



Australian Government

Immigration Assessment Authority

Decision and Reasons

Referred application

IRAN

IAA reference: IAA19/06606

Date and time of decision: 25 June 2019 09:42:00

B Mericourt, Reviewer

Decision

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

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

Background to the review

Visa application

1. The referred applicant (the applicant) claims to be stateless. His country of former habitual residence is Iran. On 9 May 2017 he lodged an application for a Safe Haven Enterprise Visa (SHEV). In a decision dated 6 May 2019 the delegate of the Minister of Immigration and Border Protection (the delegate) refused to grant the visa.
2. The delegate was satisfied the applicant was a registered refugee in Iran and his registration has expired and would not be renewed on his return. However, she was not satisfied there is any real risk or real chance the applicant will suffer serious or significant harm if he returns to Iran now or in the reasonably foreseeable future despite his status as an unregistered refugee.

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. The IAA received a submission from the applicant's representative on 10 June 2019. To the extent that this engaged in argument with the delegate's decision based on information which was before the delegate, I have had regard to it. The applicant quoted extensively from another IAA decision, however, he had already provided a copy of this decision to the delegate on 16 February 2019 and it is therefore not new information.

Applicant's claims for protection

5. The applicant's claims can be summarised as follows:
 - the applicant claims to be a stateless Faili Kurd who was born in Lorestan province, Iran. His parents and grandparents were born in Iraq. The family was expelled by Saddam Hussein in 1982. Prior to his departure from Iran he was a registered refugee and had been issued with a 'white' card. As a stateless person he had no rights to work, education, health care, marriage, freedom of movement and was discriminated against in every respect. If he returns to Iran he will not be able to renew his registration and will be at risk of arrest and detention if he works;
 - as a consequence of the recent sanctions imposed on Iran, the Iranian authorities have intensified their control over workplaces and he would suffer such economic hardship that would threaten his capacity to subsist;
 - the applicant fears he will be accused of being a spy as he departed Iran illegally as the holder of a forged Iraqi passport and sought asylum.

Factual findings

6. The applicant's claims as to his personal identity and Iran being his former country of habitual residence have been consistent since his arrival in Australia. He conducted his interviews mostly in Arabic and some Farsi and also claims to speak Faili Kurdish. He provided the Department with a record of his birth issued by [Organisation 1] '[at a camp]' in [City 1].

Departmental system checks, referrals and open source material did not disclose any issues of concern arising from the applicant's biometric record. I am therefore satisfied the applicant is the person he claims to be and that his country of former habitual residence is Iran.

Refugee assessment

7. 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

8. 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.
9. Real chance is a substantial chance as distinct from a remote or far-fetched possibility.¹

Faili Kurdish ethnicity

10. The applicant has consistently stated he is of Faili Kurdish ethnicity. His parents and grandparents were born in Iraq and the family was deported to Iran by Saddam Hussein in 1982. The family were placed in a detention centre in [City 1], Lorestan province where the applicant was born [number] years later. He has provided the Department with his record of birth issued by [Organisation 1]. The family were registered as refugees by the Bureau for Aliens and Foreign Immigrants' Affairs (BAFIA) and were issued with refugee registration cards. His father died in the camp and the remaining family were released in [year] and moved to Yazd city. The applicant's mother, [brother] and [sisters] continue to reside in Yazd and one sister resides in Esfahan. The applicant claims to speak Arabic, Farsi and Kurdish. He conducted his SHEV interview in Arabic as he considers his Farsi is "too informal" and he can better express himself in Arabic.

¹ *Chan v MIEA*, (1989) 169 CLR 379 at 389.

