



Australian Government
Immigration Assessment Authority

Decision and Reasons

Referred application

IRAN

IAA reference: IAA18/05996

Date and time of decision: 20 December 2018 13:03:00

A Lindsay, 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 Christian from Iran. He arrived in Australia [in] June 2013 and on 25 September 2017 he lodged an application for a Safe Haven Enterprise visa (SHEV).
2. A delegate of the Minister for Immigration (the delegate) refused the grant of this visa on 14 November 2018 on the grounds that the applicant did not have a real chance of serious harm or a real risk of significant harm if he were to return to Iran.

Information before the IAA

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

Applicant's claims for protection

5. The applicant's claims can be summarised as follows:
 - His father has been a member of the Iranian Revolutionary Guard Corp (IRGC or the Sepah) for over [number] years.
 - He did not follow the Muslim faith whilst living in Iran.
 - He was harassed by authorities for public appearances with women he was not related to. On one occasion he was assaulted by members of the Basij Resistance Force (Basij) for driving his car in company with his girlfriend, before they put her in a taxi and released him. On another occasion he was present with a mixed group of friends in a coffee shop and security forces arrested all the couples but did not arrest the applicant because he was by himself.
 - He has had no relationship with his father for many years because his father adheres strictly to the rules of Islam and forces his family to do the same.
 - He was beaten by his father for not following the Muslim faith. His father threatened that he would get members of the Sepah or Basij to 'take care' of him if he did not adhere to the rules of Islam.
 - Two members of the Basij attempted to forcibly recruit him.
 - He moved to his [Relative 1]'s home in Abadan approximately ten months prior to fleeing Iran because he was unable to tolerate his father's treatment of him any longer. He commenced preparations to leave Iran at this time.
 - After he left the country, his father was contacted by [Iranian authorities] when his [Country 1] visa expired and asked why he had not returned to Iran. The authorities asked for his address which his father was unable to provide because he did not know it. The applicant has not provided his address in Australia to anyone in his family.
 - Since arriving in Australia he was baptised and has converted to Christianity.

- His [Relative 2] is [Mr A], who was a high ranking member of the IRGC and is now [a senior government official]. He fears his life is in danger from this powerful person because he chose to leave Iran and convert to Christianity.
- Authorities will arrest him on his return to Iran because they will be suspicious of his motive for leaving and will accuse him of being a spy for a foreign enemy state or for conspiring against Iran.

Factual findings

6. On the basis of the documents provided by the applicant I accept his identity and nationality as claimed. Iran is the receiving country for the purposes of this review.
7. There are a number of inconsistencies in the versions provided by the applicant at different stages during the protection visa application process. Those inconsistencies which relate to a claim for protection will be identified when that particular claim is discussed below. The inconsistencies not linked to a particular claim for protection are as follows:
 - In the first part of his arrival interview conducted on 24 June 2013, the applicant said he did not know anyone on the boat he travelled on to Australia. In the second part of his arrival interview conducted on 12 July 2013, when giving details of when and how he left Iran and who he travelled with, the applicant said he travelled with a friend and his wife on the flights out of Tehran and [Country 2] and they also came on the same boat with him to Australia.
 - In his arrival interview, the applicant said he had obtained an exemption from military service in Iran because he was the only son in his family. In his Statement of Claim, the applicant said that when he was leaving Iran he was questioned by Iranian authorities at the airport about the reason he obtained an exemption from military service. The applicant said he told the authorities it was because his father was a war veteran. The applicant explained that his father served in the Iran Iraq war for a period of [number] years. In his SHEV interview, the applicant said he had sent a copy of his military service exemption card to the Department. I accept that the applicant obtained an exemption from performing military service in Iran; however, I note that the applicant has provided different reasons for obtaining this exemption.
 - In his SHEV interview, the applicant said that whilst his relationship with his mother was better than the one with his father, his relationship with her was 'cold'. In his Statement of Claim the applicant said he advised his mother and sister that he was leaving Iran and during his SHEV interview he confirmed he said goodbye to his mother before he fled the country. The applicant said his only conversation with his mother is, "hello, how are you, that's it". The applicant also said, "I'm not in contact with my family much to be honest." In his SHEV application, the applicant said he speaks with his mother every two weeks via internet applications. In his Statement of Claim, the applicant provided information about his mother contacting him in Australia to tell him about things that had occurred back in Iran. During the SHEV interview, the applicant was offered the opportunity to comment on information before the Department, in accordance with s.57 of the Act, which showed that he had transferred money from Australia to his mother in Iran which indicated that his main reason for coming to Australia was economic opportunity. The applicant denied this was the reason he came to Australia, but did not deny that he had sent money to his mother. The information before the Department showed that on three occasions between June and October 2018 the applicant transferred funds to his mother's bank

