim.
7. The applicant also consistently claimed that his parents separated when he was a young child and his father left and never came back and he does not know anything about him. According to information he provided in his Irregular Maritime Arrival and Entry Interview (Entry Interview) conducted with departmental officers on 18 March 2013, he is the only child of his mother but has [step brothers] through his father. In that interview the departmental officer noted that the applicant was hesitant and teary when discussing his father. I also accept these claims.

Religion

8. In his application for protection and attached statement of claims (the applicant's statement), the applicant claimed that he was of Shi'a Muslim religion. He also claimed to be of this religion during his Entry Interview.
9. During his protection visa interview (held on 19 January 2018) the delegate asked the applicant if he had a strict religious upbringing to which he said he did not. He also stated that he went to mosque only two times and did not attend again as one time his sneakers were stolen. The delegate then asked the applicant how he was affected by those religious demands and he responded that "There was no other way for us but to give up and obey".
10. In his decision the delegate stated that the applicant claimed that he will be harmed or persecuted for being a non-practising Muslim. However, I am not satisfied on the evidence before me that the applicant raised such claims and I refer to his consistent written evidence that he was a Shi'a Muslim. I am also not satisfied that, the fact that he only has attended mosque on two occasions, is indicative of the fact that he is a non-practising Muslim or atheist as he stated that he did not return to the mosque because his sneakers had been stolen and did not provide any other reason or raise any complaint in relation to his faith/religion for why he did attend mosque. I am also not satisfied that his concern about obeying religious demands is convincing evidence that he is a non-practising Muslim. I neither am satisfied the applicant is a non-practising Muslim nor am I satisfied the applicant has raised claims of protection regards to his religious beliefs or practices.

Harm as a Hairdresser

11. The applicant claims that in around 2011 (when he was approximately [age] years old), after completing a hairdressing course, he decided to rent a hairdressing salon in his neighbourhood in Tehran. He was never grant a licence by the authorities as the authorities did not approve of the hairstyles he was providing and did not like his style and the way he was running his shop.

¹ DFAT, "DFAT Country Information Report – Iran", 7 June 2018, CIS7B839411226

During the protection visa interview he further said that the authorities also had concerns with the name of his shop, “[name deleted]”, and his own appearance. They wanted him to provide more Islamic haircuts and styles. He claims he provided customers with any hairstyle they asked for including modern and Western styles and there was not much demand for the normal Islamic styles and he needed the work. He eventually received a notice in writing from the authorities ordering him to close his shop in ten days otherwise he would face the consequences. He did not comply with the notice because the shop was his only way of earning a living. Ten days after receiving the notice, about five people from the Basij and the Iranian security forces came to his shop and swore and threatened him then closed the shop and locked it and left. After they left, he removed the locks and reopened the shop because he needed to work and provide for himself. Two days later about eight or nine men came to shop wearing casual clothing and some were armed. They broke many things in the shop and asked the customers to leave and handcuffed him and took him with them in the car. He was taken to the headquarters of the Iranian security forces. He was detained there over the weekend during which he was beaten and abused. The following week he was taken to court and sentenced to three years in prison. He stayed in prison for around two weeks and his mother arranged for a relative who provided his house as guarantee for his conditional release. The applicant was released but was expected to return to court within two weeks in order to receive his prison sentence. After the applicant was released he packed up his hairdressing shop which was closed by the authorities for good and went into hiding for eight months and stayed with his friends and made arrangements to leave the country. He further claims that about twenty days after leaving the country, the Iranian authorities came to his house and asked his mother about his whereabouts and that they were looking for him because he had never presented himself to the court for his prison sentence. His mother claims they came again another two to three times looking for him and they told that they had received a report that he left using his relative’s passport and that he has an outstanding prison sentence.

