



**Australian Government**  
**Immigration Assessment Authority**

**Decision and Reasons**

**Referred application**

---

IRAN

IAA reference: IAA21/09012

Date and time of decision: 6 May 2021 10:21:00

M Brereton, 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 citizen and an apostate. He departed Iran lawfully [in] May 2013 and arrived [in] May 2013. On 7 August 2017, he lodged a valid application for a Safe Haven Enterprise Visa (SHEV). On 7 April 2021, a delegate of the Minister for Immigration (the delegate) refused to grant the SHEV.
2. The applicant claimed to fear harm because his family has an adverse political profile because of his father's military service for the previous regime. He also fears harm because of his own real or imputed political opinion, he no longer practises his religion, and he is facing an outstanding prison sentence.
3. The delegate accepted the applicant's claims as to identity and origin. The delegate accepted that the applicant is an apostate and has a low-level imputed adverse political opinion, but did not accept that the applicant faces an outstanding prison sentence, or that he and his family are of the level of adverse interest he claimed. The delegate was not satisfied that the applicant faced a real chance or real risk of relevant harm should he return to Iran.

### Information before the IAA

4. I have had regard to the review material given by the Secretary under s.473CB of the *Migration Act 1958* (the Act).
5. The review material contains a copy and translation of a document described as a verdict of the [Court]. This document refers to a sentence being imposed on the applicant, but the sentence is imposed 'on the basis of Articles 46, 48, 49, and 50 of the Islamic Penal Code.' There is no other information in the review material indicating what those articles relate to. The delegate did not accept the applicant's claim to have been sentenced to imprisonment, or to fear being imprisoned for that sentence should he return to Iran. Part of the delegate's concern was that the sentence of three years' imprisonment was inconsistent with information about sentences for similar offences. The delegate was also sceptical that the applicant could have lawfully departed Iran while waiting to begin a sentence of imprisonment (as he claimed).
6. I have obtained new information, being a translated copy of the Islamic Penal Code.<sup>1</sup> This information indicates that the relevant articles provide for a suspension of punishment on the condition that the offender refrain from committing any other offences for a set period. This appears, on its face, to support the applicant's claim of being sentenced but being able to depart Iran on his own passport. It also appears to address aspects of the inconsistency identified by the delegate. In the circumstances, I am satisfied that there are exceptional circumstances to justify considering this new information.
7. The review material contains material that the applicant provided following the interview with the delegate on 5 February 2021 (the interview). Some of this information is in a language other than English and some is not translated. During the interview the delegate invited the applicant to provide further evidence and said that non-English material needed to be translated. The applicant's covering emails refer to attaching some evidence and state that his family is looking to see if there is any more. He subsequently provided translations of some material, but not all. I am satisfied that he has had a real and meaningful opportunity to

---

<sup>1</sup> 'Islamic Penal Code, Books I and II (Iran)', 21 April 2013, CIS36DE0BB2877.

provide evidence in support of his claims, and that he was on notice as to the need for translations. I have decided to proceed on the basis of the evidence before me (including the information that I have obtained) and not to invite the applicant to provide further information or comment.

### **Applicant's claims for protection**

---

8. The applicant's claims can be summarised as follows:
- He was born in Iran to a Shi'a Muslim family but is no longer a practising Muslim.
  - His father was an officer in the pre-revolution Iranian army. After the revolution, his father was sentenced to death, but he repented and was spared.
  - His father was allowed to resume serving in the army but was always under suspicion and surveillance.
  - When the applicant was about [age] years old, he was assaulted by enemies of his father. His father fought with the enemies and was arrested and imprisoned for two months, then forced to retire from the army.
  - The applicant began questioning Islam as a teenager. He participated in a few protests in 2009.
  - The applicant began working at a friend's [business] when he was in his [age]. He used to criticise Islam and the Iranian regime while at the [business]. Some of the people at the [business] may have been spies for the regime.
  - In 2012, he was with a girlfriend, Z. The house was raided, and they were arrested and charged with alcohol offences and adultery. The applicant was convicted and was sentenced to 3 years' imprisonment, 30 lashes and a fine. He was released on bail but later fled Iran before serving the sentence.
  - A few months after the raid, he was kidnapped from the [business] by unknown men. He was taken to a house and was beaten and sexually assaulted. The men told him it was because he spoke out against Islam.
  - Z's family have threatened to kill him and have been coming to his parents' houses looking for him and asking about him.
  - Other people continue to come to his parents and ask about him and his siblings (some of whom are also in Australia).

