



Australian Government
Immigration Assessment Authority

Decision and Reasons

Referred application

IRAN

IAA reference: IAA18/05546

Date and time of decision: 11 October 2018 10:24:00

R Topham, Reviewer

Decision

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

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

Background to the review

Visa application

1. The referred applicant (the applicant) claims to be an Iranian citizen. On 5 July 2017 he lodged an application for a Protection subclass XE-790 Safe Haven Enterprise Visa (SHEV).
2. In a decision dated 14 August 2018 the delegate of the Minister for Immigration and Border Protection (the delegate) refused to grant the SHEV application. The delegate did not accept that the applicant was targeted by his previous wife's family prior to leaving Iran, that his religious and political views were genuine, or that he suffered from a mental condition that caused extensive memory loss. The delegate found that the applicant did not have a well-founded fear of persecution on the basis of being a non-practising Muslim, or that he faced a real chance of serious harm as a person returning to Iran as a failed asylum seeker from Australia.

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 Immigration Assessment Authority (IAA) has not received any submissions or new information from the applicant.
5. I have obtained new information, specifically information regarding Iranian Christian converts and conditions for returnees from the most recent Department of Foreign Affairs and Trade (DFAT) country report for Iran which was published on 7 June 2018.¹ This report postdates the delegate's decision and is specifically prepared for the purposes of protection determination in Australia. The delegate referred to the previously published version of this report. I am satisfied that there are exceptional circumstances which justify consideration of this new information.

Applicant's claims for protection

6. The applicant's claims can be summarised as follows:
 - He left Iran due to ongoing conflict with his former wife's family, and poor social and economic conditions in Ahwaz.
 - He openly opposed the government and was subsequently directly targeted by the authorities. The oppression significantly impacted his general well-being, financial status and employment opportunities. He left Iran as a result of being continually threatened by the authorities.
 - Since arriving in Australia he has been very outspoken against the regime, attending protests in [Australian City 1] as a member of the National Council of Iran. He openly shares his views on social media.
 - He was a non-practising Muslim when he left Iran, and subsequently converted to Christianity in Australia. His family in Iran is aware of his conversion due to his outspoken activities on social media.

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

- He suffers from a mental health condition which has affected his memory.
- The applicant fears harm for reasons of his political opinion and involvement in public displays of opposition against the Iranian government in Australia.
- He also fears harm for reasons of his religious beliefs, that he will be considered an apostate and/or imputed with an adverse political opinion. He cannot return to Iran with his wife as she is a Christian and they both will not be able to practise their faith.

Refugee assessment

7. 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

8. 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.
9. Though the applicant provided limited evidence of his identity, nationality or citizenship, his claims as to his identity and nationality have been consistent since his arrival in Australia. The applicant conducted interviews in Farsi and has submitted a copy of his Australian marriage certificate. Like the delegate, I accept the applicant’s nationality and identity are as claimed and find Iran to be the receiving country for the purpose of the application. There is no evidence before me to suggest that the applicant has a right to enter and reside in any country other than Iran and I am satisfied he does not.
10. During the SHEV interview, the applicant repeatedly claimed to be in a poor mental and emotional state and unable to recall information accurately. He attributed the condition to his incarceration and separation from his wife. The applicant did not provide any medical evidence to support this claim. Having listened to the SHEV interview carefully, the applicant provided fairly detailed and specific responses to basic questions posed by the delegate, until a more comprehensive answer was required. The applicant generally raised the issue of his mental impairment in circumstances where the delegate attempted to illicit more detailed aspects about his claims. At some point the delegate even raised his suspicion that

the applicant may have had pre-prepared notes in front of him (the interview took place over the telephone) which made the applicant quite confident in some areas, but significantly challenged in others, particularly where the applicant may not have expected a certain line of questioning. Having listened to the interview, a similar suspicion crossed my mind and I observed that the applicant provided generally vague and unconvincing answers in these circumstances, or avoided the question completely.

