



Australian Government
Immigration Assessment Authority

Decision and Reasons

Referred application

IRAN

IAA reference: IAA18/04867

Date and time of decision: 16 November 2018 11:58:00

K Juttner, Reviewer

Decision

The IAA remits the decision for reconsideration with the direction that:

- the referred applicant is a refugee within the meaning of s.5H(1) of the *Migration Act 1958*.

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

Background to the review

Visa application

1. The referred applicant (the applicant) claims to be an Iranian national. On 9 September 2016 he lodged an application for a temporary protection visa (Subclass 785).
2. On 26 April 2018, a delegate of the Minister for Immigration and Border Protection (the delegate) refused to grant the visa. The delegate accepted that the applicant is an atheist and that he has started writing a book in Australia about moving from Islam to atheism. He also accepted the applicant had a blog which had been blocked by the Iranian government, and had participated in a [social media] page which criticised Islam. The delegate found that the applicant will be able to return to Iran and maintain his atheist beliefs and not face a real chance of harm from the Iranian authorities.

Information before the IAA

3. I have had regard to the material given by the Secretary under s.473CB of the *Migration Act 1958* (the Act).
4. The IAA received a submission from applicant's representative dated 23 May 2018, which submits that the delegate's findings that the applicant will not face risk of serious harm for being an atheist were based on an inference which was drawn from false premises. I have had regard to these submissions.
5. On 13 September 2018, the IAA invited the applicant to provide, in writing, new information relating to his blog and [social media] activity in Iran and the book he claims to be writing.
6. On 26 September 2018, the applicant provided a statutory declaration and the following material to the IAA in response to the invitation:
 - Two screenshots of [a] website, with translations that state that the weblog has been blocked by the [Iranian authority], and the content of the weblog is available but has been removed from public access. In the applicant's new statutory declaration dated 26 September 2018, he provides information about the content and frequency of his writing, his readership, when he started writing on the blog and when it was blocked.
 - He provided information in his statutory declaration that he cannot provide screenshots or the content of his writing on the [social media] page because he removed all his posts before leaving Iran.
 - The applicant provided information in his statutory declaration that he finished writing his book, [Book 1] in early August 2018, and published it [in] August 2018 on a new weblog that he created called "[name]". He states that he uploaded an edited version [in] September after finding layout issues. The applicant has provided a copy of his [number] page book in Farsi (untranslated) which is a, a translation of the two page introduction to his book, and a screenshot of his weblog.
7. Section 473DD of the Act provides that the IAA must not consider any new information from an applicant unless satisfied there are exceptional circumstances which justify considering the new information, and the new information was not and could not have been provided to the Minister or is credible personal information which was not previously known and had it been known may have affected the consideration of the applicant's claims.

8. The information provided by the applicant to the IAA was not before the delegate and is new information. The delegate accepted the applicant's claims but did not explore the applicant's social media activities in detail or ask for any documentary evidence about his social media activity or his book. There is very little evidence about these claims in the referred material, beyond the applicant's assertions in the written claims and the limited evidence provided at the protection interview.
9. The applicant was not represented and because of the way the interview was conducted, I accept that the applicant would have believed that it was not necessary to provide further evidence about these claims to the delegate. In addition, the information that the applicant has published his book on his new weblog is information that post-dates the delegate's decision. I am satisfied the new information was not, and could not have been, provided to the Minister before the decision was made. The new information relates to matters that were not explored at the interview, is the only evidence before me of the applicant's activities and is corroborative of the applicant's claims. Some of the information represents new developments that have occurred since the delegate's decision. For these reasons, I am satisfied that there are exceptional circumstances to justify the consideration of this new information.
10. The delegate's decision was made on 26 April 2018, and refers to the Department of Foreign Affairs and Trade (DFAT) Country Information Report Iran dated 21 April 2016¹. I have obtained information from a DFAT Country Information Report – Iran that was published on 7 June 2018². This is new information. The DFAT country reports are produced to assist in the process of determination of protection visas. The information in the 2018 report updates that in 2016 and reflects the situation to which the applicant will be returning, if he returns to Iran. I consider that there are exceptional circumstances to justify considering the information from the 2018 report because it is cogent, current, reliable and directed to this process.

