



Australian Government

Immigration Assessment Authority

Decision and Reasons

Referred application

IRAN

IAA reference: IAA18/05387

Date and time of decision: 8 October 2018 09:15:00

S Kamandi, Reviewer

Decision

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

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

Background to the review

Visa application

1. The referred applicant (the applicant) claims to be a national of Iran. He departed Iran in March 2013 and arrived in Australia on [date] April 2013.
2. On 24 July 2017, the applicant lodged an application for a Safe Haven Enterprise Visa (SHEV). On 24 July 2018, a delegate of the Minister for Immigration and Border Protection (the delegate) refused to grant the visa on the basis that the applicant is not a person in respect of whom Australia owes protection obligations. While the delegate accepted that the applicant has tattoos which are not visible, and that he does not practice Islam and will be returning to Iran as a failed asylum seeker, the delegate did not form the view that the applicant was detained and beaten on a weekly basis and that there are outstanding summonses issued after his departure from Iran or that he has converted to Christianity in Australia. In assessing the accepted claims, the delegate was not satisfied that the applicant would be persecuted for reasons of his religious or political views or for reasons of returning to Iran as a failed asylum seeker.
3. On 27 July 2018 the matter was referred to the Immigration Assessment Authority (IAA) for review.

Information before the IAA

4. I have had regard to the material given by the Secretary under s.473CB of the *Migration Act 1958* (the Act).
5. On 17 August 2018, the applicant's representative provided a submission and four items of country information to the IAA. The submission mainly consists of arguments as to why the delegate's decision is incorrect and that the delegate has failed to appropriately consider the applicant's claims and have regard to relevant country information. I have had regard to these submissions in assessing the applicant's claims. However, the submissions also refer to a number of country information items submitted to the IAA and include extracts from these reports. I consider this to be new information and for the reasons below have not considered it in my assessment of the applicant's claims.
6. I note that one of the country information reports submitted to the IAA is the June 2014 report of the Danish Immigration Services,¹ which was before the delegate and referenced in the delegate's decision. I do not consider that report to be new information. However the other three reports,² all of which were not before the delegate, pre-date the delegate's decision. I note that the applicant's representative was in attendance at the SHEV interview and was aware of the delegate's concerns regarding the applicant's claims and the authenticity of the summonses produced as evidence that the authorities in Iran are still interested in the applicant. The applicant was put on notice about the significance of providing all evidence in

¹Danish Immigration Service, 'Update on the Situation for Christian Converts in Iran', June 2014, CIS28931.

² Cited in the submissions to the IAA as: " July 19th 2017, "More U.S. Protestants Have No Specific Denominational Identity"<https://news.gallup.com/poll/214208/protestants-no-specific-denominational-identity.aspx> [accessed 12th August 2018]; and Danish Immigration Service, Iran: Judicial issues, February 2018, 1/2018, available at: <http://www.refworld.org/docid/5ab8e8f04.html> [accessed 12 August 2018]; and Austrian Centre for Country of Origin and Asylum Research and Documentation (ACCORD), Iran: Women, children, LGBTI persons, persons with disabilities, "moral crimes": COI Compilation, December 2015, available at: <http://www.refworld.org/docid/568a98324.html> [accessed 14 August 2018].

support of his claims and that it is for the applicant to produce all evidence that support his claimed fear of harm on return to Iran. Given that the reports pre-date the delegate's decision, and the submission to the IAA does not address why these reports could not have been provided to the delegate prior to the decision, on the information before me, I am not satisfied that the reports could not have been provided to the delegate prior to the delegate's decision. I am also not satisfied that the reports contain credible personal information that, if known, may have affected the consideration of the applicant's claims. Therefore the requirements under s 477DD(b) of the Act are not met and I am not able to consider the reports.

