



Australian Government

Immigration Assessment Authority

Decision and Reasons

Referred application

IRAN

IAA reference: IAA21/09125

Date and time of decision: 11 June 2021 09:08:00

K Juttner, 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 Ahwazi Arab from Iran. He arrived in Australia in August 2013 and on 8 September 2017 he lodged an application for a Safe Haven Enterprise Visa (SHEV).
2. On 5 May 2021, a delegate of the Minister for Immigration (the delegate) refused to grant the visa on the grounds that Australia did not owe protection obligations to the applicant.

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. On 23 May 2021 the applicant provided submissions about why he disagreed with the delegate's decision, to which I have had regard. No further information has been obtained or received.

Applicant's claims for protection

5. The applicant's claims can be summarised as follows:
 - He was born in Ahwaz, Iran to Christian parents and was brought up as a Christian in secret. He was forced to pretend to be a Muslim in Iran. In Australia, he has not been practising any religion. He fears he will be executed by the Iranian authorities because he is not a practising Muslim.
 - He is of Arab ethnicity. He was targeted by the Iranian authorities for being Arabic. When he was about [age], he and his friends got into an altercation with a restaurant owner who shouted racist words at them. The police only arrested him and his friends, and he was slapped by police and kept in detention for about five hours.
 - He was arrested by the police for eating in the street during Ramadan and was taken to the police station where he was slapped and tormented by police, held for ten hours and made to clean toilets.
 - When working at [a] Company he had a fight with his boss about speaking in Arabic. A day or so later, his boss saw him with the papers in Arabic which stated there was going to be a protest against the Iranian government on the weekend and accused him of sharing the papers. His boss asked for the Basij to be called. He returned home to his father. Two days later he received a letter from the authorities notifying him to appear in court. He feared he would be imprisoned if he did not leave Iran and departed a few days later on a lawful Iranian passport.
 - In 2013, after he left Iran his parents received another letter requesting his appearance at court which they destroyed. His parents have been visited by the authorities on two occasions since he left Iran.
 - He fears he will be killed if the Iranian government accessed information about him that was accidentally released by the Australian government in 2014.

- He also fears he will be sent to prison and tortured if he returns to Iran because this is what happens to people who are involved in activities against the Iranian government. He fears that because of his time in Australia and his anti-government activities, he will be regarded as a spy or as acting against the Iranian government. As Australia is an ally of the USA, he will be accused of releasing military information to enemies of the Iranian regime.

Refugee assessment

6. 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

7. 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.
8. The applicant claimed he was born in Ahwaz and is an Iranian national. He provided copies (with translations) of his Iranian birth certificate (*shenasnameh*), which specified he was born in Ahwaz, and his mother’s *shenasnameh*, which listed the applicant as one of her children. I am satisfied that the applicant is an Iranian national who was born in Ahwaz and that Iran is his receiving country.
9. At his SHEV interview on 15 April 2021, the applicant stated that he lives in Australia with his Australian wife, and they have a [child] together. He has not provided any documentary evidence about his marriage. When asked if wife and child would accompany him if he returns to Iran, he said they would not as it is too dangerous for them as Australians.
10. When the applicant arrived in Australia in 2013, he said his religion was Shia, although in his SHEV application he claimed that he was born to Christian parents and was forced to pretend he was Shia Muslim when he was in Iran. He submitted that the reason he said he was a Shia Muslim at his arrival interview was because he was scared to tell the truth in case he was sent back to Iran and it was revealed to the authorities he was not a Muslim.