Applicant's claims for protection

11. The applicant's claims can be summarised as follows:
 - The applicant fears persecution from the Iranian authorities on the ground that he is an atheist. He was a practising Shia Muslim until 2008, when he began to read books on atheism, and he now considers himself an atheist. He discussed his atheist views with his university classmates, neighbours and family. Since moving to Australia, he has written [number] pages of a book about moving from Islam to atheism. [In] August 2018, he published a [number] page book in Farsi called [Book 1] on a new weblog in Australia.
 - He also fears persecution on the basis of his social media activity in Iran. He claims that in 2010 he started writing a personal weblog about philosophy and religion which was critical of the Islamic regime. He claims that the blog was blocked in January 2013 by Iranian internet censorship commission and the weblog provider because it contained blasphemous content.
 - The applicant also claims that he was a member of a [social media] page, which posted humorous and satirical material about Islam. He claims that he posted on that site in his own name. He claims that his fear of harm began when the [family member] of a

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

² Department of Foreign Affairs and Trade (DFAT), "DFAT Country Information Report – Iran", 7 June 2018, CIS7B839411226

member of that site living in [Country 1] was arrested in June 2012 because of the activities of his son. He claims that many members of the [social media] page were arrested for blasphemy in the following months.

- The applicant lived in [Country 2] from September 2011 - October 2012, and moved back to Iran because his mother was unwell. He claims that on his return, he was held by the authorities at the airport in Iran for about an hour, and that they took his laptop and passport and asked for his laptop password. He left Iran legally in April 2013.
- The applicant deleted all of his social media accounts before leaving Iran for Australia. In Australia, he has a personal [social media] account that is under an alias of a common male name in Iran.

Refugee assessment

12. 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

13. 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.
14. I have considered the copy of the applicant’s Iranian national identity card (with translation), and accept that he is an Iranian national and that Iran is his receiving country. I accept on the basis of a letter from the applicant’s GP dated [August] 2016 and the applicant’s evidence at the protection visa interview that the applicant was suffering from anxiety and depression for around two years after his arrival in Australia. However, the applicant did not make claims to still be suffering from these conditions at the time of the interview and I do not accept that his mental health impacted on his ability to give evidence.
15. I found the applicant’s responses to the delegate’s questions at his protection interview about his conversion to atheism to be convincing, and I am satisfied that he is an atheist. He referred to atheist thinkers who had inspired him, namely George Carlin and Luis Bunuel, the Spanish film director and writer, as well as two uncles in Iran who became atheists. He gave evidence at

his protection interview on 14 June 2017 that since moving to Australia, he uses the name of R, rather than his own name, which is a religious name. I found that the applicant's evidence in his protection application and interview about his conversion to atheism has been largely consistent.

