



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

**Decision and Reasons**

**Referred application**

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IRAN

IAA reference: IAA21/10054

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Date and time of decision: 22 December 2021 12:03:00

R Mikhail, Reviewer

**Decision**

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The IAA affirms the decision not to grant the referred applicants protection visas.

*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

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### Visa application

1. The referred applicants (the applicants) claim to be a married couple who are Ahwazi Arabs and citizens of Iran. They arrived in Australia by boat in August 2013 with two of their adult children (a son and daughter). They have two other children (an adult son and adult daughter) who remained in Iran when the applicants departed for Australia.
2. On 25 July 2017 the applicants lodged a combined application for Safe Haven Enterprise Visas (application for protection) with their two children.
3. Their daughter was subsequently granted a protection visa on the basis of her membership of the family unit of a protection visa holder. Their son is the subject of a separate IAA decision.
4. On 12 July 2021 the husband was interviewed by a delegate of the Minister for Immigration (the delegate) (PV interview).
5. On 8 October 2021 the delegate refused the grant of the visas to the applicants.

### Information before the IAA

6. I have had regard to the review material given by the Secretary under s.473CB of the *Migration Act 1958* (the Act).
7. The IAA received a submission in relation to this matter. It includes legal argument in response to the delegate's decision. To the extent that it addresses concerns about the delegate's decision in relation to matters that were before the delegate, I have had regard to it. It also attached a number of documents that were before the delegate.
8. The submission states that the delegate failed to adequately assess the consequences for the husband who, as a member of the Basij fled Iran while in active service, abandoned his government job and the Basij without permission. I consider this to be a new claim as, although the husband consistently claimed he left his government job, during which he was also member of the Basij in his workplace, I am not satisfied he claimed, before the delegate, that he left that role and the Basij without permission and fears harm for that reason. I am not satisfied this claim could not have been raised before the delegate made his decision and it does not satisfy s.473DD(b)(i) of the Act. Given the lack of evidence in this regard and that this claim was not raised earlier, I am also not satisfied it is capable of being believed. Section 473DD(b)(ii) of the Act is not met. I am also not satisfied there are exceptional circumstances to justify considering this new information.
9. The submission also states that the applicants' son (who remained in Iran) was dismissed from his government job as punishment for the husband abandoning his government job and his Basij membership, without notice. I consider this to be a new claim as, although the husband referred to his son's workplace dismissal in his claims before the delegate, he did not previously claim it was for these reasons. As this new information relates to a claim that was raised before the delegate, I am not satisfied it could not have been provided to the delegate before his decision and s.473DD(b)(i) is not met. No supporting evidence or further detail has been provided in support of this new claim and I have concerns about the credibility of this claim given it was not raised earlier. In the circumstances, I am not satisfied this claim is capable of being believed. I

am not satisfied s.473DD(b)(ii) is met. I am also not satisfied there are exceptional circumstances to justify considering this new information.

10. Also attached to the submission was a letter from [Mr A], [Office holder] of [Organisation 1], dated 29 October 2021. This letter is new information. A previous letter from [Mr A] was attached to the application for protection and was before the delegate. In his new letter, [Mr A] writes that he is sending the new letter to further clarify his previous letter. He states he wrote the first letter because he personally knows the husband and witnessed his participation in their events. He has been a member of their organisation since 2016 and has regularly participated in their meetings, events and protests. He can vouch the husband's belief in the Ahwazi Arab cause is genuine as he will continue to fight for the independence of Ahwaz as he has done in Iran and Australia. It is submitted this letter was received after the delegate's decision and could not have been provided earlier. It has been provided to address the delegate's finding in regard to [Mr A]'s previous letter and his finding that the husband's activities with Ahwazi groups in Australia was limited and he is not a prominent person within the Australian Ahwazi community. In his decision the delegate gave the previous letter from [Mr A] little weight in his assessment as he noted it was generic in relation to the content contained within the document and it does not refer to the husband's length or nature of his involvement with the group, beyond stating that he is a member of the community. These concerns were not raised with the husband during the PV interview and for this reason I am satisfied it has been provided in response to the delegate's decision and could not have been provided earlier and satisfies s.473DD(b)(i) of the Act. The information concerns the husband and I have no reason to believe that it is not reflective of the author's beliefs and as such is credible personal information. Despite the delegate's concerns about [Mr A]'s letter, having assessed the other evidence before him, he ultimately accepted that the husband is a member of the Ahwazi Community in Australia, that he attended demonstrations and that he participates in cultural gatherings in Melbourne, and he holds genuine opinions regarding the treatment and plight of Ahwazi Arabs in Iran. However, he found the husband does not hold a senior position, an organising role or any role other than attending a few protests. The new letter from [Mr A] confirms this and does not indicate the husband holds a senior position or organising role or any other specific role other than attending these events. In the circumstances, I am not satisfied this letter may have affected consideration of the husband's claims. Section 473DD(b)(ii) of the Act is not met. In the circumstances, even considering s.473DD(b)(i) is met, I am not satisfied there are exceptional circumstances to justify considering this new information.
11. The submission also cited and attached a 2017 report by the Danish Immigration Service and Danish Refugee Council and a 2016 Human Rights Watch which both provide information on recruitment by the Iranian authorities to the war in Syria. It has been submitted that these reports have been provided to corroborate what was not accepted by the delegate, namely, that people were being forced to go fight in Syria by the Iranian authorities. It is submitted the reports are credible, were published by respected and reliable institutions and corroborate claims before the delegate as they confirm that people were being coerced to fight in Syria. These reports pre-date the delegate's decision by some years and relate to one of the main claims raised by the husband his application for protection. That is, that he left Iran because he feared that, as an Arabic-speaking Basij member, he would be forced by the Iranian authorities to fight in Syria. The applicants were legally represented in their primary application and during the PV interview. At that interview the delegate raised concerns that he could not find country information in support of this aspect of the husband's claims. The husband was on notice of this concern and given an opportunity to respond at interview and in writing after that interview. His legal representative at the time sent a post-interview submission to the delegate in addition to further evidence and supporting country information. In the circumstances I am not satisfied these new reports could not have been provided to the delegate before his decision and I am

not satisfied s.473DD(b)(i) is met. The information is not credible personal information relevant to the husband's claims and does not satisfy s.473DD(b)(ii) of the Act. I also note that the Human Rights Watch article relates to the conscription by the Iranian authorities of Afghan refugees to fight in Syria, but this is of little relevance as the husband is not an Afghan refugee. Regarding the Danish report, the submission relies on one source quoted in this report who had "unconfirmed knowledge" about forced recruitment of government employees. This does not, on its face, appear to be a reliable source, particularly when the same report notes a number of other identified sources who state that recruitment by the Iranian authorities to the Syrian war was voluntary. In the circumstances, I am not satisfied there are exceptional circumstances to justify considering this new information.

