



**Australian Government**  
**Immigration Assessment Authority**

**Decision and Reasons**

**Referred application**

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IRAN

IAA reference: IAA21/09594

IRAN

IAA reference: IAA21/09596

IRAN

IAA reference: IAA21/09595

IRAN

IAA reference: IAA21/09593

Date and time of decision: 13 September 2021 17:52:00

S MacKenzie, Reviewer

**Decision**

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The IAA affirms the decision not to grant the referred applicants protection visas.

*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

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### Visa application

1. The referred applicants (the applicants) are a family unit consisting of husband (the [applicant]), his wife (the wife [applicant];), and their two children (the child [applicants]). The applicant and his wife arrived in Australia [in] March 2013 as unauthorised maritime arrivals. The child applicants were born in Australia in [year] and [year]. On 1 September 2017, the applicants lodged a valid combined application for a Class XE Subclass 790 Safe Haven Enterprise visa (SHEV) claiming to be stateless.
2. A delegate of the Minister for Immigration (the delegate) found the applicants' receiving country is Iran and refused to grant the visa on 29 July 2021, on the basis that they did not face a real chance of serious harm or a real risk of significant harm upon return to that country.

### Information before the IAA

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

### Applicants' claims for protection

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4. The applicant and the wife applicant have their own protection claims, while the child applicants claim protection as members of the family unit.
5. The applicant's and his wife's claims can be summarised as follows:
  - They are Faili Kurds and citizens of Iran;
  - They believe in God but not religion;
  - The applicant believes he was dismissed from his employment in Iran in 2013 due to his ethnicity and lack of belief in Islam. He also believes he was dismissed because he never engaged in religious matters, was not interested in religion, and was not participating in prayers;
  - The applicant and his wife fled Iran within two weeks of the dismissal because the applicant believed they faced harm due to his ethnicity and opinions;
  - Iranian intelligence contacted the applicant's father a few months after they left Iran;
  - In Australia, the applicant is part of a group that undertakes anti-Iranian regime activities. He is a vocal supporter of political aims and rights of the Kurdish people, and regularly shares posts on social media;
  - The wife applicant fears harm in Iran as a female Kurd. She feels disenfranchised as an Iranian woman;
  - The applicant and his wife also fear their children will not be able to adjust to an Iranian lifestyle. Their youngest child is diagnosed with autism and that condition is not understood in Iran;
  - They also fear harm in Iran due to:

- their ethnicity
- their views on religion
- their imputed political opinion
- the applicant's political activities in Australia.

## Refugee assessment

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

### Well-founded fear of persecution

7. Under s.5J of the Act 'well-founded fear of persecution' involves a number of components which include that:
  - the person fears persecution and there is a real chance that the person would be persecuted
  - the real chance of persecution relates to all areas of the receiving country
  - the persecution involves serious harm and systematic and discriminatory conduct
  - the essential and significant reason (or reasons) for the persecution is race, religion, nationality, membership of a particular social group or political opinion
  - the person does not have a well-founded fear of persecution if effective protection measures are available to the person, and
  - the person does not have a well-founded fear of persecution if they could take reasonable steps to modify their behaviour, other than certain types of modification.

### *Identity / life in Iran / receiving country*

8. Since their arrival in Australia, the applicant's and his wife's evidence as to their identity, background, and life in Iran has been highly problematic.
9. On 22 April 2013, soon after they arrived in Australia, they were interviewed by the then Department of Immigration and Citizenship (arrival interview). According to the written record of their respective interviews, they both claimed to be stateless Kurds from Ilam. They also claimed to be of the Shia faith and indicated that they left Iran in part because they could not obtain identity documents.
10. The applicant and his wife were interviewed again in May 2013 (entry interview), where they reiterated their earlier evidence in their arrival interviews. The applicant claimed that he faced discrimination in Iran due to having a lack of identity documentation, meaning he had to bribe the authorities to be able to do anything. The wife applicant claimed she faced targeted harm due to being undocumented. She indicated that being undocumented meant no access to education, medical care, or employment.

11. The applicants lodged their written SHEV application in September 2017. It was accompanied by a statutory declaration from the applicant dated 16 May 2017 (2017 statement) and a detailed submission from their former representative dated 27 May 2017 (2017 submission). The claims and evidence about their life in Iran as set out in the written application can be broadly summarised as follows:
  - The applicant and his wife are stateless Faili Kurds from Ilam and members of the particular social group 'Stateless Faili Kurds in Iran';
  - Due to their statelessness, they lived in a mud hut on borrowed land and had no rights to identity documentation, formal education or employment, land, or public health;
  - The applicant lived under the poverty line and was forced to go through his neighbour's bins to find scraps for his family to survive;
  - The applicant faced constant harassment from the Basij. In one particular incident, not long before leaving Iran, he sustained a bad head injury at the hands of the Basij but was unable to receive medical attention because he could not go to a hospital (due to his undocumented status) and it also would have led to the police finding out he had been working illegally. He didn't mention this incident in the entry interview because had been brought up to distrust authority and was scared he would be reprimanded for speaking against the Basij;
  - The applicant has no right to citizenship and left Iran on a fake passport.
12. Aside from the purported incident the applicant had with the Basij not long before leaving Iran, the applicant's and his wife's claims and evidence about their statelessness and life in Iran as set out in the written SHEV application, the applicant's 2017 statement, and the former representative's 2017 submission, was broadly consistent with their earlier evidence in the arrival and entry interviews. However, in the SHEV application, they recorded their religion as 'N/A'.
13. On 19 July 2017, in response to a request for information from the Department, the applicants' former representative advised that because the applicant and his wife were Faili Kurds in Iran, they were not entitled to any identity documentation.
14. On 17 June 2021, the applicant and his wife were invited to attend an interview on 1 July 2021 to discuss their SHEV application and claims for protection (SHEV interview). On the morning of the scheduled SHEV interview, the applicants' former representative provided 'supplementary' statements from the applicant and his wife (2021 statements). The statements were dated 30 June 2021 and stated:
  - the information they provided during the entry interview was not accurate
  - the information provided in the applicant's 2017 statement was not true
  - they are not stateless, but citizens of Iran
  - they believe in God, but not religion.
15. The applicant and his wife claimed in their 2021 statements that they presented as stateless on arrival in Australia on the advice of others, including the people smuggler. They indicated they believed that by doing so they could not be returned to Iran. They were motivated to present as stateless out of fear. I note in their entry interviews they indicated that prior to

coming to Australia they were not told by anyone to not tell the truth, and nor did anyone tell them what to say when dealing with the Australian authorities.

