



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

**Decision and Reasons**

**Referred application**

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IRAN

IAA reference: IAA18/05612

Date and time of decision: 16 January 2019 11:27:00

S MacKenzie, Reviewer

**Decision**

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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

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### Visa application

1. The referred applicant (the applicant) claims to be a citizen of Iran. He arrived in Australia [in] July 2013 as an unauthorised maritime arrival. On 30 June 2016 the applicant lodged a valid application for a Class XE Subclass 790 Safe Haven Enterprise visa (SHEV).
2. A delegate of the Minister for Immigration and Border Protection (the delegate) refused to grant the visa on 29 August 2018, on the basis that the applicant did not face a real chance of serious harm or a real risk of significant harm upon return to Iran.

### Information before the IAA

3. I have had regard to the material given by the Secretary under s.473CB of the *Migration Act 1958* (the Act) (the review material).
4. On 26 September 2018, the IAA received a written submission from the applicant's representative (IAA submission). The IAA submission in part comprises argument on issues before the delegate and also refers to claims and evidence that were before the delegate, and are part of the review material. I have had regard to these aspects of the submission.
5. In the IAA submission, the applicant's representative submits that given the adverse findings of the delegate 'it would be appropriate for the IAA...to invite the [a]pplicant to an interview in order to obtain new information from him as to credibility'. As the representative would be aware, the IAA provides a limited form of review which, as a general rule, does not involve accepting or requesting new information or interviewing an applicant. While the IAA may get any information not before the Minister and which it considers relevant, including by inviting a person to give new information, it does not have a duty to do so. Furthermore, if it does get new information it can only consider that information in exceptional circumstances. The applicant has already provided extensive submissions, and information, including in response to an invitation from the delegate to comment on adverse information (invitation to comment). The applicant has not identified what concerns he has that have not already been addressed in submissions and information already provided, or why an interview is the preferable manner in which he can provide the information he wants to provide. I am satisfied that the applicant has had an opportunity to present his case and I do not consider that an interview is warranted.

### Applicant's claims for protection

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6. In support of his SHEV application, the applicant provided a written statement, dated 23 May 2016 (SHEV statement). The claims outlined in his SHEV statement can be summarised as follows:
  - The applicant is a stateless Faili Kurd from the province of Ilam;
  - As a Faili Kurd, the applicant's family is not provided with any identification documents and have no rights, including citizenship. The applicant thinks that his family hold a green card. He has never held a birth certificate or another document issued by the Iranian government. His family are nomads;

- While working in Tehran, the applicant experienced discrimination and ridicule due to his Kurdish ethnicity and language. On one occasion he was beaten on the street;
  - Prior to leaving Iran, the applicant was in a sexual relationship with [Ms A]. [Ms A]'s family found out about the relationship and said that the relationship was banned. Because the applicant is Kurdish and he was having a relationship with their daughter, [Ms A]'s family reported the matter to the police. Her family also told the applicant that if he continued the relationship they would kill him;
  - Later, [Ms A]'s father and brother agreed to meet the applicant in a park to discuss the possibility of him marrying [Ms A]. However, although there were other people around, they started beating the applicant in an attempt to kill him. He was able to escape by running away;
  - Following this incident, the applicant called [Ms A] who confirmed that her family wanted to kill him. She also confirmed the matter had been reported to the police. This was the last contact the applicant had with [Ms A] because after this her family took her belongings, including her mobile phone. The phone contained explicit and naked photographs of the applicant and [Ms A] spending time together;
  - Later, the police came to the applicant's place of work while he was not there. They asked a friend who also worked there about his name and where he was living;
  - The applicant knew that he had to leave Iran in order to be safe. Due to being stateless, he had to obtain a false passport, with a false identity, to depart Iran;
  - After the applicant arrived in Australia, his friend and work colleague advised him that [Ms A]'s family visited his place of work after he departed Iran;
  - A friend has told the applicant that [Ms A] is still not married and that she stays inside her house. This demonstrates that her family believe that the applicant has destroyed her honour and that she is probably not allowed to marry;
  - The applicant's family in Iran have not been threatened by [Ms A]'s family because, as nomads, they move around a lot;
  - If returned to Iran, the applicant fears he will be seriously harmed due to his Kurdish ethnicity and for breaking the Iranian moral code due to his relationship with [Ms A], and for breaking Islamic law in respect of the photographs. He fears he will be killed by [Ms A]'s family or the police.
7. On 28 November 2017, the applicant was interviewed in connection with his claims for protection (SHEV interview). In the SHEV interview, he provided the following additional information and/or claims:
- He is not stateless and undocumented, but an Iranian citizen who has been issued a birth certificate and passport by the Iranian government;
  - He departed Iran using his legal passport;
  - He provided false information about his Iranian documentation under instruction from his father;
  - He fears returning to Iran because he will be viewed as a person who evaded military service;

