



Australian Government

Immigration Assessment Authority

Decision and Reasons

Referred application

IRAN

IAA reference: IAA18/05634

Date and time of decision: 1 November 2018 17:35:00

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] March 2013 the applicant arrived in Australia as an unauthorised maritime arrival and on 28 February 2017 he lodged an application for a Safe Haven Enterprise visa (SHEV) (subclass XE-790).
2. On 31 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) and no further information has been obtained or received.

Applicant's claims for protection

4. The applicant's claims can be summarised as follows:
 - The applicant was born on [date] in Tehran, Iran where he grew up with his [siblings]. His mother still lives in Iran and his father is deceased. The applicant is a Shia Muslim and speaks Farsi. He has never been married and has no children.
 - The applicant completed his education at [middle] school and has completed is compulsory military service. He had a job in Iran selling [goods].
 - Since the applicant arrived in Australia he has been feeling stressed which has been compounded by the fact that his mother is suffering from a medical condition. The applicant finds it hard to focus and he worries a lot. He claims that since arriving in Australia he has forgotten some of the things that occurred to him in Iran.
 - Although the applicant is a Shia Muslim and although he still believes in God, he claims that his faith has diminished after what he has seen in Iran.
 - The applicant is homosexual and said that he has known from an early age that he is not attracted to females. He said he is attracted to males and this has become clearer to him the older he has become. He told his older brother, J, about his homosexuality and J told him that he needed to be aware of how this would affect his life and that he could be detained, beaten or stoned to death.
 - The applicant grew up in an area in the south of Tehran which was a predominantly lower social-economic class. He said the area was routinely patrolled by the Basij and his neighbours had family members who were in the Basij or Sepah. He said there were also families who had members that were martyrs.
 - The applicant said that after the riots of 2009 the Iranian government sent a message to families that if they hear or see any activities against Islamic law they had to inform the authorities. He said his life became much more difficult after this and he became a target.
 - The applicant's neighbouring families had suspected that he was gay but he does not know how they knew because he had kept it a secret from everybody. He said they

informed the authorities that he was gay and from then on the Basij and Sepah would assault and harass him in the street.

- One evening the applicant was arrested by the Basij and taken to their base. He said that some of them knew him personally and knew he was gay and he was informed that he was being held because of this. He was held for 24 to 48 hours and was beaten and interrogated and was made to admit that he was gay. He told them all of his relations had been consensual. He was told that he had to change the way he lived and was made to sign a declaration stating that he wouldn't continue on the path he was on (the commitment statement). He was told that if he did continue on this path he would be referred to the higher authorities and this could lead to him being imprisoned, or stoned to death.
- The applicant was afraid and began to move around. He avoided staying at his mother's house as he knew they could be visited anytime by authorities.
- One morning, about two or three months after he was detained, his mother's house was raided by authorities who were looking for the applicant, who was staying with an uncle at the time. He said his mother advised him that the authorities had a judicial warrant for his arrest. He said it was common for the authorities to visit the homes of those who had been detained and it signalled that they were still monitoring the suspects.
- The applicant claims that if he did not leave Iran his life would continue to be in danger.
- The applicant fears that if he returns to Iran the following will happen:
 - He would be tortured and imprisoned as he is a gay man and as he has already been detained for this it would be on his file and his punishment would be more severe than last time;
 - He would continue living in secret and hiding - his neighbours will turn him in to the authorities;
 - It is common for homosexuals to be stoned to death in Iran;
 - He will be persecuted for being gay and this, combined with not having completed his studies, will make it difficult to find employment in Iran;
 - The local authorities will immediately find out he has returned and he will be arrested. He will face execution, stoning or a lengthy term of imprisonment.
- The applicant claims that he fled for his sanity as well as his safety, stating that his fear of persecution has left him with a feeling of apprehension and insecurity.
- The applicant further claims that the authorities in Iran cannot and will not protect him and there is nowhere in Iran where he would be safe from the authorities. Wherever he lives he will live in secret and safe relocation is not practically possible as the authorities would catch up with him and he will remain isolated from his family. The applicant stated that he cannot change his sexual orientation.

