



**Australian Government**  

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**Immigration Assessment Authority**

**Decision and Reasons**

**Referred application**

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IRAN

IAA reference: IAA18/05848

Date and time of decision: 20 February 2019 16:50:00

M Zdilar, 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 stateless Faili Kurd. He departed Iran on May 2013 and arrived in Australia [in] August 2012. On 31 March 2017 he lodged an application for a Safe Haven Enterprise Visa (protection visa).
2. On 18 October 2018 a delegate of the Minister for Immigration and Border Protection (the delegate) refused to grant the protection visa.

### 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), including a post interview submission from the applicant's representative from [company] dated 14 July 2018.
4. No further information has been obtained or received.

### Applicant's claims for protection

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5. The applicant's claims can be summarised as follows:
  - He is an undocumented stateless Faili Kurd.
  - In around 1978 his parents were expelled from Iraq and fled to Iran, where they lived in a refugee camp for a short time before moving to Ilam. They may have been issued with a green card but they were never recognized as citizens of Iran.
  - He was born in Ilam, Ilam Province, Iran in [year].
  - He was issued with a green card, but this was taken by the authorities in about 2003 and he was never issued with a white card. As he only worked in a labouring role he was never asked about his ID documents in Iran.
  - As a stateless undocumented person without any identity documents he had no rights; he needed a travel permit to travel outside of Ilam, he was only able to work in manual labour work as identity documents were not required for this work, he was not accepted at hospitals as he did not have a health card and was forced to attend private health centres and pay high costs, he was not able to obtain a driver's licence and was forced to rely on public transport and hiring a taxi, he could not buy a sim card to have a mobile phone and was prevented from marrying an Iranian citizen as he did not have the correct Iranian documents.
  - He was an amateur [sportsman] but could not obtain [registration] because he did not have a birth certificate.
  - He had minimal schooling to [grade] and even if he had completed university he would not be issued with a completion certificate because he did not have proper identity documents.
  - He was discriminated against because of his Faili Kurdish ethnicity; he was targeted by authorities if he wore traditional Kurdish dress; they were treated as second class

citizens by Iranian authorities and if they were assaulted the police and the Iranian authorities did not take their allegations seriously.

- He departed Iran illegally via Imam Khomeini International Airport in Tehran in May 2013.
- He was born a Shia Muslim but was not a faithful practising Muslim growing up in Iran. Since arriving in Australia he has become agnostic and considers himself an atheist.
- He fears returning to Iran as somebody who has rejected Islam and who would therefore be considered an apostate.
- He fears that he will be tortured and imprisoned by Iranian authorities if he returns and without proper documents he has no rights to voluntarily return to Iran.
- He fears he would be detained, interrogated and tortured as he has sought asylum in a Western country. The regime believes that political opponents work against it when they are staying in a Western country
- He fears that he would be targeted upon return to Iran because he will be suspected of spying against the regime or of being a member of the Kurdistan Working Party (PKK).

## Factual findings

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6. Based on consistent information provided by the applicant since his entry interview, including in his SHEV application and in oral evidence given at his protection visa (PV) interview, I accept that the applicant's background is as follows: he was born on [date] in Ilam, Ilam Province, Iran and resided there with his family until his departure from Iran in May 2013. His parents have resided in Ilam in Iran since about 1978 when they were expelled from Iraq. He has [specified family members], all of whom were born in, and continue to reside in Ilam in Iran. He completed [number] years of education. He is unmarried and does not have children.
7. The applicant has consistently claimed that he and his family are Faili Kurds. Country information indicates that Faili Kurds are a subgroup of the larger Kurdish population in Iran; they originate from the Zagros Mountains which straddle the Iran-Iraq border and typically reside either close to the Iraqi border, in border provinces including Ilam province or in major cities.<sup>1</sup> Faili Kurds are distinguished from other Iranian Kurds by their religion, most are Shia, and their location and distinctive dialect, which is often referred to as Feyli.<sup>2</sup> The applicant claims that he was born into a Shia Muslim family, which is consistent with the profile of Faili Kurds, and that he and his family have lived in Ilam. The applicant has consistently stated the he speaks Kurdish, Farsi and some Arabic, and that he spoke in Kurdish at home. I accept that the applicant and his family members are Faili Kurds as claimed.
8. I accept that the applicant's parents were both born in Iraq and were expelled from Iraq in around 1978 and fled to Iran where they lived in a refugee camp before moving to Ilam shortly thereafter. The applicant has consistently provided information that his parents were born in Iraq, including in his SHEV application where he lists the birthplace of both parents as Iraq in response to question 42. He also maintained that his parents were born in Iraq at his PV interview. Further, based on the country information, the applicant's account of his parent's expulsion from Iraq is plausible. That information indicates that upon seizing power in the 1960s, the Ba'athist government in Iraq adopted several policies with the effect of excluding Faili Kurds, including cancelling the Iraqi citizenship of all Iraqis of 'foreign origin', and