12. The submission also states that the wife submitted medical information to the delegate about her mental health issues, but no offers or alternative options were put forward for her to lodge her protection claims. It also notes she submitted a baptism certificate and information was given to the delegate that she attends church regularly and is a devout Christian convert. It also states that she has publicly posted considerable material about her religion to [Social media] since 2014 and she is likely to be accused of converting to Christianity and viewed by the Iranian regime as an apostate and the husband will also be imputed as an opponent of the regime as a result. Information about the wife's mental health issues and conversion to Christianity was before the delegate and is not new information. Information about her [Social media] activity is new information. In an email to the delegate sent from the applicants' former representative on 1 June 2021, it notes it may be appropriate to interview the wife in regard to her conversion. On 7 June 2021 at 12.54pm their representative emailed the delegate again noting that it is appropriate to schedule an interview for the wife given her conversion to Christianity. However, later that day, the representative emailed the delegate again to advise that the wife will not advance any claims of her own and she does not want to be interviewed. The post-interview submission did not raise any claims of fear of harm for the wife. In the delegate's decision he noted that, prior to the PV interview, the applicants' representative was contacted and asked if the wife was making her own claims, noting the evidence that had been provided about her mental health and Christian conversion. He wrote that, initially it was suggested that she might, and she was invited to supply a statement of claims and was offered her own interview but then the applicants' representative advised she did not want to lodge her own claims. He notes that several options were discussed, such as not doing a face-to-face interview or communicating via correspondence and he was open to other suggestions, but the wife advised that she did not wish to lodge her own claims for protection. In the circumstances, I am satisfied the wife's claim that she and her husband now fear harm based on her Christian conversion is new information. I do not accept that no offers or alternative options were put forward for her to lodge her own protection claims as it is clear that the delegate offered a number of options and alternatives to do so. I am not satisfied s.473DD(b)(i) of the Act is met in regard to this new claim and the new claims about her [Social media] activity. Although the evidence before the delegate confirms the wife was baptised in 2014, the wife was given sufficient opportunity to raise any claims for protection before the delegate and did not do so. The fact that the applicants have now raised a fear of harm on this basis, after their application was refused by the delegate, causes me to doubt the veracity of this new fear. No other supporting evidence about the genuineness of the wife's conversion or religious practise has been provided to the IAA, and no supporting evidence has been provided in regard to her [Social media] activity. I am not satisfied s.473DD(b)(ii) of the Act is met. I am also not satisfied there are exceptional circumstances to justify considering this information. Nonetheless, as evidence of the wife's mental health and Christian conversion arises on the material that was before the delegate, I have considered it in my assessment.

## Applicants' claims for protection

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13. The husband has made claims for protection, but the wife did not raise any separate claims for protection before the delegate and relied on the family unit criteria.
14. The husband's claims can be summarised as follows:
  - He was born in [year] and resided in Ahwaz, Khuzestan Province and is of Arab ethnicity.
  - He is of Shia faith.
  - He married his wife in 1980. They have four children. Two of his children are in Australia whilst his other daughter is in [Country 1] and his other son has remained in Iran.
  - He left Iran because of the way the Iranian government oppresses Arabs. He would have secret sessions with his Arab friends, and they discussed how the government oppresses Arabs. He also attended some protests. He was not an active member of Arab organisations in Iran because of his job but he always supported them. His relatives were imprisoned for supporting the Arab cause.
  - His job as a teacher in the 1980s was terminated because he was speaking to the students in Arabic.
  - He eventually joined a government [department]. He joined the Basij to appear supportive of the government to keep his job.
  - He decided to leave Iran as Basij forces were being prepared to go to fight in Syria and he was sure he would be selected as he speaks Arabic, and he did not want to go.
  - He left Iran in July 2013 legally on his own passport with his wife and two of his children. He disposed of his passport on his way to Australia.
  - In 2014 his personal details were leaked online through a data breach by the Australian government, and he will be perceived to be against the Iranian government for having sought asylum overseas.
  - Since arriving in Australia, both his children in Iran have had their employment terminated which he believes is because the Iranian government found out that he had sought asylum in Australia.
  - He is an active member of the Ahwazi community in Australia and has participated in protests against the Iranian government in Australia.
  - If he returns to Iran, he will be arrested or killed. As he was member of the Basij for many years, this will also cause problems for him if he returns to Iran because he is better known within the government and they may see him as a traitor.
  - Information provided to the delegate indicates the wife was baptised in 2014 in Australia and has mental and physical health issues. Information before the delegate also indicates the husband has physical health issues.

## Factual findings

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15. The applicants have generally provided a consistent account of the reasons they left Iran, this includes information from both applicants and their son provided during their Irregular Maritime Arrival Interviews held when they were in Australian immigration detention in 2013 and 2014 (arrival interview), and the PV interview. However, I am not satisfied of the credibility of major

aspects of the husband's claims due the implausibility of some claims, concerns with the evidence he provided and the timing and nature of evidence regarding his political activities in Australia.

### **Identity**

16. In support of their identity the applicants provided certified copies and accredited translations of the husband's Iranian national identity card and the applicants' Iranian birth certificates. These documents confirm their Iranian nationality, birth in Ahwaz, marriage and the details of their children. Also included in the review material was a copy of the husband's Iranian passport.
17. On the evidence before me I accept the applicants' claimed identity, marriage and family composition and that they are citizens of Iran and that Iran is the receiving county for the purpose of that assessment.
18. Country information that was before the delegate confirms that between 1.5 million and 3 million Arabs live in Iran, predominantly in the south-western province of Khuzestan bordering Iraq. Iranian Arabs are often referred to as 'Ahvazis', after the capital city of Khuzestan Province (Ahwaz). Iranian Arabs speak Arabic.<sup>1</sup>
19. Since their arrival to Australia the applicants have consistently claimed that they are Arab and can speak Arabic. Although they have not spoken in Arabic during their Departmental interviews, the husband explained, during his PV interview, that during his detention in Australia he was provided with Arabic interpreter who spoke a different dialect and that is why he now requests a Farsi interpreter. I accept this explanation as plausible. During the PV interview the husband also demonstrated knowledge about political and economic issues that affect Arabs in Ahwaz that is consistent with country information that was before the delegate. I am satisfied the applicants are of Arab ethnicity and lived in Ahwaz.

### **Letter from [Organisation 2]**

20. Attached to the application for protection was a letter of support from [Organisation 2] dated 5 July 2017. It states it is a non-for-profit organisation whose mission is "to help people in touch places flourish holistically". It is a character reference for the applicants and make no mention of their claims for protection so is of little relevance to this assessment and for this reason I have given this letter no weight in my assessment of the applicants' claims.