### **Refugee assessment**

---

9. Section 5H(1) of the Act provides that a person is a refugee if, in a case where the person has a nationality, he or she is outside the country of his or her nationality and, owing to a well-founded fear of persecution, is unable or unwilling to avail himself or herself of the protection of that country; or in a case where the person does not have a nationality—is outside the country of his or her former habitual residence and owing to a well-founded fear of persecution, is unable or unwilling to return to it.

## Well-founded fear of persecution

10. Under s.5J of the Act 'well-founded fear of persecution' involves a number of components which include that:
- the person fears persecution and there is a real chance that the person would be persecuted
  - the real chance of persecution relates to all areas of the receiving country
  - the persecution involves serious harm and systematic and discriminatory conduct
  - the essential and significant reason (or reasons) for the persecution is race, religion, nationality, membership of a particular social group or political opinion
  - the person does not have a well-founded fear of persecution if effective protection measures are available to the person, and
  - the person does not have a well-founded fear of persecution if they could take reasonable steps to modify their behaviour, other than certain types of modification.
11. The applicant claims to be a citizen of Iran and of Persian/Farsi ethnicity. He no longer has his Iranian passport, but he has provided copies and translations of his Iranian birth certificate, national identity card, and Military Service Exemption Card. He has been assisted by Farsi interpreters in his engagement with the Department (although I note that he speaks good English). I accept his claims as to identity and origin and I find that he is an Iranian citizen and that Iran is the receiving country for the purposes of this review.
12. The applicant claims that his father served as an officer in the pre-revolution army in Iran. He said that his father was not a general but was something like a '[position]'. The record of his entry interview conducted on [date] July 2013 (the entry interview)<sup>2</sup> states that his father was a [Position 1]. After the interview with the delegate, he provided the delegate with documents and translations that he claims are related to his father's service and which give his father's retirement rank as [Position 1], and an end of service date as [date] May 1995. There are also documents which confirm his father's service during the pre-revolutionary Shah regime and the Iran-Iraq war. The applicant has been consistent with his claims in relation to his father's service and his claims are supported by documentary evidence. I accept that the applicant's father served in the Iranian Army, both before and after the revolution.
13. The applicant claims that his father was sentenced to death by the new regime but was spared after repenting and was then allowed to continue serving with the new army. There is no documentary evidence of this part of the father's history, but I am satisfied that the applicant has been credible in relation to other aspects of his father's history and I am prepared to accept that he has been told, and believes, this to be the case. I accept that the applicant's father continued serving with the post-revolution army, but I also accept that despite this, the father may have been viewed with some lingering suspicion and may have had enemies in the new regime.
14. The applicant claims that the family was made fun of because of his father's history and that when he (the applicant) was aged about [age], one of the father's enemies pushed the applicant into a fire and he was injured. He knows it was an enemy because his parents told him this. His father went and confronted the person and there was a fight, which led to his

---

<sup>2</sup> Written record only. No audio recording is available.

father being imprisoned for two months and then forced to retire from the army. The applicant said that his father retained his army pension. I accept that the applicant was injured at a young age and that he was told, and believes, this was done by an enemy of his father. It is not implausible that this was the reason for the incident and the aftereffects, and I am prepared to accept that his father was detained and then had to leave the army. This is the only physical incident arising from the father's profile that the applicant experienced in Iran, and it appears to have been an opportunistic assault on a young boy, rather than a part of ongoing and systematic incidents. The applicant is now an adult and I am not satisfied that there is any more than a remote chance that he will be the subject of adverse interest arising from his father's past profile now, should he return to Iran. I am not satisfied that he faces a real chance of harm because of his father's profile.