16. I accept the applicant's evidence that after his conversion to atheism in 2008, he engaged in discussions with fellow university students, neighbours and his family about religion and atheism, and tried to promote atheism to people around him. He gave evidence about his passion about discussing atheism, and about how it was a big success for him to change some of his university classmates who were previously religious, which I considered to be believable.
17. The applicant also claims to fear harm because of his social media activity in Iran. He claims that he started writing a personal weblog, called [name], where he wrote about philosophy and religion and criticised religion and the regime. He said that around 200 people would read his blog on a regular basis. He claims that the blog was blocked by the Iranian internet censorship commission in January 2013 because of its blasphemous content, and has provided screenshots of the blog page. These state that the weblog has been blocked by the [Iranian authority], and the content has been removed from public access. He says that he cannot provide screenshots of the content of the blog because it has been blocked. While his evidence about whether he was active on the blog between 2010 – 2013 or 2008 – 2010 has been inconsistent, I find his evidence about writing on his blog to be credible, and consistent with his evidence about becoming an atheist and wanting to promote atheism to people around him. His claim that the site was blocked is plausible in the context of country information about surveillance of [the] server which hosted the applicant's blog, set out further below. I accept that the applicant had a weblog in Iran where he was critical about religion and the regime, that had a following of around 200 people, and that it has been blocked.
18. He also claims that he became a member of a [social media] page called [name], which contained humorous and satirical material about Islam. He claims that the page was started by a friend, and that he used his actual name when he posted on the page, because online activities were new to him. He gave evidence that the [social media] page is still running, and has [large number of] followers, but that he no longer contributes to it. He claims that he began to fear harm from the authorities after the arrest in Iran in June 2012 of the [family member] of a contributor called [Mr A], who lived in [Country 1]. The applicant claimed that many members of the [social media] page were arrested for blasphemy in 2012 and 2013. He provided media reports about the arrest of the [family member] of [Mr A], with his protection application. The applicant claims that when he left Iran in 2013, he deleted everything on social media to protect himself, and that he cannot provide screenshots of the content of his writing because he had removed all of his [social media] posts. While the applicant has provided limited information about the substance of the material that he contributed to the [social media] page, I find his evidence about contributing to this [social media] page to be credible, and consistent with his other evidence about becoming an atheist and questioning Islam and the regime in Iran. I accept that he deleted his posts before he left Iran and that he cannot provide screenshots of the material that he wrote.
19. Since moving to Australia, the applicant claims that he has had a personal [social media] page in the name of an alias of a common Iranian name in order to protect his family and his identity. The applicant did not make any claims that he uses this [social media] page to post material that promotes atheism, is blasphemous or anti-Islam. I note that the delegate was unable to find this applicant's [social media] page during the protection interview, but notwithstanding this, I find this evidence to be credible.

20. At his protection interview, the applicant claimed that he has started writing a book about [being an] atheist and moving from Islam to atheism, and that this book would cause him to come to the adverse attention of the authorities if he returns to Iran. He claimed that he is trying to write a book to do something bigger, that it was his passion and he had written [number] pages, and that he wants and hopes someday to publish his book. I have considered new information from the applicant about his book which was not before the delegate. While I find the applicant's claim that he had written [number] pages of his book to be exaggerated, I accept that he has recently published a [number] page document on a weblog he created in Australia called [Book 1]. I note that the document was published [in] August 2018, which was after the delegate's decision and before the IAA requested new information about the book. The applicant has not provided a translation of the full [number] page document, which is in Farsi, but I have considered the translation of the introduction that he has provided. I find that the applicant's writing in the introduction is consistent with his evidence at his protection interview that he was writing about moving from Islam to atheism. I also accept that the applicant is identifiable as the author of the book, having included his full name in the introduction, and that the first sentence makes clear that it relates to atheism and is based on the personal experiences of the writer. I am satisfied that the applicant has published a text about atheism and religion in his own name on a weblog in Australia.
21. The applicant claims that he was mistreated by some of his classmates and neighbours because of his atheist views, who called him names like "kafir", which means a person who rejects Islam. He claims that they told him to stop talking about atheism and that he would be in trouble if he continued. I found his evidence about the treatment by his classmates and neighbours to be credible, and I accept that some of his classmates and neighbours may have insulted him and called him names. The applicant also claimed that there was conflict with his older brother who was very religious, and that his brother threatened him with a knife. I accept that the applicant had an altercation with his brother, which may have involved the brother threatening the applicant with a knife, but note that on the applicant's evidence, his brother did not cause him harm. In his protection application, he made claims that his family received suspicious calls about him, but the delegate did not ask him about this claim at his protection interview. In the absence of evidence about the timing of the calls, the persons who called, or whether they referred to the applicant's atheism, it is difficult to make a finding about whether these calls occurred. After considering the applicant's evidence, I am satisfied that he received some negative reactions about his atheist discussions, but did not otherwise suffer harm because of his atheism or his social media activity while he was in Iran.
22. I also find that the applicant did not come to the adverse attention of the authorities while he was in Iran. He made claims that he had a university classmate who was a member of the Basij, who hired the censorship police. However, the applicant was not able to recall this person's name, and only that he was from Tehran, and did not say whether he had any contact with the censorship police and if any action that was taken against him. I have real concerns about the credibility of this evidence, and have serious doubts that he had a classmate in the Basij or contact with the censorship police. The applicant also claims that the [Defence Force 1] classmate is now a member of the [Defence Force 3], and that while this person cannot find him through his now-deleted social media activity, he believes they can still track him down. He also claimed that the [Defence Force 1] classmate asked one of his friends in Iran two years ago how the applicant was doing. I have not accepted the claim about the [Defence Force 1] classmate, and am not satisfied that a general inquiry about how the applicant was doing means that the person would want to cause him harm. The applicant also claimed that he had some difficulties with the university around the time of the Iranian election in 2009, but did not indicate that the university took any action in relation to him, and I am satisfied that this was the case. The applicant suggested that the authorities may have become aware that he was an