11. During the interview, the delegate placed significant weight on the historical aspects of the applicant's claims which were arguably not so relevant, and in some instances applied factually incorrect information in his reasoning (for example, questioning the applicant's denomination and baptism on the inference that he belonged to a Catholic as opposed to Anglican church). I observed tension and a certain level of frustration from the delegate due to the lack of cogency in most of the applicant's responses which may have influenced the direction of the delegate's enquiries. I have also considered the applicant's statements at the end of the SHEV interview indicating that he had much more to say in support of his claims and that there were other things he wanted to mention. Having said that, and despite his assertions to the contrary, I am satisfied that the applicant had ample opportunity to present his claims and that he adequately engaged with the delegate's questioning.
12. The applicant was represented during the SHEV interview and upon the delegate's invitation, his registered migration agent indicated that a comprehensive written response to the delegate's concerns would be made following the interview. I also note that a request for a recording of the interview was made by the representative, though no subsequent written submissions were provided to the delegate. In the absence of any evidence, including any medical evidence, to suggest that the applicant has been materially disadvantaged during the SHEV application process as a result of any mental or emotional conditions, I am satisfied that the applicant has had a fair opportunity to advance his claims and to address the various concerns raised by the delegate during his interview and in written submissions.

Reasons for leaving Iran

13. There are three aspects to the applicant's claims in relation to the circumstances that led to his departure from Iran:
 - He married a woman whose family was very conservative and worked for the government. Her family did not support the marriage and continually harassed the applicant and his wife ('family dispute' claim);
 - He lived and grew up in Ahwaz. The economic hardship in the area affected the applicant's life and together with his wife, he was concerned about their welfare and future in Iran. His wife convinced him to leave Iran ('economic/social conditions' claim); and
 - He totally disagreed with the strict and harsh regulations that the Iranian government imposed on its people, especially the violations of human rights. He claimed that he was specifically targeted on numerous occasions by the authorities due to his participation in demonstrations that opposed Islamic law, and described how his "*public display of opposition towards the government and the Islamic faith*" impacted his life. He had no choice but to leave Iran as a result of the continued threats he received from the authorities ('political activities in Iran' claim).
14. The applicant's evidence in relation to the family dispute and economic/social conditions in Ahwaz has been generally consistent during the arrival and SHEV interviews. In his arrival

interview, he made the following statements in relation to the circumstances that led to his departure from Iran:

- The main reason he left Iran was due to conflict with his wife's family.
 - When asked whether there were any other reasons he left Iran, the applicant replied: *"There was no job. It's a very bad place to live in Ahwaz. A lot of people drug users there. We scared of our children's future in that sort of community. Everything is expensive and culturally not very happy. My wife is forcing me we have to leave Iran."*
 - He could not return to Iran as they lost/sold everything and the conflict with his wife's family would start again. His wife's step-father was a member of the Sepah.
15. He further elaborated in the SHEV interview that the conflict with his wife's family stemmed from the fact that they were Arab and he was not, and he had a pre-marital relationship with his wife prior to getting married. Like the delegate, I am not satisfied the applicant's father-in-law was a member of the Sepah. Despite this, and given the applicant's consistent written and oral evidence in relation to the family dispute and economic/social conditions in Ahwaz, I accept these latter two factors were key motivating drivers for his decision to leave Iran.
16. There are a number of inconsistencies which cast serious doubt on the credibility of the applicant's claims in relation to his political activities in Iran. The applicant stated in his SHEV application that he left Iran due to being directly targeted and threatened by the authorities as a result of publicly opposing the government. These claims contradict the above initial statements he made upon arrival in Australia, and responses provided to the delegate in the SHEV interview. I note that the arrival interview is not designed or intended to elicit fulsome information about the applicant's protection claims, and that such interviews are conducted without the assistance of a representative. Having said that, the arrival interview was conducted over about an hour and a half and the applicant was asked a series of questions to elicit information about why he left the country, as well as any political involvement in Iran. The applicant was also put on notice that he was required to provide truthful and accurate answers and that any conflicting information provided in future interviews could raise doubts about his credibility. In this context, the following contradictions arise from the applicant's overall evidence which are particularly significant in terms of the credibility of the applicant's claims:
- In the arrival interview, the applicant made no claims in relation to any political activities in Iran. The applicant was specifically asked whether he or any of his family members have ever been associated or involved with any political groups or organisations in Iran. He responded 'no' and also confirmed that he was not involved in any activities or protests against the government. In response to the question whether the authorities impacted his day-to-day life in Iran, he stated that *"my wife was driving and because of the dress code they were stopping her and bothering her and that sort of problem."* His main reason for leaving Iran was due to the dispute with his former wife's family, not being targeted by authorities.
 - In his SHEV interview, the delegate specifically asked the applicant on at least two occasions whether he had any problems with the authorities in Iran. Apart from his experience in the military – which the applicant explicitly stated on a number of occasions had nothing to do with his protection claims or decision to leave Iran – the applicant indicated that he only had problems with the Basij base where he was living. He stated that the Basij *"used to bother me and cause me problems"*, later elaborating that *"I was always under their control, they would check my car all the time, if I went out*