15. The applicant claims that he attended some protests in 2009. According to the Australian Department of Foreign Affairs and Trade (DFAT)<sup>3</sup>, after the June 2009 presidential election in Iran, up to 3 million supporters of the defeated reformist candidate took to the streets of Tehran to protest the official verdict that Mahmoud Ahmadinejad had been re-elected in a landslide. These protests became known as the 'Green Movement', after the reformist's campaign colour. In response, the government despatched security forces, including the Iranian Revolutionary Guards Corps (IRGC), the Basij<sup>4</sup> and plain-clothed paramilitary forces. These forces beat thousands of protesters and arrested hundreds, while snipers killed dozens. By early 2010, the government had succeeded in quashing public displays of opposition. I accept that the applicant attended protests in Iran at this time. He said that he was not part of any organization, and the protestors he was with were just a group of ordinary people. He was not arrested, harassed, targeted, or questioned, nor does he claim that the authorities or any other group or persons came looking for him, or asked about him, in the aftermath of the protests.
16. The applicant said that because of his father's profile, his family was under surveillance and his parents told him that their telephones were tapped. Information in the review material indicates that surveillance is common and widespread in Iran,<sup>5</sup> and I am prepared to accept that the authorities may have been monitoring his father and that his parents warned him of surveillance. However, the applicant's attendance at the protests, unhindered and undiscovered, indicates that the applicant was not himself under suspicion or adverse interest, nor was he ever identified or accused of having attended such protests. I do not consider it is plausible that the applicant was able to attend protests unhindered and undiscovered if his family was subject to the level of official scrutiny that he has claimed. I do not accept that the applicant was under surveillance himself, or that he faces a real chance of such surveillance should he return to Iran.
17. The applicant claims that he began working at a friend's [business] when he was in his [age]. He used the [business] as a place to discuss his opinions with people, although he was aware that he might be overheard. He said that lots of the people who came to the [business] were working as spies for the regime and he was worried they were coming to monitor him. He said that he knew the risks but hated the regime and talked openly about it to people he trusted. At first glance this appears implausible given the claim that he knew his family was under surveillance, but the applicant's evidence does not indicate that he spoke openly to groups; rather, that he spoke to people he believed he could trust. I accept that he discussed his

---

<sup>3</sup> Department of Foreign Affairs and Trade (DFAT), 'DFAT Country Information Report – Iran', 14 April 2020, 20200414083132. See also United States Institute of Peace, 'The Green Movement', 1 January 2010, CX303910.

<sup>4</sup> The Basij Resistance Force ('the Basij') is a volunteer paramilitary force that operates under the command of the IRGC.

<sup>5</sup> 'State Surveillance in Iran "There's No Such Thing as Your Own Four Walls"', Qantara, 25 March 2013, CX305435.

opinions at the [business], and it is plausible that he may have been overheard, or that some of those he trusted reported his discussions to others.