11. According to his SHEV application, the applicant's mother's family was Christian. He told the delegate he was born to Christian parents. When asked if they had converted to Christianity or if he was from a long generation of Christian Arabs, he responded that he was from a long generation of Christians. His parents told him that his grandparents were also Christians. He agreed with the delegate that he had not converted to Christianity and was raised in a Christian home but said he did not personally practise as a Christian in Iran. According to his SHEV application, he specified he had no religion and said he has not been practising any religion since he has been in Australia. He told the delegate he believes in Christianity and Jesus but is not attending church in Australia. He goes to church when he has time, but it was two years since he last went. He said he had not yet been baptised although his [child] (born in 2019 to him and his Australian wife) has been baptised. He has not been open about his religious beliefs to people since he has been in Australia.
12. The applicant claimed in his SHEV application that his parents pretended to be practising Muslims in Iran but spoke about Christianity at home, where there was a crucifix and a picture of Jesus Christ. His mother wore a cross at home which he saw her wearing and would say Christian prayers and praise Jesus Christ at home. The applicant told the delegate they said Christian prayers at lunch and dinner but were very secretive about practising Christianity and did not let anyone know because it was scary. No one knew that the applicant or his family were Christian. They did not attend Christian churches in Iran as there were no Christian churches in their city. His parents adopted Muslim dress and appearance and kept a picture of the Prophet Mohammad in the house. They pretended to live as Muslims outside the house. When asked if he or his parents attended mosque or took part in Islamic activities, he said no, except during his military service when he had to attend mosque. He told the delegate his name was not a Muslim name, but an Arabic name, and was the name of a star in Arabic.
13. The applicant also provided three photographs of his mother in which she is said to be wearing a cross necklace and holding a bible. They are taken inside a home and she is not wearing a hijab. I accept she is wearing a cross in all three photos. In one of the photos she is also holding a leather-bound book with text on the cover which has not been. He also provided a photograph said to be of himself, his mother and two siblings in what appears to be at an airport in which his mother and sister are wearing a black chador. He has not provided photographs of the picture of Mohammad or the crucifix in his home.
14. DFAT¹ reports that Christians, Zoroastrians and Jews are the only minority religions which enjoy legal recognition are able to worship openly in Iran. They are allowed to hold religious services, operate places of worship and religious schools, celebrate religious holidays and issue marriage contracts in accordance with their religious laws. People from these recognised religions have to adhere to the Iranian dress code requirements, which for women, including Christians, involves wearing a headscarf, and are indistinguishable from Muslims in terms of physical appearance and dress. DFAT reports that full-body chadors are generally worn in poorer and more conservative cities and areas of Tehran. Iranian Christians may also have ethnically distinct names that identify them as Christian. In 2016 there were 130,000 registered Christians in Iran, made up of Ethnic Armenians concentrated in Tehran and Isfahan, Assyrians, Chaldeans and Sabeen-Mandaeans, and people able to prove they or their families were Christian prior to 1979. Most of the churches belong to the minority Assyrian and Armenian ethnic groups but there are also Anglican and Catholic churches and churches belonging to other denominations. Iranian law prohibits citizens from converting from Islam to another religion and Christian converts are not recognised. DFAT also reports that the activities of recognised Christian

¹ Department of Foreign Affairs and Trade (DFAT), "Country Information Report – Iran", 14 April 2020, 20200414083132; DFAT, "DFAT Country Information Report Iran", 29 November 2013, CIS26780.

communities are closely regulated to guard against proselytisation and all Christians and Christian churches (of which there are around 20 in Iran) must be registered with the authorities and only recognised Christians may attend church. Iranian Christians who are not members of recognised churches generally practise in underground “house churches”.

15. After considering the applicant’s evidence about his family’s Christian background, I consider that it contains some inherent contradictions. On the applicant’s evidence, his mother and her family were not Christian converts but came from a long background of Christians. In these circumstances, the country information indicates that his mother and grandparents would have been registered as Christians in Iran because they were Christian prior to the Islamic Revolution in 1979. As registered Christians, they would have been able to practise openly as Christians and would not have to hide their Christian beliefs or pretend to be Muslim. As such, I have real concerns about the contradictions between the key elements of this claim. I also have difficulties reconciling with his other evidence the applicant’s reason for why he said he was a Shia Muslim and not a Christian when asked about his religion at his arrival interview. If it were the case that his family were from a long generation of Christians, the applicant would not have had any reason to fear harm from the Iranian authorities for being a non-Muslim as claimed. I also find it somewhat difficult believe that in the large city of Ahwaz, there were no Christian churches for them to attend.

Moreover, the applicant’s evidence about his religious beliefs shifted over time, from evidence that he was a Shia Muslim (arrival interview), had no religion and was not practising in Australia (SHEV application) and that he believed in Christianity and had attended church in Australia but not for two years (SHEV interview). He also gave varying accounts about his practise in Iran, stating both that they said prayers at meals but also that he did not personally practise as a Christian. In addition, the applicant’s evidence about his own Christian beliefs was fairly limited. It focussed mainly on his mother’s Christian practise, although I also have concerns about his evidence regarding his mother. I find it difficult to believe that his mother would wear a conservative form of Islamic dress like the chador, rather than the required headscarf, if indeed she was a Christian. I am also not satisfied on the evidence before me that the book his mother is holding is a bible. While I accept that his mother was wearing a Christian cross at home, I consider that these photographs were manufactured to assist the applicant’s claims for protection.

