



Australian Government
Immigration Assessment Authority

Decision and Reasons

Referred application

IRAN
IAA reference: IAA18/05991

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Date and time of decision: 14 February 2019 16:22:00
K Juttner, Reviewer

Decision

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

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

Background to the review

Visa application

1. The referred applicants (the applicants) claim to be stateless Faili Kurds from Iran. The first applicant arrived in Australia, undocumented, in January 2013 with his wife (second applicant) and minor child (third applicant). In [year], they had a second child (fourth applicant). In June 2017, the applicants lodged applications for Safe Haven Enterprise Visas (SHEVs).
2. On 14 November 2018, a delegate of the Minister for Immigration (the delegate) refused to grant the visas on the basis that the first and second applicants were not persons in respect of whom Australia has protection obligations under s.36(2) of the *Migration Act 1958* (the Act). The delegate found that the applicants are Iranian citizens of Kurdish ethnicity, and did not accept that they are stateless.

Information before the IAA

3. I have had regard to the material given by the Secretary under s.473CB of the Act.
4. On 11 December 2018, the applicants' representative provided submissions to the IAA (December 2018 submissions) about why they disagree with the findings in the delegate's decision. The submissions to the IAA do not contain new information and I have had regard to them.
5. The submissions argue that the applicants were not afforded procedural fairness in having the opportunity to respond to "adverse" information in the country information the delegate relied on, and make arguments in response to that information. The submissions identify a document cited by the delegate which they say is not publicly available. On 22 January 2019 the IAA provided that document to the applicants. On 4 February 2019, the applicants' representative submitted further documentation and a cover letter to the IAA, which referred to the country information. I am satisfied that the applicants have now had the opportunity, through submissions to the IAA, to respond to the country information relied on by the delegate.
6. On 4 February 2019, the applicants provided green coloured identity cards (with translations) in the name of the first applicant's father and the second's applicant's mother, and further submissions from the applicants' representative which include information about how their respective families have only recently located these documents, said to explain why they are being provided now (January 2019 submissions). The cards and this information were not before the delegate and are new information. Without making any finding as to the authenticity of the documents, I am satisfied that on its face the material is credible personal information in respect of the applicants' relatives, in the sense that it is capable of being believed. The information, if true, corroborates their claims to be stateless Faili Kurds, contrary to the findings made by the delegate. I am satisfied that it was not previously known and may have affected consideration of the applicants' claims. The applicants submit that the documents have the potential to alter how their central claims are assessed. I am satisfied that the new information is central to the assessment of the applicants' identity, nationality and status in Iran which are key issues in determining their claims for protection. Taking this, and the corroborative nature of the documents into

account, I am satisfied that there are exceptional circumstances to justify considering the new information.

7. In their December 2018 submissions, the applicants' representative requested the IAA to exercise its discretion under s.473DC(3) to invite the applicants to attend an interview in person. They submitted that the applicants' credibility cannot be properly assessed merely by reviewing the protection visa interview recording because the applicants have limited education, although they have not explained why their limited education would not similarly impact upon any interview conducted by the IAA. They also submit that the limitations of the interview were evident by the delegate's use of plausibility inferences based on general country information not specific to the case to undermine the credibility of the applicants' evidence and that the delegate's remarks about other Faili Kurdish applicants who altered their claims during the protection visa process may have unduly affected the questioning and credibility findings. I am conducting a fast-track review under the Act, and am not obliged to invite an applicant to provide new information, although I have a discretion to do so. The applicants both provided four page statements with their SHEV applications and both attended SHEV interviews, and having listened to those interviews, I am satisfied that the applicants have had a proper opportunity to put forward their claims for protection. The applicants' representative made submissions to the IAA that refer to the country information considered by the delegate and the delegate's reliance on the situation of other Faili Kurdish applicants. They did not explain what further information the applicants could provide in relation to those or any other matters at an interview. In February 2019 the applicants provided new information to the IAA which I have taken into consideration. Considering all of these matters, I have not invited the applicants to provide further information.

Applicants' claims for protection

8. The first and second applicant made an application for a SHEV on the basis that they are persons in respect of whom Australia owes protection obligations. They provided further information about their protection claims in the statutory declarations submitted with their SHEV application, and in their SHEV interviews on 30 August 2018. The SHEV application form indicated that all four applicants were raising their own claims for protection. The third and fourth applicants refer to their parents' statements and do not make any additional claims.
9. The applicants' claims made in their SHEV application and SHEV interviews can be summarised as follows:
 - They fear that if they were forced to return to Iran, they would be seriously harmed by the Iranian government, including the police and other agencies, because of their Faili Kurdish ethnicity and because they are stateless and undocumented Faili Kurds.
 - The first and second applicants were born in Ilam, Iran. Their parents were all born in Iraq and were expelled from Iraq to Iran before the first and second applicants were born. Their parents were not registered as refugees and neither their parents nor the applicants were ever issued with any identity documentation in Iran. The first applicant was detained and questioned by police on several occasions for not having identity documents or a driver's license.
 - They faced discrimination as ethnic Kurds in Iran.

- They attended school from the age of seven for [number of] years. The first applicant claims that his family were asked to pay for him to attend middle school, but they could not afford it.
 - The first applicant worked as [an] [Occupation 1], and then as [an] [Occupation 2] for twelve to thirteen years. He claims that he was exploited by his boss and paid less than other employees. The second applicant has never been employed.
 - They got married in 2005, but do not have a marriage certificate. They lived together in a unit that was built on the top of a house that was owned by the first applicant's father.
 - They had to pay money whenever they needed medical care, and paid [amount] to the hospital for the caesarean delivery of their son.
 - They left Iran illegally on fake passports which were arranged by the people smuggler. They fear they will be imprisoned if they return to Iran because they left the country illegally, and because they are not citizens and have no right to return there. They also fear harm as failed asylum seekers who have sought protection in a western country.
 - They fear that their sons will not be educated if they return to Iran, or be able to access health care.
10. On 4 February 2019, the applicants submitted further information to the IAA as follows:
- Provided a copy of a green coloured identity card, issued by the Iranian Ministry of Interior, Department of Immigration and Foreign Nationals, in the name of [Name 1], which is claimed to be the temporary refugee card issued to the first applicant's father.
 - Provided a copy of a green coloured identity card, issued by the Iranian Ministry of Interior, Department of Immigration and Foreign Nationals, in the name of [Name 2], the second applicant's mother.