atheist from a job interview at a [workplace] when he was asked whether he believed in God and followed the Supreme Leader. He claimed that he left the interview, but did not say whether he told the people at the interview that he was an atheist. I do not accept that the applicant would be known to the authorities as an atheist as a result of this interview.

23. I accept that the applicant's blog was shut down by the [Iranian authority], but his evidence does not suggest that he had registered his blog or that he had been identified as the author of the blog. I am not satisfied that he came to the adverse attention of the authorities while he was in Iran because he was identified as the author of his blog.
24. The applicant gave evidence that he has never been charged with any offence or arrested in Iran. However, he claimed that when he returned from [Country 2] in October 2012, the authorities spoken to him for an hour, and took his passport and laptop and asked for the password to his laptop. On his evidence, he was not asked about his involvement in [social media] page, his weblog about religion or his atheism, and he was not arrested for any of these activities. He was released after an hour. I note that this incident took place a few months after the arrest of [Mr A]'s [family member], and during the time that he claimed many other people were being arrested for their contributions to the [social media] page. Given that the authorities asked for his laptop password, I am satisfied that they used it to check the content on his laptop. However, as the applicant was released by the authorities after an hour, I am satisfied that they did not find anything on the applicant's laptop that indicated that he was an atheist or contained material about the "red line" topics set out in the country information below. I also find that they did not consider that he was a person of interest because of his contributions to the [social media] page. The applicant also left Iran for [number] days in March 2013 to go to a concert, which was after his blog was shut down, and did not come to the adverse attention of the authorities at the airport when he returned. For these reasons, I find that the applicant was not known to the authorities for his social media activity or his atheism while he was in Iran, and did not face harm from the Iranian authorities on that basis.
25. I have considered the country information that was before the delegate about apostasy and atheists. Under Iranian law, a Muslim who leaves their faith or converts to another faith or atheism can be charged with apostasy³. The Iranian Penal Code does not contain provisions about apostasy, but it does specify the death sentence for proselytizing and attempts by non-Muslims to convert Muslims, as well as for moharebeh ("enmity against God") and sabb al-nabi ("insulting the prophets")⁴. By law, non-Muslims may not engage in public religious expression, persuasion, or conversion of Muslims. Such activities are considered proselytizing and are punishable by death⁵. Both the DFAT Country Information Report on Iran and the Iran Human Rights Documentation Centre (IHRDC) report that cases of apostasy are rare, but that a diverse group of individuals has been charged with these religious crimes. Muslim-born converts to Christianity, Bahá'ís, Muslims who challenge the prevailing interpretation of Islam, and others who espouse unconventional religious beliefs have been targeted and prosecuted by the Iranian state⁶. While rare, country information indicates that there have been cases where charges have been brought and persons executed since 2011 for religious charges such as