16. For all of these reasons, I am not satisfied that the applicant is from a Christian family or that he or his family were forced to practise Islam in Iran. Instead, I find that he is a Shia Muslim as he stated at his arrival interview. I am willing to accept that the applicant may now consider he has no religion and that he has not been practising any religion in Australia. I am not satisfied that the applicant believes in Christianity or is practising as a Christian in Australia, as he claimed at his SHEV interview. I am willing to accept that he may have attended church in Australia on the occasion of his [child]’s christening, but he has not attended for two years. DFAT² reports that the Iranian authorities have little interest in prosecuting failed asylum seekers for activities conducted abroad, including converting to Christianity and proselytising. It also indicates that secularism is widespread, particularly in the major cities, and a significant number of people do not attend mosque or pray on a regular basis in Iran. Religion is considered a private matter, provided that people do not eat in public or have parties during Ramadan. DFAT assesses that non-practising Iranian Muslims face a low risk of official and societal discrimination, particularly in major cities. There is no evidence that he shares his religious opinions or proselytises, and I am not satisfied that he would do so if he returns to

² DFAT, “Country Information Report – Iran”, 14 April 2020, 20200414083132.

Iran. I am not satisfied the applicant would face a real chance of harm for having no religion and not practising Islam if he returns to Iran.

17. Since his arrival in Australia, the applicant claimed his ethnicity is Arab or Ahwazi Arab. He claimed he was not permitted to speak Arabic in Iran and forced to speak Farsi at school, but spoke Arabic at home with his family. He said he can speak, read and write Arabic, Farsi and English. I note his arrival interview on 18 September 2013 was conducted in Farsi and his SHEV interview on 15 April 2021 was conducted in Arabic. When asked by the delegate what identifies him as being an Ahwazi Arab, he referred to his language and said that pretty much everything else they do is the same as others in Iran. He claimed the Iranian government don't let Arabs wear their traditional clothes. He wore traditional Arab clothing when he was around [age] years old but after he saw the reaction from other people and the police, he did not do it again. I note that the applicant provided three photos that said to depict his father and brother dressed in traditional Arab dress on their farm, in which they were wearing ankle length garments with long sleeves, but he did not provide any photographs of himself. The delegate also asked if he knew anything about the culture and history of Ahwazi Arabs, and he responded that he knew the basic information about Iranian government taking the city of Ahwaz by force but did not know when this conflict occurred.
18. The applicant claimed that Arabs are discriminated against because the authorities believe they are politically opposed to the regime. He also claimed he was targeted by the authorities for being Arab on three occasions when he was in Iran. He told the delegate that the Iranian people and government hate Arabs and don't want to have Arabs in their country because they believe Arabs will take everything from them. They think bad things happen in Iran because of the Arabs.
19. Country information reports that Iranian Arabs predominantly live in the south-western province of Khuzestan bordering Iraq which has an Arab majority population³. DFAT⁴ reports they are often referred to as Ahwazi Arabs after the capital city of Khuzestan Province (Ahwaz). Iranian Arabs speak Arabic and most (approximately 70 per cent) practise Shia Islam. USDOS⁵ reports that the constitution grants equal rights to all ethnic minorities, and there are legal rights for people to learn, use and teach their own languages and dialects, although they did not enjoy equal rights in practice. Country information⁶ indicates that the government consistently barred the use of minorities' languages in schools and Persian is the official language and sole language taught in schools, as well as the language needed to access the workplace and when dealing with the authorities. However, DFAT⁷ reporting from the time the applicant left Iran states that there were a number of Arabic language newspapers in Iran and recent reporting from DFAT indicates that Arabs can speak the Arabic language freely. The Danish Immigration Service⁸ also reported that the Arabic language is welcome in the Iranian establishment, using as an example the use of Arabic in the call to prayer. Further, most clerics

³ DFAT, "Country Information Report – Iran", 14 April 2020, 20200414083132; Ceasefire Centre for Civilian Rights, Minority Rights Group International, Centre for Supporters of Human Rights, "Rights Denied: Violations against ethnic and religious minorities in Iran", 13 March 2018, CIS7B83941441.