Factual findings

Faili Kurd ethnicity

11. The applicants have consistently claimed that they are Faili Kurds, and that they are undocumented and stateless. They claim that they lived their entire lives in Ilam, Iran before moving to Australia. They speak Faili Kurdish and were assisted by a Faili Kurdish interpreter at their SHEV interviews they also speak Farsi. According to DFAT, Ilam is one of the areas where Faili Kurds in Iran typically reside¹, and Kurdish dialects are spoken in Ilam and Kermansah, with Farsi being used less². The applicants are Shia Muslims, which is the predominant religion of Faili Kurds³. Having regard to the applicants' evidence about their language, religion, and place of residence in Iran, I am satisfied that it is consistent with the country information and that the applicants are of Faili Kurdish ethnicity.

Documentation and statelessness

12. Notwithstanding the consistency of the applicants' claims to be stateless and undocumented Faili Kurds, I have a number of significant concerns about the applicants' overall credibility

¹Department of Foreign Affairs and Trade (DFAT), "DFAT Thematic Report: Faili Kurds in Iraq and Iran", 3 December 2014, CIS2F827D91722, page 6.

² Ibid.

³ Ibid, page 5.

and their claim to be stateless. Country information provides that there are three broad groups of Faili Kurds in Iran, namely 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')⁴. The applicants claim that they fall into the last category.

13. The first and second applicants were questioned about their family's background and circumstances of becoming stateless, as well as their family's efforts to obtain Iraqi citizenship, at their SHEV interviews on 30 August 2018. I note that the country information provides that hundreds of thousands of Faili Kurds were stripped of their Iraqi citizenship and were expelled from Iraq, mostly to Iran, following the Islamic Revolution in Shia-dominated Iran in 1979, when the Iraqi regime became increasingly hostile towards Iran and of Faili Kurds in Iraq who they accused of supporting Iran⁵. Country information⁶ also indicates that Faili Kurds have been returning to Iraq since 2003 and that many have since been able to reclaim their Iraqi citizenship. Since 2006, the Iraqi Government has actively encouraged Faili Kurds to return and reclaim their citizenship, and a legal framework is now in place in Iraq to facilitate this. Under the 2005 Iraqi Constitution, anyone born to an Iraqi father or mother shall be considered Iraqi.
14. The first applicant claimed at his SHEV interview that his father was born in Khanquin, Iraq and that he didn't know where his mother was born but was told she was born in Kurdistan, Iraq. However, in his SHEV application form, he stated that his parents and all of his siblings were born in Ilam, Iran. When the delegate put to the first applicant that he had put in his application that his father he was born in Ilam, he responded: "No I didn't". This is clearly contradicted by the SHEV application form, and beyond this denial he has not provided any explanation. The delegate asked the first applicant when his father had left Iraq, and he responded by saying: "I don't know, we were born in Iran, I think it should have been around [year] or [a different year]". The first applicant was also asked about his understanding of how his family came to be stateless, and said that he did not know. The delegate questioned this and suggested that he would know the reason for his statelessness, and the first applicant said that he had this discussion with his father many times, and his father told him that he was not accepted here (Iran) or in Iraq.
15. The second applicant has consistently claimed that her parents were born in Iraq. She gave evidence in her SHEV interview that her parents were deported from Khanquin, Iraq in 1357 (1979), and when asked by the delegate why they were deported or expelled from Iraq, she said that her father did not explain or talk about it. When asked by the delegate whether her father had any documentation from Iraq, given that he was born at a time when Iraq had a functioning government that issued birth certificates and registration documents, the second applicant said that she hadn't asked him in detail, and that generally her father is very quiet and does not talk or explain much. She also said that her father told her nothing about her family history and ancestry.
16. The delegate also asked both applicants about the steps that their fathers had taken to reclaim their Iraqi citizenship after the fall of the Iraqi regime in 2003, and what steps the applicants had taken themselves after they turned 18. The first applicant said that his father did not tell them anything, and that they never asked him because they had lost everything. When asked about steps he had taken personally to resolve his statelessness, he initially

⁴ Department of Foreign Affairs and Trade (DFAT), "DFAT Thematic Report: Faili Kurds in Iraq and Iran", 3 December 2014, CIS2F827D91722, page 6.

⁵ Ibid.

⁶ Ibid, page 10.

gave evidence that other people could go to a bank to get a loan, buy a car, and obtain a license but that they had to bribe people and he was always scared. When the delegate asked the question again, he claimed that he didn't take any steps himself because he was scared. It has been submitted that such fears are understandable given widespread official and societal discrimination of Kurds in Iran and fear of being deported or detained as a stateless person. The second applicant gave evidence that her father's friends had gone over to Iraq to try to get Iraqi citizenship and could not obtain anything, and that her father had said that the same thing would happen to him. When asked whether she tried to obtain documentation after she turned 18, the second applicant's response was that her father tried his best but couldn't get anything, and that she had got married when she was [age], which did not answer the delegate's question. The applicants' responses to these questions are vague and evasive, and the first applicant's evidence that he was scared because he was a stateless Faili Kurd in Iran does not explain why he did not try to obtain Iraqi citizenship, to which the country information suggests he would have been entitled if he were born to an Iraqi father or mother.

17. The applicants' evidence about their family histories in Iraq is vague and lacking in detail, and I find it incredible that they appear to know nothing about how their parents were expelled from Iraq or how they became stateless, and do not appear to have made any real efforts to obtain this information despite its centrality to their protection visa applications. The first applicant has given inconsistent evidence regarding his parent's place of birth and I do not find the applicants' evidence about their family history or reasons for not obtaining Iraqi citizenship to be persuasive. All of these matters cast significant doubt the credibility of the applicants' claims that their parents were born in Iraq and expelled to Iran as claimed.
18. To the delegate, the applicants claimed that they did not have any documentation in Iran. In his SHEV interview, the first applicant gave evidence that his father was never issued with any identification by the Iranian authorities, and that his father told him that no matter how hard he tried, he couldn't get Iranian citizenship. He claimed that neither his parents nor his siblings were ever registered as refugees or given the green or white refugee registration cards. He did not provide any further information about what his father's attempts to get documents or citizenship involved, and why it was unsuccessful. The second applicant also claimed that her father had tried to get an identity card and documents for his children but he was unable to get any because of his statelessness.
19. The country information indicates that it is probable that the majority of Faili Kurd refugees are registered and have *amayesh* (refugee registration) cards⁷. There is information that some Faili Kurds are unable to register as refugees because they reside in 'no go' areas; because they have not complied with the terms of their prior registration; because they missed the annual re-registration deadline and their *amayesh* card has expired; or because they exited Iran, then returned⁸, but the applicants have not claimed that any of these things applied to them. Given the country information that documents were available for refugees who were expelled from Iraq, I do not accept their suggestion that they would have been unable to obtain such documents in Iran because of their statelessness.
20. To the IAA, the applicants provided copies of a green identity card for the first applicant's father, which is claimed to be a temporary refugee card, and a green identity card for the second applicant's mother. While the applicants have not specified the nature of the second

⁷ Department of Foreign Affairs and Trade (DFAT), "DFAT Thematic Report: Faili Kurds in Iraq and Iran", 3 December 2014, CIS2F827D91722, page 12.