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<sup>1</sup> DFAT, "DFAT Country Information Report Iran", 7 June 2018, CIS7B839411226

<sup>2</sup> ibid

eventually expelled them by force from Iraq, as a consequence of which many expelled Kurds crossed into Iran from the late 1970s to the late 1980s.<sup>3</sup> Iran recognised many, but not all Faili Kurds as refugees. There are three main groups of Faili Kurds who live in Iran: Faili Kurds who are Iranian citizens ('Iranian citizens'), Faili Kurds of Iraqi origin who are registered as refugees in Iran ('registered refugees'), and Faili Kurds of Iraqi origin who are not registered as refugees in Iran ('unregistered refugees'). Accurate population estimates for the three groups or the overall number of Faili Kurds in Iran are not available.<sup>4</sup> The Department of Foreign Affairs and Trade (DFAT) has assessed that it is likely that the majority of Faili Kurd refugees in Iran are registered as refugees.<sup>5</sup>

9. The applicant stated in his written claims that after his parents had moved to Iran, they may have been issued with a green card, but he was not sure. At his PV interview he said that his parents had previously held green cards and now they had white cards. When questioned whether his parents had ever tried to become citizens of Iran, he said that they did not because it was not possible. He claimed that although he had been issued with a green card this was taken from him by the Iranian authorities in about 2003 and that neither he or his [specified family members] were issued with a white card. The applicant provided a low-resolution, black and white photo of this card and a NAATI translation of it. At his PV interview he maintained that apart from that green card, he did not have any other documents, and that neither he nor his siblings who were born in Ilam ever received a birth certificate. DFAT has assessed that it is probable that the majority of Faili Kurd refugees in Iran are registered and have amayesh (refugee registration) cards, which have been issued in different colours in the past, including green (from the 1980s until the end of 2001) and white prior to 1979 and from 2002 onwards.<sup>6</sup> Further, that in almost all cases Iranian authorities will issue an amayesh card to a child born to an Iraqi refugee father who has a valid amayesh card.
10. In relation to the applicant's green card, which he maintained was taken from him in 2003, the delegate referred to country information indicating that in the 2003 and 2004 period, the Iranian Bureau for Aliens and Foreign Immigrants Affairs (BAFIA) moved to a computerised white card system.<sup>7</sup> It is therefore plausible that the applicant's green card may have been taken by authorities as part of the move to a computerised white card system. In any event, having regard to the country information before me and the applicant's testimony, and noting that his parents had held both green and white cards, I accept that the applicant previously held an Iranian amayesh refugee registration card in Iran.
11. The applicant said at his PV interview that he had departed from the main airport in Iran illegally. He said he paid about 10 or 12 million Tomans to obtain an Iranian passport and that the persons who he had paid to obtain the passport for him had put his details in the passport. When pressed as to whether that passport had his picture, name and date of birth, he confirmed that it did and that there were people in the passport office who were willing to do that. As to whether any immigration officials at the airport had any problems with his passport the applicant said that "*they had a look and they stamped it right away*". He said that he had not paid any bribes at the airport in Iran, having only done so when he arrived in [a transit country], and maintained that the 10 or 12 million Tomans that he had paid for the passport was also to be divided and shared amongst the people at the airport. The applicant maintained that the people who had he had paid to obtain his passport "*had people in the*

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<sup>3</sup> ibid

<sup>4</sup> ibid

<sup>5</sup> Ibid.

<sup>6</sup> Department of Foreign Affairs and Trade (DFAT), "DFAT Thematic Report – Faili Kurds in Iraq and Iran", 3 December 2014, CIS2F827D91722 (cited by delegate as 'Thematic')

<sup>7</sup> Delegate decisions, Footnote 11, source not cited.

airport”, and that he was told when he had paid the money that “it would be 100% guaranteed that he would pass the gate”. However, I consider it implausible that the applicant could have obtained a passport issued in his own name without providing any identity documents, even upon payment of the money he claims to have paid for that passport. DFAT advises that all Iranian passports have been biometric since February 2011 and that applicants for passports are required to provide their original Iranian Birth Certificate (*shenasnameh*), a copy of their residence permit and recent photographs.<sup>8</sup> Whilst DFAT further advises that it may be possible to obtain a genuine identification document with the intention of impersonating another person, there is nothing to indicate that the applicant had sought to impersonate another person in obtaining any identification documentation and had in fact said that his details were used in the passport that he used.