⁴ DFAT, "Country Information Report – Iran", 14 April 2020, 20200414083132.

⁵ United States Department of State, "Country Reports on Human Rights Practices for 2019 – Iran", 11 March 2020, 20200312093514.

⁶ United States Department of State, "Country Reports on Human Rights Practices for 2019 – Iran", 11 March 2020, 20200312093514; Amnesty International, "Amnesty International Annual Report 2017-18", 22 February 2018, NGED867A612; Danish Immigration Service and Danish Refugee Council, "Issues concerning persons of ethnic minorities, Kurds and Ahwazi Arabs", 1 February 2018, CIS7B83941872.

⁷ Department of Foreign Affairs and Trade (DFAT), "DFAT Country Information Report Iran", 29 November 2013, CIS26780.

⁸ Danish Immigration Service and Danish Refugee Council, "Issues concerning persons of ethnic minorities, Kurds and Ahwazi Arabs", 1 February 2018, CIS7B83941872

and top leaders have Arabic language skills. Information from 2014⁹ stated that Arabs have been targeted for expressing their ethnic identity through Arabic-language poetry and traditional clothing although more recent reporting from DFAT¹⁰ states that Arabs can wear traditional Arabic dress freely and has heard anecdotal reports that Arabs in the Khuzestan Province are afforded considerable space to express their ethnic identity.

20. The country information before me indicates that Iranian Arabs face some discrimination. In 2013, DFAT¹¹ reported that broadly, there was a high level of societal discrimination against Arabs which led to unfair day-to-day treatment (such as in employment and access to housing and services) but was rarely coupled with community-led violence. DFAT also considered that most Arab Iranians did not come to the attention of the authorities or were subject to only low levels of adverse attention of the state. More recent reporting indicates that like other ethnic minorities, Arabs reported political and socioeconomic discrimination, including discrimination in education and university admissions, employment, housing and land rights, economic aid and politics and culture¹². DFAT¹³ assesses that members of ethnic minority groups face a moderate risk of official and societal discrimination, particularly where they are in the minority in the geographic area in which they reside, but also that Arabs are not specifically targeted for discrimination on the basis of their ethnicity and are afforded the same state protections as other minorities. The country information¹⁴ does also indicate that the authorities are very sensitive to minorities seeking peacefully to exercise their civil and political rights, as well as their economic, social, and cultural rights and that minorities who spoke out against violations of their rights faced arbitrary arrest, torture and other ill-treatment, grossly unfair trials, imprisonment and the death penalty. DFAT¹⁵ also reports that an Arab who openly espouses separatism would face a high risk of arrest and imprisonment. In his submissions, the applicant referred to information in the delegate's decision that Arab activists face severe consequences including execution for their involvement in protests and submitted that Arabs in Khuzestan, including himself, have faced adverse attention for political activism by just wearing traditional Arab garments and speaking Arabic in public.
21. The applicant lived his whole life in Iran in Ahwaz, in an Arab majority province, spoke Arabic with his family and Arab friends and wore traditional Arab dress as a young teenager. I considered his evidence about these matters largely credible and accept that the applicant is an Ahwazi Arab. I also accept that he was taught and had to speak Farsi at school. However, the information before me does not indicate that Ahwazi Arabs were prevented from speaking Arabic outside school, and I am not satisfied that he was unable to speak in Arabic in Iran in other contexts. While more recent reporting from DFAT indicates that Arabs are free to wear their traditional dress, I accept that he may have faced unwanted attention in the past when he wore traditional Arabic dress as a young teenager.

⁹ Ceasefire Centre for Civilian Rights, Minority Rights Group International, Centre for Supporters of Human Rights, "Rights Denied: Violations against ethnic and religious minorities in Iran", 13 March 2018, CIS7B83941441.

¹⁰ DFAT, "Country Information Report – Iran", 14 April 2020, 20200414083132.

¹¹ DFAT, "DFAT Country Information Report Iran", 29 November 2013, CIS26780.