account which amounted to AU\$[amount] with the details of the payment being listed as 'support family'. I do not accept that the applicant's relationship with his mother is 'cold' due to the inconsistent information provided by the applicant about the nature of his contact with his mother and the fact that he is sending money to her to support the family.

8. As a result of these inconsistencies and those identified below, I have serious concerns about the credibility of the information the applicant seeks to rely on in support of his claims for protection.
9. In his arrival interview, when asked what his father's occupation was, the applicant said his father worked in buying and selling [Asset 1] and [Asset 2]. In his SHEV application the applicant said his father had been a member of the Sepah for over [number] years. The IRGC or Sepah is Iran's most powerful security and military organisation, responsible for the protection and survival of the Islamic Republic.¹ The IRGC operates substantial and independent land, sea and air forces and has a powerful intelligence arm that carries out domestic intelligence operations.² The applicant said he had memories of his father [doing certain things] and there being many documents in the house about his father's work with the Sepah. The applicant said when he was young he used to hear his father talk to others about his job but would never talk to his family directly and he believed this was one of the requirements of being in the Sepah. The applicant claimed his father was quite secretive about his job. In his SHEV interview, the applicant said his father was in the military but did not know exactly what his occupation was.
10. The applicant made no mention of either his father or any member of his family being a member of the Sepah in his arrival interview. In his arrival interview, the applicant was told he is expected give true and correct answers to the questions being asked. The applicant was also told that he should understand that if the information he gives at any future interview is different from what he says during his arrival interview, this could raise doubts about the reliability of what he has said. When asked by the officer conducting his arrival interview if there was anyone in the detention centre of concern to him, who he was afraid of or who has been threatening him, the applicant said 'no'. During this same interview, when asked if anyone told the applicant what to say when dealing with Australian authorities, he also said 'no'. In his SHEV application the applicant claimed that he was afraid to mention his father being a member of the Sepah initially because 'others' in the camp had told him not to mention this because it would be problematic for him. It is illogical that an applicant would not only fail to disclose that his father is a member of the Sepah, but make up an alternative occupation for him, because it directly relates to his claims for protection and the reasons he says he fears returning to Iran.
11. I accept that a member of the Sepah might be secretive about individual assignments they are performing at certain times but I do not accept they operate covertly, revealing nothing about their rank or role within the IRGC to their families. I do not accept that the applicant's father is or was ever a member of the Sepah because of the inconsistent versions provided about his father's occupation and the applicant's inability to state what rank his father is in the Sepah.
12. I accept that the applicant's father's occupation involved him buying and selling [Asset 1] and [Asset 2], as stated by the applicant in his arrival interview.

