



Australian Government
Immigration Assessment Authority

Corrigendum

Referred application

IAA reference: IAA18/05830

Date of IAA decision: 12 February 2019

Correction

1. The following corrections are made to the decision:

At paragraph 9 the words ‘Furthermore, the applicant’s later evidence that he was still able to attend school after his parents had willingly decided to cancel their registration with the Iranian authorities is not supported by the 2016 US Department of State Report, as quoted by the representative, which states that while the Iranian government imposes fees for children of registered refugees to attend school, the children of unregistered refuse were completely barred.’ should be replaced with:

‘Furthermore, the applicant’s later evidence that he was still able to attend school after his parents had willingly decided to cancel their registration with the Iranian authorities is not supported by the 2016 US Department of State Report, as quoted by the representative, which states that while the Iranian government imposes fees for children of registered refugees to attend school, the children of unregistered refugees were completely barred.’

Date of corrigendum: 22 March 2019

L Hill, Reviewer



Australian Government

Immigration Assessment Authority

Decision and Reasons

Referred application

IRAN

IAA reference: IAA18/05830

Date and time of decision: 12 February 2019 17:35:00

L Hill, Reviewer

Decision

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

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

Background to the review

Visa application

2. The referred applicant (the applicant) claims to be stateless. He arrived in Australia in July 2013 and applied for a Safe Haven Enterprise Visa (protection visa) in 18 May 2017. A delegate of the Minister for Immigration (the delegate) refused to grant the visa on 15 October 2018.

Information before the IAA

3. I have had regard to the material given by the Secretary under s.473CB of the *Migration Act 1958* (the Act).
4. On 6 November 2018, the IAA received an email from the applicant's representative. Attached to the email was a submission. The submission contains discussion on why the applicant does not agree with the delegate's decision and refers to country information and information already before me, and as such this is not new information and I have considered it in this review.

Applicant's claims for protection

5. The applicant's claims can be summarised as follows:
 - He was born in [his home town in] Illam Province in Iran. He is a stateless person of Faili Kurd ethnicity. He was born a Shia Muslim, however he no longer considered himself to be a Shia Muslim.
 - As Faili Kurd he and his family were unable to access education and medical treatment without the payment of money. They were forced to pay higher school fees than Iranian children and were never issued with report cards. On one occasion he was verbally and physically assaulted by a teacher at school.
 - When he was a registered Faili Kurd he was permitted to work in limited circumstances however when he was unregistered he was forced to work illegally. He was only ever paid fraction of what Iranian citizens were for the same work.
 - They were unable to obtain a legal driver licence, operate a bank account, buy property or a mobile phone. They also did not have freedom of movement and in order to travel to Tehran and pass through the checkpoints he had to use a fake birth certificate and national identity card.
 - In 2008, applicant claimed that he was caught eating during Ramadan by the police and arrested. He was taken to court prior to being released two days later.
 - In 2009, he was in a park in [a district] in Tehran when plain clothes officers told him and his friends to leave the park. There was an altercation and one officer slashed him with a knife. They managed to escape but did not seek treatment in Tehran for fear that they would be thrown in jail.
 - Life in Iran was extremely difficult and in 2013 he contacted a smuggler who made the arrangements for him to leave. He departed Iran using a fake passport through the airport in Tehran.

- After his arrival in Australia, in February 2014 the Department of Immigration published his personal details on their website. Shortly after this three people in plain clothes attended his mother's home and searched. They found his fake documents.
- He has also explored Christianity and attended Christian church services and is in the process of converting to Christianity.
- He fears if he returns to Iran he will be discriminated against and harmed by the Iranian authorities including being seriously physically assaulted, arbitrarily detained, interrogated, tortured and/or killed by the Iranian authorities such including the police, Basij and Sepah because he is a Faili Kurd who departed illegally using fake documents and has sought asylum in a western country. He fears that his treatment by the Iranian authorities will be exacerbated because they will deem his attempt to seek asylum as an affront to the Iranian regime.
- He also fears he will be seriously harmed by the Iranian authorities because on return he will not stop wanting to learn more about Christianity and will be punished because he will be considered to be an apostate.

Refugee assessment

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

Well-founded fear of persecution

7. Under s.5J of the Act 'well-founded fear of persecution' involves a number of components which include that:
 - the person fears persecution and there is a real chance that the person would be persecuted
 - the real chance of persecution relates to all areas of the receiving country
 - the persecution involves serious harm and systematic and discriminatory conduct
 - the essential and significant reason (or reasons) for the persecution is race, religion, nationality, membership of a particular social group or political opinion
 - the person does not have a well-founded fear of persecution if effective protection measures are available to the person, and
 - the person does not have a well-founded fear of persecution if they could take reasonable steps to modify their behaviour, other than certain types of modification.
8. The applicant claimed to be stateless. For the following reasons, I do not accept he is a stateless and instead have found him to be an Iranian citizen.
9. The applicant's evidence regarding his citizenship and possession of identity documents has evolved over time. According to the record of the entry interview conducted on 30 August

2013 the applicant said that he was a citizen of Iran and possessed a national identity card, birth certificate and driver licence which had been issued by the Iranian government. He also provided the number for his national identity card. These matters were put to the applicant at the protection visa interview. He gave a somewhat mixed response. He asserted that he did not say he was an Iranian citizen. He also said that he was under a lot of stress at that time and he didn't know what to say. The interpreter was also not a Faili Kurdish interpreter and that the identity documents he mentioned were fraudulent documents. The representative noted that the applicant, in his protection visa statement stated that at the entry interview he and the interpreter could not understand each other and that he had told the interpreter that the documents were fake. It was further contended that unless an audio recording could be produced by the Department little weight should be given to what was in the written record. I accept that the record is not a transcript of the interview and it is impossible to be certain of what exactly was said, and to that extent I have approached it with some caution. However, in light of my other concerns below, I am not prepared to dismiss it entirely.

