



Australian Government
Immigration Assessment Authority

Decision and Reasons

Referred application

IRAN

IAA reference: IAA20/08639

Date and time of decision: 15 September 2020 17:50:00

J McLeod, 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) is an Iranian national and ethnic Kurd from Ilam, Iran. He arrived in Australia [in] May 2013 and lodged an application for a Safe Haven Enterprise Visa (SHEV) on 26 June 2017. A delegate of the Minister for Immigration (the delegate) interviewed the applicant by telephone on 12 August 2020 and refused the grant of visa on 20 August 2020.

Information before the IAA

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

Applicant's claims for protection

3. The applicant's claims can be summarised as follows:
 - He is an Iranian citizen of Kurdish ethnicity from Ilam, Iran.
 - Due to their concerns about Kurdish separatism, the Iranian government has employed hostility and brutality against Kurdish people. The Kurdish are attacked, arrested, assaulted, tortured and killed just for seeking recognition and participating in peaceful demonstrations demanding human rights, public facilities and better living conditions.
 - The applicant participated in a protest against the Iranian government's neglect of Kurdish people during (then) President Ahmadinejad's visit to Ilam. Because he spoke out, he was arrested, imprisoned, battered, tortured and suffered cruel and degrading treatment from Iranian authorities. He was released but his father was warned to send him out of the country, and he was subsequently sentenced to two years imprisonment.
 - As a result of his mistreatment, he developed a [health] condition and subsequently had to undergo [surgery]. The consequences are still impacting him.
 - He fears that because he spoke out during the Ahmadinejad visit, if he returns to Iran, he will face the same type of mistreatment he suffered previously at the hands of Iranian authorities. He may also be arbitrarily deprived of his life. He has already been sentenced to two years in prison and this may now be increased to 10-20 years or an execution.

Refugee assessment

4. 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

5. 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.
6. There are no identifiable concerns with the applicant's identity and nationality. I accept it is as claimed and find Iran to be his receiving country.
 7. The applicant has been reasonably consistent about his general background and I have no reason to dispute it. I accept the following: He was born in Ilam in [year] and lived at the same family address in Ilam his whole life. His father passed away before the applicant came to Australia. He recently learned that his mother has [a medical condition]. She resides with his [siblings] and their families at the family address. The applicant and his wife divorced in [year]. His son, who is now around [age] years old, lives with the applicant's ex-wife in Ilam. The applicant is a Muslim (a Shi'a Muslim, according to the record of his Arrival Interview) and is of Kurdish ethnicity. He speaks Kurdish and Persian. He completed compulsory military service [during specified years]. He completed his schooling and attained a university diploma in [course]. He was variously employed as [specified occupations] in Iran and in [specified] roles in Australia, though he has engaged in little work recently due to his doctor's concerns over his [condition].
 8. With his application, the applicant has provided a doctor's letter dated 17 June 2017. The doctor confirms the applicant had a [condition] and received [surgery] in Iran, that he was taking medication and required regular blood tests. The doctor also noted the applicant suffered from [specified medical conditions] and had commenced taking medication for major depression and that his mood, memory and concentration had been impaired. The assessment of the applicant's mental health is dated and pre-dates the SHEV interview by more than three years. I am not prepared to accept the applicant's memory and concentration was affected in the SHEV interview on account of these factors, although I have factored into my consideration that the applicant was having some struggles as he had only recently learned of his mother's [medical condition]. I note the applicant has not raised any claims of fearing return to Iran relating to any of these health issues.
 9. The applicant's central claim is that he was previously arrested, detained and mistreated and has been sentenced to a two-year jail term for participating in a protest and speaking out against the Iranian regime during former President Ahmadinejad's visit to Ilam.
 10. The applicant provided the following information in his SHEV interview: During Ahmadinejad's visit, he gave a speech which contained offensive remarks against Kurds. The applicant objected to these statements and gathered with others to protest against the regime by shouting slogans. While other protestors behaviour escalated to breaking windows and being destructive, he did not break anything or do anything illegal. He had never engaged in anything like this before and has never done so again. He was arrested and held not one to two days as is recorded in the Arrival interview, but for a few hours. He was released quickly because his father's cousin who worked for the police force, used his connections. The applicant's evidence in this regard was

open and forthcoming and appeared unexaggerated. Apart from the length of detention it was also reasonably consistent with information he had provided in the Arrival interview. I accept the applicant was briefly detained and released with the help of a relative, after protesting against the Ahmadinejad regime.

