



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

**Decision and Reasons**

**Referred application**

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IRAN

IAA reference: IAA18/05809

IRAN

IAA reference: IAA18/05812

IRAN

IAA reference: IAA18/05810

IRAN

IAA reference: IAA18/05811

Date and time of decision: 17 January 2019 13:25:00

T Hennessy, 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 an referred applicant, or their relative or other dependant*

## Background to the review

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### Visa application

1. The referred four applicants (the applicants) are a family consisting of a father, mother and their two biological children. The first (IAA18/05809), second (IAA18/05812) and third (IAA18/05811) applicants arrived in Australia [in] July 2013 and claim to be citizens of Iran. The fourth applicant (IAA18/05810) was born in Australia on[ date]. The applicants made a combined application for Safe Haven Enterprise Visas (SHEV) on 22 May 2017.
2. On 11 October 2018 a delegate of the Minister for Immigration (the delegate) refused to grant the protection visas. The delegate was not satisfied that there was a real chance or real risk the applicants would suffer serious harm or significant harm if returned to Iran due to the first applicant's work as a police officer in Iran, their Kurdish ethnicity, the inadvertent release of their biodata information on the website of the then Department of Immigration and Border Protection in 2014, or due to being failed asylum seekers from a western country.

### Information before the IAA

3. I have had regard to the material given by the Secretary under s.473CB of the *Migration Act 1958* (the Act).
4. The IAA received a submission on behalf of the applicants from [a law firm] (the representative) on 1 November 2018. To the extent that this submission engages in argument on the basis of information which was before the delegate I have had regard to it. The representative provided documents in support of the submission on 7 November 2018. These documents included a report by Amnesty International, "The Death Penalty in 2017: Facts and Figures", dated 12 April 2018, a translation of the first applicant's police identity card, and translations of parts of the documents "Civil Conscription Organisation NAJA – Frequently Asked Questions", "Conditions and Cost of Obtaining a Passport in 2017" and "Civil Conscription Act Executive Regulations".
5. I note that the submissions to the IAA include a NAATI translation of the first applicant's police identity card obtained [in] November 2018. The representative noted that the delegate found that the first applicant was [a type of] police officer on the basis of a NAATI translation of his police identity card, which listed his branch as "[branch]". The representative stated that this translation was not included in the copy of the SHEV application and supporting documents sent to him by the IAA (IAA records, however, show that the translation dated 18 May 2017 was included in documents sent to the representative by the IAA on 19 October 2018). It is submitted that the delegate's finding that the applicant did not specifically work for [a particular] branch or in any active field of duty was incorrect, given he was a uniformed police officer for around six years, and that the identity card does not list the first applicant's duties as "[branch]". I note that the new translation of the police identity card does not reflect this information as being on the card but I also note that the new translation would not appear to reflect all of the information on the card as the translation before the delegate did, and it appears that only information from the front page of the card has been translated in the new translation. Insofar as the new translation, as a partial translation of the card, reflects some of the information which was before the delegate I do not consider it to be new information.

6. In his submissions the representative provided new information in the form of an Amnesty International report containing information about the number of people executed in a number of countries during 2017, including Iran. It is noted that this report indicates that Iran has the second highest number of executions in the world but it is under a lot of pressure from international communities to suspend executions and this is why the Iranian regime does not publish the names of many of those who have been executed, and that this is significant because it indicates that the delegate erred in drawing adverse conclusions from the absence of any evidence of the execution of a figure identified by the applicant. It is submitted that the 2017 Amnesty International report could not have been provided to the delegate before the decision was made because matters of this kind were not put to the applicant by the delegate. It is submitted that, given these factors, there are exceptional circumstances which justify the provision of new information. It is true that these matters were not expressly put to the first applicant by the delegate but, nevertheless, this matter was at the heart of the applicant's claims and the applicant had been made aware of the need to provide evidence in support of his claims. If he had no evidence of the execution of this particular person, then it was the applicant's responsibility to provide evidence to explain why no such direct evidence could be provided. The applicant submitted his SHEV application with the assistance of a registered migration agent. Given this, and that the report was published several months before the delegate's decision was made, the applicant has not satisfied me that this report could not have been provided before that time. The report does not provide any information about the applicant or any other identifiable individual such as would amount to personal information. I note, moreover, that while the report does provide information about the extent of Iran's executions it does not state or otherwise indicate that the Iranian regime does not publish the names of many of those who have been executed. Given all of this, and given that I already have recently published country information from credible sources before me about the extent of executions in Iran (to which the new report does not add anything substantive), and given that exceptional circumstances of some other kind are not apparent, I am not satisfied that there are exceptional circumstances to justify considering this new information.
  