11. Country information indicates that Faili Kurds are Shia Muslim Kurds who originally inhabited the Iran-Iraq border region along the Zagros mountain range. During the Ottoman period, Faili Kurds who had been living in Iran had the choice of registering as Ottoman or Persian/Iranian subjects. Many chose to align themselves with Iran both to avoid military service and in line with familial ties with Failis living in Iran, while continuing to live in Iraq. In the 1970s and 1980s, the Sunni-dominated Baath regime expelled those it viewed as Iranian and opposed to the Government, and forced several hundred thousands of Faili Kurds across the border into Iran. They were stripped of their Iraqi nationality, and had their citizenship documents, property and assets confiscated.² This is consistent with the applicant's claimed family history that his grandparents and parents were originally from Iraq, south of Baghdad near the border area. The delegate accepted the applicant's Faili Kurdish ethnicity, as do I on the same evidence and country information.

Statelessness

12. The applicant has consistently claimed both he and all his family are stateless in Iran. He said they were registered and renewed their refugee registration cards (temporary residency cards) each year. He told the Department that when he left Iran his card was white, but since his departure his family have been issued with blue cards. He provided a photocopy of his last registration card with no date of issue and his family's 'original' laminated blue registration cards issued in 1387 (Iranian calendar year) to the Department. The family's registration cards were referred for Departmental forensic document examination and found to be counterfeit in a report dated 22 March 2019. The delegate put this finding to the applicant in a s.57 letter dated 3 April 2019 for his comment. She accepted the applicant's explanation that the previously provided cards were laminated copies of original cards.
13. On 15 April 2019 the applicant provided the Department with certified copies of five pink temporary residence cards issued to his mother, [brother], one sister, a niece and nephew in the year 1398 (which commenced [in] 2019). The applicant explained the difference in appearance between these cards and the previously provided cards were that the previous copies had been issued for Persian year 1397. Country information confirms that residency cards must be renewed annually and that in 2013 BAFIA privatised the system of refugee registration and the colour of the cards changes annually. The delegate did not refer these cards for Departmental forensic examination.
14. Most Faili Kurds expelled from Iraq were accepted by Iran as refugees although under strict registration criteria.³ The Department of Foreign Affairs and Trade (DFAT) assesses that the majority of Faili Kurds in Iran are registered and have amayesh (refugee registration)⁴ or 'temporary resident cards' which must be renewed annually.⁵ In almost all cases, Iranian authorities will issue an amayesh card to a child born to an Iraqi refugee father who has a valid amayesh card.⁶ The copy of the applicant's 'Temporary Residency Card for Foreign Citizens' (residency card) issued by BAFIA, the copies of his family members' residency cards

² Department of Foreign Affairs and Trade (DFAT), "Thematic Report Faili Kurds in Iran and Iraq", 3 December 2014, 2.1-2.3, CIS2F827D91722

³ Department of Immigration and Border Protection Tehran (DIBP) "Feyli Kurds— obtaining identity travel documents" 17 September 2015, CISEC96CF13392

⁴ Department of Foreign Affairs and Trade (DFAT), "DFAT Thematic Report: Faili Kurds in Iraq and Iran" 3 December 2014 CIS2F827D91722 at 3.11

⁵ Department of Immigration and Border Protection, Tehran (DIBP) "Feyli Kurds— obtaining identity travel documents" 17 September 2015, CISEC96CF13392

⁶ Department of Foreign Affairs and Trade (DFAT), "DFAT Thematic Report: Faili Kurds in Iraq and Iran" 3 December 2014 CIS2F827D91722 at 3.9

and the evidence he gave at his SHEV interview is broadly consistent with he (and his family) being registered refugees.