11. However, I am not persuaded the applicant was formally imprisoned, battered, tortured and subject to cruel and degrading treatment during his detention which led him to suffer [health] problems. This was raised in the applicant's written application, but he gave no details to explain what he meant by these terms and in the SHEV interview he made no mention of being harmed in custody. No evidence has been provided which indicates the applicant was injured during his few hours of detention or that he needed medical treatment after being released, and nor has any evidence been provided to support that his [health] problems stemmed from the detention incident. Overall, while I accept he was briefly held by Iranian authorities for his verbal protest, I am not persuaded he was battered, tortured, subject to cruel and degrading treatment or other mistreatment which resulted in [health] problems.
12. The applicant's evidence around when these events occurred has been vague and also appears to have been inconsistent. While he gave no relevant date references in his SHEV application, the Arrival interview (conducted in June 2013) record indicates that the applicant twice said it occurred three years ago (2010) and once said it was two to three years ago (2010/11). However, in his SHEV interview he estimated it occurred approximately eight to nine months before he came to Australia (being June – September 2012).¹ I note that in both interviews the applicant referred to these events occurring before an election, however he has never specified which election and nor is it obvious with reference to country information. The applicant did suggest the Arrival interview record contained errors and explained that he was struggling with dates in the SHEV interview as his mind was affected by learning only a few days earlier that his mother has [a medical condition]. The audio recording of the Arrival interview is unavailable, but I have reservations about his claim of the dates being erroneously recording noting the multiple references to three years. And while the applicant may have had difficulty recalling precise dates in the SHEV interview setting, the delegate made his concerns around this matter clear in the interview and decision and the applicant provided no further clarity to the delegate following the interview, nor in any submissions to the IAA.
13. In the SHEV interview the applicant claimed that a few months after his release, his father's cousin told his father to send him out of Iran because his file was being given to the intelligence office. His brother then went and got his passport renewed. He said that because of his father's cousin's role, he was never taken back into custody, but he attended court whenever advised by his father's cousin. When asked if he had received documentation from the authorities in regard to his involvement in the protest, the applicant said he had, but it was not sent to Australia. He said they are always sent to his brother in Iran. He also said that while he was in [Country 1] (March – May 2013) documentation from the Revolutionary Court was sent to him at his mother's address advising he has been sentenced in absentia to two years in prison. However, when asked if any other documents pertaining to his involvement in the protest had been sent to that address, he said 'no' or if they had sent them, he wasn't aware. The delegate asked if anything further had been received following the conviction/sentencing notice and the applicant said he hadn't asked his family if there was anything further. I note that towards the end of the SHEV interview, when the applicant's representative was seeking to clarify some matters around

¹ The June – September timeframe accounts for the possibility that the applicant was referring to when he left Iran to come to Australia (in March 2013) and when he actually arrived in Australia (in May 2013).

the applicant's receipt of the news of his conviction and sentencing, the applicant said that while he was in [Country 1], his mother was told by his father's cousin that he had been convicted.