7. I note that the submissions to the IAA have provided extracts from several Farsi language documents and translations for these, including: "Civil Conscription Organisation NAJA – Frequently Asked Questions", and "Civil Conscription Act Executive Regulations (Article 9 of the Compulsory Military Service Law)". It is submitted that there are exceptional circumstances to justify the consideration of these two documents in that the delegate made findings about the applicant's claims in relation to his service commitment and his ineligibility to obtain passport (with regard to the applicant's claim that he was required to perform service with the police for 30 years in lieu of compulsory military service and so was unable to obtain a passport or travel outside Iran during this period) merely on the basis of speculation rather than country information, and because the delegate's concerns about these matters were never put to the first applicant by the delegate and so the applicant could not have provided this new information to the delegate before the decision was made. Again, and although the matter was not expressly put to the applicant by the delegate, it was the applicant's responsibility to provide substantiating evidence for his own claims. The applicant has not satisfied me that this new information could not have been provided to the delegate before a decision was made, and the new information does not provide any information about the applicant or any other identifiable individual such as would amount to personal information. Moreover, as I do not consider the issue of the first applicant's "in lieu" military service to be directly relevant to the applicants' protection claims or the issues on review, and as exceptional circumstances of some other kind are not apparent to me, I am not satisfied that there are exceptional circumstances to justify considering the new information.

8. I note that the submissions to the IAA also include an extract from a further Farsi language document, and its translation, this being: "Conditions and Cost of Obtaining a Passport in 2017". It is submitted that there are exceptional circumstances to justify considering this new information in that the delegate made his finding about the applicant's claims in relation to his ineligibility to obtain passport merely on the basis of speculation rather than country information, and because the delegate did not put his concerns in this regard to the first applicant and so this new information could not have been provided before the decision was made. Again, and although the matter was not expressly put to the applicant by the delegate, it was the applicant's responsibility to provide substantiating evidence for his own claims. The applicant has not satisfied me that this information could not have been provided to the delegate before a decision was made, and the new information does not provide any information about the applicant or any other identifiable individual such as would amount to personal information. I note, moreover, that it has been submitted that this new information is significant because it indicates that former employees of the armed forces must obtain a travel permit unless a minimum of five years has passed since the person's resignation or retirement. However, the new information refers to military retirees of less than five years requiring a letter from the relevant protection unit rather than a travel permit. Moreover the new information refers to the situation for military retirees whereas the applicant claims to have served with Iran's police, and it is not evident on the information before me that persons who have retired from serving with Iran's police would be considered military retirees. Given all of this, and as exceptional circumstances of some other kind are not apparent to me, I am not satisfied that there are exceptional circumstances to justify considering the new information.
9. In his submission the representative noted that the delegate referred to country information and did not accept the first applicant's claim that he used his [relative]'s identity documents to obtain a passport. The representative stated that the first applicant claims to have a strong resemblance to his [relative] and this is why the passport application interviewing officer did not raise any concerns in relation to his identity. The representative further submitted that, given police officers in Iran are not granted passports unless a travel permit is granted in very limited circumstances, the first applicant's claim that he departed Iran on a fraudulent passport seems reasonable. He asserted that as a former police officer the first applicant will face serious harm on return to Iran on the basis of deserting the service and departing Iran using a fraudulent passport. The representative argued that the delegate failed to take into account relevant considerations and made an error of law by failing to ask whether the first applicant will face serious harm for these reasons. The representative did not provide any evidence to support his assertion that the first applicant would have been able to apply for a passport using his [relative]'s details and his own photograph. I consider that the representative's disagreement with the delegate's finding that the first applicant did not use his [relative]'s identity to obtain a passport to be argument and not new information.
10. In the concluding paragraph of his submission, the representative submitted that the first applicant will face serious harm on return to Iran on the basis of his membership of a particular social group, i.e. member of armed forces who has committed desertion, and for departing Iran on a fraudulently obtained passport, and as such he should be afforded protection in Australia. I have addressed these issues in this review.