¹² DFAT, "Country Information Report – Iran", 14 April 2020, 20200414083132; United States Department of State, "Country Reports on Human Rights Practices for 2019 – Iran", 11 March 2020, 20200312093514; Amnesty International, "Amnesty International Annual Report 2017-18", 22 February 2018, NGED867A612.

¹³ DFAT, "Country Information Report – Iran", 14 April 2020, 20200312093514.

¹⁴ Danish Immigration Service and Danish Refugee Council, "Issues concerning persons of ethnic minorities, Kurds and Ahwazi Arabs", 1 February 2018, CIS7B83941872; Amnesty International, "Amnesty International Annual Report 2017-18", 22 February 2018, NGED867A612.

¹⁵ DFAT, "Country Information Report – Iran", 14 April 2020, 20200312093514.

22. Nevertheless, I have concerns about his claims that he was targeted by the authorities on a number of occasions on account of his Arab ethnicity.
23. The applicant claimed that the first incident took place when he was about [age] years old. He and his friends got into an altercation with a restaurant owner who shouted racist words at them, but when the police were called, they only arrested him and his Arabic friends. He told the delegate the restaurant owner was telling him he was an Arab, to get out of there, and asking what he wanted and why he was there. When the police came, they did not ask any questions and just arrested him. He claimed he was slapped by the police and kept in detention for about five hours before he was released. The delegate queried how they identified the applicant was an Arab and whether it was not just that he was in an argument, and why they had specifically arrested him. The applicant initially said it was because he was dressed as an Arab. When the delegate referred to the applicant's evidence that he did not wear Arabic clothes, he gave a different reason and said it was because he and his friends were speaking Arabic. The applicant's evidence about this incident was fairly cursory and the reasons he gave for argument also shifted over time. Overall, I did not find his evidence about this incident convincing. I am not satisfied that the applicant had an argument with a restaurant owner or that he was held briefly and assaulted by police.
24. The applicant also claimed that he was detained at a police station on another occasion for ten hours because he ate food on the street during Ramadan. He forgot it was Ramadan, because Islam is not his religion, and ate a piece of cake or a sandwich or something like that. The police caught him and took him to the police station again, where they slapped and punched him and made him clean the toilets before he was allowed to leave. He told the delegate he was given a document that said he did anything else again, he would be arrested and incarcerated. He did not have to attend court to explain why he was eating during Ramadan. DFAT¹⁶ reports that there is an expectation that people do not eat in public during the holy Muslim month of Ramadan and those who are caught doing so run the risk of arrest and prosecution. On the applicant's evidence, the reason he was held was for breaching religious rules and was not related to his ethnicity. I am willing to accept that the applicant may have been detained and mistreated on one occasion for eating in public during Ramadan. I am not satisfied that his detention was related to his Arab ethnicity. The applicant did not face any further repercussions in relation to this incident.
25. According to the applicant's SHEV application, the third incident took place in 2013 at his work. He was working at [a] Company which he said was run by Persians with mostly Arab workers and the land on which the company was [operating] was Arab land. He claimed he had a fight with his boss for speaking Arabic and disagreed with his boss when he told him he should always speak in Farsi. At his SHEV interview, he said that his boss realised he was an Arab from speaking on the phone and after that, he started shouting at him and calling him bad words. The applicant was talking with the foreman who his boss knew was an Arab, and his boss said: "Look at these two monkeys, they are Arabs, they don't know about anything". On the applicant's other evidence there were mostly Arabic workers at the company, and while the country information indicates that Farsi is needed to access the workplace, it also says that Arabic can be spoken freely. While it may have been the case that the applicant's boss had a personal prejudice about him speaking Arabic, I do have concerns the applicant's accounts of this incident differed to some degree.
26. The applicant claimed that a day or so after this disagreement, he was handed some papers by another employee which stated in Arabic there was going to be a protest on the weekend

¹⁶ DFAT, "Country Information Report – Iran", 14 April 2020, 20200414083132.

against the Iranian government. His boss saw him holding the papers and accused him in front of other workers of sharing the papers and asked them to call the Basij. He stated his boss knew a protest was being organised and assumed the papers were related to this. The further information given by the applicant at his SHEV interview about this matter was slightly convoluted and differed from his SHEV application in some respects. He referred to Arab people who worked there and owned the land where the petrol was being taken hearing his argument with his boss. They asked why his boss was speaking to him like that and said they knew his boss hated Arabs because Iranians hate Arabs. They told the applicant to come and have a look at the papers, which he saw said "Free Ahwazi people". The applicant called on the foreman to come and have a look at them, but he said he didn't have time and did not come. In contrast to his earlier evidence that he was accused of sharing the papers, he claimed the "big boss" said he had made them and that he was creating dissent and inciting the people to go against the government. The applicant denied he was involved and said he was innocent. After the Basij were called the applicant ran back home and told his father what had happened.

