



Australian Government
Immigration Assessment Authority

Decision and Reasons

Referred application

IRAN

IAA reference: IAA18/05618

Date and time of decision: 30 November 2018 10:41:00

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] June 2013 the applicant arrived in Australia as an unauthorised maritime arrival and on 17 April 2017 he lodged an application for a Temporary Protection (subclass 785) visa (TPV).
2. On 30 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 given by the Secretary under s.473CB of the *Migration Act 1958* (the Act) (the review material).
4. I invited the applicant to an interview on 19 October 2018 to seek information regarding his claim that he is bisexual and to seek information about why he had initially denied this claim at his interview with the delegate on 22 May 2018. The applicant had claimed in his TPV application that he feared harm on the grounds that he is homosexual. He also said that he was interested in both boys and girls and that he had been lashed in Iran for drinking and flirting with a boy. At the interview with the delegate, however, he denied that he is bisexual. The delegate re-interviewed the applicant on the same day when he then claimed that he was, in fact, bisexual, and that he had initially denied it for various reasons, including cultural reasons. The first interview, when the applicant denied his claim that he is bisexual, went for two hours and 18 minutes. The second interview, where the applicant again claimed that he was bisexual and discussed this particular claim, went for just 28 minutes. The applicant was not asked about his earlier claim that he received 80 lashes in Iran for drinking alcohol and 'flirting' with a boy and he was asked only limited questions about his relationship with [Mr A] in Australia. The applicant's claim that he is bisexual has emerged as a significant aspect of his application, and his two completely different accounts of his sexuality provided at the TPV interviews raised major credibility issues, however little evidence has been provided about this particular claim. Given its significance, and the limited information before me about this claim, but also bearing in mind that I can only consider new information in the limited circumstances provided for under the Act, I decided to exercise my discretion in s.473DC(3) to invite the applicant to give new information on this issue.
5. At the interview with the IAA I asked the applicant about his bisexuality and why he had initially denied this claim when talking to the delegate. To the extent that the responses reiterated evidence that was already before the delegate (including his reasons as to why he initially denied his claim of bisexuality), they do not constitute new information and I have had regard to them.
6. I am mindful of the difficulties applicants may have putting forward their claims for protection, particularly claims relating to sensitive and personal information such as sexuality. At the interview with the IAA the applicant provided new details about his claimed relationship with his male friend, [Mr A], including how they met and how they spent time together. He also provided further details about his claimed bisexual relationships in Iran and why it is difficult to openly talk about his sexuality within the Iranian community. I am satisfied that this new information is credible in the relevant sense, and that it is personal information which, had it

been known, may have affected the consideration of the applicant's claims, and I am satisfied that there are exceptional circumstances to justify considering it.

Applicant's claims for protection

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

- The applicant was born on [date] in Tehran, Iran. He was raised as a Shia Muslim in Tehran with his [siblings]. He is Persian and no longer considers himself to be Shia Muslim. Although he believes in God he does not believe in Islam.
- The applicant left Iran because there is no religious freedom and because he is bisexual he fears he will be publicly hanged in Iran.
- He did not want to practise Islam in Iran and he was sick of the torment and harassment and fear of when the authorities would finally catch up with him and kill him.
- In approximately 2010/2011 the applicant had a party at his home with some friends, including boys and girls, and they were drinking alcohol. The applicant's father came home and called the authorities who raided the party. The applicant was taken away by police and received 80 lashes.
- The applicant realised he was bisexual when he reached puberty and he was interested in both boys and girls. He had a long term girlfriend in Iran and also had sexual relationships with males.
- The applicant's father was an [addict] and a member of the local Basij. The applicant was always trying to distance himself from his father because his father was always trying to report him.
- In 2011 the applicant was held by police for [number] days because of his hairstyle and because he was 'the type the Basij wouldn't like'.
- The applicant claims that before he left Iran his father arranged for him to be knifed by members of the Basij. He said he was knifed [a number] times in an alleyway by Basij members, including someone he recognised as a friend of his father's.
- The applicant's father also glassed him with a bottle from which he suffered a broken [Body Part 1] and spent [number of] weeks in hospital.
- The applicant accepts God but not Islam and there was pressure on him from his father to be "like a Muslim", to not drink alcohol and to not "hang out" with his girlfriend.
- Except for the boys that the applicant had sexual relations with, no one in Iran knew that the applicant was bisexual although he said his father was suspicious. He said that when he was [age or age] years old and he was living at home with his parents, his father would see boys visit the applicant and would wonder what two boys were doing in his bedroom. He was afraid that his dad was suspicious and he could see this escalating.
- The applicant travelled to Australia with an Iranian male friend, [Mr A]. They lived together for two years when the applicant first arrived in Australia and they were in a relationship for less than one of those years. The applicant has had sexual intercourse with other boys and girls since he has been in Australia but he is not currently in a relationship.

