



Australian Government

Immigration Assessment Authority

Decision and Reasons

Referred application

IRAN

IAA reference: IAA21/09367

Date and time of decision: 12 July 2021 18:35:00

R Mikhail, Reviewer

Decision

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

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

Background to the review

Visa application

1. The referred applicant (the applicant) claims to be a citizen of Iran. On 9 August 2017 he lodged an application for a Safe Haven Enterprise Visa (application for protection). On 15 June 2021 a delegate of the Minister for Home Affairs (the delegate) refused the grant of the visa.

Information before the IAA

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

Applicant's claims for protection

4. The applicant's claims can be summarised as follows:
 - He was born in Ilam in [year] and is a citizen of Iran.
 - He was born into a Shia Muslim family but now does not believe in any religion.
 - He is of Faili Kurdish ethnicity.
 - As a Faili Kurd he was discriminated in the community and by the authorities and was not able to get a relevant job.
 - He served in the Iranian Military for two years in a sensitive and classified role. His unit was charged with ensuring the safety of a nuclear military installation.
 - He fears his personal information held by the Department of Immigration was published on the internet and that the Iranian Authorities are aware of his personal information.
 - He fears if he is returned to Iran, he will be questioned by the Iranian authorities who will suspect he has provided military secrets to the Australian government.

Refugee assessment

5. 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

6. 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.
7. Country information that was before the delegate indicates that Faili Kurds are a sub-group of the larger Kurdish population. They originate from the Zagros Mountains, which straddle the Iran-Iraq border. Faili Kurds in Iran typically reside either close to the Iraqi border, including in Ilam province. They are distinguishable from other Iranian Kurds by their Shia religion, their location and their distinctive dialect.¹
 8. The applicant has consistently claimed to be Faili Kurd and during his Departmental interviews he spoke in Faili Kurdish.
 9. In the application for protection, the applicant indicated he had been residing in Ilam since birth, other than the two years he spent in compulsory military service. In support of his identity the applicant provided a copy and accredited translation of his Iranian birth certificate. It confirms his identity and that he was born in Ilam. He also provided a copy and accredited translation of his Iranian driver's licence. He has provided other identity cards which have not been translated so I have not been able to give them weight.
 10. On the evidence before me I accept the applicant is a citizen of Iran who is of Faili Kurdish ethnicity and who resided in Ilam Province.
 11. The applicant has indicated that his family continue to reside in Ilam. I am satisfied that, if the applicant were to return to Iran, he would return to Ilam Province.
 12. I am satisfied Iran is the receiving country for the purpose of this assessment.
 13. In his statement that was attached to this application for protection (statement), the applicant claims that the Department put his confidential information on the internet and the authorities in Iran may have been able to access that information. He does not believe that his personal information will be kept secret in Australia, and he is scared because of this. He heard that many people were detained in Iran because this information was leaked. He is afraid that his personal information will also be leaked, so he cannot provide all his claims to the Department in this written statement. He does not feel safe to provide information on his religious beliefs and his role in the Iranian military.
 14. In his decision, the delegate noted that the applicant was referring to the data breach that occurred when confidential Departmental information about detainees became briefly accessible on the Department's website in February 2014. He notes that Department records indicate the applicant was not in detention at the time of the breach and therefore his

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

personal details were not published. In his application for protection the applicant indicated that he was in Australian immigration detention only until September 2013.