- [Ms A]'s family were searching for him at his place of work as recently as one and a half years ago (approximately May 2016);
  - He did not fear returning to Iran on the basis of his Kurdish ethnicity.
8. In a post-SHEV interview submission dated 12 December 2017, the applicant's representative addressed a number of concerns raised by the interviewing officer in the SHEV interview, and reiterated a number of the applicant's claims. The representative also submitted that on return to Iran the applicant will face harm due to his 'Kurdish ethnicity' and his profile as 'an adulterer in Iran', or a combination of these factors. It was further submitted that the applicant faced harm as a 'returned asylum seeker'.

## **Refugee assessment**

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9. 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**

10. 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*

11. In his SHEV statement and SHEV application, the applicant claimed to be a stateless Faili Kurd born on [date] in the province of Ilam, Iran. In a different part of the SHEV application he recorded his date of birth as [date]. He claimed that his mother and father were also stateless. He also claimed that he had never been issued any official documentation in Iran, had no right to citizenship, and that when he departed Iran he was forced to obtain a false passport.
12. At the beginning of the SHEV interview, the interviewing officer asked the applicant if there was anything in his application that he wanted to change. In response, he claimed that he was not stateless but an Iranian citizen. He said his parents and grandparents were also Iranian

citizens. He advised that he had previously been issued a birth certificate and a passport in Iran. The interviewing officer asked him if he was a Faili Kurdish, another type of Kurdish, or Persian. In response, the applicant said he was "Kurdish from Ilam".

13. The applicant explained to the interviewing officer that he was very young when he arrived in Australia and that he wanted to tell the truth. However, his father had put a lot of pressure on him to not tell the Department about his documents. He said that since he had arrived in Australia he had attempted to tell the Department a few times that he had documents but he was under pressure from his father who had scared him by telling him that he would be sent back to Iran if admitted to having documents. The applicant stated that he had been upset that he had not mentioned the truth and that it was only a few days prior to the SHEV interview that his mother had encouraged him to tell the truth in respect of his identity. He advised the interviewing officer that his father had possession of his birth certificate and he was not certain that he would be able to get his father's agreement to send the document to him.
14. In the post-SHEV interview submission, the representative stated that his father told him he should present as a stateless Kurd. In the response to an invitation to comment dated 14 August 2018 (invitation response), the representative stated that the applicant felt stressed and overwhelmed during the arrival interview due to the pressure he was under, particularly from his father. In the IAA submission, it was submitted that the applicant was fearful that drawing attention to the fact he lied on arrival would result in his return to Iran. The representative reiterated that the applicant was under strict instructions from his father 'not to tell the truth about certain things' and that it was only after speaking to his mother he decided to tell the truth.
15. I have had regard to the applicant's evidence in an earlier interview with the Department on 10 August 2013 (arrival interview). In that interview, he advised the interviewing officer that he had a birth certificate and had legally obtained an Iranian passport in his name.
16. As noted by the delegate in her decision, the applicant's evidence as to his date of birth differed at various times. The delegate had information before her that indicated that the applicant had approached the Department in 2013 to advise that he had turned [age] years, thereby indicating he was born in or before [year]. The next day he again approached the Department advising he was aged [age] years. I have had regard to the explanations provided by the applicant in the SHEV interview, by his representative in the post-SHEV interview submission, and in the invitation response.
17. I have also had regard to the birth certificate provided to the delegate on 12 December 2017 which records the applicant's date of birth as [date]. I find it peculiar that the birth certificate is a 'renewal' issued in Iran [in] 2017. The document appears to include an updated photograph of the applicant and his fingerprint, at a time he was residing in Australia. The birth certificate also appears to have been obtained, presumably with his father's consent, prior to the SHEV interview and prior to the date that he advised that his mother encouraged him to tell the truth in respect of his identity. I note the delegate's finding that the birth certificate was assessed as genuine and that she afforded the document considerable weight.
18. While I have some concerns with the birth certificate provided, having regard to all of the information before me, including the explanations provided as to why different dates of birth were provided, I am prepared to accept that the applicant was born on [date]. As noted by his representative in the invitation response, the applicant appeared to state his date of birth as [date] during the arrival interview but it had been recorded differently in the transcript.