27. The applicant told the delegate he was never involved in promoting the Ahwazi protest. When asked if he knew what the protests were about, he claimed it said they had to make a major fight against the government and take their land from the government. He never planned to attend the protest or other events. He did not have any interest the pro-Ahwazi or pro-Arab political movement and neither he nor his family were ever members of any pro-Arab groups.
28. The applicant claimed that he received a letter from the authorities about two days later, telling him to appear in court. In his SHEV application, he states the summons did not specify what charge was laid against him, but according to information from his father's friend who worked in the same company, his boss had reported the applicant to the Sepah for anti-government behaviour. He told the delegate the letter was from the court and delivered by post. It put a time on the number of days in which he had to attend court, but he cannot remember how many days. It also said that if he did not turn up at court he was going to be sued by the Iranian police. The applicant has not provided a copy of this letter. He also said the Basij or police did not attend at his home to try and arrest him after this incident.
29. The applicant decided he had to leave Iran, otherwise he would face imprisonment. He claimed that he left Iran three days after the incident. When asked when the document had arrived at his house, he said it arrived a couple of days after the incident. When the delegate explored the timeline of events involving the incident, receiving the letter and his departure, the applicant said he had left less than a week after the incident, and then said that it was maybe three or two days after. He was able to pay for his travel because his father got money from a friend and his mother sold her jewellery. I have some concerns about the variations in his evidence about the timing of his departure, but also find it somewhat improbable that he was able to leave Iran such a short time after this incident.
30. In his SHEV application, the applicant also claimed that his parents told him they had received another letter in 2013 after he left Iran which requested his appearance in court. He believes his parents destroyed this letter because they were afraid of keeping it around the house. However, if his parents had received another letter from the court as claimed, I find it difficult to believe that they destroyed it given its significance to his claims, or that they would be afraid of keeping the letter in the house in circumstances where it originated from the Iranian authorities. His evidence about this second letter was also very cursory. The applicant did not mention this second letter at his SHEV interview. When asked if there were any more summons or warrants for his arrest, he said no, but that if something had arrived his family would not have told him. He did not know if the court matter had finalised.

31. The delegate also considered whether the applicant's ability to leave Iran on a genuine Iranian passport through the International airport without encountering issues from the Iranian authorities indicated he was not known to the authorities. When asked if he experienced any problems with the Iranian authorities on his departure, he said it was just "the usual" and they started searching everything. The delegate referred to the number of checks at the airport and presence of intelligence and queried how the applicant was able to leave and evade the Basij and authorities given the outstanding summons. The applicant suggested it may have been because they had not fixed the time or date he had to go to court or maybe he was lucky. He claimed he was scared and so red when he was in the airport and appeared to be saying that he was searched because they thought he had drugs. He told the delegate that they made him naked because they thought he had drugs and let him go. The applicant's evidence about the airport search was cursory and not to my mind convincing, but even on the applicant's evidence, he was allowed to leave through the airport. Country information¹⁷ from the year the applicant left Iran indicates that the airport authorities and airlines conducted separate document checks of both passport and visa and security measures were efficient at the airport. Earlier information¹⁸, reported that if a person had a case pending before the court they would be registered on a list of individuals who were not allowed to leave Iran and this information would appear on the computer system during the security check conducted by Immigration Police. The 2013 reporting indicated that in practice, the authorities appeared to have lifted restrictions on people with a criminal case pending from leaving, and also that it could take the court up to three months to issue a travel ban. This indicates that it may have been possible for a person to leave through the International airport with a court case pending. As such I do not consider the applicant's capacity to depart Iran of itself undermines his claim to have been sought. However, for other reasons, I have significant concerns about the applicant's claim that he was of any adverse interest to the authorities at the time he left Iran.
32. The applicant also claimed the Iranian authorities visited his family and asked about his whereabouts after he left Iran. At his SHEV interview he claimed that his father told him the police came and asked about him two or three months after he left and came on another occasion after a year. His father told them he didn't know where the applicant was. The people said they knew he had gone to [Country] but not where he gone after that and his father told them he didn't know. His family in Iran have not been harmed, arrested or detained on account of the applicant. The applicant claimed that his family changed address and moved somewhere else in Ahwaz after the visit from the authorities. The delegate queried why the authorities were not sophisticated enough to find where his parents had moved, to which he responded that his father told him never to "talk behind the phone", noting that earlier in his SHEV interview, he claimed that his father had told him on the phone that "they" were recording everything right now and knew everything.
33. After considering the applicant's evidence about the incident at work in 2013, I do not find it at all credible. On the applicant's evidence, he was simply holding a paper about a protest and did not have any interest or involvement in the pro-Ahwazi or pro-Arab political movement or the protest. In these circumstances, I find it difficult to believe that he would be perceived by his boss as being involved in promoting the protest or in pro-Arab political activities. I also have concerns that his claims about his boss's accusations regarding his involvement in the paper increased in seriousness over time. Despite claiming that the Basij were called, the authorities did not attend the applicant's house after the incident. I considered his evidence about the