### **Relatives' Political Activities**

21. In the husband's statement attached to the application for protection (the statement) he claimed that, shortly after the Islamic Revolution, one of his sisters and her husband were imprisoned because of their support for the Arab cause. He claims his sister worked at [a Workplace] in Ahwaz and had issues with management because she would speak to customers in Arabic and even wore traditional Arab clothing to work one day. She was warned to speak to the customers only in Persian. She would then argue with management and tell them that Arabs and Persians should be treated equally. She was arrested and was imprisoned for two years after the government suspected her of being involved in pro-Arab organisations. She was tortured in prison and developed mental health issues. She was not allowed to work after she was released from prison and passed away in 2016. During the PV interview the husband said he thinks this

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<sup>1</sup> Australian Department of Foreign Affairs and Trade (DFAT), "Country Information Report – Iran", 14 April 2020, 20200414083132

occurred in 1979 before the Iran/Iraq war. During the husband's 2014 arrival interview he referred to this claim so has also been consistent in this regard.

22. I accept, as plausible, the above occurred as it is generally consistent with country information before me about the political tensions between the new revolutionary Iranian government and ethnic minorities in 1979.<sup>2</sup> The husband claimed nothing happened to him as a result of these events because he was not working for the government at the time. He has not claimed he was harmed subsequently because of his association to these relatives, and the husband has not raised a fear of harm on this basis or claimed this enhances their profile if they were to return to Iran and I am not satisfied it does.
23. In his statement the husband also claimed his sister-in-law was also imprisoned for six months because of her support for the Arab people but did not provide any further detail. Given the lack of detail in this regard, I am not satisfied on the evidence this occurred. Regardless, I note that the applicants have not raised a fear of harm on this basis.

### **Termination as a teacher**

24. The husband claims he was a [teacher] between 1984 and 1986 in a village near Ahwaz. He also referred to this job in his 2013 arrival interview. He claims that his employment was terminated because he was speaking Arabic to the students.
25. A 2013 report that was before the delegate confirms the use of minority languages in schools and government offices is generally prohibited, according to Amnesty International.<sup>3</sup> Although this report is more recent, I am willing to accept that this was the case in the 1980s as other sources indicate that during this period, the Arab minority were treated with suspicion by the Iranian authorities because of the Iran-Iraq war.<sup>4</sup>
26. I am prepared to accept this occurred. The husband has not claimed that, because of this incident, he remained of adverse interest to the Iranian authorities, and I am not satisfied, on the evidence, he did. He has not claimed a fear of harm in regard to this incident.

### **[Government] job and Basij membership**

27. The husband claims that he eventually obtained a job at a [government] department. He knew that he had to cooperate with them to keep his job, especially since the first year of employment was probationary, so he decided to join the Basij. He was only a member of the Basij that operated in that workplace. When he became an active Basiji, they approved his employment. In the application for protection, he indicated he worked for this organisation from 1991 to 2012. He claims he pretended to support the government, but in private, he was an anti-government Arab.
28. Included in the review material is evidence of the husband's Basij membership.
29. Country information that was before the delegate indicates that the Basij Resistance Force ('the Basij') is a volunteer paramilitary force that operates under the command of the Iranian Revolutionary Guard Corps (IRGC). The Basij was established shortly after the Islamic Revolution

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<sup>2</sup> Unrepresented Nations and Peoples Organization (UNPO), "Ahwazi Arabs", 1 June 2010, CIS20365

<sup>3</sup> Minority Rights Group International (MRG), "State of the World's Minorities and Indigenous Peoples 2013 – Iran", 24 September 2013, CX315939

<sup>4</sup> Iran Human Rights Documentation Centre, "A Framework of Violence: Repression of the Arab Ethnic Minority in the Islamic Republic of Iran", 25 September 2014, CIS2F827D91379

as an auxiliary law enforcement unit and was brought under the direct command of the IRGC in 2007. The Basij is one of the primary enforcers of internal security and moral codes, including in relation to Islamic dress. Membership of the Basij comes with privileges, including in relation to university admission, government jobs and bank loans. The state has periodically mobilised the Basij to suppress anti-government protests. International sources report that Basij units often repress political opposition elements and intimidate civilians perceived to be violating Iran's strict moral code without formal guidance or supervision from their superiors. There is considerable popular resentment against the Basij, although this may vary according to location.<sup>5</sup>

30. Country information also indicates that, in Iran, discrimination in access to employment is institutionalised through the practice of *gozinesh*, a mandatory screening process that anyone seeking employment in the public or para-statal sector must undergo. It involves assessing prospective employees' adherence to Islam and their loyalty to the Islamic Republic. Its basis is found in the 1995 Selection Law, Article 2 of which lists the following criteria for the selection of employees: Belief in Islam or one of the religions stipulated by the Constitution; Practical adherence to Islam's rulings; Belief in and adherence to *Velayat-e Faqih*, the Islamic Republic and the Constitution; Not being morally corrupt; Not being a member of, or sympathiser with, political parties, organizations and groups that are declared illegal or will be declared illegal by the competent authorities, unless their repentance is known; no criminal record; and no drug addiction.<sup>6</sup>
31. I am prepared to accept the husband joined the Basij at this government department, initially to secure his job. I accept he remained a member of the Basij in that department until he left that workplace in 2012. However, the fact that he remained a member of the Basij, given the controversial nature of their activities in Iran, for such a long period of time causes to me doubt his claimed level of conviction in regard to his political opinion against the Iranian regime.
32. During the PV interview the delegate also expressed the same concern to the husband, noting that he found it hard to believe the husband was a supporter of Arab rights whilst also being a member of the Basij. The husband said that he had to join the Basij to keep his job, but it was just superficial, and he used his position to influence their missions by ensuring it was not successful and by releasing Arabs that had been arrested. When the delegate noted that the husband would have been in trouble for that, the husband said that he had the authority to release and arrest people. I do not accept this aspect of his claims as I find it very difficult to believe that such actions did not attract negative attention from his other Persian Basij colleagues. I do not accept the husband subverted the activities of the Basij in his workplace for the benefit of the Arab community and I am satisfied he has exaggerated this aspect of his claims. This adds to my concern about his purported anti-government political opinion.

### **Forced recruitment to Syria**

33. The husband claims that, before he came to Australia, Basij forces were being prepared by the Iranian government to go to Syria to fight the rebels. Because he was an active Basij and knew Arabic, he claims he was sure to be selected to go to Syria. He claims a lot of people with the same background had already been selected and he was next in line. He did not want to fight for the Iranian government and for Bashar al-Assad, so he decided to leave the country because if he refused their orders he would be in trouble.

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<sup>5</sup> DFAT, "Country Information Report – Iran", 14 April 2020, 20200414083132

<sup>6</sup> 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



34. During the PV interview the delegate noted to the husband that the Basij is a large volunteer force, and he would think a lot of Basij would volunteer to go to Syria if they were being paid and he found it hard to believe they would need to force anyone, and he could not find any country information to indicate that Basij members were being forced to fight in Syria. The husband said that he worked for the Basij in his company and if they wanted to send him it would be a deployment and he would be paid but no one wanted this deployment. This does not address the lack of corroborating country information that Basij members were being forced/ordered or pressured to deploy to Syria.
35. Although country information before the delegate confirms there were Basij members fighting in Syria,<sup>7</sup> the county information before the delegate does not indicate that Basij members with Arabic-speaking skills were being ordered/forced or pressured to deploy to fight in Syria. I do not accept this claim and I do not accept the husband left his last job, and the applicants left Iran, for this reason in 2013.