Applicant's claims for protection

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

- The applicant was raised in a strict Muslim family, but never conformed to the religion or practised the religion. He became involved in [Church 1] in Australia and was baptised in December 2013. He does not believe in Islam or one particular Christian religious doctrine.
- The applicant's problems with the Basij started about four years before he left Iran. In 2009, he was caught holding hands with his girlfriend and as a result was detained, beaten and required to report to the police station and sign documents on a weekly basis. This continued until his departure from Iran. Four months later, the applicant was arrested and detained for three days after being caught at a [location]. He was beaten [and] suffered [an injury]. In September 2009, the applicant's house was raided by the Basij, he was blindfolded and taken to an underground cell and repeatedly beaten for two days. In February 2010, he was put in the back of a large open truck and driven through streets and announced as an infidel to Islam.
- The applicant tried to undertake his military service, but was refused on the basis that he had tattoos and was unfit to serve in the military. He obtained a medical exemption from military service on the basis of insanity.
- The applicant's family has continuously been harassed by the authorities and have received summonses for the applicant to attend court.
- The applicant fears harm from the authorities on the basis of his religion and imputed political views. He believes that he will be arrested and interrogated upon return to Iran as a failed asylum seeker from Australia and will be tried in an Islamic court for his previous anti-Islamic behaviour. The Iranian government will allow the authorities to make an example of him as someone who turned away from Islam and that he would be considered an infidel corrupted by western culture.

Factual findings

8. The applicant has consistently claimed to be a national of Iran. He has provided documents supporting his identity and nationality. On the information before me and in absence of any information to the contrary, I accept that the applicant is a national of Iran and that Iran is the receiving country for the purposes of this review.

Past events in Iran

9. Although the applicant's evidence about the 2009 incident, where he was caught holding hands with his girlfriend and subsequent events of detention, beatings and requirement to

attend the police station on a weekly basis, have largely been consistent, I find a number of aspects of his claimed interest from the authorities and the extent of his pursuance by the authorities on the basis of that one incident problematic and highly implausible. Having listened to the applicant's evidence at his SHEV interview, I also found the applicant's responses to the questions relating to this claim vague and unconvincing.

10. The applicant claims that although he never conformed to the Islam religion or practised Islam in Iran, he did not come to the attention of the authorities for reasons of his anti-Islamic behaviour, which he described to entail drinking alcohol, having girlfriends and tattoos, until the 2009 incident. He claims that he and his girlfriend were holding hands and were caught by the Basij. In response to the Basij's question about their relationship, the applicant stated that they were married, but could not provide any documentation to prove the status of their relationship. As a result they were taken to the police station and had to sign papers and the applicant was beaten and released on the condition that he would report to the constabulary office on a weekly basis.

11. Country information before me indicates that authorities can take a heavy-handed approach when they periodically enforce standards of Islamic conduct in the community, including Islamic dress and public display of affection with non-family members of the opposite sex. Article 638 of Iran's Penal Codes states that imprisonment and/or lashings may be given for haram (sinful) acts.³ However, although relations before marriage are officially not allowed, relations outside of marriage are very prevalent in larger cities and such cases rarely go to court. It is reported that morality police will more strictly enforce modesty rules in situations with elections or similar political events.⁴ I note the submission to the IAA that the 2013 report by the Danish Immigration Services⁵ confirms that the authorities were particularly capricious and brutal in the aftermath of the June 2009 elections and that there was generalised environment of increased surveillance, especially outside of the wealthy enclaves of North Tehran, the applicant's home area, however, I note that information to be predominantly about activities of political activists in the aftermath of the 2009 presidential election. However, given the increased tightening of surveillance in the society as a whole, I accept that the applicant and his girlfriend did come to the attention of the Basij while holding hands and that they were questioned and taken to the police station where the applicant was beaten as claimed. However, on the evidence before me, I have a number of concerns about the applicant's evidence that he was required to attend the police station on a weekly basis, where he was severely beaten on each occasion or that he suffered any further repercussions as a result of this incident. My concerns are as follows:

- The applicant gave evidence that he had not come to the attention of the authorities for any reason prior to the incident in 2009. Given the applicant's lack of profile with the authorities, I find it highly implausible that, as a result of this one incident of holding hands with his girlfriend, the Basij would have developed such strong interest in the applicant requiring him to report to them on a weekly basis for a period of four years and to have severely beaten him on each occasion. I also find it difficult to accept that the Basij would continuously pursue the applicant, rather than charging him with an offence and imprisoning him, given that the under Article 638 of Iran's Penal Codes

³ Department of Foreign Affairs and Trade, "DFAT Country Information Report Iran April 2016", 21 April 2016, p.17, CIS38A8012677.