16. In their 2021 statements, the applicant and his wife both stated 'details of our background are all correct as per our previous statements'. However, I note much of the applicant's and his wife's evidence prior to 2021 related to the difficulties they faced in Iran due to being purportedly stateless. For example, both had claimed that they were unable to attend university due to being undocumented, yet in her 2021 statement the wife applicant said she did attend university. I also note the applicant's 2021 statement in respect of events in Iran bears little resemblance to his 2017 statement.
17. In the SHEV interview, the delegate asked the applicant and his wife when they first decided to tell the truth about their citizenship. They both indicated they had decided about two years earlier and claimed that they hadn't had an opportunity to advise the department due to changing lawyers/migration agents. The delegate put to them that it appeared they had only recently been motivated to tell the truth about their citizenship status. She explained that their evidence as to when they told their migration agent the truth coincided with the applicant's sister's evidence to the Department, in a separate marriage/spouse visa application, that she was an Iranian citizen. Both the applicant and his wife denied that assertion. The delegate also noted that the applicant's sister, an Iranian citizen, had initially not mentioned in her separate visa application that the applicant was living in Australia and revealed this information around the same time the applicant and his wife revealed to their former migration agent that they were Iranian citizens.
18. The delegate asked the applicant and his wife to provide, along with other information, full details of their family composition, including siblings, uncles, aunts, and first cousins, within seven days of the SHEV interview. The delegate also asked for certified copies of their Iranian identity documents with accredited translations. She advised the applicant that if the certified copies of the identity documents/translations could not be provided within seven days to provide an explanation as to why it was not possible. The former representative confirmed he could arrange translations of identity documents (copies) already provided within seven days. On 9 July 2021, the former representative requested an additional seven-day extension to provide the information requested. The extension was granted but neither the documents/information nor an explanation was received prior to the delegate's decision.
19. The information before me, consistent with the applicant's and his wife's evidence in the SHEV interview, indicates they have family in Australia who have identified as Iranian citizens and, like the delegate, I also accept the applicant and his wife's evidence in their 2021 statements and SHEV interview that they are from Iran. I also agree with the delegate's assessment that there appears to be no incentive for the applicants to claim to be Iranian citizens if they are not and I find that the applicant and his wife are Iranian citizens. Iranian nationality law contains principles of both citizenship by descent and citizenship by birth; children acquire nationality of Iran through their father (but not their mother). Article 976 of the Civil Code of Iran defines an Iranian national to include persons born outside Iran whose father is Iranian.<sup>1</sup> I am satisfied the child applicants are also Iranian citizens.
20. Although the applicant and his wife indicated in their 2021 statements that they desired to tell the truth and provide accurate information, I have some concerns with their apparent failure to provide the requested information (or an explanation) from the delegate in respect

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<sup>1</sup> Switzerland Research Park Journal, Hossein Alekajbaf, "The Narratives of Nationality in Iran: Rights and Duties Related to Nationality", 1 November 2013, CIS29472

of their identity and family composition. As noted by the delegate in her decision, their remains some question mark as to their identity. However, the information before me indicates the applicants have significant family from Iran living in Australia and I am prepared to accept that their identity (name and date of birth) is as claimed. Like the delegate, I accept that the applicants are nationals of Iran and I find Iran to be the receiving country for the purpose of this decision.

21. However, for the avoidance of doubt, I am not satisfied the applicant and his wife intended to reveal the truth about their claimed statelessness two years earlier as claimed in the SHEV interview. I consider if they genuinely intended to do so, the lack or change of a legal representative was not a barrier to providing this critical information to the Department. I also note that in the SHEV interview the delegate raised a concern with the applicant that the Department had spoken to their migration agent on 18 June 2021 and were advised by them that they had earlier been unable to contact the applicant via email or on either of his mobile numbers. In response, the applicant indicated even at that point they were unsure whether to mention the truth. The applicant's and his wife's evidence indicates they only re-engaged with their migration agent in the days prior to the SHEV interview.
22. Although I have significant concerns in respect of the applicant and his wife's credibility, I am prepared to accept they are of Faili Kurd ethnicity. DFAT reports that Faili Kurds are distinguishable from other Iranian Kurds by their religion (most are Shia), their location (they typically reside in border provinces such as Ilam) and their distinctive dialect. Faili Kurds are a sub-group of the larger Kurdish population (who are predominantly Sunni Muslim).<sup>2</sup> I note the applicant and his wife have consistently claimed to have originated from Ilam and were interviewed on 1 July 2021 using an interpreter in the Southern Faili Kurdish language. I also note their evidence in their 2021 statements and SHEV interview that they were born into a Shia Muslim family.

#### *Events in Iran and Australia*

23. The applicant and his wife stated in their 2021 statements that they are Iranian citizens and that their claims for protection differed from what had been previously advanced. Given I have accepted the applicant and his wife are citizens of Iran, and that their earlier evidence in the arrival interview, entry interview, and in the 2017 lodged application was based on a false claim of being stateless, I have disregarded their claims and evidence about events in Iran advanced prior to June 2021. While I note some of their evidence also related to treatment purportedly faced on the basis of ethnicity, I give weight to their evidence in their 2021 statements that their claims for protection had changed and note that the majority of their past evidence was not repeated in those statements or in the subsequent SHEV interview. I also note the applicant's claim in his 2017 statement that as a Faili Kurd he received 30 – 50 percent less pay, or sometimes was not paid at all. He also said that the living conditions for Faili Kurds were 'atrocious' and that they had no permission to work. However, it is evident from his later evidence in both his 2021 statement and the SHEV interview that this was not the case. I also note reporting from DFAT that Faili Kurds who are citizens of Iran enjoy the same rights as other Iranians.<sup>3</sup> For these reasons, like the delegate, I have not considered the applicant's and his wife's claims and evidence about purported events in Iran in respect of their ethnicity or claimed statelessness raised prior to June 2021.