12. Country information before me confirms that, in 2010, the Iranian authorities banned “Western” hairstyles including mullets, spikey hair, and ponytails and released a list of “approved” haircuts for men.² According to the Union of Men’s Hairdressing Salons, salons which violate this law would be closed.³
13. Nonetheless I am not satisfied of the credibility of the applicant’s claims. I have given weight to a number of significant internal inconsistencies in the applicant’s evidence and with country information before me and that he has not provided any documentary evidence in support of his claims.
14. During the applicant’s Entry Interview, he raised these claims as the reason he left Iran. However in that interview he claimed that he had been detained on one occasion in relation to this and held for 24 hours and insulted and sworn at and hit. He did not refer to being detained for a week and then taken to court and sentenced to three years in prison which I consider a significant omission. During that Interview he referred to receiving a summons twenty days after he departed the country but this was in relation to his military extension card and not offences in relation to his hairdressing.
15. Furthermore, during the protection visa interview the applicant claimed that he received the first notice four months after opening the salon which, according to his claims and statement, indicates that all of these events occurred within the fifth month but in his application for

² "Seven Things About Iranian Fashion you Should Know", IranWire, 1 December 2016, CX6A26A6E14940

³ DFAT, “DFAT Country Information Report – Iran”, 21 April 2016, CIS38A8012677

protection he indicated that he had the salon from July 2011 until March 2012 which is approximately nine months.

16. Although the applicant claims that he went into hiding after his salon was closed, in his application for protection it appears that he worked [in another role] in Tehran from March 2012 until December 2012. He also referred to doing this work during his protection visa interview. I also note this driver's licence (which was issued by the police) was issued on [date] August 2012 at the time he was meant to be in hiding. His work and application for a driver's licence during this period which is not suggestive of someone who was living in hiding.
17. The applicant provided no documentary evidence in support of his claims. The applicant has claimed that has not worked in Australia as a hairdresser due to his limited English but I also note that he claimed to have completed a course in Hairdressing in Iran and three year apprenticeship but has also not provided any documentary evidence of this. When asked by the delegate about providing a copy of the first notice he received from the Iranian authorities, he claimed that it was a long time ago and does not know if his mother still had it. He further said that he was not sure if his mother still had the court documents as she has moved out but then claimed that court documents in Iran are not taken seriously. I am not convinced of this and the reasons he has given for not being able to provide this documentary evidence. Further, when questioned about the relative that provided his house as guarantee for his release from detention by the delegate, the applicant could not name the relative despite his role in his release from prison. The applicant also said he could ask his mother if she still has documents about his release but I note that no such documents were provided to the delegate.
18. In his statement the applicant claimed that he was able to work in his own business on a trainee basis and after a year or so he could apply for a licence. He claimed that in the beginning there is no need for a licence, the authorities will assess your work and if they are happy with it you will be granted a licence but he was never granted such a licence as the authorities did not approve of the hairstyles he was providing. However, there is no evidence before me that indicate that hairdressers in Iran are able to operate without licence until the authorities assess their work.
19. I also find the applicant's claim that he reopened his salon after it was closed down by the authorities difficult to believe. It is not clear how he was able to do so as he claims that they locked the shop. He has claimed that he reopened the shop and did not comply with the notice because it was his only way of earning his living, however, I note that he previously worked as an apprentice hairdresser in another salon prior to opening up his own. During the protection visa interview he also claimed that he looked for work but could not find any other job so in order to earn money he had to open his shop again and support his mother as well but I note that during his Entry Interview he claimed that his mother also worked as a hairdresser. He also claimed that he subsequently worked in [another role] prior to his departure from Iran which appears to contradict his claim that he could not find alternative work and therefore had to reopen his shop. The applicant has also claimed the when he had his own shop there was not much demand for the normal Islamic styles and he needed to work, yet he previously claimed in his statement that during his apprenticeship for three years he worked at a hairdressing salon that provided customers with normal hair styles that were not modern indicating there was a demand for non-western styles.
20. On the evidence before me I do accept that the applicant trained and worked as a hairdresser in Iran, opened up his own salon and provided Western-style haircuts and was subsequently harassed by the Iranian authorities as claimed. I do not accept that his salon was closed down and he was detained and sentenced to three years imprisonment. I also do not accept that his

home was approached by the Iranian authorities after his departure seeking his whereabouts in relation to his prison sentence. I am not satisfied he was of any adverse interest to the authorities on his departure for any reason,