### **Applicants' claims for protection**

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11. The second, third and fourth applicants have not made individual claims and are relying on the protection claims of the first applicant.

12. The applicants' claims can be summarised as follows:

- The first, second and third applicants were born in Iran and claim to be Shia Muslim and of Faili Kurd ethnicity. They left Iran in June 2013 and arrived in Australia in July 2013. The fourth applicant was born in [Australia].
- Before he left Iran the first applicant worked as [an] officer in the Iranian police force. In 2012 his work unit [performed certain work]. He arrested a [person named Mr A].
- [Mr A's] associates discovered the first applicant's identity and began pursuing him due to his involvement in [Mr A's] arrest. They made numerous threatening phone calls to his family home. He reported these calls to the drug authorities in his region on numerous occasions but they were unable to assist.
- A month before they left Iran the applicants' home was raided and damaged by [Mr A's] associates while the second and third applicants were present. Neighbours told the first applicant that the perpetrators had yelled out that they considered him to be responsible for [Mr A's] arrest and for him facing the death penalty. The perpetrators claimed that if [Mr A] was killed the applicants would meet the same fate.
- The first applicant feared that [Mr A's] associates would return and inflict greater harm on his family. He weighed up his options, including moving to another region, but decided he would not be safe anywhere in Iran. He then made arrangements to leave Iran.
- As Iranian police are not permitted to travel to another country unless there is a compelling reason the first applicant could not obtain a passport in his own name. When he made arrangements to flee Iran he organised for a passport to be issued in his [relative]'s name using a photograph of himself.
- Since leaving Iran the first applicant's father has told him that the Iranian authorities have made countless enquiries about him and that they are still pursuing him. Every two months his parents and parents-in-law are interrogated by Hefazat-e Etelaat, which is aware that he fled to Australia and demands that his family members tell him to return. The Hefazat-e Etelaat has given his father information about his life in Australia, including where he lives and the colour of his car. It has told his father that if he does not return voluntarily it can have him returned by force.
- The first applicant fears harm from the Iranian authorities because he fled the country illegally while a serving police officer.
- He fears being seriously harmed, placed in indefinite imprisonment or killed by Hefazat-e Etelaat for leaving the police force and travelling illegally. As it already knows he has travelled he will be placed on a travel blacklist and come to the attention of customs officials at Tehran Airport immediately upon return.
- He fears harm from the Iranian authorities and cannot avail himself of their protection.
- He fears that he will be exposed to a risk of harm from Hefazat-e Etelaat and [a certain] tribe due to his ethnicity.
- He fears persecution and imprisonment as a failed asylum seeker who has been living in a western country.
- The authorities control the entire country and there is nowhere he can hide from them.

- He fears being killed by [Mr A] tribe members located in Khuzestan province as it is a powerful tribe and has the financial resources to locate him and make good on its promise to kill him. The tribe would be able to find him wherever he moved to in Iran.
- The extensive and widespread networks of drug rings and traffickers across Iran means he cannot relocate to another region to find durable and ongoing safety.