14. As the delegate raised with the applicant, while the applicant claimed documents from the authorities and the courts had been sent to his family, no documentary evidence has been provided to support his claims. The applicant responded he had not been asked for any, but if the delegate wanted, he could send them. The delegate advised the applicant he would give the applicant a week to provide any evidence, however nothing further was received. Nor was any extension of time sought, or indication given that further material was forthcoming. Nor were any explanations given for not being able to produce such evidence.
15. I have concerns about the lack of substantiating evidence in these circumstances. I also find there to be some disconnect in the applicant's evidence – that on the one hand claims he is only aware of one document (the conviction/sentencing notice) being sent to his mother's address, but on the other hand he claims other documents have been sent to his brother, who I note lives at the mother's address. The applicant's late statement in the SHEV interview about his mother being informed of his conviction by the father's cousin also raises a concern as to whether the news was only received orally, or by letter. The applicant's mention of having attended court whenever told to do so by his father's cousin was vague, and I do not consider it plausible that he would have been informed of the requirement for his attendance in this manner, as opposed to through more official channels or documentation. Further, the applicant seemed to know very little about the conviction/sentencing notice and any subsequent action. He could not tell the delegate when the verdict was handed down, saying instead that when he sends the document on to the delegate the delegate will be able to see the date on it. Nor could he advise with any specificity when it was received at his mother's address, only stating it was while he was in [Country 1]. And given he remains in contact with his family in Iran, I find it implausible that in the seven years since he learned of the conviction/sentencing, he had never asked and remained unaware of whether any further documents had been sent about his matter.
16. In the SHEV interview the applicant referred to the fact that his father had acted as guarantor for him, inferring he was subject to bail when he departed Iran. He said because his father passed away, the authorities couldn't find his father or arrest him. In the same interview the applicant confirmed that he departed Iran through the international airport in Tehran on his own passport, which was renewed in Ilam a few months after his arrest and release. He said that once reaching the airport, he was delayed overnight because the airline staff identified an issue with his ticket, but he was able to depart the following day. The evidence does not suggest the applicant took any specific measures or paid any bribes in order to leave the country; it does not suggest he was subject to a travel ban (and I note according to all of the various proffered timelines, there was sufficient time for it to have been issued)² or that the authorities showed any interest in questioning or pressuring his family for any details about his whereabouts. There is some evidence to suggest the authorities were allowing political activists leave around this time to rid the country of dissent,³ but even so, I am not persuaded the applicant - with his limited participation shouting some slogans in one protest and being released after just a few hours in custody, and noting my concerns about his vague and unsubstantiated evidence around court proceedings - would have been perceived as any kind of activist or dissident.
17. The vagaries in the applicant's evidence, the lack of any corroborating evidence, the fact that he was not taken back into custody following his release, that he was able to renew his passport

2 Danish Refugee Council, Landinfo (Norway) 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", February 2013, CIS25114

3 Danish Refugee Council, Landinfo (Norway) 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", February 2013, CIS25114

and depart the country without encountering any issues from the authorities and the lack of any indications that his father's cousin or any family members have been questioned or required to engage with the authorities in his absence, lead me to find that the applicant's claims of facing ongoing court proceedings, being convicted and sentenced in absentia are not credible. I am not persuaded that the applicant faced any further repercussions or remained of any interest to the authorities following his release from his brief few hours in custody which I find was, at minimum, several months before the applicant departed Iran.

18. I do not accept the applicant has any outstanding judicial issues to address or sentences to serve. His participation was low-level and limited to only one protest in Iran and the evidence does not suggest he has been active since departing or that he has any intention of engaging in political activities on return. I am not satisfied he would be perceived as a political activist or that he would, for any reason, be a person of interest to the Iranian authorities. I am not satisfied the applicant faces a real chance of any harm relating to these matters should he return to Iran.
19. I have considered the applicant's statements about Kurdish people being subject to discriminatory and adverse treatment from the regime due to the regime's concerns about Kurdish separatism.
20. According to DFAT, Iran is an ethnically diverse and multilingual country. Dominated by Persians (around 60 per cent), Kurds - the majority of whom are Sunni Muslims and reside in the provinces of Kurdistan, Kermanshah, Ilam, and West Azerbaijan, bordering Iraq and Turkey - make up the second largest minority ethnic group (behind Azeris). DFAT estimates they comprise around 8 million or 10 per cent of the 82.8 million population in Iran, though the Association for Human Rights in Kurdistan – Geneva (KMMK-G) places this estimate higher, at 11 – 13 million.⁴
21. Article 19 of the Constitution states that all people of Iran enjoy equal rights, regardless of their ethnic group to which they belong. No laws discriminate on the basis of ethnicity, including in relation to access to education, employment, or housing. The overwhelming majority of ethnic minority communities are integrated into Iranian society, participate in politics, and identify with the Iranian nation.⁵ Nevertheless, various sources⁶ suggest that these rights are not always upheld in practice. DFAT also assesses that, although the experience of different groups is not uniform, both official and societal discrimination against ethnic minorities does occur. Ethnic minorities report political and socioeconomic discrimination, particularly in relation to economic aid, business licenses, university admissions, job opportunities, permission to publish books, and housing and land rights. It can also extend to access to adequate housing, water sanitation, political office, and the exercise of their cultural, civil and political rights. DFAT assesses there is a moderate risk of members of ethnic minority groups facing official and societal discrimination, particularly where they are in the minority in the geographic area in which they reside.⁷ However