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

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

13. Upon arriving in Australia, when asked his religion, the applicant said he did not have one. The applicant made reference to living in a society where if someone is not Muslim, they place that person under pressure and punish them. In his SHEV application and interview, some four to five years later, the applicant identified as being a Christian. The applicant said his family is Muslim and as a child he was forced to go to the mosque, fast and pray. The applicant said his father was very strict about the Islamic teachings and always tried to force his beliefs onto the rest of the family which included his mother and sister having to pray and wear the hijab. The applicant said that as he grew older he could not accept the Islamic teachings and would regularly get into quarrels with his father because the applicant disagreed with what his father wanted. I accept that the applicant, when he left Iran, considered himself as having no religion.
14. The applicant said he was harassed by authorities for being in public with women he was not related to and had “quite a few run ins” with the Basij. In his arrival interview, when asked why he left Iran he said he was not accepting their religion. When asked if anything had happened to him personally, he said “besides being beaten twice, no”. The applicant was then asked to explain how refusing to accept Iran’s religion and being beaten was linked to him leaving the country, the applicant said ‘my life was in danger because I didn’t have their religion, you have to be a Muslim there’. The applicant was again asked to provide details of what had happened to him to result in him leaving Iran and he again said, ‘my life was in danger’ and ‘if somebody is not a Muslim they put that person under pressure and punishment’. When asked what happened when he was beaten the applicant said, “it was because I was with my girlfriend and it is against the religion so they got me and beat me”. The applicant also said that when he was driving he was stopped by police and security or intelligence organisations and they looked at “how you are, inside the car, everything”.
15. In his SHEV application the applicant said he was in his car with his girlfriend and they were stopped by the Basij at a check point. The applicant said the Basij asked who the girl was and because he could not provide a proper answer the Basij became suspicious. The applicant said the Basij made him get out of the car and started preaching about what he was doing was “a sin and un-Islamic”. The applicant claimed he said, “it was my life and that I was not doing anything wrong or hurting anyone” and as a result the Basij slapped him in the face. The Basij made his girlfriend get out of the car and put her in a taxi and told her to leave. They then let the applicant go.
16. In his SHEV application the applicant said that on another occasion he had gone out to a coffee shop with a mixed group of friends, some of whom had their girlfriends with them. The applicant said that the security forces rushed into the coffee shop and arrested all the couples but because he was by himself he was able to leave.
17. In his SHEV application, the applicant made the statement, “On most occasions, I was able to get away amidst all the commotion.” Yet the applicant has failed to provide details of even one occasion where he was detained or arrested by security forces and he confirmed in both his arrival interview and SHEV application that he had never been detained or arrested by the police or security organisations.
18. I accept that the Basij is a volunteer paramilitary organisation, operating under the IRGC, whose responsibilities include internal security and moral policing³ and that they may respond unfavourably to circumstances where a woman is in public with a man who is not

³ DFAT, “DFAT Country Information Report: Iran”, 7 June 2018, CIS7B839411226.

their husband or close relative.⁴ I accept that the applicant has experienced low level harassment from authorities for engaging in conduct that doesn't comply with the rules of Islam in Iran.

19. In his SHEV application, the applicant gives details about his relationship with his father, deteriorating as he grew older and became opposed to the rules of Islam which his father, a devout Muslim, tried to force him to comply with. The applicant said he and his father would often argue because of their different opinions about what the applicant should do. The applicant said his father used to make threats and say things like, "I will get them (meaning the Sepah or Basij) to take care of you" because the applicant did not want to adhere to the rules of Islam. The applicant claims his father did not know he was leaving Iran, but he did tell his mother and sister.
20. In his SHEV interview, the applicant said there was either an altercation or argument between himself and his father over everything and the applicant never listened to his father.
21. In his Statement of Claim dated 5 October 2017, the applicant said that about a year prior to him leaving Iran, which would have been approximately May 2012, an altercation occurred after his father found out he had been speaking to the daughter of the neighbour who lived opposite the applicant's family home through the open windows. In his SHEV interview, which took place on 30 October 2018, the applicant said this incident occurred four or five years ago, which would have been October 2013 or 2014 and is after the applicant left Iran. The applicant said, his father started screaming at the applicant and saying that the neighbour's daughter was not kin and that the applicant was bringing disrepute to his honour. The applicant said his father, "... became more infuriated and grabbed an [item] and threw it at the wall. He then grabbed [another item] and came towards me. I think he just wanted to scare me. However, I panicked and raised my [Body Part 1] to fend him off and the [item] cut my [Body Part 1] quite deeply." The applicant said his mother took him to the hospital and he required stitches. The applicant showed a scar on his [Body Part 1] to the officer conducting the SHEV interview. The applicant did not provide details of any other physical altercations between his father and himself.
22. In his SHEV interview, the applicant said that following this incident with his father he did not feel safe so he went to stay with his [Relative 1] in Abadan for between ten and twelve months prior to him leaving Iran for Australia and did not return home. The applicant made arrangements during this time to travel to Australia. During his arrival interview, the applicant was asked to provide the last address he lived at in Iran, prior to travelling to Australia which he gave as his family's home in Karaj. In the SHEV application when asked to provide his residential history for the previous 20 years the applicant lists the Karaj address as his final place of residence in Iran and does not include an address in Abadan.
23. In his arrival interview, the applicant gave his father as his emergency contact person. The applicant made no adverse comments about his father during his arrival interview. During the SHEV interview, the applicant was questioned about giving his father as his emergency contact during the arrival interview, the applicant denied this and said, "never... I haven't done such a thing, never." The audio recording of the arrival interview has been reviewed and I can confirm the applicant provided his father as his emergency contact.