Military Service Obligations

21. The majority of country information before me indicates that Iranian males are liable for conscription from the age of 18.⁴ One source states all men, upon reaching the age of 18, are called up as part of their military service duties. They must report to the military authorities within one month after the start of the Iranian calendar year in which they turn 18.⁵ Young men of 17 years of age will be prevented from leaving Iran until they have completed their military service.⁶
22. The applicant turned 18 in [date] and claimed to have left Iran in December 2012 and, therefore, would have been of military service age on departure. During the protection visa interview he confirmed he received all paperwork advising him that it was time for him to conscript prior to his departure from Iran.
23. In his statement the applicant claims that he was able to obtain a temporary exemption from military service because he was the carer for his mother who is a single divorced woman. In order for the exemption to continue he needed to attend an interview with Sepah once a month. Since he has been out of the country he has missed those interviews and therefore his compulsory military service obligations will be outstanding in Iran.
24. Country information sources before me confirms that the Iranian authorities can grant an individual exemption from military service on the grounds of being the only son/male in the family or the only child in a family where the parents require the assistance of their only child.⁷ However, there is no corroborating country information which indicates that such exemptions are temporary and that individuals would need to attend an interview once a month.
25. Further, during the protection visa interview the applicant claimed he did not have time to respond to the letter calling him for military service prior to his departure and his mother received a letter about it after his departure. This contradicts his claim to have already obtained a temporary exemption card. He also noted this letter was in Iran and he could ask his family to send it but I note that no such document was provided to the delegate. The applicant has also not provided any other documentary evidence in support of his claim to have only received a temporary exemption from military service.
26. On the evidence before me I accept the applicant received an exemption from military service due to his family circumstances but I do not accept that it was temporary and I do not accept he has outstanding military service obligations in Iran or has avoided military service.

⁴ UK Home Office, "Country Policy and Information Note: Iran: Military service", 25 October 2016, OGD7C848D84; DFAT, "DFAT Country Information Report – Iran", 7 June 2018, CIS7B839411226

⁵ UK Home Office, "Country Policy and Information Note: Iran: Military service", 25 October 2016, OGD7C848D84

⁶ UK Home Office, "Country Information and Guidance - Iran: Illegal Exit", 20 July 2016, OGD7C848D28

⁷ UK Home Office, "Country Policy and Information Note: Iran: Military service", 25 October 2016, OGD7C848D84; DFAT, "DFAT Country Information Report – Iran", 7 June 2018, CIS7B839411226

Departure

27. The applicant has also provided inconsistent evidence about the passport he used to depart Iran.
28. In his statement the applicant claimed that he used the passport of a distant relative named “[name deleted]” to departed Iran. During his Entry Interview he stated that he departed the country on a passport that belonged to one of his friends who looked like him. He later said in that interview that it was his uncle’s passport in the name of “[name deleted]” and the photo was not exactly the same. In his statement he explained that he provided a different name during his Entry Interview because at that time he was afraid that if he provided his uncle’s real name it could cause his uncle problems. However it is not clear why he now feels there is less risk in revealing his uncle’s real name.
29. Furthermore, during the protection visa interview, the applicant claimed that the people smuggler [made] his passport for him but this is inconsistent with his claim to have used someone else’s passport and his claim, in the Entry Interview, that he only met [the people smuggler] in [another country].
30. Given these concerns, and my earlier findings in respect of his other claims, I do not accept the applicant departed Iran on someone else’s passport and I am satisfied he left on his own genuine passport. I do not accept that his home was approached after his departure by the authorities who told his mother that they knew he had fled on someone else’s passport or for any other reason.
31. The applicant has claimed that he lost his documents on the way to Australia and I accept this as plausible.

Moral Offences

32. In his statement the applicant claimed he was arrested two times by the Basij in 2011. On one occasion he had been caught in the park with his girlfriend. He was taken to their base where they verbally abused and bashed and detained him for about 6 to 7 hours. The second time he was detained it was for drinking alcohol and he was also taken to the station and abused and beaten and detained for 7 to 8 hours.
33. I note the applicant refers to these claims during his Entry Interview. During the Entry Interview, when referring to these incidents, the applicant claimed he was charged every time but when asked further about the charges by the case officer, he merely stated that he was made to sign an undertaking not to do it again. I am not satisfied the applicant was charged with an offence on these two occasions.
34. A report by DFAT in 2016 notes that Article 638 of Iran’s Penal Code states that “anyone in public places and roads who openly commits a haram (sinful) act, in addition to the punishment provided for the act, shall be sentenced to two months’ imprisonment or up to 74 lashes; and if they commit an act that is not punishable but violates public prudency, they shall only be sentenced to ten days to two months’ imprisonment or up to 74 lashes”. However, in that report, DFAT has also stated that if unmarried couples are arrested they would usually be taken to a police station, where parents or guardians are summoned and are usually released after making a written statement and can sometimes be required to pay a fine. Its more recent

report from 2018 does not indicate that this has changed.⁸ This appears consistent with the applicant's claim that he was made to sign an undertaking after his arrest.

