



Australian Government

Immigration Assessment Authority

Decision and Reasons

Referred application

IRAN

IAA reference: IAA21/09530

Date and time of decision: 25 August 2021 16:42:00

K Allen, Reviewer

Decision

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

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

Background to the review

Visa application

1. The referred applicant (the applicant) claims to be a Faili Kurd from Tehran, Iran. On 15 September 2017 he lodged an application for a Safe Haven Enterprise Visa (SHEV).
2. On 19 July 2021 a delegate of the Minister for Immigration (the delegate) made the decision to refuse the grant of the visa on the basis that the applicant is not owed protection.

Information before the IAA

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

Applicant's claims for protection

5. The applicant's claims can be summarised as follows:
 - He was born in Kazemain City near Baghdad in Iraq in [year].
 - When he was [age] years old he moved to Tehran, Iran with his family.
 - He departed Iran legally by air in 2013.
 - He fears that if he returns to Iran, he will be imprisoned and tortured.

Factual findings

Information before the IAA

6. This is an unusual protection application due to the limited information that the applicant has provided to the Department and the IAA about why he is claiming protection.
7. In his arrival interview, held in 2013, the applicant stated that the reason he left Iran was because he was jobless. His friends told him that there are jobs in Australia and he wanted to have a better life. The applicant was asked if there was anything specific that caused him to leave and he said that there was not. However he was jobless and faced discrimination as a migrant because his place of birth is listed on his Iranian birth certificate as being Baghdad.
8. The applicant lodged his SHEV application without assistance in 2017. It set out only his name and date of birth, it was signed but undated. Below his name he wrote 'please help thanks'. He then provided a statement of claims which stated that he applied for a protection visa because he fears returning to Iran because he will be put in prison and tortured. It contained no additional information about his claims for protection. On 9 October 2017 the Department wrote to the applicant and requested more information as his SHEV application was not complete. No further information appears to have been forthcoming.
9. The Department then arranged for the applicant to attend a SHEV interview on 26 May 2021 but the applicant did not attend. Department records indicate that they attempted to call

him without success and the interpreter left a message for the applicant in Farsi on his answering machine. The Department did not hear from the applicant and on 19 July 2021 the delegate made the decision to refuse the visa, considering only the claims made in his statement of claims that he feared returning to Iran on the basis that he would be imprisoned and tortured.

10. On 23 July 2021 the IAA contacted the applicant by telephone as he had not attended a protection visa interview. The applicant answered his phone and confirmed his identity. The applicant advised that he was not aware that his visa was not granted as he had moved to a new house and he did not want to give his current address. The IAA confirmed the applicant's mobile number but he stated that he doesn't have an email address and said he is homeless. The IAA tried to ascertain where they could send the acknowledgement letter and the applicant stated that he could get it in person. Due to the COVID-19 restrictions the IAA officer advised that they would call him back to discuss options. Later that day the IAA contacted the applicant again and talked to him for 40 minutes. The IAA explained the process and the 21 day timeframe for providing the IAA with submissions and/or new information that he did not give to the Department before the Department made their decision. The applicant was advised that, as he did not have an email and he could not attend the office, he could send correspondence to the IAA by post. The IAA stated that it is not a requirement that he provide the IAA with anything but that he can if he wishes to. The applicant said that he had already given the Department anything he had wanted to provide and that he didn't have anything in that case that he wanted to give the IAA. The applicant then agreed to provide an address to the IAA so that he could be provided with a letter for Medicare. The IAA also posted the IAA acknowledgment letter to the applicant and gave the applicant the IAA contact details in case he wanted to provide anything.
11. I have decided whether to exercise my discretion to obtain further information from the applicant. I have had regard to the fact that the Department sought to obtain additional information from the applicant but that he did not reply to their written request and he did not participate in an interview. I have had regard to the fact that the applicant was contacted by the IAA and advised that he could provide further information. The applicant said that he had already given the Department anything he had wanted to provide and that he didn't have anything in that case that he wanted to give the IAA. I appreciate the applicant's very difficult circumstances including that he does not appear to have had any assistance throughout the visa application process and his advice that he is currently homeless. However, the applicant has not been particularly active in pursuing his claims and he has stated that there is no further information he could or wants to provide and I have therefore decided not to request further information from him.

Identity

12. In his arrival interview the applicant provided a plausible account of his identity. He described leaving Baghdad in 1983 and moving to Tehran with his family. He stated that his family, including his parents and siblings continue to reside in Tehran. He stated that his family are Faili Kurds but they were granted green cards by the Iranian government that they had to renew each year. He described being able to attend school and work in various [roles]. He stated that in 2009 he was issued with an Iranian birth certificate. He stated that in 2013 he departed the country by air from Imam Khomeini International Airport in Tehran on his own Iranian passport. He provided the Department with a photocopy of his Iranian passport. I am satisfied that the applicant is a national of Iran, having migrated there in 1983. I accept that Iran is the receiving country.