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<sup>22</sup> DFAT, "DFAT Country Information Report - Iran", 14 April 2020, 20200414083132

<sup>3</sup> DFAT, "DFAT Country Information Report - Iran", 14 April 2020, 20200414083132

24. The applicant's claims and evidence about events in Iran and Australia as set out in his 2021 statement can be summarised as follows:

*Iran:*

- He was born into a Shia Muslim family but never practised religion in Iran;
- He believes in God but not religion;
- In the four-year period prior to his departure from Iran, he worked as a subcontractor for a [company] called [name deleted]. The company was state-owned by Sepah (The Army of the Guardians of the Islamic Revolution);
- After four years of contract work, he applied for a permanent position. However, he was unsuccessful because he failed an assessment to assess his religiousness and loyalty to Islam and the Iranian regime;
- After he failed the assessment, he was dismissed from the company. He believes the reason for this was due to his ethnicity and lack of belief in Islam. He also believes he was dismissed because he never engaged in religious matters, was not interested in religion, and was not participating in prayers;
- He feared that because he has been dismissed from an Iranian government agency he was no longer employable anywhere in Iran;
- He also feared that following his dismissal he would be at risk of harm due to his ethnicity and opinions;
- He quickly made arrangements to leave the country and did so within two weeks;

*Australia:*

- Since 2014, he has been an active member of ([Organisation 1]);
- [Organisation 1] undertakes anti-Iranian regime activities, such as protests against the Iranian government at the front of the embassy of Iran, and protests against the Turkish embassy for crimes against Kurdish people;
- He is a vocal supporter of political aims and rights of the Kurdish people, and regularly shares posts on social media.

25. The wife applicant's claims and evidence about events in Iran as set out in her 2021 statement can be summarised as follows:

- She was born into a Shia Muslim family, but does not consider herself a Muslim. She does not belong to nor identify with any religion;
- She relies on her husband's claims for protection.

26. Both the applicant and his wife claimed in their statements they feared harm in Iran on the basis of their ethnicity and imputed political opinion as Fail Kurds, and their lack of religion. The applicant stated that Iran Kurds are heavily discriminated against by the general population and as well as and especially the government. He said the government heavily favours other ethnicities over Kurds and discriminates against them at every level, including in areas of education and employment, and does not attend to Kurdish areas. He said he feared his activities in Australia have come to the attention of the Iranian authorities and he would be regarded as a dissident. The wife applicant said she feared harm in Iran as a female

Kurd. She also said she felt disenfranchised as an Iranian woman, and that women in Iran cannot pursue education or work. The wife applicant also stated that her children were used to the 'Australian way', and that she fears they will not be able to adjust to the Iranian lifestyle in Iran.

27. On the day of the SHEV interview, the applicant provided a number of documents in support of his protection claims. The documents were provided without explanation but appear to relate to his employment in Iran and political activity in Australia. The employment documents appear to indicate that in December 2008 the applicant received certification/approval to work as [an occupation] in Iran. Unusually, these documents have been issued in English. According to a letter from [Organisation 1]'s spokesperson dated 30 June 2021, the applicant has been an active member of the community organisation since 2014. The spokesperson states the applicant regularly participates in activities which aim to condemn the abuse of human rights, especially towards Kurds in Iran, Turkey, Iraq, and Syria. Also provided are several photographs that appear to show the applicant attending peaceful demonstrations in Australia.
  
28. I have significant concerns with the applicant's evidence as to the events that he claims motivated him and his wife to quickly depart Iran in 2013. Firstly, even if I was to accept he was dismissed from his employment in 2013, his evidence both in his 2021 statement and in the SHEV interview indicated he did not know the reason for his dismissal. He advised the delegate that his employer didn't give him any document evidencing the cessation of his employment. Secondly, I find it difficult to accept he would genuinely be in fear for his life following the purported dismissal, to the extent he would leave the country within two weeks, following his purported failure of an assessment testing his religiousness, loyalty to Islam, and the Iranian regime. In particular, I note his evidence is that he never openly engaged in prayers or religious matters within the workplace, yet he had been working for that company for four years. I consider if his lack of adherence to Islamic rituals at work was a concern to his state-owned employers that he would have been warned about his conduct prior to the purported assessment and subsequent dismissal. Thirdly, his claim that he made arrangements to depart Iran within two weeks of the purported dismissal and for reasons relating to the dismissal is difficult to reconcile with his and his wife's evidence in their respective entry interviews, in which they both independently stated that they started making arrangements to leave Iran two or three months prior to departing. While I acknowledge at that time they were both presenting (falsely) as stateless, it is not apparent how claiming to have commenced arrangements two or three months before leaving would support that claim, or that they would have another reason to be dishonest with that aspect of their evidence on arrival in Australia. Nor was there any indication in their entry interviews, even in general terms, that they were in a rush to depart the country (due to problems at work or for any other reason). Fourthly, I found the applicant's evidence in the SHEV interview that he and his wife already held Iranian passports prior to the time he was purportedly dismissed not insignificant. Neither the applicant nor his wife have declared prior overseas travel and when I consider their evidence in its entirety, I consider they were planning to leave Iran much earlier than indicated in their 2021 statements and SHEV interview. Fifthly, I consider if Iranian intelligence had contacted the applicant's father a few months after he left Iran, given the significance of such a claim, he would have mentioned it in his 2021 statement and not for the first time in the SHEV interview. I note the wife applicant gave no indication in her SHEV interview that Iranian intelligence had showed an interest in her husband. When I consider the applicant's and his wife's evidence as whole, including their initial claim to be stateless and their unpersuasive reasons as to why and when they decided to tell the truth to the Department, I am not satisfied they have provided a truthful account about the circumstances that motivated them to leave Iran. On the



evidence, I am not satisfied the applicant was dismissed from his employment for failing a religious and/or loyalty assessment, or for any other reason. Nor am I satisfied that Iranian intelligence contacted the applicant's father at any time. I am not satisfied the applicants face a real chance of harm on account of past events in Iran now, or in the reasonably foreseeable future.