Factual findings

8. The applicant stated he left Iran on an Iranian passport which was subsequently taken by a people smuggler in [Country 1]. I accept this. The applicant provided the delegate with his Iranian national identity card, his Iranian birth certificate, and his Iranian driver licence. 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.

Refugee assessment

9. 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

10. 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.

Bisexuality

11. The applicant claimed in his TPV application that he is homosexual and that if he returns to Iran he will be expected to pretend he is not gay (and that he is a Muslim) and that ‘they’ will find out and he will be publicly hanged. I note that the applicant also claims in his TPV application that he is interested in both boys and girls. For the purposes of this review I shall refer to the applicant’s claim as a claim that he is bisexual.
12. In his TPV application the applicant also claimed that in 2011 he was whipped for drinking alcohol and for flirting with another boy. He claimed he was at a party where there were both boys and girls present and he said he was interested in both. The party was raided and the applicant subsequently received 80 lashes. The applicant referred to this party at his arrival interview and at his TPV interview with the delegate.
13. The applicant has been generally consistent regarding the details of the party and the subsequent lashes, except he has provided different reasons for why he received the lashes. At

his arrival interview and in his first TPV interview (when he denied his claim that he is bisexual) he claimed that he had received the lashes because he had been drinking alcohol and socialising with girls at a mixed party. I note that country information indicates that the penalty for drinking alcohol is 80 lashes¹.

14. The applicant provided video footage of his injuries from the lashes and showed the scars from the lashes to the delegate at his TPV interview. Based on country information, and after looking at the video of the lashes and the applicant's back at the interview, the delegate accepted that the applicant was lashed. I also accept that the applicant was lashed by authorities in Iran after he had held a party that had been raided.
15. As stated above, in his TPV application, the applicant stated that he received the lashes for drinking alcohol *and* for flirting with another boy (at the party). This information was only disclosed in the TPV application and was not discussed in the applicant's first interview with the delegate, nor was it raised during his second interview after he had clarified his claim that he was, in fact, bisexual. During his interview with the IAA I asked the applicant to state why he was lashed in 2011 and he stated that he had been lashed not 'just for flirting with a boy'. He said that the "main reason" for the lashing was drinking and having a social gathering with boys and girls. I consider that this comment indicates that the applicant was resiling somewhat from this aspect of his claim.. I note that the applicant has provided no evidence that he was caught 'flirting' with a boy, or any details of what he was doing and what his father's reaction was. I do not accept that this was the reason (or a reason) for his lashings. As noted, 80 lashes is the penalty for drinking alcohol in Iran and based on the evidence before me I consider that the reason that the applicant was lashed was because he had attended a party where there were boys and girls and because they were drinking alcohol.
16. Whilst not determinative, I note that the applicant's claim that he is bisexual is supported only by his own evidence. He has not provided any supporting documentation such as photographs, social media documentation or any written correspondence between him and any other person, including [Mr A], to support his claim and I have taken this into account.
17. Although the applicant was consistent in his assertion at the second TPV interview, and at the IAA interview, that both he and [Mr A] did not want their relationship to be known in the Iranian community on the [City 1] (discussed below), I have concerns regarding the lack of details provided regarding the claimed relationship given the claim that they had cohabited for a period of [number] years, and had been in an intimate relationship for almost [number] of those years.
18. Without documentary evidence to support the claim I have had careful regard to the applicant's own evidence and his credibility. I have considered the evidence provided by the applicant at his arrival interview, in his TPV application, in his two TPV interviews with the delegate, and in his interview with the IAA. In considering the applicant's credibility I have had regard to both the consistencies and inconsistencies in his evidence and I have considered the reasons provided in relation to the inconsistencies.
19. The most striking difficulties are his failure to mention his bisexuality at his arrival interview and his denial of his bisexuality at his first interview with the delegate.