However, I do not accept the applicant's claim in the SHEV interview, and reiterated in the invitation response and IAA submission, that his father had pressured him on arrival to present as a stateless Faili Kurd. I find this claim inconsistent with his evidence in the arrival interview that he was a documented Iranian passport holder.

19. On the evidence before me, I accept that the applicant is a national of Iran and that he is of Kurdish ethnicity. I find Iran to be the receiving country for the purpose of this decision.

#### *Events in Iran*

20. I found the applicant's evidence in relation to the events that he claims led to his decision to leave Iran unconvincing. In particular, there were a number of inconsistencies in his evidence presented at different times that undermine the credibility of his claims.
21. Firstly, there were inconsistencies in the applicant's evidence as to when his relationship began with [Ms A]. In his SHEV statement, he claimed that at the age of [age] years he began a sexual relationship with [Ms A], who was aged [age] years, which lasted about one year. However, in the SHEV interview, he claimed that the relationship began when he was aged [age] years, and that it lasted for one to one and half years.
22. Secondly, the applicant's central claim that his relationship with [Ms A] came to light when her family found him in their family home was unconvincing. In his SHEV statement, he claimed that his relationship with [Ms A] was discovered after her mother and brother found him naked in [Ms A]'s family home. However, this was inconsistent with his initial evidence in the SHEV interview that while he knew [Ms A]'s family lived in Tehran he did not know exactly where they lived. He said that he thought their house may have been around the [Neighbourhood 1] area. Later in the SHEV interview, the applicant claimed that he went to [Ms A]'s house after she invited him earlier that day because she thought her family would not be at home.
23. Thirdly, there were inconsistencies in the applicant's evidence as to the events that followed him being discovered by [Ms A]'s family at her house. In his SHEV statement, he claimed that [Ms A]'s father called him, threatened to kill him, and said that he had destroyed his family's reputation. The applicant claimed that he told [Ms A]'s father that in one or two weeks he might ask for [Ms A]'s hand in marriage, to which he responded that he had destroyed [Ms A]'s honour and the honour of the family. He said that he then asked his uncle to contact [Ms A]'s family on his behalf to further discuss the possibility of marriage. He did this and [Ms A]'s father agreed to meet the applicant in a park. However, in the SHEV interview, the applicant claimed that about two weeks after being discovered naked he received a call from [Ms A] who advised him that her family wanted to meet with him and get to know him. [Ms A] advised him that her family were happy for them to marry. He also said it was clear at this point that her family had "bashed her". He claimed that it was then that he asked his uncle to contact [Ms A]'s father to suggest the possibility of marriage and that it was then that her father agreed to meet at the park.
24. Fourthly, there were inconsistencies in the applicant's evidence as to the events that transpired in the park. In his SHEV statement, he claimed that when he arrived at the park he was met by [Ms A]'s father and brother. He said they punched him, causing a [Injury 1] and [Injury 2]. He said there were other people in the park but they 'did nothing'. He claimed that [Ms A]'s father and brother wanted to kill him but he was able to escape by 'running for his life'. However, in the SHEV interview, the applicant claimed that he was beaten so badly by [Ms A]'s father and brother that he was "close to death". He said he was covered in blood and

“limping”. He also said that people could see that he was going to be killed and that they “got involved”, which enabled him to escape. He said that he dragged himself 20 to 30 metres to the main road where somebody, who could see he was being bashed, gave him a ride to his uncle.