18. The applicant claims that unknown men kidnapped him from the [business] one night in 2012 and took him to a house. He was accused of speaking out against Islam and was subjected to physical and sexual assaults. It is plausible that if his opinion had become known to religious extremists, they may have taken such action. I accept that the applicant was kidnapped and assaulted as he has claimed, and I am satisfied that this was due to his speaking out at the [business]. There is no evidence before me indicating the identities of these persons, or whether they were linked to the Iranian authorities. The applicant was assaulted and then released and was later able to depart Iran on his legal passport without any interest from, or hindrance by, the authorities. There is no evidence before me indicating that the authorities have an ongoing interest in him. He said that he thinks his family received a letter about him, but he has not produced this letter and there is no other evidence indicating that the authorities have issued warrants against him, or have sought details of his whereabouts or intentions. In the circumstances, I am not satisfied that the kidnapping was linked to the Iranian authorities. I find that it was perpetrated by unknown persons who may have become aware of comments he made at the [business].
19. I am not satisfied that the applicant was of adverse interest to the Iranian authorities for any real or imputed political opinion at the time he left Iran. However, I accept that his political opinion did lead to the kidnapping and assault in 2012. Given that the applicant was released, and there were no apparent attempts to locate or further harm him, I am not satisfied that he faces a real chance of harm arising from this incident.
20. At the interview, the applicant claimed that he has made social media posts in Australia and that these could lead to his being targeted and harmed should he return to Iran. He said that he had received death threats because of these posts. The delegate asked if there was any evidence of these posts or threats and the applicant said that he would try to obtain some. Following the interview, the applicant provided some screen shots but as these are not translated, it is not possible to identify what they relate to. The applicant's covering email states that these relate to shaming the leaders of Iran, accusing them of using religion to kill people in Syria or Iraq, accusing them of hanging protesters, and 'my opinion about regime'. The review material also contains information about the applicant's publicly accessible social media profile which indicates that he is [an occupation] and has a large following (more than 15,000 people). The open source information does not contain any posts, comments, or other information indicating that the applicant has been publishing anti-regime or anti-religious views. Apart from the applicant's claim, there is no evidence provided indicating that the applicant has received death threats because of social media posts.
21. Although the Iranian Constitution claims to protect its citizens from non-lawful trespass by the State, information before me indicates that the government routinely infringes on this right. Security forces have been seen to monitor the social activities of citizens, enter homes, and monitor telephone conversations and internet communications, without court authorization. Social networking sites including Facebook, Telegram, and Twitter, are officially banned in Iran and the security forces have targeted citizens who have been actively posting criticism or social commentary on such sites. Journalists, bloggers, and some social media users have been arrested for their activities. The authorities have also arrested persons who manage or moderate activist sites.<sup>6</sup> The government has also used internet shutdowns to curb protests

---

<sup>6</sup> United States Department of State, 'Country Reports on Human Rights Practices for 2019 - Iran', 11 March 2020, 20200312093514.

and has also restricted foreign-content sites and platforms. Freedom House reports that many users, including private citizens, practise self-censorship.<sup>7</sup> While there are approved networks, many of those are controlled by the Iranian state and opponents of the regime claim that these work in close co-operation with intelligence and other state organisations, to assist in suppressing dissent.<sup>8</sup>

22. DFAT<sup>9</sup> reports that Iranians are able to criticise the government of the day robustly, both in public conversation and online in social media, although this freedom is not unlimited. Some topics or critical commentary may lead to prosecution under national security legislation. The social media accounts of well-known figures and celebrities attract particular scrutiny. Local sources also said that it is common for Iranians to be critical of the government in public places, but people remain cautious about crossing well-understood 'red lines', like insulting the Supreme Leader, in their public interactions beyond close family and friends. The authorities monitor social media and individuals posting content openly critical of the Islamic Republic, its institutions and policies, or that is deemed to be pushing moral boundaries, may attract adverse attention. However, DFAT assesses that the authorities do not comprehensively monitor Iranians' online activities. Individuals with a public profile (including with large social media followings, particularly on Instagram), who are politically active, advocate for greater human rights, have connections to foreigners and are otherwise perceived as threats to the Islamic Republic are more likely to have their social media monitored and may face a higher risk of arrest or harassment than other Iranians. Other information also indicates that those with high profiles, including journalists, activists, and agitators are more likely to face harassment and harm than ordinary citizens. Other groups that have been targeted have included artists (on 'moral' grounds) and other 'immoral' users.<sup>10</sup>
23. The applicant's evidence indicates that his social profile is that of [an occupation] and although he has a large number of followers, his evidence does not indicate that he also has a profile as an activist, political commentator, critic, or any similar identity. I am not satisfied on the evidence before me that he has been, or will be perceived to have been, active in spreading criticism, dissent, or undertaking any other activist type role. I am not satisfied that there is a real chance that he will come to the adverse attention of the authorities because of his social media profile or presence.
24. I accept that the applicant may wish to continue voicing his opinions should he return to Iran. His evidence is that he did not do so publicly in the past, and that he has otherwise demonstrated caution (albeit he may have been overheard at the [business]). Having regard to his experiences, I consider it unlikely that he will publicise his views should he return. I find that he will exercise discretion in voicing his opinions and am satisfied that by doing so, he will not face a real chance of coming to the adverse attention of any group or person. To the extent

---

<sup>7</sup> Freedom House, 'Freedom on the Net 2020 - Iran', 14 October 2020, 20201016084814.