15. The applicant has not provided any evidence of his personal information being inadvertently published in the internet by the Department. There is also no credible evidence before me that people in Iran were detained as a result of the data breach. There is also no evidence before me that such a breach has occurred since.
16. When the applicant was first invited to apply for protection by the then Department of Immigration and Border Protection (the Department) via letter dated 2 September 2016, it provided the applicant with information indicating that his personal information is protected by the *Privacy Act 1988* and he should read the *Privacy Notice* in regards to the circumstances in which his personal information may be disclosed to third parties. In the application for protection the applicant signed a declaration acknowledging the circumstances in which the Australian government may share his personal information with other agencies. When the applicant was invited to his interview with the delegate to discuss his claims for protection, information attached to the Department's invitation letter indicated that the information he provided at that interview will be kept confidential and will not be provided to the country against which he is making protection claims and that his personal information is protected by the *Privacy Act 1988*. It indicates that his personal information may be shared with certain government authorities but stated that only some of his details may be shared with his home country to facilitate his return in the event his application is refused. This may include biometrics collected by the Department.
17. I do not accept that the applicant's personal information (including his claims for protection) were published on the Department's website or the internet. I also do not accept that there is a real chance his claims for protection in Australia will be made publicly available so that the Iranian authorities will become aware of it or the Australian government will provide this information to the Iranian authorities. It may be the case that some of the applicant's personal information may be given to the Iranian authorities (including biometrics) for the purpose of facilitating his removal from Australia, but I am not satisfied this will include his claims for protection.
18. In his statement the applicant claims that he has a distinct accent as a Faili Kurd. When he was at school or in the community, he faced discrimination and would be targeted and picked on. Teachers, students and other people would humiliate them and laugh at them. At university he continued to be humiliated in class due to his ethnicity and the way he spoke. The teachers and other students would pick on him. On one occasion at school, he saw people who were protesting, and they were killed by the authorities. When he asked someone what they did, he was told that they were "munafak" (hypocrites). He was very scared to speak up and assert his cultural rights or express his opinions after seeing this. Even though he had a university degree he was not able to get a relevant job because of his ethnicity. As Faili Kurds they have many cultural practices that they are not permitted to practise such as wearing Kurdish dress, celebrations, speaking their language, and wedding parties attended by men and women together. If he went to a government building in his Kurdish dress he would be discriminated against and humiliated. One time when he was driving and was wearing Kurdish dress he was pulled over by the police and told to get out of the car and he received a fine. He understands from what they did that they fined him for wearing Kurdish dress. Newroz, which is held at the beginning of the New Year, is a singing and dancing festival, but the authorities stop them from doing it as they see it as against Islam. One time he was at a Newroz celebration in 1385 in [Area 1] and they were playing instruments as is their tradition, when law enforcement officers came and prevented them from continuing with their celebrations. They took their musical

instruments and we were powerless to resist. One of his friends told him that the next time the authorities tried to stop their celebration he would take action. Later that friend was detained for over two months and when he was released, they saw the scars of torture on him. They suspect that someone informed the authorities about his friend's threats. The applicant was too scared to try and demand his cultural rights and freedom of expression for fear of being harmed, killed or being charged with crimes which he had not committed. He fears he will continue to face discrimination as a Faili Kurd in Iran and be harmed if he tries to express his culture or opinion.

19. On 14 May 2021 the applicant attended an interview with the delegate via videoconference to discuss his claims for protection (PV interview). During that interview, when the delegate asked about the applicant's fear of harm as a Faili Kurd in Iran, as per the delegate's own observations in his decision, I also found the applicant's responses vague and uninformative.
20. When the applicant was first asked by the delegate why he could not return to Iran, he said that he did not want to witness any more problems such as people pulling knives at each other. He then said, seven years ago, it was important what would happen to him if he returned to Iran but now it is not important as he does not have his own family and it did not make a difference if he went back to Iran. When the delegate sought further clarification, the applicant said that he did not have a problem with the Iranian authorities and his family do not have political problems but he has a problem with the government and gave the example of not being able to have a wedding ceremony. He did not otherwise refer to his fear of harm as a Faili Kurd. The delegate then subsequently specifically asked him about his experiences as a Faili Kurd. In response, the applicant said that, after completing his university degree, he could not get a proper job, they pick on their accent and one time the police gave him a hard time when he was with his girlfriend. When the delegate asked for more detail, the applicant queried what the benefit was, as he applied for the visa years ago, but it is now not important anymore. When the delegate asked again for further details, the applicant merely said there was still discrimination. The applicant was given seven days to provide any further information to the delegate and it appears he did not. He has not provided any submissions or information to the IAA.
21. It is unclear from the applicant's oral evidence whether he still fears serious or significant harm in Iran as a Faili Kurd, but I have, nonetheless, considered the claims he raised in his statement and generally at the PV interview.
22. Country information that was before the delegate indicates that Article 19 of the Iranian Constitution stipulates that all people of Iran enjoy equal rights, regardless of the ethnic group to which they belong, and colour, race, and language do not bestow any privilege. Article 15 stipulates that, while Farsi is the official language of Iran and must be used in all official documents, textbooks and signage, the use of regional and tribal languages in the press and mass media and for the teaching of literature in schools is permitted alongside Farsi. No laws discriminate on the basis of ethnicity, including in relation to access to education, employment or housing. However, ethnicity remains a sensitive political topic in Iran. In practice, Iran is a strongly Persian-centric society. While ethnic minority communities exist in Tehran and other major cities, a large percentage of non-Persian Iranians are concentrated in less developed rural areas of the country where access to services and employment opportunities is more limited. This issue affects all rural residents, regardless of ethnicity. In its 2020 report on Iran, the Australian Department of Foreign Affairs and Trade (DFAT) assessed that, although the experience of different groups is not uniform, both official and societal discrimination against ethnic minorities does occur. Ethnic minorities report political and socioeconomic discrimination, particularly in relation to their ability to access economic aid and business