⁴ Danish Refugee Council and Danish Immigration Service, "Iran: Relations outside of marriage in Iran and marriages without the acceptance of the family", 1 February 2018, CIS7B83941639.

⁵ Danish Refugee Council, Landinfo and Danish Immigration Service, 'Iran: On Conversion to Christianity, Issues concerning Kurds and Post-2009 Election Protestors as well as Legal Issues and Exit Procedures', 1 February 2013, CIS25114.

imprisonment can be imposed for involvement in sinful acts in Iran. This is even more concerning given the applicant's evidence that there was no complaint against him, yet the Basij continued to invest resources in beating the applicant on a weekly basis, raiding his family home and making an example of him by parading him on the streets of his neighbourhood as an infidel, all due to that one incident for which the applicant was beaten and in absence of the applicant getting involved in any further activities that would be considered as anti-Islamic or sinful in Iran. I do not accept the applicant's evidence that the Basij did not like him and didn't want him to be alive, particularly in light of his lack of profile or involvement with the authorities, for any reason, prior to the 2009 incident.

- The applicant gave evidence that although he would attend on a weekly basis, there were times that he could not endure the pain of beatings and would decide not to report for two or three months at a time. The applicant's answer to the delegate's question of what would happen when he did not comply was vague and unconvincing. He stated that once they located him at a [location] where he was asked to take his clothes off and that is when they noticed his tattoos. He also stated that other times he would go to his sister's house to sleep, and the Basij would go to his family house and cause problems for his family. I find the applicant's evidence which suggests that if he did not report on a weekly basis, the Basij would be looking for him and raiding his home, all because of that one incident where he was caught holding hands with his girlfriend, highly implausible and unconvincing. Furthermore, given that the applicant claims that he was beaten on a weekly basis for an extended period of time, I find it difficult to accept that his tattoos would have gone unnoticed or that he would be asked to take off his clothes in a public [location] rather than taken away and beaten for non-compliance with his weekly reporting obligations. I also note that the applicant's evidence about the [incident] as provided in his SHEV statement, does not mention being asked to take off his clothes or the tattoos, but rather indicates that he was taken to prison for three days.
- The applicant stated that he left Iran legally using his own passport. In response to the question of when he obtained his passport, the applicant stated that he obtained his passport about six or seven months before his departure from Iran. This casts further doubts as to the applicant's claim that he was of interest to the authorities or that he was actively pursued and was under control of the authorities. If the applicant was of such interest to the authorities and was in contact with the authorities on a weekly basis, for most of the four years prior to his departure from Iran, I find it difficult to accept that he would have been able to obtain a passport in his own name and leave the country without any problems or incidents.
- The applicant claims that his family has continuously been harassed since his departure and that a number of summonses have been served on his family requiring him to attend court. The applicant has provided copies of summonses issued and received by his family on [date] June 2016, [date] July 2016, [date] July 2016, [date] July 2013, and [date] July 2016. At the SHEV interview, the applicant was asked, given that he left Iran in 2013, why would the authorities wait for three years before issuing summonses for him to appear. The applicant stated that when he was in Iran, they did not issue summonses as he was there reporting to them and was under their control. Now that he has left the country, he has run away, they have issued summonses. In response to a further observation that given his evidence that in the past the Basij were able to locate him after two or three months of failure to report, they would have been looking for him soon after his departure given that he was not reporting to them, the

applicant simply stated that he hadn't committed a crime, there was no complaint against him and the reason he was signing the documents every week was because he did not want to go to court. Now they would have found out that he had left the country so they issued summonses in his absence. I found the applicant's evidence vague, evasive and unconvincing. I do not accept the applicant's explanation as to why the authorities would wait for three years, given his evidence that in the past they would be locating him and raiding his family home after his failure to report. I also find it difficult to accept that the authorities would issue five summonses in the span of two months, given that the applicant was not responding to the summonses and was unable to be located. I note the submission to the IAA that the applicant made it clear that summonses provided to the delegate are only the most recent summonses. However, although the applicant made a similar claim in his statement, at the interview when answering the questions around the summonses, he did not reveal that there were any earlier summonses that have not been provided to the delegate nor has the applicant provided any further evidence of summonses issued earlier than three years after his departure in 2013. I do not accept that the applicant has been summoned to attend court or that he will be facing charges upon return to Iran and is of any interest to the authorities for any outstanding court orders in connection with the 2009 incident.