Factual findings

5. The applicant left Iran using his own Iranian passport in his own name. He claims he was coerced to throw his passport into the sea by a people smuggler en route to [Australia]. I

accept this explanation. The applicant provided the delegate with a copy of his Iranian birth certificate, Iranian driver licence, Iranian military completion card and his Iranian national identity card. I accept these documents 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.

Events in Iran

6. The applicant claims that he is homosexual, stating that he knew from an early age that he wasn't attracted to females. He stated in the SHEV interview that he became certain that he is homosexual after puberty. He said that when he went through puberty he could feel that he didn't have feelings for, or could enjoy, the opposite sex and was happier with the same sex.
7. In the SHEV interview the applicant said that he had relationships in Iran but they were in secret because of the lack of freedom in Iran and because the authorities 'crack down' severely on the homosexual people. He said that lots of people like him (homosexual) face lots of problems and he said he was always trying to find a way to get away and be set free from the harassments. He said he was always scared and frightened of people finding out about his sexual orientation. The applicant would talk about this with his brothers J and M who are also homosexual. He said that his mother and his other siblings know that he is homosexual.
8. The applicant said his relationships with males in Iran were not public and he tried to be careful that no one would find out about them. He said there were two families in his street with members in the Basij who gave information to the Basij station. He said these families found out about his homosexuality when a person he had a relationship with came to his house. He said they were standing on the street talking and, by looking at them and seeing their behaviour, the neighbours realised they were having a sexual relationship with each other and informed the Basij in the area (which, he said, was only two streets away). He claims he was subsequently arrested (discussed below).
9. In his SHEV application the applicant stated that a neighbour suspected he was gay and reported him to the Basij or Sepah. He claimed that one evening he was arrested by members of the Basij, some of whom knew him and knew that he is gay. He was taken to their base where he was held for 24 to 48 hours during which time he was beaten and interrogated. He said he was made to admit he is homosexual and to sign a declaration (the commitment statement) that he "wouldn't continue on the path he was on". He said he was told that if he did continue on this path it could lead to him being imprisoned or stoned to death.
10. When asked about this incident in the SHEV interview the applicant said the arrest occurred "roughly one year before, more than a year before" he left Iran which, he said, was "roughly late 2011 or beginning 2012". He said he was held for two to three days and then clarified it was for three days and nights, or 72 hours. He told the delegate he was beaten, insulted, scorned, and sworn at. He said, "I can't say I was tortured but I was persecuted, mentally, psychologically, I was humiliated and the purpose for this, the reason to do that is they wanted me to confess to say that I'm a homosexual so they could put a heavy file against me".
11. The applicant referred to the commitment statement and said that after he signed it, if anyone he had a relationship with came to his home or was talking with him in the street he would have been reported and would have faced heavy charges.
12. The applicant had claimed in his SHEV application that his mother's house was raided two to three months after he was arrested. The applicant said that his mother told him that it

happened after midnight. She told him that the authorities came looking for the applicant and asked some questions. In his SHEV interview he said he was out of Tehran at his uncle's house in [City 1] at the time of the raid and he claimed that his mother told him over the phone that the authorities had a judicial warrant for his arrest. The applicant told the delegate that he thinks that after his arrest most of the members of his family knew that he was homosexual. He said that after he had signed the commitment statement he became scared, saying that he was even scared of his own shadow and that he couldn't stay at his home with his mum because of fear. He said he started moving around and staying with different relatives, sometimes outside of Iran (including with his uncle in [City 1]). He said he tried staying with different members of the family on different days of the week.