⁸ Ibid, page 7.

applicant's mother's card, the fact that it is issued by the same authority and is identical in format to the first applicant's father's card, suggests that it is also a temporary refugee card. These cards indicate that the first applicant's father and the second applicant's mother are both of Iraqi nationality and were born in Khanaqin Province. The place of issue for both cards is Ilam. Both cards state they are valid for one year but do not contain any date to specify the commencement of that period. Both cards list the names of the holders' dependants/offspring. The cards are both issued by the Iranian Department of Immigration and Foreign Nationals.

21. The country information provides that *amayesh* cards generally expire annually, and there is an annual registration fee which varies depending on location and is paid per family member. DFAT reports that past colours have included green (from the 1980s until end of 2001), white (prior to 1979 and from 2002 onwards) and pink (for undefined periods, probably in the 1980s). 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* card⁹.
22. The applicants claim that they have asked their families repeatedly before and after the delegate's decision if they could provide the applicants with identity documents, and that their parents have only recently found the identity cards. The applicants claim that the first applicant's family eventually found his deceased father's green card amongst his father's possessions, and that the second applicant called her mother many times a week crying because the Australian government cannot properly identify her, and that her mother asked her friends what she should look for, and they found the card she provided which might help her daughter's situation. The second applicant claims that her mother cannot describe what the card she provided is used for because she is physically unwell and emotionally affected by the recent loss of her son. These explanations are unconvincing and disingenuous. Given that registered refugees have greater rights and benefits than unregistered refugees in Iran, I find it difficult to believe that the applicants' parents would have told the applicants that they were stateless and undocumented if indeed the first applicant's father and second applicant's mother had refugee registration cards as now claimed. I also find it incredible that if the cards had existed, and if the applicants had been repeatedly requesting their families to provide identity documents or documents about their status in Iran to help with their claims for protection in Australia, their families would not have at least told them earlier that they had, at one point, held such cards. It also lacks credibility that both families were, coincidentally, then able to locate the cards only following the delegate's decision. For all of these reasons, I do not accept the applicants' claim that their respective parents had the cards and have only just discovered them now.
23. The applicants have not specified their parents' current status or explained why, if their parents previously held green cards, they no longer hold valid cards, if indeed that is the case. Further, the applicants have provided no explanation about why, if their parents had green *amayesh* cards, they did not have *amayesh* cards themselves as children of *amayesh* card holders, as the country information would suggest. In the absence of some explanation of these matters, the information they have now provided seems inconsistent with the applicants' claim to have been undocumented in Iran.
24. In addition, I have concerns about the authenticity of the green identity cards. Looking at the documents themselves, they appear to be in remarkably good condition for cards which, according to the country information referred to by the applicants when submitting them¹⁰,

⁹ Ibid, page 12.

¹⁰ DIBP Tehran, "Feyli Kurds - obtaining identity travel documents", 17 September 2015, CISEC96CF13392.

were issued in the 1980s. The fact that the cards are undated is inconsistent with the country information that *amayesh* cards were issued and expire annually. Further, the fact that the date is blank on both parents' cards, despite being issued to different individuals in different families, points against this being merely an omission or error on one card. It seems an improbable coincidence that both of their parent's cards would be undated. All of these factors cause me to have real concerns about the veracity of the cards. I do not accept that they are authentic *amayesh* cards.

25. The applicants argue that the cards support the credibility of the applicants because they verify their evidence regarding their families' flight from Iraq and status as non-citizens in Iran. In addition to my findings about the authenticity of the cards themselves, the significant inconsistencies in the applicants' evidence about whether their parents were undocumented, their failure to explain why these cards have not impacted their own status in Iran and their unconvincing explanations for only now providing these documents raise serious concerns about the credibility of the applicants' claims regarding their own and their parents' status in Iran and their credibility as witnesses as a whole. Given all of these matters, I give the green cards no weight as evidence that the applicants' parents were born in Iraq or were stateless refugees in Iran.
26. I have additional concerns about the applicants' credibility and their claims regarding their and their family's status in Iran. The applicants gave evidence at their SHEV interviews that the first applicant's father had bought a house in Iran. Country information provides that normally, identity documents would be required to buy a house or establish a utilities account in Iran¹¹. Iranian identity documents include a *shenasnameh* or birth certificate which is issued to all Iranians at birth, and a national identity card, which is issued to all Iranian nationals over the age of 18¹². When the delegate asked how the first applicant's father was able to buy a house without documentation, or how they arranged for utilities to be connected to the house, the first applicant claimed that everything in Iran is built through nepotism and bribes, that Faili Kurds in particular have to pay bribes, and that is what they did. I note that the first applicant gave evidence at his SHEV interview that his father worked as [an] [Occupation 1]. He has not explained how his father was able to buy a house and pay associated bribes from the money he earned as [an][Occupation 1], other than saying it was a very old house. At no point has he indicated that his father was able to buy the house because he possessed a green card at that time, and in any event the purported green identity card submitted to the IAA states "this card is not valid for ownership of real estate properties". I have serious doubts that his father was able to buy a house as an undocumented Faili Kurd, without Iranian identity documentation, as claimed. The ability of the first applicant's father to buy a house, when considered with the evidence suggesting he may not have been born in Iraq as claimed, strongly points to the possibility that he was an Iranian citizen. This is particularly significant for the first applicant's own status given country information¹³ that in general, a child born to an Iranian father acquires citizenship at birth.
27. At the SHEV interview, the delegate asked the second applicant about money she has been sending to her mother in Iran since the second applicant has been in Australia. The delegate also alerted the first applicant to the fact that she was aware that he and the second applicant had been sending money to family members back in Iran, who would have to have some form of documentation to receive those payments. The second applicant agreed that her mother would need to show some sort of identity document to receive the money, and

¹¹ Department of Foreign Affairs and Trade (DFAT), "DFAT Thematic Report: Faili Kurds in Iraq and Iran", 3 December 2014, CIS2F827D91722, page 14.