12. Given my concerns with the applicant's evidence, while I accept that in 2009, he was involved in an incident where he and his girlfriend were taken to police station for holding hands and that he was beaten for that act, I am not satisfied that the applicant suffered any further repercussions or interest from the authorities as a consequence of that incident. Accordingly, I do not accept the applicant's evidence that he was pursued by the Basij after the initial incident, or that his family home was raided or that he was publicly announced to be an infidel. On the information before me, I do not accept that the applicant was of any interest to the Basij or the authorities at the time of his departure or that the authorities have been searching for the applicant since his departure in March 2013 and in the process have harassed his family or that there are outstanding court orders in connection with the 2009 incident.

Tattoos

13. The applicant gave evidence that he obtained his first tattoo [as a minor], which was the name of a girl he liked, and got other tattoos when he was around [age] and [age] years old. He stated that the first tattoo was done by a person who was working for his brother, who was the same age as him, and the second tattoo was done by his cousin who is a [professional], but does tattoos on the side. The applicant claims that he was prevented from doing his military service as he was told that because he has tattoos he is anti-Islamic, not a good role model and does not deserve to serve the country. He stated that there was a man there that told him that he could get a medical exemption for nervous reasons and insanity under Article 33.
14. I find the applicant's evidence that he got his first tattoo [as a minor], of a girl he liked at the time and done by a person of the same age as him difficult to accept. However, he indicated that he later covered that tattoo after the girl he liked got married. Although the applicant has not provided any evidence in the form of photos to show his tattoos, having listened to the SHEV interview recording, it appears that he has a tattoo of [a range of symbols]. It is unclear as to where the tattoos are imprinted, but I note the delegate's decision which indicates that the tattoos are not visible. I accept that the applicant has tattoos of [symbols] on his body.
15. While I accept that the applicant obtained an exception from military service on medical grounds, in considering the applicant's evidence, I am not satisfied that his exemption was for

reasons of his tattoos or that he was considered as anti-Islamic not deserving to serve the country. I note the submission to the IAA that country information cited⁶ in the delegate's decision specifically states that moral deviancy can be grounds for medical exemption. However, in considering the report it appears that men who are homosexuals or transsexual/transgender are considered to have a physiological condition that warrant an exemption and that their sexual orientation will be documented on the exemption card. Although the report provides that "moral and sexual deviancy, such as transsexuality" can be grounds for medical exemption, there is no indication that having tattoos will be considered as a moral deviancy. Further, the report indicates that there is an application process for medical exemptions and that medical evidence is required. The applicant's evidence suggests that he was told by a man at the "medical commission" that he can get a medical exemption, but does not suggest that he made an application or produced any evidence, but rather that he was given an exemption on the basis of insanity because of his tattoos. I note that the applicant has provided a copy of his military exemption card and that it indicates that he was exempted (medical Article 33, Section 3). While I accept that the applicant was given an exemption on medical grounds, on the information before me, I am not satisfied that the applicant obtained the exemption in the circumstances claimed or for reasons of having tattoos.