10. The applicant's evidence regarding the extent of his and his sibling's access to education has evolved over time and is inconsistent with the country information regarding the position of stateless person in Iran. In his protection visa statement he stated that he and his siblings attended school and that when his parents did not renew their registration with the Iranian authorities, he was able to continue to attend but his siblings were unable to do so. In contrast, at the protection visa interview he stated that he was the only one who had attended school. He was asked why he was the only one who attended school. He stated that after his family's arrived in Iran some of his siblings had already passed the age to attend school and his family could not afford to pay for everyone to attend. Furthermore, the applicant's later evidence that he was still able to attend school after his parents had willingly decided to cancel their registration with the Iranian authorities is not supported by the 2016 US Department of State Report, as quoted by the representative, which states that while the Iranian government imposes fees for children of registered refugees to attend school, the children of unregistered refugees were completely barred. It also states that amayesh holders (registered refugees) have access to primary education and further undermines the applicant's evidence that after his family became unregistered and they moved to [a named town] he was able to enrol, attend and complete a further [number] years of secondary school.
11. The applicant's evidence regarding his birth and residence has been inconsistent. At the protection visa interview he said that he was born in Iran but returned to Iraq with his family before they were all expelled again in 1358 or 1359 (1979 or 1980) In his protection visa application and statement he stated that he resided in Ilam Province since his birth in [year] until his departure from Iran in 2013.
12. I also agree with the delegate, and do not consider it credible, that the applicant was able to arrange for an Iranian passport to be manipulated in the manner described and for him to depart Iran using such documents. DFAT advises Iranian passports have been biometric since 2011 and that an original Shenasnameh is required for a passport to be issued. It states while it might be possible to obtain a genuine identification document with the intention of impersonating another person, sophisticated border control procedures would make it difficult to use in order to leave Iran. Whilst the Danish Immigration Service has reported that it may be possible to bribe airport personnel, such action would involve bribing a lot of airport staff members since there are several checkpoints in the airport. It was also reported that a source had indicated that the price would probably high, such as 8-10,000 Euros and that the right connections were also important if one was to bribe one's way out of the

airport. The same source indicated that many illegal Iranian migrants abroad have left Iran using original national passports. Furthermore, there is an absence of information to suggest that Iranian passports are issued to people who are not considered to be Iranian nationals under the law of that country.

13. In the IAA submission the representative contended that the use of the word “difficult or possible” in the DFAT report are “surely are a concession” that is it possible to pass through the airport with a fraudulent passport and gives credence to the applicant’s claims. It was also contended that the country information supports that it is plausible to purchase a fake passport in Iran and depart through the airport and that the applicant is entitled to the benefit of the doubt regarding this aspect of his claims. I disagree. The information indicates that for the applicant to have departed Iran in the manner claimed, he would have not only have needed to have a passport and original Shenاسnameh created for him but for these documents to be linked to a new identity that would need to be created on various immigration and law enforcement systems, and I do not accept that this is plausible. I do not accept that the applicant was able to pass through immigration controls or obtain a passport or other identity documents with altered details in the ways described.
14. Separately, I have considered the household services card (household card) and a letter by the [Authority 1] (reference letter) which have been provided as documentary evidence of his stateless claims. There are a number of irregularities with these documents. The household card states that in [year] his father’s address was Tehran and household members “2”. This is inconsistent with the applicant’s evidence that in [that year] he and his family were living in Lomar Province, not Tehran. Furthermore, while the reference letter reiterates the applicant’s evidence regarding the deprivation of his rights, it offers no reason why his rights were deprived. It also states the reference letter was issued at the request of the applicant and the inclusion of the statement that the writer ‘bears no other liability’ raises questions about the reliability of the information contained in document. In light of the foregoing, I am not satisfied that the household card and reference letter have any probative value and I give them no weight.
15. Finally, the applicant’s evidence regarding the reasons why his parents willingly decided to no longer register with the Iranian government was problematic. At the protection visa interview, he stated that as his parents had to pay money for basic services including their education it was of no benefit to them to keep paying. He also stated it was because his family could not afford to keep paying the amount to be registered. In 2014, the DFAT reported that the annual registration fee for an amayesh card varied depending on location was paid per family member and generally ranged from USD 80 to USD 120. However, vulnerable families were exempt from paying the fee. I find it difficult to accept that had the applicant’s family been unable to afford the fee as claimed that they would not have been able to or attempted to apply for an exemption given the serious consequences of being unregistered. He has not suggested they did so.
16. In light of the foregoing, and the absence of any compelling arguments against the delegate’s conclusion, I am not satisfied that the applicant has been a truthful witness regarding his claims that he is stateless. I do not accept the applicant or his family members are stateless. Nor do I accept the applicant or his family members have in the past been harmed, discriminated against or their rights restricted because they are stateless. I do not accept he has ever possessed fraudulent documents or that he departed Iran using a fraudulent Iranian passport with altered details. Instead, I am satisfied that the applicant departed using his own Iranian government issued passport. The DFAT report states Iranian passports serve as proof

of Iranian citizenship under Iranian law and there is no other information before me to suggest otherwise. I am satisfied that the applicant is an Iranian citizen.