licences, university admissions, job opportunities, permission to publish books in their languages, and housing and land rights. Ethnic minorities are rarely awarded senior government or military positions. Human rights observers claim authorities commonly subject members of ethnic minorities in pre-trial detention to more severe physical punishment or mistreatment than other prisoners, regardless of the crime they are accused of committing. Ethnic minorities account for a disproportionate number of political prisoners and executions on national security-related charges.² The US Department of State (USDOS) and other sources that were before the delegate also reported the same. The USDOS reported that Kurds, Ahwazis, Azeris, and Baluchis reported political and socioeconomic discrimination with regard to their access to economic aid, business licenses, and job opportunities.

23. In its 2020 report, DFAT assessed that the overwhelming majority of ethnic minority communities are integrated into Iranian society, participate in politics and identify with the Iranian nation. Nevertheless, the authorities are highly sensitive to political activism, particularly in border provinces and when they perceive the activism to be a threat to the Islamic Republic. Authorities have targeted ethnic minority activists for arrest and prosecution on national security grounds and the authorities are highly sensitive to organised political activity by the Kurds. DFAT assessed that members of ethnic minority groups face a moderate risk of official and societal discrimination, particularly where they are in the minority in the geographic area in which they reside. This may take the form of denial of access to employment and housing but is unlikely to include violence on the grounds of ethnicity alone. The risk to members of ethnic minority groups who are involved (or are perceived to be involved) in activism, including those advocating for greater political and cultural rights or speaking out against perceived violations, is higher.
24. However, with specific regard to the situation of Faili Kurds, DFAT noted that it was not aware of specific instances whereby authorities have singled out Faili Kurds for mistreatment.³ DFAT made the same assessment in regard to Faili Kurds in 2018 and 2013.⁴
25. In his application for protection the applicant claimed that he attended school and university in Ilam, and country information before the delegate indicates that the Iranian Kurdistan covers an area of 111,705 km², comprising of four western provinces of Kermanshah, Ilam, West Azerbaijan and Kurdistan and that Ilam has a large Kurdish majority population.⁵ I find it hard to believe the applicant (and his community in general) was picked on and humiliated by other students and teachers whilst attending school and university in Ilam, given Kurds make up the majority of the community. Given this and the fact that he chose not to elaborate further on these claims during his PV interview, I do not accept this claim.
26. I accept that the applicant struggled to find work related to his [occupation 1] degree as in his application for protection he indicated that he subsequently was only able to secure jobs in Ilam as a casual [labourer] and as [an occupation 2]. However, as noted, he lived in a majority Kurdish area, so I find it difficult to believe he was discriminated against in all employment opportunities he sought in [occupation 1] because of his ethnicity. However, country information that was before the delegate indicates that Ilam is relatively under-developed economically and have some of the highest rates of unemployment in the country. In April

² Ibid.

³ Ibid.