⁴ D Amos, "My (Brief) Detention By Iran's Morality Police", *National Public Radio*, 3 March 2014, <http://www.npr.org/blogs/parallels/2014/03/03/285244225/my-brief-detention-by-irans-morality-police>, CX318577.

24. Other than the applicant's assertion that his father is a member of the Sepah, which I have not accepted, the applicant has not produced any other evidence of information to explain how his father is able to influence the Sepah or Basij to take action against the applicant at his father's request. I do not accept that the applicant's father has the ability to arrange for the Sepah or Basij to "take care of" the applicant, or to target him specifically, because of his non-compliance with the rules of Islam in Iran.
25. I accept that the incident involving the applicant's father cutting his [Body Part 1] occurred although there is a lack of clarity as to when it happened because of the different dates provided by the applicant. I acknowledge the applicant felt his father did not intend to hurt him and only wanted to scare him and I accept that whilst this altercation occurred, the injury caused to the applicant was not intentional. I accept that the applicant's father is a practising Muslim and that as a result, this may result in some conflict between the applicant and his father due to their different beliefs which may result in them having disagreements or arguments but I do not accept that the applicant does not have a relationship with his father or fears his father because: he listed his father as his emergency contact in his arrival interview; he did not make any adverse comments about his father in his arrival interview; and the inconsistent information provided about his father being a member of the Sepah.
26. The applicant said his father constantly pressured him to join the Basij or the Sepah. The applicant said his father told him that he could get him any job in the Sepah or send him anywhere overseas. Despite the benefits that joining the Basij or Sepah might confer, the applicant did not like the lifestyle or the belief in Islam that it required so this was not of interest to him.
27. In his SHEV interview the applicant said that two people were sent to him so that they could arrange for him to become a member of the Basij or become involved with them. The applicant said he did not want to get involved in what they do.
28. The Basij is a paramilitary organisation which operates under the command of the IRGC and membership is voluntary.⁵ There is no indication in country information that people are forcibly recruited to join the Basij which is likely to be the result of the numerous privileges provided to members such as university places, access to government jobs and the ability to avoid or shorten conscription in the regular army.⁶ The Department of Foreign Affairs and Trade (DFAT) reports that local mosques provide background information about each volunteer applicant and they also serve as the Basij headquarters for the neighbourhood.⁷
29. I have accepted that the applicant faced harassment from authorities for engaging in conduct that doesn't comply with the rules of Islam in Iran and that at the time he left Iran he had no religion. I accept that the applicant's claim that his father pressured him to become a member of the Basij given the numerous privileges that are associated with it. I do not accept that the applicant was approached by members of the Basij to join for the following reasons: it is highly unlikely that the applicant would be approached by the Basij to become a member based on the fact that he had "quite a few run ins" with the Basij and was a person who considered himself to have no religion; I have not accepted that his father is or was a member of the Sepah and I have also not accepted his father was able to arrange for members of the Basij to take any action in relation to the applicant.

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

⁶ Country of Origin Information Section, 'Iran CI171002104323805 – Stateless Faili Kurds – Basij membership', 6 October 2017, CR8DFDCEA334.

