



Australian Government

Immigration Assessment Authority

Decision and Reasons

Referred application

IRAN

IAA reference: IAA18/05589

Date and time of decision: 8 October 2018 14:38:00

J Stuckey, Reviewer

Decision

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

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

Background to the review

Visa application

1. The referred applicant (the applicant) claims to be a citizen of Iran. [In] May 2013 the applicant arrived in Australia as an unauthorised maritime arrival and on 15 May 2017 he lodged a valid application for a Safe Haven Enterprise Visa (SHEV) (subclassXE-790).
2. On 24 August 2018 a delegate of the Minister for Immigration and Border Protection (the delegate) refused the visa application.

Information before the IAA

3. I have had regard to the material (the review material) given by the Secretary under s.473CB of the *Migration Act 1958* (the Act). No further information has been obtained or received.

Applicant's claims for protection

4. The applicant's claims can be summarised as follows:
 - He was born on [date] in Tehran, Iran. He is Persian and was raised in a Shia Muslim household in Tehran but never felt a strong connection to Islam.
 - The applicant left Iran to come to Australia in 2013 when he was [age] years old. He said he fled Iran for his sanity and his safety, saying the constant fear of persecution left him feeling apprehensive and insecure about his future in Iran. He said that growing up in Iran he felt constrained and limited by the Iranian regime imposed on him.
 - Since he has been in Australia the applicant has married and has had a [child].
 - In September 2011 the applicant drank alcohol at a party with friends. When he and his two friends left the party they were approached by the Basij on motorcycles who realised they had been drinking. He said that he and the two friends were taken back to the Basij base and separated. He was kept in a cell for three or four days and officers beat him and kicked him at least three or four times a day. He was not told why he was beaten but he suffered scarring to his [body parts] as a result of the incident. He was then dropped off on a street near his parents' home and he said that his family was shocked when they saw him. He said his family did not make a complaint to the police because they felt that the Basij would retaliate and their lives would be at risk.
 - The applicant studied two semesters of [a subject] at university in Iran. During this period he attended a [venue] with some other students, including girls, and they discussed the subjects they were studying. The Basij representatives at the university were at the same [venue] and the following day they were at the front gate of the university where they told the applicant and his friends that they have had been accused of talking to female students. They attended the protective officer's office where they denied the allegations and were verbally abused and insulted by the informers. A few days later, after the matter had been referred to the disciplinary committee (which is presided over by the Basij), they were expelled from the university.
 - The applicant said he was a [sportsman] in Iran but claimed that he didn't have the same opportunities as other [participants] because he didn't have any contacts.

- After the applicant arrived in Australia he met Christian friends and began attending the Church of Jesus Christ of Latter-Day Saints where he attended bible classes and learnt about Christianity.
- The applicant was baptised [in] February 2014 at that church. He now attends a church in [town] and attends every second week when he can. He claims he is a Christian convert.
- Since the applicant has been in Australia he has also obtained a number of tattoos including a [example].
- The applicant has 'shared' a [number] of Christian [entries] on [social media].
- The applicant fears returning to Iran because:
 - He rejected Islam while in Iran
 - He has been caught drinking which is seen as blasphemous against Islam
 - The Iranian authorities will know he is a Christian and doesn't practise Islam and they will execute him
 - He will be arrested for having left Iran and he will be detained, interrogated and tortured for having sought asylum in a western country.

Factual findings

Identity

1. The applicant left Iran via the airport in Tehran using his Iranian passport. He said his passport was taken by a people smuggler in Indonesia, which I accept. The applicant provided to the delegate his Iranian birth certificate with translation, his Iranian drivers licence, his [child's] Australian passport and his [child's] original birth certificate. I accept this documentation as confirmation of his identity. I am satisfied the applicant is a citizen of Iran and that Iran is the receiving country for the purpose of this assessment.