15. Based on the above country information and the applicant's consistent evidence about his place of birth, his parents' expulsion from Iraq and his residency in the [City 1] refugee camp for the first [numbers] years of his life, I am satisfied that up until at least the age of [age] years the applicant was a registered family Kurdish refugee born in Iran whose parents were from Iraq. I am satisfied the family were in possession of amayesh or temporary resident cards and that they renewed them annually as required by the Iranian government.
16. The applicant stated that he departed Iran as the holder of a fraudulent Iraqi passport. I therefore gave consideration to whether the applicant had obtained Iraqi citizenship since 2003 when many Faili Kurds returned to Iraq and have had their Iraqi nationality reinstated.⁷ The applicant told the delegate at his SHEV interview that his parents were detained for 45 days in Karbala, Iraq, during which time Iraqi officials told them as all their official documents had been burned that they would not be able to return to Iraq. Furthermore, his father died while in the detention centre in Lorestan and he would have difficulty proving his Iraqi citizenship. He claimed that some more distant relatives, that is, paternal cousins and uncles attempted unsuccessfully to obtain Iraqi citizenship. On the basis of this information the applicant said neither he nor any members of his immediate family have ever attempted to obtain Iraqi citizenship. I am prepared to accept the applicant's evidence that he has not attempted to obtain Iraqi citizenship and has never travelled to Iraq.
17. Nonetheless I considered whether the applicant may have some right to enter and reside in Iraq for the purpose of s.36(3) of the Act. Country information indicates that Iraqi Faili Kurds are able to reclaim Iraqi citizenship, but to do so they must travel to Iran. DFAT advises that it is currently a difficult and lengthy process which succeeds only in some cases⁸. Faili Kurds in Iran must obtain temporary travel documentation from Iranian authorities and a laissez-passer that enables a return trip from the Iraqi Embassy in Iran. There is no evidence before me that the applicant has obtained any such document or permissions, or that he otherwise has a presently existing right to enter and reside in Iraq or any other country. Section 36(3) does not apply.

Iranian citizenship

18. As discussed above I am satisfied the applicant was a registered stateless refugee in Iran up until at least the age of [age] years (that is, about 2003). He stated his registration card did not entitle him to any rights including rights to health and education, ability to marry, travel from one area to another without a permit, or to work. The delegate put to him that the back of the card stated rights to which the holder was entitled. The applicant insisted it was only an identity card that could be used for the purposes of showing to police whenever he was detained for identity purposes. I note that the identity cards provided to the Department do not have any rights listed on the back of the card, and state they are for identity purposes only and restrict travel to the state in which the holders reside. I accept the applicant's evidence that the cards themselves do not indicate he has any rights.
19. Nevertheless, country information indicates that Amayesh registration enables refugees to access basic services including healthcare, education and state benefits although such access is at a lower level than that offered to Iranian citizens and costs, for example of health care,

⁷ Department of Foreign Affairs and Trade (DFAT), "DFAT Thematic Report: Faili Kurds in Iraq and Iran", 3 December 2014, p.5, CIS2F827D91722

⁸ Ibid, p.10

may be higher.⁹ The applicant's evidence that his mother had to pay cash before she was able to access surgical services for her [medical illness] is consistent with this information.

20. Registered Faili Kurds are able to record their marriages on their amayesh cards.¹⁰ At his entry interview, the applicant stated that he had tried to marry an Iranian citizen but they do not allow it because (he did not) have citizenship". They eventually separated. I take this to mean her parents disapproved of the marriage as he was not a citizen, as there is no independent information before me to suggest that there is a legal impediment to such marriages in Iran.
21. Country information also indicates that identity documents are required to buy a house, car, mobile phone or establish a utilities account.¹¹ The applicant stated that he is able to contact his mother and brother by telephone which confirms that as registered refugees they have been able to obtain access to telecommunications.
22. Whilst Faili Kurds registered as refugees have no automatic right to work, registration also entitles holders to apply for work permits, although these are generally limited to a small number of work categories and are subject to conditions and an application fee.¹²
23. On his SHEV application the applicant stated that he was employed with the one company on 'a casual basis' from the time the family were released from detention and moved to Yazd. He was employed at the lowest rate, paid in cash with no entitlements and his employer had to hide him when authorities came to the office. At his protection interview, the applicant stated that he had never personally been detained or arrested by authorities for working illegally, however, he thought his employer was fined from time to time.
24. In his SHEV application lodged in February 2016 the applicant claimed that since his departure from Iran his brother took his position with the same employer and was arrested for working illegally, charged, taken to court. He was released after they issued him with a fine. He stated that the situation for people working illegally in Iran has worsened since sanctions were imposed on Iran by the US resulting in a deteriorating economy.
25. At his protection interview the applicant claimed his brother has been arrested and fined multiple times for working illegally– he thought at least on three or four occasions. At other times he does not work at all because he is too scared to do so. His brother-in-law has also been arrested for working illegally.
26. The applicant's evidence about his family's annual renewal of their registration cards, his low education, his mother's health care and his own employment experiences are all consistent with country information about the situation for registered stateless Faili Kurds.
27. However, I have concerns about the applicant's evidence in respect of two critical issues. The applicant's responses to the delegate's questions about whether he had ever attempted to obtain Iranian citizenship were evasive and lacking in detail despite the delegate's repeated requests to provide some detail about what he did in his attempts to obtain citizenship.