¹ Department of Foreign Affairs and Trade (DFAT), "Country Information Report", 7 June 2018, CIS7B839411226, states that Article 265 of the Penal Code penalises the use of alcohol with 80 lashes, regardless of whether the consumption causes drunkenness or not.

20. During his arrival interview in 2013 the applicant said he left Iran for religious reasons, because he had had problems with his father, and because he had been lashed 80 times for drinking and mixing with girls. He did not claim to fear harm for being bisexual. In his TPV application he stated that he did not mention his claim to be bisexual in his arrival interview as he was 'extremely afraid' to disclose this and was 'extremely shy' as in Iran it is not something you can openly talk about, saying that they hang gay people in Iran. I have considered this claim in light of country information before me regarding the treatment of homosexuals in Iran. The Department of Foreign Affairs and Trade (DFAT) Country Information Report on Iran, released in 2018², stated, "There is a strong societal taboo against homosexuality. International LGBTI (lesbian, gay, bisexual, transgender and intersex) NGOs report that many young gay men face harassment and abuse from family members, religious figures, school leaders, and community leaders. Authorities have reportedly expelled individuals from university for alleged same-sex relations.... LGBTI individuals are unlikely to obtain protection from state officials, and may face harassment, abuse or arrest should they come to the attention of security forces."
21. I have also had regard to DFAT's country information report of 2013³ which is the year the applicant left Iran. This report states that homosexuality is illegal in Iran and societal discrimination is widespread so people generally do not openly identify as being homosexual.
22. I have also considered the applicant's failure to mention his claimed bisexuality at the arrival interview in light of the inherently sensitive nature of the claim and the nature and context of the interview and I have been mindful of the difficulties that asylum seekers may face and the caution needed when relying on omissions in interviews conducted soon after arrival, as discussed in *MZZJO v MIBP* [2014] FCAFC 80.
23. On the one hand I find the applicant's claim that he did not disclose his sexuality at this early stage due to fear and shyness to be somewhat plausible given the nature of the claim and the country information before me. On the other hand, however, given that his claim that he is bisexual is part of his core claim for seeking protection, I find it difficult to accept that he chose not to disclose this information upon arrival in the country where he is seeking asylum.
24. I have also had regard to the fact that, despite making a claim that he is bisexual in his written TPV application, the applicant then denied that he is bisexual in his first TPV interview. When the delegate asked the applicant if he was bisexual he said, "No". The delegate then said, "So you are not bisexual, certainly not gay then?" and the applicant said, "No". Having listened to the delegate's second interview with the applicant it is apparent that after the first interview had finished the delegate had an off-record conversation with the applicant where he indicated that he was, in fact, bisexual. The applicant was then interviewed for a second time when he stated that he had been bisexual since puberty. During this second interview he said that due to his cultural background of where he grew up, Iranians find it difficult to disclose such material to someone else. This would appear to be consistent with country information referred to above which indicated that in Iran people do not generally identify as homosexual.
25. In this second TPV interview the applicant explained that he had had a relationship with a male Iranian friend, [Mr A], who had travelled to Australia with him. He said that [Mr A] is also bisexual and still lives on the [City 1], but not with the applicant. He said they lived together for [number] years when they arrived in Australia and they were in a relationship for less than [number] of those years. He said that [Mr A] was adamant that their relationship not be disclosed anywhere. He also said that the Iranian community on the [City 1] is a small

² DFAT, "Country Information Report", 7 June 2018, CIS7B839411226.