Non-practice of Islam and conversation to Christianity

16. The applicant claims, and I accept, that he does not believe in Islam and has not in the past and will not in the future follow Islam. I also accept that although he was raised in a strict Muslim family, he was not forced by his family to follow Islam and that he did not go out of his way to disobey authorities.
17. The applicant claims that he became a Christian [in] December 2013, when he was baptised in [Church 1]. I note that the applicant has provided a baptism certificate to support his claim. However, at SHEV interview the applicant confirmed that even though he was baptised, he is not actively involved with the Church. He believes in God, but has not chosen a denomination and is currently undertaking research into the denominations and wants to find something that is closer to his thoughts. When asked as to how long he has been researching and what are his thoughts, he stated that he did not know that there were so many denominations, he only knew about [Church 1], but then found out that they were very strict. His main aim is to reach God, and when he has time he tries to do research about different denominations, but he is not researching all the time. The applicant stated that [Church 1] say that you [are not allowed to do certain things] and that it is not a very old authentic branch of Christianity.
18. I find the applicant's claim that he was baptised, within some seven months after his arrival in Australia, into a denomination of Christianity that he did not know much about, but later found out that he is not allowed to [do certain things], very concerning. The applicant's evidence that he is still researching, when he has time, different denominations of Christianity and still has not chosen a denomination or church to belong to, some five years after his arrival in Australia, is also very concerning. The applicant's somewhat rushed baptism and prolonged research to find a denomination of Christianity that agrees with him cast doubts as to the genuineness of his claimed conversion and interest to practice the Christian faith.
19. While I accept that the applicant has been baptised, I do not accept that the applicant was baptised because of his genuine belief or commitment to the Christian faith or that his conversion to Christianity is genuine. I find it highly implausible that if the applicant was

⁶ UK Home Office, "Country Policy and Information Note: Iran: Military service", 25 October 2016, OGD7C848D84.

genuine and interested in the Christian faith, that he would not have engaged in activities to find out more about different denominations prior to his baptism, or that he would be researching the Christian faith and differing denominations for the past five years, and still not have found a Church or denomination that is closer to his thoughts. I also found the applicant's evidence at SHEV interview regarding his research into the Christian faith vague and unconvincing.

20. The applicant has not provided any evidence, apart from his baptism in December 2013 and researching when he has the time, of any other religious activities that he has undertaken in Iran or in Australia. While I note the submission to the IAA that the applicant has not renounced his faith or his baptism as a Christian, on the evidence before me, I am not satisfied the applicant has a genuine interest and commitment to the Christian faith or has genuinely converted and will be returning to Iran as a Christian convert.

Refugee assessment

21. 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

22. 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.
23. As I have not accepted that the applicant was pursued, harassed or beaten following the incident in 2009, I am not satisfied that the applicant was of any interest to the authorities, or any other person, at the time his departure from Iran. Given my findings about the outstanding summonses and continued harassment of his family since he departure from Iran, I am also not satisfied that the applicant will be of any interest to the authorities, for reasons of the incident in 2009. Therefore, I am not satisfied that there is a real chance the applicant will be harmed for those reason on return to Iran.

24. I have accepted that the applicant has tattoos of [symbols] on his body. The country information before me indicates that although many Iranians consider tattooing a disagreeable or anti-value act, the country's laws or religious rules don't forbid it except those that contain obscene or nasty images on the face or the visible parts of the body.⁷ DFAT also reports that it is unaware of any recent reports of people being targeted by security forces solely for having tattoos. However it is possible that people with visible tattoos may experience low-level harassment.⁸
25. Although I have not accepted the applicant's claim that he was in any way harmed or was of interest to the authorities for reasons of his tattoos, I note his evidence at the SHEV interview where he states that what he encountered was nine years ago and that things may have changed and that, now, he may not face the same problems that he encountered nine years ago because of his tattoos. He also stated that having tattoos is not his main problem. In noting that the delegate's decision indicates that the applicant's tattoos are not visible, and in light of the country information before me, I am not satisfied that the applicant would face any harassment or that his tattoos will be considered anti-Islamic, such that he would face a real chance of harm for reasons of his tattoos in the reasonably foreseeable future. While I have accepted that the applicant was exempted from military service on medical grounds, I have not accepted it was for reasons of his tattoo or moral deviancy. Accordingly, I am also not satisfied that the applicant will be facing any harm for reasons of his medical exemption from military service.
26. I have accepted that the applicant does not believe in Islam, he did not practice the religion in Iran and is not intending to do so upon return. The country information before me indicates that the official religion of Iran is Shia Muslim and that a Muslim who leaves his or her faith or converts to another religion or atheism can be charged with apostasy. However, it is unlikely that individuals will be prosecuted for apostasy and highly unlikely that the government would monitor religious observance by Iranians. Whether or not a person regularly attends mosques or participates in religious occasions such as Ashura or Muharram or that a person is no longer faithful to Shia Islam is unlikely to come to the attention of the authorities.⁹ Furthermore, perceived apostates are only likely to come to the attention of the Iranian authorities through public manifestations of their new faith, attempts at proselytization, attendance at house churches or via informants. Atheists are also unlikely to come to the attention of the authorities unless they seek to publicise their views.¹⁰
27. In light of the country information before me, I am not satisfied that the applicant will attract the attention of the authorities by not practicing Islam, that he will be perceived as an apostate or atheist by the authorities, or that there is a real chance that he will be harmed for reasons of not practicing Islam or considered as an apostate on return to Iran.
28. I have found that that the applicant does not have a genuine interest and commitment to the Christian faith or has genuinely converted to Christianity. There is no evidence before me that the applicant's baptism in December 2013 or his engagement in Christian activities, in the form of undertaking research, have been communicated to the authorities in Iran. On the applicant's evidence it appears that he is still researching different Christian denominations, and although he believes in God he has not found a denomination that accords with his thoughts. The evidence before me does not suggest that the applicant has been practising Christianity since