with my girlfriend they would stand in front of us questioning who is she, things like that.”

- The delegate specifically asked the applicant what political activities he undertook in Iran, to which the applicant replied that he was only someone who followed the crowd, having participated in the Green Movement twice. In response to the delegate’s question whether he had ever previously submitted any claims on the basis of his participation in protests in Iran, the applicant said ‘no’. I find this response particularly curious considering the specific claims the applicant made on his SHEV application form in relation to his participation in demonstrations and public opposition towards the Iranian government.
 - In response to the question why he left Iran, the applicant stated that he had lots of problems and conflict with his wife’s family, particularly his father-in-law who was Arab and a member of the Sepah. Later in the interview the applicant was again questioned about the motivating factors for his decision to leave Iran, and the applicant confirmed that family conflict as a result of ethnic differences caused him to leave the country.
17. None of the above statements provide an indication or inference that the applicant had any adverse interactions with the authorities for reasons of his political activities, or that he was targeted as a result of any overt expression of opposition towards the government. The fact that the statements on the applicant’s SHEV application form are not in any way supported by the evidence he provided during the entry interview, subsequent SHEV interview or written statement of claims submitted in support of his SHEV application is particularly noteworthy. For these reasons, I do not consider the applicant’s account of his political activities in Iran as a motivating factor for his departure from Iran, to be credible. I note that the applicant was represented by the same registered migration agent throughout his primary visa application process, which would have assisted him to adequately present his claims and to address any material differences in earlier statements made. No post-interview submissions were made by the applicant or his representative, nor has a submission been made to the IAA.
18. I do not accept that the applicant had a political profile prior to his departure from Iran, or that he was targeted or threatened by the authorities as a result of his political activities in Iran. Whilst I am willing to accept that the applicant may have been present in the crowd on one or two occasions during the Green Movement protests, I am not satisfied that the applicant was otherwise actively engaged in anti-government public displays or demonstrations, that the Iranian authorities ever took any interest in his political views or that his life was adversely impacted as a consequence. I consider that his employment opportunities were likely limited as a result of general economic hardship in Ahwaz, and not because of any political involvement or activities. I accept that substantial underemployment generally exists in Iran, and that youth unemployment is of particular concern,² however I do not consider that the applicant would be subjected to any unemployment as a direct result of systematic or discriminatory conduct against him. As such, I am not satisfied that the applicant faces a real chance of persecution on this basis. Given that the applicant’s relationship with his former wife ended five years ago and he subsequently remarried in Australia, I am not satisfied he faces a real chance of any harm from his former wife’s family, including her step-father, upon return to Iran.

² DFAT, “Country Information Report – Iran”, 21 April 2016, CIS38A8012677, 2.12; DFAT, “DFAT Country Information Report Iran”, 7 June 2018, CIS7B839411226, 2.11.