³ DFAT, "Country Information Report Iran", 23 November 2013, CIS26780.

community and everyone knows everyone and [Mr A] was keen that the applicant didn't disclose their relationship to anybody. He said that [Mr A] was with him when he met with his migration agent, who is also an Iranian male. He said that he and [Mr A] had an agreement not to disclose their relationship to the migration agent as they didn't trust him because, he said, 'one way or another' this could be leaked to the Iranian community. He also said that it was hard for them to talk about it. He said he and [Mr A] had left Iran and arrived together and lived together in Australia and had a relationship, he said he didn't want anyone to know about it, "even an Aussie, let alone an Iranian". The applicant said that he told the migration agent that there was a boy but he didn't say it was [Mr A]. Despite this claim, there is no mention of a boy or a boyfriend in his written application. I find this peculiar given his claim to be bisexual was core to his application and he otherwise had no evidence to support the claim.

26. The applicant was also asked about this inconsistency at the IAA interview where he said that he and [Mr A] decided not to mention their relationship to start with because they didn't want it to be known in the Iranian community and at gatherings etc. He said he didn't want to be known as gay because, he said, it was kind of 'shameful' for his culture. He said he and [Mr A] decided not to open up this matter on the [City 1] as it is a small community of Iranians which could go against them and, he said, socially it is unpleasant and it is not acceptable in the community of Iran. He explained that he grew up in a country where this is a shameful thing and that a lot of Iranians think like that. He repeated they didn't want to open up shame in front of the Iranian community. I acknowledge that this may provide a plausible explanation as to why the applicant may have not wanted to disclose his claimed relationship with [Mr A] to the migration agent but it does not explain why he was not able to disclose or discuss his sexuality with the delegate at the interview. At the beginning of that interview the delegate explained that the Farsi interpreter was bound by a code of ethics not to repeat anything said in the interview. I note that the applicant indicated that he did not know the interpreter, he had no objections to the interpreter, and that he was aware of information privacy. I also note that the applicant's migration was absent from that interview. I consider that the delegate gave the applicant ample time to raise this claim and when it wasn't raised by the applicant the delegate asked him about sexuality directly. Despite this, the applicant denied to the delegate that he was homosexual or bisexual. Even if I accept that the applicant may not have wanted to identify [Mr A] as his boyfriend (or ex-boyfriend) with his migration agent for fear of people in the Iranian community finding out, I do not consider that this explains why he did not mention his claim to be bisexual when being interviewed by the delegate.

27. At the IAA interview the applicant came across as relaxed and cooperative in his responses to questions. He provided a consistent, albeit brief, description of his relationship with [Mr A], stating that they had lived together for [number] years and that they had been in a relationship for less than [number] of those years. He said that they had worked together and are still friends and currently work together as [occupations]. He said that as a couple they had done 'normal things', 'day to day' stuff including going out together, going to restaurants, working together (in a [shop]) and coming home together. When asked, the applicant said they decided to end their relationship because of arguments they were having. I found the applicant's answers in relation to his relationship offered no more information than was necessary to answer the questions and cast no real light on the claimed relationship. I have had regard to the applicant's claimed history with [Mr A] and I consider that, after knowing him for many years, travelling with him from Iran, living with him in Australia for [number] years, being in a relationship with him for less than [number] year, and working with him when he arrived in Australia and currently, there would be at least *some* evidence of the relationship. Even if they had decided to keep the relationship secret I consider there would at least be some personal anecdotes to tell.