## **Factual findings**

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13. On the basis of the identity documents and other evidence provided in connection with their visa application, I accept that the first, second and third applicants were born in Iran and that they are all citizens of Iran, and I find that Iran is their receiving country.
14. I accept that the fourth applicant was born in [Australia]. I accept that she is also an Iranian citizen and I find that Iran is her receiving country.
15. I accept that the applicants are Shia Muslim and of Faili Kurd ethnicity.
16. In a statement included in his SHEV application the first applicant stated that as a Kurd he was from an ethnic minority but he was well integrated (in Iran), although he had occasionally encountered low-level discrimination at different periods throughout his life.
17. During the SHEV interview, however, the applicant stated that if he returned to Iran he would be persecuted because of his Kurdish ethnicity. He indicated that his ethnicity, in combination with other factors, including leaving his job as a police officer, would mean that he is regarded as a criminal. He also advised that because he belongs to the Kurdish minority he sometimes felt that he was deliberately given policing work amongst Arab people, implying that less desirable policing jobs were assigned to him due to his ethnicity.
18. According to the SHEV application, the first applicant completed high school and attended training at a police college in [year]. While studying he worked as [Occupation 1] and as [Occupation 2] from 2005 to 2007, and then as a police officer from 2007 until he left Iran in June 2013. The second applicant does not appear to have ever been in paid employment. The fact that the first applicant was consistently employed from the time that he left secondary school to the time that he departed Iran at the age of [age], including six years as a police officer, indicates that his ethnicity did not prevent him from obtaining and holding employment.
19. Apart from the first applicant's view that he may have been assigned less desirable policing jobs, the first and second applicants have not provided any other examples of adverse treatment that they personally experienced in Iran due to their ethnicity. They have not presented any information that suggests they were members of any political or social groups associated with their ethnicity while living in Iran, nor that they took part in any related political activities.
20. Country information indicates that members of ethnic minority groups, such as Faili Kurds, face a moderate risk of official and societal discrimination in Iran. Having regard to this information, I accept the first applicant's claim as outlined in his SHEV application that he experienced some low level discrimination during his life in Iran due to his Kurdish ethnicity.<sup>1</sup>

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<sup>1</sup> Department of Foreign Affairs and Trade (DFAT), "DFAT Country Information Report - Iran", 7 June 2018, CIS7B839411226, p.19

21. The first applicant claims to have left Iran using a passport in his [relative]'s name because Iranian police officers can only leave the country if they have a compelling reason. He claimed that because he could not obtain a passport in his own name when arranging to leave Iran he organised for a passport to be issued in his [relative]'s name, using his [relative]'s personal details and identity documents, but featuring his own photograph. The first applicant claimed that the passport was thrown into the water during his boat journey from [Country 4] to Australia. He has not provided a photocopy of the passport.
22. The first applicant departed Iran via the Tehran Airport in June 2013 with his wife and son, the second and third applicants respectively, who used their own passports. During the SHEV interview the first applicant advised that the second and third applicants obtained their passports at the same time that he applied for a passport in his [relative]'s name. He also advised that his [relative] has faced some problems, including being "kicked out" of university, as a result of allowing the first applicant to use his identity card to obtain a passport.
23. Country information regarding passports in Iran states that all Iranian passports have been biometric since February 2011<sup>2</sup>. Applicants for passports must provide their original birth certificate, photocopies of all of the pages of the birth certificate containing an identity photograph, the original and a copy of their Residence Permit, and three passport photos taken within the previous three months. Although it may be possible to obtain a genuine identification document with the intention of impersonating another person, DFAT assesses that sophisticated border control measures would make it difficult to use such a document in order to leave Iran<sup>3</sup>.
24. Country information indicates that it would be very difficult to pass through the Tehran Airport using a fraudulent passport due to the sophisticated security features in place in Iran. It is highly unlikely that the applicant would have been able to obtain, and then leave the country, using a passport in his [relative]'s name. The applicant has not provided any evidence that would satisfy me that he used a passport in his [relative]'s name to travel to Australia, such as a photocopy of the passport used. He has also not provided any evidence to illustrate his claimed physical resemblance to his [relative] and support his claim that he was able to use his [relative]'s identity but his own photograph to obtain a passport. I therefore do not accept that the first applicant departed Iran using a passport in his [relative]'s name. I find that the first applicant departed Iran legally using a passport issued in his own name.
25. The first applicant claims to have left Iran illegally because he was enrolled in the police force at the time of departure and Iranian police are not allowed to hold passports and travel to other countries. The applicant claimed that police service is a thirty year commitment in Iran and a police officer can only leave the country if they have a compelling reason, such as an injury. He fears that he will face harm by the Iranian authorities because he fled the country while enrolled in the police force.
26. I found the first applicant's assertion that he was a serving member of the police force when he departed Iran to be plausible and I therefore accept this claim.
27. The delegate could not locate any country information to support the applicant's claim that as a police officer he could not obtain a passport or travel outside of Iran due to a thirty year service commitment. The applicant has not provided any evidence to support his claim. In the