⁷ "Is Tattooing a Crime in Iran?", Iran Front Page (Iran), 20 February 2017, CXC90406620781.

⁸ DFAT, "DFAT Country Information Report Iran April 2016", 21 April 2016, p.17, CIS38A8012677.

⁹ DFAT, "DFAT Country Information Report Iran April 2016", 21 April 2016, p.14, CIS38A8012677.

¹⁰ DFAT, "DFAT Country Information Report Iran April 2016", 21 April 2016, p.14, CIS38A8012677.

his baptism in Australia or that he intends to do so, on return to Iran. Accordingly, I am not satisfied that the applicant will face any chance of harm for reasons of his religious activities in Australia or that he will be perceived as a Christian convert in Iran.

29. I note that the applicant's evidence that he had a girlfriend in Iran and that after he found out that [Church 1] are strict in that he was not able to have girlfriends or smoke he did not want to pursue that denomination of Christianity. His evidence also suggests that he wants to live a free life and have the freedom to choose not to follow Islam and exercise freedom of speech without being targeted for anti-Islamic behaviour. I have found above, that there is not a real chance of the applicant coming to adverse attention of the authorities for not practising Islam. In considering whether the applicant will be able to continue to have girlfriends, smoke or drink alcohol and exercise freedom of speech in Iran, I note the DFAT report¹¹ which indicates that pre-marital and extra-marital relations are common with the authorities generally turning a blind eye to such couples; that the use of alcohol is relatively high in Iran and that Iranians are able to criticise the government of the day robustly, both in public conversation and online in social media, provided they do not cross well-established 'red-lines' which include respect for the Supreme Leader, the constitution and territorial foundation of the Islamic Republic and the place of Shia Islam in Iran.¹² I am not satisfied on the information before me that the applicant has or intends to engage in any activities such as drinking in public, disrespecting the religion or the Supreme Leader or other anti-Islamic conduct beyond what he claims to have done in the past. He has come to adverse attention on only one occasion in the past and considering the above country information, even if he chooses to have girlfriends and engage in what he considers to be anti-Islamic conduct to the extent that he has done in the past, I find the chances of him coming to adverse attention of the authorities or suffering harm on return to Iran to be remote.
30. The applicant claims that he believes that he will be arrested upon arrival in Tehran because he is still a person of interest and will be returning from Australia without an Iranian passport. The authorities will know that he is failed asylum seeker and that he would be detained, questioned and imprisoned for his previous anti-Islamic behaviour. The submission to the IAA also reiterates the applicant's fear of return on the basis that he would be returning as a failed asylum seeker, with outstanding court proceedings and for reasons of his Christian faith. It is submitted that considering the likelihood that the applicant will encounter aggressive interrogation it is likely that he would be subjected to cruel and unusual punishment, or even torture.
31. I accept that the applicant lost his passport in [another country] as claimed and that he would be returning to Iran without an Iranian passport. I also accept that the authorities may be aware of the applicant's stay in Australia and that he sought asylum in Australia. However, while I have accepted that the applicant will be returning to Iran as a failed asylum seeker from Australia and without his Iranian passport, I have also found that he left Iran legally using his passport and was of no interest to the authorities or had any political or religious profile at the time of his departure. Furthermore, given my findings about the claimed past events in Iran and the genuineness of his conversion and interest in Christianity and reasons for exception from military service, I do not accept the applicant's submission that he would be subjected to aggressive integration, cruel and unusual punishment or torture on return to Iran, or that the government will allow the authorities to make an example of him as someone who has turned away from Islam and been corrupted by western society.