### **Husband's political activities in Iran**

36. The husband claims in his statement that because he saw how the Iranian government treats Arabs unequally, he decided to object this and would have secret sessions with his Arab friends and discuss how the government oppresses Arabs. He was not an active member of Arab organisations in Iran because of his job but he always supported them. When asked about these secret sessions during the PV interview the husband said that he had meetings with friends to discuss issues that were affecting Arabs in Iran, but he was not involved in any organisation.
37. I found the husband's description of these meetings lacking in detail and it does not appear that there were any outcomes from these meetings such as planned action such that they could be described as political activities. But rather they appear to be conversations between friends.
38. In the husband's 2014 arrival interview he said that in Iran he had been supporting the Arab nation and would participate in protests but was not a member of any Arab organisation. He did say he was a member of a monarchist group but had not been active, but I note has not repeated this in his application for protection or raised a fear of harm in this regard.
39. During the PV interview the husband was asked if he had been involved in protests in Iran as his application indicated he had not. He said he had attended some randomly but because he was afraid of being arrested, he would cover his face completely with a shawl so he would not be recognised.
40. The husband did not give any details about the protests he attended. I also find it very hard to believe that, as a member of the Basij, and even though he claimed to have covered his face, that he would risk attending anti-government protests. This activity also seems at odds with his claim that he could not be an active member of an Arab organisation because of his job.
41. Having considered the husband's evidence as a whole, I am not convinced that someone who is willing to remain with the Basij for twenty years has a strong anti-government political opinion and would be simultaneously involved in political activities against the Iranian government. I do not accept the husband attended anti-government protests in Iran.
42. Also included in the review material were support letters on behalf of the husband, sent to the Department in 2014 when the applicants were still in Australian immigration detention. These

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<sup>7</sup> "Iran Extends Islamic Volunteer Force to Region, Commander Says", Bloomberg.com, 28 November 2017, CXC90406618457; "IRGC to expand Basij special forces", *The Long War Journal*, 24 October 2016, CX6A26A6E16682

letters are from a number of overseas Ahwazi political organisations in Europe and the United States. They claim the husband is a political and cultural activist who was persecuted in Iran, was fired from his job because of his political activities and was harassed by the Iranian authorities. One organisation also claimed he worked for their organisation as a member of their media committee.

43. During the PV interview the delegate noted that the above letters do not correspond with the husband's claims as they refer to him losing his job because of political activities in Iran and having a role in one of the organisations. The husband said they relate to when he was a teacher. However, I am not satisfied that is the case, on the evidence, as he has not claimed to have been an activist when he was a teacher for two years. Regarding his apparent role in their media committee, he said and that it refers to information he has shared on social media. Again, I am not convinced by his response as I am not satisfied being referred to being part of an organisation's media committee means sharing images on social media and he has not provided any evidence in support of this assertion. The husband also said that he was put in contact with these organisations when he was in immigration detention and he told them his story and they provided these letters. In the circumstances and given the concerns I have raised about the information in these letters, I give them no weight as corroborative evidence of the husband's claims. However, instead, I find that these letters add to my concerns about his credibility, particularly in regard to his purported political activities in Iran and the genuineness of his intentions regarding his activities in Australia, as it shows his willingness to provide false information to the Department in support of his claims for protection.
44. I agree with the delegate's assessment that the evidence presented by the husband does not support the husband's claimed level of conviction in regard to his political opinion against the Iranian government. Although I am prepared to accept, he has such a political opinion, I am not satisfied it is a particularly strong conviction and it extends to a level of genuine desire to act on, or publicly express, that opinion.
45. On the evidence before me, I do not accept the husband was involved in any anti-government political activities in Iran and I am not satisfied this was due to a fear of harm.

#### **Political activities in Australia**

46. The husband claims he is now an active member of the Ahwazi Community in Australia. He is member of an Arab organisation called [Organisation 4], which have cultural events and organise gatherings outside [a Venue] to protest against the Iranian government. He claims he has been involved in seven or eight public protests against the Iranian government in Australia. He claims he will be arrested and interrogated and tortured on return to Iran because the authorities have already realised he is outside Iran and joined an Ahwazi group and attended protests against the regime and he will be accused of being political, a separatist and a spy.
47. In support of this claim the husband provided an undated letter from [Organisation 1]. It confirms the applicant is an active member of their community. It states he always attends their programs and is a good and reliable person.
48. The husband has also provided photos of him attending a number of protests in Victoria in support of Ahwazi Arab rights and I accept he attended these events. Also provided to the delegate was a link to a [video] about a protest the husband attended in [one year] to [protest]. The [Video] is dated [Month Year] and shows a man standing in front of others holding banners [and] [protesting]. Although the quality of the video is poor, I am prepared to accept the husband is in the [video].

49. During the PV interview the husband claimed that he shared his political activities on social media including [Social media]. During that interview the delegate noted that he checked the husband's [Social media] account and he found there was nothing there about his Arab political activities. The husband said he had two [Social media] pages and has used a different name for one account to prevent problems for his siblings in Iran. Included in the review material were screenshots from the husband's two [Social media] pages. One under a different name and the other under a name similar to his own.
50. The delegate asked the husband why his social media activities, on the [Social media] account under the false name, only started in 2019. The husband responded that he had been active on [another social media] and WhatsApp and he realised he needed to increase his activities and that is why he started posting such material on [Social media] (in 2019). However, he did not give any reason as to why he felt he needed to increase his activities on [Social media] at this time and I am concerned about the fact that he did increase his activities at this time. The husband did not provide any evidence of his [posts] and, as the delegate noted in his decision, WhatsApp is not publicly accessible social network.
51. The husband then told the delegate his political activities are posted on [Social media] in the account that is not his real name. However, the delegate noted that, after observing that account, the husband had not actually done that. In his decision, the delegate noted that this [Social media] page does not match that of the husband, such as, when he was married, where he studied and there are no images of the husband. There are no pictures of the husband protesting or any other activities. There are no friends listed on the page. The page is anonymous, there is no way of linking it to the husband. In response the husband said that the protests are posted [online] and he shares it on WhatsApp. I find the husband's claims about sharing his political activities in [Social media] are not supported by the evidence he has provided and the fact that his oral evidence changed, in the face of challenge from the delegate, also raises doubts about the genuineness of his political activities in Australia and his claim to have shared his activities on social media.
52. In his decision the delegate also noted that, in viewing the applicant's [Social media] page that is in his own name, prior to his PV interview, the husband had not posted any material against the Iranian regime, there was no indication that he had protested against the Iranian regime or advocated for Arab rights. At the time of writing the delegate's decision, the delegate again viewed the husband's [Social media] page and observed there are now a few posts advocating for the rights of Arabs and all these posts were made after his PV interview. I note the applicants have not provided any evidence in response to this assessment in their submissions to the IAA. I agree with the delegate's concern about the timing of the husband's decision to begin posting material online after the PV interview which further raises doubts about his reasons for sharing and posting anti-regime material online.
53. The husband has claimed that he has posted political activities on [Social media] under a false name to protect his siblings in Iran, but he has also provided images of himself at these protests and provided a link to a [video] of him attending a protest in Melbourne. This behaviour is at odds with his claim that he is trying to protect his siblings in Iran from any consequence and is also at odds with his claim and concern that his children in Iran had also lost their jobs in Iran, in 2014, because of his protection application in Australia.
54. On the evidence before me, although I accept the applicant has a political opinion against the Iranian government, I do not accept he was involved in any political activities in Iran, and this was not due to a fear of harm but rather a lack of strong conviction. Given this and the concerns I have raised about the evidence he has presented about his political activities in Australia, I