¹² Ibid, page 13

¹³ Ibid, page 11.

claimed that her mother went to the bank and opened an account. When asked what sort of documents her mother needed to show the bank to open an account, she said that her mother had no documents but paid some bribes, and then claimed that her mother did not actually have a bank account but was given a piece of paper by the bank that she would show and with which she was able to receive the money transfers. I note that she indicated this document was provided by the bank and did not suggest that it was the purported green card. Country information provides that from mid-2008, national identity card became compulsory for obtaining a passport, driver's license and opening bank accounts¹⁴. The second applicant has given shifting evidence about whether or not her mother had opened a bank account, and her claim that bank gave her mother a document that she could use to receive money transfers from overseas upon payment of a bribe lacks credibility. I find it difficult to accept that her mother was able to receive the money without Iranian identity documents or a bank account, casting doubt over her claim that her mother was also undocumented and stateless. The fact that the second applicant's mother has been able to receive this money in Iran, when considered with my concerns over her claimed connection with Iraq and rejected of the claim that she held the identity document submitted to the IAA, strongly suggests that she is also an Iranian citizen.

28. There are other aspects of the evidence which cast doubt on the applicants' claimed circumstances and status in Iran. The third applicant was born in a hospital in Iran by caesarean section. DFAT reports¹⁵ that all children born in hospital in Iran should receive an official birth record, which would normally state the date, time, place and the parents' details, although significant variation is possible. At their SHEV interviews, the delegate asked the applicants whether their son's birth was registered with the Iranian authorities. The first applicant's responded that his son was born in Ilam, and that they just know the day that he was born, but did not answer the delegate's question. The second applicant gave evidence that their son's birth was not registered because they did not have any documents or papers. Neither applicant referred to having an official birth record, which the country information indicates would have been issued, casting doubt on their credibility.
29. At his SHEV interview, the first applicant claimed that he paid USD [amount] to the people smuggler for himself and his wife to travel to Australia, [and] [amount] for the three fake passports for himself, his wife, and son. The delegate asked how the first applicant was able to fund the significant cost of their travel and passports, and the first applicant gave evidence that he was working and saving from his job at the [Occupation 2] shop, and from[doing other work]. He claimed that his boss helped him. When asked how much of the money he had saved himself, he said that he was not exactly sure. The delegate asked the first applicant several times how much money his boss had given him. He responded first by saying that he had worked so hard and he was probably paid money that was owed from his overtime work, and when he was asked a second time how much his boss had given him, he said: "God help us to get it, just to leave the country and to come here". The first applicant's responses to the delegate's questions were evasive and his evidence at his SHEV interview that his boss was willing to help him to leave the country so he could have a peaceful life is inconsistent with the evidence in his statutory declaration that his employer exploited him at work and paid him less than the other workers. Given this and my concerns about the first applicant's credibility, I am not convinced that his boss contributed money towards his travel costs. I also find the claim that the first applicant was able to save such a large amount of money to be inconsistent with his claim that he was disadvantaged and exploited in his

¹⁴ DFAT, "DFAT Thematic Report: Faili Kurds in Iraq and Iran", 3 December 2014, CIS2F827D91722, page 13.

¹⁵ Ibid.

employment as a stateless and undocumented Faili Kurd, suggesting that his circumstances in Iran were not as he claimed.

30. At the SHEV interview, the delegate put to the first applicant that it appeared that he and his family were doing well financially, which did not appear to be consistent with the life of a stateless Kurd. She referred to his evidence that they were able to buy a home and that his average weekly income was good. The first applicant responded that he did not have any financial problems. The second applicant also gave evidence at her SHEV interview that they were not poor or starving, and were able to live. I am satisfied that the applicants did not suffer from financial hardship in Iran.
31. I also have significant concerns about the applicants' evidence regarding their departure from Iran. The applicants claim that they left Iran on fake passports provided by the people smuggler, who was introduced to them by the first applicant's boss. The first applicant claims that he provided their photographs to the people smuggler to make the fake passports, and that the people smuggler told them that he was giving a lot of bribes at the airport because he wanted to make one hundred percent sure that they left, and that he had connections with the Sepah and other officers at the airport. The first applicant gave evidence that he does not remember whether his name or date of birth was inside the passport. When asked if he tried to memorise the details in case he was questioned, he gave evidence that the smugglers told them they would give the passports to them at the last minute, and they were all so stressed they didn't think about it. When asked about the different check points at the airport, he claimed that they checked in their luggage, and when asked how they knew which passport official to go to, he said that there were two queues and they just joined it. He claimed that they got through each checkpoint at the airport without any problem.
32. Country information indicates that Iranian passports have been biometric since February 2011, include sophisticated security features, and would be difficult to manufacture for fraudulent use. While it may be possible to obtain a genuine identification document with the intention of impersonating another person, DFAT assesses that sophisticated border control procedures would make it difficult to use such a document in order to leave Iran¹⁶. Other country information indicates that while counterfeit Iranian passports can be purchased rather easily on the black market, authorities are generally adept at identifying these documents via a "double check" mechanism in the law enforcement database which tracks passport issuance¹⁷. A 2009 Danish Immigration Service report¹⁸ provides information about security procedures on departure from the Imam Khomeini International Airport in Tehran, which includes at least three passport checks, at the luggage check, the check-in counter, and at the Immigration Police counter, where the Immigration Officer checks the passport and personal information on a computer system. The data of the passport holder appears on the screen, together with a photograph of the traveller. Therefore, for the applicants to pass through the airport, it would have required the creation of entire identity profiles onto the immigration system, or for the each of the officials who checked the applicants' passports to be bribed.

¹⁶ DFAT, "DFAT Country Information Report – Iran", 7 June 2018, CIS7B839411226 page 50.

¹⁷ 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, page 3.

¹⁸ 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, page 40.