25. Fifthly, there were inconsistencies in the applicant’s evidence as to the events that transpired following the claimed incident in the park. In his SHEV statement, he stated that he called [Ms A] who confirmed that her family wanted to kill him and that they were going to involve the police. He claimed that the police later came to his workplace looking for him and after this he realised he needed to leave Iran. He claimed that after he arrived in Australia, [Ms A]’s family went to his place of work to ask about his whereabouts. However, in the SHEV interview, the applicant claimed that after the park incident he called [Ms A] who told him that her father had been bashing her for two weeks, that they want to kill him, and that they are now thinking about reporting the matter to the police. He also claimed that he returned to Ilam and was bashed by his father. He said that his father then arranged for the applicant’s uncle to call [Ms A]’s father and attempt to resolve the situation. During this call, [Ms A]’s father again said that his family had been humiliated and that he was going to find the applicant and kill him. He claimed that [Ms A]’s father and brother went to his workplace in Tehran a number of times to look for him, including while he was in Australia and as recently as 18 months earlier. He also claimed that the police came to his workplace when he was in Australia in 2013 or 2014.
26. Throughout the SHEV interview, the interviewing officer raised a number of concerns with the applicant. The applicant’s evidence was that his parents were illiterate gypsy nomads who lived predominantly in tents. They were non-practising Shia Muslims. He also said that as Kurds his family were often looked down upon in society. He indicated that Persians would not normally seek a relationship with a Kurd. The applicant claimed that [Ms A] and her family were Persians, that they were relatively well off financially, and that [Ms A]’s father owned a shop. [Ms A]’s father was a religious man. The interviewing officer put to the applicant that it seemed culturally unusual for a [age] year old [sic] from Ilam, with a lower education, to be with a girl from a wealthy middle class family. In response, the applicant said that all of his work colleagues were older than him and had girlfriends, and that he wanted a girlfriend too. He said he could not find a girlfriend his age and after being introduced to [Ms A] through a mutual friend they developed a close relationship.
27. The interviewing officer also raised a concern that the applicant went on his own to meet [Ms A]’s father to discuss marriage, given his young age and his uncle’s involvement in facilitating the meeting. In response, the applicant said that he was under the impression that the matter had been resolved at this point and that [Ms A]’s father was open to meeting him. There was no indication that [Ms A]’s father would react in the way that he did. The interviewing officer referred to the applicant’s SHEV statement where he had claimed that prior to this [Ms A]’s father had threatened to kill him because he had destroyed their reputation. In response, the applicant said that [Ms A]’s father was initially angry and threatening, but that in the end he deceived him into thinking all was okay prior to the meeting in the park.
28. The interviewing officer raised a further concern with the applicant about her family involving the police in such a matter in circumstances where the repercussions for the woman are more severe. In response, the applicant stated that in Iran the male is held responsible under the law. He also speculated that [Ms A] may have told the police that she was in a relationship against her will or by deception.
29. Towards the end of the SHEV interview, the interviewing officer asked the applicant what he thought would happen to him if he returned to Iran. The applicant’s first response was that he

will be imprisoned for not undertaking military service. He said that he also assumed that [Ms A]'s family has reported him to the police and that when he is arrested in connection with military service the police will learn of the complaint against him from [Ms A]'s family. He will either be killed by the police, or [Ms A]'s family.