13. I note that in 2013, during his arrival interview, the applicant referred to being captured by the Basij "a few times". He also stated at that interview that he was taken to a Basij station where he was beaten and given no food. He said they hurt him with "any facility they had in their hand". He indicated that the last time he had been captured was roughly 6 months ago (which would make it late 2012).
14. I note there are a number of inconsistencies between what the applicant claimed at his arrival interview and what he claimed in his SHEV application and his subsequent interview with the delegate. After the SHEV interview the delegate wrote to the applicant inviting comment on the inconsistencies, namely: the number of times he was arrested; the length of time he was detained for; and when the arrest occurred.
15. On 13 June 2018 the applicant's representative provided submissions to the delegate via email, stating that during the SHEV interview the applicant displayed difficulties responding to a significant number of questions that were put to him and in comprehending their meaning. The representative submitted that the applicant suffers from cognitive impairment which affects his ability to give testimony. I note that no medical evidence has been provided to support this assertion. I also note that at the beginning of the interview the applicant was informed that if he didn't understand anything that the delegate said he was to ask her to repeat or re-word the question. The applicant was represented at the interview and I note that no indications were provided to the delegate at the interview regarding any possible lack of understanding on the applicant's behalf. Having listened to the interview I am satisfied that the applicant was forthcoming in his responses to the delegate's questions and I am not aware of any obvious indication that he didn't understand the questions or was suffering from cognitive impairment. Without any supporting medical evidence I am not willing to accept that the applicant was suffering from any impairment, cognitive or otherwise, that would have prevented him from answering the delegate's questions truthfully.
16. I also note that in his SHEV application the applicant claimed that since arriving in Australia he has been feeling stressed and stated that his mother has been suffering from a medical condition that has compounded his stress. He said he finds it hard to focus and he worries a lot and that since he has been in Australia he has forgotten some of the things that occurred in Iran. The applicant has not provided any medical evidence to support his claim that he is having mental difficulties, nor is there any evidence to support his claim that his mother is suffering from a medical condition. Overall I am not satisfied that the applicant is suffering from a condition that would impair his recall of events, beyond the normal difficulties associated with the passing of time.
17. I find that the inconsistent statements provided by the applicant cast doubt over the credibility of his claim that he was arrested and detained and I have had particular regard to the fact that

at the arrival interview the applicant said he was captured by the Basij “a few times” yet in his SHEV application and interview he only referred to the one time.

18. In her post-interview submissions to the delegate the applicant’s representative stated that while it was acknowledged that the details provided were different, they did not go to the nature of the event and are thus not sufficient to justify a negative credibility finding. I do not accept this submission. I find that claiming he was arrested “a few times” and then claiming it was only one time does go to the nature of the event and is a significant inconsistency.
19. I note that the applicant claimed at the arrival interview that the last time he was captured was six months prior to arriving in Australia and yet he later claimed that it occurred roughly a year before he left Iran. Although this inconsistency is less significant I have taken it into account. I have considered the nature and context of the arrival interview and I have been mindful of the difficulties that asylum seekers may face and the caution needed when relying on interviews conducted soon after arrival, as discussed in *MZZJO v MIBP* [2014] FCAFC 80. I have also considered the passing of time between the arrival interview and the SHEV interview however I do not consider that the nature and context of the arrival interview and the passing of time adequately explain or excuse the inconsistencies made at the two interviews. I also have some concerns about the length of time the applicant states he was held for. In his SHEV application he stated that he had been held for about 24 to 48 hours yet in his SHEV interview he told the delegate that he had been held for 72 hours.
20. I consider that these discrepancies relate to details that are more than peripheral details and overall I find the inconsistencies, considered together, render the claim implausible. I do not accept that the applicant was arrested and detained as claimed.
21. In making this finding I have had regard to the applicant’s representative’s submissions in relation to country information stating that the Iranian authorities are known to deploy arrest and release tactics and that ‘security forces harassed, arrested, and detained individuals they suspected of being gay or transgender’¹. Whilst I accept that homosexual people are harassed by authorities in Iran, I am not satisfied that there is enough credible evidence in the material before me to satisfy me that the applicant was arrested and released as claimed.
22. I am also not willing to accept that there was a judicial warrant for the applicant’s arrest following the alleged raid of the applicant’s mother’s house some two to three months after the applicant’s alleged arrest. The applicant did not claim that there was a warrant at the arrival interview and I note that at that stage he was claiming that the last time he had been captured was six months prior to coming to Australia. I find it difficult to conceive that if the applicant *was* aware that a judicial warrant for his arrest had been issued a few months prior to his departure from Iran that he wouldn’t refer to this issue in the country where he is seeking asylum. I note that the applicant did not mention the warrant in his written SHEV application and only raised it for the first time in his SHEV interview. He has not subsequently provided any supporting documentation of the said warrant. I also note that the applicant left Iran on his own passport via the airport in Tehran, suggesting that at the time of his departure he was of no interest to the authorities. I do not accept that there was a warrant for the applicant’s arrest and I find that he was not of interest to the authorities at the time that he departed Iran.

