



Australian Government
Immigration Assessment Authority

Decision and Reasons

Referred application

IRAN

IAA reference: IAA17/01963

Date and time of decision: 18 September 2017 12:32:00

Rebecca Mikhail, Reviewer

Decision

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

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

Background to the review

Visa application

1. The referred applicant (the applicant) claims to be a stateless Faili Kurd from Iran. [In] December 2016 he lodged an application for a Safe Haven Enterprise Visa (application for protection). [In] February 2017 a delegate of the Minister for Immigration and Border Protection refused the grant of the visa.

Information before the IAA

2. I have had regard to the material given by the Secretary under s.473CB of the *Migration Act 1958* (the Act).
3. On 20 March 2017 the IAA received a submission on behalf of the applicant.
4. The submission outlines a number of findings by the delegate in his decision, the applicant's original claims and evidence, country information that was before the delegate and legal argument which I do not consider to be new information.
5. The submission claims that it is reasonable to expect the applicant's [relative] could have been concerned that the applicant would seek to avenge his father's death, now that the applicant was older and more capable of exacting revenge against his [relative]. In support of this claim it cites and attached two country information reports on honour killings in Iran and Iraq that were published prior to the delegate's decision. I consider this new information as this claim and country information reports were not provided to or before the delegate. I am not satisfied that this new claim is credible personal information as I am satisfied that this is an assertion based on speculation. I am also not satisfied that the country information is credible personal information. This information has been provided in response to the delegate's finding in his decision that a period of five years has lapsed since the applicant's father's death and the submission claims that the passing of five years does not prove that the applicant's [relative]s held no ill will towards the applicant. Although I accept that the delegate did not raise this particular concern with the applicant during the protection visa interview, given the nature of the claim now presented and taking into account that the applicant was represented by the same migration firm before the delegate who provided a written submission to the delegate on his behalf, I am not satisfied this information was not, and could not have been, provided to the Minister before the Minister made the decision. I am not satisfied s.473DD(b) of the Act has been met and I have not considered this new claim and country information.
6. The submission also cites a 2016 report titled "Iran corruption report" which was not before the delegate and which I consider to be new information. This report has been provided in response to the delegate's findings in his decision that the applicant's departure from Iran on a fraudulent passport was not consistent with country information. No reason has been given for why this report, which was published before the delegate's decision, was not provided earlier particularly in light of the fact that the delegate raised concerns about the credibility of the applicant's claimed departure from Iran during the protection visa interview and gave the applicant an opportunity to provide a written submission after the interview. I am not satisfied this information was not, and could not have been, provided to the Minister before the Minister made the decision and it is not credible personal information. I am not satisfied s.473DD(b) of the Act has been met and I have not considered this information.