30. In the post-SHEV interview submission, the applicant's representative submitted that his evidence in the SHEV interview was consistent with his SHEV statement. She provided country information said to support his claims.
31. In the invitation to comment, the delegate asked the applicant to comment on the information he provided in the arrival interview about why he left Iran. The applicant's evidence in the arrival interview was that he left Iran because he didn't like Iran and he did not have freedom of speech or freedom of living. He didn't have job opportunities. He couldn't study because teachers made it difficult. When asked what he thought would happen if returned to Iran, the applicant said that he did not know and had not really thought about it. The applicant made no mention in the arrival interview about evading military service or being targeted by [Ms A]'s family. He was also asked about whether the police had impacted his day to day life in Iran, to which he responded "no". In the invitation response, the applicant's representative stated that given the arrival interview was conducted only days before his [age] birthday it is entirely reasonable that there are inconsistencies between his evidence upon arrival and his evidence later given at the protection visa interview. It was also submitted that the applicant felt stressed and overwhelmed at the arrival interview, and that he was under pressure from his family, particularly his father. I note that at the start of the arrival interview it was explained to the applicant that he was expected to give true and correct answers during the interview. The applicant confirmed that he understood that if the information he provided later was different it could raise doubts about the reliability of that information. He later advised the interviewing officer that nobody had told him what to say when dealing with the Australian authorities. It was further submitted in the invitation response that given the sensitive nature of his claims he felt shy and embarrassed to talk about them at that time. It was also claimed that the applicant did not trust or feel comfortable with the Australian officers, given he held an existing mistrust of authority. It was further claimed that the applicant had clarified in the SHEV interview that the police did not come to his workplace until after he departed Iran. However, I note the applicant's evidence in the SHEV interview was that the police *last* came to his workplace while he was living in Australia.
32. When considered cumulatively, the above evidence leads me to conclude that the applicant was not recalling a genuine personal experience in relation to the events that he claims led to his decision to leave Iran. I have difficulty accepting that, as a teenager, the applicant would not know his age when he, by his own evidence, began a sexual relationship with an adult. I find the applicant's initial evidence in the SHEV interview that he was unsure where [Ms A] lived not insignificant. Further, as noted above, there were significant inconsistencies in his evidence between his SHEV statement and SHEV interview as the events that transpired following his claim to have been caught by [Ms A]'s mother and brother in their home, which leads me to doubt the veracity of those claims. I also find the applicant's claim in the SHEV interview that males are held responsible by law in sexual relationships outside of marriage, which is considered 'adultery' in Iran, is not supported by country information which indicates that women receive disproportionate punishment for such crimes, including death sentences.<sup>1</sup> Country information also indicates that adultery is often not reported due to reasons of

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<sup>1</sup> US Department of State, "Iran 2016 Human Rights Report", 3 March 2017, OGD95BE926964, p.36; UK Home Office, "Country Policy and Information Note: Iran: Adulterers", 2 November 2016, OGD7C848D85; Department of Foreign Affairs and Trade (DFAT), "DFAT Country Information Report - Iran", 7 June 2018, CIS7B839411226, 4.5



honour, and that prosecutions are difficult as four witnesses are usually required.<sup>2</sup> In these circumstances, I have difficulty accepting that [Ms A]’s family would have involved the police in such a matter. I have also had regard to the various explanations put forward as to why the applicant did not mention his claimed relationship with [Ms A] and associated claims in the arrival interview, which I find unpersuasive. At no time did the applicant claim that his father had pressured him to lie about his relationship with [Ms A], the death threats, or being beaten to a point that he was nearly killed. I consider his failure to mention these claims during the arrival interview, together with the above noted inconsistencies between his written and oral evidence, to indicate that these events did not happen. I am also mindful that the applicant departed Iran via the airport in 2013 without difficulty, thereby further indicating that he was not a person of adverse interest to the police prior to his departure. I have also had regard to the explanation in the IAA submission in respect of the applicant’s credibility, including reference to the applicant’s age when he arrived in Australia and when he lodged his SHEV application. However, given the evidence discussed and the discrepancies noted, I also find that explanation unpersuasive. I also expect if the applicant had received death threats, or had been severely beaten prior leaving Iran, that he would have mentioned this in the arrival interview. I conclude that the applicant fabricated these claims to enhance his application for protection. For these reasons, I do not accept that the applicant was in a sexual relationship, or any other type of relationship, with a person named [Ms A]. It follows that I reject his associated claims that he came to the adverse attention [Ms A]’s family, that he was threatened with death, or that he was physically harmed as claimed. I do not accept that there are explicit photographs of the applicant in Iran. I also reject the applicant’s claims, first raised in the SHEV interview, that his father was violent towards him in connection with these events, or for any other reason. I am not satisfied that the applicant is a person of adverse interest to the police, or any other person or group, in connection with his life in Iran prior to his departure in 2013.