¹ US State Department, ‘Country Report on Human Rights Practices for 2015 – Iran’, 13 April 2016.

Current relationship

23. The applicant claims that he has a partner, [Mr A] with whom he has been in a relationship for more than [number] years (roughly). The applicant did not refer to this relationship in his SHEV application but first raised it at the SHEV interview when the delegate asked if he had had any relationships in Australia.
24. The applicant told the delegate that he met [Mr A], a [Country 1] man, when he went to a park close to his [home]. He said it was night time and he was sitting on a park bench and they got talking and [Mr A] asked him if he was gay. He said yes and they became friends. They swapped phone numbers and roughly one week later they started an intimate relationship.
25. When the delegate asked the applicant what his partner's name was the applicant responded by informing the delegate that he is a [Country 1] man and was born in [Country 1]. He said he had written his 'exact name' down on a piece of paper and had provided it to his representative. The applicant did not verbally provide his partner's name to the delegate and I consider that the fact that he had written it down is an indication that he did not know his real name from memory. He explained to the delegate that his English name is [Mr A] and that is what he calls him.
26. The applicant said that they do not live together but they see each other once a week at [Mr A]'s house. The applicant was unable to verbally provide [Mr A]'s address to the delegate but said that he had written it down and given it to his representative at her request. The applicant explained that besides two photos that he has on his phone (one of [Mr A], and one of [Mr A] and him together), [Mr A]'s date of birth, and [Mr A]'s address, he does not have any other evidence of their relationship. He said he had taken the photos two weeks prior to the interview and had provided them to his representative along with [Mr A]'s address and real name. (I note that the applicant's representative subsequently forwarded the photo of the applicant and [Mr A] together to the delegate but did not provide the other photo of [Mr A] alone. The second photo was not before the delegate and is not in the material before me). The delegate asked the applicant why he had written down [Mr A]'s address and he said it was because he had spoken with his representative on 'Thursday' and she told him to provide some evidence to prove his claim. He explained that when he was with [Mr A] on the following Monday, two days prior to the SHEV interview, he wrote down [Mr A]'s address. He said that when he visits [Mr A], [Mr A] picks him up and drives him to his house and that he had only travelled to [Mr A]'s home a few times on his own. He said he used to catch the train to visit [Mr A] when he lived at his old address but when asked what that address was he said he didn't know it, even though he also said that [Mr A] had lived at that address for [number] years out of their [number] year relationship. He said he would catch the train there but did not know the name of the street that [Mr A] had lived in.
27. When asked if other people know about his relationship with [Mr A] his answers were vague. At first he said he doesn't know. He then said he has two or three Iranian friends who may know but he is not sure about that. He indicated that on [Mr A]'s side no one knows except perhaps [Mr A]'s landlord. He said that one night he and [Mr A] went to a gay couple's house, friends of [Mr A]'s, as dinner guests. He said this occurred in the first year that he had met [Mr A].
28. It was apparent from the applicant's evidence that not many people know about the applicant's claimed relationship with [Mr A]. That said, I note that the applicant did not claim that their relationship is secret. The delegate asked the applicant if he had been to a gay club and he said that he had, once, but he couldn't remember the name of it. He said it was at the

club where [Mr A] ran into the gay couple who invited them over for dinner a week later (referred to above). The applicant said that when he did have Facebook (he said he is unable to download it on his new phone) he doesn't think there was anything on there to prove he was in a relationship with [Mr A]. He also said that he doesn't think [Mr A]'s account contains any evidence of their relationship either. He said [Mr A]'s personality is like his – “he is not into doing these things much”.