7. In response to the delegate's reliance in his decision on country information which indicates that green cards became invalid in 2002 and were replaced with Amayesh cards, the submission claims that this transition has not been as quick or as smooth as the delegate suggests and in support of this claim attached two translated articles which indicates that many regions in Iran are still transitioning from green cards to Amayesh cards. One article is undated but the subject refers to a deadline of 14 January 2017 for foreigners in Iran to extend their identity cards so I am satisfied that this article was published prior to the delegate's decision. The other article is dated 31 December 2016 which is also before the delegate's decision. It also attached a copy of the applicant's mother's purported green card which has not been translated. I am satisfied that the above is new information which was not before the delegate. I note that during the protection visa interview the applicant was questioned at length about his documentation and his green card and departmental case officers made clear to him their concerns about the fact that green cards had been out of circulation for some time and had been replaced by white cards and Amayesh cards and therefore his claims appeared implausible. Given the applicant had been put on notice in regards to these concerns during the protection visa interview and was represented by the same migration firm at that stage and was given an opportunity to provide any written submissions after the interview, I am not satisfied that the above information was not, and could not have been, provided to the Minister before the Minister made the decision. I also do not consider the country information to be credible personal information. As the green card has been provided without a translation, I also cannot be satisfied that it is credible personal information. I am not satisfied that s.473DD(b) of the Act has been met and I have not considered this information.
8. The submission also claims that if the applicant is forced to return to Iran and it comes to light that he left the country utilising a fraudulent passport, he will be at risk of interrogation and imprisonment. Further, if his asylum seeker claims is discovered by the Iranian authorities upon his return and it is deemed that he fabricated his persecution claims he could be prosecuted. When questioned by the authorities on return to Iran it may very well be revealed that the applicant obtained and used a fraudulent passport and as a failed asylum seeker and due to his previous arrests and adverse dealings with the Iran authorities this may also come to light and may result in future harassment and persecution at the hands of the Iranian authorities. I am satisfied that this is new information as the applicant has not raised such claims before the delegate. The delegate considered whether the applicant will face a real chance of serious or significant harm on return to Iran as a failed asylum seeker in his decision and I am satisfied these new claims have been provided in response to the delegate's findings. The delegate's concerns in this regard were not raised for response at the protection visa interview. I am satisfied this claim was not, and could not have been, provided to the Minister before the Minister made the decision and that there are exceptional circumstances for considering it.
9. In response to the delegate's finding in his decision that it was more likely that the applicant had simply registered as a refugee with the United Nations High Commissioner for Refugees (UNHCR) in [Country 1] and had not received an assessment, the applicant has now provided a number of statutory declarations from people he befriended whilst being held in a [Country 1] detention centre and a photo of him with some of these people taken in the detention centre. He has also provided a copy of his UNHCR refugee certificate issued on [in] March 2013 which confirms that he has been recognised as a refugee by the UNHCR in [Country 1] and copies of email correspondence between a Legal Protection Assistant in UNHCR [city] and his migration agents in regards to confirming his refugee status. I am satisfied that the above is credible personal information which was not previously known and, had it been known, may have affected the consideration of the applicant's claims given the delegate made a finding of fact in this regard which is now disputed by this evidence. I have also taken into consideration that

the delegate did not raise his concern in this regard to the applicant during the protection visa interview. I am satisfied there are exceptional circumstances to justify considering this information.

Applicant's claims for protection

10. The applicant's claims can be summarised as follows:

- He was born on [date] in Tehran, Iran.
- His parents are Shia Faili Kurds who were both born in Baghdad, Iraq and were expelled to Iran by Saddam Hussein. His father had an Iraqi birth certificate. His family all speak Faili Kurdish.
- He and his parents held green cards which were regularly renewed. His green card was taken by the people smugglers in [Country 1].
- As a child he could not go to school in Iran because he was an undocumented Faili Kurd from Iraq. He did not have a birth certificate and was therefore prevented from going to school or attaining any government service. He undertook home schooling for [number] years when he was [age] years old but then spent the following [number] years at home as his mother could not afford to keep paying the private teacher. He was born in an illegal clinic and did not receive any documents at the time of his birth.
- His father worked in [occupation] in Iraq and would travel back to Iran every three to six months. His father became [Occupation 1] for the [western forces] in Iraq around 2003 to 2004. He did this for a while until some of his own [relatives] and their friends murdered him because they were religious fanatics who could not accept that his father was working with the [western forces]. After they killed his father they sent a message to the applicant's mother calling them heretics and claimed they would kill them.
- He started working to support his mother as a retailer with a small store in the bazaar. Almost every week, the City Council authorities would come and confiscate his stock and he would have to pay bribes to get his stock back. As he did not have any documentation he could not complain to the authorities.
- On several occasions he was detained by the authorities because of his tattoos and earrings. As he could not show any identification documents they would interrogate him for longer and accused him of being a spy. He was arrested over ten times and every time he would be kept for several days and on a few occasions he was detained for a period of a month.
- When he was about [age] years old, his [relative] told his mother that he had seen his father's murderer in Tehran and had asked him how to find the applicant. His mother suggested that he flee Iran and he obtained a fraudulent passport with a different name and fled Iran in around March 2012.
- He was detained for ten months in a jail in [Country 1] after being caught trying to leave by boat. The UNHCR assessed his case and found him to be a refugee and he was released and took a boat to Australia.
- He fears he will be captured, tortured and killed by his [relative]. He fears he will be arrested and tortured by the Iranian authorities because of his tattoos and lack of documentation. He is stateless and does not have full rights to live in Iran and will be discriminated against and prevented from earning a living and the City Council authorities will keep confiscating his stock.