29. I note when the applicant and his wife arrived in Australia, they both identified as Shia. I also note their evidence in the SHEV interview that they attended a mosque (or a room designed for Islamic prayer) while in immigration detention. The delegate raised their mosque/prayer room attendance with them and they both indicated that they attended only as a means of getting away from the detention centre for a change of scenery. The delegate also raised a concern with the wife applicant that in her arrival or entry interview photo she was wearing a hijab. In response, she said she had been wearing the scarf for several years and it was hard to take it off. The applicant confirmed in the SHEV interview that while he believes in God, he hadn't practised Islam in Iran since the age of [age] years. However, he said he had also attended some Christian church services in detention, and once or twice following his release. He also said he had read the Bible and indicated at that time he was interested to know more about the faith, which is somewhat difficult to reconcile with his other evidence that he does not believe in religion and I note he described himself only one day earlier, in his 2021 statement, as a 'person who had never engaged in religious matters and not interested in religion'. The applicant gave no indication in the SHEV interview he had pursued Christianity in recent years, or that he intended to in the foreseeable future. The wife applicant advised the delegate that while she believed in Allah, she had not practised Islam since childhood. Although I have some concerns, I am prepared to accept the applicant and his wife did not practise Islam in Iran. Overall, I considered their oral evidence in this regard reasonably convincing, particularly in comparison to other aspects of their evidence in the SHEV interview. I also give weight to country information from DFAT and ACCORD (Austrian Centre for Country of Origin and Asylum Research and Documentation) that indicates that secularism and the non-practise of Islam is widespread in Iran.<sup>4</sup> I also accept that they believe in God/Allah, that they do not believe in religion, and that if returned to Iran they would continue to not practise Islam, nor any other religion.
30. Sources noted by the delegate indicate that many Iranians have a secular attitude and lifestyle.<sup>5</sup> More recently, local sources told DFAT that secularism is widespread, particularly in the major cities and among younger and wealthier Iranians. DFAT report that a significant proportion of the population does not attend mosque or pray on a regular basis, and alcohol consumption is common. Official sources told DFAT that religion was a private matter and 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. DFAT heard anecdotally that many Iranians do not observe Ramadan strictly, including by eating, drinking liquids and smoking at home. Most restaurants are closed during Ramadan, although many (especially in Tehran) reportedly serve food discreetly. Those caught eating in public during Ramadan run the risk of arrest and prosecution. DFAT assesses that non-practising Iranian Muslims face a low risk of official and societal discrimination, particularly in the major cities.<sup>6</sup> DFAT defines 'low risk' as it is aware of incidents but has insufficient evidence to conclude they form a pattern.

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<sup>4</sup> ACCORD, "Iran COI Compilation", 1 July 2018, 20190326122102; DFAT, "DFAT Country Information Report - Iran", 14 April 2020, 20200414083132

<sup>5</sup> ACCORD, "Iran COI Compilation", 1 July 2018, 20190326122102

<sup>6</sup> DFAT, "DFAT Country Information Report - Iran", 14 April 2020, 20200414083132

31. DFAT reports that, under Iranian law, a Muslim who leaves his or her faith can be charged with apostasy. DFAT also reports that politically motivated apostasy charges were frequent in the years following the Iranian revolution, often leading to death sentences, although in most cases the defendants faced other charges relating to national security. Death sentences in apostasy and blasphemy cases are rare today.<sup>7</sup>
32. DFAT reports that while apostasy and blasphemy cases are no longer an everyday occurrence in Iran, authorities continue to use religiously based charges (such as 'insulting Islam') against a diverse group of individuals. This includes Shia members of the reform movement, Muslim-born converts to Christianity, Baha'is, Muslims who challenge the prevailing interpretation of Islam (particularly Sufis) and others who espouse unconventional religious beliefs (including members of recognised religious groups). Some religiously based cases have clear political overtones, while other cases seem to be primarily of a religious nature, particularly when connected to proselytisation.<sup>8</sup>
33. The information before me indicates that non-practising Iranian Muslims (or those perceived to be) face a low risk of official and societal discrimination. I have accepted when previously in Iran the applicant and his wife did not practise Islam and I have also accepted they will not do so if they return to the country. However, I am not satisfied they would, or that they have any genuine interest in, publicly declaring their non-belief in religion, in Islam, or that they no longer practise the faith. Further, I am not satisfied they would seek to denounce Islam publicly or that their non-belief or non-practise would impute them with views opposing the Iranian regime. I note both the applicant and his wife indicated in the SHEV interview that their beliefs in respect of religion were predominantly a private matter for them. While the applicant claimed in the SHEV interview that in Iran a person's family can go against them or even kill them for not practising Islam, I also note his evidence in the interview that he had told his siblings of his non-practise and indicated they accepted that he had his own beliefs. While I am prepared to accept his evidence that he has not told his own parents, who he said were practising Muslims, of his non-practise, I am not satisfied this is due to a fear of harm from them. On the information before me, I am not satisfied in the applicant's and his wife's circumstances there is a real chance that their (past and future) non-belief and/or non-practise of Islam would lead them or the child applicants to face a real chance of harm in Iran now, or in the reasonably foreseeable future. Nor am I satisfied there is a real chance they would be charged with apostasy or otherwise come to the adverse attention of the state in connection with their views on religion. While I accept that there is a chance the applicants may face some official and societal discrimination given they will not practise Islam, whilst regrettable, nevertheless, on the information before me, I am not satisfied that it amounts to or would result in a real chance of serious harm to him now, or in the reasonably foreseeable future.
34. I am not satisfied on the applicant's evidence that he has a genuine ongoing interest in Christianity, and I do not accept he would be perceived to have such an interest on return to Iran. I am not satisfied the Christian activities he has engaged in while in immigration detention or following his release would become known to the authorities in Iran, or that this would raise concern in Iran if known. The information before me does not support the applicant's engagement in Christianity in Australia would be known in Iran, or that if it was, that he would be viewed as have genuinely converted to Christianity. I am not satisfied the applicants face a real chance of harm in Iran in connection with the applicant's past Christian activity in Australia now, or in the reasonably foreseeable future.