29. The applicant stated that before he met [Mr A] he had sexual relationships with other people in Australia but they were casual relationships.
30. I note the post-interview submissions made on the applicant's behalf refer to the delegate's comments on the applicant's appearance in relation to his claim that he is homosexual and submits that these comments are inappropriate. I agree. The representative also submitted that the applicant should not be expected to go to gay clubs, to dress colourfully, or to post gay material on Facebook. I accept these submissions. Although evidence of these factors *can* be considered as supporting evidence of homosexuality, I do not consider that a lack of such evidence is indicative of a lack of credibility.
31. The representative also submitted that the applicant's partner, [Mr A], is older than the applicant and works often and this is why they see each other once a week, stating that this is the arrangement that suits them personally and makes both of them happy.
32. As stated above, the representative submitted a photograph depicting the applicant sitting next to a man and is taken from the shoulders up. The other man, '[Mr A]', is wearing a [type of clothing] and the applicant has his hand resting on his shoulder. I assume that this photo is the one referred to in the SHEV interview that the applicant said he had provided to his representative. I note that the applicant said that he took the photo two weeks before his SHEV interview.
33. Whilst I accept that the photograph provided depicts the applicant next to another man, there is no evidence to confirm that the other man in the photo is, in fact, '[Mr A]'. There is no one else in the photo and it looks unlikely that it was taken in the context of a social situation. I have noted that the photograph is self-taken and was taken two weeks before the SHEV interview. I also note that there is no other photographic evidence of the claimed relationship in an all of the circumstances I find that the photograph was not taken for any reason other than to strengthen the applicant's claim that he is in a homosexual relationship. I consider that the photograph was staged and I have not given it any weight when assessing the applicant's claim.
34. The representative's post-interview submission also contained screen shots of the applicant's call log from his mobile phone, asserting that they show the frequency with which [Mr A] calls him. The submission states that the phone was purchased in May 2018, explaining that this is why the records are not backdated further. There is no explanation as to why the phone was purchased at that time (e.g. his old phone had broken or been lost). I also note that the phone was purchased in the month leading up to the SHEV interview.
35. The screenshots provided relate to the periods [dates in May and June], 2018. The majority of contacts listed refer to a “[Mr B]” and a mobile phone number which is unidentified on the screen. The representative submitted that this number is [Mr A]'s number. Whilst the phone calls to and from this number are relatively frequent, I note that the duration of most of these calls is less than a minute, with only two calls lasting more than one minute and the longest lasting 1 minute and 42 seconds.

36. I find it difficult to accept that if the applicant *had* been in a [number] year relationship with [Mr A] that he would not have saved [Mr A]'s phone number under [Mr A]'s name, noting too that the other phone number in the log (with which he has also had regular contact) is identified as '[Mr B]'. I also have difficulty accepting that after a [number] year relationship the longest conversation the applicant had with his partner would be less than two minutes, especially if they only saw each other once a week. I have also had regard to the short period of time covered by the call logs and the assertion that the call logs cannot be back-dated further because the phone was only bought in May. It is difficult to conceive that if the applicant had been trying to gather evidence of a genuine relationship that he would replace his phone a few weeks out from his SHEV interview. I also find that if he did genuinely have to replace his phone at that time he would have, at least, provided some explanation for doing so. Overall I do not consider the call logs provide any probative evidence of the claimed relationship. As such I have given no weight to the mobile phone call logs in assessing the applicant's claim that he is in a homosexual relationship.
37. Given the absence of any corroborative evidence, except for a photo that doesn't identify the other person and appears to have been staged, and the phone call log discussed above, I have difficulty accepting the applicant's claimed relationship with [Mr A]. I find the applicant's description of his relationship to be generally lacking in detail. I have had regard to the fact that the applicant doesn't know [Mr A]'s full name and whilst I accept that [Country 1] names can be difficult to pronounce, I have difficulty accepting that after a four year relationship the applicant did not, at least, know his partner's surname. I have also taken into account the fact that the applicant could not verbally provide [Mr A]'s current or former address to the delegate at the SHEV interview. I find the applicant's responses to the delegate's questions about how they met and who knows about their relationship to be vague. Whilst I accept that the applicant may not have had a desire to publicise his relationship (as claimed by his representative), I note that he has not claimed that his relationship was secret and, in any event, I consider it implausible that he wouldn't have any evidence to support the existence of a [number] year relationship. Overall I am not willing to accept that the applicant is in a homosexual relationship as claimed.