Factual findings

Claims of Statelessness

11. I accept that the applicant was born on [date] in Tehran, Iran and that he resided in Iran prior to coming to Australia.
12. Country information indicates that, beginning in the late 1970s, hundreds of thousands of Faili Kurds were stripped of their Iraqi citizenship and were expelled from Iraq, mostly to Iran. Many Faili Kurds' citizenship documents were confiscated as was their property. Generally, they are distinguished from other Kurdish groups by their religion (Shiism), location and language (Faili Kurdish) which I note the applicant speaks.¹ I accept that the applicant's parents were Faili Kurds who were born in Baghdad, Iraq and expelled from Iraq by Saddam Hussein to Iran a number of years ago and that his father held an Iraqi birth certificate. I accept that the applicant is of Faili Kurd ethnicity. I accept that the applicant's father worked in [occupation] in Iraq and would travel back and forward to Iran every three to six months.
13. The applicant claims that he and his parents had green cards during their residence in Iran but that his was taken by the people smugglers in [Country 1]. During the protection visa interview he claimed that he had no other documents and could not recall when he got the green card as his dad got it for him but that it had a photo of him when he was around [age] years old and that the card would have been around [age] years old. He claims they kept renewing it and that it was valid for up to five years. The applicant's claim of retaining a green card up and until he left Iran is inconsistent with country information before me about registration cards issued to refugees in Iran. On the basis of his claims it would appear that the applicant got his last green card in 2007 or 2008. A report by the Australian Department of Foreign Affairs and Trade (DFAT) explains that green cards were issued to Iraqi refugees in Iran until the end of 2001. From 2002 onwards, green cards were replaced by white cards and green cards were no longer considered valid. White cards expired annually, but could be renewed for a fee.² In 2002 the majority of Iraqi refugees residing in Iran were then registered during a comprehensive registration programme referred to as "Amayesh" registration which became the sole system through which a refugee status could be renewed and Amayesh cards were renewed annually.³ DFAT has stated that it is probable the majority of Faili Kurd refugees in Iran are registered and have Amayesh cards.⁴ During the protection visa interview, when asked whether he knew what a white or Amayesh card was, the applicant said no. During the protection visa interview, when the departmental case officer informed the applicant that the green card went out of circulation at least 12 to 15 years ago and were only issued for a period of one year then were replaced with white cards and then Amayesh cards, the applicant responded that he did not know about any of this and there was nothing he could do with the card and there was no reason for it to be renewed. During the interview the applicant's migration agent also claimed that there were a lot of Kurds that did not actually collect their white cards and maybe he is one of them. However this is inconsistent with the applicant's claim that he maintained a green card which they continued to renew until he departed Iran in 2012. Given the above, I accept that at some stage the applicant and his family may have held green cards but I do not accept the applicant's claim that he and his family held valid green cards after 2001.

¹ Australian Department of Foreign Affairs and Trade (DFAT), "DFAT Thematic Report: Faili Kurds in Iraq and Iran", 3 December 2014, CIS2F827D91722, p.5

² DFAT, "Faili Kurds", 18 March 2010, CX241170

³ DIBP Tehran, "Feyli Kurds - obtaining identity travel documents", 17 September 2015, CISEC96CF13392

⁴ DFAT, "DFAT Thematic Report: Faili Kurds in Iraq and Iran", 3 December 2014, CIS2F827D91722, p.12