17. In the protection visa statement, the applicant claimed that he was caught eating during Ramadan by the police and arrested. He was taken to the police station where he presented his fake birth certificate. He was released after two days. He believes if he did not have the fake birth certificate he would have been imprisoned for longer. At the protection visa interview, the applicant reiterated these aspects of his claims however he further added that prior to being released he was taken to court. At court the punishment ordered was lashes however he paid money to a friend who had connections to avoid the punishment and instead was released on bail. He also had to pay a fine before the matter was over.
18. The applicant also claimed that in 2009 he was in [a district] in Tehran with friends when they were approached by plain clothes Basij officers who told them to leave. They protested and were physically assaulted. One officer slashed him with a knife. They managed to escape but did not seek treatment in Tehran as they feared that they would be thrown in prison because they were Faili Kurds who were outside of Ilam or Kermanshah Provinces and their wounds would suggest they had been fighting. At the protection visa interview, he further added that he believes the Basij officers started to physically assault them because of the way they were dressed. They were wearing jeans and t-shirts with images.
19. I accept the applicant was arrested by the police when he was caught eating in Ramadan. I accept that he was detained at the police station for two days before being taken to court and released. I accept that in 2009, the applicant was involved in an altercation with Basij officers and slashed with a knife. I accept he escaped the event and returned to Ilam Province where he sought treatment. The applicant's evidence regarding these aspects has been generally consistent throughout his interactions with the Department.
20. In contrast, I found the applicant's evidence regarding his use of fake documentation and payment of money to avoid punishment and a fine to be unconvincing. I have found the applicant is an Iranian citizen and rejected his claims that he possessed fake documentation. No mention of the court ordered punishment, payment of money to a friend or a fine was mentioned by the applicant in his entry interview or his protection visa statement. Rather, at the entry interview he stated that when he attended court the judge pardoned him. I do not accept that the applicant provided a fake birth certificate to the police, that he paid money to a friend to avoid punishment and in order to be released on bail or that he had to pay a fine.
21. The applicant has not claimed that arising from these events he remained of interest to the Iranian authorities and his whereabouts sought, and I am satisfied that he wasn't. In the entry interview, the applicant claimed he was arrested for not fasting in 2008. He stated the altercation with the Basij occurred in 2009. At least ten years has passed since these events. He has not claimed to fear any repercussions or harm on the basis of these events should he return to Iran, and I am not satisfied that he would. I am not satisfied the applicant faces a real chance of harm as a consequence of the events in 2008 and 2009 should he return to Iran.
22. Apart from the applicant's individual claims discussed above, he has not claimed to be of interest or concern to the Iranian authorities for any reason at the time of his departure, and I do not accept that he was. I have found the applicant is an Iranian citizen and rejected his claims that he possessed fake documentation. There is no other credible evidence before me to suggest why the first applicant would need to depart Iran using a fraudulent passport and I do not accept he did. I do not accept that the applicant departed using a fraudulent Iranian

passport. Nor do I accept that his departure through the airport in Tehran involved any bribery or corruption. Rather, as discussed above I am satisfied that the applicant departed Iran legally using his own Iranian government issued passport.

23. In the protection visa statement, the applicant claimed that in February 2014, the Department leaked his personal details on their website. Shortly after this he was contacted by his mother who told him that three people in plain clothes had gone to his family home and told his mother that they had received reports that there was something in the family home. They searched his family home and found the bag containing his fake documents that he had concealed in a [container]. As a result of this event his mother medical conditions became worse and she passed away.
24. The applicant claimed that arising from Department of Immigration's data breach he fears the Iranian authorities are aware that he left the country and sought asylum in Australia and that they will now know that he possessed fake documents in Iran.
25. I have found the applicant is an Iranian citizen who was not of interest to the Iranian authorities for any reason at the time of his departure from Iran. I have rejected the applicant's claims that he possessed fake documentation. However, as discussed below, I accept the applicant's details were inadvertently published on the Department of Immigration's website for a short period in 2014 and that as a result, the Iranian authorities may infer that the applicant has sought asylum in Australia. However, the information before me indicates that failed asylum seekers are unlikely to be targeted by the Iranian authorities for the sole reason of having applied for asylum overseas and I am not satisfied that on this basis the Iranian authorities have searched his home. More than four years have passed since the data breach, and there is no other credible evidence before me to suggest that the Iranian authorities would be interested in seeking the applicant and searching his family home for any other reason. In light of the foregoing, I am not satisfied the applicant has been a truthful witness regarding these aspects of his claims. I do not accept anyone visited the applicant's family home, spoke to his mother and searched it. Nor do I accept that any of the subsequent events which are claimed to have occurred during or after his family home was searched. I am satisfied the applicant has contrived these claims to enhance his claims for protection.
26. It has been contended that on return to Iran the applicant will be perceived as being opposed to the Iranian government and harmed by the Iranian government by the Iranian authorities, including the police, Basij and Sepah because he is a Faili Kurd. He will also be discriminated against in employment, healthcare and housing and will struggle to survive.
27. The applicant claimed that as Faili Kurd he and his family were unable to access education and medical treatment without the payment of money. When they attended school they were forced to pay higher school fees than Iranian children and were never issued with report cards. On one occasion he was verbally and physically assaulted by a teacher at school. When registered he was permitted to work in limited circumstances however when he was unregistered he was forced to work illegally. He was only ever paid fraction of what Iranian citizens were for the same work. They were unable to obtain a legal driver licence, operate a bank account, buy property or a mobile phone. They also did not have freedom of movement and in order to travel to Tehran and pass through the checkpoints he had to use a fake birth certificate and national identity card.
28. DFAT reports that Faili Kurds are a subset of the Kurdish population, but are generally distinguishable from other Kurdish groups by their religion (Shiism), location and language.