⁴ DFAT, "DFAT Country Information Report—Iran", 7 June 2018, CIS7B839411226; DFAT, "DFAT Country Information Report—Iran", 29 November 2013, CIS26780

⁵ Danish Immigration Service, "Iranian Kurds: Consequences of political activities in Iran and KRI", 7 February 2020, 20200210101317; DFAT, "Country Information Report – Iran", 14 April 2020, 20200414083132

2019, it recorded unemployment rates of 10.3 per cent.⁶ I consider it more likely that he could not find work in [occupation 1] because of the general lack of opportunities in Ilam rather than being denied employment because of his ethnicity. He has not claimed that he sought employment opportunities outside of Ilam.

27. Country information indicates that teaching of the Kurdish language is prohibited in most schools and universities, but its general use is tolerated.⁷ I do not accept that the applicant was prevented from speaking Kurdish in public and, again, I note that he resided in a majority Kurdish area where most of the residents likely also speak Kurdish. I also do not consider that being prevented from learning Kurdish in school amounts to serious harm.
28. Country information also indicates that the Iranian new year Nowruz is a state holiday celebrated by all Iranians.⁸ In a 2018 report by the Danish Immigration Service and the Danish Refugee Council, The Middle East Consultancy Services claimed that Iranian Kurds are free to celebrate cultural occasions such as Nowruz. However, cultural events becoming political are an issue such as examples shouting political statements or carrying political iconography during the celebrations.⁹ In a 2013 report by the Danish Refugee Council, the United Nations High Commissioner for Refugees Office in Erbil also stated that Nowruz is allowed in Iran because it is a Persian feast, however, if Kurds express themselves against the Iranian regime during the celebrations and are caught on cameras, they may be charged and sentenced to imprisonment. If they do not do anything during the celebrations, nothing will happen. A spokesperson from the Kurdish Human Rights Committee in Europe stated that whenever people get together regardless of the reason, the authorities become suspicious, and it particularly applies to cultural activities. As an example, the regime might sabotage Kurdish festive gatherings if people have bonfires or dance the traditional Kurdish dance where men and women dance hand in hand. In the past, people had been arrested on such occasions but lately there have not been cases of arrests. It stated that the regime is still sensitive to Nowruz festivities, and people may be threatened and arrested for celebrating Nowruz by gathering and dancing. Usually, the Iranian riot police will come to the party in a truck and tell people to take everything into consideration and respect the Islamic background of the government and not to act against Islamic traditions.¹⁰ Recent reports note that, in 2019, some Kurds were arrested for organising Nowruz celebrations but no further information was provided in regards to where this occurred and who was involved.¹¹
29. Having considered the information above, I accept that on one occasion the applicant's community were prevented from continuing their Nowruz celebration. He referred to it as a singing and dancing festival and on this occasion, they were playing instruments. Country information also indicates that traditional Kurdish dances can involve men and women dancing together. Given this and DFAT's observation that the Iranian authorities do not single out the Faili Kurds community for mistreatment, I consider the event was cancelled due to concerns over such dancing as, in Iran, women are not supposed to mix openly with unmarried or

⁶ DFAT, "Country Information Report – Iran", 14 April 2020, 20200414083132

⁷ United States Department of State, "Country Reports on Human Rights Practices for 2019 – Iran", 11 March 2020, 20200312093514; DFAT, "Country Information Report – Iran", 14 April 2020, 20200414083132

⁸ DFAT, "Country Information Report – Iran", 14 April 2020, 20200414083132

⁹ Danish Immigration Service and Danish Refugee Council, "Issues concerning persons of ethnic minorities, Kurds and Ahwazi Arabs", 1 February 2018, CIS7B83941872

¹⁰ Danish Refugee Council, "Iranian Kurds: On Conditions for Iranian Kurdish Parties in Iran and KRI, Activities in the Kurdish Area of Iran, Conditions in Border Area and Situation of Returnees from KRI to Iran", 1 May 2013, CIS26587

¹¹ United Nations General Assembly, "Situation of human rights in the Islamic Republic of Iran: Report of the Special Rapporteur on the situation of human rights in the Islamic Republic of Iran", 18 July 2019, 20190819104518; Iran Human Rights Monitor (United States), "2019 Iran Human Rights Monitor Annual Report", 6 January 2020, 20200420081401

unrelated men in Iran and mixed-gender parties are prohibited by law.¹² This applies to all Iranians and is not specific to the Kurdish community. Regardless, I do not consider that this amounts to serious harm.