4 The Association for Human Rights in Kurdistan - Geneva (KMMK-G) in Danish Immigration Service (DIS), "Iranian Kurds: Consequences of political activities in Iran and KRI", 7 February 2020, 20200210101317

5 DFAT, "DFAT Country Information Report – Iran", 7 June 2018, CIS7B839411226; DFAT, "DFAT Country Information Report – Iran", 14 April 2020, 20200414093132; Government of Iran, 'Iran – Constitution', Alavi and Associates Legal Counsels and Attorneys at Law, 1 February 2012, CIS22595

6 Ceasefire Centre for Civilian Rights (United Kingdom), Centre for Supporters of Human Rights (United Kingdom), Minority Rights Group International (United Kingdom), "Rights Denied: Violations against ethnic and religious minorities in Iran", 13 March 2018, CIS7B83941441; USDOS, "2019 Country Reports on Human Rights Practices: Iran", 11 March 2020, 20200312093514;; Danish Immigration Service and the Danish Refugee Council (DIS/DRC), "Iran: Issues concerning persons of ethnic minorities, Kurds and Ahwazi Arabs", February 2018, CIS7B83941872

7 DFAT, "DFAT Country Information Report – Iran", 7 June 2018, CIS7B839411226; DFAT, "DFAT Country Information Report – Iran", 14 April 2020, 20200414093132

DFAT assesses it unlikely to include violence on the grounds of ethnicity alone, and as noted above, it advises that the experiences of ethnic minorities are not uniform.⁸

22. Specifically regarding Kurds, in 2016 DFAT noted that Kurds can face considerable societal discrimination, leading to unfair day-to-day treatment, although DFAT considered this was not usually the result of official or state-directed policies and it was rarely coupled with violence.⁹ Overall, DFAT considered that most Iranian Kurds either do not come to the attention of authorities or are subject to only low levels of adverse attention by the state. It assessed that it was those individuals who attempted to publicly assert cultural/political rights that were perceived to threaten the constitutional foundations or the territorial integrity of the Islamic Republic and had an increased risk of coming to the attention of the state.¹⁰ More recently, 2018 reporting from sources including DFAT and the Danish Immigration Service continued to suggest that while ethnicity remains a sensitive political topic in Iran, it is Kurds who seek to assert their cultural or political rights who have an increased risk of coming to the adverse attention of the Iranian authorities.¹¹ DFAT has continued this line in its current (April 2020) assessment - DFAT assesses that Kurds who are active politically are likely to attract adverse attention from the authorities, but that Kurds are not specifically targeted for discrimination on the basis of their ethnicity or religion, including in their ability to access government services and are afforded the same state protections as other ethnic minorities.¹²
23. Relevantly, DFAT prefaces its discussion by explaining that Kurds are majority Sunni and located in the border region provinces including Ilam. Within Iran, and predominantly in these border areas, there are a number of organised Kurdish groups who are politically active and striving for strengthened rights including greater recognition of Kurdish cultural rights, autonomy for their border region and outright independence from Iran.¹³ DFAT reports the authorities are highly sensitive to Kurds' organised political activity. Those who advocate for greater rights and autonomy and/or self-determination face a high risk of official harassment, monitoring, imprisonment and mistreatment. The government uses security, media and other laws to arrest and prosecute Kurds for exercising freedom of expression and association. While Iranian authorities do not prohibit the use of Kurdish in informal settings and its general use is tolerated, its teaching is prohibited and persons active in seeking to change this situation can face harassment from the Iranian authorities.¹⁴ Some Kurdish-language newspapers, journals and books have also been banned. Groups advocating for political autonomy or independence may be subject to arrest and execution.¹⁵ Sources including the United States Department of State (USDOS), Amnesty International, Iran Human Rights Monitor (US) and the UN Special Rapporteur on the situation of human rights in Iran (July 2019) consulted by the delegate also refer to the disproportionately targeted arbitrary arrest, detention, physical abuse and executions of Kurds in Iran.