12. DFAT assesses that sophisticated border control procedures would make it difficult to use a fraudulent passport in order to leave Iran. The information indicates that for the applicant to have departed Iran illegally, he would have not only have needed to have a passport and original shenasnameh created for him but for these documents to be linked to a new identity that would need to be created on various immigration and law enforcement systems. The country information indicates that due to sophisticated security features, computerised cross-checking and multiple layers of physical security and document checking, it would be difficult or impossible to pass through Khomeini International Airport with a fraudulent passport.<sup>9</sup> Therefore, for the applicant to have passed through the airport, it would have required the creation of an entire identity profile on various government systems. His testimony does not support that any such new identity was created for him when he obtained his passport. The fact that he was able to pass through the multiple layers of physical security and document checking at the airport strongly indicates that he did not have a fraudulent passport. Whilst a report of the Danish Immigration Service<sup>10</sup> also indicates that it is not possible to exit the airport with a forged or fraudulent passport, it does not rule out the possibility of a person being able to bribe their way out of the airport. However, such action would involve bribing a lot of airport staff members since there are several checkpoints in the airport. It was also reported that a source had indicated that the price would probably be high, such as 8-10,000 Euros and that the ‘right connections’ were also important if one was to bribe one’s way out of the airport. As noted above, the applicant said that he did not have to pay a bribe to any officials at the airport, and his evidence does not suggest that he had any connections at the airport. Whilst he maintained that the money he had paid in obtaining his passport covered payment to people at the airport, I do not consider it plausible that he could have obtained any such passport without having provided his identity documents given that the passport was issued in his name.

13. Country information also indicates that an applicant must apply for and pick up his or her passport in person, although in exceptional circumstances, such as serious accidents or illness,

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<sup>8</sup> DFAT, “DFAT Country Information Report Iran”, 7 June 2018, CIS7B839411226

<sup>9</sup> Danish Refugee Council, Landinfo and Danish Immigration Service, "Iran: On Conversion to Christianity, Issues concerning Kurds and Post-2009 Election Protestors as well as Legal Issues and Exit Procedures", 01 February 2013, CIS25114; Danish Immigration Service, "Human Rights Situation for Minorities, Women and Converts, and Entry and Exit Procedures, ID Cards, Summons and Reporting, etc.", 01 April 2009, CIS17329; Immigration and Refugee Board of Canada, IRN101054.E – Iran, “The passport; its features and procedures for application including whether an applicant who was refused a passport would be notified and have recourse; the use and prevalence of fraudulent or counterfeit passports to exit Iran”, 3 April 2006, OGF10222E67; Australia: Department of Immigration and Citizenship (DIAC), "Entry procedures and passport control at Dubai International Airport", 13 April 2012, CX286895.

<sup>10</sup> Danish Immigration Service “Human rights situation for minorities, women and converts, and entry and exit procedures, ID cards, summons and reporting,etc”, 1 April 2009, CIS17329

the applicant may send a proxy with written permission to pick up his passport.<sup>11</sup> Other country information<sup>12</sup> further indicates that as fingerprints are obtained and an ID check is performed when a passport application is lodged, an applicant must be present at that time. The passport application can be lodged at one of a number of multipurpose administration offices called "Police+10" and is then sent to the passport headquarters for processing, which process would alert authorities if an applicant is a 'person of interest' on the blacklist. If a passport applicant is blacklisted their passport application would be blocked and the applicant would be invited to have the matter explained to them.

14. Having considered the applicant's testimony about his passport and using it to go through Imam Khomeini International airport in Tehran, and based on the cited country information, I find that the applicant did not exit Iran on a fraudulently obtained passport and that he did not bribe or otherwise influence airport officials. In all the circumstances of the applicant's case, I am satisfied that he departed Iran using his own legally issued Iranian passport in his own name with his own details and departed Iran without facing any problems or being questioned by airport officers or the authorities when passing through the security checks. The DFAT report states that Iranian passports serve as proof of Iranian citizenship and there is no other information before me to suggest otherwise. I am satisfied that the applicant is an Iranian citizen. I find that Iran is the receiving country for the purpose of this review.
15. As the applicant was able to obtain his passport, and was able to pass through the airport without any difficulty, I find that the applicant was of no interest to Iranian authorities when he left Iran. If he was of any interest to authorities I consider it highly likely, having regard to the cited country information, that he would have been on a blacklist and identified as such in the process of obtaining his passport.
16. The applicant said at his PV interview that the people smuggler in [the transit country] took his passport, which I accept as plausible having regard to the circumstances of his journey from there to Australia. I accept that he no longer has his passport.
17. The applicant claimed that as an undocumented stateless Faili Kurd he was discriminated against and restricted in his rights, including in education and employment, whilst living in Iran. In relation to education, he maintained that he finished up to [grade] in school only because he would not receive a certificate or obtain his grades report as he was undocumented. He said that he did not have a reason to continue going to school after [grade] because he was not entitled to a completion certificate and he therefore decided to work; he also claimed that even if he completed university he would not be issued with a completion certificate because he did not have identity documents. The applicant said at his PV interview that both he and his [siblings] had attended a government school. After finishing school at [grade], he did various jobs such as repairing shoes and selling newspapers and when he was a bit older he started working as a labourer in [an industry]. He claimed that the only work available to him was in manual labour work as he was not required to provide identity documents for this work, whereas to find employment in an office, a government building or any professional role he would need to provide identity documents. However, I consider that there are other more likely reasons as to why the applicant had limited employment opportunities, including socio-economic reasons and his education level, rather than because he was an undocumented stateless Faili Kurd, which I do not accept. I also do not accept that the applicant was not