accept the applicant has participated in several protests in Australia against the Iranian government in support of Arab rights and he may have shared such material on his [Social media] pages. However, I am not satisfied on the evidence that he has participated in these activities in Australia otherwise than for the purpose of strengthening his claims to be refugee.

55. I also do not accept, on the evidence, the Iranian authorities are aware of his political activities in Australia.

#### **Data Breach**

56. The husband also claims that in 2014, his personal details were accidentally leaked online through a data breach. He claims if the Iranian government has accessed this information, they will know that he sought asylum in Australia, and they could use this against him if he returned to Iran. It will be obvious that he is against the Iranian government if he has sought asylum overseas. He claims as he was a member of the Basij for many years, this will also cause problems for him if he returns to Iran because he is better known within the government and they may see him as a traitor.
57. Information included in the delegate's decision confirms that the husband was affected by the website disclosure or 'data breach' in February 2014. Confidential departmental information became briefly accessible on the then Department of Immigration and Citizenship's website in February 2014. The accessible information included the husband's name, date of birth, nationality, that is he is an unauthorised maritime arrival and his detention status. I accept the husband was subject to this data breach and the above information was published online about him.
58. The husband claims that both his children in Iran have had their employment terminated which he believes was because the government found out that he had sought asylum in Australia and wanted to cause problems for them. He was scared that they would cause major issues for his children, so he advised them to move. His son left Ahvaz for Karaj and his daughter in Tehran moved addresses. When his daughter lost her job, she could not continue her studies because they would not accept her at university, so she decided to go to [Country 1] and study. His son is currently self-employed and lives in Karaj. During the PV interview the husband claimed his son now works in Karaj as a freelancer and had previously worked for [Employer] in Ahwaz. He also said his daughter is now married in [Country 1] and working and studying there and now has permanent residency there.
59. In support of the above claim, after the PV interview, the husband provided the delegate a photo image of letter regarding his son's employment at [Employer] and an accredited translation. The translation indicates it is a "Certificate of Employment" from the above [employer]'s head office in Khuzestan Province dated [April] 2015 which certifies his son worked as a contract employee in their head office from [April] 2012 to [August] 2014. It also notes the certificate was issued upon his request and has no other value. It does not state he was terminated, and it indicates he was on a contract rather than held a permanent job indicating other potential reasons why he left that [employer] in 2014. I also note that it indicates the son requested this letter, likely in April 2015 according to the date of the letter, which is somewhat at odds with the husband's claim to have told his son to go into hiding in another city after he was terminated from his job (in August 2014) so he would not be found by the authorities. I consider it of little corroborative value regarding this claim.
60. During the PV interview the delegate also questioned how the husband's children would be safe by moving cities when the Iranian government knows where everyone lives. The husband said

that Ahwaz is not a big city like Tehran and, if they stayed there, they would have a problem. He said at the time his son was living in Ahwaz and his daughter was living in Tehran. They only had information about his son, and he was the only one living in Ahwaz and was the only one at risk and when his employment was terminated, he told his son to go somewhere else away from Ahwaz and until now they really do not know where the children are. This is at odds with his claim that his daughter also lost her job and could not continue her studies and he told her to move address in Tehran. It is also not evidently clear why the authorities would only have information about his son. It also at odds with the husband's own claim that he cannot relocate to avoid serious harm as he could be targeted anywhere. Country information that was before the delegate also indicates that the countrywide capacity of the centrally-organised state security forces means that an individual facing adverse official attention is unlikely to escape this attention by relocating internally.<sup>8</sup> As noted, the husband's claim that the authorities do not know where his son now lives is also at odd with the fact that his son requested the above letter from his purported previous employer in 2015.

61. During the PV interview the delegate indicated that he had information which indicates that the husband's son still works for [Employer] in Iran, and they have an office in Karaj as reflected on his son's public [Social media] page, an image of which was included in the review material. The husband denied this. However, the above information in the review material confirms the delegate's claim. The husband also said his son has financial problems, but the delegate noted that there was a photo of his son in [Country 2] on his son's [Social media] page (also reflected in the information in the review material). The husband said he told his son to travel to other countries as he needs prior travel history in order to apply for an Australian visa. The delegate then noted it still does not indicate he has financial issues, and the husband said his son had financial issues when he was dismissed from his employment but since then he has been working and has an income. Nonetheless, the fact that his son has travelled internationally and likely through Iran's international airport is not reflective of someone in hiding.
62. It has been submitted that [Social media] is not a reliable source for correct and updated information. Many people do not usually update their details and even some put the wrong information for various reasons. However, the husband did not relay this at the PV interview, and I find it hard to believe his son did not update information on his [Social media] page about his job since he purportedly was dismissed his employment at this organisation seven years prior.
63. The husband has not provided any other credible corroborative evidence in support of his claim that his children were dismissed from their employment and university because the Iranian government found out that he had sought asylum in Australia and/or as a result of the data breach.
64. On the evidence before me I do not accept the applicants' children in Iran were dismissed from their employment or prevented from attending university in Iran because the Iranian authorities found out the husband was in Australia seeking asylum as a result of the data breach or otherwise. I am not satisfied on the evidence the Iranian authorities are aware of the husband's application for protection.

### **Husband's health Issues**

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<sup>8</sup> DFAT, "Country Information Report – Iran", 14 April 2020, 20200414083132

65. The husband has provided information and evidence that he suffers from a number of physical health issues, which I accept.

### **Wife's Christian Conversion**

66. The applicants' former representative provided information to the delegate in June 2021 claiming that the wife had been baptised in 2014 and provided her baptism certificate which confirms this. It was also submitted that she attends church regularly and is a devout convert. On this basis she requested that the wife be interviewed, however, later she advised the delegate that the wife did not wish to raise claims for protection and did not wish to be interviewed.

67. A letter was also provided from a member of [Church] dated 25 May 2021 who claims she knows the wife through a Christian women's meeting and referred to the wife's good character. Although it makes mention they meet at a Christian meeting, it makes no mention of the wife's Christian practice, so I find it of little probative value. The wife was given opportunities to present any further claims and evidence before the delegate and did not do so.