⁹ Ibid, pp.9 & 14

¹⁰ Ibid, p.13

¹¹ Department of Foreign Affairs and Trade (DFAT), "DFAT Thematic Report: Faili Kurds in Iraq and Iran", 3 December 2014, p.14, CIS2F827D91722

¹² Ibid, p.15

28. The applicant told the delegate at his SHEV interview that “his ‘seventh’ grandfather was born in Iran and lived in the mountains in Iran”. In response to the delegate’s question whether he or any of his family members had ever tried to obtain Iranian citizenship, the applicant said “we tried a lot to get citizenship but after the Iran/Iraq war they would not grant us citizenship”. When asked how he tried to obtain citizenship he said ‘we tried because I was born in Iran and so was my [brother] and so we are entitled to citizenship in Iran. They told us we were not eligible because we were Iraqis”. The delegate then asked what he did to try to obtain citizenship and he said “I only tried once on the basis that I was born there and according to Iranian law you are entitled to citizenship but I was not granted”. The delegate repeated the question and also asked when he tried. He said “when we were at the camp we tried a couple of times but there was no procedure or documents that enabled us to apply. There was no process. So the Iranian government would not enable it.” The delegate repeated the question again and he said “my parents just enquired since we were born there. They were told definitely we are not eligible. We had no documents to present to be able to apply.” When asked who told his parents that he said the Iranian government. I found the applicant’s answers to the questions about whether he had attempted to obtain Iranian citizenship, how and when he had done so to be evasive and lacking in any detail. I had regard for the fact he was aware that as he and his brother had been born in Iran that they could try to obtain citizenship.
29. The Department of Immigration and Border Protection (DIBP) (now Department of Home Affairs) has advised that the majority of Faili Kurds expelled from Iraq and their children, have managed to obtain Iranian citizenship through paternal lineage if they could prove their Iranian ancestry, or have been recognised as Iraqi citizens by the Iraqi authorities.¹³ Article 976 of the Civil Code of the Islamic Republic of Iran (the Civil Code) states that persons are considered to be Iranian subjects if they “are born in Iran of a father of foreign nationality who has resided at least one more year in Iran immediately after reaching the full age of 18; in other cases their naturalisation as Iranian subjects will be subject to the stipulations for Iranian naturalisation laid down by the law”.¹⁴
30. DIBP indicates that in order to trace their paternity, Faili Kurd refugees could approach the office of the Organisation for Civil Registration in Ilam province, which specialises in tracing Southern Kurdish family heritage or ancestry as far back as the 1920s. If Faili Kurd refugees have an Iranian father, paternal grandfather and/or uncles, this is viewed by officials as proof of an individual’s entitlement to Iranian citizenship and identity documents, which includes the issuance of a shenasnameh and National Identity Card and eligibility for an Iranian passport.¹⁵ The Department of Foreign Affairs and Trade (DFAT) indicates that there is a process in place for Faili Kurds to apply for citizenship but it is slow and has only improved in recent years.¹⁶ The applicant stated he had an Iranian grandfather (although I do not know what he meant by a 7th grandfather). If his father attempted to obtain Iranian citizenship whilst in the refugee camp I assume it was on the basis of this paternal ancestry. The applicant appears to have had a strong motivation to resolve his stateless status given the discrimination he experienced and it appears from his evidence that his brother and he tried to do so which I assume would have been after they turned 18 years and were living in Yazd.