28. At the IAA interview the applicant stated that the reason he did not mention his bisexuality at the first TPV interview with the delegate was because he and [Mr A] did not want to open up about this matter because of the small community of Iranians on the [City 1] and because he grew up in a country where there is 'some kind of shame'. Again, I do not consider that this explains why he denied his claimed bisexuality at his first interview with the delegate. On the one hand he was able to tell his Iranian migration agent about his sexuality, even though he was concerned about his privacy. Yet on the other hand he claims he wasn't able to discuss it with the delegate when neither the migration agent nor [Mr A] were present. Despite the opportunity to explain this to the IAA no such explanation was provided. When the applicant was asked why he had initially told the delegate that he was not bisexual he stated that he and [Mr A] had decided not to mention their relationship to start with because they didn't want it known in the Iranian community. I do not consider that this response answered the question. Even when the question was repeated no explanation was provided. Overall I find the applicant's behaviour at the interview with the delegate to be at odds with his readiness to include this as a claim in his TPV application and I am not satisfied that there is a satisfactory explanation for why he denied his claimed bisexuality to the delegate. .
29. I have also had regard to an inconsistency in the evidence provided by the applicant at the second TPV interview and at the IAA interview. At the second TPV interview (in March 2018) the applicant said that he had a girlfriend and had been seeing her for two or three months whereas at the IAA interview (in October 2018) he said that he didn't have a girlfriend. When asked about what he had stated at the second TPV interview in relation to having a girlfriend he said that he's had a sexual relationship with another girl but she was not his girlfriend. Although it is possible that the applicant's view of that relationship is less serious than initially made out, I find his explanation unpersuasive and I consider the inconsistency adds doubt to his credibility.
30. The applicant has been consistent in his claim that he did not tell anyone about his bisexuality in Iran, including his family, although he said his dad had suspicions. At the second TPV interview and at the IAA interview the applicant stated that no one in Iran knew that he was bisexual, other than those he had relationships with.
31. In both of these interviews the applicant referred to his father's suspicions regarding his relationships with other boys. At his second TPV interview he said that when his boyfriends would come to see him he would see that his father wasn't comfortable – he said his father would see two boys in a room and think "what would they do?". The applicant was afraid that his father would know about it, stating that he already had suspicions about it. He said that at the age of [age or age] he saw this situation escalating and the applicant said he had fears to 'continue down this track'. The applicant said his father also had issues with him hanging out with his girlfriend. In the IAA interview applicant stated that his father had not seen him having sexual acts but that he was suspicious of him and that his father suspected that there was something going on between him and a friend in his room at his house.
32. The applicant claims that his father was always telling the Basij of his behaviour involving alcohol or girls but it seems that he turned a blind eye to his suspicions regarding the applicant's homosexuality. If the applicant *had* had boys visiting his room as claimed and if his father *had* been suspicious as claimed, I find it implausible that his father would not have reported this to the Basij along with his other complaints about his non-Muslim behaviour.

33. During the IAA interview I asked the applicant about his comment to the delegate in the second TPV interview that he started to have feelings towards men when he was in puberty. He stated that yes, this was the case, and the reason is that in Iran all the boys are separate from the girls in schooling. He said they are separate at high school and everywhere you go the boys are always together and are not mixed with the girls so that sort of feeling towards guys, other men, happened because 'everywhere you go they are the only one that you could get close to and that is how some of the relationships developed'. He said, 'Of course it was not obvious and was all hidden and secretly getting close to another guy was also behind closed doors so no one knew about it'. He said that these were not relationships but that they had sex. He said, "We didn't want relationship, what the meaning of anything but because we had interest in sex and then that was what happened".
34. I note also that in his TPV application he said he will be expected to be a Muslim in Iran and to like girls, stating, "If I return and I am expected to pretend I am Muslim and not gay then nothing till they realise I have no interest in Islam or women. I will be publicly hanged if they find out, and of course they will find out so I will be killed". I find his statement about having no interest in women to be somewhat overstated given his other, more consistent, claims that he had a long term girlfriend in Iran and has had relations with a girl here in Australia.
35. In summary, although I accept that the applicant was lashed in Iran, I do not accept that he was lashed for flirting with a boy. I find the inconsistencies in his evidence to be significant and despite being given an added opportunity to put evidence forward, the applicant did not provide a satisfactory explanation for the inconsistencies. Given the applicant's lack of detail and evidence of his relationship with [Mr A] I do not accept that the relationship existed as claimed and although a lack of a homosexual relationship is not determinative of the applicant's sexuality, I consider that it casts doubt over the applicant's claim to be bisexual. Overall on the basis of the material before me I am not satisfied that he is bisexual.