[Sport]

2. At the arrival interview the applicant claimed that he was a [sportsman] but that 'he could not go on' because he was discriminated against. He said that only people with connections could go up in the ranks but he did not have connections. The applicant did not raise this issue in his written SHEV application and his representative did not refer to this claim in his post-interview submission. He did however raise it in the SHEV interview and the delegate considered this claim in his decision.
3. During the SHEV interview the applicant stated he was into [his sport] but he felt that his rights were disregarded. He said there were always those with contacts who managed to 'go up' in [the sport]. He said he didn't have a lot of contacts because he was not from a rich family or the son of a well-known person. He said that when you have contacts they will support you and protect you, they provide back up support. When asked what he meant by 'support' he said 'That would be a good club to join or a very good one with a very good trainer so they can teach you the skills of [his sport] in a very good way. Without that support it's not easy'. I note that the delegate asked the applicant how this would amount to persecution and he responded by saying that without support you get fed up with everybody.

4. I note that at the SHEV interview the delegate advised the applicant that he had concerns about how this claim amounts to persecution and suggested he speak about this with his representative (who was present) during the upcoming break in the interview. Despite this, the applicant did not raise it again and, as stated, it was not referred to in the representative's subsequent submission to the delegate.
5. I also note that when the applicant raised this issue at the arrival interview he stated that when he was [age] he was a very good [sportsman], stating that at least here (Australia) he could get two or three medals, adding that he is still young and he still has the potential to reach his goals. I note that at the SHEV interview he indicated that although he has done some training in a gym, he has not competed in [his sport] since he has been in Australia.
6. The applicant has not provided any evidence to suggest that his experience regarding [his sport] gave rise to any fear of harm or persecution. I accept, however, that there was a level of frustration with respect to not having contacts.

Drinking alcohol

7. The applicant claims that in September 2011 he had his first dealings with the Iranian authorities after he had been drinking with some friends and was later picked up by Basij members riding motorcycles. He said he and his friends were detained and beaten for three to four days. The applicant's descriptions of this incident at the arrival interview, the SHEV interview, and in the SHEV application are generally consistent with just a couple of inconsistencies. In his SHEV application the applicant stated that he and his friends were separated and he was held in a cell by himself for three to four days whereas at the SHEV interview he indicated that sometimes he and his friends were together and on other days, they were separate. In his SHEV application he said this incident occurred with two friends but in the SHEV interview he said he was 'with two or three mates of mine, we were only four actually'.
8. The applicant consistently described scars he claims to have sustained to his [body parts] as a result of the beatings. He said he took photos at the time but he didn't think there would be this day where the photo might help. I have listened to the audio recording of the SHEV interview and it is not apparent that the applicant pointed out any scarring to the delegate, nor has he provided any photos or medical reports or any other evidence to confirm that he physically scarred by the injuries as claimed.
9. The Department of Foreign Affairs and Trade (DFAT) 2016 country information report¹ confirms that drinking alcohol is an offence in Iran² even though it can be obtained relatively easily. DFAT's 2018 report³ adds that while reports of prosecutions for alcohol consumption exist, they are not common. DFAT states that police do not usually seek to investigate actively or entrap individuals consuming alcohol in their own homes, but will act if the activity comes to public attention or if instructed to crack down on it⁴. I find that the applicant's claims about drinking alcohol at a party and later being picked up by the Basij when he and his friends were in public (on the street) to be plausible based on this information.

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

² Article 265 of the new Islamic Penal Code clearly states that the punishment for alcohol consumption is 80 lashes, regardless of whether consumption caused drunkenness or not (DFAT 2016 Report).

³ DFAT, "Country Information Report", 7 June 2018, CIS7B839411226.

⁴ Ibid.

10. The applicant has provided largely consistent versions of the incident on three different occasions and the country information indicates that the claim is plausible. I do however have some concerns about the applicant's claims to have scarring from this incident yet he has not provided evidence to support this assertion – evidence which would have been relatively easy to obtain. Whether or not he has scarring, I accept that the applicant was detained and assaulted by the Basij on this occasion as claimed.
11. I note that the applicant confirmed in the SHEV interview that he was not charged with an offence or taken before a court in relation to this incident, nor were there any warrants issued for his arrest. I have considered this in combination with the fact that he left Iran on his Iranian passport via the airport in Tehran (which would suggest he was not of interest to the authorities at that time) and I am satisfied that the applicant is not of interest to the authorities in Iran in relation to this incident.
12. I also accept the applicant's claim made at the arrival interview - that this incident was the first time he had decided to drink alcohol. The applicant has not indicated an intention to drink alcohol upon his return to Iran and there is no evidence to suggest that he will.