Political activities in Australia

19. In his SHEV application, the applicant claimed that he had been very outspoken about his opposition towards the Islamic Regime since arriving in Australia. He joined the National Council of Iran in [Suburb 1] sometime in 2016, and attended protests in [Australian City 1] against the Islamic regime. He also actively shares his political views on social media so his family, friends and other people in Iran are aware of his participation in anti-regime protests in [Australian City 1]. There is no evidence, apart from the applicant's statements, before me to support any of these claims.
20. When questioned by the delegate about his political activities in Australia during the SHEV interview, the applicant was unable to provide any cogent responses. The applicant claimed to be a member of the National Council of Iran, but was unable to tell the delegate when he joined the group in 2016, who or where their leader was, how often they would meet or any details of the first time the applicant publicly expressed his political opinion in Australia. The applicant indicated that he could explain why he joined the National Council and what their purpose was, but did not elaborate further. He stated that they met "*mostly in [Suburb 1]*" and when the delegate asked the applicant when they would meet, he responded "*sometimes we go to [a location] and we have a kind of protest for what we want*".
21. I am not satisfied on the evidence before me that the applicant was or is actively engaged with the National Council of Iran. His oral evidence during the SHEV interview was generally vague and unconvincing, and he did not make any mention of being politically active on social media. I am not satisfied that the applicant attended protests in [a location], or that he openly speaks out against the government as claimed.
22. During the SHEV interview, the delegate put to the applicant for comment his concerns about the applicant's very limited knowledge about the Iranian National Council and provided the applicant with an opportunity to respond to these concerns. The applicant's representative indicated that he would do so through post-interview submissions but I note none were provided to the delegate. The applicant did not address any of the delegate's concerns during the SHEV interview, in post-interview submissions or submissions to the IAA. I am satisfied that the applicant was afforded a number of opportunities to present his claims and to address any material differences in earlier statements made.
23. I have found that the applicant was not politically active in Iran, nor was he a person of interest to the Iranian authorities by virtue of any political activities at the time of his departure. I do not accept that the applicant is a political activist, or that he has otherwise engaged in any anti-political activities in Australia. I am not satisfied that he will actively engage in anti-political activities in Iran in the foreseeable future.
24. I do not accept there is a real chance the applicant would suffer any harm upon return to Iran on the basis of any political beliefs.

Christian conversion

25. The applicant claimed that he grew up in an extremely conservative and fundamentally religious Islamic family. He was not religious himself, and did not adhere to the same religious ideologies as his family and the wider community. He converted to Christianity in Australia and claimed that he cannot return to Iran as he would not be able to practise his faith, and that his ability to integrate into the community and obtain employment would be compromised.

26. The delegate placed significant emphasis on the applicant's evidence during the SHEV interview regarding his family and religious background in Iran, particularly in relation to his exploration of other religions on the internet from 2004 onwards, and his experience in the military service as a result of non-adherence to religious instructions. Whilst the applicant's oral evidence appeared quite muddled and implausible at times, particularly in relation to his time in the military, I found his overall evidence in relation to his general disinterest in religion and his non-Islamic attitude prior to his departure from Iran to be credible.
27. I accept the applicant grew up in a strict religious family but started to inform himself of other religions around the world as he got older, though he was not interested in any one in particular. I am also prepared to accept that he did not comply with certain Islamic practices in the military, that this may have brought him to the attention of his superiors and that any disciplinary action may have stemmed from his non-compliance with religious orders. The applicant expressly instructed the delegate that his religious beliefs and experience in the military had nothing to do with his protection claims or decision to leave Iran. I accept that the applicant was a non-practising Muslim when he departed Iran but that this did not cause him any ongoing issues at that time.
28. In terms of his Christian conversion in Australia, the applicant made the following claims:
- He had some prior knowledge about Christianity through his research in Iran, though he was not a believer;
 - He met a Christian Kurdish woman [in] 2015 whom he subsequently married [in] 2017. The applicant provided a copy of his Australian marriage certificate and I accept the applicant was legally married on this date;
 - Through his relationship with his current wife, he became more interested in Christianity and started to attend his wife's church at the end of 2015. Prior to this, he briefly attended a few church services at a Farsi-speaking church;
 - He started to attend bible study classes at the end of 2015/early 2016; and
 - Over a period of at least 18 months (up until the time he was detained), the applicant attended Sunday church services and Friday bible study classes.
29. The applicant's evidence with respect to the above claims have been generally consistent and appeared quite natural and genuine during the SHEV interview. I accept the above claims as stated.
30. The applicant provided inconsistent information in relation to his baptism, stating in his SHEV application that he was baptised but later confirming in the SHEV interview that he was not. Based on the applicant's oral evidence I accept that he is not currently baptised. Whilst he intended to become baptised, the applicant explained that timing prevented him from doing so. He stated that baptismal ceremonies did not occur frequently as the church required a certain number of candidates to facilitate a ceremony, and that there was only one upcoming ceremony at the time he decided to get baptised though it was too close to his wedding date and he did not get a chance to go. I do not consider this explanation particularly compelling. He demonstrated knowledge of the significance of baptism in the Christian faith, gave evidence about his wife's desire for him to get baptised before their wedding and previously claimed that he became so "engrossed" with Christianity and saw himself "using it in his daily life so much", that he converted and became baptised (noting my earlier comment about the latter aspect of this claim). He provided no evidence from his wife's church to verify the limited baptismal opportunities. I also note it is now over 18 months since his marriage, and there is no indication that he has since become baptised or