³ Department of Foreign Affairs and Trade (DFAT), "DFAT Country Information Report Iran April 2016", 21 April 2016, CIS38A8012677, page 14; Department of Foreign Affairs and Trade (DFAT), "DFAT Country Information Report – Iran", 7 June 2018, CIS7B839411226, page 22; Iran Human Rights Documentation Center, 'Apostasy in the Islamic Republic of Iran', 30 July 2014, CIS29371, page 1.

⁴ US Department of State, "2015 Report on International Religious Freedom - Iran", 10 August 2016, OGD95BE926723.

⁵ Ibid, page 3.

⁶ Iran Human Rights Documentation Center, 'Apostasy in the Islamic Republic of Iran', 30 July 2014, CIS29371, page 1.

moharebeh⁷, and apostasy and encouraging prostitution⁸. The 2018 DFAT report refers to a decision of the Supreme Court in March 2017 to uphold the decision of a criminal court in Arak to sentence a 21 year old man to death for apostasy, where he made social media posts considered critical of Islam and the Koran⁹.

26. DFAT considers that it is highly unlikely that the government would monitor religious observance by Iranians, for example, whether they regularly attend mosque or participate in religious occasions such as Ashura or Muharram – and that it would generally be unlikely that it would become known that a person was no longer faithful to Shia Islam¹⁰. Country information indicates that abstaining from Muslim rituals would not necessarily arouse any suspicion as many in Iran do not regularly attend mosques¹¹, that there are more and more atheists in Iran and that this is more accepted among some Iranians¹². The 2016 DFAT report suggests that perceived apostates are only likely to come to the attention of Iranian authorities through public manifestations of their new faith, attempts at proselytization, attendance at a house church or via informants¹³. The 2018 DFAT report does not indicate that the situation has changed since the earlier report. According to DFAT, atheists are also unlikely to come to the attention of security authorities unless they seek to publicise their views¹⁴. The Austrian Centre for Country of Origin and Asylum Research and Documentation (ACCORD) report cites the 2015 Amnesty International report that atheists “remained at risk of persecution, including arrest, imprisonment and possible execution” and a 2012 article in the German weekly newspaper Die Zeit which says that while few death sentences for apostasy were carried out in the last ten years, atheists are forced to hide their true beliefs for fear of other consequences such as losing their social benefits or being barred from university entrance¹⁵. ACCORD also cites information from an academic in Germany in 2015 that atheists usually do not express their views in public and are thus able to lead normal lives in Iran without facing any further restrictions. Whereas atheists obviously cannot discuss their opinions in public, they often use the internet to present their views anonymously. They have a number of active internet pages and blogs including a Facebook page with more than 187,000 followers.¹⁶
27. I have also considered the country information about social media activity in Iran, which provides that the Iran government restricts and disrupts access to the internet, monitors private online communications, and censors online content¹⁷. The Constitution and various legislative provisions place significant constraints on media freedom, such as the Press Law which bars the media from publishing articles that violate Islamic principles, codes, and public rights, including (but not limited to): ‘atheistic articles’, ‘promoting subjects that might damage the foundation of the Islamic Republic’, ‘creating discord by raising ethnic and racial issues’,

⁷ US Department of State, "2015 Report on International Religious Freedom - Iran", 10 August 2016, OGD95BE926723, page 1.

⁸ Iran Human Rights Documentation Center, ‘Apostasy in the Islamic Republic of Iran’, 30 July 2014, CIS29371.

⁹ Department of Foreign Affairs and Trade (DFAT), “DFAT Country Information Report – Iran”, 7 June 2018, CIS7B839411226, page 25.