Socialising with females

13. I consider that the applicant's telling of this incident was generally consistent at the arrival interview, in his SHEV application and at the SHEV interview. I note that the claim relates to the applicant and some friends talking to some girls in a public space (a [venue]) at a co-educational university campus. On the face of this allegation I find it difficult to conceive that this behaviour could result in him being expelled from a university and being prohibited from applying to or attending any other university (as claimed at the arrival interview). I also note that the applicant has not provided any evidence, including documentary evidence, to support this claim.
14. I have considered this claim in light of country information regarding Iranian youth mixing with the opposite sex. The DFAT 2016 report provides some information on married couples and couples who display public affection that authorities "can take a heavy-handed approach when they periodically enforce standards of Islamic conduct in the community, including Islamic dress and public displays of affection with non-family members of the opposite sex". The Penal Code provides 'anyone in public places and roads who openly commits a haram (sinful) act, in addition to the punishment provided for the act, shall be sentenced to two months' imprisonment or up to 74 lashes; and if they commit an act that is not punishable but violates public prudency, they shall only be sentenced to ten days to two months' imprisonment or up to 74 lashes'⁵. That said, DFAT also states that pre-marital and extra-marital relations are common and unmarried couples appearing together in public is very common, particularly in the upper and middle classes. DFAT assesses that the authorities generally turn a blind eye to such couples.
15. I note that this information relates to couples and public displays of affection whereas the applicant claims that the behaviour which led to his expulsion involved a group of friends (not a couple) and there is no suggestion that there were public displays of affection.
16. I have also had regard to DFAT's assessments in relation to 'westernised youth' in Iran - DFAT assesses it is difficult to make an overall assessment of the treatment of what are sometimes labelled 'Westernised' Iranians.... Youth in particular can experience some form of low-level

⁵ DFAT, "Country Information Report Iran", 21 April 2016, CIS38A8012677.

harassment from security authorities, such as being subjected to searches, car checks and verbal warnings for dress or behaviour. It is important to note the significance of Iran's sizeable youth population in this regard. Enforcement can be unpredictable and related to the prevailing political atmosphere of the time'⁶.

17. Based on this information, even though enforcement can be unpredictable, it appears that the youth in Iran can experience low-level harassment from security authorities for their behaviour but this seems limited to searches, car checks and verbal warnings. It also appears that authorities generally turn a blind eye to unmarried couples appearing in public. Whilst I accept that the applicant and his friends may have conversed with the opposite sex in a [venue] at a university, country information indicates that authorities would generally turn a blind eye, or, at most, engage in some low level harassment. I do not find it plausible that the applicant was expelled from university for this behaviour or at all.

Conversion to Christianity / Non-practising Muslim

18. I accept that the applicant was brought up in a Shia Muslim household but did not practise Islam. I note that the applicant provided a letter from the Church of Jesus Christ of Latter-Day Saints congratulating him on his baptism and I accept that he was baptised [in] February 2014 at that Church, which is also referred to as the Mormon Church. I also accept that the applicant attended church and bible classes, as claimed, in preparation for his baptism.
19. I note that the applicant arrived in Australia in May 2013 and at the arrival interview he stated he was Shia Muslim and, at that stage, there was no suggestion that he had an interest in Christianity yet the applicant was baptised as a Christian just 9 months later.
20. I note that the delegate questioned the applicant at length about his conversion to Christianity at the SHEV interview and I note that the applicant at times seemed confused and provided inconsistent statements, stating several times that he is a catholic *and* a Mormon. Although the applicant could provide the delegate with a short description of Easter and Christmas and the book of Luke, I consider his knowledge of Christianity to be commensurate with someone who has prepared for baptism but is not comprehensive enough to be commensurate with someone who had been practising Christianity for four years.
21. When asked why he decided to pick up a religion and why he chose Christianity he said it was because he attended classes in church and he was given verses, books, the words of Jesus, and hearing all of it gave him a special feeling. He said he practises his religion by saying his prayers and going to church on Sundays if he is free and doesn't have to work or attend classes.
22. The applicant indicated that he attends the church in [location] because it is a catholic church (even though he was baptised as a Mormon) and he said he sometimes takes his [child]. He said his wife doesn't attend because she 'doesn't believe any of it'. When asked what the name of the priest is the applicant said, 'An old fellow called [first name]'. When asked where the church was he couldn't name the street, stating that he knows how to get there by car. He showed some photos to the delegate, indicating that they were taken at the church when he was baptised. I find it difficult to accept that if the applicant had been attending church for four years that he would have been so vague about the name of the church's priest (or pastor) or its address. He later indicated that he studied the book of Mormon for his Catholicism and that he attends a Mormon church for Catholic people.