¹³ Department of Immigration and Border Protection (DIBP), “Feyli Kurds – obtaining identity travel document”, DIBP Tehran, 17 September 2015, CISEC96CF13392

¹⁴ Alavi and Associates Legal Counsels and Attorneys at Law, “Civil Code of the Islamic Republic of Iran, 23 May 1928 (Unofficial Translation)” 1 January 1928, CIS17938

¹⁵ Department of Immigration and Border Protection (DIBP), “Feyli Kurds – obtaining identity travel document”, DIBP Tehran, 17 September 2015, CISEC96CF13392

¹⁶ Department of Foreign Affairs and Trade (DFAT), “DFAT Thematic Report: Faili Kurds in Iraq and Iran”, 3 December 2014, CIS2F827D91722

31. I also had regard to the applicant's refugee registration card which he provided to the Department. There is no date of issue on the card and the photograph is clearly of the applicant as a child. The delegate put these issues to the applicant for comment at his protection interview. He did not know why it did not have an issue date although he knew it had to be renewed each year. He could not say how he knew when it needed to be renewed when there was no issue date on the card. He also said "with the old cards they didn't change photos. It was only with new cards they changed photos". In her decision the delegate cited country information from DIBP that cards issued between 1998 and 2001 sometimes had the date of issue scored through or left blank.¹⁷ This does not apply to the card the applicant provided which he claimed was issued prior to his departure, presumably some time in 2012. The other family members' cards all included dates of issue.
32. I do not accept the applicant's explanation about the photo only being updated on 'new' cards. The applicant would have been around [age] years old at the time his registration card was issued and he was the oldest male in the family. I find it far more likely that his photograph would have been updated earlier, after the age of 18 and after his father had died leaving him the eldest male in the family. I note that the forensic document examination indicated the copy of the applicant's identification card was not of sufficient quality standard to determine its authenticity.
33. The second issue is the applicant's evidence about obtaining a driver's licence which I find to lack credibility. On his SHEV application the applicant stated that he did not drive a car or motorbike because he did not have a license. However, the applicant told the delegate at his protection interview that he provided the Australian Department of Roads and Maritime Services with his Iranian drivers licence which he had obtained fraudulently through a friend in Iran as part of the process of obtaining his Australian driver's license. Initially he said it was forged. Then he said it was not forged but he obtained it illegally through a friend. He said that he paid money to obtain one because he needed to drive in Iran - without it he couldn't drive. When asked whose car he drove he said he did not own or drive a car in Iran. He never used his license or carried it with him because he was not permitted to have one as a stateless refugee. He thought he had obtained it about 8 to 12 months before his departure from Iran. The delegate asked why he obtained an Iranian drivers licence if he did not use it or carry it with him. He said that after he had obtained it a friend advised him that if he was picked up using it he would be arrested and detained so he decided it was too risky. The delegate put to the applicant he had been inconsistent in his evidence about whether the licence was forged or not. He responded that the licence itself is 'proper' but he paid money to get it. Just like anyone else he wanted a licence to be able to drive a car but after his friend told him it would cause problems he never used it.
34. I accept that documents are easy to get in Iran through bribery and connections, including civil documents.¹⁸ However, I do not find the applicant's evidence plausible that he only learned from his friend *after* he had obtained his license that he may be arrested, detained or fined if he was found to have a driver's license when he only had his refugee registration card as his identity. The applicant has consistently stated he believed he had no rights as a registered refugee. He claimed to have obtained a license when he was about [age] or [age]

¹⁷ Department of Immigration and Border Protection (DIBP), Country of Origin Information Section Services (COISS), "Iran: CI150723131013116 – Green Card – White Booklets – White Cards – Pink Cards – Blue Cards – BAFIA Registration Program (BRP) certificates" 30 July 2015, CRE6D9079221

¹⁸ 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

years old. I consider that he would have been well aware of the risks of driving with a fraudulently obtained license if he only had a refugee registration card for ID purposes.