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<sup>11</sup> Immigration and Refugee Board of Canada, IRN101054.E – Iran, "The passport; its features and procedures for application including whether an applicant who was refused a passport would be notified and have recourse; the use and prevalence of fraudulent or counterfeit passports to exit Iran", 3 April 2006, OGF10222E67

<sup>12</sup> "COUNTRY INFORMATION REPORT NO. 09/50 TITLE CIS Request No. IRN 9725 Passport and exit procedures", *Australia: Department of Foreign Affairs and Trade (DFAT)*, 09 June 2009, CX227682

entitled to a completion or grades certificate at school because he was an undocumented stateless Faili Kurd. Despite the applicant's insistence that he was restricted in his education and in his employment because he did not have identity documents, I am satisfied that he was an Iranian citizen and I do not accept that he had any issues either in relation to completing his education or finding employment because of his claim of being a stateless undocumented Faili Kurd. Nor do I accept that was unable to access government health services for any dental health or other health issues he had in Iran such as [specified] issues which he referred to in his PV interview, and that he was required to pay high costs at private health centres as he could not gain admittance to a hospital without identity documents. Contrary to his claims in regard to health care access, he had indicated at his PV interview that his mother had treatment in hospital about two months prior to his interview and was not expected to pay. The country information indicates that Faili Kurds in Iran who are Iranian citizens can access services, including health care, education and state benefits, on the same basis as other Iranian citizens.<sup>13</sup>

18. The applicant also claimed that because he was undocumented he was unable to obtain a driver's licence and had to take public transport and pay for taxi hire to get to work. He also claimed that as he did not have identity documents he had to obtain a travel permit from a government permit office if he wished to travel outside of Ilam and explain his reasons for travel before he was issued with this permit. He also could not obtain a mobile phone because he could not buy a SIM card without identity documentation. He said that on one occasion he had to pay money to borrow another person's birth certificate to purchase a SIM card and that the person who he had borrowed the birth certificate then disabled the SIM card, so he had to buy another one again. The applicant also claimed that he was prevented from marrying an Iranian citizen because the Iranian authorities would not allow such a union to be officially registered without Iranian documents. At his PV interview, the applicant indicated that he wanted to marry someone he loved but because he didn't have Iranian documentation, her family did not accept him. However, as I have not accepted that the applicant was an undocumented stateless Faili Kurd I do not accept any of these claims.
19. The applicant also claimed at his PV interview that he was an active member of an amateur [sports] club for seven years in Ilam but as he did not have any documentation he was not allowed to participate in championship competition matches between the [provinces], having been limited to participating in local matches in Ilam. He was able to participate in local matches because he was able to use another person's birth certificate, although if he won the game he could not advance to the next level. He said that he could not obtain the required [registration] for his [sports] participation, which was at a cost of [amount] Tomans, because he didn't have a birth certificate. When questioned whether he had borrowed a birth certificate to obtain [registration] for his [sport], he said that he didn't get the [registration] because he could not afford [amount] Tomans. He also said that his [sports] coach did not charge him for membership of the club, which was [amount] Tomans per month, although he would assist him with preparing for competitions and other assistance. Based on the applicant's testimony, I consider it highly likely that his participation in amateur [sport] was restricted because of the costs involved, which he could not afford to pay. In any event, for the reasons given above, I do not accept that he was undocumented or that he did not have identity documents. It follows that I do not accept that was not able to participate in these activities for reason of not having identity documentation.

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<sup>13</sup> Department of Foreign Affairs and Trade (DFAT), "DFAT Thematic Report – Faili Kurds in Iraq and Iran", 3 December 2014, CIS2F827D91722