even arranged for a time when that may occur. I note he is currently in criminal detention but am not satisfied this of itself is a barrier to him becoming baptised, should he genuinely wish to.

31. Apart from providing unusually detailed information about Easter and the day of Pentecost – and noting my earlier comments about the applicant’s limitations in circumstances where the delegate attempted to illicit more detailed aspects about his claims – I have serious doubts as to whether the applicant has a genuine interest in, and commitment to Christianity for the following reasons. The applicant was unable to provide any meaningful insight into his Christian beliefs despite attending church services and bible study classes over at least an 18 month period, and completing 14 sessions and an exam as part of a baptism course. The applicant claimed that Christianity is *“the only one that is full of forgiveness and affection”* and that *“there’s lots of evidence and reasons that prove that Christianity is a real religion and no one can cover that.”* However, when the delegate sought an example of a teaching or parable of Jesus that reflected that belief, the applicant could not provide one, responding instead that he had been incarcerated for a long time without access to a Bible and that he was unable to recall anything due to his poor mental and emotional state. I consider that a person who is genuinely interested in and committed to Christianity would have acquired at least a basic level of knowledge over an 18 month period to enable them to justify their beliefs, or in the case of the applicant, to explain at least one of the many reasons that ‘prove Christianity is a real religion’. The applicant was able to recall the names of his pastor and individuals who facilitated his bible study classes, but could only describe the location of his church and could not identify it by name or denomination. The latter points are also significant considering the frequency of his attendances over what appears to be a reasonable period of time, further supporting my finding that the applicant is not a genuine convert.
32. I am mindful that there is no minimum knowledge required to establish that a person is a genuine Christian. I accept that a person may know very little about the Bible and Christian faith and practices, yet still be a genuine Christian. However, the above factors combined cast serious doubt on the applicant’s commitment to actively pursue and practise his faith. The applicant has been without a Bible for the entire period of his incarceration and I find it implausible that he has not managed to source a Bible from the jail chaplain who had promised him one for *“more than 10 months”*, or his Christian friend who regularly visited him. The applicant also claimed to be the only Iranian in jail and he stopped attending chapel in May 2018 due to the language barrier. I seriously question his interest and commitment in an environment where he has ample time to make an effort to source a Bible in his own language, and to actively explore and study the basic principles of his faith. The applicant indicated that bible study was important to him, having attended classes to increase his knowledge about Christianity and to gain a better understanding of the religion he was entering into. I find this statement inconsistent with someone who has not had a Bible since August 2017.
33. In his SHEV application, the applicant claimed that he has been very outspoken about his religious beliefs on social media since arriving in Australia, and that his friends and family are well aware of his conversion. He claimed that his father became aware of his conversion through Facebook. There is no evidence before me to support these claims and I am not satisfied that the applicant has a religious profile on social media. I am not satisfied that he is a genuinely committed Christian who would practise the Christian faith and to seek out a house church on his return to Iran. I do not accept on the evidence before me that the applicant has been actively promoting Christianity on social media whilst in Australia, and I am not satisfied he will seek to promote his beliefs in Iran.