8 DFAT, "DFAT Country Information Report—Iran", 7 June 2018, CIS7B839411226; DFAT, "DFAT Country Information Report – Iran", 14 April 2020, 20200414093132

9 DFAT, "DFAT Country Information Report—Iran", 21 April 2016, CIS38A8012677

10 DFAT, "DFAT Country Information Report—Iran", 21 April 2016, CIS38A8012677

11 DFAT, "DFAT Country Information Report—Iran", 7 June 2018, CIS7B839411226; DIS/DRC, "Iran: Issues concerning persons of ethnic minorities, Kurds and Ahwazi Arabs", February 2018, CIS7B83941872

12 DFAT, "DFAT Country Information Report – Iran", 14 April 2020, 20200414093132

13 DFAT, "DFAT Country Information Report—Iran", 7 June 2018, CIS7B839411226; DIS/DRC, "Iran: Issues concerning persons of ethnic minorities, Kurds and Ahwazi Arabs", February 2018, CIS7B83941872; DFAT, "DFAT Country Information Report – Iran", 14 April 2020, 20200414093132

14 DFAT, "DFAT Country Information Report—Iran", 7 June 2018, CIS7B839411226; DFAT, "DFAT Country Information Report – Iran", 14 April 2020, 20200414093132;

15 DIS/DRC, "Iran: Issues concerning persons of ethnic minorities, Kurds and Ahwazi Arabs", February 2018, CIS7B83941872; USDOS, "2019 Country Reports on Human Rights Practices: Iran", 11 March 2020, 20200312093514; DFAT, "DFAT Country Information Report – Iran", 14 April 2020, 20200414093132;

24. Significantly however, whereas the majority of Kurds in Iran are Sunni Muslims, the applicant has never claimed to be so, and identified as Shi'a in his Arrival interview, and Iran's policy and legislation favours the majority Shi'a population and seeks to use the Shi'a religion as a means of fostering national identity among the country's various ethnic groups.¹⁶ The reporting suggests that most Kurds targeted by the state are Sunni and are associated with nationalist, separatist or other organised political activity. And while I note the DIS's comment that the Government of Iran does not differentiate between Kurdish party members and supporters, or even independent activists and ordinary people,¹⁷ it gives no examples of ordinary people who have not otherwise engaged in some relevant political activity being targeted. Overall, the incidents of targeting highlighted in the reporting manifested in very specific circumstances and I am not satisfied they, nor the general references to Kurds in these reports resemble the circumstances of the applicant, who identifies as Shi'a and who I have found has no history with organised groups, very limited political involvement (just the single protest) and/or no apparent interest to be involved in such upon return.
25. I accept on the basis of the country information that Kurds and other ethnic minorities are subject to certain types of discrimination in Iran, however as DFAT noted, the experiences of such minorities are not uniform. In the applicant's case, I take into account that he would return to Ilam, one of the provinces where Kurds are concentrated but I have found he is not of interest to the authorities and would not engage in activism upon return. He has identified as Shi'a and there is little evidence to indicate that Shia Kurds are perceived as supporting Kurdish separatist groups to the same extent as Sunni Kurds. His family still reside in Ilam in property they own and according to the applicant's evidence in the SHEV interview, he has received some financial assistance from relatives in Iran even while he has been in Australia. He completed all his schooling and attained a university diploma, speaks fluent Farsi and has had apparently stable accommodation and for the most part, long term jobs. He also received [surgery] in Iran. While Ilam is under-developed and unemployment is high¹⁸, I am not satisfied the applicant would be denied employment or basic services, nor health services he may require, on the basis of his Kurdish identity. I am not satisfied that any discrimination and mistreatment the applicant has faced as a Kurd in Iran has been of a level to amount to persecution or significant harm, nor that it would be in the future.
26. Given the country information discussed above and the applicant's personal circumstances, I find the possibility of his experiencing any other kind of harm on the basis of his being a Kurd, or from some separatist or other political opinion arising from his Kurdish ethnicity and identity, is remote and not real.
27. Although the applicant did not raise such claims, the delegate considered whether the applicant may face risks on the basis of his return as a failed asylum seeker from Australia who had been affected by the 2014 departmental data breach.
28. Country information¹⁹ indicates that while Iran has historically refused to issue travel documents to facilitate the return of involuntary returnees under a recent Memorandum of Understanding (MOU), Iran has agreed to facilitate the return of Iranians who arrived after 19 March 2018 and who have no legal right to stay in Australia. However, the applicant arrived before this date and

