



Australian Government
Immigration Assessment Authority

Decision and Reasons

Referred application

IRAN

IAA reference: IAA20/08802

Date and time of decision: 11 January 2021 16:34:00

M Simmons, Reviewer

Decision

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

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

Background to the review

Visa application

1. The referred applicant (the applicant) claims to be an Iranian national. On 25 September 2017 he lodged an application for a temporary protection visa. A delegate of the Minister for Immigration refused to grant that visa on 3 December 2020, finding that the applicant did not engage Australia's protection obligations and that s.91W(2) of the Migration Act prevented the grant of the visa.

Information before the IAA

2. I have had regard to the review material given by the Secretary under s.473CB of the *Migration Act 1958* (the Act). No further information has been obtained or received.
3. Since lodging his visa application, the applicant appears to have made no contact with the Department, or indeed with the IAA, and seems to have been uncontactable. The IAA sent an acknowledgement of referral letter to the address provided in the visa application and a copy of that letter to a different address mentioned in the delegate's decision record, neither has been returned unclaimed. They IAA also unsuccessfully attempted to contact applicant by phone on the number provided in his visa application

Applicant's claims for protection

4. The applicant's claims can be summarised as follows:
 - He was raised in a strict Islamic family but himself is no longer adherent to Islam. He now considers himself agnostic and has explored different religions since coming to Australia.
 - While in Iran his father forced him to attend mosque and engage in religious rites. When he was around [age] his father punished him by striking him with a hot kebab skewer after detecting alcohol on his breathe. To punish the applicant for smoking, which is against Islam, his father would put his cigarette butt out in his arm.
 - He disagrees with the Iranian government and the way they operate. There is no freedom of speech in Iran. He was detained by the Basij while in Iran for walking with his girlfriend in public and for organising a birthday party for one of his friends. These incidents caused problems with his family, and his father punished him by belting him with a garden hose.
 - Because of his rejection of Islam and his political opinions in favour of Western ideals such a freedom of speech, he would be arrested by the Basij should be return to Iran. Now he lives in Australia, he engages in activities like eating pork. Due to this behaviour, it would become apparent he is not practicing Islam should he return to Iran and he fears that this would lead to his arrest and execution.

Identity documents – request from Minister

5. In this matter a preliminary issue arises of whether the grant of the visa is prevented by the operation of ss.65 and 91W of the Act. Under s.65 the Minister is to refuse to grant a visa to an applicant if, after considering a valid application for the visa, the Minister is not satisfied that the grant of the visa is not prevented by s.91W (evidence of identity and bogus documents).

6. Section 91W of the Act prevents the grant of a protection visa to an applicant who, without a reasonable explanation, refuses or fails to comply with a request to produce documentary evidence of their identity, nationality or citizenship, or produces a 'bogus document' (defined in s.5(1)) in response to the request. However, that requirement will not apply if the Minister is satisfied that the applicant has a reasonable explanation for the failure or refusal, and either provides the relevant documentary evidence or has taken reasonable steps to provide such evidence.

Application of s.91W to this case

7. On 5 October 2017 the applicant was requested in writing to produce documentary evidence of his identity, nationality or citizenship under s.91W(1) of the Act. The letter stated that if he failed or refused to do so, or produced a bogus document in response, and if he does not have a reasonable explanation for refusing or failing to comply with the request or for producing a bogus document, the grant of the protection visa will be prevented under s.91W of the Act and the visa must be refused under s.65 of the Act.
8. The request was posted to the residential address provided by the applicant in his visa application, which was lodged around 2 weeks prior to the request. The applicant indicated in that application that all written communication was to be sent to himself and he did not agree to receiving correspondence by email, nor did he provide an email address. He would have been deemed to have received that letter 7 working days after the date of the letter per s.494C. I am satisfied the applicant was given a request under s.91W(1) and the applicant was warned that a protection visa cannot be grant to him if he refused or failed to comply with the request, or provided a bogus document, without a reasonable explanation. I am satisfied that the request complied with s.91W(2)(d). The applicant did not reply to that request.
9. On 4 November 2020 the applicant was invited in writing to provide a reasonable explanation for refusing or failing to comply with the 5 October 2017 request. He was advised that if he did not have a reasonable explanation for refusing or failing to comply with the request, then the grant of the protection visa will be prevented by s.91W(2) of the Migration Act and his protection visa application will be refused. He was advised that he had 14 days after the date he was taken to have received that letter to provide a response. No response was received prior to the delegate's decision.
10. No documents were provided with the visa application in support of the applicant's claimed identity. Nor does there appear to be anything in that application suggestive of why the applicant may not be able to comply with a s.91W request. On the contrary, in his visa application the applicant alluded to intending to provide documents in the future. On the visa application form the applicant indicated he would be providing copies of his passport, national identity card, birth certificate, and military exemption card later. The applicant states that *"all my ID cards are currently in Iran. I will ask my family to send them to me and bring them to interview."* This application was prepared with assistance from a migration agent.
11. It appears that the Department sought to contact the applicant on numerous occasions in relation to his protection visa application. On 28 May 2020, 18 June 2020 and 28 July 2020, the applicant was invited by written correspondence to his designated address to attend an interview to discuss his protection claims. The applicant did not respond or take part in any of these interviews. On 20 August 2020 he was requested to provide more information in relation to his protection claims. This correspondence was sent to a different address to that set out in the visa application. On 4 November 2020 the applicant was then invited by letter posted to his specified residential address, to provide a reasonable explanation for not providing identity,