¹⁰ Department of Foreign Affairs and Trade (DFAT), “DFAT Country Information Report Iran April 2016”, 21 April 2016, CIS38A8012677, page 14

¹¹ Danish Immigration Service, Update on the Situation for Christian Converts in Iran, June 2014, page 12

¹² Ibid, page 13.

¹³ Department of Foreign Affairs and Trade (DFAT), “DFAT Country Information Report Iran April 2016”, 21 April 2016, CIS38A8012677, page 14.

¹⁴ Ibid

¹⁵ Austrian Centre for Country of Origin and Asylum Research and Documentation (ACCORD) “Iran: Freedom of Religion; Treatment of Religious and Ethnic Minorities COI Compilation”, 28 September 2015, CISEC96CF13622, page 51.

¹⁶ Ibid

¹⁷ US Department of State, "2015 Report on International Religious Freedom - Iran", 10 August 2016, OGD95BE926723.

‘offending the Supreme Leader and senior religious authorities’, and ‘insulting lawfully respected persons or institutions, even by means of pictures or caricatures’.¹⁸

28. Internet systems and content are monitored by the Ministries of Culture, Information, and Communications Technology and government organisations such as the Cyber Police and Cyber Army which are presumed to be controlled by the IRGC¹⁹. The authorities monitor the press, internet cafes, cyberspace and private communications including social networking sites and messaging apps, and charge persons with crimes against national security and insulting the regime based on letters, emails and other public and private communications²⁰. The 2016 DFAT report refers to frequent harassment of journalists, bloggers and other media professionals by the Iranian authorities to ensure they do not cross known red lines, which can include surveillance and monitoring, summons, arbitrary arrest and detention, and imprisonment²¹. DFAT also reports that journalists do not have to be particularly high-profile to be subject to adverse attention, and that bloggers with only a handful of readers have been arrested and imprisoned for their published work. In September 2014, the Supreme Court of Iran upheld the death sentence for a blogger convicted of sabb a-nabi (insulting the Prophet Mohammed) for comments he allegedly posted on several Facebook accounts²². Freedom on the Net – Iran also reports on a number of prosecutions and detentions for online activities²³ and states that Iran continues to be an extremely dangerous environment for internet users.
29. According to country information, Iranians from across the social and political spectrum are active and enthusiastic users of social media²⁴, and the Persian blogosphere has an international reputation as one of the largest and most active in the world, with an estimate of 60,000 blogs²⁵. However, the government restricts access to tens of thousands of websites in Iran, including Facebook, YouTube and Twitter, and filters websites if they differ from the official doctrine of Islam or the government’s political position. Website owners must register their sites with the Ministry of Culture and are then subject to requests to remove particular posts deemed unacceptable by the government²⁶. The Committee for Determining Instances of Criminal Content (CDICC) is empowered to identify and report sites that carry forbidden content for blocking²⁷. According to a 2013 Report²⁸, Blogfa, one of the main blogging platforms inside Iran, reportedly receives orders to shut down an average of 50 blogs each week, though this figure has reached 10,000 blogs per week. According to the founder and manager of Blogfa, such massive censorship has damaged the Iranian blogosphere by discouraging users from blogging.
30. Country information indicates that the government’s aggressive censorship of social media platforms has led to a culture of privacy amongst Internet users, where the use of pseudonyms

¹⁸ Department of Foreign Affairs and Trade (DFAT), “DFAT Country Information Report – Iran”, 7 June 2018, CIS7B839411226, page 30.

¹⁹ US Department of State, "2015 Report on International Religious Freedom - Iran", 10 August 2016, OGD95BE926723.

²⁰ UK Home Office, "Country Policy and Information Note: Iran: Journalists and internet based media", 25 October 2016, OGD7C848D83, page 5.