⁶ Ibid.

23. I note that towards the end of the SHEV interview the delegate informed the applicant that he was going to pause the interview so that the applicant could talk to his representative about concerns that the delegate had - including his concern regarding the applicant's lack of knowledge and the confusion around what denomination of religion he is, stating that Mormon is different to Catholicism and that they have different beliefs and are required to do different things. After the break the delegate asked the applicant to clarify what denomination he is practising and he said Catholic. He then said he has been told that Mormon is a branch or denomination of Catholicism but admitted that he wasn't one hundred per cent sure if it is a Mormon church that he attends. He also reiterated that he has been a Christian for four years and that he wants to continue with his Christianity.
24. I do not consider it plausible that if the applicant had been practising his Christian faith for four years he would be confused about the difference between Catholics and Mormons or that he would consider that he is both.
25. There is no evidence to support the applicant's attendance at church since his baptism - there are no references from the church or other parishioners.
26. In his SHEV application the applicant stated that since leaving Iran he has become a Christian. He did not provide any information about how or why he became a Christian, simply stating that the crime of apostasy is punishable by death in Iran and that it will become revealed in Iran that he is a Christian and he will be executed. In the SHEV interview the delegate asked how it is that the Iranian authorities will know he is a Christian he said he doesn't know. Towards the end of the interview he added that he is active on social media and there are lots of [entries] and pictures on there (discussed below).
27. Despite being warned by the delegate at the SHEV interview that he had concerns regarding with the applicant's knowledge of Christianity and his confusion about which denomination he belonged to, no further submissions were received by the delegate, or the IAA, on this issue. In the post-interview submission made by the applicant's representative to the delegate, the representative stated that the applicant had converted to be a practising member of the Church of Jesus Christ of Latter day Saints but provided no explanation as to why the applicant lacked knowledge regarding Mormon practises or why there had been confusion between Mormons and Catholics.
28. Although I have accepted that the applicant attended church and bible classes, and was baptised I do not accept that he continued to attend church after his baptism and I am not satisfied that the applicant has converted to Christianity.
29. I have considered the applicant's attendance at church and bible classes and his subsequent baptism in light of s5J(6) which provides that any conduct engaged in in Australia is to be disregarded unless the applicant can satisfy the Minister that he engaged in the conduct otherwise than for the purpose of strengthening his claim to be a refugee.
30. I note that the applicant has not provided any reason for his church attendance and baptism other than stating that after he attended bible classes he had a special feeling. He has not provided any details as to the affect Christianity has had on him or provided any comments on the social aspect of church or how it has affected his integration in Australia. In the circumstances I am not satisfied that the applicant attended church and undertook baptism for any other reason than to strengthen his claim to be a refugee. As such, I have not had regard to this conduct in assessing his claims for refugee status.

Social Media

31. I note that the applicant did not raise his use of social media in his SHEV application.
32. In the SHEV interview the applicant stated that he [uploaded] an 'order of execution' on [social media] in relation to 'two or three people returned to Iran' as Christians. He later added that 'there are so many [entries] on it (social media) and the authorities can just search my name and see the [entries] and pictures'. He indicated that some of the [entries were added] a year ago or two years ago. After the interview the applicant's representative emailed 12 screenshots of [social media entries] to the delegate.
33. As pointed out by the applicant's representative, the applicant's [social media site] captured in the supplied screenshots indicates that his [social media] account is in the name "[name]" instead of his full name, "[full name]". I also note that only two of the screenshots provided indicate the date (including the year) that they were [uploaded] – one being [in] August 2017 and the other being [in] December 2017. Six of the screenshots relate to the applicant 'sharing' photos or videos from a website (or [social media]) [relating to Mormonism]. The remaining screenshots either attach links to [sites] written in Persian or attach Christian images. I note that the delegate stated that he had searched the applicant's social media [site] and found that the majority of [entries] regarding Christianity were [added] after the applicant had his SHEV interview (on 10 July 2018), or in the days leading up to his SHEV interview. The delegate noted that there were only five [entries] in the years prior.
34. As the social media [entries] relating to Christianity all relate to conduct by the applicant since he has been in Australia, I have considered this conduct in light of s5J(6). As I do not accept that the applicant has converted to Christianity, I am not satisfied that he has [added Christian-related entries] on social media for any purpose other than to strengthen his claim to be a refugee and as such, I have not regarded this conduct when considering his claims.