20. I accept as plausible that the applicant experienced some discrimination in Iran because of his Kurdish ethnicity. He claimed that he was targeted by authorities if he wore traditional Kurdish dress. At his PV interview he said that he was insulted many times because of his Kurdish dress. He otherwise made broad non-specific claims regarding discrimination suffered by Kurdish people, including being treated as second class citizens by Iranian authorities and not being able to complain to police if they were assaulted because the Iranian authorities did not take their allegations seriously. At his PV interview he referred to a specific incident where he was involved in an argument in the street with some other people and was insulted and hit by the police when they were called to attend the scene. Whilst I accept that he was involved in such an incident, and was unfairly treated by police as claimed because of his Kurdish ethnicity, the applicant said that he was not involved in any other incidents with authorities. When questioned whether anyone else in his family was ever arrested or detained, he said that his [brother] was arrested while he was out with his girlfriend, and that he was tortured and beaten to confess to charges that he did not commit, and that he was imprisoned for 2 or 3 months sometime in 1984 or 1985. Whilst I accept as plausible that the applicant's brother was treated in this matter, the country information indicates that such moral code issues are enforced generally within the population and I do not consider such an incident to be indicative of any specific targeting of or discrimination against the applicant's family members as Faili Kurds. The country information does not indicate that Faili Kurds are treated differently to any other Kurdish groups by the Iranian authorities. I am prepared to accept that the applicant was subject to some discrimination as an ethnic Kurd, as claimed.
21. As I am satisfied that the applicant is an Iranian citizen and therefore he is not stateless, I do not consider the arguments made in the post-interview submission on behalf of the applicant in relation to the implications of statelessness for the applicant to be relevant. For the same reasons, I also do not consider the argument made in the post interview submission that the applicant would not be able to obtain an amayesh refugee registration card (white or green) on his return to Iran to be relevant in considering the applicant's claims.
22. The applicant maintained in his PV interview that he would be targeted upon return to Iran because he would be accused of spying against the regime and suspected of being a member of the PPK (Kurdistan Working Party). He said that the authorities might have already checked his [social media] account, which he said included pages relating to the PPK. Apart from indicating that the PPK is active against the regime, he did not provide any further information about any pages he claimed to have on his social media accounts. He did not provide any screen shots or copies of his claimed [social media] accounts or any pages or material on any of his claimed social media accounts, and his evidence about what pages or material he claimed to have on any such social media accounts was vague and unconvincing. When questioned why the authorities would think that he was a member of the PPK or that he was spying, he referred to an American lecturer being arrested upon his return to Iran because he was considered anti-regime. When questioned whether he was ever politically active in Iran, he replied "Not at all" and maintained that he would be killed, particularly as he was a Kurd and it would be easier to kill an undocumented Kurd. The applicant did not indicate that any of his family members in Iran have been subjected to scrutiny from the Iranian authorities or that they have come to adverse attention of authorities on account of any social media activities engaged in by the applicant. Given his vague evidence about any such social media activities engaged by him, the absence of any corroborating evidence to support that he has engaged in such activities or about the nature of any such social media activity, I do not accept that the applicant has engaged in any such activity.
23. The applicant claimed that whilst he was a Shia Muslim in Iran, since coming to Australia he has no religion and considers himself to be an atheist. He confirmed that his family in Iran are Shia



Muslims and said that [specified family members] are religious. When asked whether he would attend Mosque whilst he was growing up in Iran, he replied that he'd never been to a Mosque, that he didn't even know how to pray and considered himself a Muslim only in title. He did not indicate that he was forced by his parents to observe any religious practices and I consider that his evidence does not support that either he or his family were devout practising Muslims whilst in Iran. When asked when he stopped calling himself a Muslim, he said after he was released from detention in Australia and had access to the internet he read about atheism from famous people. He said that he learnt about atheism by watching Youtube science journals and listening to explanations by the famous scientist, Hawkings, who had passed away recently, about why there was no God. By listening to this material, he was persuaded by the reasons given as to why there is no God. He maintained that he now considered himself an atheist, and that for him that means there is no God, although he is not disrespectful of religion. When questioned about whether he has told his family that he is no longer Muslim, he initially said that he wouldn't dare tell them and that if he did, his mother would have a heart attack or she would definitely be upset. He later said that he had actually already told his [brother] and that as his brother would have shared that with other relatives and cousins, his whole family would know about it soon. When questioned about whether his mother asks him about his religious beliefs when he speaks to her, he replied in the negative although he said that she does ask him about whether he still prays. However, given his evidence that he never attended a Mosque in Iran and had never prayed, I am sceptical about his evidence that his mother asked if he still prays. I do not consider that his evidence supports that his mother or any of his family members were as religious as claimed by the applicant or that he was compelled to attend religious observance in Iran. I therefore also treat with scepticism his testimony that his brother was upset when he told him about his atheism or that his family would have any adverse reaction to the news of the applicant's atheism. Given the applicant was not religious whilst in Iran and that the evidence does not support that his family enforced religious observance, and based on his testimony of his experiences since arriving in Australia, I accept that applicant now identifies as an atheist and/or is agnostic as claimed.

24. I accept that if the applicant is returned to Iran, he is likely to be identified as a failed asylum seeker who will be returning to Iran after living in a Western country (Australia).
25. I accept that the applicant's personal details became briefly accessible in a routine report released on the then Department of Immigration and Citizenship website in February 2014 (the website disclosure).

## **Refugee assessment**

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26. 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**

27. 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.

28. I have found that the applicant is an Iranian citizen of Faili Kurdish ethnicity. DFAT reports that it is not aware of cases where Faili Kurds who are Iranian citizens have faced adverse attention specifically because of their ethnicity or of being out singled out for mistreatment on that basis and states that Faili Kurds of Iranian citizenship have access to state protection on the same basis as other Iranian citizens.<sup>14</sup>

29. Whilst DFAT's recent report has noted that ethnicity remains a sensitive political topic in Iran and has identified Kurds as an ethnic minority group, it observed that the overwhelming majority of ethnic minority groups are integrated into Iranian society and participate in politics and identify with the Iranian nation.<sup>15</sup> Nevertheless, DFAT has assessed that members of ethnic minority groups, including Faili Kurds, face a moderate risk of official and societal discrimination and this may take the form of denial of access to employment and housing but is unlikely in most cases to include violence on the basis of ethnicity alone and the risk to members of ethnic minority groups who are involved (or perceived to be involved) in activism, including for those asserting cultural or political rights, is higher.<sup>16</sup> The applicant does not claim to have been politically active or that he has sought to assert cultural or political rights in Iran. In the absence of any political activism or public assertion of cultural or political rights, the country information before me does not support a finding that Faili Kurds face a real chance of harm from the Iranian authorities on account of their ethnicity.