²¹ Department of Foreign Affairs and Trade (DFAT), “DFAT Country Information Report Iran April 2016”, 21 April 2016, CIS38A8012677, page ; Department of Foreign Affairs and Trade (DFAT), “DFAT Country Information Report – Iran”, 7 June 2018, CIS7B839411226, page 19

²² Department of Foreign Affairs and Trade (DFAT), “DFAT Country Information Report Iran April 2016”, 21 April 2016, CIS38A8012677

²³ Freedom House, "Freedom on the Net 2016 - Iran", NGE43874C612, page 10.

²⁴ Department of Foreign Affairs and Trade (DFAT), “DFAT Country Information Report – Iran”, 7 June 2018, CIS7B839411226, page 30.

²⁵ UNHCR Refworld, "Computer Crimes in Iran: Online Repression in Practice", 1 December 2013, CIS27002, page 10.

²⁶ Ibid

²⁷ Freedom House, "Freedom on the Net 2016 - Iran", NGE43874C612, page 7.

²⁸ UNHCR Refworld, "Computer Crimes in Iran: Online Repression in Practice", 1 December 2013, CIS27002, page 18.

is common on social media and initials or locations are used as profile names.²⁹ The virtual private networks (VPNs) used by Iranians to circumvent the blocks on websites also give an additional degree of protection against passive network surveillance³⁰. Individuals and groups also practice self-censorship online³¹. However, the country information also suggests that the Iranian authorities has little visibility into who is participating in certain online communities – or whether they are even in the country³², and that it is unclear how the authorities can technically monitor the content of messages on foreign social networks, given that some apps encrypt their messages³³. The Danish Immigration Service³⁴ cited a source who explained that Facebook is not monitored on a systematic basis and a lot of people will use it and not be concerned about potential surveillance. According to the source, the only way for the authorities to monitor an individual's activities on Facebook would be if he or she has a friend who is an agent of the authorities or if he or she has not set the privacy settings of his or her page properly (i.e. has an open page). However, there is always an underlying nervousness among users that it could be monitored.

31. I accept that the applicant is an atheist and that he will continue to be an atheist if he returns to Iran. I have also accepted that the applicant spoke openly about religion and atheism to classmates, neighbours and family members in Iran after his conversion to atheism in 2008. When he was asked at the protection interview why his atheism places him at risk and what would happen if he returned to Iran, the applicant gave evidence that some people who are atheists keep their head down and say nothing, but that he always tries to promote atheism and to tell the truth about Islam. He also said that if you are not really religious you can somehow ignore the authorities for a while, but it is temporary. He spoke about his passion to continue this way, and said that he does not want to hide his identity anymore. I found these responses to be consistent with his earlier conduct in Iran, compelling and believable. I am satisfied that the applicant would continue to seek to publicise his views about atheism if he returns to Iran, including by discussing atheism and his book with his friends, family and neighbours and by publishing written material about atheism on weblogs or social media.
32. Since the delegate's decision, the applicant has published his book on a weblog called [Book 1] which contains his full name and clearly indicates that he is an atheist. I note that the applicant published his book on his new weblog 2 weeks before the IAA requested information about the book, and that he only provided the information at the IAA's request. I am satisfied that the applicant's conduct has been because of his genuine commitment to publicising his views, and that he has not engaged in conduct in Australia solely for the purposes of strengthening his claim as a refugee. I accept that the content of the applicant's book and the name of his weblog relate to matters that would be prohibited by the Press Law in Iran, and that they would be viewed adversely by the authorities if they became aware of it. The blog is publicly available on the internet, and includes a reference to the applicant's full name in the introduction. Having regard to the country information that the Iranian authorities monitor, censor and block internet sites and weblogs, I am satisfied that the authorities would be able to monitor and detect the existence of the applicant's weblog and book.

²⁹ "Fictitious Profiles and WEBRTC's privacy leaks used to identify Iranian activists", Iran Threats, 11 November 2016, CX6A26A6E16849

³⁰ Fictitious Profiles and WEBRTC's privacy leaks used to identify Iranian activists", Iran Threats, 11 November 2016, CX6A26A6E16849

³¹ US Department of State, "2015 Report on International Religious Freedom - Iran", 10 August 2016, OGD95BE926723

³² "Fictitious Profiles and WEBRTC's privacy leaks used to identify Iranian activists", Iran Threats, 11 November 2016, CX6A26A6E16849

³³ Freedom House, "Freedom on the Net 2016 - Iran", NGE43874C612, page 13.