The most commonly spoken dialect among Faili Kurds is often referred to as Feyli, a dialect of southern Kurdish. The applicant's protection visa application states that he speaks Feyli Kurdish and basic Farsi. His religion is listed as Shia Muslim. In light of the foregoing, I accept he is a Faili Kurd.

29. DFAT reports that Kurds represent about 10 percent of the Iranian population, with estimates varying between seven and 15 percent. Faili Kurds are a small proportion of Iran's Kurdish population, although information on their exact numbers is unavailable. Faili Kurds typically reside in areas close to the border with Iraq, particularly in Kermanshah or Ilam provinces, as well as major cities such as Tehran and Yazd.
30. The Iranian Constitution guarantees equal rights to "all people of Iran, whatever the ethnic group or tribe to which they belong". There are no laws that discriminate on the basis of ethnicity, including in relation to access to education, employment and housing. However many sources including the reports and articles referred to by the representative including US Department of State, DFAT and Amnesty indicate that such rights are not enjoyed in practice. According to the DFAT, in practice, official and societal discrimination against ethnic minorities does occur, particularly where they are in the minority in the geographic area in which they reside. US Department of State and United Nations reporting that the discrimination Kurds face as an ethnic minority also includes problems with land rights, access to political office, the exercise of cultural, civic and political rights, restrictions on the use of language and permission to publish books.
31. I have had regard to the arguments and sources provided by the representative however it predominately refers to the persecution of undocumented or stateless Faili Kurds or registered refugees in Iran, which I have not accepted that the applicant is. The sources also pre-date those relied on by the delegate by several years and I am not satisfied that the information referred to gives a contemporary assessment of the situation for Faili Kurds in Iran. Instead, I have given substantial and greater weight to the DFAT report published in June 2018, and referred to by the representative. This report noted that while ethnicity remains a sensitive political topic in Iran and identifies Kurds as an ethnic minority group, it observed that the overwhelming majority of ethnic minority groups are integrated into Iranian society and participate in politics and identify with the Iranian nation. It assessed that members of ethnic minority groups face a moderate risk of official and societal discrimination and this may take the form of denial of access to employment and housing but is unlikely in most cases to include violence on the grounds of ethnicity alone and the risk to members of ethnic minority groups who are involved (or perceived to be involved) in activism is higher.
32. In light of the foregoing, I accept the applicant as a Faili Kurd may have experienced some instances of discrimination in the past however the information before me does not support his presented claims that as Faili Kurd, whom I have found is an Iranian citizen that he has in the past had his access to employment and education restricted, his family was forced to pay higher school fees, not issued with report cards, was on one occasion physically assaulted by a teacher, unable to work lawfully, paid less than Iranian citizens and prevented from obtaining a legal driver licence, operate a bank account, buy property or mobile phone and I do not accept these claims.
33. Nonetheless, I accept that as Faili Kurd the applicant may face some official or societal discrimination should he return to Iran. However, the applicant's siblings continue to reside in Iran and there is no evidence before me to indicate that he would not be able to rely on support from his siblings upon return for housing and support. Furthermore, the applicant was able to obtain work in the past, and I am not satisfied that he would be unable to obtain

work of the kind he has in the past. I have had regard to the country information above the treatment of Faili Kurds, and the representatives contentions however given the particular circumstances of the applicant I am not satisfied there is a real chance of him experiencing discrimination, limitations, or other hardship whether separately or in any cumulative sense at a level that would threaten his capacity to subsist or otherwise amount to serious harm.

34. I accept that there are credible reports of Kurds being targeted by authorities for perceived links (or having family members with perceived links) to Kurdish political groups such as the Party for a Free Life in Kurdistan, Komala or the Democratic Party of Iranian Kurdistan. DFAT has reported that those who attempt to publically assert their cultural or political rights that are perceived to threaten the constitutional foundations or the territorial integrity of the Islamic Republic may also come to the attention of the Iranian authorities.
35. I have found that the applicant departed Iran using his own Iranian government issued passport and he was not of interest or concern to the Iranian authorities at the time of his departure. The applicant has not claimed that he or his family members have been supporters of or involved in any political activities including Kurdish groups, organisations or activities in Iran or Australia. Nor has he claimed that he has or would seek to publically assert his cultural or political rights. I am not satisfied that the applicant as a Faili Kurd he will be perceived to have any actual or imputed adverse opinion or profile by the Iranian authorities or someone of interest and harmed on return to Iran. I do not accept that the applicant faces a real chance of serious harm because of his ethnicity should he return to Iran.
36. The applicant claimed that in early 2017, he started to explore Christianity. He had a few friends who were Christian and they would talk to him about Christianity and gave him some books in Farsi. He read the books and became struck by a number of the teachings about Jesus Christ and wanted to learn more. He started to attend Sunday services at a Christian church close to his home. He stated that he is only in the early stages of discovering Christianity however he no longer considered himself to be a Shia Muslim.
37. The applicant claimed that on return to Iran he would want to continue to explore Christian faith as he would like to “fully become a Christian”. He would like to be baptised one day but wishes to learn more about what Christianity means and the teachings of Jesus Christ. He fears that if he seeks to continue his learning about Christianity on return to Iran he will be considered an apostate and a threat to the Islamic principles on which the regime is built and will be severely punished including being seriously harmed and/or killed by the Iranian authorities.
38. At the protection visa interview, the applicant was asked to provide further details regarding his exploration of Christianity. He stated that he had attended church for approximately two months but because of his medical conditions and the treatment he was receiving he stopped doing everything and focused on having his medical treatment. He stated after his treatment is finished he would continue. He stated he hates his previous Shia Islam faith. He was asked when he had attended church. He stated he didn't know the exact dates but it was approximately one year ago. He was asked why he had decided to attend church. He stated that he wanted to convert to another religion. He did not have enough information about Christianity and this is why he started to explore it. He stated he hated everything about Iran and its religion and did not want to follow that religion anymore.
39. I accept the applicant has explored Christianity by reading books, having conversations with friends and attended a Christian church service each Sunday for approximately two months. I

do not accept however that on the evidence he has provided that he has any genuine or ongoing interest in Christianity.