<sup>8</sup> 'Anatomy Of Suppression In Iran: The Institutions and Tactics That Repeatedly Quash Dissent', Radio Farda (Czech Republic), 21 August 2018, CXBB8A1DA34009.

<sup>9</sup> DFAT, 'DFAT Country Information Report – Iran', 14 April 2020, 20200414083132.

<sup>10</sup> Freedom House, 'Freedom on the Net 2017 – Iran', 14 November 2017, NG2A465F5221; United Kingdom Home Office, 'Country Policy and Information Note—Iran: Journalists and Internet-based media', 25 October 2016, OGD7C848D83; 'Fictitious Profiles and WebRTC's privacy leaks used to identify Iranian activists', Iran Threats, 11 November 2016, CX6A26A6E16849; 'Iran struggles to mold 'revolutionary youth'', Al Monitor, 25 July 2019, 20190730084312. See also, for example, 'Iran: Telegram admins sentenced to prison', Iran Human Rights Monitor (United States), 22 August 2017, CXC90406612560; 'Iran Tightens Its Grasp on Telegram Use', Huffington Post (United States), 6 June 2017, CXC9040669094; 'Three Young Iranian Men to Serve 12 Years in Prison For 'Insulting' Social Media Posts', Center for Human Rights in Iran (United States), 28 April 2017, CXC9040666693; 'Press freedom violations recounted in real time (January-December 2016)', Reporters sans Frontières (France), 6 January 2017, CXC904066693; 'Security Agencies and the Prosecution of Online Activists', International Campaign for Human Rights in Iran (United States), 11 November 2014, CX1B9ECAB9307.

that exercising such discretion may be said to be a modification of behaviour, I am satisfied that it is a reasonable step to take to avoid a real chance of persecution and is not an impermissible modification as contemplated by s.5J(3).

25. I am not satisfied that the applicant faces a real chance of harm arising from any real or imputed political opinion, should he return to Iran.
26. The applicant claims that in 2012 (just prior to the kidnapping incident discussed above), he was in a house alone with his girlfriend, Z, drinking alcohol and making love. The authorities raided the house and arrested them, charging them with alcohol offences and adultery. The applicant's SHEV application includes a document and translation said to be the verdict entered against the applicant. According to this document, he and Z were charged with carrying and storage of alcoholic beverages, participation in carrying and storage of alcoholic beverages, drinking alcoholic beverages, and adultery. They were acquitted of the adultery charge, but the applicant was convicted of the alcohol offences and sentenced to three years' imprisonment, 30 lashes and a fine of 5 million *rials*. The verdict states that the imprisonment is issued on the basis of articles 46, 48, 49 and 50 of the Islamic Penal Code and the applicant is required to refrain from committing intentional offences during this period, or the imprisonment sentence will be 'extended'. The applicant claims that following the verdict, he was released 'on bail', pending being imprisoned, but he later departed Iran. He claims that he will be subject to the outstanding prison sentence if he returns.
27. Information in the review material indicates that while the production or sale of alcohol may attract imprisonment, lashes, and a fine, the punishment for consumption is normally a fine. Floggings are also rare.<sup>11</sup> It also indicates that although travel bans are not automatic for those on bail, there are security checks at the airport which will identify persons with outstanding issues with the authorities.<sup>12</sup>
28. I have obtained a translation of the identified articles of the Islamic Penal Code.<sup>13</sup> Article 46 provides that a court can suspend the execution of all or part of a punishment from one to five years. Article 48 provides that suspension can take two forms – simple or supervised. Article 49 provides that a writ of suspension shall be issued by the court within the judgment of conviction or after that. Anyone, whose punishment has been wholly suspended, if s/he is in custody, shall be released immediately. Article 50 provides that when someone who has been released on suspension does not comply with the court orders, the suspension can be cancelled, and the punishment may be extended. Having regard to the above, I am satisfied that the meaning of the court verdict is that although the applicant was sentenced to imprisonment, this sentence was suspended, and the applicant was ordered to refrain from committing further offences for three years and was released from custody. I do not consider this to be inconsistent with the other information before me and I accept that the applicant was charged, convicted, and sentenced as he has claimed, but the imprisonment was suspended for three years. There is nothing in the order indicating that the applicant was required to pay any bail or surety, report to the police during this suspension period, or that he was not allowed to leave Iran. The three-year period expired in 2015 and the applicant has not claimed to have committed any further offences in Iran (or Australia) during that period.