Tattoos

35. The applicant did not mention his tattoos in his SHEV application or at the SHEV interview. It was towards the end of the SHEV interview, when the delegate asked if there is anything else the applicant would like to raise in relation to his application, that the applicant's representative stated that the applicant has a very large tattoo of [details]. The delegate noted for the record that he could see visible tattoos [on his body]. The applicant's representative clarified that the tattoos [contain specified details]. I note that the applicant then showed his tattoo to the delegate (presumably by removing his [clothing item]). He said that he obtained the [specific tattoo] after he had become a Christian.
36. Given the applicant obtained the tattoos after he came to Australia I have had regard to s5J(6). I consider that *had* the applicant obtained his tattoos for the sole purpose of strengthening his claim he would have been more forthcoming about them. For example, he would have claimed to fear harm because of them in his SHEV application or earlier in the SHEV interview. As he did not do this, I am satisfied that he obtained the tattoos otherwise than for the sole purpose of strengthening his claim for refugee status.
37. I accept that the applicant has tattoos on his [body] that are visible but do not relate to Christianity. I note that the tattoo on [a covered body part] is of [an item] but I do not consider that they are immediately identifiable as [the type he specified] as they also look like (for example) [a similar type]. As such, I do not accept that the tattoo [specified] is immediately identifiable as a Christian symbol.

38. In his post interview submission the applicant's representative provided a photograph of the tattoo [specified] to the delegate. Although the tattoo is large and spans the applicant's [body area], I note that if the applicant was wearing [certain clothes] it would not be visible and if he was wearing [other clothes] the [parts] of the [tattoo] may be visible but it wouldn't be apparent that they were the [specified items].

Returning asylum seeker

39. I accept that the applicant departed Iran in 2013 using his Iranian passport. I accept that if he were to return to Iran the government may be aware that he has sought asylum in Australia, given that he is no longer in possession of his passport and his return would require a temporary travel document issued by Iranian diplomatic representatives.

40. According to DFAT⁷, Iran says it does not accept involuntary returnees and Iranian overseas missions will not issue travel documents to an Iranian whom a foreign government wishes to return involuntarily to Iran. On the basis of that information I find that if the applicant were to return to Iran it would be voluntarily. Officials provide assistance to Iranians who wish to voluntarily return to Iran, even if they left irregularly. Strong anecdotal evidence suggests that officials do not attempt to prosecute a voluntary returnee—largely because most failed asylum seekers leave Iran legally (a regular departure through airports or with passports, as was the case here).

41. From DFAT's anecdotal observation at airports, a voluntary returnee does not attract much interest from authorities amongst the large regular international movements of Iranians. Credible sources have told DFAT that returnees will generally move quickly through airports – usually Tehran Imam Khomeini – without official interest. Where temporary travel documents have been issued by Iranian diplomatic representatives overseas, authorities at the airport will be forewarned about a person's return because of Iran's sophisticated government systems. Irrespective of whether a returnee is travelling on a temporary travel document, or their ordinary passport, credible sources have told DFAT that they will generally only be questioned if they had done something to attract the specific attention of authorities. The majority of people questioned would be released after an hour or two⁸. I have also had regard to DFAT's 2018 Report⁹ which does not include any information to suggest that the treatment of returnees at the airport has changed. It states that Iranians have left the country in large numbers since the 1979 revolution, and authorities accept that many will seek to live and work overseas for economic reasons. International observers report that Iranian authorities have little interest in prosecuting failed asylum seekers for activities conducted outside Iran, including in relation to protection claims. This includes [entering] social media comments critical of the government – heavy internet filtering means most Iranians will never see them – converting to Christianity, or engaging in LGBTI activities. 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 activists¹⁰.