¹⁷ Danish Refugee Council, Landinfo and Danish Immigration Service, "Iran: On Conversion to Christianity, Issues concerning Kurds and Post-2009 Election Protestors as well as Legal Issues and Exit Procedures", 1 February 2013, CIS25114.

¹⁸ 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.

timing of the court letter and his rapid departure from Iran was implausible. He has not provided any documentary evidence of the court letters and I do not accept his reasons for not doing so as plausible. I am not satisfied that the applicant was caught holding a paper about a protest by his boss. I am also not satisfied that he was sent a court letter or that he was of any interest to the Iranian authorities for his political activities when he left Iran. I do not accept that the authorities visited his parents after his departure from Iran. The applicant has not taken part in any civilian protests or demonstrations or been involved in any Ahwazi political activities in Australia. I am not satisfied that he has any intention of taking part in such political activities if he returns to Iran. I am not satisfied that there is a real chance that the applicant would face any harm from the Iranian authorities on account of his political activities or beliefs.

34. Notwithstanding this, I accept that the applicant is an Ahwazi Arab. I do not accept that Arab people as a whole are considered to be politically opposed to the Iranian regime and discriminated against as a result, in light of the country information that Arabs are not specifically targeted for their ethnicity and that it is Arabs separatist or people who speak out against violations of their rights who have come to the adverse attention of the Iranian authorities. The applicant has not been politically active or engaged in any activities that may be regarded as separatist or controversial. Arabs in Iran have reported some political and socioeconomic discrimination, although the country information also indicates it is more likely to occur where they are in the minority of the area where they reside. I accept that the applicant experienced some discrimination on account of his ethnicity in Iran, mainly when he was a child and teenager. I note that the applicant completed his schooling and was accepted into university where he undertook part of a [degree]. Notwithstanding reporting that [companies] overwhelmingly hire employees from outside of the Ahwaz area instead of from the local Arab population¹⁹, the applicant was able to obtain employment with [a company] in Ahwaz. Recent reporting from DFAT indicates that Arabs are not specifically targeted for discrimination on the basis of their ethnicity. I note that the applicant lived his whole life in Ahwaz, which has a majority-Arab population. His parents still reside in Ahwaz, and I consider it very likely that he will return to live in Ahwaz if he returns to Iran. I am not satisfied that the applicant would face a real chance of harm because of his Arab ethnicity on his return to Iran.
35. The applicant also claimed he will be killed by the Iranian authorities if they have accessed the personal information accidentally released by the Department of Immigration in 2014. The delegate accepted, as do I, that the applicant was affected by the Department's data breach in February 2014, where confidential departmental information became briefly accessible on the website of the then Department of Immigration and Citizenship. As noted in the delegate's decision, the Department published information about the applicant's name, date of birth, nationality, detention status and fact he was an unauthorised maritime arrival. The information did not reveal any information about the applicant's (yet to be made) protection claims or reasons for leaving Iran. There is no evidence before me that the Iranian authorities were aware of the data breach or accessed the applicant's personal information, and I am not satisfied that they did. Even if this information has come to the attention of the Iranian authorities, I am not satisfied it would reveal much more than some brief biographical details and the fact he had arrived in Australia by sea and was in immigration detention. It is possible that it may be inferred from this that he had sought or was seeking asylum, but for the reasons given below, I am not satisfied that this gives rise to a real chance of serious harm.
36. The applicant also claimed he will be imprisoned and tortured if he returns to Iran because he will be suspected of involvement in activities against the Iranian government. In particular, he