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<sup>7</sup> DFAT, "DFAT Country Information Report - Iran", 14 April 2020, 20200414083132

<sup>8</sup> DFAT, "DFAT Country Information Report - Iran", 14 April 2020, 20200414083132

35. I have accepted the applicants are of Faili Kurd ethnicity. However, I have some concerns about the applicant's claims in respect of his political activities in Australia. In particular, I note he made no mention in his 2017 lodged application that he was involved with [Organisation 1] (since 2014) or that he feared harm in Iran due political activities undertaken in Australia. The delegate raised this concern in the SHEV interview and, in response, the applicant initially indicated that he hadn't raised it earlier because he had claimed to be undocumented (stateless). When the delegate put to him that he had always claimed to be Kurdish and in these circumstances it did not make sense he wouldn't raise the claims earlier, he said he was waiting for the SHEV interview to reveal the information.
36. The applicant explained to the delegate that he was not involved with any other groups other than [Organisation 1]. He said his role in the group was to attend demonstrations and collect monies for those affected by war. He said he wasn't involved in organising but attended demonstrations when an issue arose abroad that demanded the need to highlight Kurdish oppression. He said that due to COVID-19 restrictions he primarily now met with fellow [Organisation 1] members online.
37. The applicant advised the delegate that when he attended demonstrations in Australia people would come and take a picture and leave. He said he could tell by the way they are dressed that they are from the Islamic Republic of Iran. He also said that the Iranian authorities would know of his activities in Australia by looking on his [social media] profile. He said he had been posting on [social media] since 2014. The delegate advised the applicant that she had tried to find his [social media] profile prior to the interview without success and questioned as to how the Iranian authorities would be able to locate it. In response, he said images of his involvement in such activities weren't only on his [social media] profile but also on the news. The delegate again raised a concern about the applicant's failure to mention his [Organisation 1] activity in his 2017 lodged application, noting his evidence that he was prepared to post about it on social media. In response, he again said that he was waiting to be interviewed so he could provide the information in person. As noted above, the delegate asked the applicant to provide information following the SHEV interview, which included evidence that he had been on the news and that he had posted information on [social media]; however, nothing was received prior to the delegate making the decision.
38. Having regard to all of the evidence, I have significant concerns that the applicant's involvement with [Organisation 1] may have been undertaken for the sole purpose of strengthening his claims for protection. While I accept he has attended demonstrations highlighting Kurdish oppression and promoting Kurdish rights; I note he made no mention of participating in such activities in his 2017 lodged application and I find his explanation for not mentioning it earlier unpersuasive. I also note the photographs evidencing his attendance at the demonstrations are undated and I am not satisfied they relate to events prior to the lodgement of the SHEV application. I also consider his wife's evidence in the SHEV interview that indicated she knew very little as to the extent of her husband's purported political activities in Australia not insignificant, nor supportive of his claim to be a 'vocal supporter' of political aims and rights of the Kurdish people. As noted earlier, the applicant was asked to provide evidence of his claimed activity on social media and appearance on the news, but nothing was provided. While I acknowledge the letter from [Organisation 1] states the applicant has been involved with the community organisation since 2014, it does not outweigh my other concerns.
39. Although I have concerns, I am prepared to accept the applicant is affiliated with [Organisation 1], a community organisation that promotes and advocates for Kurdish rights. The letter from [Organisation 1] indicates that the applicant turned to the Kurdish community

in Australia in part for help, guidance, and safety. I am prepared to accept the applicant's involvement with [Organisation 1] has not been for the sole purpose of strengthening his claims for protection. However, on his evidence, I consider his involvement with the organisation and political activities in Australia to be low-level at best. On the evidence, I am not satisfied the applicant posts pro-Kurdish or anti-Iranian regime material on social media. Nor am I am satisfied the Iranian authorities are aware of [Organisation 1], or that if they are, they view the group as a threat to the regime. Further, I am not satisfied the Iranian authorities are aware the applicant has attended demonstrations in Australia. Although he has not claimed that he would, I am not satisfied that the applicant would seek to proactively channel pro-Kurdish sentiments upon return to Iran. While I accept he supports Kurdish rights and the non-oppression of Kurds in various countries, I am not satisfied he genuinely defines himself as a vocal supporter of political aims and rights of the Kurdish people, an anti-regime activist, or that he holds strong anti-regime opinions. I am not satisfied the applicants face a real chance of harm in Iran due to their actual or imputed political opinion now, or in the reasonably foreseeable future.