Events in Iran – clothing, hair style, mixing with girls, alcohol

36. I have accepted that in about 2010/2011, when the applicant was in Iran, he had a party at his home where there were both boys and girls and alcohol. I have accepted that his father reported the party to the local authorities and the applicant subsequently received 80 lashes.
37. The applicant also claims that in 2011 he was held by the police for two days in [City 2] because of his hairstyle and because he was 'the type the Basij doesn't like'. The applicant mentioned this incident at his arrival interview, stating that the authorities were suspicious about him. The applicant (who will turn [age] years of age in [2018]) turned [age] years of age [in] 2011. I note that the applicant referred to this incident at the arrival interview in 2013 but did not refer to it in his TPV application lodged in 2017. At the TPV interview, when the delegate asked about this incident the applicant said "We were on a motorbike and my hairstyle was a type that the Basij wouldn't like so they detained us because they suspect us". He later mentioned that the authorities were suspicious because of his clothes as well as his hairstyle. He also stated that he had been charged with assault in high school but said that he was not otherwise charged with anything in Iran.
38. I have had regard to country information regarding the treatment of youths in Iran who wear western clothing and hair styles and I accept that the applicant's version of events is consistent with that information. DFAT's 2016 report⁴ states that authorities can take a heavy-handed approach when they periodically enforce standards of Islamic conduct in the community,

⁴ DFAT, "Country Information Report Iran", 21 April 2016, CIS38A8012677.

including Islamic dress. DFAT assesses it is difficult to make an overall assessment of the treatment of what are sometimes labelled 'Westernised' Iranians and that youth in particular can experience some form of low-level harassment from security authorities, such as being subjected to searches, car checks and verbal warnings for dress or behaviour. DFAT also stated that enforcement can be unpredictable and related to the prevailing political atmosphere of the time.

39. DFAT's 2018 Report⁵ states that it is aware that some men have claimed to have been discriminated against on the basis of their dress – for example, for having 'Western-style' hairstyles or clothing styles. Notwithstanding such reports, DFAT states that it is common to see young men fitting these descriptions on Iranian streets, particularly in larger cities such as Tehran and assesses that the restrictions the dress codes place on men do not amount to discrimination.
40. Based on this country information I find that, should the applicant continue to wear westernised clothing and hairstyle upon return to Iran, he may face some low-level harassment for violating the dress code but I do not consider that this treatment amounts to serious harm.
41. The applicant also claims that his father was an [addict] and that he was a member of the Basij and was always trying to report him. He claims that 4 – 5 months before he left Iran his father arranged for him to be knifed. I note that this incident was not raised at the arrival interview and was not mentioned in his TPV application.
42. At the TPV interview he said he has issues with his father, that he put pressure on him not to consume alcohol or to have a relationship with a girl, or to have a tattoo, that he is a member of the Basij and he 'can do anything'. He claims that on one occasion he got his friends to knife him 4 or 5 times in the back because he had consumed alcohol. He said he was at a tea house when his father's friends came in and one of them called the applicant out the back to an alleyway for a chat but when he got there his father's friends jumped on him because they knew he had drunk alcohol and they beat him up. Later in the interview he referred back to this incident, stating that if he had been hit with the knife somewhere else he could have ended up dead. He explained this in the context of his claim that he was afraid that his life was at risk when he left Iran to come here. The applicant said that he tried to stand up against his father and the Basij and he tried pressing charges against them for knifing him but he said the charges 'didn't go anywhere'.
43. The applicant also claimed that his father was always looking to inflict injury on him and on one occasion he used a glass bottle to hurt him and he subsequently spent [time] in hospital. He said his father used a stick to bash him and he has injuries to his [Body Part 2] and [Body Part 3], and has suffered a broken [Body Part 1]. When asked if his siblings suffered from the same treatment he replied "they accept to be Muslim".
44. I accept that the applicant experienced abuse from his father and that his father reported him to the Basij. However, I note that the applicant continued to live with his father in the family home throughout this time. Apart from a period of a few months when the applicant claimed he moved out of home (after the lashings in 2010/11), the evidence before me indicates that even though the applicant was employed he continued to live with his father until he was [age] years old. The applicant is now [age] years and has lived independently of his parents for the past 5 years, during which time he has held down continuous employment. Based on the applicant's description of his parents, his proven ability to live independently, and his age, I