40. The applicant's own evidence is that he has not attended church or explored Christianity for some time. He stated that it was due to his medical conditions. I accept that the applicant may have some medical conditions which have required treatment however there is no information before me substantiating that such medical conditions would prevent him from continuing to explore Christianity or his attendance at church and I do not accept that they have.
41. I have considered the representative's contentions in the IAA submission that the applicant "continues to actively explore Christianity", however I do not accept that he has. Other than the applicant's assertions regarding his exploration of Christianity and his attendance at Christian church since his arrival in Australia, the applicant has not submitted any evidence to substantiate the nature and depth of his involvement with Christianity. Furthermore, the representative's contention is in conflict with his own verbal submissions made at the commencement of the protection visa interview that "[the applicant had] put a claim into his statement about exploring Christianity and he appears not to have progressed further than that now". I do not accept that the applicant has undertaken any significant exploration of Christianity. Nor do I accept that he is an active member of a Christian church or Christian community in Australia.
42. Having regard to the information before me and which I have outlined above, I am not satisfied that the provision of the applicant's sur place claims was for any purpose otherwise than to strengthen his claims for protection. Therefore, in determining whether he has a well-founded fear of persecution, the applicant's conversion to Christianity in Australia must be disregarded: s.5J(6) of the Act. The applicant has not claimed to have had any involvement with Christianity prior to his arrival in Australia and I am not satisfied on the evidence that I can consider that he will engage or continue to have any interest in Christianity or Christian activities on return to Iran and I am not satisfied the applicant faces a real chance of harm on this basis.
43. The applicant claimed that he will be harmed on return because he will be considered to be an apostate. The Iranian authorities are ruthless in protecting the Iranian religious and culture regime and punish severely anyone who they see as an apostate as this is seen as a threat to the Islamic principles on which the regime is built.
44. At the protection visa interview, the applicant was asked whether he was a practising Muslim in Iran. He stated he wasn't and didn't practice or worship at all. He was asked if he had any problems because he was a non-practising Muslim in Iran. He stated no but that on one occasion when he ate something when he was meant to be fasting he got in trouble.
45. As discussed above, I have accepted that the applicant was arrested and detained by the police after he was caught eating food during Ramadan. His evidence at the entry interview was that he was a 'Shia'. I am satisfied that the applicant was a non-practising Shia Muslim prior to his departure from Iran however I accept that since the applicant's arrival in Australia he no longer identifies himself as a Shia Muslim or with the Islamic religion.
46. I accept that under Iranian law a Muslim who leaves his or her faith or converts to another religion or atheism can be charged with apostasy. The Penal Code does not criminalise apostasy but provisions in Penal Code and Constitution state that sharia applies with most Islamic judges in Iran agreeing that apostasy should be a capital crime. This position has been

reported in a number of sources including DFAT, ACCORD and Danish Immigration Service reports. However DFAT also reported that that it is highly unlikely that the government would monitor religious observations by Iranians – for example, whether or not a person regularly attends mosque or participates in religious occasions such as Ashura or Muharram – and thus it would generally be unlikely that it would become known that a person was no longer faithful to Shia Islam. It has also assessed that atheists are unlikely to come to the attention of security authorities unless they seek to publicise their views.

47. The Danish Immigration Service quoted the NGO Elam Ministries as saying that “abstaining from Muslim rituals such as not attending mosque [...] would not necessarily arouse any suspicion as many in Iran do not regularly attend mosques”. They also quoted Mansour Borij, advocacy officer of the Article 18 initiative of the United Council of Iranian Churches, who stated that “[s]ome people from the conservative communities pay more attention to public manifestation of religion such as participation in Friday prayers etc., whereas people from the more secular segment do not pay any attention to such public manifestations”. A senior research fellow in Iranian studies at a university in Germany has also advised “that non-practising Muslims form a large part of Iranian cities” and that “they lead normal daily lives and are rarely called upon to answer direct questions about Muslim religious practice and are rarely pressured to observe Muslim precepts”.
48. I have accepted that the applicant was a non-practising Muslim in Iran however other than one occasion, in which he was arrested, detained before being released there is no other credible evidence before me to suggest that the applicant experienced any problems in Iran on account of his views on religion or his non-practice of Islam. The evidence before me does not indicate that in Australia the applicant has publicly renounced Islam or promoted his non-belief in Islam or has any desire to do so. I am not satisfied the applicant faces a real chance of harm on account of his lack of religion or belief and/or practise of Islam. I do not accept that on any of these bases there is a real chance he would be considered to be imputed with an adverse opinion or profile by the Iranian authorities and harmed should he return to Iran.
49. The applicant claimed that he fears on return to Iran he will be harmed by the Iranian authorities including being seriously physically assaulted, arbitrarily detained, interrogated, tortured and/or killed by the Iranian authorities including the police, Basij and Sepah because he has sought asylum in a western country, Australia and other matters which I have found not to be credible. He fears that his treatment by the Iranian authorities will be exacerbated because they will deem his attempt to seek asylum as an affront to the Iranian regime. The representative also contended that he will be imputed with a political opinion that is anti-regime and pro-Kurdish because he has spent a substantial period of time in a western country.
50. I have found that the applicant departed Iran legally using his own Iranian government issued passport, and I accept that he no longer has this passport. I accept that in 2014 some of the applicant’s personal details were inadvertently published on the Department’s website for a short period of time. This information included: the applicant’s name; date of birth; nationality; gender; the reason for and location of his detention; and whether he had any family members in detention. It did not include any protection visa related information, and while I consider it unlikely, I accept that the applicant’s details may have been obtained by the Iranian authorities as a result of the Department of Immigration’s data breach in 2014 and that it may be inferred from that information that he has sought protection in Australia
51. I have found that the applicant departed Iran legally using his own Iranian government issued passport, and I accept he no longer has this passport. According to DFAT, Iran has historically