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<sup>2</sup> DFAT, "DFAT Country Information Report - Iran", 7 June 2018, CIS7B839411226, p.50

<sup>3</sup> DFAT, "DFAT Country Information Report - Iran", 7 June 2018, CIS7B839411226, p.50

absence of credible information on this issue I do not accept that it is illegal for Iranian police officers to depart Iran and therefore I find that the first applicant did not depart Iran illegally.

28. The first applicant claims to fear harm by [Mr A] Arab tribe members due to his involvement in the arrest of a drug baron known as [Mr A].
29. During his entry interview the first applicant stated that he left Iran because he had problems with Arab drug dealers as a result of his work as an [officer] in the police force. He advised that a lot of drug dealers were imprisoned due to his actions as a police officer and some of them had been executed. He claimed that threats had been made against him and his family over the preceding year, the most recent being approximately three months prior to the entry interview. His home had also been attacked and windows broken. He felt that his life and the lives of his family were in danger and they had no security. He claimed that the authorities did not provide any assistance to him in relation to the threats.
30. In a statement included in his SHEV application the first applicant stated that he was enlisted as [an] officer with the Iranian police force in 2007. He stated that his unit [engaged in work] in 2012. Inside the [location] he arrested a wanted drug baron known as [Mr A], who belonged to an Arab tribe known for its involvement in the drug industry. [Mr A] was charged with drug supply and his file was transferred to the court and provincial drug authorities. The arrest caused problems for him because people involved with [Mr A] discovered his identity and began pursuing him. They called his family home and threatened his wife, child and him individually. He reported the threatening phone calls to the drug authorities in his region on numerous occasions but they were unable to assist him. One month prior to fleeing Iran his home was raided and damaged by the bandits while his wife and child were present. Neighbours told him that the perpetrators had yelled out that he was responsible for their family member's arrest and for facing the death penalty. The perpetrators claimed that if their family member was killed the applicants would meet the same fate. He feared the bandits would return and inflict greater harm on his family. He weighed up his options, including moving to another region, but decided he would not be safe anywhere in Iran. He then made arrangements to leave Iran. If returned to Iran he fears being killed by [Mr A] Arab tribe members located in Khuzestan province; it is a powerful tribe with the financial resources to locate him and make good on its promise to kill him.
31. During the SHEV interview the first applicant reiterated his claims in relation to his involvement in the arrest of [Mr A] and subsequent phone calls from people associated with him, including threats to kill his family. He claimed that his home was attacked while his wife and son were present and windows were broken. He stated that he started to receive phone calls from [Mr A's] associates about a year before he left Iran and the attack on his home occurred less than a month before he departed. Police informants told him the threats and attack came from the [Mr A] family. He reported the threatening calls to the police but they did not investigate and said he did not have any evidence. After the attack on his home he asked to be relocated to another area or city but his employer did not listen to him until a few weeks after the attack. He decided to escape and left Iran. He fears that the [Mr A] family will come after him if he is returned to Iran.
32. In a post-interview submission the first applicant's representative repeated his claims in relation to the arrest of [Mr A] and threatening phone calls and attack on his home by people from the Arab tribe involved with [Mr A's] drug network, as well as the inability of authorities to assist. The representative stated that the risk of arbitrary deprivation of life, torture, cruel or inhuman treatment or punishment is faced by the first applicant personally because he was [a] law enforcement officer who investigated and charged a high-up drug trafficker from



a notorious Arab tribe. He argued that the extensive and widespread networks of drug rings and traffickers across Iran mean that the first applicant cannot relocate to another region to find durable and ongoing safety. He further submitted that the State is not willing and able to provide the first applicant with effective protection in any part of Iran and he is now not able to access state protection because he fears the authorities.