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

30. In his Statement of Claim, the applicant said that when he arrived in Australia he did not have or practice a religion and that he did not want to follow the Islamic way of life. I have accepted that the applicant considered himself to have no religion when he arrived in Australia. The applicant said he had heard about Christianity whilst still living in Iran and knew it to be a peaceful religion that was not strict like Islam. The applicant said that after arriving in Australia he “did a lot of research and became interested in Christianity” and went to [Church 1] a few times on a Sunday and attended some classes with an Iranian friend. A person from this church organised a bible and some literature in Persian for the applicant whilst his friend helped to translate the services and classes into Persian to help the applicant understand. The applicant said he “started to see a new spiritual avenue through which I could connect with god”. The applicant said he was baptised in a ceremony approximately three months after starting to attend church and that he continued to regularly attend whilst living in [Australian City 1] between August 2013 and August 2015. The applicant provided the certificate of baptism to the Department. After he moved to [Australian City 2] in August 2015 he was introduced by a friend to a church [called] [Church 2] which he said he attended for about a year and went to all their events. The applicant said he had a friend in this church who would assist with the interpretation of things he did not understand. As at the date he prepared his Statement of Claim in October 2017, the applicant said he had been attending a church [called] [Church 3] where he can get assistance in the Farsi language. The applicant said the Christian faith has allowed him to get in touch with God a lot easier and he can relate to its teaching a lot more than he ever did with Islam.
31. During the SHEV interview, the applicant said he had not been attending church regularly due to his need to work [on] Sundays, but he confirmed he does not work every day of the week. In the SHEV application, the applicant said he worked [number] hours a week in this role. The applicant said he was aware there was the opportunity to attend either a morning or afternoon session with the church. The applicant was not able to provide any information about rituals or traditions of Christianity or important days that Christians celebrate, like Christmas or Easter. The applicant could not explain what the Holy Trinity was or the Christian concept of an afterlife. When asked to provide information about a sermon that he had attended that was meaningful to him, the applicant said that because of the language barrier he didn’t understand much and just remembered that the pastor spoke about how Jesus healed a man. When asked what questions he had that were answered by Christianity, the applicant said, “... it’s a convenient religion ... it’s not like you have to do this or that ... attending church is not something you have to do ... as long as you believe in Jesus Christ in your heart.” When asked questions related to his current Christian beliefs on two occasions the applicant referred to ‘being independent’ and ‘taking steps towards success’ with God’s help. When asked about the teachings of his church, the applicant said, “the book of the bible, the stories of Jesus ... how Jesus healed human beings ... taught to me ... they were back from a few years ago. I don’t quite remember all of it”.
32. The applicant said his mother told him that his father found out about his conversion to Christianity and had disowned him. During the SHEV interview, when asked how the applicant’s family found out about him being baptised, the applicant said, “I didn’t tell them but I don’t know how the news reached them. They had very bad reaction to this news and my father said if you come back, bad things await you.” I consider it highly unlikely that if information about the applicant’s conversion to Christianity in Australia, which had the potential to inflame a conflicted relationship between the applicant and his father, had somehow been disclosed to his father in Iran, the applicant would seek to clarify how his father found out and based on the applicant’s evidence, this was not done.

33. I accept the applicant was baptised in 2013 and attended some church services and events. I do not accept that the applicant is a genuine convert to the Christian faith for the following reasons: he claims to have had access to a bible and other Christian literature in Farsi whilst attending church with support from a person who could interpret the English to Farsi for him on a regular basis for a period of over five years yet was unable to give anything more than a very vague description of one sermon that was meaningful to him; and his ability to answer any questions about key tenets of the Christian faith, including the importance of Christmas and Easter, was very limited. I make this finding in the context of the applicant no longer attending church regularly due to a need to work on Sundays, despite the fact that church services are available in the morning and afternoon. For the same reasons, I find that the applicant being baptised and attending some church services and events was for the purpose of strengthening his claim for protection. I do not accept that the applicant's family knows the applicant has been baptized and purports to have converted to Christianity, or that his father has threatened him as a result, because I have not accepted he is a genuine convert to the Christian faith and his inability to explain how they found out leads me to believe this information is not credible.
34. In his Statement of Claim, the applicant said he feared for his safety if he were to return to Iran because his [Relative 2] is [Mr A], who is Iran's current [senior government official]. The applicant asserts that [Mr A] is extremely powerful and he and his circle of IRGC people "will cause me a lot of trouble" and "are an obvious threat to my safety" if he were to return to Iran. The applicant said that this is because of the problem he had with their ideology and the fact that he has converted to Christianity.
35. The applicant has not provided any evidence to support the assertion that his [Relative 2] is [Mr A] and has only provided very general statements about what he believes might happen to him if he were to return to Iran because he converted to Christianity. The applicant did not mention this particular claim in his arrival interview or make any reference to being a relative of [Mr A]. The applicant said he was hesitant to discuss this matter as part of his application which appears to be linked to the fear he holds over what he perceives [Mr A] and his 'people' are capable of doing.
36. It is illogical that an applicant would fail to disclose that a member of his family is a high ranking member of the Sepah at the earliest possible opportunity because it directly relates to his claims for protection and the more significant reasons he says he fears returning to Iran.
37. I have accepted the applicant considered himself to have no religion whilst living in Iran and that he experienced some low level harassment from authorities for his failure to comply with the rules of Islam. I note the applicant has not provided any evidence to indicate [Mr A] took any steps to adversely impact on the applicant's life prior to him fleeing Iran in 2013 for these reasons and he only experienced adverse attention from authorities on a small number of occasions.
38. Given the lack of any evidence to support this claim, considered in conjunction with the numerous inconsistent statements given by the applicant throughout the visa application process, I do not accept he is related to [Mr A] or that [Mr A] has any knowledge of the applicant being a person with no religion or someone who has been baptised and attended Christian services and events.
39. The applicant said shortly after arriving in Australia his mother told him that Iranian authorities had contacted his family to find out why he had not returned to Iran after his