42. With reference to the applicant's particular circumstances, I have found that he was not a person of adverse interest to the authorities at the time of his departure. The country information before me does not support a finding that persons who have sought asylum in Western countries, such as Australia, are imputed to hold an anti-Iranian government political

⁷ DFAT, "Country Information Report Iran", 21 April 2016, CIS38A8012677.

⁸ Ibid.

⁹ DFAT, "Country Information Report", 7 June 2018, CIS7B839411226.

¹⁰ Ibid.

opinion. Overall, I am not satisfied the applicant had a profile of interest to the Iranian authorities for any reason prior to his departure, or would attract the adverse attention of the Iranian authorities as a returning asylum seeker. I accept that if the applicant is questioned at the airport he will be released after one or two hours.

Refugee assessment

43. 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

44. 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.

45. I have accepted that the applicant suffered frustration at not having any contacts in the [sporting] competitions in Iran. Whilst this may have resulted in some low level discrimination (for example, access to particular clubs), I am not satisfied that this treatment amounts to serious harm. The applicant has not competed in [this sport] since he arrived in Australia there is no evidence to suggest that he will compete on his return to Iran. As such, I find that the applicant does not face a real chance of harm on this basis.

46. Although I have accepted that the applicant was arrested and detained by the Basij in the past for drinking alcohol, I have found that he is not wanted by the authorities in relation to this event. I have noted that the applicant has not indicated an intention to drink alcohol upon his return and I am satisfied that there is no evidence to suggest he will. As such, I find that there is no real chance that the applicant will face harm for drinking alcohol in Iran, now or in the foreseeable future.

47. I have accepted that the applicant and his friends were conversing with females at a [venue] at university in Iran but I have not accepted that he was expelled from the university for this

behaviour. I note that the applicant has not claimed to fear harm on the basis of this event and has not claimed that he would find himself in a similar situation in the future. I am not satisfied that there is a real chance that he will be harmed or persecuted on this basis.

48. I have accepted that the applicant attended church for a period, and bible classes, and was baptised a Christian but pursuant to s.5J(6) of the Act I have not taken this conduct into account when considering his claim to be a refugee. I have not accepted the applicant's claim that he has converted to Christianity and, therefore, I am not satisfied that he would face a real chance of harm upon his return to Iran on this basis, now or in the foreseeable future.
49. I have accepted that the applicant did not practice Islam in Iran and there is no evidence to suggest that he will upon his return. DFAT's 2016 report indicates that a Muslim who leaves his or her faith can be charged with apostasy and although is not a criminal offence within the Penal Code, apostasy charges have been applied. DFAT also considers it would be highly unlikely that the government would monitor religious observance by Iranians – for example whether a person regularly attends mosque, and perceived apostates are only likely to the attention of Iranian authorities through public manifestations of their new faith, attempts at proselytization, attendance at house church or via informants¹¹.
50. There is no evidence to indicate that the applicant has publicly manifested his non-compliance with religious rituals in the past and there is no evidence to suggest that he will upon his return. As it is highly unlikely that the authorities would monitor his non-compliance I do not consider that the applicant's non adherence to Muslim rituals will come to the attention of the authorities and I do not consider he faces a real chance of harm on this basis.
51. As stated above, I have not taken the applicant's conduct in relation to social media into account when assessing his claim for refugee status.
52. I have had regard to the applicant's representative's submission that the presence of tattoos, 'particularly a tattoo which may be perceived as being a tattoo of [specified item] (and therefore a reference to Christianity) may lead to further adverse attention from the Iranian authorities'. The submission asserts that if forced to return to Iran the applicant's situation is dangerous as it is not merely an un-Islamic tattoo, but is likely to be perceived as pro-Christian and gives rise to the perception that he has converted to Christianity.
53. As stated earlier, I do not accept that the [specified tattoo] is immediately identifiable as a Christian symbol and I do not accept that it will be perceived as "pro-Christian". I have considered the claim in relation to all of the applicant's tattoos together.
54. DFAT's 2018 report¹² states that it is aware that some men have claimed to have been discriminated against for visible tattoos. DFAT also reports that notwithstanding this, it is common to see young men with visible tattoos, particularly in larger cities such as Tehran (where the applicant is from). DFAT's 2016 report states that DFAT is not aware of reports of harassment or detention specifically for displaying tattoos with Christian symbols or words.
55. The 2016 report¹³ also states that tattoos are increasingly common in Iran - particularly among youth - and DFAT has regularly observed male Iranians with visible tattoos. The Report added that "DFAT is unaware of any recent, specific report of people being targeted by security forces solely for having a tattoo. However, it is possible that a person with a visible tattoo could come