33. I have accepted that the first applicant was employed as a police officer in Iran and that he was a serving police officer at the time that he departed Iran. I found his evidence about his employment as a police officer since 2007 to be credible. He provided a translated copy of his police identity card with his SHEV application, as well as a copy of his original police identity card that also includes a photograph. The police identity card indicates that he held the rank of [ranking], that he was located in the Khouzeestan [Province], and that he worked in [a particular] Branch. The first applicant's representative also provided a photograph to the delegate that shows the applicant in a [particular] uniform with other similarly dressed men, although it is not clear whether it is a police uniform or the uniform of a particular police unit. I accept that these are genuine documents that support the first applicant's claims that he worked as a police officer before he left Iran.
34. Although I accept that the applicant was employed as a police officer in Iran I did not find his evidence about being involved in the arrest of a drug baron called [Mr A] and subsequent phone threats and attack on his home by [Mr A's] tribe/associates to be convincing. I accept that he may have had some involvement with drug related matters in the course of his work as a police officer and that he may have been involved in the arrest of some individuals on drug related charges, however I am not convinced that he held a [role] or similar specialist role. The first applicant's evidence did not convey an in-depth knowledge or first-hand experience of such a role. During his entry interview the first applicant referred to threats from drug dealers as a result of his work in very general terms only; apart from describing the drug dealers as "Arabs" he did not provide the names of any individuals or groups, and did not provide details of any particular arrests in which he had been involved. When he lodged his SHEV application the first applicant claimed that he had received threats and his home had been attacked because he had arrested a drug baron named [Mr A]. He did not provide any credible evidence, such as media articles, of the arrest of such a high profile person. As country information indicates that illicit drug use is a serious and growing problem in Iran I consider it reasonable to expect some reporting of the arrest of high profile drug figure in the Iranian media.<sup>4</sup> The first applicant has not provided any evidence that other police officers who were also involved in [Mr A's] arrest have experienced retribution from his tribe/associates, nor that his family members in Iran have been contacted by the tribe/associates. The delegate was not able to locate any country information about the 2012 arrest of a drug baron named [Mr A]. I consider that the first applicant fabricated his claim to have been involved in the arrest of a drug baron named [Mr A] in order to enhance his protection claims and I do not accept that the incident occurred. As a result I do not accept that he and his family received threatening phone calls from [Mr A's] tribe/associates, nor that his home was raided and damaged by such people as retribution.

### **Refugee assessment**

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35. 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

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<sup>4</sup> DFAT, "DFAT Country Information Report - Iran", 7 June 2018, CIS7B839411226, p.11

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**

36. 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.

### *Faili Kurd ethnicity*

37. DFAT country information notes that ethnicity remains a sensitive political topic in Iran and identifies Faili Kurds as an ethnic minority group.<sup>5</sup> DFAT observes that the overwhelming majority of ethnic minority groups are integrated into Iranian society, participate in politics and identify with the Iranian nation. It assesses that members of ethnic minority groups face a moderate risk of official and societal discrimination; this may take the form of access to employment and housing but is unlikely in most cases to include violence on the grounds of ethnicity alone and the risk to members of ethnic minority groups who are involved (or perceived to be involved) in activism is higher. DFAT further states that the experiences of Iran’s different ethnic minority groups is not uniform, and with regard to the experiences of Faili Kurds that DFAT is not aware of specific instances in which authorities have singled out Faili Kurds for mistreatment<sup>6</sup>.
38. The applicants have not provided any evidence that they have been members of any political or social groups associated with their ethnicity since they arrived in Australia, nor taken part in any related political activities. As they do not have profiles as activists I do not consider that the first and second applicants are likely to attract the attention of Iranian authorities on the basis of their race, if they are returned to Iran.
39. Having regard to country information and the applicants’ own circumstances, I accept that they may face some general low-level discriminatory treatment, for example in relation to housing and some forms of employment (which may be exacerbated by the fact that the first applicant left his employment as a police officer without notice when he left Iran), if returned to Iran due to their ethnicity but I am not satisfied that there is a real chance it will amount to serious harm.