33. The 2016 DFAT report provides that exit from Imam Khomeini International Airport with a forged passport would be difficult, although not impossible if bribery were involved¹⁹. The Danish Immigration Service report also provides that it is very difficult to leave Iran illegally through an airport due to thorough security checks, but that it may be possible to bribe airport personnel, although it will include bribing a lot of airport staff members since there are several check points at the airport²⁰. The applicants' representative referred the delegate to a recent IAA decision, and cited country information from that case relating to the ability of a person to leave Iran through bribery despite having a case pending before the court. The first applicant claims that the smuggler had connections and gave a lot of bribes at the airport to enable them to leave on the fake passports, but I note that on his evidence, the smuggler did not go with the applicants to the airport. The applicants have not indicated that they paid any bribes themselves to any officials as they passed through the different checkpoints at the airport or that the smuggler told them to see any particular officials at the airport. Indeed, when asked whether they knew which passport official to go to, the first applicant said that he just joined the queue. After considering the first applicant's evidence, and in light of the country information above, I find it implausible that the smuggler was able to bribe all of the officials who the applicants may have come into contact with. I find the applicants' evidence about leaving Iran illegally on fake passports because bribes had been paid is not credible, and the fact that they were able to pass through the airport without any difficulties suggests that they were travelling on legitimate Iranian passports.
34. After considering the first and second applicants' evidence about their families' history in Iraq and their history in Iran, my credibility findings about their evidence, and in particular my concerns about their departure from Iran and the green cards they provided, I am not satisfied that the first and second applicant have been truthful about their status or experiences in Iran. I do not accept that the first and second applicants' parents were born in Iraq, or expelled from Iraq to Iran, or that they were either registered or unregistered refugees. Considering this, and the ability of the first applicant's father to buy a house and the second applicant's mother to receive money transfers through a bank, I find that the first applicant's father and second applicant's mother had Iranian citizenship. Because of this and my broader concerns around their evidence, I am not satisfied that the first and second applicants were undocumented and stateless in Iran. As set out above, a child acquires Iranian citizenship from their father. I am satisfied that the first applicant is an Iranian citizen through his father. Country information also provides that a 2006 constitutional amendment goes some way towards providing for the children of Iranian mothers to be able to acquire citizenship, and that a woman who marries an Iranian citizen assumes the husband's citizenship automatically²¹. On that basis, I am also satisfied that the second applicant is an Iranian citizen through her marriage to the first applicant, if not in her own right through her Iranian parents. I find that the applicants departed Iran on their own genuine Iranian passports.
35. I find that the applicants had a lawful, registered marriage. Having being born to an Iranian father, his sons acquire Iranian citizenship at birth, and I find that the applicants' sons are Iranian citizens. I do not accept that the third and fourth applicants are stateless. I find that the applicants' country of nationality and receiving country is Iran.

Claimed experiences in Iran

¹⁹ DFAT, "DFAT Country Information Report Iran April 2016", 21 April 2016, CIS38A8012677, page 30.

²⁰ 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, page 36.

²¹ DFAT, "DFAT Thematic Report: Faili Kurds in Iraq and Iran", 3 December 2014, CIS2F827D91722, page 11.

36. The first and second applicants claim to have attended only five years of schooling and to have had to pay to access to medical care. I have not accepted the first and second applicants' claim to be undocumented and stateless and have found them to be Iranian citizens. As I have said above, the applicants appear to have been able to obtain medical care, such as for the birth of the third applicant. Their claims to have been limited in regard to medical care and education is inconsistent with information from DFAT that Faili Kurds who are also Iranian citizens can access services on the same basis as other Iranian citizens²². I do not find the applicants credible witnesses and am not satisfied that they were unable to access education and healthcare in Iran as claimed.
37. The first applicant claims that because he is a Faili Kurd, he was exploited and discriminated against at work by his employers and by customers, but I find that this evidence is lacking in detail, and inconsistent with the claim at his SHEV interview that his boss supported him financially with his travel costs for Australia, and that they did not have any financial problems. I do not find this claim to be credible. Given my concerns about the first applicant's credibility as a witness, and my findings that he is not undocumented and stateless, I do not accept that he was made to do work without payment.
38. In his statutory declaration, the first applicant claimed that he was detained and questioned by police on several occasions for not having identity documents or a driver's license, and was taken to the police station and held until he could pay a bribe. At his SHEV interview, he claimed that he was detained many times. He also claimed that the authorities would come to his work and demand he do work for free because he was Kurdish and didn't have any documents. The first applicant also made a claim that in 2011, he was pulled over by the police when riding his motorbike to work, and that the police asked for his licence and registration papers which the first applicant told them he couldn't provide because he is Kurdish. The police then confiscated his motorbike and demanded he pay a bribe. The applicant has linked all of these claims to his lack of documentation and as I have not accepted the claim that he was stateless and had no identity documents, I do not accept any of these events occurred. I do not accept that the first applicant has an adverse profile with the authorities in Iran.

Other claims

39. The applicants also claimed that they would be harmed if they return to Iran because they left Iran illegally on fake passports and have no right to return there. I have found that the applicants left Iran on legitimate Iranian passports and are Iranian citizens. They also fear harm on the basis of being failed asylum seekers returning from a western country. I accept that if the applicants return to Iran, it will be as failed asylum seekers from Australia.
40. The applicants also claimed in their statutory declarations that they met with UNHCR in [City 1 in Country 1], who gave them a letter which would allow them to stay and move around [City 1 in Country 1] while UNHCR decided their case. The second applicant said that they could not provide any documents to UNHCR but were given the letter anyway. They claim that they lost the letter when they were detained in [Country 1]. I note that the applicants have not claimed that UNHCR recognised them as refugees. On the evidence before me, I accept that they may have had contact with UNHCR in [Country 1] and been given a letter, but I am not satisfied that they were recognised as refugees by UNHCR.

²² DFAT, "DFAT Thematic Report: Faili Kurds in Iraq and Iran", 3 December 2014, CIS2F827D91722, page 14.

Refugee assessment

41. 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

42. 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.
43. The applicants claim to fear that they will be arrested, killed or seriously harmed on the basis they are undocumented and stateless Faili Kurds.
44. I have rejected the applicants’ claims to be stateless and undocumented and am not satisfied there is a real chance of them being harmed for those reasons.
45. I accept the applicants are of Faili Kurdish ethnicity. DFAT is not aware of cases where Faili Kurds who are also Iranian citizens (as I have found the applicants to be) have faced adverse attention specifically because of their ethnicity²³, and has said they can access services on the same basis as other Iranian citizens and appear to face little to no discrimination in access to services on the basis of their ethnicity or religion²⁴. DFAT reports that Faili Kurds who are Iranian citizens have access to employment and state protection on the same basis as other Iranian citizens²⁵, although I note that country information in submissions to the delegate reports that Kurds in Iran face institutional discrimination which affects their access to basic services such as housing, employment and education, but that generally it will not reach the level of being persecutory²⁶. On the societal treatment of Faili Kurds, DFAT has not received reports of Faili Kurds being targeted for extortion or being subject to harassment, detention or physical assault, but their contacts were not prepared to rule out the possibility

²³ DFAT, “DFAT Thematic Report: Faili Kurds in Iraq and Iran”, 3 December 2014, CIS2F827D91722, page 9.