Claims for protection

13. The applicant has stated in his SHEV application, that if he returns to Iran he will be imprisoned and tortured. He has not provided any 5J or other grounds as to why he would face harm. The delegate considered return procedures for failed asylum seekers. I accept that the applicant would be returning to Iran as a failed asylum seeker.
14. In his arrival interview the applicant stated that he came to Australia because he was jobless and noted that he had faced discrimination in employment since 2009 when he was issued with an Iranian birth certificate which listed his birthplace as being Baghdad. However, he did indicate that he and his father had been employed in Iran. The applicant did not raise these claims in his SHEV application and he did not indicate that he would be imprisoned and tortured on the basis of his place of birth or ethnicity. Based on the information before me I am satisfied that the applicant is not claiming protection on these grounds. I have therefore only had regard to the remaining claim that the applicant would be returning to Iran after having failed to obtain asylum in Australia.

Refugee assessment

15. 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

16. 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.
17. I accept that the applicant is a national of Iran and that he departed Iran in 2013 due to lack of economic opportunity as set out in his arrival interview. I accept that on his return to Iran, the applicant would be returning after failing to seek asylum in Australia.

18. I have considered country information about returnees to Iran and I accept that there are some examples¹ from a number of years ago of failed asylum seekers being prosecuted and/or punished for political or other activities upon their return to Iran, but these appear to have obtained a profile whilst abroad or else had a criminal record in Iran before leaving which does not apply to the applicant in this case. The applicant stated that he departed Iran lawfully on his own passport unhindered and he has not indicated that he was of any particular interest to the Iranian authorities at the time of his departure. The applicant has not claimed to have been involved in any political activity in Australia and I am satisfied that since his arrival in Australia he has not been involved in any activities, either on-line, or in public that would have come to the attention of the Iranian authorities.
19. DFAT observes² that authorities pay little attention to failed asylum seekers on their return to Iran. Iranians have left the country in large numbers since the 1979 revolution, and authorities accept that many will seek to live and work overseas for economic reasons. Those who return on a laissez-passer are questioned by the Immigration Police at Imam Khomeini International Airport in Tehran about the circumstances of their departure and why they are traveling on a laissez-passer. Questioning usually takes between 30 minutes and one hour, but may take longer where the returnee is considered evasive in their answers and/or immigration authorities suspect a criminal history on the part of the returnee. Arrest and mistreatment are not common during this process. I am satisfied that, based on his profile, the applicant would not face harm in that process.
20. DFAT reports that according to local sources, the greatest challenge facing failed asylum seekers on return is reintegrating economically and finding meaningful employment. The IOM runs a program to assist voluntary returnees to Iran, in cooperation with the country from which they are returning. Iranian authorities cooperate with the IOM in this regard. DFAT is not aware of any legislative or social barriers to voluntary returnees finding work or shelter in Iran, nor any specific barriers to prevent voluntary returnees from returning to their home region. I note in this case the applicant is still in contact with his immediate family who continue to live in Tehran. He has not indicated that he would be unable to return to live with them or that he would not have their support on his return.
21. With regard to the above information, I do not accept that asylum seekers returning to Iran from western countries, including with the applicant's background and experiences, are viewed with adverse interest, simply for reason of having claimed asylum and spent time in the west. I do not consider that the applicant had a profile of interest to the authorities before departing Iran or that he has undertaken activities in Australia which would make him a person of interest. It is possible he will be briefly questioned on his return to Iran because of the nature of his travel documents but in his particular circumstances I consider the chance of him being identified as being as person of adverse interest and harmed or such questioning entailing or amounting to harm, to be remote.
22. Overall I am not satisfied that that the applicant would be of any interest to the authorities or anyone else in Iran now or that he would face a real chance of any harm in the reasonably foreseeable future arising from his background and experiences in Iran or Australia or a person returning to Iran after having spent time in and sought asylum in Australia or on the basis of any combination or accumulation of those factors.

¹ For example: Amnesty International, "IRAN:AMNESTY INTERNATIONAL - URGENT ACTION: UA 125/11: Student activists held in Iran", 6 May, 2011; Radio Zamaneh, "Mousavi's campaign worker arrested upon return to Iran", 16 February 2014, CX318168; Amnesty International, "We are ordered to crush you: Expanding Repression of Dissent in Iran", 28 February 2012, CIS22610

² Department of Foreign Affairs and Trade, "DFAT Country Information Report Iran", 14 April 2020, 20200414083132

23. The applicant does not have a well-founded fear of persecution within the meaning of s.5J.

Refugee: conclusion

24. 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

25. 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

26. 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.

27. 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.

28. I have found that the applicant would return to Iran without a profile of interest to the authorities and would not face a real chance of harm on the basis of his claim or experiences, including his status as a returning asylum seeker who spent time in the west. Real chance and real risk involve the same standard³. On the same factual findings, I am similarly not satisfied that the applicant faces a real risk of suffering any harm, including significant harm on those grounds, should he be returned to Iran.

Complementary protection: conclusion

29. 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).

³ *MIAC v SZQRB* (2013) 210 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.