34. Considering the evidence before me as a whole, I am not satisfied that the applicant has a genuine belief in and commitment to Christianity, or that he is a genuine Christian convert, or that he will be involved in any Christian activities on return. I am prepared to accept that the applicant's involvement with Christianity in Australia may have arisen from the relationship with his current wife and not solely for the purpose of strengthening his claims to be a refugee, and therefore s.5J(6) of the Act does not apply. However, I am not satisfied that his activities in Australia will lead to a real chance of harm in Iran, or that he will be precluded from the community or obtaining employment, or that his capacity to subsist will be threatened. I am not satisfied that there is a real chance that the applicant will face any harm from the Iranian authorities if he returns to Iran for reasons of his religious beliefs and there is no evidence before me to indicate a real risk of harm to the applicant by virtue of his wife's religious beliefs.

Failed asylum seeker

35. Though not expressly raised by the applicant, the delegate considered whether the applicant would suffer harm for reasons of being a failed asylum seeker. I accept that the applicant departed Iran lawfully on his own passport [in] June 2013 and arrived in Australia [in] July 2013.
36. The applicant claimed that his passport was taken by people smugglers prior to boarding the boat to come to Australia. I accept that he is no longer in possession of his passport. In these circumstances, I also accept that if the applicant returns to Iran, it will very likely be on a temporary travel document or laissez-passer. I accept that the applicant would return to Iran as a failed asylum seeker from Australia, and this may be apparent.
37. In 2016 DFAT advised that the fact of claiming asylum whilst abroad was unlikely, in of itself, to be a trigger for mistreatment upon return. It was also reported that, regardless of whether a returnee was travelling on a temporary travel document or their ordinary passport, credible sources have advised that returnees will generally only be questioned if they had done something to attract the specific attention of authorities and the vast majority of people questioned would be released after an hour or two.³ Similarly in 2018, DFAT also reported that Iranian authorities pay little attention to voluntary returnees on their return to Iran, and have little interest in prosecuting failed asylum seekers for activities conducted outside Iran, including in relation to protection claims.⁴ In such cases the risk profile for the individual will be the same as for any other person in Iran within that category. Those with an existing high profile may face a higher risk of coming to official attention on return to Iran, particularly political activists.⁵ As mentioned above, the applicant does not fit this profile and I have found that he was of no interest to the Iranian authorities when he departed Iran or on account of any activities in Australia.
38. The current information before me does not indicate any differential treatment of failed asylum seekers based on the nature of their return to Iran (voluntary or involuntary). Historically Iran has refused to issue travel documents (laissez-passer) to allow the involuntary return of its citizens from abroad, although by a Memorandum of Understanding signed in March 2018 Iran has agreed to facilitate the return of Iranians who arrived in Australia after that time who have no legal right to remain in Australia.⁶ The applicant did

³ DFAT, "Country Information Report – Iran", 21 April 2016, CIS38A8012677, p.29.

⁴ DFAT, "Country Information Report – Iran", 21 April 2016, CIS38A8012677, 5.33; DFAT, "DFAT Country Information Report Iran", 7 June 2018, CIS7B839411226, 5.25.

⁵ DFAT, "DFAT Country Information Report Iran", 7 June 2018, CIS7B839411226, 5.25.

⁶ DFAT, "DFAT Country Information Report Iran", 7 June 2018, CIS7B839411226, 5.23.

not arrive after the relevant date and the information indicates that if he was to return to Iran, it would only be as a voluntary returnee.