35. On weighing the applicant's evidence I do not accept that his driver's licence was fraudulently obtained. I accept the applicant's evidence that the licence was genuine or 'proper' but in the absence of any details about how he obtained a licence in his own name illegally other than paying someone, I am not satisfied that this was the case. Country information confirms that in order to obtain a driver's license a person must be an Iranian national over the age of 18 and the holder of a valid National Identity card (NID) and a shenasnameh to obtain one. That is, an applicant for a drivers licence must be an Iranian national.
36. Taking into consideration the relevant country information and all the above findings, I consider it most likely that the applicant successfully obtained Iranian citizenship in the year or so before he departed Iran and then obtained a genuine driver's licence and a valid Iranian passport prior to his departure.
37. In conclusion, I am satisfied the applicant was a registered refugee born in Iran to Iraqi parents until at least the age of [age] years, that is, until at least 2003. I find that some time prior to his departure from Iran in September 2012, the applicant obtained Iranian citizenship. I am therefore satisfied the applicant is not stateless as he claims.

Fear of harm for reasons of his Faili Kurdish ethnicity

38. At his entry interview on 12 November 2012, in response to the question whether he had ever been arrested or detained by police or security organisations, the applicant said no. In response to the question about whether police, security or intelligence organisations impacted on his day-to-day life in Iran, the applicant provided information about wanting to marry an Iranian citizen, but being unable to do so because he did not have citizenship. He did not identify when this occurred.
39. The applicant has not claimed to have been seriously harmed by authorities for reasons of either his Kurdish ethnicity or his statelessness, rather he was treated harshly and suffered discrimination, particularly in employment. I accept the applicant experienced discrimination in employment as a consequence of his lack of citizenship and was only able to obtain 'informal' employment.
40. I accept the applicant's evidence that he has suffered discrimination and harassment as a consequence of his statelessness / refugee status in Iran prior to his obtaining citizenship. However, I am not satisfied that the discrimination and harassment he suffered meets the standard of serious harm, having regard to the extensive examples of serious harm in s.5J(5) of the Act.
41. I had regard to the applicant's evidence that his mother, brother and [sisters] still live in Yazd and his brother continues to work, albeit in the informal economy. I am satisfied the applicant will have access to food and shelter and family support if he were to be returned to Iran now or in the reasonably foreseeable future.
42. It is the case that the applicant probably has a limited range of employment opportunities given his claim to have had no schooling beyond primary school and he lacks any vocational or professional training. It is also the case, as the applicant claims, under the current situation of increased sanctions against Iran the economy has slowed and unemployment rates have increased significantly. However, in my view, if he returns he will have access to similar job

opportunities as he had before and I am not satisfied there is a real chance he would be denied the capacity to earn a livelihood or that he will suffer severe economic hardship that threatens his capacity to subsist for reasons related to his ethnicity.

43. Article 19 of the Iranian Constitution provides that “[all] people of Iran, whatever the ethnic group or tribe to which they belong, enjoy equal rights; and colour, race, language and the like, do not bestow any privilege.”¹⁹ However, a great deal of country information indicates that ethnic and religious minorities in Iran do not enjoy equal rights and are subject to discrimination in accessing education, housing, employment, political office and their exercise of cultural civil and political rights.²⁰
44. DFAT states it has spoken to a range of credible contacts in relation to the societal treatment of Faili Kurds. Its contacts have not reported instances of Faili Kurds being targeted for extortion or being subject to harassment, detention or physical assault but could not rule it out due to their vulnerability as refugees and their Kurdish identity.²¹ The applicant comes from Yazd where there is a significant Faili Kurd population.²² I am not satisfied that any possibility he might be harassed, detained or subject to assault as an ethnic Kurd rises to the level of a real chance.