68. On the very limited evidence before me, I accept the wife was baptised in 2014 in Australia, but I am not satisfied of the genuineness of her conversion.

### **Wife's Health Issues**

69. Also provided to the delegate was a psychologist report in regard to the wife dated in 2020. It indicates she is suffering from depression and anxiety and other physical health issues such as body pain and high blood pressure. I accept the information noted in this report.

### **Refugee assessment**

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70. 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**

71. 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.
72. The husband has not convinced me that he has participated in political activities in Australia otherwise than for the purpose of strengthening his claims to be a refugee. In the circumstances, I have disregarded this conduct in assessing whether the applicants have a well-founded fear of persecution pursuant to s.5J(6) of the Act.
73. I do not accept that, as a member of the Basij, the husband left his last job, and the applicants left Iran, because he felt he would be forced/ordered or pressured to fight in Syria. I do not accept the husband was involved in any anti-government political activities in Iran. I do not accept his two children, who remained in Iran, were dismissed from their government employment or prevented from attending university because the Iranian authorities found out about the applicants' application for asylum in Australia. I am not satisfied the applicants have a well-founded fear of persecution in regard to these claims.
74. I am not satisfied on the evidence the applicants will face a real chance of harm in Iran on the basis of the husband's relatives' previous political activities.
75. On the evidence before me, I am not satisfied of the genuineness of the wife's purported Christian conversion. I am not satisfied there is a real chance she will identify or practise as a Christian if she returns to Iran. I am not satisfied on the evidence the Iranian authorities are aware of her Christian activities in Australia or there is a real chance they will become aware in the reasonably foreseeable future. I am not satisfied the applicants face a real chance of harm from any group or person because of the wife's baptism or church attendance in Australia.
76. The husband claims he left Iran because of the way the Iranian government treats ethnic Arabs. He claims Arabs in Iran are disliked and oppressed by the government. They are not allowed to have Arabic language schools or wear traditional Arab clothing or speak Arabic at work. He claims unless they actively support the government, they are disadvantaged in terms of education and employment, especially in the public sector. Ahwaz is a major source of wealth for Iran because of its rich oil resources but its inhabitants do not receive any benefit from this. Pollution, access to water, and poor sanitary conditions have also become a huge issue in Ahwaz. He claims they also have poor employment and study opportunities. Anyone who objects are arrested and executed. During the PV interview the husband also claimed that his relatives in Iran cannot get government jobs and they are not allowed to speak Arabic or wear traditional clothing and that Arabs have to pay for medical services.
77. In its 2020 report on Iran, the Australian Department of Foreign Affairs and Trade (DFAT) noted that Arabs account for 2 percent of the population in Iran. It assessed that, although the experience of different groups is not uniform, both official and societal discrimination against ethnic minorities does occur. Ethnic minorities report political and socioeconomic discrimination, particularly in relation to their ability to access economic aid and business licences, university admissions, job opportunities, permission to publish books in their languages, and housing and land rights.<sup>9</sup> Other sources that were before the delegate, including the report the same concerns from the Ahwazi Arab community. NGOs report that In Khuzestan in particular, home to Iran's largest oil and gas reserves, unemployment rates among Arabs are incommensurate with the region's natural wealth. Oil and gas companies overwhelmingly hire employees from outside of the Ahwaz area instead of from the local Arab population, despite

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

repeated demands to impose a quota on foreign companies compelling them to hire local labour. As a result, many Arabs are forced to make a living by working in the informal sector.<sup>10</sup>

78. In its 2020 report DFAT assessed 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. This may take the form of denial of access to employment and housing but is unlikely to include violence on the grounds of ethnicity alone. The risk to members of ethnic minority groups who are involved (or are perceived to be involved) in activism, including those advocating for greater political and cultural rights or speaking out against perceived violations, is higher. DFAT defines societal discrimination as behaviour by members of society (including family members, employers or service providers) that impedes access by a particular group to goods or services normally available to other sections of society (examples could include but are not limited to refusal to rent out property, refusal to sell goods or services, or employment discrimination) and ostracism or exclusion by members of society. It also noted that Arab cultural activities are tolerated, and Arabs can freely wear traditional Arabic dress. They also freely speak the Arabic language. DFAT heard anecdotally that Arabs in Khuzestan Province are afforded considerable space to express their ethnic identity. Like other ethnic minorities, Arabs complain of economic neglect and discrimination in education, employment, housing, politics and culture. While they hold most of Iran's oil and gas reserves and have significant shipbuilding, manufacturing and petrochemical industries, the south-western provinces are under-developed economically (largely due to a lack of post-war reconstruction) and suffer from widespread unemployment and poverty. Community representatives claim that Iranian Arabs are systematically excluded from employment in the shipbuilding, manufacturing and petrochemical industries and from opportunities to work in local government. DFAT assesses that Arabs are not specifically targeted for discrimination on the basis of their ethnicity, including in their ability to access government services, and are afforded the same state protections as other ethnic minorities. DFAT assesses that Arabs, more so than other ethnic minorities, who are active politically are likely to attract adverse attention from the authorities, particularly those in border provinces. Those who advocate for greater rights and autonomy and/or self-determination face a high risk of official harassment, monitoring, imprisonment and mistreatment.
79. Other sources that were before the delegate noted that the Iranian government accepts the Ahwazi Arabs' culture. Based on anecdotal evidence, an associate professor claimed that different activities including cultural, social and political are accepted for all ages, but it depends on how they are framed. Ahwazi Arab journalists may be in the authorities' spotlight, as well as activists advocating for Ahwazi Arabs' minority rights. Further, Ahwazi Arabs conducting activities perceived as political may be on the authorities' radar. According to another source, the Arabic language is welcome in the Iranian establishment; as an example, the source highlighted the use of Arabic in the call to prayer. Further, most clerics and top leaders have Arabic language skills.<sup>11</sup>
80. I am not satisfied the applicants have a profile such that there is a real chance they will attract the adverse attention of the Iranian authorities as Ahwazi Arabs.
81. The country information indicates that, although Arabic is not taught in school, Arabs are able to speak Arabic in public and wear their cultural dress.