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

find it unlikely that he would need to, or would want to, live with his parents upon return to Iran. Nor has he indicated any intention to do so. As such, I find the chances that the applicant will experience this treatment from his father upon return to be remote. I am not satisfied that he faces a real chance of harm on these grounds now, or in the foreseeable future.

45. I have accepted that in 2010/11 the applicant was lashed for attending a party where there were boys and girls and they were drinking alcohol. I accept that the applicant drank alcohol socially but I note his comments made at the TPV interview; that when he was in Iran he had his drinking under control. There is no suggestion that the applicant has drunk alcohol other than to socialise and I accept that he does not have a problem with alcohol. I accept that the applicant may continue to drink alcohol upon his return to Iran, and although he does not claim to fear harm on this basis, I have considered whether his doing so will give rise to a real chance or risk of harm.
46. As stated above, DFAT reports that the penalty in Iran for the use of alcohol is 80 lashes, regardless of whether the consumption caused drunkenness or not. It also states that Iranians wishing to obtain and consume alcohol can do so relatively easily. DFAT's 2018 report⁶ states that media reports of prosecutions for alcohol consumption exist, but these are not common. DFAT understands 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 it.
47. There is no evidence to suggest that the applicant intends to drink alcohol publicly and based on country information I am satisfied that the applicant does not face a real chance of harm should he drink alcohol in Iran. In coming to this conclusion I have had regard to the fact that when the applicant was caught drinking in 2010/11 he was drinking in his parents' home and his father had reported him to the authorities. For the reasons outlined earlier, I find it unlikely that the applicant would need to, or would want to, live with his parents upon return to Iran. Nor has he indicated any intention to do so. As such, I do not consider that there is any increased chance that if he drinks alcohol upon return to Iran that this will come to the attention of authorities.

Religion

48. The applicant grew up in a Shia Muslim family. One of the reasons he gave for leaving Iran in his arrival interview was "religious reasons", saying he had no freedom of religion or in society.
49. In his TPV application the applicant confirmed that he had left Iran because there was no religious freedom and stated that if he is returned to Iran he will be expected to pretend he is Muslim. He said he will not live a free life. In his TPV interview he said he had issues with his father with respect to religion, stating his father put pressure on him to be like a Muslim. He said his other siblings were forced to accept the religion of Islam but that Islam was not for him. He said he accepted God but not religion. When asked if he ever spoke publically against the government or religion he said, "No". He later said his father would push him not to drink and to practise religion, pray, fast, and attend mosque and he said he didn't want to do these things.
50. I accept that the applicant believes in God but does not believe in religion and does not believe in Islam and I have considered whether or not this gives rise to a real chance of harm in Iran. DFAT's 2016 Report⁷ considers it highly unlikely that the government would monitor religious

⁶ Ibid.

⁷ Department of Foreign Affairs and Trade (DFAT), "Country Information Report Iran", 21 April 2016, CIS38A8012677.

observance by Iranians – for example whether or not a person regularly attends mosque or participates in religious occasions – and thus it would be generally unlikely that it would become known that a person was no longer faithful to Shia Islam.