16 DFAT, "DFAT Country Information Report—Iran", 7 June 2018, CIS7B839411226

17 Danish Immigration Service (DIS), "Iranian Kurds: Consequences of political activities in Iran and KRI", 7 February 2020, 20200210101317

18 DFAT, "DFAT Country Information Report – Iran", 14 April 2020, 20200414093132

19 DFAT, "DFAT Country Information Report—Iran", 7 June 2018, CIS7B839411226; DFAT, 'DFAT Country Information Report - Iran', 14 April 2020, 20200414083132

as such I find that if the applicant is returned to Iran it would only be on a voluntary basis. In the event of his voluntary return, as he is no longer in possession of his passport, he would either obtain a new passport or be issued a temporary travel document or laissez-passer from an Iranian diplomatic mission to facilitate his travel and return to Iran. I accept that through this process, the authorities may be forewarned of the applicant's imminent return, and that they may surmise that he is a failed asylum seeker from Australia/a western country.

29. While I accept he was in detention at the relevant time and that his data may have been included in the briefly accessible information (names, dates of birth, nationalities, detention and status as irregular maritime arrivals) leaked in the 2014 data breach, it contained no detail relevant to his actual claims and I do not consider the Iranian authorities - on the chance that they accessed the information - would garner any more information from this, than they would from the method of the applicant's return noted above.
30. DFAT states that according to international observers, Iranian authorities pay little attention to failed asylum seekers on their return to Iran and have little interest in prosecuting failed asylum seekers for activities conducted outside Iran including in relation to protection claims involving conversion to Christianity.²⁰ However those returning on a laissez passer are routinely questioned by the Immigration Police about the circumstances of their travel and return on a laissez passer. DFAT's recent advice is that this typically only lasts for 30 minutes (with more extensive questioning undertaken if the returnee is evasive or a criminal history is suspected) and neither arrest, nor mistreatment is common.²¹ Some other sources before me refer to reports of mistreatment of returnees however an analysis of such cases indicates those returnees were of interest when they departed Iran, had been critical of the government while abroad or subject to some other specific factors, none of which apply to the applicant. The Danish Immigration Service suggests it is failed asylum seekers with connections to political activism who risk being interrogated, arrested, and in some cases tortured and killed²², though again, I am not satisfied the applicant, with his limited participation in one protest and a subsequent lack of interest from the authorities following his release, would fall into this category.
31. The applicant departed Iran lawfully on his own passport he renewed in the period before his departure and there is no credible evidence before me to indicate he was of any adverse interest to the authorities following his release from the few hours in custody several months prior, and certainly not when he departed Iran. There is no credible evidence that he has any criminal history the authorities would be concerned about or that he would otherwise have become of interest to them. Country information including the recent DFAT report before me does not support that persons (including Kurdish persons from Ilam) returning from the west are subject to harm in Iran.
32. Given all of this, I consider the chance the applicant would face more extensive questioning is remote and I am not in any event satisfied that any such questioning would amount to serious harm, or that there is a real chance he would be arrested or otherwise harmed. I am not satisfied that the applicant faces a real chance of serious harm either now or in the reasonably foreseeable future, on the basis of his being a failed asylum seeker returning from a long period

20 DFAT, "DFAT Country Information Report—Iran", 7 June 2018, CIS7B839411226; DFAT, 'DFAT Country Information Report - Iran', 14 April 2020, 20200414083132

21 DFAT, 'DFAT Country Information Report - Iran', 14 April 2020, 20200414083132

22 Danish Immigration Service (DIS), "Iranian Kurds: Consequences of political activities in Iran and KRI", 7 February 2020, 20200210101317

abroad in Australia/the west whose information was leaked in the data breach, even taking into account his Kurdish ethnicity and brief protest and detention during Ahmadinejad's visit.