---

<sup>11</sup> DFAT, 'DFAT Country Information Report – Iran', 14 April 2020, 20200414083132.

<sup>12</sup> Danish Refugee Council and Danish Immigration Service, 'Iran: Judicial issues', 1 February 2018, CIS7B83941638; Danish Immigration Service, 'Human Rights Situation for Minorities, Women and Converts, and Entry and Exit Procedures, ID Cards, Summons and Reporting, etc.', 1 April 2009, CIS17329.

<sup>13</sup> 'Islamic Penal Code, Books I and II (Iran)', 21 April 2013, CIS36DE0BB2877.



29. I am satisfied that the court order has been discharged by the passage of the three years. I am not satisfied that the applicant will be of any adverse interest to the authorities arising from this previous conviction, including for having left Iran, or that he faces any outstanding punishment for this conviction should he return to Iran. Further, even if he were to face punishment on return, I am satisfied the processes and penalties the applicant may face would result from the lawful prosecution of a crime and there is no evidence before me that laws relating to illegal storage, use or possession of alcohol are discriminatory on their terms, are applied in a discriminatory manner, or are selectively enforced. It does not amount to persecution for the purposes of ss.5H(1) and 5J(1) of the Act.
30. The applicant claims to fear harm from Z's family because of the adultery charge. As noted above, the court record states that the applicant and Z provided 'reasonable defenses' and there are 'no clear reasons for the commitment of the crime'. The court determined the applicant and Z innocent of this charge. However, while this is the official verdict, I accept that Z's family may still have had some animosity towards the applicant, including for having involved Z in the alcohol offences. It is plausible, and I accept, that Z's family expressed this animosity toward him and may have threatened to harm him; however, I am satisfied that this arose in the context of a private family dispute. I am not satisfied that it was, or would be, persecution for reasons of race, religion, nationality, membership of a particular social group or political opinion, and thus would not be persecution as contemplated by the Act.
31. I accept that the applicant does not practise Islam. Local sources have told DFAT that secularism is widespread, particularly in the major cities and among younger and wealthier Iranians. A significant proportion of the population does not attend mosque or pray on a regular basis, and alcohol consumption is common. Official sources told DFAT that religion was a private matter — that, beyond the expectation that people do not eat in public or hold parties during the holy Muslim month of Ramadan, how one wished to observe Islam was an individual choice, and was not a matter for the state. DFAT heard anecdotally that many Iranians do not observe Ramadan strictly, including by eating, drinking liquids, and smoking at home. Those caught eating in public during Ramadan run the risk of arrest and prosecution. DFAT assesses that non-practising Iranian Muslims face a low risk of official and societal discrimination, particularly in the major cities.<sup>14</sup>
32. Other information supports DFAT's view that punishments for apostasy are rare. Vocal critics, scholars, and high-profile activists continue to be harassed, arrested, and charged, but it does not indicate that those who simply do not practise their religion are targeted or subjected to serious harm for that reason.<sup>15</sup>
33. Apart from his claims in relation to the [business], the applicant does not claim that he has come to any other adverse attention as a non-practising Muslim. I am not satisfied that there is any more than a remote chance that he will be identified as a non-practising Muslim or that he will suffer any harm as a result. Even if he was identified as a non-practising Muslim, the information before me does not indicate that he will face a real chance of harm that could be considered serious harm, for that reason.
34. The applicant left Iran on a lawful passport. He claims, and I accept, that he no longer has his passport. I accept that should he return to Iran, he will need to obtain documentation to facilitate his travel. While officials assist Iranians who wish to voluntarily return, Iranian

---

<sup>14</sup> DFAT, 'DFAT Country Information Report – Iran', 14 April 2020, 20200414083132.