¹⁹ Ceasefire Centre for Civilian Rights, Minority Rights Group International, Centre for Supporters of Human Rights, "Rights Denied: Violations against ethnic and religious minorities in Iran", 13 March 2018, CIS7B83941441.

fears that because of his time in Australia and his anti-government activities, he will be regarded as a spy or as acting against the Iranian government. As Australia is an ally of the USA, he will be accused of releasing military information to enemies of the Iranian regime. The delegate also considered whether the applicant would be harmed as a failed asylum seeker returning from a western country.

37. I accept that the applicant would be returning to Iran as a person who has lived and sought asylum in a western country. I accept that he left Iran lawfully on an Iranian passport. He claimed that he threw his passport into the sea on his journey to Australia and no longer has it, which I accept may be the case. According to DFAT²⁰, Iran has a global and longstanding policy of not accepting involuntary returns and of refusing to issue temporary travel documents (*laissez-passers*) to facilitate the involuntary return of its citizens from abroad. The exception to this is people who arrived in Australia after March 2018, but as the applicant arrived in 2013, I am satisfied that if he returns to Iran it would be on the basis it is voluntary. DFAT reports that people who do not have a passport (like the applicant) require a travel document to be issued by Iranian diplomatic representatives overseas in order to return, and that the authorities at the airport will be forewarned about people travelling on such documents. In these circumstances, it is possible that the Iranian authorities may infer that the applicant has sought asylum in Australia.
38. DFAT reports that the authorities may little attention to failed asylum seekers on their return to Iran, and that they accept that many Iranians will seek to live and work overseas for economic reasons. People returning on a *laissez-passer* are questioned by the Immigration police at the airport about the circumstances of their departure and reasons for travelling on a *laissez-passer*. This questioning usually takes between 30 minutes and an hour but may take longer if the returnee is considered evasive or is suspected of having a criminal history. DFAT also reports that the Iranian authorities have little interest in prosecuting failed asylum seekers for activities conducted outside Iran (such as proselytising or attending church), although those with an existing high profile, such as political activists, may face a higher risk of coming to the official attention on return.
39. If the applicant returns on a *laissez-passer*, I accept that he may be questioned briefly at the airport. I do not accept he has a criminal history in Iran or a profile as a political activist. I also do not accept that the authorities regard people who have lived in Australia to be spies, and there is no credible evidence or country information before me to support the claim that he will be regarded as a spy or accused of releasing military information to Iran's enemies. I do not accept that the applicant would be regarded as person of any adverse interest to the authorities on return, or that he would be regarded as a spy. I am not satisfied that there is a real chance that the applicant would face a real chance of serious harm because he sought asylum in Australia.
40. The applicant does not have a well-founded fear of persecution.

Refugee: conclusion

41. 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).

²⁰ DFAT, "Country Information Report – Iran", 14 April 2020, 20200414083132.

Complementary protection assessment

42. 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

43. 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.
44. 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.
45. I accept if the applicant travels on a *laissez-passer* he may be questioned briefly at the airport on return but I am not satisfied this process would amount to significant harm. I am not satisfied that there is a real risk of the death penalty being carried out, an arbitrary deprivation of life or torture, or that it amounts to severe pain and suffering, pain and suffering that would reasonably be regarded as cruel or inhuman in nature, or extreme humiliation, such that it would amount to cruel or inhuman treatment or degrading treatment and punishment as defined in the Act. I am not satisfied that the applicant faces a real risk of significant harm in this regard.
46. Beyond this, I am not satisfied that there is a real chance of the applicant experiencing any harm if he were to return to Iran. The Court has held that real chance in the refugee context has the same standard as real risk in a complementary protection assessment²¹. Having regard to the reasoning and country information above, I find that there is no real risk that the applicant will suffer significant harm in connection with any of the matters raised.

Complementary protection: conclusion

47. 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).

²¹ *MIAC v SZQRB (2013) FCR 505*.

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.