30. I consider it plausible that, one occasion, the police gave the applicant a hard time when he was with his girlfriend. Given the lack of detail in regard to this claim, I am not satisfied on the evidence this was due to the applicant's ethnicity but, again, is more likely due to the prohibition on unmarried couples mixing in public which applies to all Iranians.
31. Although one recent report notes that Kurdish people were banned from wearing their traditional dress in public in Oshnavieh, West Azerbaijan Province,¹³ there is no evidence before me that that is, or has ever been, the case in Ilam. The applicant has claimed that he was discriminated against for his Kurdish dress and humiliated when he was in a government building but did not provide any other detail about these events in his statement or at his interview. Given the lack of detail regarding this claim and the fact that he lived in a majority Kurdish area and the lack of supporting country information that this occurs in Ilam, I am not satisfied this occurred.
32. The applicant also claims that on one occasion, when he was driving, he was stopped by the police and told to get out of the car and received a fine. He understands, from what they did, that they fined him for wearing Kurdish dress. It is not clear from his evidence on what basis he came to this conclusion and he has provided little detail in this regard and did not refer to this claim during his PV interview despite being given many opportunities to discuss these claims. As noted above, there is no country information that was before the delegate to indicate that Faili Kurds are not allowed to wear Kurdish dress by the Iranian authorities and would be fined for doing so in Ilam. Although it is possible the applicant was stopped by the police whilst driving and fined on this occasion, I am not satisfied it was because of his Kurdish dress or for any reason relating to his ethnicity.
33. The applicant has generally referred to Kurds being unable to have weddings with women and men together. There is no country information to support the fact that Kurds are prevented from having weddings but as noted above, country information notes that women are not supposed to mix openly with unmarried or unrelated men in Iran and mixed-gender parties are prohibited by law and country information indicates that some traditional Kurdish dance involve men and women dancing together. I am not satisfied that Kurds are prevented from having weddings but if there are restrictions it is likely due to these issues which are restrictions that apply to all Iranians. I also do not consider this to amount to serious harm.
34. During the PV interview the applicant claimed that he was put in charge of men guarding a nuclear plant because the Iranian authorities feared it would be [attacked], so they did not want an Iranian person to die so they put a Kurdish person in charge. However, in his statement, he claimed he was given this position because he had a greater level of education. I do not accept that he was given this role because of his ethnicity.
35. I accept that the applicant was prevented from learning Kurdish in school and that Faili Kurds are, at times, prevented from celebrating Nowruz and weddings in their traditional way which involve men and women dancing together. They may also be prevented from celebrating Nowruz at times when their celebrations espouse political opinions against the regime. I do not consider that this, individually or cumulatively, amounts to serious harm.

¹² DFAT, "Country Information Report – Iran", 14 April 2020, 20200414083132

¹³ Iran Human Rights Monitor (United States), "Iran officials ban Kurdish clothes and language in public places", 13 June 2018, CXBB8A1DA29303