30. Country information indicates that Faili Kurds who are citizens of Iran have access to services and employment on the same basis as other Iranian citizens and they face little or no official discrimination.<sup>17</sup> There is however institutional discrimination in Iran and it would for example be harder for a Kurd (Faili or otherwise) to get a job compared to a Persian Iranian.<sup>18</sup> I have accepted that the applicant, as a Faili Kurd, experienced some instances of discrimination in the past and I accept that he may face some societal discrimination in the form of limitations on access to housing and employment should he return to Iran. However, the applicant's immediate family continues to reside in Iran and there is no evidence before me to indicate that the applicant would not be able to rely on support from his family members for housing and other support. As stated in his PV interview, his immediate family members continue to

<sup>14</sup> Department of Foreign Affairs and Trade (DFAT), "DFAT Thematic Report – Faili Kurds in Iraq and Iran", 3 December 2014, CIS2F827D91722; DFAT, "DFAT Country Information Report Iran", 7 June 2018, CIS7B839411226

<sup>15</sup> DFAT, "DFAT Country Information Report Iran", 7 June 2018, CIS7B839411226

<sup>16</sup> DFAT, "DFAT Country Information Report Iran", 7 June 2018, CIS7B839411226.

<sup>17</sup> Department of Foreign Affairs and Trade (DFAT), "DFAT Thematic Report – Faili Kurds in Iraq and Iran", 3 December 2014, CIS2F827D91722

<sup>18</sup> Danish Refugee Council, Landinfo and Danish Immigration Service, "Iran: On Conversion to Christianity, Issues concerning Kurds and Post-2009 Election Protestors as well as Legal Issues and Exit Procedures", 01 February 2013, CIS25114

live in the predominantly Kurdish province of Ilam, [specified siblings] also work in [the same industry] as he had done in the past (as well his father who now no longer works due to old age), and [other siblings] are [occupation 1s], and while [specified siblings] continue to live with his parents in their home [other siblings] have married and moved from home. Furthermore, the applicant was able to obtain employment in Iran, having indicated that he was employed as a labourer in the [specified] industry whilst living there. He also indicated that his [siblings] were working in Iran, [in the specified industry] and [as occupation 1s], and there is nothing to indicate that the applicant would not be able to find employment if he were to return to Iran. I am not satisfied that he has been subjected to discrimination or denied the capacity to earn a livelihood, or to access basic services in ways which have threatened his capacity to subsist. Based on the evidence before me about the applicant's particular circumstances, I am not satisfied that the applicant will not be able to obtain employment upon return to Iran, or that his capacity to subsist will be threatened. I am also not satisfied that there is a real chance of the applicant experiencing discrimination, limitations or other hardship, whether separately or in any cumulative sense at a level that would threaten his capacity to subsist or otherwise amount to serious harm.

31. I accept that there are credible reports of Kurds being targeted for perceived links to Kurdish political groups such as the Party for a Free Life in Kurdistan, Komala or the Democratic Party of Iranian Kurdistan.<sup>19</sup> DFAT has reported that those who attempt to publically assert their cultural or political rights that are perceived to threaten the constitutional foundations or the territorial integrity of the Islamic Republic may also come to the attention of the Iranian authorities. However, I do not accept that the applicant has any such political profile of interest to Iranian authorities. I have found that the applicant departed Iran using his own Iranian government issued passport and he was not of interest or concern to the Iranian authorities at the time of his departure. The country information before me indicates that it is those who are politically active or otherwise actively engaged in activities considered to be a threat to the Iranian regime that are at risk of harm. The applicant has not claimed that he or his family members have been supporters of or involved in any political activities including Kurdish groups, organisations or activities in Iran or Australia. Nor has he claimed that he has or would seek to publically assert his cultural or political rights. The applicant does not have a risk profile on account of having engaged in any activities that would be considered as a threat to the Iranian regime. I am not satisfied that the applicant as a Faili Kurd will be perceived to have any actual or imputed anti-regime opinion or profile by the Iranian authorities or as someone of adverse interest and harmed on return to Iran.
32. Having regard to the cited country information and the applicant's circumstances, I am satisfied that the applicant does not face a real chance of harm upon his return to Iran because of his Faili Kurdish ethnicity now or in the reasonably foreseeable future.
33. I have accepted that the applicant, who was born into the Shia Muslim religion, has become an atheist since arriving to Australia and will be returning to Iran as an atheist. As has been consistently reported, under Iranian law a Muslim who leaves his or her faith or converts to another religion or atheism can be charged with apostasy, although such cases are no longer an everyday occurrence.<sup>20</sup> In its 2016 report, DFAT advised that the last known application of the death penalty for apostasy occurred in 1990.<sup>21</sup> Since then, DFAT has reported that while the death sentence is yet to be carried out for apostasy, in March 2017 the Supreme Court