²⁴ Ibid, page 14.

²⁵ Ibid, page 15 and 17.

²⁶ United Kingdom: Home Office, Country Information and Guidance - Iran: Kurds and Kurdish political groups, July 2016, page 6.

of this occurring to individual Faili Kurds, due to their vulnerability as refugees (where that is the case) and their Kurdish identity. Therefore, DFAT assesses that this type of societal discrimination against Faili Kurds is not widespread, but cannot be ruled out in individual cases²⁷. It is also possible that individual members of the Basij discriminate against ethnic and religious minorities, including Faili Kurds²⁸. Other country information indicates that Kurds, as one of Iran's disadvantaged ethnic minorities, remained subject to entrenched discrimination, curtailing their access to employment, adequate housing, political office, and their exercise of cultural, civil and political rights, and that members of minorities who spoke out against violations of their political, cultural and linguistic rights faced arbitrary arrest, torture and other ill-treatment, grossly unfair trials, imprisonment, and in some cases the death penalty²⁹. Reports also indicate that minority rights activists are consistently threatened and arrested, that ethnic minorities including Kurds complain of discrimination, and Kurdish opposition groups suspected of separatist aspirations, such as the Democratic Party of Iranian Kurdistan (KDPI), are brutally suppressed³⁰. There is also country information before me about attacks on an Iranian Kurdish opposition group base in Iraq³¹ and the execution of four Kurdish political activists³².

46. While some of the country information above refers to discrimination faced by minority groups in Iran, it appears to relate to Kurds more broadly. The majority of Iranian Kurds are Sunni Muslim, unlike Faili Kurds who are majority Shia, and DFAT has said it can be difficult to distinguish whether discrimination against Kurds is religious or ethnic³³. I prefer the information from DFAT which, specifically in relation to Faili Kurds, assesses that those who are Iranian citizens face little to no discrimination when accessing services.
47. I have not accepted the applicants' claim that there were not able to seek the benefits of the Iranian government including healthcare and education, or that the first applicant was discriminated against and exploited in employment and harassed and detained by authorities. I note that on the first applicant's evidence, he worked in Iran as [an] [Occupation 2] for about 12 years, and as a[an] [Occupation 1] after he left school. I am satisfied that the first applicant would be able to again find employment if he returned to Iran. I am also satisfied that the third and fourth applicants would have access to government education and healthcare if they returned to Iran. The applicants' families continue to reside in Ilam, where there is a large Faili Kurd population, and I am not satisfied on the evidence that they have faced any harm. I note that the applicants have not claimed that they were members of a political or a Kurdish opposition group or politically active while they lived in Iran, or that they have been politically active in Australia, or intend to be politically active if they return to Iran. The applicants have also not claimed that they spoke out against violations of their political, cultural and linguistic rights in Iran or Australia or that they intend to do so in the future. I am willing to accept the applicants may experience some occasional low-level discrimination on account of their ethnicity, but am not satisfied there is a real chance they would experience discrimination at a level that would amount to serious harm, or that there is otherwise a real chance of the applicants being harmed by Iranian authorities or any other persons on account of their Kurdish ethnicity.

²⁷ DFAT, "DFAT Thematic Report: Faili Kurds in Iraq and Iran", 3 December 2014, CIS2F827D91722, page 16.

²⁸ Ibid, page 17.

²⁹ Amnesty International, "Amnesty International Report 2016-2017", NG2A465F54, page 194.

³⁰ Freedom House, Freedom in the World 2014 - Iran, 23 January 2014.

³¹ Reuters, Iran attacks Iranian Kurdish opposition group base in Iraq, 9 September 2018.

³² Unrepresented Nations and People's Organisation, Iranian Kurdistan, 25 March 2008.

³³ DFAT, "DFAT Country Information Report - Iran", 7 June 2018, CIS7B839411226.

48. They also fear harm on the basis that they have sought protection in Australia and are failed asylum seekers. The applicants claim that they gave their passports to the people smugglers in [Country 1] who did not return them. Given that the applicants do not have passports, they will require temporary travel documents to be issued by Iranian diplomatic representatives overseas in order to return to Iran³⁴. Country information provides that authorities at the airport in Iran will be forewarned about the return of a person on a temporary travel document because of Iran's sophisticated government systems³⁵, and in these circumstances, I accept that the Iranian authorities may infer that the applicants have sought asylum in Australia. I have had regard to the country information³⁶ that Iran has historically refused to issue travel documents to allow the involuntary return of its citizens, such as the applicants who arrived in Australia in 2013, from abroad, and find that if the applicants were to return to Iran it would be on the basis it was voluntary.
49. An Amnesty International report from 2012³⁷ states that asylum seekers are interrogated on return, whether or not they have been political activists in Iran or abroad, and that returnees will be held for a few days until it is clear to the police that they have not been involved in political activity. If the police can prove that the person was not active and has not done or said anything that could damage the reputation of the Islamic Republic, then they are released. Submissions also refer to a Kurdish failed asylum seeker being detained on return to Iran in 2011.³⁸ However I note that DFAT³⁹ indicates that the authorities will usually only question a voluntary returnee on return if they have already come to official attention, such as committing a crime and states that according to international observers, Iranian authorities pay little attention to failed asylum seekers on their return to Iran and have little interest in prosecuting failed asylum seekers for activities conducted outside Iran.
50. Considering this information, I prefer the more recent DFAT assessment. I do not accept that the authorities regard people who left Iran and claimed asylum to be anti-regime. For the reasons set out above, I do not accept that the applicants left Iran illegally on fake passports, and have found that they are Iranian citizens. I do not accept that the applicants have come to the adverse attention of the authorities, or that there is a real chance they will be considered of interest because they are returning as failed asylum seekers from a western country, for their Faili Kurd ethnicity, or for any other reason. I am not satisfied there is a real chance that the applicants will suffer any harm in Iran as a result of being identified as Faili Kurd failed asylum seekers who sought protection in western country.
51. I have considered the applicants claims as a whole. Even taking their claims together I am not satisfied that the applicants face a real chance of harm now or in the reasonably foreseeable future, on account of their ethnicity as Faili Kurds who are Iranian citizens or because they are failed asylum seekers who sought protection in a western country, or any combination of these matters.