14. The applicant also gave inconsistent evidence during his entry interview held [in] July 2013 in relation to his green card. During that interview he claims that when he applied to travel from Iran “they” took the green card off him and did not give it back. He later claimed in the same interview that the people smuggler in [Country 1] took his green card from him. When the interviewing officer highlighted his previous claim that the green card was taken when he got a passport, he responded that he showed them the card to get “the document” but he did not have citizenship or any other cards. His claim that he had to show or give his green card in order to travel out of Iran is also inconsistent with the applicant’s subsequent claim to have paid someone to get a fraudulent Iranian passport for him in order to leave Iran. I consider the applicant’s evidence in regards to his green card to be particularly damaging to his credibility in relation to his status in Iran.
15. The applicant also claims that he does not have a birth registration document as he was born in an illegal clinic which charged a lot of money. He claims he could not go to school in Iran because he was a Faili Kurd from Iraq and did not have a birth certificate and schools would not accept the green card. Consequently he undertook home schooling for [a number of] years when he was [age] years old. I find his claims to be inconsistent with country information which indicates that registered refugee card holders in Iran have access to education and free primary healthcare, although it may be at a lower level than offered to Iranian citizens.⁵ Although registered refugees can access hospitals, costs might be higher for refugees.⁶ All children born in hospital in Iran should receive an official birth record. This would normally state the date, time, place and the parents’ details.⁷ I do not consider it plausible that the applicant’s family paid a lot of money to have his birth in an illegal clinic when they could access hospitals, even at a cost. I do not accept that as a registered refugee the applicant was not permitted to attend school in Iran and had to be home schooled. I am satisfied the applicant has fabricated these claims to support his claim to have had no documents other than a green card.
16. In his application for protection, the applicant claimed that his father held a green card but also had an Iraqi birth certificate. He claims that his father used to travel back and forth between Iran and Iraq illegally and claims that many smugglers do this because the border is not hard to pass especially if you speak Arabic though he was not sure what documents his father had. Although country information confirms the possibility of illegal travel between the borders of Iran and Iraq,⁸ I have given consideration to the claims made by the applicant during his first entry interview where he said that his father had both Iraqi and Iranian citizenship. DFAT has previously been advised that Faili Kurds who can prove Iranian ancestry (through the paternal line) would be eligible for Iranian citizenship, although only a very small number of Iraqi refugees would be able to establish Iranian ancestry.⁹ Other sources claim that over the past 30 years the majority of Faili Kurds expelled from Iraq, and their children, have managed to obtain Iranian nationality through paternal lines or marriage or have been recognised as Iraqi citizens by the Iraqi authorities and issued with Iraqi Identity cards and passports.¹⁰ Faili Kurds have been returning to Iraq since 2003 and many have since been able to reclaim their Iraqi citizenship and the Iraqi Government in Iraq has actively encouraged Faili Kurds to return and

⁵ DFAT, "Faili Kurds", 18 March 2010, CX241170; DFAT, "DFAT Thematic Report: Faili Kurds in Iraq and Iran", 3 December 2014, CIS2F827D91722, p.9

⁶ DFAT, "DFAT Thematic Report: Faili Kurds in Iraq and Iran", 3 December 2014, CIS2F827D91722

⁶ DFAT, "Faili Kurds", 18 March 2010, CX241170, p.14

⁷ DFAT, "DFAT Thematic Report: Faili Kurds in Iraq and Iran", 3 December 2014, CIS2F827D91722, p.13

⁸ DFAT, "Faili Kurds", 18 March 2010, CX241170; Danish Refugee Council, Landinfo and Danish Immigration Service, "Iran: On Conversion to Christianity, Issues concerning Kurds and Post-2009 Election Protestors as well as Legal Issues and Exit Procedures", 1 February 2013, CIS25114, p.67

⁹ DFAT, "DFAT Thematic Report: Faili Kurds in Iraq and Iran", 3 December 2014, CIS2F827D91722, p.11

¹⁰ DIBP Tehran, "Feyli Kurds - obtaining identity travel documents", 17 September 2015, CISEC96CF13392

reclaim their citizenship since 2006.¹¹ A 2009 article published by the Centre on Migration, Policy and Society stated that Iran had granted citizenship to some 100,000 expellees from Iraq who have proven their Iranian origins and that some Faili Kurds hold both Iranian and Iraqi nationalities.¹²

17. The applicant also provided his Refugee Certificate from UNHCR in [Country 1] which assessed him to be a refugee. Although the certificate notes that his place of birth to be Tehran it refers to his nationality as "Iraq". The applicant also gave a different name to the UNHCR, although he claims he did so because he was scared that he would be deported. Nonetheless, I find this creates further doubt in regards to his overall credibility and his claim to be stateless.
18. On the basis of the evidence before me, I consider it likely that the applicant's father regained his Iraqi citizenship as he held an Iraqi birth certificate and spent the majority of his recent life working in Iraq. Although the applicant may be entitled to Iraqi citizenship through his parents, on the evidence before me I cannot be satisfied the applicant is a current citizen of Iraq or has the current right to enter and reside there.
19. Given the inconsistencies and other issues I have highlighted in regards to the applicant's evidence, particularly in regards to his green card, I do not accept that he maintained a green card after 2001. Given this and his earlier claim in his entry interview that his father had both Iranian and Iraqi citizenship, I consider it more likely that the applicant's father acquired Iranian citizenship as a result of proven Iranian ancestry and this is why his father was able to travel regularly back and forth between Iran and Iraq. Given citizenship is derived from the father in Iran,¹³ I consider it more likely that the applicant was able to acquire Iranian citizenship through his father and this is the reason why he did not obtain a white or Amayesh card when they were introduced from 2001 and knew nothing about them. For these reasons I do not accept that the applicant is stateless.