33. I also expect that if the applicant had been beaten on the street in Tehran on a date unspecified, or otherwise mistreated, for being or speaking Kurdish, as mentioned in his SHEV statement, that he would have mentioned this in his arrival interview, or in the SHEV interview when he was specifically asked if he feared returning to Iran on account of his ethnicity. The applicant’s evidence in the SHEV interview was that while Kurds in Iran are considered third class citizens and receive lower wages, he did not fear return to Iran on account of being Kurdish. Given my concerns with the applicant’s evidence already noted, I do not accept that the applicant was beaten or otherwise mistreated for being or speaking Kurdish.

#### *Return to Iran*

34. In the SHEV interview, the applicant stated that he feared returning to Iran because he will be perceived to have deliberately evaded military service. In the post-SHEV interview submission, the applicant’s representative submitted that the applicant faced harm in Iran due to his Kurdish ethnicity and his profile as a returnee asylum seeker. Although not expressly raised a claim for protection, the delegate also considered whether the applicant faced harm as a non-practising Muslim, or due to his time spent in a western country. She also considered whether the applicant faced harm as a result of the Department’s website disclosure in February 2014 (data breach).
35. As noted above, the applicant’s evidence as to whether he feared harm in Iran on account of his ethnicity varied. In his SHEV statement, he claimed that Kurdish people found it difficult to

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<sup>2</sup> UK Home Office, "Country Policy and Information Note: Iran: Adulterers", 2 November 2016, OGD7C848D85; DFAT, "DFAT Country Information Report – Iran", 21 April 2016, CIS38A8012677, 3.89

get jobs and were paid lower wages. He claimed that he suffered 'discrimination and ridicule' on account of his ethnicity. He also claimed it was difficult to access education and obtain documents. However, I note his evidence in his SHEV statement was based on a claim of being undocumented and stateless, which he confirmed in the SHEV interview that he is not. The applicant also claimed in the SHEV interview that he did not fear returning to Iran on the basis of his Kurdish ethnicity. He confirmed that he left school in order to earn an income. However, the post-SHEV interview submission it was claimed that the applicant's ethnicity, coupled with his membership of a particular social group as an 'adulterer' (which I have not accepted), exacerbated his risk of being targeted and subjected to serious harm in the future. Country information was provided about the treatment of Kurds in Iran.

36. Recent country information before me indicates that there are no laws in Iran that discriminate on the basis of ethnicity, including in relation to access to education, employment, and housing. However, in 2016, DFAT reported that Kurds can face considerable societal discrimination, leading to unfair day-to-day treatment. DFAT assessed that such discrimination is rarely coupled with community-level violence. DFAT also assessed that most Kurds either do not come to the attention of authorities or are subject to only low levels of adverse attention by the state. Those who attempt to publically assert cultural or political rights that are perceived to threaten the constitutional foundations or territorial integrity of the Islamic Republic have an increased risk of coming to the attention of the state.<sup>3</sup> There is no evidence before me to suggest the applicant has been involved in pro-Kurdish activities attempting to assert his cultural or political rights either here or in Iran. In 2017, the US Department of State reported that minority groups, including Kurds, reported political and socioeconomic discrimination, particularly in their access to economic aid, business licenses, university admissions, job opportunities, permission to publish books, and housing and land rights.<sup>4</sup> The applicant's evidence is that following his withdrawal from school in [year], he had continuous employment in a Tehran [store] up until his departure from Iran. He has not claimed to have been denied education, or that he has had difficulty securing accommodation.
37. While I accept the applicant may be subject to some level of discrimination in accessing employment and services, having regard to the country information, his background and personal circumstances, I consider it remote that this would be to such an extent as to threaten his capacity to subsist or that he would otherwise experience treatment amounting to serious harm on account of his ethnicity. On the evidence before me, I am not satisfied he faces a real chance of harm in Iran in connection with his Kurdish ethnicity in the foreseeable future.
38. On 13 December 2017, the applicant's representative sent an email submission about the risk of prosecution the applicant may face on return to Iran as a military service 'evader'. It was submitted that any risk of prosecution he faced as an evader should be considered in combination with his fears with regards to his extra-marital relations with [Ms A] (which I have not accepted) and as a Kurd. The representative highlighted excerpts about penalties for draft evasion and military service deserters from an attached October 2016 UK Home Office report.<sup>5</sup>
39. Recent country information in the review material indicates that generally all Iranian males are required to perform military service, and are normally called up at the age of 18 years.<sup>6</sup> I have accepted that the applicant departed Iran when he was aged [age] years and, as such, was not a person who was required to perform military service at the time of his departure. There is