40. In 2018, DFAT reported that it was not aware of specific instances where Faili Kurds have been singled out by the Iranian authorities for mistreatment. However, it 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. DFAT defined 'moderate risk' as it is aware of sufficient incidents to suggest a pattern of behaviour.<sup>9</sup> Consistent with its 2018 reporting, DFAT assesses in 2020 that 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. DFAT also assesses 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. Specific to the treatment of Faili Kurds, DFAT assesses that is not aware of specific instances whereby authorities have singled out Faili Kurds for mistreatment, regardless of whether they are Iranian citizens, registered refugees, or not registered refugees (non-Amayesh cardholders).<sup>10</sup>
41. DFAT states 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. DFAT further assesses that, like other ethnic minorities, Kurds who are active politically are likely to attract adverse attention from the authorities. Those who advocate for greater rights and autonomy and/or self-determination face a high risk of official harassment, monitoring, imprisonment and mistreatment.<sup>11</sup>
42. I acknowledge DFAT's assessment that members of ethnic minority groups face a moderate risk of societal discrimination in Iran and in particular in areas where they are the minority. The country information before me indicates that Ilam, where the applicant and his wife resided before coming to Australia, and where I am satisfied they would highly likely return, have significant Faili Kurd populations.<sup>12</sup> DFAT states that the Iranian constitution commits the government to providing all citizens with free education up to the secondary level and to

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<sup>9</sup> DFAT, "DFAT Country Information Report - Iran", 7 June 2018, CIS7B839411226

<sup>10</sup> DFAT, "DFAT Country Information Report - Iran", 14 April 2020, 20200414083132

<sup>11</sup> DFAT, "DFAT Country Information Report - Iran", 14 April 2020, 20200414083132

<sup>12</sup> DFAT, "DFAT Country Information Report - Iran", 14 April 2020, 20200414083132; Danish Immigration Service, "Iranian Kurds: Consequences of political activities in Iran and KRI", 6 February 2020, 20200210101317

expanding free higher education to the extent required for Iran to attain self-sufficiency. DFAT reports that almost all Iranian children complete primary education, and most have at least some secondary education.<sup>13</sup>

43. While I accept that ethnic minorities in Iran involved in political activism or other activities that may be perceived to be a threat to the regime are likely to attract adverse attention from the authorities, I am not satisfied there is a real chance that the applicants will be involved in, or imputed to be involved in, such activities. Nor am I satisfied there is a real chance the applicant's activities or association with [Organisation 1] would be known to the Iranian authorities. On the information before me, while I accept that there is a chance the applicants may face some official and societal discrimination on the basis of their membership of a minority ethnic group, whilst regrettable, nevertheless, on the information before me, I am not satisfied that it amounts to or would result in a real chance of serious harm to the applicants now, or in the foreseeable future. Further, I am not satisfied the applicants face a real chance of harm in Iran due to their imputed political opinion arising from their ethnicity now, or in the reasonably foreseeable future.
44. The wife applicant claimed in her 2021 statement that as an Iranian woman she could not pursue education or work in Iran. I note her evidence in the same statement that she attended high school and university. She also stated that being an Iranian woman made her feel 'disenfranchised'. In the SHEV interview, she said that it is hard for woman to work and earn money in Iran. I note she has been living in Australia since 2013 and gave no indication that she had pursued employment here. She advised the delegate that she is now studying English and is at 'level three'.
45. According to DFAT, women enjoy considerable legal protections in many areas, including personal safety, participation in the workforce and mandatory schooling for girls. DFAT also report that women can drive, work, and attend university (there are more female university graduates than men).<sup>14</sup> On the evidence, I am satisfied that the wife applicant would be able to pursue education and employment opportunities in Iran if she desired.
46. DFAT also assesses that most Iranian women face persistent societal discrimination and the threat of gender-based violence. Legislation, longstanding traditional values and gender roles continue to restrict the participation of women in the workforce and community. Activists attempting to promote women's rights face a high risk of official discrimination. This may include arrest, monitoring, harassment, smear campaigns and travel bans. Women perceived by the authorities to be pushing Iran's moral boundaries face a high risk of arrest and severe punishment.<sup>15</sup>
47. The wife applicant has not claimed that in the past she has faced harm in Iran due to her profile as a woman. She has not indicated that she fears gender-based violence or that she is an activist for women's rights. I am also satisfied that if returned to Iran she would do so accompanied by her husband and they would live as a family unit as they did previously in Iran and now in Australia. I am not satisfied she will be denied access to basic services for reason of her gender or that her risk of facing harm as woman is elevated due to her ethnicity; as already noted, Faili Kurds who are citizens of Iran enjoy the same rights as other Iranians. On the information before me, while I accept that there is a chance the wife applicant may face some societal discrimination on the basis of her gender, whilst regrettable, nevertheless, on the information before me, I am not satisfied that it amounts to

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<sup>13</sup> DFAT, "DFAT Country Information Report - Iran", 14 April 2020, 20200414083132

<sup>14</sup> DFAT, "DFAT Country Information Report - Iran", 14 April 2020, 20200414083132

<sup>15</sup> DFAT, "DFAT Country Information Report - Iran", 14 April 2020, 20200414083132

or would result in a real chance of serious harm to the applicants now, or in the foreseeable future.