³⁴ Danish Immigration Service, Update on the Situation for Christian Converts in Iran, June 2014, page 21

33. On the evidence before me about the applicant's ongoing practise of his atheist beliefs, which involves him promoting atheism if he returns to Iran and having published atheist material on a blog, and in light of the country information, I am satisfied that in combination, this conduct will expose the applicant to a real chance of serious harm in Iran, including harassment, interrogation, arrest and thereafter severe physical mistreatment. I am satisfied that the essential and significant reason for the harm is the applicant's religious beliefs, namely his atheism. I am satisfied that the persecution involves systematic and discriminatory conduct.
34. I note that the delegate relied on the applicant's evidence at the protection interview that he places the safety of his family as his foremost priority in life to make a finding that the applicant will not engage in activities that would endanger his family, such as publicising his atheist beliefs or mocking Islamic institutions. However, while the applicant gave evidence that he wanted to protect his family and did not want to get them into trouble, I find that he did not explicitly say to the delegate that he would not engage in promoting his atheist beliefs to friends and family or through social media to protect his family. Instead, he said that he did not know what he would do, and I have found above that the applicant will continue to publicise his beliefs in Iran. I find that if the applicant were to take such action to avoid a real chance of persecution to himself or his family, this would require him to conceal his atheist beliefs, which would amount to a modification of his behaviour that cannot be required under section 5J(3)(c) of the Act. Therefore, I find that section 5J(3) of the Act does not apply.
35. I find that there are no effective protection measures available to the applicant in Iran, as the Iranian authorities are the agent of harm. I also find that he faces a real chance of persecution in all areas of Iran. I find that the applicant has a well-founded fear of persecution within the meaning of s.5J of the Act for reasons of his atheist beliefs.

Refugee: conclusion

36. The applicant meets the requirements of the definition of refugee in s.5H(1).

Decision

The IAA remits the decision for reconsideration with the direction that:

- the referred applicant is a refugee within the meaning of s.5H(1) of the Migration Act 1958.

Applicable law

Migration Act 1958

5 (1) Interpretation

In this Act, unless the contrary intention appears:

...

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

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

...

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

- (a) severe pain or suffering, whether physical or mental, is intentionally inflicted on a person; or
- (b) pain or suffering, whether physical or mental, is intentionally inflicted on a person so long as, in all the circumstances, the act or omission could reasonably be regarded as cruel or inhuman in nature;

but does not include an act or omission:

- (c) that is not inconsistent with Article 7 of the Covenant; or
- (d) arising only from, inherent in or incidental to, lawful sanctions that are not inconsistent with the Articles of the Covenant.

...

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

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

...

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

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

...

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

- (a) for the purpose of obtaining from the person or from a third person information or a confession; or
- (b) for the purpose of punishing the person for an act which that person or a third person has committed or is suspected of having committed; or
- (c) for the purpose of intimidating or coercing the person or a third person; or
- (d) for a purpose related to a purpose mentioned in paragraph (a), (b) or (c); or
- (e) for any reason based on discrimination that is inconsistent with the Articles of the Covenant;

but does not include an act or omission arising only from, inherent in or incidental to, lawful sanctions that are not inconsistent with the Articles of the Covenant.

...

5H Meaning of refugee

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

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

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

...

5J Meaning of well-founded fear of persecution

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

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

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

5K Membership of a particular social group consisting of family

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

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

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

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

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

5L Membership of a particular social group other than family

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

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

5LA Effective protection measures

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

...

36 Protection visas – criteria provided for by this Act

...

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

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

...

Protection obligations

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

Determining nationality

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