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<sup>10</sup> 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

<sup>11</sup> Danish Immigration Service and Danish Refugee Council, "Issues concerning persons of ethnic minorities, Kurds and Ahwazi Arabs", 1 February 2018, CIS7B83941872



82. I note that the husband provided evidence that he was able to complete high school and obtain a postgraduate diploma. He was also able to obtain a government job which he held for a long period of time and was also able to join the Basij, a government paramilitary group. His two children who remained in Iran also obtained government jobs and his daughter in Iran was attending university prior to her move to [Country 1]. I am not satisfied on the evidence he was prevented from obtaining housing or other services and I am not satisfied on the evidence Arabs are denied equal access to healthcare in Iran.
83. Other than facing societal discrimination when seeking employment in certain sectors in Ahwaz, such as shipbuilding, manufacturing and petrochemical industries, I do not accept that applicants will face a real chance of other mistreatment based on their ethnicity or denied equal access to healthcare.
84. On the basis of the country information before me, I accept the applicants may face societal discrimination on the basis of their ethnicity when seeking some employment opportunities in certain industries in Ahwaz, I am not satisfied there is a real chance they will be prevented from obtaining employment in Iran in the reasonably foreseeable future. I am not satisfied there is a real chance they will suffer significant economic hardship or will be denied the capacity to earn a livelihood for any of the s.5J reasons, such that their capacity to subsist will be threatened or suffer harm that amounts to serious harm.
85. During the PV interview, when the delegate referred to the husband's claim of fearing harm as a failed asylum seeker as outlined in his statement, he said the authorities will not do anything to him for that reason, seemingly resiling from this claim. Nonetheless this claim was again raised in the post-interview submission, so I have decided to consider it in my assessment.
86. The post-interview submission claims the applicant will be imputed with a political opinion against the regime because of his claim for asylum in Australia. I note that I have not accepted that the Iranian authorities dismissed the applicants' children from their employment or university studies because they found out about the applicants' asylum claim in Australia.
87. Country information that was before the delegate notes that Iran has a longstanding policy of not accepting involuntary returns. Nevertheless, in March 2018, Iran and Australia signed a Memorandum of Understanding on Consular Matters which includes an agreement by Iran to facilitate the return of Iranians who arrived after March 2018. The applicants do not fall within that category and as such I am satisfied that if the applicants were to return to Iran, it will only be on a voluntary basis.
88. There are few recent reports of returnees being mistreated on the basis of being failed asylum seekers returning from a western country before the delegate. A 2019 article states that an Iranian convert to Christianity who was refused asylum in Germany and deported back to Iran was arrested immediately upon her arrival in Tehran, but it is unclear from the report why she was arrested. A small number of older articles refer to the arrest of people with a particular existing profile such as political activists or their families, artists, PHD students, and journalists.
89. In DFAT's more recent 2020 report on Iran, it notes that, in cases where an Iranian diplomatic mission has issued temporary travel documents, authorities will be forewarned of the person's imminent return. Authorities pay little attention to failed asylum seekers on their return to Iran. International observers report that Iranian authorities have little interest in prosecuting failed asylum seekers for activities conducted outside Iran, including in relation to protection claims. This includes posting social media comments critical of the government (heavy Internet filtering means most Iranians will never see them), protesting outside an Iranian diplomatic mission.

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. The treatment of returnees, including failed asylum seekers, depends on the returnees' profile before departing Iran and their actions on return. DFAT assesses that, unless they were the subject of adverse official attention prior to departing Iran (e.g. for their political activism), returnees are unlikely to attract attention from the authorities, and face a low risk of monitoring, mistreatment or other forms of official discrimination. Other recent sources claim the same. There is also no credible evidence that Ahwazi Arabs are generally treated differently during this process.

90. In his written claims the husband said that, as he was member of the Basij for many years, this will also cause problems for him if he returns to Iran because he is better known within the government and they may see him as a traitor. However, as noted above, when questioned about his fear of harm as a failed asylum seeker during the PV interview, he claimed that said the authorities will not do anything to him for that reason and did not refer to his fear as a former Basij again, strongly indicating he does not have subjective fear in this regard. There is also no country information before the delegate to indicate a real chance he will attract the adverse attention of the Iranian authorities on return as a former Basij member who sought asylum in another country or in combination with his ethnicity.
91. As it appears the applicants no longer have their passports, I accept it is highly likely they will return on a *laissez-passer*. Should they return on a *laissez-passer*, I accept they will very likely face a brief period of questioning on return to Iran. For reasons already stated, I am not satisfied the applicants have a profile such that there is a real chance they will attract the adverse attention of the Iranian authorities on return, including because of their ethnicity or the husband's former Basij membership. I am not satisfied there is a real chance the applicants will be subject to prolonged questioning for any reason. I am not satisfied the applicants will face a real chance of harm during such questioning for any reason. I also do not consider being questioned for a short period in these circumstances amounts to harm, even taking into account the applicants' health issues.
92. I am not satisfied the applicants will face a real chance of harm from any group or person as a failed asylum seeker returning from a western country or in combination with their Ahwazi Arab ethnicity and the husband's former Basij membership.

#### **Refugee: conclusion**

93. The applicants do not meet the requirements of the definition of refugee in s.5H(1). The applicants do not meet s.36(2)(a).

#### **Complementary protection assessment**

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94. Under s.36(2)(aa) of the Act, 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

95. 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.

96. 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.

97. I do not accept that, as a member of the Basij, the husband left his last job, and the applicants left Iran, because he felt he would be forced or requested to fight in Syria. I do not accept the husband was involved in any anti-government political activities in Iran. I do not accept their two children, who remained in Iran, were dismissed from their government employment or prevented from attending university because the Iranian authorities found out the applicants sought asylum in Australia. I am not satisfied the applicants will face a real risk of significant harm in Iran in relation to these claims.

98. For reasons noted, I have not accepted the husband participated in political activities in Iran. I have assessed that the husband participated protests and other social media activity in Australia solely for the purpose of strengthening his claims for protection. I am not satisfied of the husband's claimed level of political conviction. I am not satisfied he has a particularly strong conviction in regard his political opinion against the Iranian regime or a genuine desire to publicly promote his opinion. Based on my above assessment of the husband's political conviction and activities in Australia, I am not satisfied there is a real risk the husband will promote his opinion or participate in political activities if he were to return to Iran.

99. I accept that the husband has attended some protests in Australia, one of which was [online], and that he has posted a small number of posts on his [Social media] page (in his own name) about [an issue] in Ahwaz. DFAT assessed that the authorities do not comprehensively monitor Iranians' online activities. Individuals with a public profile (including with large social media followings, particularly on Instagram), who are politically active, advocate for greater human rights, have connections to foreigners and are otherwise perceived as threats to the Islamic Republic are more likely to have their social media monitored – and, concomitantly, face a higher risk of arrest or harassment – than other Iranians. DFAT has also referred to a well-placed source who was not aware of voluntary returnees being prosecuted for criticising the Islamic Republic while abroad on their return to Iran. As far as DFAT is aware, the authorities do not check the social media accounts of Iranians returning from abroad. International observers report that Iranian authorities have little interest in prosecuting failed asylum seekers for activities conducted outside Iran, including in relation to protection claims. This includes posting social media comments critical of the government (heavy Internet filtering means most Iranians will never see them) and protesting outside an Iranian diplomatic mission. In such cases, the risk profile for the individual will be the same as for any other person in Iran within that category. Those with an existing high profile may face a higher risk of coming to official attention on return

to Iran, particularly political activists. The treatment of returnees, including failed asylum seekers, depends on the returnees' profile before departing Iran and their actions on return.<sup>12</sup>

100. In submissions provided to the delegate it refers to statement from Amnesty International dated 24 June 2021 in regard to the detention of an Ahwazi Arab by the Iranian authorities. An informed source claims the has been interrogated in regard to the political activities of his brother who acts as spokesman for an Ahwazi Arab organisation seeks self-determination for Ahwazi Arabs and advocates for independence. I am not satisfied the husband has such a profile. The post interview submission also cited an article about the arrest and execution of an Ahwazi Arab political prisoner in March 2021. The information indicates that was a refugee in Austria before his arrest, but after returning to the country, he was arrested, was convicted of "armed insurrection" by a Revolutionary Court in Ahwaz and sentenced to death in connection with his alleged collaboration with groups opposed to the Iranian regime. It provides no indication he was arrested and charged because of activities he conducted overseas or because he applied for asylum overseas. Also cited was a 2016 article about another Ahwazi human rights activist who was denied asylum in the Netherlands who returned and was sentenced to imprisonment for attending protests. However, according to the report he was of interest due for attending a protest at a football game in Ahwaz in 2015. Other articles about the same person noted he had fled Iran whilst on bail after being arrested.<sup>13</sup> This does not equate to the husband's profile or circumstances.