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<sup>19</sup> Austria: Federal Ministry of the Interior, 'The Kurds: History, religion, language, politics', November 2015, CISEC96CF14202,

<sup>20</sup> DFAT, "DFAT Country Information Report Iran April 2016", 21 April 2016; DFAT, "DFAT Country Information Report Iran", 7 June 2018, CIS7B839411226

<sup>21</sup> DFAT, "DFAT Country Information Report Iran April 2016", 21 April 2016

upheld the decision of a criminal court to sentence a 21 year old man to death for apostasy following his arrest for social media posts considered critical of Islam and the Koran while on military service. The court also convicted two co-defendants of posting anti-Islamic material on social media, sentencing them to prison.<sup>22</sup> Notwithstanding these cases, overall the country information supports that death sentences in apostasy and blasphemy cases are now rare and it is unlikely individuals would be prosecuted or that the government would know that someone had abandoned Islam unless they publicly declared it. The applicant has not claimed that he would publicly declare he has abandoned Islam if he returns to Iran, or that he has any desire to do so. Nor is there any evidence to indicate that in Australia the applicant has publicly renounced Islam or promoted his atheism or has any desire to do so. I am satisfied he will not seek to publicly declare he has abandoned Islam upon return to Iran because of lack of interest and commitment rather than from a fear or persecution.

34. The country information indicates that it is highly unlikely that the government would monitor religious observance by Iranians and that non-observance of Islam would only cause problems in certain situations, such as refusing to fast during Ramadan.<sup>23</sup> The applicant has not claimed to have done this or any similar actions whilst in Iran. Further, there is reporting indicating that atheists usually do not express their views in public and are thus able to lead normal lives in Iran without facing any further restrictions.<sup>24</sup> Given the applicant's past non-observance of religious practices in Iran, I am satisfied that he will refrain from expressing his atheist views because of lack of interest and commitment rather than a fear of persecution. I have considered the post-interview submission that the applicant is likely to be ostracised by his family if his lack of religious beliefs become known to them upon return to Iran; however I am not satisfied that the evidence supports this to be the case.
35. Having regard to the country information and the applicant's circumstances, I am satisfied the applicant does not face a real chance of harm on return to Iran for reasons of being an atheist and/or being perceived to be an apostate now or in the reasonably foreseeable future.
36. I have found that the applicant departed Iran legally using his own Iranian government issued passport, and I accept that he no longer has this passport. According to DFAT, Iran has historically refused to issue travel documents (laissez passers) to allow the involuntary return of its citizens from abroad although on 19 March 2018, Iran and Australia signed a Memorandum of Understanding (MOU) on Consular Matters 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>25</sup> However, the applicant arrived in Australia well before this date. On the basis of this information I find that if the applicant were to return to Iran it would be voluntarily and that he would be returning on a temporary travel document.
37. I accept that as the applicant has spent over five years in in Australia, a western country, and has sought asylum, his status as a returning asylum seeker from a western country may be known, or become known to Iran authorities, including because he will be returning on a temporary travel document.
38. I am satisfied, based on the country information before me, that the applicant would not be targeted by the authorities on return to Iran for the sole reason of being a failed returning

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<sup>22</sup> DFAT, "DFAT Country Information Report Iran", 7 June 2018, CIS7B839411226

<sup>23</sup> DFAT, "DFAT Country Information Report Iran April 2016", 21 April 2016

<sup>24</sup> 'Iran: Freedom of Religion; Treatment of Religious and Ethnic Minorities COI Compilation September 2015', Austrian Centre for Country of Origin and Asylum Research and Documentation (ACCORD), 1 September 2015, p.31, CISEC96CF13622

<sup>25</sup> DFAT, "DFAT Country Information Report Iran June 2018", 7 June 2018.

asylum seeker from a western country.<sup>26</sup> The country information before me does not indicate that returning asylum seekers from western countries are routinely imputed with an anti-government or anti-regime opinion or that Iranian authorities seek to prosecute or otherwise harm them for reasons of having made a claim for asylum. Reports of asylum seekers being arrested, detained and mistreated on return relate to those with an existing high profile, particularly political activists who have either a known anti-regime political profile in Iran or who have engaged in anti-regime political activism overseas.<sup>27</sup> However, I find that the applicant does not fit these risk profiles. He has not claimed to be a political activist or to have participated in any anti-regime activities and there is nothing to indicate that he attracted any adverse attention whilst in Iran on account of any anti-regime or other political activities. I am satisfied that he did not have an adverse profile with Iranian authorities when he departed Iran or that he was otherwise of any interest to the authorities. Further, the applicant has not claimed, nor is there anything to indicate that he has engaged in any anti-Iranian government political activism or any other activities that would come to the adverse attention of the Iranian authorities since arriving in Australia so as to create a risk profile upon return to Iran.