51. Country information indicates that under Iranian law, a Muslim who leaves his or her faith or converts to another religion or atheism can be charged with apostasy.⁸ Although the Iranian Penal Code does not have specific provisions penalising apostasy, it is a crime punishable under sharia law, which judges may also apply⁹. Whether or not the applicant's religious views and conduct bring him within the concept of apostasy as understood in Iran, country information referred to above indicates that it is highly unlikely that the government would monitor his religious observance in any event. DFAT further reports that it is unlikely that individuals will be prosecuted on charges of apostasy¹⁰ and that perceived apostates are only likely to come to the attention of the Iranian authorities through public manifestation of their new faith, attempts at proselytization, attendance at a house church or via informants. There is no evidence before me to suggest that the applicant has adopted another faith. I note that he indicated to the delegate that he has never spoken publically about his views on religion, and I note that there is no suggestion of an intention to do so in the future. I accept that the applicant does not believe in religion and there is nothing in the material before me to suggest that he would, or would want to, proselytize or attend a house church.
52. Overall, having regard to the applicant's behaviour and the country information, and my finding that the applicant is unlikely to live with his parents upon return, I consider the chance that his views on religion, or his non-compliance with religious rituals, will come to the attention of the Iranian authorities is remote. As such, I am not satisfied that the applicant faces a real chance of harm for reasons of religion.

Returning to Iran

53. I note that the applicant claimed at his TPV interview that there is a possibility that if he steps foot in an Iranian airport his father would be summoned and because his father knows where he lives, he would have "pressed charges" against him, and all the complaints and charges would "show up". I do not accept that there are outstanding charges against the applicant. He left Iran via the airport in Tehran on his own passport which would suggest that at the time of his departure he was of no interest to the authorities. Other than making this statement in his TPV interview the applicant has not provided any evidence to support his assertion that there are outstanding charges against him. In the circumstances I do not accept this claim.
54. Although the applicant has not specifically claimed to fear harm due to the fact he will be a returning asylum seeker from a western country, I am satisfied on the evidence that he is an asylum seeker who will be returning to Iran without a passport after living in a Western country (Australia) for more than five years.
55. As discussed above, the applicant departed Iran in 2013, using an 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.

⁸ DFAT, "Country Information Report Iran", 21 April 2016, CIS38A8012677; Iran Human Rights Documentation Centre, "Apostasy in the Islamic Republic of Iran", July 2014.

⁹ US Department of State "2015 Report on International Religious Freedom – Iran", 10 August 2016, OGD95BE926723.

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

56. 46. According to DFAT¹¹, 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).
57. 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 two¹². I have also had regard to DFAT’s 2018 Report¹³ which does not include any information to suggest that the treatment of returnees at the airport has changed.
58. 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 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.
59. While I accept the Iranian authorities may question and detain the applicant for one or two hours upon his return to Iran, I am not satisfied this would amount to serious harm.
60. I have also considered the applicant’s circumstances as a whole. I have rejected the applicant’s claim that he is bisexual. Although I have accepted that he experienced abuse from his father in past, I have not accepted that he faces a real chance of harm on this basis upon return to Iran. I am not satisfied that the applicant faces a real chance of harm for his religious views, or for consuming alcohol should he continue to do so upon return to Iran. I have found that the applicant may face low-level harassment if he wears western style clothing and hair upon return to Iran but I am not satisfied that this amounts to serious harm. Nor am I satisfied that this low-level harassment, in combination with the treatment he may receive as a returned asylum seeker, amounts to serious harm. I am not satisfied there is a real chance of him facing serious harm now or in the reasonably foreseeable future.

Refugee: conclusion

61. 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).

¹¹ Ibid.

¹² Ibid.

¹³ DFAT, “Country Information Report”, 7 June 2018, CIS7B839411226.

Complementary protection assessment

62. 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

63. 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.

64. I have rejected the applicant's claim that he is bisexual and although I have accepted that he has experienced abuse from his father in the past, I do not accept that he faces a real chance of harm from his father upon return to Iran. I have not accepted that the applicant faces a real chance of harm for drinking alcohol or for his religious views. As real chance equals real risk, for the same reasons I am not satisfied that he faces a real risk of significant harm, as defined, on these grounds.

65. I have considered the low-level harassment the applicant may face if he chooses to wear western-style clothing and hair, and I have considered the brief detention and questioning he may face for being a returned asylum seeker, and I do not consider this treatment amounts to significant harm as defined.

66. I have also considered the harm cumulatively and I do not find that the combined effect of the treatment the applicant may face amounts to significant harm as defined.

Complementary protection: conclusion

67. 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.