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<sup>3</sup> DFAT, "DFAT Country Information Report – Iran", 21 April 2016, CIS38A8012677, 3.22, 3.25

<sup>4</sup> US Department of State, "Iran 2016 Human Rights Report", 3 March 2017, OGD95BE926964, p.41

<sup>5</sup> UK Home Office, "Country Policy and Information Note: Iran: Military service", 25 October 2016, OGD7C848D84

<sup>6</sup> DFAT, "DFAT Country Information Report - Iran", 7 June 2018, CIS7B839411226, 3.101

nothing in the review material to support the conclusion that the applicant will be considered to be a draft evader due to having left the country during his childhood and I agree with the delegate's assessment that he will not be viewed in this way. Further, there is no independent information before me to suggest that absent any other concerns, a Kurdish male who has turned 18 years old while living outside of Iran including in a western country, such as Australia, are punished or harmed for not having completed compulsory military service. I accept that on return to Iran the applicant would likely be required to fulfil his military service obligations. In 2016, the UK Home Office reported that there was no evidence to suggest that performing military service in Iran involved acts or conditions that would amount to persecution.<sup>7</sup> The applicant has not claimed that he fears undertaking military service or that he would seek to evade it on return to Iran. The information before me does not indicate that compulsory military service is applied in a discriminatory manner; rather it applies to all Iranian males aged 18 to 40 years. On the information before me, I am not satisfied that the requirement to complete compulsory military service amounts to serious harm. I am not otherwise satisfied that the applicant faces arrest or imprisonment on return to Iran in connection with any military service obligations.

40. In respect of the applicant's profile as a non-practising Muslim, I note his evidence in the SHEV interview was that while he was born a Muslim and still believes in God, he has not practised any religion since arriving in Australia. DFAT confirmed in April 2016 that apostasy (abandonment or renunciation of Islam) is a crime in Iran and that charges of apostasy have in the past resulted in the death penalty. DFAT also assessed it unlikely that individuals would be prosecuted on charges of apostasy and that it is highly unlikely that the Iranian government would monitor religious observance by Iranians – for example, whether or not a person regularly attends mosque or participates in religious occasions such as Ashura or Muharram – and thus it would generally be unlikely that it would become known that a person was no longer faithful to Islam.<sup>8</sup> DFAT's 2018 report does not indicate a change in this regard.<sup>9</sup> DFAT also assessed that perceived apostates are only likely to come to the attention of Iranian authorities through things such as manifestations of a new faith or publicising their views.<sup>10</sup> Other sources indicate that many Iranians have a secular attitude, rejecting all religions, including Islam. Abstaining from Muslim rituals such as not attending mosque would not necessarily arouse any suspicion, as many Iranians do not regularly attend mosques. Non-practising Muslims form a large part of the cities and generally lead normal daily lives without being pressured to observe Muslim precepts.<sup>11</sup> I am not satisfied that the applicant would publicly declare that he does not practise Islam on return to Iran, or that he has any interest in doing so. The applicant has not claimed that he would face harm on return to Iran as a non-practising Muslim and, on the information before me, I am not satisfied he faces a real chance of harm on this basis.