39. As reported by DFAT, returnees even if travelling on a temporary document will generally only be questioned if they had done something to attract the specific attention of authorities, such as by committing a crime in Iran before departing, and that the vast majority of people questioned would be released after an hour or two.<sup>28</sup> I am not satisfied that the applicant has done anything to attract the attention of the authorities either in Iran or Australia. Whilst the country information indicates that people of interest may be questioned on return I do not accept that the applicant would be of interest to the Iranian authorities. I accept the applicant may be questioned because of his travel document, but I do not accept this would result in any adverse interest in the applicant or that he would be harmed during that questioning or process or that such would amount to serious harm.
40. Having regard to the country information cited and the applicant's circumstances, I am satisfied that the applicant does not face a real chance of harm on return to Iran for reasons of being a failed asylum seeker returning from a western country now or in the reasonably foreseeable future.
41. I have accepted that, as a result of the website disclosure, the applicant's personal details became briefly accessible in February 2014. I note that the accessible information included the applicant's name, date of birth, nationality, Irregular Maritime Arrival (IMA) status and detention status. Although there is no evidence to indicate that the Iranian authorities were aware of the website disclosure and accessed the applicant's information, I accept that it is possible. However, the information disclosed did not reveal the applicant's asylum claims or any information about his protection visa application. At most, the release of the applicant's name in this context may identify him as an asylum seeker; however he would be identifiable

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<sup>26</sup> DFAT, "DFAT Country Information Report Iran ", 21 April 2016, CIS38A8012677; DFAT, "DFAT Country Information Report Iran", 7 June 2018, CIS7B839411226

<sup>27</sup> Radio Zamaneh, 'Iranian poet/activist arrested at Tehran airport', 8 January 2016, CX6A26A6E140; International Campaign for Human Rights in Iran 'New Video: Iranian Expats Face Arrest upon Return to their Homeland', 23 April 2015, CXBD6A0DE5203; Radio Zamaneh, 'Jailing of returning journalists called part of anti-Rohani plan', 31 July 2014, CX324017; Committee to Protect Journalists 'Rouhani has yet to deliver on press reforms in Iran', 13 March 2014, CX318970; Radio Zamaneh, 'Mousavi's campaign worker arrested upon return to Iran', 16 February 2014, CX318168; Amnesty International, 'We are ordered to crush you': Expanding Repression of Dissent in Iran', 28 February 2012, CIS22610, p.56; Amnesty International, 'AMNESTY INTERNATIONAL - URGENT ACTION: UA 125/11: Student activists held in Iran', 6 May 2011, CX264288

<sup>28</sup> "DFAT Country Information Report Iran April 2016", 21 April 2016; DFAT, "DFAT Country Information Report Iran", 7 June 2018, CIS7B839411226

as such given that he would be returning on a temporary travel document. In any event, I do not consider that he would face any harm as a result of being identified by the authorities as a returning asylum seeker for the reasons referred to above. I am satisfied that the applicant does not have a risk profile or that he has been involved in any activities since arriving in Australia either on-line or in public that would come to the adverse attention of the Iran authorities. I am therefore satisfied that the applicant does not face a real chance of harm because of the website disclosure and I make this finding having considered all his claims.

42. Having considered the applicant's circumstances as a whole, I am not satisfied there is real chance of the applicant suffering persecution in the reasonably foreseeable future in Iran on the basis of his ethnicity, his atheism and/or being perceived as an apostate or on the basis of being a failed asylum seeker returning from a western country.

#### **Refugee: conclusion**

43. 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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44. 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**

45. 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.
46. Considering both the country information and the particular circumstances of the applicant, I am not satisfied that any discrimination the applicant may face as a Faili Kurd upon his return to Iran will involve deprivation of life, the death penalty, torture, cruel or inhuman treatment or punishment, or degrading treatment or punishment or that there is a real risk of him being arbitrarily deprived of his life or subject to the death penalty. I am not satisfied he faces a real risk of significant harm on this basis should he return to Iran.
47. I have found that being questioned upon return to Iran would not amount to serious harm. I also find that this does not amount to significant harm. The harm does not involve deprivation of life, the death penalty or torture; nor am I satisfied he will be subject to cruel, inhuman or degrading treatment or punishment as defined.

48. I have otherwise found the applicant does not face a real chance of harm on any or the bases claimed now or in the reasonably foreseeable future. For the same reasons and as 'real risk' and 'real chance' have found to be the same standard<sup>29</sup>, I am also not satisfied that the applicant faces a real risk of significant harm.

**Complementary protection: conclusion**

49. 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.

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<sup>29</sup> *MIAC v SZQRB* (2013) 210 FCR 505

## 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.