101. The husband has claimed, and the evidence before me indicates, that he has mainly been a participant in protests in Australia and has no leadership role. I am not satisfied, having considered his profile and the nature of the activities he has conducted in Australia and the country information above, that there is a real risk he will attract the adverse attention of the authorities if he were to return to Iran.

102. As discussed above, I accept applicants may face some discriminatory treatment when seeking employment in certain sectors in Ahwaz in Iran. I do not consider this amounts to significant harm as defined. It does not amount to the arbitrary deprivation of their life or the death penalty or torture as defined. I am also not satisfied that such treatment amounts to an intentional infliction of severe pain or suffering, or pain or suffering that could be reasonably be regarded as cruel or inhuman in nature. Nor am I satisfied this treatment is intentionally inflicted to cause extreme humiliation which is unreasonable. I am not satisfied the applicants will face a real risk of significant harm in Iran on the basis of their Ahwazi Arab ethnicity.

103. I have found the applicants will not face a real chance of any harm in relation to their other claims. Consequently, they will also not face a real risk of any harm in Iran in relation to these other claims.<sup>14</sup> I am not satisfied the applicants will face a real risk of significant harm in Iran.

### **Complementary protection: conclusion**

104. 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 applicants will suffer significant harm. The applicants do not meet s.36(2)(aa).

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<sup>12</sup> DFAT, "Country Information Report – Iran", 14 April 2020, 20200414083132; "Iran's dissident surveillance operation exposed", *Arab News*, 8 February 2021, 20210422110242

<sup>13</sup> "An Arab Asylum Seeker Sentenced to Jail after Returning to Iran", *Human Rights Activists News Agency* (United States), 30 May 2017, CXC9040668619; "6 Years of Imprisonment for a Refugee, After Returning to Iran From the Netherlands", National Council of Resistance of Iran, 4 March 2017, CXC9040668613

<sup>14</sup> *MIAC v SZQRB* (2013) 210 FCR 505.

## Member of same family unit

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105. Under s.36(2)(b) or s.36(2)(c) of the Act, an applicant may meet the criteria for a protection visa if they are a member of the same family unit as a person who (i) is mentioned in s.36(2)(a) or (aa) and (ii) holds a protection visa of the same class as that applied for by the applicant. A person is a 'member of the same family unit' as another if either is a member of the family unit of the other or each is a member of the family unit of a third person: s.5(1).
106. For the purpose of s.5(1), the expression 'member of the family unit' is defined in r.1.12 of the Migration Regulations 1994 to include spouses and certain children.
107. The applicants' son has been found to meet the requirements of s.36(2)(b).
108. I am not satisfied either of the applicants are members of the same family unit of their son for the purpose of s.36(2)(a) as:
- a. Neither of the applicants meet the requirements of r.1.12(4)(a)-(c) as they cannot be described as the spouse, de facto partner, or dependent child (or dependent child of a dependent child) of their son.
  - b. Neither of the applicants meet the requirement of r.1.12(4)(d). While both applicants can relevantly be described as a 'relative' of their son (as defined in r.1.03), subparagraph 1.12(4)(d)(1) requires that they do not have a spouse or de facto partner. As they are in a married relationship with each other, this requirement is not met.
109. I am also not satisfied their son is a member of his father's family unit as:
- a. His son cannot be described as his spouse or de facto partner, nor is he a dependent child of a dependent child of his, as required in r.1.12(4)(a), and (c).
  - b. I am not satisfied, on the evidence, that the son is a dependent child of his father. To meet that definition, he must satisfy the relevant definition in r.1.03 and r.1.05A. As he is over 18 years of age, he must be 'dependent' on his father (as defined by r.1.05A) or incapacitated for work due to partial loss of bodily or mental functions. The evidence does not support that he is incapacitated for work. I am also not satisfied that the son is wholly or substantially reliant on his father for financial, psychological or physical support as per the requirements of r.1.05A(2). In May 2021 the son was invited to provide evidence to the Department of his dependency on his father or, otherwise, was given the opportunity to raise his own claims for protection. The son raised his own claims for protection. I accept he has significant [physical health issues] for which he is receiving treatment. The evidence in the review material, however, indicates that he is able to work 20 hours a [week]. Information in the review material also indicates the father is unemployed. The son has also indicated he has some mental health issues, but he claims he stopped treating it with medication and has tried to resolve it himself and does other activities such as sport to address his mental health issues. The evidence before me, including the medical evidence, does not support the son wholly or substantially relies on his father for psychological or physical support.
  - c. As I am not satisfied the son is dependent on his father, I am also not satisfied that he is a 'relative' of his father who meets the requirements of r.1.12(4)(d).

110. I am also not satisfied their son is a member of his mother's family unit as:
- a. Her son cannot be described as her spouse or de facto partner, nor is he a dependent child of a dependent child of hers as required in r.1.12(4)(a), and (c).
  - b. I am not satisfied, on the evidence, that the son is a dependent child of his mother. As noted above, the evidence does not support that the son is incapacitated for work. I am also not satisfied that the son is wholly or substantially reliant on his mother for financial, psychological or physical support as per the requirements of r.1.05A(2). He is receiving treatment for his physical health issues. He is able to work 20 hours a [week]. Information in the review material also indicates the mother is unemployed and has been assessed as not fit for work due to her health issues and relies on her family for assistance with house duties and out of home tasks. The son has also indicated he has been able to address his mental health issues on his own. The evidence before me, including the medical evidence, does not support the son wholly or substantially relies on his mother for psychological or physical support.
  - c. As I am not satisfied the son is dependent on his mother, I am also not satisfied that he is a 'relative' of his mother who meets the requirements of r.1.12(4)(d).
111. The evidence before me does not support that each of the mother/father or the son are members of the family unit (as relevantly defined) of a third person.
112. The applicants do not meet the family unit criterion in either s.36(2)(b) or s.36(2)(c).

## **Decision**

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The IAA affirms the decision not to grant the referred applicants protection visas.

## Applicable law

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### **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.