refused to issue travel documents (laissez passers) to allow the involuntary return of its citizens from abroad. On 19 March 2018, however, Iran and Australia signed a Memorandum of Understanding (MOU) on Consular Matters that includes an agreement by Iran to facilitate the return of Iranians who arrived after this date and who have no legal right to stay in Australia. In light of this information, I am satisfied that if the applicant was to return to Iran it would be on a voluntary basis, on a temporary travel document (laissez passers), after he has spent a substantial period of time in Australia and after his asylum application has been unsuccessful.

52. The representative has provided a number of reports and extracts from court and tribunal cases regarding the risks of harm for failed asylum seekers returning to Iran, however they all pre-date the reports relied on by the delegate which provide a more contemporary assessment of the situation for returnees to Iran and which indicates that failed asylum seekers are very unlikely to be targeted by the Iranian authorities for reason of having applied for asylum overseas. DFAT reported in 2018 that according to international observers, Iranian authorities pay little attention to failed asylum seekers on their return to Iran, with the authorities accepting that many will seek to live and work overseas for economic reasons. It was also commented that Iranian authorities have little interest in prosecuting failed asylum seekers for activities conducted outside Iran, including in relation to protection claims and it was those with an existing high profile who may face a higher risk of coming to official attention on return to Iran, particularly political activists. DFAT also noted that it not aware of any legislative or social barriers for returnees finding work or accommodation in Iran or any specific barriers to prevent return to a returnee's home region.
53. I have found the applicant departed legally using his own Iranian government issued passport and that he was not of interest or concern to the Iranian authorities at the time of his departure. There is no information before me to indicate that he has been involved in any activities since arriving in Australia that would have brought him to the attention of the Iranian authorities. There is also no independent information before me to suggest that absent any other concerns, Iranians who have spent a substantial period of time outside of Iran in a Western country and sought asylum unsuccessfully and who were subject to the data breach are imputed with an adverse opinion or profile by the Iranian authorities including that they are anti-regime or pro-Kurdish or that such actions are seen as affront to the Iranian regime and harmed on return and I do not accept he will be. Having regard to all the evidence before me, I am not satisfied that he will be at risk of attracting the specific attention of the authorities and questioned should he return to Iran.
54. In light of the information before me, I am not satisfied the applicant faces a real chance of harm on return to Iran because he might be identified at the airport as a person who is travelling on a temporary travel document, who was subject to the data breach, his return after spending a substantial period of time in a western country, Australia or because he sought asylum, or sought asylum unsuccessfully. I do not accept that on any of these bases he would be considered to be imputed with an adverse opinion or profile by the Iranian authorities and harmed on return. I am not satisfied that the applicant faces a real chance of harm as a returning asylum seeker on a temporary travel document from Australia.
55. I am not satisfied the applicant has a well-founded fear of persecution.

Refugee: conclusion

56. 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

57. 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

58. 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.
59. I have considered whether there is a real risk of significant harm as a result of the applicant's activities in Australia, that being his exploration Christianity by reading books, having conversations with friends and attendance at a Christian church service each Sunday for approximately two months in Australia. As discussed above, I have found that the applicant has not undertaken any significant exploration of Christianity or that he is an active member of a Christian church or the Christian community in Australia and I do not accept that the applicant has any genuine or ongoing interest in Christianity and he will engage or continue to have any interest in Christianity or Christian activities should he return to Iran. I have also found that the applicant was not of interest to the Iranian authorities when he left Iran. There is nothing before me to indicate that the Iranian authorities would be aware of his involvement in any Christian community or activities in Australia or such activities would be of concern to them or that he would be of adverse interest to them on this basis. I do not accept that he will become a person of interest to the Iranian authorities on the basis of his Christian activities in Australia, and I am not satisfied he will pursue the Christian faith on return to Iran. I am not satisfied he faces a real risk of significant harm on return to Iran on this basis.
60. Considering both the country information and the particular circumstances of the applicant as I have discussed above, I am not satisfied that as Faili Kurd there is a real risk of the applicant experiencing discrimination, limitations, or other hardship to an extent that would involve the level of pain, suffering or humiliation required in the definitions of torture, cruel or inhuman treatment or punishment or degrading treatment or punishment, or that there is a real risk of him being arbitrarily deprived of his life or subject to the death penalty. I am not satisfied he faces a real risk of significant harm on this basis should he return to Iran.
61. I have otherwise found the applicant does not face a real chance of harm on any or the bases claimed now or in the reasonably foreseeable future. As 'real risk' involves the same standard as 'real chance', I am also not satisfied that the applicant faces a real risk of significant harm.

Complementary protection: conclusion

62. 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.