*Failed asylum seeker / Returnee from the west / Data breach*

41. I accept that if the applicant returned to Iran he would do so as a failed asylum seeker returned from Australia.

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<sup>7</sup> UK Home Office, "Country Policy and Information Note: Iran: Military service", 25 October 2016, OGD7C848D84, p.8

<sup>8</sup> DFAT, "DFAT Country Information Report – Iran", 21 April 2016, CIS38A8012677, 3.52-3.53, 3.55

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

<sup>10</sup> DFAT, "DFAT Country Information Report – Iran", 21 April 2016, CIS38A8012677, 3.55

<sup>11</sup> Austrian Centre for Country of Origin and Asylum Research and Documentation (ACCORD), "Iran: Freedom of Religion; Treatment of Religious and Ethnic Minorities COI Compilation September 2015", 1 September 2015, CISEC96CF13622, p.15, 31

42. In 2016, DFAT indicated that the claiming asylum abroad was, in itself, unlikely to attract adverse interest or mistreatment from the Iranian authorities. DFAT reported that whether a returnee is travelling on a temporary travel document or their ordinary passport, credible sources have stated they will generally only be questioned if they had done something to attract the specific attention of authorities, and that the vast majority of people questioned would be released after an hour or two.<sup>12</sup> DFAT's more recent report<sup>13</sup> similarly states that the Iranian authorities pay little attention to failed asylum seekers on their return to Iran. International observers have 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 assess that persons with an existing high profile may face a higher risk of coming to the official attention of the authorities in Iran; however, as already noted, I am not satisfied that the applicant holds a profile that would raise the concern of the Iranian authorities and I am mindful that he was able to depart Iran legally in 2013 without difficulty. DFAT is not aware of any legislative or social barriers to returnees finding work or accommodation in Iran, or any specific barriers to prevent them from returning to their home region.<sup>14</sup>
43. In her decision, the delegate states that the applicant was affected by the data breach and I accept this to be the case. The decision states that the applicant's name, date of birth, nationality, his mode of arrival to Australia, and his detention status was briefly accessible on the Department's website in February 2014. The decision also states that the information disclosed in the data breach does not reveal the applicant's protection claims or that he applied for a protection visa. While there is no evidence that the material has been accessed by persons the applicant fears, I agree with the delegate's assessment that the information may have been accessed by the Iranian authorities. The applicant has not claimed, and nor is there any information before me to indicate, that he faces harm in Iran in connection with the data breach. As noted above, I have found that the applicant does not hold a profile that would raise the concern of the Iranian authorities and that he was able to depart Iran legally in 2013 without difficulty.
44. While I accept the authorities may question and in this process may even briefly detain the applicant as a returnee, I am not satisfied that this treatment would amount to serious harm. I am not satisfied the applicant faces a real chance of harm as a failed asylum seeker, due to the data breach, or due to his time spent in a western country like Australia, or any combination of these factors, should he return to Iran.
45. I find that the applicant does not have a well-founded fear of persecution within the meaning of s.5J.

### **Refugee: conclusion**

46. 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**

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47. 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

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<sup>12</sup> DFAT, "DFAT Country Information Report – Iran", 21 April 2016, CIS38A8012677, 5.34

<sup>13</sup> DFAT, "DFAT Country Information Report - Iran", 7 June 2018, CIS7B839411226, 5.25

<sup>14</sup> Ibid, 5.24; DFAT, "DFAT Country Information Report – Iran", 21 April 2016, CIS38A8012677, 5.35

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**

48. 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.

49. While I accept the applicant may be subjected to questioning or be briefly detained on return to Iran, I am not satisfied that this amounts to significant harm. I find that the questioning and the potential of being briefly detained individually or cumulatively not to amount to the death penalty, arbitrary deprivation of life, torture or that there is an intention to inflict pain or suffering, severe pain or suffering or cause extreme humiliation.

50. I have otherwise concluded that the applicant does not face a real chance of harm from the Iranian government or police, or any other person, in connection with the claimed events that transpired in Iran prior to his departure in 2013. I have also concluded that the applicant does not face a real chance of harm in connection with any military service obligations. I have further concluded that the applicant does not face a real chance of harm for any other reason including due to his ethnicity, due to his non-practise of Islam, due to the data breach, or due to him being a returning asylum seeker who has resided in a western country. Based on the same information, I find that the applicant does not have a real risk of suffering significant harm in Iran.

51. After having regard to the applicant's circumstances, I find that he does not face a real risk of suffering significant harm.

### **Complementary protection: conclusion**

52. 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**

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

## 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.