48. Although not mentioned in their 2021 statements (or prior), the applicant and his wife advised the delegate in the SHEV interview that their youngest child had been diagnosed with autism. They indicated that not much was known in Iran about the condition and expressed concern that treatment would not be available. The delegate asked the applicant (and confirmed with the former representative) to provide evidence of the diagnosis and treatment being undertaken, but like the other information requested it was not forthcoming.
49. DFAT reports that the Iranian Constitution stipulates that every Iranian has the right to enjoy the highest attainable level of health. The Ministry of Health and Medical Education is responsible for planning, monitoring and supervising health-related activities for the public and private sectors. Health care and public health services are delivered through a countrywide network, based on a referral system that starts at primary care centres in the periphery and proceeds through secondary-level hospitals in provincial capitals and tertiary hospitals in major cities. The government remains the main provider of primary health care services across the country, although the private sector also plays a significant role in health care provision, mostly through secondary and tertiary health care in urban areas. While the quality of healthcare in the public sector is of a good standard, overcrowding and doctor shortages are major challenges — Iran has 1,000 public hospitals for a population of nearly 83 million, or approximately 1.7 hospital beds per 1,000 people. Iran's private health care system is highly regarded and attracts patients from other countries in the region. Numerous non-governmental organisations (NGOs) are active on health issues, particularly in specialised fields.<sup>16</sup> According to a recent study by the Journal of Education and Health Promotion, there are autism schools in Iran and the autism centre in Khuzestan province (neighbouring Ilam) is one of such centres in the country.<sup>17</sup>
50. There has been no documentary evidence provided to evidence the youngest of the child applicants has been diagnosed with autism or to what extent any treatment is required. On the evidence, I am not satisfied he has been diagnosed with autism or undergoing treatment for this condition. However, if I am wrong about that, the information indicates that there is an awareness of autism in Iran and support services that cater for autistic children. The Journal of Education and Health Promotion study indicates that families with autistic children face challenges, one being the quality in facilities. I accept that health services and facilities for autism in Iran, compared to Australia, are possibly more limited and of a lower quality. However, the applicants have not claimed the child would be denied access to treatment services or facilities, and the information in the review material indicates that a level of support is available in Iran, and does not indicate that any limits on support or medical treatment is the result of systematic and discriminatory treatment for one or more of the s.5J(1)(a) reasons. I am not satisfied the applicants face a real chance of harm in relation to any health condition of the youngest child applicant now, or in the reasonably foreseeable future.
51. The wife applicant expressed concern in her 2021 statement that in Iran the child applicants will not be able to adjust to Iranian lifestyle. She reiterated the same in the SHEV interview and said they speak English and don't know much about Iranian culture. Although not

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<sup>16</sup> DFAT, "DFAT Country Information Report - Iran", 14 April 2020, 20200414083132

<sup>17</sup> Journal of Education and Health Promotion, "The experiences of families raising autistic children", 26 February 2021, 20210723103217

advanced as a claim for protection, the delegate considered whether the applicants faced harm in Iran due to being failed asylum seekers returning from a western country.

52. According to DFAT, Iran has historically refused to accept involuntary returnees, and while officials provide assistance to Iranians who wish to voluntarily return, Iranian overseas missions will not issue travel documents to an Iranian whom a foreign government wishes to return involuntarily to Iran. In March 2018 Iran and Australia signed a Memorandum of Understanding (MOU) on Consular Matters to facilitate the return of Iranians who arrived after that date and who have no legal right to stay in Australia.<sup>18</sup> The applicants do not fall into this category and I am satisfied there is not a real chance they would be forcibly returned to Iran.
53. DFAT states that the Iranian authorities pay little attention to failed asylum seekers on their return to Iran. International observers reported that the authorities have little interest in prosecuting failed asylum seekers for activities conducted outside of Iran, including in relation to protection claims. DFAT also states that treatment of returnees, including failed asylum seekers, depends on their profile before departing Iran and their actions on return. DFAT assesses that persons with an existing high profile, particularly political activists, may face a higher risk of coming to the official attention of the authorities in Iran. DFAT also assesses that in general returnees are unlikely to attract attention from the authorities and face a 'low risk' of monitoring, mistreatment or other forms of official discrimination.<sup>19</sup>
54. On the information, I am not satisfied that any of the applicants hold a profile that would raise the concern of the Iranian authorities and I note that the applicant and his wife were able to depart Iran legally in 2013 without difficulty. While I accept the authorities may question and in this process may briefly detain the applicants as voluntary returnees<sup>20</sup>, I am not satisfied that this treatment would amount to or lead to harm. While I also accept that there is a chance the applicants may face some monitoring, mistreatment or other forms of official discrimination as a returnees, whilst regrettable, nevertheless, on the information before me, I am not satisfied that it amounts to or would result in a real chance of serious harm to them now, or in the foreseeable future. I am not satisfied the applicants face a real chance of harm as failed asylum seekers, or due to time spent in a western country like Australia now, or in the foreseeable future, should they return to Iran. The child applicants are aged [age] and [age] years and live with their parents. While I acknowledge they may be familiar with Australian lifestyle and culture, I am not satisfied they would face any harm in Iran due to unfamiliarity with Iranian culture or lifestyle. Nor am I satisfied their risk of harm is elevated because they can speak English. While I acknowledge there will be a period of adjustment as they integrate into life in Iran and this may be challenging, I am not satisfied they face a real chance of harm on this basis now, or in the reasonably foreseeable future.
55. I have accepted that if returned to Iran the applicants, due to their ethnicity and/or non-practice of Islam, may experience a level of official or societal discrimination. I have also accepted the wife applicant may face some societal discrimination on the basis of her gender. I have further found the applicants may face some monitoring, mistreatment or other forms of official discrimination as returnees. Having regard to the applicants' evidence in its entirety, including the country information, even when considered cumulatively, I am not satisfied they face a real chance of treatment that would constitute serious harm now, or in the reasonably foreseeable future. I am not satisfied they face a real chance of harm due to

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<sup>18</sup> DFAT, "DFAT Country Information Report - Iran", 14 April 2020, 20200414083132

<sup>19</sup> DFAT, "DFAT Country Information Report - Iran", 14 April 2020, 20200414083132

<sup>20</sup> DFAT, "DFAT Country Information Report - Iran", 14 April 2020, 20200414083132

past events in Iran or Australia, due to their non-belief and/or non-practise of Islam, due to their ethnicity, due to any political and religious activities in Australia, due to any association with [Organisation 1], due to any actual or imputed political opinion, due to the wife applicant's gender or profile as a 'female Kurd', due to any health conditions, as failed asylum seekers from Australia, due to time spent in Australia, due to English language skills, due to unfamiliarity with Iranian lifestyle and/or culture, or any combination of these factors.