<sup>15</sup> Austrian Centre for Country of Origin and Asylum Research and Documentation (ACCORD), 'Iran – COI Compilation', 1 July 2018, 20190326122102; 'Iran bulldozes grave of pastor executed for apostasy', Article 18, 9 January 2020, 20200110111033; 'Pastor in Iran Awaits Decision on Execution', Compass Direct, 28 July 2011, CX270264.

overseas missions will not issue travel documents to an Iranian whom a foreign government wishes to return involuntarily to Iran. Iran and Australia signed a Memorandum of Understanding (MOU) on Consular Matters on 19 March 2018, to facilitate the return of Iranians who arrived after that date and who have no legal right to stay in Australia,<sup>16</sup> but as the applicant arrived in Australia before that date, he does not fall into this category. I am satisfied there is no real chance the applicant will be returned to Iran involuntarily. If the applicant did return to Iran in the foreseeable future, it would only be on a voluntary basis, using a temporary travel document issued by the Iranian authorities. I accept that the applicant's presence in Australia may therefore become known to the Iranian authorities, should he return to Iran.

35. DFAT<sup>17</sup> states 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 in relation to protection claims. Those who return on temporary travel documents are questioned by the Immigration Police at the airport about the circumstances of their departure and the reasons for travelling on a temporary travel document. This questioning takes between 30 minutes and one hour but can take longer if the returnee gives evasive answers or is suspected of having a criminal history. Arrests and mistreatment are not common during this process. Other information in the review material supports DFAT's assessment that returnees with no other adverse profiles are unlikely to face adverse interest from the Iranian authorities.<sup>18</sup>
36. I have found above that the applicant will not be of adverse interest to the Iranian authorities for any reason, including for having departed Iran following his court conviction. He has not been involved in political, anti-religious or similar activities while here in Australia. I accept that the applicant may be questioned by the Iranian Immigration Police if he returns to Iran on temporary travel documents, but I do not accept that he will be of adverse interest to the authorities for any reason, or that he will be subjected to any degree of ill-treatment at the airport upon his return.
37. DFAT also notes that millions of Iranians travel into and out of Iran each year without difficulty, including the large Iranian diaspora residing in North America and Europe. People with an existing high profile may face a higher risk of coming to official attention on return to Iran, particularly political activists, but for the reasons given above I am not satisfied that the applicant will be of adverse interest to the Iranian authorities, including for criminal, political or religious matters, if he returned to Iran. DFAT notes that some people with 'Western' appearances may be 'frowned upon' by more conservative Iranians, but there is no information indicating that this has included or amounted to threats to life or liberty, or significant physical harassment or ill treatment. The information before me does not indicate to me that persons who return to Iran face harm that includes, or could amount to, a threat to life or liberty, or

---

<sup>16</sup> DFAT, 'DFAT Country Information Report – Iran', 14 April 2020, 20200414083132.

<sup>17</sup> DFAT, 'DFAT Country Information Report – Iran', 14 April 2020, 20200414083132.