[Country 1] visa expired. The applicant explained it was a 30 day visa. The authorities allegedly spoke with his father and asked for the applicant's address in Australia which was not provided because his father did not know it. The applicant said this happened because families like his "are always under extreme scrutiny" and this showed him that "the security forces have been keeping an eye on our family and especially me since I have left. I am sure this is because of my father's position and status in the Sepah".

40. I do not accept that Iranian authorities contacted the applicant's family shortly after his 30 day [Country 1] visa expired because the applicant's reasoning for such a call being made is negated by the fact that I have not accepted that the applicant's father, or any member of his family, is or was a member of the Sepah and the many other inconsistent statements made by the applicant throughout the protection visa application process.
41. The applicant said he left Iran on an Iranian passport in his own name and that on his journey to Australia he was told to destroy it by the smugglers. The applicant stated that if he were to return to Iran, even if he had not converted to Christianity, he would be in serious trouble for bringing disrepute to the Sepah and the Iranian regime and will be arrested. He said his motives for leaving the country and entering Australia illegally would be questioned and he may be accused of being a spy for a foreign enemy state or for conspiring against Iran.
42. The applicant has now been living in Australia for over five years.
43. I accept the applicant departed Iran on a valid passport in his own name. I also accept that he no longer possesses a valid Iranian passport. If the applicant were to return to Iran I accept that he would need to do so using temporary travel documents which may lead to authorities concluding that he is a returning asylum seeker.

Refugee assessment

44. 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

45. 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.
46. I do not accept the applicant has converted to Christianity. I find that the applicant was baptised and attended church services and events for the purpose of strengthening his protection claims. In accordance with s.5J(6) of the Act I have disregarded this conduct when giving consideration to whether the applicant has a well-founded fear of persecution.
 47. I am not satisfied, on the applicant's evidence, that his father is or was a member of the Sepah. I do not accept that the applicant is related to [Mr A] or that [Mr A] is aware that the applicant considered himself to have no religion.
 48. I have accepted that an altercation occurred between the applicant and his father that resulted in the applicant's [Body Part 1] being cut and requiring stitches but have not found this was an intentionally violent act. I have accepted the relationship between the applicant and his father is somewhat conflicted due to their different religious beliefs and that this would involve them having disagreements or arguments but there is no evidence before me which establishes that the applicant faces a real chance of harm from his father if he were to return to Iran.
 49. I have accepted that the applicant considered himself to have no religion whilst living in Iran and that he has experienced some low level harassment from authorities in Iran for not complying strictly with the laws of Islam.
 50. Country information indicates that abstaining from Muslim rituals, such as not attending mosque or Friday prayers, is not usually monitored by Iranian authorities and a large proportion of Iranians do not regularly attend mosques.⁸ DFAT considers it is highly unlikely that authorities would monitor religious observance by Iranians and as a result it would generally be unlikely that it would become known that a person was no longer faithful to Shia Islam.⁹ People who do not practice the Muslim faith form a large part of the population of Iran's cities and they lead normal daily lives.¹⁰ DFAT reports that people who are critical of Islam and the Koran in a public forum, like on social media, can face the death penalty or imprisonment.¹¹
 51. The applicant has not given any indication that he has previously criticised Islam in a public forum, or that he intends or wishes to in the future. The applicant said that he has a Facebook account but it's held in a shortened version of his correct name and he doesn't use it very often. If the applicant were to return to Iran and continue, as he has done in the past, to not strictly adhere to the rules of Islam in a public environment he is likely to only face the same low level harassment from authorities that he did previously.
 52. I do not accept the applicant faces a real chance of harm if he were to return to Iran on the basis of him being a person with no religion or someone who does not strictly adhere to the rules of Islam.