Applicable law

Migration Act 1958

5 (1) Interpretation

In this Act, unless the contrary intention appears:

...

bogus document, in relation to a person, means a document that the Minister reasonably suspects is a document that:

- (a) purports to have been, but was not, issued in respect of the person; or
- (b) is counterfeit or has been altered by a person who does not have authority to do so; or
- (c) was obtained because of a false or misleading statement, whether or not made knowingly

...

cruel or inhuman treatment or punishment means an act or omission by which:

- (a) severe pain or suffering, whether physical or mental, is intentionally inflicted on a person; or
- (b) pain or suffering, whether physical or mental, is intentionally inflicted on a person so long as, in all the circumstances, the act or omission could reasonably be regarded as cruel or inhuman in nature;

but does not include an act or omission:

- (c) that is not inconsistent with Article 7 of the Covenant; or
- (d) arising only from, inherent in or incidental to, lawful sanctions that are not inconsistent with the Articles of the Covenant.

...

degrading treatment or punishment means an act or omission that causes, and is intended to cause, extreme humiliation which is unreasonable, but does not include an act or omission:

- (a) that is not inconsistent with Article 7 of the Covenant; or
- (b) that causes, and is intended to cause, extreme humiliation arising only from, inherent in or incidental to, lawful sanctions that are not inconsistent with the Articles of the Covenant.

...

receiving country, in relation to a non-citizen, means:

- (a) a country of which the non-citizen is a national, to be determined solely by reference to the law of the relevant country; or
- (b) if the non-citizen has no country of nationality—a country of his or her former habitual residence, regardless of whether it would be possible to return the non-citizen to the country.

...

torture means an act or omission by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person:

- (a) for the purpose of obtaining from the person or from a third person information or a confession; or
- (b) for the purpose of punishing the person for an act which that person or a third person has committed or is suspected of having committed; or
- (c) for the purpose of intimidating or coercing the person or a third person; or
- (d) for a purpose related to a purpose mentioned in paragraph (a), (b) or (c); or
- (e) for any reason based on discrimination that is inconsistent with the Articles of the Covenant;

but does not include an act or omission arising only from, inherent in or incidental to, lawful sanctions that are not inconsistent with the Articles of the Covenant.

...

5H Meaning of refugee

(1) For the purposes of the application of this Act and the regulations to a particular person in Australia, the person is a refugee if the person:

- (a) in a case where the person has a nationality—is outside the country of his or her nationality and, owing to a well-founded fear of persecution, is unable or unwilling to avail himself or herself of the protection of that country; or
- (b) in a case where the person does not have a nationality—is outside the country of his or her former habitual residence and owing to a well-founded fear of persecution, is unable or unwilling to return to it.

Note: For the meaning of ***well-founded fear of persecution***, see section 5J.

...

5J Meaning of well-founded fear of persecution

- (1) For the purposes of the application of this Act and the regulations to a particular person, the person has a well-founded fear of persecution if:
 - (a) the person fears being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion; and
 - (b) there is a real chance that, if the person returned to the receiving country, the person would be persecuted for one or more of the reasons mentioned in paragraph (a); and
 - (c) the real chance of persecution relates to all areas of a receiving country.

Note: For membership of a particular social group, see sections 5K and 5L.
- (2) A person does not have a well-founded fear of persecution if effective protection measures are available to the person in a receiving country.

Note: For effective protection measures, see section 5LA.
- (3) A person does not have a well-founded fear of persecution if the person could take reasonable steps to modify his or her behaviour so as to avoid a real chance of persecution in a receiving country, other than a modification that would:
 - (a) conflict with a characteristic that is fundamental to the person's identity or conscience; or
 - (b) conceal an innate or immutable characteristic of the person; or
 - (c) without limiting paragraph (a) or (b), require the person to do any of the following:
 - (i) alter his or her religious beliefs, including by renouncing a religious conversion, or conceal his or her true religious beliefs, or cease to be involved in the practice of his or her faith;
 - (ii) conceal his or her true race, ethnicity, nationality or country of origin;
 - (iii) alter his or her political beliefs or conceal his or her true political beliefs;
 - (iv) conceal a physical, psychological or intellectual disability;
 - (v) enter into or remain in a marriage to which that person is opposed, or accept the forced marriage of a child;
 - (vi) alter his or her sexual orientation or gender identity or conceal his or her true sexual orientation, gender identity or intersex status.
- (4) If a person fears persecution for one or more of the reasons mentioned in paragraph (1)(a):
 - (a) that reason must be the essential and significant reason, or those reasons must be the essential and significant reasons, for the persecution; and
 - (b) the persecution must involve serious harm to the person; and
 - (c) the persecution must involve systematic and discriminatory conduct.
- (5) Without limiting what is serious harm for the purposes of paragraph (4)(b), the following are instances of **serious harm** for the purposes of that paragraph:
 - (a) a threat to the person's life or liberty;
 - (b) significant physical harassment of the person;
 - (c) significant physical ill-treatment of the person;
 - (d) significant economic hardship that threatens the person's capacity to subsist;
 - (e) denial of access to basic services, where the denial threatens the person's capacity to subsist;
 - (f) denial of capacity to earn a livelihood of any kind, where the denial threatens the person's capacity to subsist.
- (6) In determining whether the person has a **well-founded fear of persecution** for one or more of the reasons mentioned in paragraph (1)(a), any conduct engaged in by the person in Australia is to be disregarded unless the person satisfies the Minister that the person engaged in the conduct otherwise than for the purpose of strengthening the person's claim to be a refugee.