<sup>18</sup> 'Zahra Majd Sequestered for Opinions of her Dissident Spouse', Human Rights Activists News Agency (HRANA), 15 October 2018, CXBB8A1DA36878; 'Iranian poet/activist arrested at Tehran airport', Radio Zamaneh, 8 January 2016, CX6A26A6E140; 'New Video: Iranian Expats Face Arrest upon Return to their Homeland', International Campaign for Human Rights in Iran, 23 April 2015, CXBD6A0DE5203; 'Jailing of returning journalists called part of anti-Rohani plan', Radio Zamaneh, 31 July 2014, CX324017; 'Rouhani has yet to deliver on press reforms in Iran', Committee to Protect Journalists, 13 March 2014, CX318970; 'Mousavi's campaign worker arrested upon return to Iran', Radio Zamaneh, 16 February 2014, CX318168; Amnesty International, 'We are ordered to crush you': Expanding Repression of Dissent in Iran', 28 February 2012, CIS22610; Amnesty International, 'AMNESTY INTERNATIONAL - URGENT ACTION: UA 125/11: Student activists held in Iran', 6 May 2011, CX264288; Danish Refugee Council and Danish Immigration Service, 'Iranian Kurds: On Conditions for Iranian Kurdish Parties in Iran and KRI, Activities in the Kurdish Area of Iran, Conditions in Border Area and Situation of Returnees from KRI to Iran', September 2013, CIS26587.

significant physical harassment or ill treatment. Nor does it include, or amount to, significant economic hardship, denial of access to basic services, or denial of capacity to earn a livelihood of any kind, that would threaten a person's capacity to subsist, or any other type of harm that may be considered serious harm as contemplated by the Act.

38. I am not satisfied that the applicant will face a real chance of serious harm from the Iranian authorities or any other person for any reason or reasons associated with his travel to and presence in the West, or his asylum claims.
39. The applicant does not have a well-founded fear of persecution in Iran.

### **Refugee: conclusion**

40. 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**

---

41. 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**

42. 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.
43. The expressions 'torture', 'cruel or inhuman treatment or punishment' and 'degrading treatment or punishment' are in turn defined in s.5(1) of the Act.
44. Is there a real risk that the applicant will suffer significant harm? - Insert findings and reasons.

### **Qualifications to the real risk threshold**

45. Section 36(2B) provides that there is taken not to be a real risk that a person will suffer significant harm in a country if:
  - it would be reasonable for the person to relocate to an area of the country where there would not be a real risk that the person will suffer significant harm

- the person could obtain, from an authority of the country, protection such that there would not be a real risk that the person will suffer significant harm, or
  - the real risk is one faced by the population of the country generally and is not faced by the person personally.
46. I accept that the applicant may have been threatened by Z's family after the arrest and prosecution. The applicant told the delegate that Z's family were involved with the police, but there is no evidence before me indicating that this is the case. I also note that the incident occurred nearly 10 years ago, and the applicant has been in Australia for most of that time. He claimed that he has received threatening messages in Australia, but he did not retain these. He told the delegate that he has had no contact with Z or her family for about a year. He does not claim that he will instigate contact with Z should he return. I do not consider it plausible that Z's family has continued to harass the applicant's family, ask his whereabouts, or send him threatening messages over this extended period. I do not accept that he has remained of adverse interest to Z's family, nor do I accept that there is any more than a remote chance that Z's family would find out if the applicant returned, track him down and seek to harm him now. Even if they did, I am not satisfied on the evidence before me that Z's family has any influence with the police and I am not satisfied that the applicant would be unable to seek protection from the authorities in Iran, should he need to do so. I am not satisfied that the applicant faces a real risk of significant harm from Z's family should he return to Iran.
47. I accept that the applicant was harmed by unknown persons for voicing his opinions of Islam in the past. However, he was not publicly espousing his opinions and I am satisfied that the incident of harm arose when the applicant was overhead speaking to others whom he believed he could trust. For the reasons I have given, I find that the applicant will exercise discretion in speaking his views should he return to Iran and for that reason, I am not satisfied there is any more than a remote chance that he will come to the adverse attention of any other person for his opinions, now or in the reasonably foreseeable future. I am not satisfied that he faces a real risk of significant harm from his real or imputed political or religious opinions.
48. I have found above that the applicant does not face a real chance of harm for any other reason or reasons in Iran. As 'real chance' equates to 'real risk',<sup>19</sup> and for the same reasons as I have given, I am not satisfied that he faces a real risk of significant harm for any other reason or reasons, should he return to Iran.

### **Complementary protection: conclusion**

49. 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.

---

<sup>19</sup> *MIAC v SZQRB* (2013) 210 FCR 505.

## 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.