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

¹² DFAT, "Country Information Report", 7 June 2018, CIS7B839411226.

¹³ DFAT, "Country Information Report Iran", 21 April 2016, CIS38A8012677.

to the attention of security forces and result in low-level harassment. While DFAT is not aware of specific penalties that could be imposed for having a tattoo, it is likely that such penalties would be similar to those imposed for dress or hair styles that are deemed 'improper'. In these circumstances, the usual penalty is a warning or fine. DFAT believes it unlikely that authorities would maintain an interest in someone who had previously come to their attention for having a tattoo, unless the tattoo gave evidence of another crime (e.g. related to national security)".

56. I accept that it is possible that the applicant may experience low-level harassment by authorities on the basis of his tattoos and although penalties are unlikely, the usual penalty would be a warning or a fine. I am not satisfied however that this treatment would amount to serious harm and as such, I do not consider the applicant faces a real chance of serious harm for having tattoos.
57. While I accept the Iranian authorities may question and even briefly detain the applicant as a returned failed asylum seeker, I am not satisfied this treatment would amount to serious harm.
58. I also find this treatment, combined with potential low level harassment the applicant may face for his tattoos, does not amount to serious harm. The applicant does not have a well-founded fear of persecution within the meaning of s.5J.

Refugee: conclusion

59. 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

60. 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

61. 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.
62. I have found that the applicant will not face a real chance of harm in relation to his claims regarding [his sport], drinking alcohol, socialising with females, or being a non-practising Muslim. As real chance equals real risk, I am not satisfied that there is a real risk that the applicant will suffer significant harm, as defined.

63. I have accepted that as a returning asylum seeker that applicant may face detention and questioning for one or two hours upon his return to Iran however I do not consider that this treatment amounts to significant harm, as defined.
64. Although I have accepted that the applicant attended church for a period, and bible classes, and was baptised, I have not accepted that he is a genuine Christian and I am not satisfied that he would be involved with the practice of Christianity upon return to Iran. I note that the applicant has told his brother of his baptism but not his parents indicating that knowledge of his baptism has not been publicised in Iran. In any event, country information indicates that Iranian authorities have little interest in prosecuting failed asylum seekers for activities conducted outside Iran, including converting to Christianity. Country information also indicates that authorities in Iran also have little interest in prosecuting failed asylum seekers who [uploaded] social media comments critical of the government whilst overseas. It would follow that the authorities would have little interest in the applicant's [social media entries] relating to Christianity. In any event, country information indicates that even in Iran, Iranians are able to criticise the government of the day robustly, including on social media. I note that the applicant's [social media site] is not in his own name and I do not accept his assertion that the authorities will be able to find his [entries] simply by searching his name. I also note from the [social media] screenshots provided to the delegate that a number of the [entries] have only [been accessed by] the applicant's wife. Overall, I am not satisfied that there is a real risk that the Iranian authorities would learn of the applicant having attended Christian churches in Australia or of his having been baptised in Australia, or that he would face significant harm for this reason. Likewise, I am not satisfied that the applicant's [social media] activity would come to the attention of the authorities in Iran and I am not satisfied that he would face significant harm on this basis.
65. I am not satisfied that there is a real risk that the applicant would suffer significant harm from the Iranian authorities upon his return.

Complementary protection: conclusion

66. There are not substantial grounds for believing that, as a necessary and foreseeable consequence of being returned from Australia to a receiving country, there is a real risk that the applicant will suffer significant harm. The applicant does not meet s.36(2)(aa).

Decision

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

Applicable law

Migration Act 1958

5 (1) Interpretation

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.