Father's death and threats

20. I accept the applicant's claim that his father became an [Occupation 1] working with [western forces] in Iraq around 2003 to 2004.
21. The applicant claims that his father's [relatives] and their friends murdered him because they were religious fanatics who could not accept that his father was working with the [western forces]. He claims it had been a long time since they had heard from their father and that he had not come back to Iran since 2007. He claims that after they killed his father they sent a message to his mother calling them heretics and claiming they would kill them. During the protection visa interview he explained that his father's [relatives] preferred to have Saddam in power than the [western forces] because when the [western forces] come, they destroy the country and war starts. When he was about [age] years old, his [relative] told his mother that he had seen his father's murderer in Tehran who had asked him how to find the applicant.
22. I note that during the applicant's entry interview, when asked why he left Iran, he referred to the fact that his father had been killed and had been accused of being a traitor because of the interpreting he did for the [western forces] and that he is now at risk as well for the same reason. He did not mention that his father had been killed by his own family members and that he was at risk from his own relatives. I have taken into account that during the entry interview the applicant was advised to only provide the reasons why he left Iran in a few sentences but

¹¹ DFAT, "DFAT Thematic Report: Faili Kurds in Iraq and Iran", 3 December 2014, CIS2F827D91722, p.10

¹² DIBP Tehran, "Feyli Kurds - obtaining identity travel documents", 17 September 2015, CISEC96CF13392

¹³ Ibid.

have also considered that the interviewing officer asked him number of additional questions about why he left allowing him an opportunity to elaborate on this claim. For example she asked him how he knew that his father had been killed and whether his mother and brother were also at risk. I note that in response he said they do not want to harm women and that his mother was paralysed and that he has no clue about his [brother] who he claimed he had not heard from since he was a child. Despite being asked such questions he made no mention of his [relatives] killing his father and the relatives he feared. I have also given consideration to the fact that he gave incorrect information about his brother. Although he initially claimed he had not heard from his brother since he was young, only when confronted by the delegate with information the Department had obtained about his brother during the protection visa interview, did he admit that he was in touch with his brother who was in [Country 2] but who had told him not to say they were in touch as it may “stuff up” his application for citizenship in [Country 2] where he has been for the past eleven years. I find this creates further doubt as to the applicant’s general credibility. I am also not satisfied that the applicant’s [relatives] would threaten him or his family after killing his father due to his work with the [western forces] when they had nothing to do with his work and question why they would wait several years to travel to Iran and look for the applicant with the intention of killing him.

23. On the evidence before me, I accept that the applicant’s father disappeared and was possibly killed as a result of his work as [Occupation 1] with the [western forces] in Iraq a number of years ago around 2007. I am not satisfied that he was killed by his [relatives] and that they threatened to kill the applicant and his remaining family in Iran or that he and his family have been threatened by any other group or person as a result of his father’s previous work as [Occupation 1] in Iraq. I do not accept that the applicant left Iran in 2012 for this reason as he has claimed.