Homosexuality

38. As stated above, I do not accept that the applicant's claim that he was arrested and detained in Iran for being homosexual and I do not accept that he is currently in a homosexual relationship. Whilst the absence of a relationship is not determinative of one's sexuality, I consider the applicant's fabrication of a relationship casts doubt over his claim that he is homosexual. I have considered the applicant's evidence relating to his life in Iran, including his description of his feelings in relation to his homosexuality. I note that the applicant claims that he had homosexual relationships in Iran and whilst I accept that he claims these relationships were primarily secret (as submitted by the applicant's representative) I do not consider this to be a valid explanation for providing no details of the encounters such as who they were with, where they met, or how long the relationships lasted for. Other than his claim that he was seen by neighbours with a man on the street prior to being arrested (which I have rejected), no other details of his purported relationships have been provided. In all of the circumstances I am not satisfied on the evidence before me that he is homosexual.

Employment

39. I note that in his SHEV application the applicant claimed that he will be persecuted for being gay and this, combined with not having completed his studies, will make it difficult to find employment in Iran.

40. I have rejected the applicant's claim that he is homosexual. Whilst I accept that the applicant finished his schooling after year [number], I note from his SHEV application that he was employed selling [goods] in Iran from 2010 until two months before he left to come to Australia in 2013. The applicant has not provided any evidence to suggest he can no longer work and I do not accept his claim that his circumstances will make it difficult for him to find employment in Iran.

Returning asylum seeker

41. I accept that the applicant is an asylum seeker who will be returning to Iran without a passport after living in a Western country (Australia).

Refugee assessment

42. 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

43. 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.

44. I have not accepted that the applicant is homosexual, or that he was arrested or detained in Iran as claimed, or that he will find it difficult to gain employment in Iran. Therefore I am not satisfied that he faces a real chance of harm on these grounds.

45. As discussed above, the applicant departed Iran in 2013, using an Iranian passport. I consider 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.

46. I have considered DFAT's 2016 Country Information Report² in relation to the treatment of returnees in Iran. I have also had regard to DFAT's 2018 Report³ which suggests the treatment

² DFAT, "Country Information Report Iran", 21 April 2016, CIS38A8012677.

of returnees hasn't changed. According to the DFAT 2016 Report⁴ 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).

47. 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 two⁵.
48. 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 and there is no credible evidence before me that the applicant has engaged in any activity since he has been in Australia which would attract the attention of the authorities. 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.
49. While I accept that upon his return the Iranian authorities may question and detain the applicant for one or two hours for returning as a failed asylum seeker, I am not satisfied this would amount to serious harm. As such, I am not satisfied the applicant will face a real chance of serious harm now or in the foreseeable future should he return to Iran. The applicant does not have a well-founded fear of persecution within the meaning of s.5J.

Refugee: conclusion

50. 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

51. 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.

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

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

⁵ Ibid.

Real risk of significant harm

52. 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.

53. I have rejected the applicant's claim that he is homosexual and that he was arrested and detained in Iran. I have also rejected the applicant's claim that he will have difficulty gaining employment in Iran. Therefore I am not satisfied there is a real risk of significant harm on these grounds, now or in the foreseeable future.

54. I have found that as a returning asylum seeker the 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.

Complementary protection: conclusion

55. 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.