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

¹² DFAT, "DFAT Country Information Report Iran April 2016", 21 April 2016, p.15, CIS38A8012677; DFAT, "DFAT Country Information Report Iran", 7 June 2018, p.25, CIS7B839411226.

32. Historically Iran does not issue travel documents to involuntary returnees and therefore I find that if the applicant were to return to Iran, it would be on voluntary basis and he would require temporary travel documents by Iranian diplomatic representatives. DFAT advises that voluntary returnees do not attract much interest amongst the large regular international movements of Iranians and that they will generally move quickly through airports. Where temporary travel documents are issued by Iranian diplomatic representatives' overseas, authorities at the airport will be forewarned about the person's return, but they will only be questioned if they had done something to attract the specific attention of the authorities.¹³ On the information before me, I do not accept that the applicant will be imputed with adverse political or religious views or otherwise be harmed because he has claimed asylum in Australia. While, I accept that it is possible that the applicant may be questioned on return to Iran because of the nature of his travel documents, I find the chances of the applicant being identified as a person of interest or having an adverse profile, or such questioning amounting to any harm, to be remote.
33. Considering the applicant's circumstances as a whole and in light of what I have accepted of his claims, including the incident in 2009, his non-belief in Islam and claimed anti-Islamic conduct, his tattoos, religious activities in Australia and his return as a failed asylum seeker with temporary travel documents, I am not satisfied that he faces a real chance of any harm from the authorities or any other person in the reasonably foreseeable future in Iran. The applicant does not have a well-founded fear of persecution within the meaning of s.5J of the Act.

Refugee: conclusion

34. The applicant does not meet the requirements of the definition of refugee in s.5H(1). The applicant does not meet s.36(2)(a).

Complementary protection assessment

35. 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

36. 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.

¹³DFAT, "DFAT Country Information Report Iran April 2016", 21 April 2016, p.28, CIS38A8012677; DFAT, "DFAT Country Information Report Iran", 7 June 2018, p.49, CIS7B839411226.

37. The Federal Court held that 'real risk' imposes the same standards as the 'real chance' test.¹⁴ I have found above that there is no real chance of the applicant facing any harm for reasons of his non-belief in Islam, claimed anti-Islamic conduct, his religious activities in Australia, his tattoos, the incident in 2009 and/or returning as a failed asylum seeker from Australia. I am also satisfied that the applicant does not face a real risk of significant harm for those reasons.
38. Considering the claims as a whole, I am not satisfied that there is a real risk that the applicant will suffer significant harm in Iran.

Complementary protection: conclusion

39. 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.

¹⁴ *MIAC v SZQRB* (2013) 210 FCR 505.

Applicable law

Migration Act 1958

5 (1) Interpretation

In this Act, unless the contrary intention appears:

...

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

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

...

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

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

...

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

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

...

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

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

...

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

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

...

5H Meaning of refugee

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

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

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

...

5J Meaning of well-founded fear of persecution

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

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

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

5K Membership of a particular social group consisting of family

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

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

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

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

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

5L Membership of a particular social group other than family

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

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

5LA Effective protection measures

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

...

36 Protection visas – criteria provided for by this Act

...

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

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

...

Protection obligations

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

Determining nationality

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