Harassment by the Iranian authorities

24. I accept the applicant’s claim that when he was around [age] he started working to support his mother and had a small store in the bazaar. In his application for protection it indicates that he started this work in 2008. During his entry interview he claimed that he was selling items illegally on the street as he did not have any other opportunity to work and during the protection visa interview he claimed that that green card did not permit him to work. As I have not accepted that the applicant maintained a green card after 2001 and found that he likely acquired Iranian citizenship by then, I do not accept that he was not permitted to work legally at this time. Even if I accept that he had a small store in the bazaar, I do not accept that it was illegal and that the City Council authorities would regularly come and confiscate his stock and he would have to pay bribes to get his stock back and that he could not complain to the authorities because he did not have any documentation.
25. The applicant claims that he was detained by the Iranian authorities because of his tattoos and earrings on several occasions. As he could not show any identification documents they would interrogate him for longer and accused him of being a spy. He was arrested over ten times and every time he would be kept for several days and on a few occasions he was detained for a period of a month.
26. DFAT has stated that tattoos are increasingly common in Iran- particularly among youth - and DFAT has regularly observed male Iranians with visible tattoos. DFAT is unaware of any recent, specific report of people being targeted by security forces solely for having a tattoo. However, it is possible that a person with a visible tattoo could come to the attention of security forces and result in low-level harassment. While DFAT is not aware of specific penalties that could be imposed for having a tattoo, it is likely that such penalties would be similar to those imposed

for dress or hair styles that are deemed 'improper'. In these circumstances, the usual penalty is a warning or fine. DFAT believes it unlikely that authorities would maintain an interest in someone who had previously come to their attention for having a tattoo, unless the tattoo gave evidence of another crime (e.g. related to national security).¹⁴ Another source claims that while there is no specific law against tattoos, the Iranian authorities use Islamic law to denounce it, as they do with many other trends considered too "Western".¹⁵ Another source refers to the implementation in 2011 of a moral security plan which also banned men wearing jewellery.¹⁶

27. DFAT has also stated that it is not aware of cases where Faili Kurds who are also Iranian citizens have faced adverse attention specifically because of their ethnicity. DFAT has spoken with credible contacts, including NGOs, in regards to the allegations that Faili Kurds face harassment on the basis of their former Iraqi citizenship and/or their statelessness. Access to information on this issue remains difficult. However, DFAT has not seen evidence of widespread official discrimination or harassment.¹⁷
28. I accept that the applicant may have experienced some low-level harassment such as a warning or a fine for his tattoos and earrings, but as I have not accepted that he had no identification documents, I do not accept that he was detained on these occasions and interrogated and accused of being a spy or experienced any other harm as a result of his Faili Kurd ethnicity or claimed lack of documentation.
29. During his entry interview the applicant claimed that on such occasions when he would be detained he would be [assaulted]. I note that the applicant did not repeat this claim in his application for protection and given this and my findings above, I do not accept that the applicant was [assaulted] on these occasions.
30. In the post interview written submission to the delegate it claims that tattoos and earrings are seen as an act of rebellion against the conservative ideologies and beliefs of the Iranian government and thus the applicant is perceived as having an anti-Iranian government stance. It also claims that Islam and politics in Iran are fundamentally intertwined and therefore the applicant's fear of persecution for political reasons also amounts to fear of persecution for religious reasons. Although I accept that the Iranian authorities have denounced tattoos and jewellery on men as too western, I am not satisfied on the evidence before me that the authorities impute such people (including Faili Kurds) with an anti-regime political opinion and anti-Islamic religious opinion.

Departure from Iran

31. The applicant claims that he departed Iran on a fraudulent passport. As I have not accepted that the applicant is stateless and I have found that he is an Iranian national, I do not accept that he departed Iran on a fraudulent passport.

UNHCR Status

32. I accept that the applicant was detained for ten months in a jail in [Country 1] after being caught trying to leave the country by boat. I accept that the UNHCR assessed his claims for

¹⁴ DFAT, "DFAT Country Information Report – Iran", 21 April 2016, CIS38A8012677, p.17

¹⁵ "Working underground: the life of an Iranian tattoo artist", France 24 International News, 1 July 2013, CIS26056

¹⁶ Refugee Documentation of Ireland, "Information on the enforcement of dress codes by the Iranian authorities", 11 January 2013 accessed at <http://www.refworld.org/pdfid/5118d9312.pdf>

¹⁷ DFAT, "DFAT Thematic Report: Faili Kurds in Iraq and Iran", 3 December 2014, CIS2F827D91722, p.9

protection and found him to be a refugee and that he was released from detention and took a boat to Australia.

33. Although the applicant claims that he gave "his story" to the UNHCR, there is no further evidence before me of the claims that he put forward to the UNHCR and their assessment of his claims. Although I have considered that he has been recognised as a refugee by the UNHCR I find this is not determinative of the assessment of his claims before me. I have also taken into account that although giving his place of birth as Iran, his UNHCR certificate refers to his nationality as Iraq which strongly suggests that there is inconsistency between the claims assessed by UNHCR and the claims he has presented to the Australian government.