35. DFAT also stated that the authorities can take a heavy-handed approach when they periodically enforce standards of Islamic conduct in the community, including public displays of affection with non-family members of the opposite sex. However, given my overall concerns with the applicant's credibility and my findings that he has fabricated the majority of his claims, I also have concerns about the credibility of his alleged lengthy detention and mistreatment by the Iranian authorities in respect of these incidents.
36. Although I am willing to accept he was detained for these offences by the Basij and he was required to sign undertakings not to repeat these offences, I am not satisfied he was detained for as long as he claims or beaten.

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
 - 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 worked as a hairdresser, opened up his own salon and provided Western-style haircuts and was subsequently harassed by the Iranian authorities, had his salon closed down and was detained and sentenced to three years imprisonment, that he left Iran on someone else's passport or that he has outstanding military service obligations. I am not satisfied he has a well-founded fear of persecution for these reasons.

⁸ DFAT, "DFAT Country Information Report – Iran", 21 April 2016, CIS38A8012677; DFAT, "DFAT Country Information Report – Iran", 7 June 2018, CIS7B839411226

40. I have accepted that the applicant was detained by the Basij on two occasions for being with his girlfriend in public and for drinking alcohol. I am not satisfied he was charged with any offences on these occasions. During the protection visa interview he claimed he did not have any other interactions with the Basij. On the evidence, I am not satisfied he was imputed with a political opinion against the government or Islam or remained of adverse interest to the Iranian authorities due to these incidents. The applicant has not raised any further claims about alcohol consumption or that he drinks regularly. I am not satisfied the applicant faces a real chance of harm from the Iranian authorities or any other group or person in relation to these incidents, both individually or cumulatively.
41. In his application for protection the applicant did not raise any claims a fear of harm in relation to his Turkish ethnicity. However the delegate asked the applicant if he did fear harm on this basis and he indicated he did. DFAT assesses that, although the experience of different groups is not uniform, both official and societal discrimination against ethnic minorities does occur. Country information indicates that ethnic minorities report political and socioeconomic discrimination, particularly in relation to economic aid, business licences, university admissions, job opportunities, permission to publish books, and housing and land rights.⁹ In 2018, DFAT assessed that members of ethnic minority groups face a moderate risk of official and societal discrimination, particularly where they are in the minority in the geographic area in which they reside. This may take the form of denial of access to employment and housing, but is unlikely in most cases to include violence on the grounds of ethnicity alone. The risk to members of ethnic minority groups who are involved (or are perceived to be involved) in activism is higher. In respect of Azeri's, DFAT notes that they are Iran's largest ethnic minority and politically and socio-economically diverse. They are on the whole better integrated into Iranian society, business and politics than are other ethnic minorities and have substantial economic weight, and several of its members hold important positions in the state apparatus and in the armed forces. However, whilst Azeris are well-integrated into Iranian society, DFAT is aware of some reports of official discrimination which include claims that the government has prohibited the use of the Azeri language in schools, harassed Azeri activists or organisers, and changed Azeri geographic names.¹⁰ The World Directory of Minorities and Indigenous Peoples, updated by the Minority Rights Group in July 2014, also stated that, of all of Iran's ethnic minorities, Azeris receive perhaps the greatest acceptance among Persian Iranians, while noting that Azeris nevertheless continue to face discrimination and are denied education in their mother tongue.¹¹ The applicant denied being involved in any political activities and also noted that he never experienced any harm on the basis of his ethnicity. During the protection visa interview he claimed that everyday new legislation is passed so he is fearful he will be harmed because of his ethnicity. I find this overly speculative and I note one source from 2017 stated that first inclusion of Azeri language and literature majors in universities was introduced in 2016 and another source referred to the recent decision by the government that optional Turkish language courses would be offered in schools in two provinces.¹² On the evidence before me I am not satisfied the applicant faces a real chance of harm from the Iranian authorities or any other group or person as a result of his Azeri ethnicity.