36. I do not, otherwise, accept that the applicant could not express his culture through use of his language generally or by wearing Kurdish dress or by participating in apolitical Kurdish celebrations that do not offend the general legal requirement that men and women do not mix socially.
37. I also note the applicant was able to complete school and has not claimed he faced obstacles being admitted to university or obtaining a passport due to his ethnicity. He has not claimed he or his family were prevented in accessing housing or other services.
38. I am not satisfied the applicant will face a real chance of serious harm in Iran from any group or person on the basis of his Faili Kurdish ethnicity.
39. During the PV interview the applicant did not elaborate on the general claim he made in his statement that he could not express his opinions due to fear of harm as a Faili Kurd. I am, nonetheless, willing to accept he holds a political opinion against the Iranian regime. However, during the PV interview he said he was not a politician and did not have any problem with the authorities when he was in Iran. Given this and that he has not claimed he has engaged in any political activities in Australia or wishes to do so on return to Iran, I am not satisfied the applicant has a genuine desire to engage in political activities in Iran and I am not satisfied he will on return to Iran and I am not satisfied this will be due to a fear of persecution.
40. I am not satisfied the applicant will face a real chance of harm in Iran from the Iranian authorities or any other group or person because of his political opinion.
41. In his statement the applicant claimed that he grew up in a Shia Muslim household, however, from the age of about 17 he realised that he did not accept Shia Islam and stopped practising it. However, when he was at university and subsequently whilst in the army, he had to pretend to practise Islam as he could be accused of being an apostate, so he attended public prayers to avoid punishment. Since coming to Australia, he did not practise any aspects of Islam as he is free. He noted that he can provide additional information orally as he is worried to include more information about his beliefs in writing. He fears serious harm from the Iranian authorities and personal community because of his lack of religious practise.
42. Despite these claims in his statement, during the PV interview, the applicant did not raise a fear of harm in Iran based on his religious opinion when asked by the delegate what he feared on return to Iran. When the delegate asked him about his religion, he said he had been a Muslim before, but he does not now believe in any religion. When asked for the reasons, he said that it was important before, but he does not want to say anything for the sake of having a visa.
43. Despite the applicant seeming to resile from his previous written claims in this regard, in his decision, the delegate assessed whether the applicant would face a real chance of harm based on his religious opinion and I have also made such an assessment.
44. I accept that the applicant grew up as a Shia Muslim but stopped believing in Islam when he was young and now does not believe in any religion.
45. Country information that was before the delegate indicates that Iran is a theocracy with Islamic beliefs and customs enshrined in law. Shia Islam is the official state religion. A Muslim who renounces Islam and becomes atheist is considered an apostate and risks state persecution and, potentially, the death penalty but death sentences in apostasy are rare. In DFAT's 2020 report, and in other sources that were before the delegate, it notes that secularism in Iran is

widespread, particularly in the major cities and among younger and wealthier Iranians. A large part of Iran's population have a secular lifestyle, which means that they do not practice their Islamic faith, for example by not attending meetings at the mosque or refraining from fasting during Ramadan and alcohol consumption is common. Official sources told DFAT that religion was a private matter — that, beyond the expectation that people do not eat in public or hold parties during the holy Muslim month of Ramadan, how one wished to observe Islam was an individual choice, and was not a matter for the state.¹⁴ In DFAT's 2020 report it also states that, unless they widely publicise their non-belief, atheists are unlikely to come to the attention of the authorities. Atheists from conservative families might face familial pressure and potential ostracism if their atheism were revealed but would generally not be subjected to physical harm and DFAT is unaware of individuals being prosecuted for atheism. It assesses that non-practising Iranian Muslims face a low risk of official and societal discrimination, particularly in the major cities. Atheists who are open about their non-belief face a moderate level¹⁵ of official and societal discrimination.

46. Country information that was before the delegate indicates that religious minorities face a moderate risk of harassment on the grounds of their religious faith while undergoing military service.¹⁶ I accept that that the applicant attended public prayers whilst in the Army for fear of punishment. It is also possible he attended public prayers at university for the same reason. Since completing his military service in [year], he has not claimed to have had to pretend to practise Islam nor hide his religious opinion nor claimed to have come to the adverse attention of the Iranian authorities or community or suffered discrimination for this reason. The applicant has not claimed, and there is no credible evidence, he has an interest in promoting his non-belief in Islam. I am not satisfied on the evidence that the applicant will widely publicise his religious views in public in Iran and I am satisfied this will not be due to a fear of persecution.
47. I am not satisfied the applicant faces a real chance of harm in Iran from the Iranian authorities or any other group or person because of his religious opinion.
48. In his statement, the applicant claimed that he served in the military in Iran for two years. After his initial training period of about five months he was put in charge of six to seven people. Because he had a greater level of education, he was given greater responsibility and was in a sensitive and classified role. His unit was charged with ensuring the safety and protection of a nuclear military installation. He is not able to write down any more information about this work as it is of a very sensitive nature. He would be willing to answer some questions from the Department orally on this topic. Before leaving the Iranian army, he was required to sign a document stating that he would not disclose any military secrets. If he is returned to Iran, he is afraid that he will be questioned by the Iranian authorities and when he is questioned, they will suspect him, and they will think that he provided military and nuclear military secrets to Australia. This will make many difficulties for him and he fears he will be detained and harmed.
49. During the PV interview the applicant reiterated that he is afraid he will face problems in Iran because he completed three years of military service at a nuclear power plant and the Iranian authorities may be concerned that he disclosed details about that plant.