Failed Asylum Seeker

34. I accept that the applicant will be returning to Iran as a failed asylum seeker from Australia. As he no longer has his passport, I am satisfied that, if he returns, he will likely return on a temporary travel document.
35. A number of sources indicate that Iranians travelling on temporary travel documents are likely to be interviewed upon arrival and questioned about how they lost their passport and may take a few hours.¹⁸ I accept that there is a real chance the applicant will be questioned for a few hours on return to Iran.
36. It is claimed that if the applicant's asylum seeker claims is discovered by the Iranian authorities upon his return and it is deemed that he fabricated his persecution claims he could be prosecuted. A report issued by a Swiss refugee agency quotes an unnamed judge as saying that asylum seekers are interrogated on return to Iran, whether or not they have been political activists in Iran or abroad. If they have tried to conduct propaganda against Iran, then they are culpable and are detained until a judge decides the sentence. Returnees will therefore be held for a few days until it is clear to the police, that they have not been involved in political activity. This report followed an article written by a former Supreme Court judge which appeared in Iran government newspaper on 17 February 2011 which stated that failed asylum-seekers could be prosecuted for making up accounts of alleged persecution.¹⁹ However, DFAT has commented that it is unlikely that authorities would prosecute someone simply for claiming asylum overseas. However, it is possible that a known dissident would be prosecuted in this way.²⁰ Mr. Hossein Abdy, Head of the Iranian Passport and Visa Department claimed in 2013 that it is not a criminal offense in Iran for any Iranian to ask for asylum in another country. He further stated that approximately 60% of Iranians who have asylum in other countries, travel back and forth between Iran and other countries.²¹ DFAT has also more recently stated that strong anecdotal evidence suggests that officials do not attempt to prosecute a voluntary returnee—largely because most failed asylum seekers leave Iran legally.²² I am not satisfied the applicant will face a real chance of being prosecuted as a failed asylum seeker from Australia on return to Iran.

¹⁸ Danish Immigration Service, "Human Rights Situation for Minorities, Women and Converts, and Entry and Exit Procedures, ID Cards, Summons and Reporting, etc.", 1 April 2009, CIS17329; Danish Refugee Council, Landinfo and Danish Immigration Service, "Iran: On Conversion to Christianity, Issues concerning Kurds and Post-2009 Election Protestors as well as Legal Issues and Exit Procedures", 1 February 2013, CIS25114, p.69

¹⁹ Amnesty International, "We are ordered to crush you' Expanding Repression of Dissent in Iran", 1 February 2012, CIS22610, p.56

²⁰ DFAT, "Response to IRN 11738 Iran - Article on returned asylum seekers and people exiting Iran with false documents", 19 April 2011, CX263145

²¹ Danish Refugee Council, Landinfo and Danish Immigration Service, "Iran: On Conversion to Christianity, Issues concerning Kurds and Post-2009 Election Protestors as well as Legal Issues and Exit Procedures", 1 February 2013, CIS25114, p.69

²² DFAT, "DFAT Country Information Report – Iran", 21 April 2016, CIS38A8012677, p.28

37. There are also a small number of reports before me of student activists, journalists and political activists, some of whom were returning as failed asylum seekers, being arrested on return to Iran at the airport. However, on the basis of the country information before me I am not satisfied the Iranian authorities impute failed asylum seekers from western countries as holding an anti-regime, western sympathiser or anti-government opinion in Iran. I am not satisfied the applicant has a profile of adverse interest to the Iranian authorities. Although I accept that the applicant will be questioned on return I am not satisfied he will face a real chance of harm during questioning on the basis of being a failed asylum seeker or in combination with his Faili Kurd ethnicity, or for any other reason.

Refugee assessment

38. 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

39. 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.

40. I have found that the applicant is a citizen of Iran. I am not satisfied that he has a current right to enter and reside in Iraq. For this reason I am satisfied that Iran is the receiving country for the purpose of this assessment.