Fear of harm for reasons of membership of a particular social group – that is, failed asylum seekers who sought protection in a Western country

45. The applicant claims he departed Iran illegally as the holder of a fraudulent Iraqi passport. At his SHEV interview he stated that the smuggler arranged for someone from immigration to meet him at the airport and escort him through to his flight so there would be no troubles with officials. He did not know if a smuggler paid a bribe to this person and did not know his name. He had no difficulties departing. He claims his passport cost about [amount] tomans and his ticket cost about the same amount. He only earned about [amount] tomans a month which wasn’t enough so his three sisters all sold some of their gold jewellery to pay for his travel. At his entry interview he said he paid a total amount of [amount] for his travel plus [amount] tomans for his passport. Given the value of the rial/toman to the US dollar I consider the figure of [amount] to be a more accurate translation. The total amount does not suggest that a separate bribe was paid to an immigration official at the airport.
46. The applicant told the delegate that as a consequence the authorities will think he is a spy and he will be arrested and detained if he returns. The applicant also claimed that when his family went to renew their registration cards in 2016, they were asked why he was not renewing his card and where he was. The family were threatened their cards would not be renewed if they did not provide this information so they told the authorities he had left the country. His family got into trouble because the authorities queried how he was able to leave the country without any ID. Nevertheless their cards were renewed and he provided some of his family members’ most recent registration cards to the Department. The applicant thought the authorities asked his family about him because they were already aware he had left the country.
47. As discussed above I do not accept the applicant left using a fraudulent Iraqi passport and consider he departed legally as the holder of a genuine Iranian passport. I also do not

¹⁹ Department of Foreign Affairs and Trade (DFAT), “DFAT Country Information Report – Iran”, 7 June 2018, p.16, CIS7B839411226

²⁰ Ibid

²¹ Department of Foreign Affairs and Trade (DFAT), “DFAT Thematic Report: Faili Kurds in Iraq and Iran” 3 December 2014, p.17, CIS2F827D91722

²² Ibid, p.6

consider the applicant's evidence plausible that almost four years after he had departed the family were asked about his whereabouts and how he left the country. If, as he says, the entire family who lived in Yazd went to renew their registration cards together, it does not seem plausible that it would take four years for the authorities to notice the applicant was not present, particularly as he had been the oldest male in the family for over 10 years, or to only just become aware that he had left the country.

48. The applicant also thought the Iranian government authorities will detain him and ask him "information about other countries". The delegate did not ask him to clarify. I therefore consider that a claim arises on the material related to the applicant having sought protection in a Western country.
49. I have had regard to the country information²³ that Iran has historically refused to issue travel documents to allow the involuntary return of its citizens, such as the applicant who arrived in Australia in 2012, from abroad, and find that if the applicant was to return to Iran it would be on the basis it was voluntary.
50. I am satisfied that the applicant will return to Iran as the holder of temporary documents as he no longer has possession of his passport. I accept that there is a real chance he will be assumed by Iranian authorities to have sought protection in Australia.
51. The International Organisation for Migration (IOM) runs a program to assist voluntary returnees to Iran in cooperation with Australia. Iranian authorities cooperate with IOM in this regard. DFAT reports that according to international observers, Iranian authorities pay little attention to failed asylum seekers on their return to Iran. Iranians have left the country in large numbers since the 1979 revolution and authorities accept that many will seek to live and work overseas for economic reasons. Authorities will usually question a voluntary returnee on return only if they have already come to official attention, such as by committing a crime in Iran before departing or if they were political activists.²⁴ There is no evidence before me to suggest the applicant has such a profile and, as discussed above, I do not accept the applicant's evidence that the authorities expressed any interest in his departure more than four years after he left the country.
52. Considering the country information before me I am not satisfied the Iranian authorities impute failed asylum seekers from Western countries or people who have resided in Western countries as holding an anti-regime, Western sympathiser or anti-government opinion in Iran or seek to prosecute or otherwise harm them for reasons of having made a claim for asylum. I am satisfied the applicant had no difficulty departing Iran using his own passport which suggests he was of no interest to Iranian authorities prior to his departure.
53. As I am not satisfied the applicant was of adverse interest to the authorities prior to his departure and there is no information before me that the applicant has done anything in Australia that may attract the adverse attention of authorities in Iran, I am satisfied that he may be questioned for a brief period on his arrival at the airport and he would then be released.
54. Although I accept that the applicant will be likely to be questioned on return to Iran by the Iranian authorities, I am not satisfied this amounts to serious harm having regard to the