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<sup>5</sup> DFAT, “DFAT Country Information Report - Iran”, 7 June 2018, CIS7B839411226, p.16

<sup>6</sup> DFAT, “DFAT Country Information Report - Iran”, 7 June 2018, CIS7B839411226, p.19

### *Involvement in arrest of drug baron*

40. Although I accept that the first applicant worked as a police officer in Iran, based on the information before me I do not accept that he was involved in the arrest of a drug baron named [Mr A] in 2012. As a result I do not accept that the first and second applicants received threatening phone calls from {Mr A's} tribe or associates as retribution for the first applicant's involvement in the arrest of [Mr A], or that their family home was raided and damaged. I am therefore not satisfied that they and their children, the third and fourth applicants, would face a real chance of harm from [Mr A's] tribe or associates if they returned to Iran.

### *Illegal departure of first applicant / asylum seekers returning from a western country*

41. In a statement included in his SHEV application the first applicant's representative stated that he fears persecution by the Hefazat-e Etelaat if returned to Iran because he departed Iran illegally whilst enrolled in the police force. He also fears persecution and imprisonment as a failed asylum seeker who is returning after being refused protection in a western country. He noted that if he is returned to Iran the fact that the first applicant would be returning as a failed asylum seeker after a long period of time outside of Iran would mean he is extremely likely to come under additional scrutiny and questioned on return by the Iranian authorities. The representative stated that there is a reasonable possibility that the first applicant would be targeted if returned to Iran on the basis of being perceived to be anti-government as a result of travelling, seeking asylum and illegally leaving the police force.
42. As I am not satisfied that Iranian police officers are unable to depart Iran, and I have found that the first applicant departed Iran legally using a genuine passport in his own name, I am not satisfied that he would face a real chance of harm on return on the basis of having departed Iran illegally as claimed.
43. Country information provided by DFAT states that Iran has historically refused to issue travel documents to allow the involuntary return of its citizens from abroad, however on 19 March 2018 Iran and Australia signed a Memorandum of Understanding (MOU) that includes an agreement by Iran to facilitate the return of Iranians who arrived after this date and who have no legal right to stay in Australia.<sup>7</sup> As the applicants arrived in Australia prior to this date the MOU does not apply to them and I find that they will only be returned to Iran as voluntary returnees.
44. DFAT notes that Iranian authorities will usually question a voluntary returnee on return only if they have already come to official attention, such as if they committed a crime in Iran before they departed.<sup>8</sup> DFAT is not aware of any legislative or social barriers to prevent voluntary returnees from returning to their home region. DFAT points to observations from international observers that Iranian authorities pay little attention to failed asylum seekers on their return to Iran and Iranian authorities have little interest in prosecuting failed asylum seekers for activities conducted outside of Iran, including social media posts critical of the government. However, returnees with an existing high profile, such as political activists, may face a higher risk of coming to official attention.<sup>9</sup>
45. On return to Iran the first applicant may be questioned by authorities about having left Iran suddenly while still a serving member of the police force, as this may set him apart from

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<sup>7</sup> DFAT, "DFAT Country Information Report - Iran", 7 June 2018, CIS7B839411226, p.49

<sup>8</sup> DFAT, "DFAT Country Information Report", 7 June 2018, CIS7B839411226, p.49

<sup>9</sup> DFAT, "DFAT Country Information Report", 7 June 2018, CIS7B839411226, p. 49

other returnees. I did not find the first applicant's claim that Iranian authorities have been making ongoing enquiries about him, and that he is being monitored in Australia, to be convincing or plausible. Apart from some questioning on re-entry to Iran I do not consider that Iranian authorities would have an interest in taking any further action against the first applicant in relation to his departure from the police force over five and a half years ago in mid-2013. There is no evidence that the first applicant's departure from the police force resulted in any legal action or other sanction being initiated against him or that he is a person of ongoing interest to the Iranian police force. In addition, he has not expressed a desire to seek to resume work in the police force if returned to Iran.