*SHEV interview interpreter*

56. During the SHEV interview, the applicant raised a concern with the delegate about the interpreter. He appeared to be of the view that the interpreter did not fully relay his response to the delegate when asked about what prompted him to tell the truth about his Iranian citizenship. It seemed that the interpreter had not fully completed relaying the response when the applicant intervened with his complaint. The applicant raised a similar concern later in the interview, when being asked about his activities with [Organisation 1] and his understanding of the Kurdish political scene in Iran. The interpreter confirmed she had interpreted and relayed to the delegate the meaning of what the applicant had said.
57. At the end of the SHEV interview, and following consultation in private with the applicant, the applicant's former representative said he had noticed that the interpreter had, on several occasions throughout the interview, not satisfactorily interpreted information both to the applicant and back to the delegate. I inferred from his oral submission that the representative could speak or understand Southern Faili Kurdish or Kurdish language. It was not clear why the representative waited until this point in the interview to raise the concern, given he was apparently the only person present who could attest to the purported issues.
58. The former representative said he would provide examples of interpreting the issues, which he said in his experience may lead to adverse credibility findings. However, the first example appeared to take issue with the delegate's line of questioning rather than an issue with the interpreter. He took objection to the fact that the delegate had compelled applicant to give a precise answer as to the frequency in which he attended demonstrations or protests in Australia. He submitted that the applicant's evidence in the SHEV interview was that his attendance at such events was irregular and based on when an issue would arise, such as when a Kurdish activist was imprisoned or sentenced to death overseas. However, this is how I understood the applicant's earlier evidence in the interview and, as noted above, I have accepted he attended such demonstrations in Australia.
59. The second issued raised by the former representative was regarding the interpretation of the applicant's responses about his attendance at Christian church services in Australia. He took objection with the delegate's suggestion in the interview that the applicant had been investigating Christianity and said the interpreter did not relay to him that the delegate was of the view he had been investigating Christianity. The former representative added that at no point in the exchange did the applicant mention he was investigating Christianity nor was he interested in doing so. I don't fully understand the former representative's submission about this aspect of the applicant's evidence or the relevant exchange in the interview, and nor am I satisfied anything turns on it. The applicant indicated on several occasions throughout the interview that he attended Christian church services both while in immigration detention and following his release. He said he wanted to find out about the religion and that he had read the bible. He also indicated on several occasions that he accepted the Christian faith more than Islam. Based on the applicant's evidence (as interpreted), it is difficult to draw any other conclusion that, at some point, he was investigating Christianity. However, as noted above, his evidence did not indicate that he had



pursued Christianity in recent years or that he intended to in the foreseeable future. I note I have not drawn any adverse credibility findings in respect of the applicant's evidence in this regard.

60. The former representative also stated at the end of the SHEV interview that there were other examples of incorrect interpretation during the SHEV interview which he would document in a post-SHEV interview submission. However, no examples or submission was received. On all the evidence, I am not satisfied the applicant's (or his wife's) oral evidence in the SHEV interview was adversely impacted by the delegate's line of questioning or the interpreter. I am not satisfied the interpreter did not properly interpret the delegate's questions or explain the meaning of the applicant's responses, or that the audio recording of the SHEV interview cannot be relied upon as a true reflection of the questions put to the applicant, his wife, and their responses.

### **Refugee: conclusion**

61. The applicants do not meet the requirements of the definition of refugee in s.5H(1). The applicants do not meet s.36(2)(a).

### **Complementary protection assessment**

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62. Under s.36(2)(aa) of the Act, 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**

63. 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.
64. 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.
65. While I accept the applicants may face some level of official and societal discrimination in Iran due to their ethnicity and/or non-practice of Islam, or a low risk of monitoring, mistreatment or other form of official discrimination as returnees, I am not satisfied that this, either individually or cumulatively, amounts to or would lead to significant harm as defined. I am not satisfied that the treatment they may face would amount to the death penalty, or result in an arbitrary deprivation of life, or torture. I also do not accept that the treatment they may face would involve pain or suffering that could reasonably be regarded as cruel or

inhuman in nature, or severe pain or suffering or that would cause extreme humiliation, even when considered in a cumulative sense. I am not satisfied there is a real risk of significant harm on this basis.

66. I accept the wife applicant, as a female, may possibly face some societal discrimination on the basis of her gender. However, when I consider her background and her personal and family circumstances, I am not satisfied there is a real risk of significant harm on this basis. I am not otherwise satisfied she faces a real risk of harm as a 'female Kurd'.
67. Even accepting the youngest child applicant may need further treatment for a diagnosis of autism, having regard to the evidence before me, I am not satisfied that any health condition he may have or any difficulties he may face accessing treatment would result in a real risk of significant harm as defined. The information before me indicates that support for children with autism is available in Iran. While I accept those supports may be limited compared to Australia, the information before me does not indicate it is due to an intention to inflict pain or suffering that could reasonably be regarded as cruel or inhuman in nature, or severe pain or suffering or an intention cause extreme humiliation.
68. I have otherwise found that the applicants do not face a real chance of any harm in Iran for the reasons claimed. Based on the same information, and for the reasons set out above, I find they do not have a real risk of suffering significant harm in Iran.
69. After having regard to the applicants' circumstances, I find that they do not face a real risk of suffering significant harm.

#### **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 applicants will suffer significant harm. The applicants do not meet s.36(2)(aa).

#### **Member of same family unit**

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71. Under s.36(2)(b) or s.36(2)(c) of the Act, an applicant may meet the criteria for a protection visa if they are a member of the same family unit as a person who (i) is mentioned in s.36(2)(a) or (aa) and (ii) holds a protection visa of the same class as that applied for by the applicant. A person is a 'member of the same family unit' as another if either is a member of the family unit of the other or each is a member of the family unit of a third person: s.5(1). For the purpose of s.5(1), the expression 'member of the family unit' is defined in r.1.12 of the Migration Regulations 1994 to include a spouse or dependent child of the family head.
72. As none of the applicants meet the definition of the refugee or the complementary protection criterion, it follows that none of the applicants meet the family unit criteria in either s.36(2)(b)(i) or s.36(2)(c)(i).

#### **Decision**

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The IAA affirms the decision not to grant the referred applicants protection visas.

## Applicable law

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### ***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.