²³ Department of Foreign Affairs and Trade, "DFAT Country Information Report - Iran", 7 June 2018, p.49, CIS7B839411226; Department of Foreign Affairs and Trade (DFAT), "DFAT Country Information Report Iran April 2016", 21 April 2016, p.28, CIS38A8012677

²⁴ Department of Foreign Affairs and Trade, "DFAT Country Information Report - Iran", 7 June 2018, p.49, CIS7B839411226

extensive examples provided in s.5J(5) of the Act. I am not satisfied the applicant faces a real chance of serious harm on return to Iran on the basis of being a failed asylum seeker from Australia, if he is returned to Iran now or in the reasonably foreseeable future.

Cumulative consideration of claims

55. As discussed above, I am satisfied the applicant is an ethnic Faili Kurd who was born in Iran and was a documented registered refugee until at least the age of [age] years. I have found that the applicant obtained Iranian citizenship prior to his departure from Iran and he departed legally as the holder of a valid Iranian passport. I accept that he suffered discrimination and harassment as a Faili Kurdish refugee in Iran but do not consider this met the standard of serious harm having regard to the extensive examples of serious harm in s.5J(5) of the Act.
56. I am satisfied that if the applicant returns to Iran as a failed asylum seeker it will be voluntarily on temporary travel documents issued by the Iranian authorities. I accept it is likely the authorities will assume he sought protection. However, I am satisfied that any questioning he may undergo on his arrival does not meet the standard of serious harm and there is no evidence before me to suggest the authorities will impute him with being a spy or having an adverse political opinion as a consequence of his having sought asylum in a Western country.
57. Overall, I am not satisfied that there is a real chance the applicant will suffer serious harm as a consequence of his Faili Kurdish ethnicity, membership of a particular social group or for any other reason. Having regard to all the applicant's specific circumstances in the context of the country information about the current situation in Iran, I am not satisfied that there is a real chance of the applicant being seriously harmed by the Iranian authorities or by any other group or person if he returns to Iran now or in the reasonably foreseeable future.

Refugee: conclusion

58. 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

59. 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

60. 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.

61. Real chance and real risk involve the same standard.²⁵

62. As discussed above I accept the applicant was a documented registered refugee born in Iran and his parents were born in Iraq. I accept the applicant's evidence about his lack of education, poor access to health care and the fact that he was only able to work in the informal sector on a casual basis for cash due to his status as a refugee. I accept his evidence that he suffered discrimination and harassment from time to time. However, I am satisfied the applicant did not suffer significant harm for reasons of his refugee status and/or ethnicity having regard to the definitions of significant harm in s.36(2A) and s.5(1) of the Act. Moreover, I have also found the applicant obtained Iranian citizenship after he turned 18 and before he departed Iran in September 2012.

63. There is no evidence before me to suggest the applicant was of any adverse interest to the authorities prior to his departure. I am satisfied the applicant departed Iran legally as the holder of a valid passport. I am satisfied he no longer has this passport and, if he returns voluntarily, it will be as the holder of temporary travel documents issued by Iranian authorities. I accept he may be perceived to be a failed asylum seeker who sought protection in a Western country and as such he may be questioned on his arrival. However, I do not consider that any questioning he may undergo amounts to significant harm.

64. I accept the applicant may suffer some social discrimination as an ethnic Faili Kurd, however, I am satisfied such discrimination does not constitute significant harm having regard to the definitions of significant harm in s.36(2A) and s.5(1) of the Act.

65. I am not satisfied that there is a real risk that the applicant will suffer significant harm based on the cumulative effect of his circumstances and profile.

Complementary protection: conclusion

66. 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.

²⁵ *MIAC v SZQRB* (2013) 210 FCR 505

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.