³⁴ DFAT, "DFAT Country Information Report Iran April 2016", 21 April 2016, CIS38A8012677, page 29; DFAT, "DFAT Country Information Report - Iran", 7 June 2018, CIS7B839411226, page 49.

³⁵ DFAT, "DFAT Country Information Report Iran April 2016", 21 April 2016, CIS38A8012677, page 29.

³⁶ DFAT, "DFAT Country Information Report - Iran", 7 June 2018, CIS7B839411226, page 49; DFAT, "DFAT Country Information Report Iran April 2016", 21 April 2016, CIS38A8012677, page 28.

³⁷ Amnesty International, "'We are ordered to crush you': Expanding Repression of Dissent in Iran", 28 February 2012, p.56, CIS22610, page 60

³⁸ Ireland: Refugee Documentation Centre, "Iran: Treatment of returned failed asylum seekers in Iran", 5 January 2012.

³⁹ DFAT, "DFAT Country Information Report - Iran", 7 June 2018, CIS7B839411226, page 49; DFAT, "DFAT Country Information Report Iran April 2016", 21 April 2016, CIS38A8012677, page 29.

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

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 accepted that the applicants may face some discrimination as Faili Kurds, but considering the country information and their own past experiences, I do not consider there is a real risk that the discrimination that they may suffer will involve the level of pain, suffering or humiliation contemplated in the definitions of torture, cruel or inhumane treatment or punishment or degrading treatment or punishment or that there is otherwise a real risk of them suffering significant harm as described.
56. I have otherwise found that the applicants do not face a real chance of harm in Iran. The Court has held that real chance in the refugee context has the same standard as real risk in a complementary protection assessment⁴⁰. I find that there is no real risk that the applicants will suffer significant harm.
57. Considering the claims as a whole, I am not satisfied that there is a real risk that the applicants will suffer significant harm in 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).

⁴⁰ *MIAC v SZQRB* (2013) 210 FCR 505.

Member of same family unit

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 a spouse and dependent children of the family head.
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

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

Applicable law

Migration Act 1958

5 (1) Interpretation

In this Act, unless the contrary intention appears:

...

bogus document, in relation to a person, means a document that the Minister reasonably suspects is a document that:

- (a) purports to have been, but was not, issued in respect of the person; or
- (b) is counterfeit or has been altered by a person who does not have authority to do so; or
- (c) was obtained because of a false or misleading statement, whether or not made knowingly

...

cruel or inhuman treatment or punishment means an act or omission by which:

- (a) severe pain or suffering, whether physical or mental, is intentionally inflicted on a person; or
- (b) pain or suffering, whether physical or mental, is intentionally inflicted on a person so long as, in all the circumstances, the act or omission could reasonably be regarded as cruel or inhuman in nature;

but does not include an act or omission:

- (c) that is not inconsistent with Article 7 of the Covenant; or
- (d) arising only from, inherent in or incidental to, lawful sanctions that are not inconsistent with the Articles of the Covenant.

...

degrading treatment or punishment means an act or omission that causes, and is intended to cause, extreme humiliation which is unreasonable, but does not include an act or omission:

- (a) that is not inconsistent with Article 7 of the Covenant; or
- (b) that causes, and is intended to cause, extreme humiliation arising only from, inherent in or incidental to, lawful sanctions that are not inconsistent with the Articles of the Covenant.

...

receiving country, in relation to a non-citizen, means:

- (a) a country of which the non-citizen is a national, to be determined solely by reference to the law of the relevant country; or
- (b) if the non-citizen has no country of nationality—a country of his or her former habitual residence, regardless of whether it would be possible to return the non-citizen to the country.

...

torture means an act or omission by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person:

- (a) for the purpose of obtaining from the person or from a third person information or a confession; or
- (b) for the purpose of punishing the person for an act which that person or a third person has committed or is suspected of having committed; or
- (c) for the purpose of intimidating or coercing the person or a third person; or
- (d) for a purpose related to a purpose mentioned in paragraph (a), (b) or (c); or
- (e) for any reason based on discrimination that is inconsistent with the Articles of the Covenant;

but does not include an act or omission arising only from, inherent in or incidental to, lawful sanctions that are not inconsistent with the Articles of the Covenant.

...

5H Meaning of refugee

(1) For the purposes of the application of this Act and the regulations to a particular person in Australia, the person is a refugee if the person:

- (a) in a case where the person has a nationality—is outside the country of his or her nationality and, owing to a well-founded fear of persecution, is unable or unwilling to avail himself or herself of the protection of that country; or
- (b) in a case where the person does not have a nationality—is outside the country of his or her former habitual residence and owing to a well-founded fear of persecution, is unable or unwilling to return to it.

Note: For the meaning of ***well-founded fear of persecution***, see section 5J.

...