⁸ LSE Middle East Centre (United Kingdom), "The Revival of Nationalism and Secularism in Modern Iran", November 2015, CISEC96CF14725.

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

¹⁰ Austrian Centre for Country of Origin and Asylum Research and Documentation (ACCORD), "Iran: Freedom of Religion; Treatment of Religious and Ethnic Minorities COI Compilation September 2015", 1 September 2016, CISEC96CF13622.

¹¹ DFAT, "DFAT Country Information Report: Iran", 7 June 2018, CIS7B839411226.

53. I accept that if the applicant were to return to Iran, Iranian authorities would conclude that he would be a returning asylum seeker. The applicant claimed he is likely to experience harm as a failed asylum seeker upon returning to Iran for bringing disrepute to the Sepah and the Iranian regime which will result in him being arrested. He said his motives for leaving the country and entering Australia illegally would be questioned and he may be accused of being a spy for a foreign enemy state or for conspiring against Iran. The country information before me does not support the applicant's claim.
54. In June 2018 DFAT reported that Iranian authorities pay little attention to failed asylum seekers on their return to Iran and have little interest in prosecuting failed asylum seekers for activities conducted outside Iran, including the making of protection claims.¹² According to DFAT, an Iranian who no longer possesses a valid passport can obtain temporary travel documents through a program run by the International Organisation for Migration (IOM) to assist voluntary returnees to Iran. Authorities usually question a voluntary returnee, only if they have already come to official attention.¹³
55. I have not accepted the applicant is related to anyone who is or was a member of the Sepah. The applicant has not produced any credible evidence which shows he was of interest to the Iranian authorities prior to leaving Iran. There is no evidence before me which indicates the applicant has come to the attention of Iranian authorities since leaving Iran or arriving in Australia.
56. Prior to a Memorandum of Understanding (MOU) being signed on 19 March 2018 between Australia and Iran, Iran refused to issue travel documents to allow involuntary returnees to be returned to the country. That MOU however only covers returnees who arrived in Australia after it was signed. The applicant is not able to be returned to Iran involuntarily at this time due to him arriving in Australia prior to the date this MOU was signed.¹⁴ If he is to return to Iran, I consider it would be on a voluntary basis.
57. The country information before me does not support a finding that persons who have sought asylum in Western countries, such as Australia and resided there for a significant period, are imputed to hold an anti-Iranian government political opinion or that they are suspected of being a spy or face a real chance of harm on that basis. The country information indicates the applicant may face some brief questioning at the airport on return but I am not satisfied this amounts to serious harm.
58. I am not satisfied the applicant faces a real chance of serious harm as a returning asylum seeker.
59. Overall, I am not satisfied the applicant has a well-founded fear of persecution.

Refugee: conclusion

60. 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).

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

¹³ DFAT, "DFAT Country Information Report: Iran", 7 June 2018, CIS7B839411226.

¹⁴ DFAT, "DFAT Country Information Report: Iran", 7 June 2018, CIS7B839411226.

Complementary protection assessment

61. 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

62. 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.
63. I accept that if the applicant were to return to Iran, he may face some brief questioning at the airport but I am not satisfied that this conduct amounts to significant harm as defined in s.36(2A). I accept that the applicant was baptised and has attended church services on a limited number of occasions whilst in Australia. However, I do not accept the applicant is a genuine convert to Christianity and nor do I accept he has any interest in pursuing this faith on return to Iran. I do not consider there is any risk of harm faced by the applicant as a result of him being baptised or attending church services in Australia and this information would not be known by Iranian authorities. I have otherwise concluded that the applicant does not face a real chance of any harm for the reasons claimed. As 'real chance' and 'real risk' are of same threshold, I am therefore satisfied that the applicant does not face a real risk of harm, including significant harm for any reason.

Complementary protection: conclusion

64. 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.