46. The applicants have not claimed to have been involved in any political activities in Iran or Australia nor have they expressed a desire to do so. They have not been members of any political or social groups in Iran or Australia. I have found that the first, second and third applicants were able to depart Iran legally in 2013 using their own passports. They were not of interest to authorities or anyone else on departure. I am not satisfied that the first and second applicants and, by extension, the third and fourth applicants, have profiles that would be of interest to Iranian authorities if they were to return to Iran voluntarily for the reason of having sought asylum and spent time living in Australia or due to the first applicant leaving the police force suddenly in 2013.
47. Taking into account the country information outlined above and the applicants' profiles, I am not satisfied that they would face a real chance of persecution due to being failed asylum seekers who have spent time in a western country.

#### *Website disclosure*

48. Although the applicants did not make a specific claim of fear of harm on the basis that some of their personal details were released on the website of the then Department of Immigration and Border Protection in 2014, the delegate addressed this issue in his decision.
49. The delegate accepted that the applicants were affected by the website disclosure or 'data breach' that occurred in February 2014, when confidential departmental information became briefly accessible on the Department's website. He noted that the accessible information included information such as an individual's name, data of birth and detention status but did not reveal information such as their claims or that they had applied for a protection visa.
50. I accept that it is plausible that the data breach could alert Iranian authorities to the fact that the first, second or third applicants travelled to Australia and were held in Australian immigration detention, and that it may be inferred from this that the applicants sought asylum in Australia. However, and as has been noted above, Iranian authorities pay little attention to failed asylum seekers on their return to Iran and Iranian authorities have little interest in prosecuting failed asylum seekers for activities conducted outside of Iran. There is no evidence before me that the first, second or third applicants would face a real chance of serious harm as a result of the data breach in which limited personal details were disclosed. I find that the first, second and third applicants do not face a real chance of harm from Iranian authorities due to the data breach. The fourth applicant was born after the data breach and was therefore not affected by it.
51. In considering country information and the applicants' circumstances as a whole, I am not satisfied that they face a real chance of persecution from the authorities or any other person in Iran in the reasonably foreseeable future.

## Refugee: conclusion

52. 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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53. 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

54. 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.
55. I have found that the applicants may face some low-level discriminatory treatment in Iran due to their Faili Kurd ethnicity, however I am not satisfied that such discrimination constitutes significant harm such as cruel or inhuman treatment or punishment. I have found that the first applicant worked as a police officer in Iran but was not involved in a [role]. I have found that he was not involved in the arrest of a drug baron called [Mr A] and did not receive threatening phone calls from [Mr A's] associates as a result of the arrest. I am not satisfied that the first applicant, or any of the other applicants, would face significant harm from [Mr A's] tribe/associates as a result of his work as a police officer if he was returned to Iran.
56. I have concluded that the applicants do not face a real chance of harm for any of the other reasons claimed, including fear of harm due to the first applicant departing Iran illegally while a serving police officer and using his [relative]'s passport, or due to being failed asylum seekers returning from a western country. 'Real chance' and 'real risk' have been found to equate to the same threshold. As a result I find that the applicants will not face a real risk of significant harm for these reasons.
57. I am not satisfied that there is a real risk the applicants will suffer significant harm on their return to Iran.

### **Complementary protection: conclusion**

58. 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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59. 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 the spouse of the family head and the children of the family head who have not turned eighteen.
60. As none of the applicants meets the definition of refugee or the complementary protection criterion, it follows that they also do not meet the family unit criterion in either s.36(2)(b) or s.36(2)(c).

### **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.