¹⁴ DFAT, "Country Information Report – Iran", 14 April 2020, 20200414083132; Austrian Centre for Country of Origin and Asylum Research and Documentation (ACCORD), "Iran - COI Compilation", 1 July 2018, 20190326122102; Danish Immigration Service, Danish Immigration Service, "Update on the Situation for Christian Converts in Iran", 1 June 2014, CIS28931

¹⁵ DFAT is aware of sufficient incidents to suggest a pattern of behaviour

¹⁶ DFAT, "Country Information Report – Iran", 14 April 2020, 20200414083132

50. Although not articulated by the applicant as a fear, in his decision, the delegate also considered whether the applicant would be harmed on the basis of being a failed asylum seeker returning from a western country.
51. I accept that the applicant worked in a nuclear power plant during his military service and he was privy to sensitive Iranian government information as a result of this.
52. In DFAT's 2020 report, it noted that Iran has a global and longstanding policy of not accepting involuntary returns. In March 2018, Iran and Australia signed a Memorandum of Understanding on Consular Matters which includes an agreement by Iran to facilitate the return of Iranians who arrived after March 2018, but the applicant does not fall within that category. I am satisfied that if the applicant were to return to Iran, it will only be on a voluntary basis.
53. In the above report, DFAT has stated that a *laissez-passer* can be obtained from an Iranian diplomatic mission on proof of identity. In cases where an Iranian diplomatic mission has issued temporary travel documents, authorities will be forewarned of the person's imminent return. Authorities pay little attention to failed asylum seekers on their return to Iran. International observers report that Iranian authorities have little interest in prosecuting failed asylum seekers for activities conducted outside Iran, including in relation to protection claims. Those who return on a *laissez-passer* are questioned by the Immigration Police at Imam Khomeini International Airport in Tehran about the circumstances of their departure and why they are traveling on a *laissez-passer*. Questioning usually takes between 30 minutes and one hour but may take longer where the returnee is considered evasive in their answers and/or immigration authorities suspect a criminal history on the part of the returnee. Arrest and mistreatment are not common during this process. The treatment of returnees, including failed asylum seekers, depends on the returnees' profile before departing Iran and their actions on return. DFAT assesses that, unless they were the subject of adverse official attention prior to departing Iran (e.g. for their political activism), returnees are unlikely to attract attention from the authorities, and face a low risk of monitoring, mistreatment or other forms of official discrimination.
54. In a recent 2020 report by the Danish Immigration Service on Iranian Kurds, it reported that the Kurdistan Human Rights Network opined that an individual, who has applied for asylum in a foreign country, will face difficulties upon return to Iran. The authorities will subject her/him to questioning related to the reason for the asylum claim as well as what actions the individual has taken against the government of Iran. However, in support of this it only referred to five such cases between 2011 and 2018, two of which appear to have already been subject to charges in Iran prior to leaving and already had a profile with the authorities.¹⁷
55. There are few other very recent reports before me that allege mistreatment of failed asylum seekers from western countries on return to Iran. A 2019 article claims that an Iranian convert to Christianity who was refused asylum in Germany and deported back to Iran was arrested "immediately" upon her arrival in Tehran, but it is unclear from the report why she was arrested. There are also no reports before of mistreatment of returnees/failed asylum seekers from a western country due to concerns that they had divulged Iranian military secrets to other foreign governments or individuals as a result of having completed compulsory military

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

service and/in sensitive military areas in Iran. The absence of such reports is significant given military service in Iran is compulsory for all men aged between 18 and 40.¹⁸