41. Although I have not accepted that the applicant is stateless, the applicant also claims he has a well-founded fear of persecution on the basis of his ethnicity as a Faili Kurd from Iraq. However, on the basis of my findings that he is an Iranian citizen and country information before me and cited above in relation to the treatment of Faili Kurds who are citizens of Iran, I am not satisfied he faces a real chance of harm on return to Iran as a result of his Faili Kurd ethnicity or because he is a Faili Kurd from Iraq.

42. As I have not accepted that the applicant’s father was killed by his [relatives] and that they threatened the applicant or his family or that the applicant and his family have been

threatened by any other person or group in relation to his father's work as [Occupation 1], I am not satisfied the applicant faces a real chance of harm on return to Iran on the basis of his father's previous work as [Occupation 1] with the [western forces] in Iraq and/or because he was killed for this reason.

43. I am satisfied the applicant faces a real chance of experiencing low-level harassment in the form of a fine or warning from the Iranian authorities because of his tattoos and earrings, but I am not satisfied that fines or warnings, individually or cumulatively, amount to serious harm. Although I have accepted that the applicant has experienced previous harassment for these reasons on a number of occasions in the past, I am not satisfied that if he is caught again that he will face a real chance of experiencing anything other than a warning and/or fine.
44. Although I accept that the applicant will face a real chance of being questioned for several hours on return to Iran as someone who will be returning on a temporary travel document, I am not satisfied that being questioned in such circumstances amounts to serious harm. On the basis of the country information cited above and my assessment of the applicant's profile, I am not satisfied the applicant will face a real chance of serious harm as a failed asylum seeker from Australia on return to Iran.
45. The applicant is a Faili Kurd citizen of Iran whose parents were expelled from Iraq by Saddam Hussein. His father disappeared and was likely killed as a result of his work working as [Occupation 1] in Iraq around approximately 2007. The applicant has been caught a number of times by the Iranian authorities because of his tattoos and earrings. The applicant applied for asylum in Australia and will return as a failed asylum seeker on a temporary travel document. Considering his profile and experiences as a whole, I am not satisfied the applicant faces a real chance of serious harm on return to Iran.

Refugee: conclusion

46. The applicant does not meet the requirements of the definition of refugee in s.5H(1). The applicant does not meet s.36(2)(a).

Complementary protection assessment

47. 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

48. 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.

49. For reasons already stated I have not found the applicant will face a real chance of harm on return to Iran on the basis of his Faili Kurd ethnicity or because he is a Faili Kurd from Iraq or because his father worked as an [Occupation 1] with the [western forces] in Iraq and/or was killed for this reason. As real chance equals real risk²³ I am also not satisfied the applicant will face a real risk of significant harm on return to Iran for these reasons.
50. As someone who has tattoos and wears earrings, I accept that the applicant will face a real risk of low-level harassment from the Iranian authorities, such warnings or fines. However, I do not consider this level of harassment, individually or cumulatively, rises to the level of significant harm because I am not satisfied that it involve acts or omissions that are intended to inflict severe pain or suffering or pain and suffering on the applicant, or are intended to cause extreme humiliation which is unreasonable. As such, I am not satisfied that these incidents constitute cruel or inhuman treatment or punishment, or degrading treatment or punishment as defined in s.5(1). These incidents do not involve torture or an arbitrary deprivation of life or the death penalty. I am not satisfied on the evidence that the applicant will face a real risk of significant harm for these reasons or because of the previous harassment he encountered from the Iranian authorities as a result of his tattoos and earrings.
51. On the basis of the country information before me I am not satisfied the applicant will face a real risk of significant harm on return to Iran as a failed asylum seeker from Australia. Although I have accepted that he will be questioned on return, for reasons already stated, I am not satisfied he would face a real risk of significant harm during questioning on return to Iran and I am not satisfied that being questioned amounts to significant harm.
52. Considering the applicant's circumstances and profile cumulatively, I am not satisfied that there are substantial grounds for believing that, as a necessary and foreseeable consequence of being returned to Iran, there is a real risk of him suffering significant harm.

Complementary protection: conclusion

53. There are not substantial grounds for believing that, as a necessary and foreseeable consequence of being returned from Australia to a receiving country, there is a real risk that the applicant will suffer significant harm. The applicant does not meet s.36(2)(aa).

Decision

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

²³ *MIAC v SZQRB* (2013) 210 FCR 505.

Applicable law

Migration Act 1958

5 (1) Interpretation

...

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.