5K Membership of a particular social group consisting of family

For the purposes of the application of this Act and the regulations to a particular person (the **first person**), in determining whether the first person has a well-founded fear of persecution for the reason of membership of a particular social group that consists of the first person's family:

- (a) disregard any fear of persecution, or any persecution, that any other member or former member (whether alive or dead) of the family has ever experienced, where the reason for the fear or persecution is not a reason mentioned in paragraph 5J(1)(a); and
- (b) disregard any fear of persecution, or any persecution, that:
 - (i) the first person has ever experienced; or

- (ii) any other member or former member (whether alive or dead) of the family has ever experienced;

where it is reasonable to conclude that the fear or persecution would not exist if it were assumed that the fear or persecution mentioned in paragraph (a) had never existed.

Note: Section 5G may be relevant for determining family relationships for the purposes of this section.

5L Membership of a particular social group other than family

For the purposes of the application of this Act and the regulations to a particular person, the person is to be treated as a member of a particular social group (other than the person's family) if:

- (a) a characteristic is shared by each member of the group; and
- (b) the person shares, or is perceived as sharing, the characteristic; and
- (c) any of the following apply:
 - (i) the characteristic is an innate or immutable characteristic;
 - (ii) the characteristic is so fundamental to a member's identity or conscience, the member should not be forced to renounce it;
 - (iii) the characteristic distinguishes the group from society; and
- (d) the characteristic is not a fear of persecution.

5LA Effective protection measures

- (1) For the purposes of the application of this Act and the regulations to a particular person, effective protection measures are available to the person in a receiving country if:
 - (a) protection against persecution could be provided to the person by:
 - (i) the relevant State; or
 - (ii) a party or organisation, including an international organisation, that controls the relevant State or a substantial part of the territory of the relevant State; and
 - (b) the relevant State, party or organisation mentioned in paragraph (a) is willing and able to offer such protection.
- (2) A relevant State, party or organisation mentioned in paragraph (1)(a) is taken to be able to offer protection against persecution to a person if:
 - (a) the person can access the protection; and
 - (b) the protection is durable; and
 - (c) in the case of protection provided by the relevant State—the protection consists of an appropriate criminal law, a reasonably effective police force and an impartial judicial system.

...

36 Protection visas – criteria provided for by this Act

...

- (2) A criterion for a protection visa is that the applicant for the visa is:
 - (a) a non-citizen in Australia in respect of whom the Minister is satisfied Australia has protection obligations because the person is a refugee; or
 - (aa) a non-citizen in Australia (other than a non-citizen mentioned in paragraph (a)) in respect of whom the Minister is satisfied Australia has protection obligations because the Minister has substantial grounds for believing that, as a necessary and foreseeable consequence of the non-citizen being removed from Australia to a receiving country, there is a real risk that the non-citizen will suffer significant harm; or
 - (b) a non-citizen in Australia who is a member of the same family unit as a non-citizen who:
 - (i) is mentioned in paragraph (a); and
 - (ii) holds a protection visa of the same class as that applied for by the applicant; or
 - (c) a non-citizen in Australia who is a member of the same family unit as a non-citizen who:
 - (i) is mentioned in paragraph (aa); and
 - (ii) holds a protection visa of the same class as that applied for by the applicant.
- (2A) A non-citizen will suffer **significant harm** if:
 - (a) the non-citizen will be arbitrarily deprived of his or her life; or
 - (b) the death penalty will be carried out on the non-citizen; or
 - (c) the non-citizen will be subjected to torture; or
 - (d) the non-citizen will be subjected to cruel or inhuman treatment or punishment; or
 - (e) the non-citizen will be subjected to degrading treatment or punishment.

- (2B) However, there is taken not to be a real risk that a non-citizen will suffer significant harm in a country if the Minister is satisfied that:
- (a) it would be reasonable for the non-citizen to relocate to an area of the country where there would not be a real risk that the non-citizen will suffer significant harm; or
 - (b) the non-citizen could obtain, from an authority of the country, protection such that there would not be a real risk that the non-citizen will suffer significant harm; or
 - (c) the real risk is one faced by the population of the country generally and is not faced by the non-citizen personally.

...

Protection obligations

- (3) Australia is taken not to have protection obligations in respect of a non-citizen who has not taken all possible steps to avail himself or herself of a right to enter and reside in, whether temporarily or permanently and however that right arose or is expressed, any country apart from Australia, including countries of which the non-citizen is a national.
- (4) However, subsection (3) does not apply in relation to a country in respect of which:
- (a) the non-citizen has a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion; or
 - (b) the Minister has substantial grounds for believing that, as a necessary and foreseeable consequence of the non-citizen availing himself or herself of a right mentioned in subsection (3), there would be a real risk that the non-citizen will suffer significant harm in relation to the country.
- (5) Subsection (3) does not apply in relation to a country if the non-citizen has a well-founded fear that:
- (a) the country will return the non-citizen to another country; and
 - (b) the non-citizen will be persecuted in that other country for reasons of race, religion, nationality, membership of a particular social group or political opinion.
- (5A) Also, subsection (3) does not apply in relation to a country if:
- (a) the non-citizen has a well-founded fear that the country will return the non-citizen to another country; and
 - (b) the Minister has substantial grounds for believing that, as a necessary and foreseeable consequence of the non-citizen availing himself or herself of a right mentioned in subsection (3), there would be a real risk that the non-citizen will suffer significant harm in relation to the other country.

Determining nationality

- (6) For the purposes of subsection (3), the question of whether a non-citizen is a national of a particular country must be determined solely by reference to the law of that country.
- (7) Subsection (6) does not, by implication, affect the interpretation of any other provision of this Act.