39. In light of the above, I am not satisfied the applicant faces a real chance of harm of any kind on return to Iran (either voluntary or involuntarily) because he might be identified at the airport as a person who is travelling on a temporary travel document, is returning after an absence overseas from Australia and who may be identified, for those or any other claimed reasons combined, as a failed asylum seeker. The country information indicates, and I find that, at most, he may be questioned but I am not satisfied that there is a real chance that he would be subjected to any harm in this process. I am satisfied that applying for asylum is not considered to be a crime, nor does it, of itself, cause a person to be imputed with an adverse profile that would result in harm.
40. The applicant does not have a well-founded fear of persecution.

Refugee: conclusion

41. 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

42. 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

43. 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.
44. I accept the applicant may be questioned on re-entry to Iran but am not satisfied this amounts to significant harm as defined in s.36(2A). Similarly, while the applicant may have difficulty securing employment due to general underemployment in Iran, I am not satisfied that this, even when combined with the possible treatment outlined above, amounts to significant harm. I am not satisfied there is a real risk he will be subject to the death penalty, will be arbitrarily deprived of his life or be subject to torture. I am not satisfied that there is an intention to inflict severe pain or suffering, pain or suffering that is cruel or inhuman in nature, or extreme humiliation.
45. I have otherwise found that the applicant does not face a real chance of harm upon return to Iran for any of the other reasons claimed. I apply the same reasoning upon which the above

findings are based and as 'real risk' involves the same standard as 'real chance'⁷, I also find that the applicant would not face a real risk of significant harm if returned to Iran in relation to these matters.

Complementary protection: conclusion

46. 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.

⁷ *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.

91W Evidence of identity and bogus documents

- (1) The Minister or an officer may, either orally or in writing, request an applicant for a protection visa to produce, for inspection by the Minister or the officer, documentary evidence of the applicant's identity, nationality or citizenship.
- (2) The Minister must refuse to grant the protection visa to the applicant if:
- (a) the applicant has been given a request under subsection (1); and
 - (b) the applicant refuses or fails to comply with the request, or produces a bogus document in response to the request; and
 - (c) the applicant does not have a reasonable explanation for refusing or failing to comply with the request, or for producing the bogus document; and
 - (d) when the request was made, the applicant was given a warning, either orally or in writing, that the Minister cannot grant the protection visa to the applicant if the applicant:
 - (i) refuses or fails to comply with the request; or
 - (ii) produces a bogus document in response to the request.
- (3) Subsection (2) does not apply if the Minister is satisfied that the applicant:
- (a) has a reasonable explanation for refusing or failing to comply with the request or producing the bogus document; and
 - (b) either:
 - (i) produces documentary evidence of his or her identity, nationality or citizenship; or

- (ii) has taken reasonable steps to produce such evidence.
- (4) For the purposes of this section, a person produces a document if the person produces, gives, presents or provides the document or causes the document to be produced, given, presented or provided.

...

91WA Providing bogus documents or destroying identity documents

- (1) The Minister must refuse to grant a protection visa to an applicant for a protection visa if:
 - (a) the applicant provides a bogus document as evidence of the applicant's identity, nationality or citizenship; or
 - (b) the Minister is satisfied that the applicant:
 - (i) has destroyed or disposed of documentary evidence of the applicant's identity, nationality or citizenship; or
 - (ii) has caused such documentary evidence to be destroyed or disposed of.
- (2) Subsection (1) does not apply if the Minister is satisfied that the applicant:
 - (a) has a reasonable explanation for providing the bogus document or for the destruction or disposal of the documentary evidence; and
 - (b) either:
 - (i) provides documentary evidence of his or her identity, nationality or citizenship; or
 - (ii) has taken reasonable steps to provide such evidence.
- (3) For the purposes of this section, a person provides a document if the person provides, gives or presents the document or causes the document to be provided, given or presented.

...

91WB Application for protection visa by member of same family unit

- (1) This section applies to a non-citizen in Australia (the **family applicant**):
 - (a) who applies for a protection visa; and
 - (b) who is a member of the same family unit as a person (the **family visa holder**) who has been granted a protection visa.
- (2) Despite anything else in this Act, the Minister must not grant the protection visa to the family applicant on the basis of a criterion mentioned in paragraph 36(2)(b) or (c) unless the family applicant applies for the protection visa before the family visa holder is granted a protection visa.