nationality or citizenship documentation. It seems most of these letters were returned to the Department of Home Affairs unclaimed. The letter sent on 4 November 2020 to the address provided in his visa application was evidently returned unclaimed with handwritten notations "RTS" and "moved out 5 years ago". Written correspondence between Departmental officials also refers to a number of attempts to reach the applicant by telephone on 9 July 2020 and 17 July 2020. I note that in the visa application form the applicant signed a declaration undertaking to inform the Department if he intends to change his address for more than 14 days while his application is being considered. Records before me indicate that the applicant was not able to be contacted by post at his specified address, however there is nothing on the material before me to indicate the applicant advised the Department of any change in his residence or preferred method of communication.

12. The applicant was requested in writing to produce documentary evidence of identity, nationality or citizenship. When that request was made the applicant was warned that a protection visa cannot be granted to him if he refused or fails to reply with the request or produces a bogus document in response to the request, and he does not have a reasonable explanation for doing so. The applicant has failed to comply with the request. There is no explanation, reasonable or otherwise, on the material before me for this noncompliance. To date the applicant has neither produced documentary evidence of his identity, nationality or citizenship; or demonstrated that he has taken reasonable steps to produce such evidence. I am satisfied that both the request to provide this documentary evidence and the request for a reasonable explanation for failing to do so were both sent to the address nominated by the applicant in his visa application form.
13. The applicant has failed to comply with a request for documents under s.91W and has offered no explanation for doing so. Section 91W applies to the applicant. Therefore, the grant of the visa is prevented by that section and under s.65 it must be refused.
14. In the circumstances I consider it unnecessary to determine whether the applicant meets the criteria in s.36(2) for a protection visa. I note that there has been no opportunity to explore or test the applicant's reasons for fearing harm in Iran at an interview, and the applicant has not provided any documentary evidence related to his protection claims. As such, were I to consider whether the applicant satisfies the criterion for a protection visa in s.36(2), on the limited information before me I would not be satisfied that the applicant meets that provision in any event.

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:

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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

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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.

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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.

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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.

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36 Protection visas – criteria provided for by this Act

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- (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.

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Protection obligations

- (3) Australia is taken not to have protection obligations in respect of a non-citizen who has not taken all possible steps to avail himself or herself of a right to enter and reside in, whether temporarily or permanently and however that right arose or is expressed, any country apart from Australia, including countries of which the non-citizen is a national.
- (4) However, subsection (3) does not apply in relation to a country in respect of which:
- (a) the non-citizen has a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion; or
 - (b) the Minister has substantial grounds for believing that, as a necessary and foreseeable consequence of the non-citizen availing himself or herself of a right mentioned in subsection (3), there would be a real risk that the non-citizen will suffer significant harm in relation to the country.
- (5) Subsection (3) does not apply in relation to a country if the non-citizen has a well-founded fear that:
- (a) the country will return the non-citizen to another country; and
 - (b) the non-citizen will be persecuted in that other country for reasons of race, religion, nationality, membership of a particular social group or political opinion.
- (5A) Also, subsection (3) does not apply in relation to a country if:
- (a) the non-citizen has a well-founded fear that the country will return the non-citizen to another country; and
 - (b) the Minister has substantial grounds for believing that, as a necessary and foreseeable consequence of the non-citizen availing himself or herself of a right mentioned in subsection (3), there would be a real risk that the non-citizen will suffer significant harm in relation to the other country.

Determining nationality

- (6) For the purposes of subsection (3), the question of whether a non-citizen is a national of a particular country must be determined solely by reference to the law of that country.
- (7) Subsection (6) does not, by implication, affect the interpretation of any other provision of this Act.

91W Evidence of identity and bogus documents

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

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

...