33. Towards the end of the SHEV interview, the delegate asked the applicant if there were any other reasons he feared returning to Iran and the applicant said there were, but it was not possible for him to discuss them over the phone. The delegate asked the applicant to explain and the applicant said he could answer other questions, but he has limitations and cannot discuss 'this' matter by phone. Just as he had at the beginning of the interview, the delegate reminded the applicant that it was his responsibility to raise all his claims for protection and provide evidence in support of those claims and that he may not have another opportunity to provide the additional information if his application was refused. The delegate also reassured the applicant that their discussion was confidential and would not be shared with authorities in Iran. He gave the applicant another opportunity to add to his claims and the applicant said there were safety issues in Iran preventing him from being able to discuss it. He told the delegate they could move on. The applicant was given an opportunity to talk privately with his representative and following this, he was again invited to provide any further information he wished. In response, the applicant simply reiterated his existing claims. No written claims or submissions were provided in the eight days that followed before the decision was made. No advances were made to the delegate – and nor have they been made to the IAA – suggesting the applicant wished to raise additional claims in any other format. Nor has any context or meaningful explanation provided about the safety issues which purportedly prevented the applicant from speaking about any matter by phone. The evidence does not suggest that any of his family members were facing pressure from the authorities or at risk of suffering any other kind of harm. In the circumstances, I do not find it credible that there are safety issues preventing him from advancing, in some way, all his protection claims. I am satisfied the applicant has had ample opportunities to present claims to the department and to the IAA and I have decided not to invite him to provide new information.
34. Overall, even having regard to the totality of the applicant's claims I am not satisfied he will face a real chance of serious harm from anyone in Iran for any one or any combination of reasons given. I am not satisfied the applicant has a well-founded fear of persecution.

Refugee: conclusion

35. 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

36. 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

37. 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.

38. The expressions ‘torture’, ‘cruel or inhuman treatment or punishment’ and ‘degrading treatment or punishment’ are in turn defined in s.5(1) of the Act.

39. For the reasons already discussed I accept the applicant may be routinely questioned by authorities at the airport about the circumstances of his travel and return. This typically lasts 30 minutes and I consider there to be only a remote prospect that he would be questioned more extensively. However, either way, and even taking into account his Kurdish ethnicity, brief detention after protesting during Ahmadinejad’s visit and his asylum claim and residence in the west (and leaked information in the data breach), I am not satisfied there is a real risk of his facing ‘significant harm’ being the arbitrary deprivation of life, the death penalty, or torture, nor cruel, inhuman or degrading treatment or punishment, as defined.

40. While I accept Ilam is under-developed and has a high rate of unemployment, I am not satisfied the applicant will be denied the opportunity to obtain employment and earn a livelihood, to obtain health care, obtain basic services or to otherwise subsist. I am not satisfied the applicant would face discrimination or mistreatment as a Kurd (or in fact for any reason) that would amount to persecution or significant harm. I am also not satisfied there is a real risk he would face the death penalty, be arbitrarily deprived of his life or be tortured, nor be subject to pain or suffering that could be regarded as cruel or inhuman in nature, severe pain or suffering, or extreme humiliation for the purposes of the definition of cruel or inhuman treatment or punishment, or degrading treatment or punishment.

41. I have otherwise found the applicant would not face a real chance of harm for any reason on return. For the same reasons, I am not satisfied he would face a real risk of harm, including significant harm – from anyone in Iran.

42. Even considering the applicants’ claims cumulatively I am not satisfied there are substantial grounds for believing that, as a necessary and foreseeable consequence of being returned to Iran, that there is a real risk the applicant will face significant harm.

Complementary protection: conclusion

43. 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.