⁹ US Congressional Research Service, "Iran: Politics, Human Rights, and US Policy", 1 November 2017, CISEDB50AD4776; "World Directory of Minorities and Indigenous Peoples - Iran Overview", Minority Rights Group International (MRG), 1 July 2014, CX324703; US Department of State, "Iran 2016 Human Rights Report", 3 March 2017, OGD95BE926964; DFAT, "DFAT Country Information Report – Iran", 7 June 2018, CIS7B839411226

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

¹¹ 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

¹² US Department of State, "Iran 2016 Human Rights Report", 3 March 2017, OGD95BE926964; Amnesty International, "Amnesty International Report 2016-2017", G2A465F54

42. In his decision, the delegate also considered whether the applicant would be harmed on the basis of being a failed asylum seeker from a western country.
43. Country information indicates that Iranian overseas missions will not issue travel documents to an Iranian whom a foreign government wishes to return involuntarily to Iran.¹³ In its 2018 report, DFAT indicated that it reached an agreement with the Iranian government to facilitate the return of Iranians who arrived after 19 March 2018,¹⁴ however the applicant does not fall within this category. If the applicant were to return to Iran, it would be on a voluntary basis.
44. Country information before me indicates that it is not a criminal offence in Iran for any Iranian to ask for asylum in another country and Iranian authorities have little interest in prosecuting failed asylum seekers for activities conducted outside Iran, including in relation to protection claims.¹⁵ I am also not satisfied, on the information before me, that the Iranian authorities impute failed asylum seekers from western countries with a political opinion against the Iranian government.
45. In its 2018 report, DFAT stated that, according to international observers, Iranian authorities pay little attention to failed asylum seekers on their return to Iran. In cases where an Iranian diplomatic mission has issued temporary travel documents, authorities will be forewarned of the person's imminent return. Authorities will usually question them on return only if they have already come to official attention, such as by committing a crime in Iran before departing.¹⁶ There are few very recent reports before me that allege mistreatment of failed asylum seekers on return to Iran. There are two 2017 articles which refers to the sentencing to prison of an asylum seeker on return to Iran but it notes that he had been arrested for an offence prior to his departure from Iran and was related to a political activist with little other detail about the case provided. A 2015 article by the Guardian refers to the return of two Iranian asylum seekers from Papua New Guinea who, after return, were forced to surrender their documents and were told to report to police though no further details about their circumstances were provided. Other articles refer to the arrest of returning political activists, artists, PHD students, and journalists. I am not satisfied the applicant has a profile such that there is a real chance he will attract the adverse attention of the Iranian authorities on his return for any reason. I am not satisfied the applicant will face a real chance of harm from the Iranian authorities or any other group or person due to being a failed asylum seeker from a western country.

Refugee: conclusion

46. 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).

¹³ Danish Immigration Service, "Human Rights Situation for Minorities, Women and Converts, and Entry and Exit Procedures, ID Cards, Summons and Reporting, etc.", 1 April 2009, CIS17329; DFAT, "DFAT Country Information Report – Iran", 7 June 2018, CIS7B839411226

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

¹⁵ 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

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

Complementary protection assessment

47. 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

48. 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.

49. I have not accepted that the applicant worked as a hairdresser, opened up his own salon and provided Western-style haircuts and was subsequently harassed by the Iranian authorities, had his salon closed down, was detained and sentenced to three years imprisonment, left Iran on someone else's passport or that he has outstanding military service obligations. I am not satisfied he faces a real risk of significant harm in Iran for these reasons.

50. For reasons already stated, I have not found the applicant will face a real chance of harm in Iran from the Iranian authorities or any other group or person due to his ethnicity or because he was detained previously for being his girlfriend and alcohol consumption or for returning as a failed asylum seeker from a western country. As real chance equals real risk¹⁷ I am also not satisfied the applicant will face a real risk of significant harm in Iran for these reasons.

Complementary protection: conclusion

51. 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.

¹⁷ *MIAC v SZQRB* (2013) 210 FCR 505.

Applicable law

Migration Act 1958

5 (1) Interpretation

In this Act, unless the contrary intention appears:

...

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

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

...

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

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

...

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

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

...

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

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

...

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

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

...

5H Meaning of refugee

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

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

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

...

5J Meaning of well-founded fear of persecution

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

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

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

5K Membership of a particular social group consisting of family

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

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

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

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

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

5L Membership of a particular social group other than family

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

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

5LA Effective protection measures

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

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36 Protection visas – criteria provided for by this Act

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- (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.

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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.