56. I am not satisfied, on the information before me, that the Iranian authorities impute failed asylum seekers from western countries with a political opinion against the Iranian government or impute those who have conducted military service in sensitive areas with having divulged military secrets in their country of asylum.
57. In his application for protection the applicant conducted his military service in Iran between [specified years]. After that he was able to apply and receive an Iranian passport and he was not prevented from departing Iran in 2013. I am also not satisfied the applicant was of adverse interest to the Iranian authorities prior to his departure for any reason.
58. The applicant claims, and I accept, that when his boat arrived near Christmas Island the boat sank in the ocean with his passport. I accept that the applicant no longer has his passport. Should he return on a *laissez-passer*, I accept the applicant will very likely face a brief period of questioning on return to Iran. I am not satisfied there is a real chance he will attract the adverse attention of the Iranian authorities on his return for any reason, including because of the nature of his previous military service in Iran or his ethnicity. I am not satisfied there is a real chance he will be subject to prolonged questioning or that he will face a real chance of harm during such questioning. I also do not consider being questioned for a short period in these circumstances amounts to harm.
59. On the evidence before me, even after leaving the airport, I am also not satisfied there is a real chance he will come to the adverse attention of the authorities due to concerns he divulged military secrets when he was overseas/in Australia.
60. I am not satisfied the applicant will face a real chance of harm from any group or person in Iran due to concerns he divulged Iranian military secrets and/or as a returned failed asylum seeker from a western country.
61. During the PV interview, the applicant claimed that he did not want to return to Iran because he did not want to witness people pulling knives on one another (general crime) or people being hanged. When the delegate asked if he feared being strangled or hung, he said he did not as he has not done anything for that to happen. Recent country information that was before the delegate notes Iran has a relatively low rate of violent crime and much of the violent crime that does occur is drug-related. Iran also continues to implement the death penalty by hanging with some continuing to take place in public. Reports, information and testimonies reveal that in 2019 executions were carried out in public spaces such as popular parks or in residential areas in front of a crowd of several hundreds.¹⁹ I am satisfied that there is more than a remote chance that the applicant may, again, witness general crime or people being hung in public, if he were to return to Iran. I am not satisfied this, individually or cumulatively, amounts to persecution for reasons of the applicant's race, religion, nationality, membership of a particular social group or political opinion or that it involves systematic and discriminatory conduct. I am not satisfied he has a well-founded fear of persecution in Iran in relation to these claims.

¹⁸ DFAT, "Country Information Report – Iran", 14 April 2020, 20200414083132

¹⁹ Amnesty International, "Human Rights in the Middle East and North Africa: Review of 2019", 18 February 2020, 20200219090219; DFAT, "Country Information Report – Iran", 14 April 2020, 20200414083132; Iran Human Rights, "Annual Report on the Death Penalty in Iran 2019", 1 April 2020, 20200402073515

62. During the PV interview the delegate asked the applicant about information before him which indicates the applicant was required to attend [a named] Court in February 2021. In response, the applicant said that he was working for a [company] and they were charged with not stopping at a red-light and they nominated the applicant and he is still fighting the charge. I do not consider this information relevant and have not considered it in my assessment.

Refugee: conclusion

63. 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

64. 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

65. 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.

66. 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.

67. I have considered the applicants' circumstances, including that he will return and live in Ilam province which is a majority Kurdish area, and the country information before me. I accept that the applicant was prevented from learning Kurdish in school and that Faili Kurds are, at times, prevented from celebrating Nowruz and weddings in their traditional way which involve men and women dancing together. They may also be prevented from celebrating Nowruz at times when their celebrations espouse political opinions against the regime. I do not consider that this, individually or cumulatively, amounts to significant harm. I am not satisfied this involves an arbitrary deprivation of his life, torture or the death penalty. It does not reach the requisite level of harm to amount to cruel or inhuman or degrading treatment or punishment. I am not satisfied there is a real risk the applicant will be subject to discrimination or any other harm, on the basis of his Faili Kurdish ethnicity, that will amount to significant harm.

68. There is a real risk that, on return to Iran, the applicant may, again, witness general crime or people being hung in public, however, I find the risk is one faced by the population of the country generally and is not faced by the applicant personally.

69. I have found the applicant will not face a real chance of any harm in Iran in relation to his other claims. Consequently, he will also not face a real risk of any harm in Iran in relation to those claims.²⁰ I am not satisfied the applicant will face a real risk of significant harm in Iran.

Complementary protection: conclusion

70. 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.

²⁰ *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.