5J Meaning of well-founded fear of persecution

- (1) For the purposes of the application of this Act and the regulations to a particular person, the person has a well-founded fear of persecution if:
 - (a) the person fears being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion; and
 - (b) there is a real chance that, if the person returned to the receiving country, the person would be persecuted for one or more of the reasons mentioned in paragraph (a); and
 - (c) the real chance of persecution relates to all areas of a receiving country.
Note: For membership of a particular social group, see sections 5K and 5L.
- (2) A person does not have a well-founded fear of persecution if effective protection measures are available to the person in a receiving country.
Note: For effective protection measures, see section 5LA.
- (3) A person does not have a well-founded fear of persecution if the person could take reasonable steps to modify his or her behaviour so as to avoid a real chance of persecution in a receiving country, other than a modification that would:
 - (a) conflict with a characteristic that is fundamental to the person's identity or conscience; or
 - (b) conceal an innate or immutable characteristic of the person; or
 - (c) without limiting paragraph (a) or (b), require the person to do any of the following:
 - (i) alter his or her religious beliefs, including by renouncing a religious conversion, or conceal his or her true religious beliefs, or cease to be involved in the practice of his or her faith;
 - (ii) conceal his or her true race, ethnicity, nationality or country of origin;
 - (iii) alter his or her political beliefs or conceal his or her true political beliefs;
 - (iv) conceal a physical, psychological or intellectual disability;
 - (v) enter into or remain in a marriage to which that person is opposed, or accept the forced marriage of a child;
 - (vi) alter his or her sexual orientation or gender identity or conceal his or her true sexual orientation, gender identity or intersex status.
- (4) If a person fears persecution for one or more of the reasons mentioned in paragraph (1)(a):
 - (a) that reason must be the essential and significant reason, or those reasons must be the essential and significant reasons, for the persecution; and
 - (b) the persecution must involve serious harm to the person; and
 - (c) the persecution must involve systematic and discriminatory conduct.
- (5) Without limiting what is serious harm for the purposes of paragraph (4)(b), the following are instances of **serious harm** for the purposes of that paragraph:
 - (a) a threat to the person's life or liberty;
 - (b) significant physical harassment of the person;
 - (c) significant physical ill-treatment of the person;
 - (d) significant economic hardship that threatens the person's capacity to subsist;
 - (e) denial of access to basic services, where the denial threatens the person's capacity to subsist;
 - (f) denial of capacity to earn a livelihood of any kind, where the denial threatens the person's capacity to subsist.
- (6) In determining whether the person has a **well-founded fear of persecution** for one or more of the reasons mentioned in paragraph (1)(a), any conduct engaged in by the person in Australia is to be disregarded unless the person satisfies the Minister that the person engaged in the conduct otherwise than for the purpose of strengthening the person's claim to be a refugee.

5K Membership of a particular social group consisting of family

For the purposes of the application of this Act and the regulations to a particular person (the **first person**), in determining whether the first person has a well-founded fear of persecution for the reason of membership of a particular social group that consists of the first person's family:

- (a) disregard any fear of persecution, or any persecution, that any other member or former member (whether alive or dead) of the family has ever experienced, where the reason for the fear or persecution is not a reason mentioned in paragraph 5J(1)(a); and
- (b) disregard any fear of persecution, or any persecution, that:
 - (i) the first person has ever experienced; or

- (ii) any other member or former member (whether alive or dead) of the family has ever experienced;

where it is reasonable to conclude that the fear or persecution would not exist if it were assumed that the fear or persecution mentioned in paragraph (a) had never existed.

Note: Section 5G may be relevant for determining family relationships for the purposes of this section.

5L Membership of a particular social group other than family

For the purposes of the application of this Act and the regulations to a particular person, the person is to be treated as a member of a particular social group (other than the person's family) if:

- (a) a characteristic is shared by each member of the group; and
- (b) the person shares, or is perceived as sharing, the characteristic; and
- (c) any of the following apply:
 - (i) the characteristic is an innate or immutable characteristic;
 - (ii) the characteristic is so fundamental to a member's identity or conscience, the member should not be forced to renounce it;
 - (iii) the characteristic distinguishes the group from society; and
- (d) the characteristic is not a fear of persecution.

5LA Effective protection measures

- (1) For the purposes of the application of this Act and the regulations to a particular person, effective protection measures are available to the person in a receiving country if:
 - (a) protection against persecution could be provided to the person by:
 - (i) the relevant State; or
 - (ii) a party or organisation, including an international organisation, that controls the relevant State or a substantial part of the territory of the relevant State; and
 - (b) the relevant State, party or organisation mentioned in paragraph (a) is willing and able to offer such protection.
- (2) A relevant State, party or organisation mentioned in paragraph (1)(a) is taken to be able to offer protection against persecution to a person if:
 - (a) the person can access the protection; and
 - (b) the protection is durable; and
 - (c) in the case of protection provided by the relevant State—the protection consists of an appropriate criminal law, a reasonably effective police force and an impartial judicial system.

...

36 Protection visas – criteria provided for by this Act

...

- (2) A criterion for a protection visa is that the applicant for the visa is:
 - (a) a non-citizen in Australia in respect of whom the Minister is satisfied Australia has protection obligations because the person is a refugee; or
 - (aa) a non-citizen in Australia (other than a non-citizen mentioned in paragraph (a)) in respect of whom the Minister is satisfied Australia has protection obligations because the Minister has substantial grounds for believing that, as a necessary and foreseeable consequence of the non-citizen being removed from Australia to a receiving country, there is a real risk that the non-citizen will suffer significant harm; or
 - (b) a non-citizen in Australia who is a member of the same family unit as a non-citizen who:
 - (i) is mentioned in paragraph (a); and
 - (ii) holds a protection visa of the same class as that applied for by the applicant; or
 - (c) a non-citizen in Australia who is a member of the same family unit as a non-citizen who:
 - (i) is mentioned in paragraph (aa); and
 - (ii) holds a protection visa of the same class as that applied for by the applicant.
- (2A) A non-citizen will suffer **significant harm** if:
 - (a) the non-citizen will be arbitrarily deprived of his or her life; or
 - (b) the death penalty will be carried out on the non-citizen; or
 - (c) the non-citizen will be subjected to torture; or
 - (d) the non-citizen will be subjected to cruel or inhuman treatment or punishment; or
 - (e) the non-citizen will be subjected to degrading treatment or punishment.

- (2B) However, there is taken not to be a real risk that a non-citizen will suffer significant harm in a country if the Minister is satisfied that:
- (a) it would be reasonable for the non-citizen to relocate to an area of the country where there would not be a real risk that the non-citizen will suffer significant harm; or
 - (b) the non-citizen could obtain, from an authority of the country, protection such that there would not be a real risk that the non-citizen will suffer significant harm; or
 - (c) the real risk is one faced by the population of the country generally and is not faced by the non-citizen personally.

...

Protection obligations

- (3) Australia is taken not to have protection obligations in respect of a non-citizen who has not taken all possible steps to avail himself or herself of a right to enter and reside in, whether temporarily or permanently and however that right arose or is expressed, any country apart from Australia, including countries of which the non-citizen is a national.
- (4) However, subsection (3) does not apply in relation to a country in respect of which:
- (a) the non-citizen has a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion; or
 - (b) the Minister has substantial grounds for believing that, as a necessary and foreseeable consequence of the non-citizen availing himself or herself of a right mentioned in subsection (3), there would be a real risk that the non-citizen will suffer significant harm in relation to the country.
- (5) Subsection (3) does not apply in relation to a country if the non-citizen has a well-founded fear that:
- (a) the country will return the non-citizen to another country; and
 - (b) the non-citizen will be persecuted in that other country for reasons of race, religion, nationality, membership of a particular social group or political opinion.
- (5A) Also, subsection (3) does not apply in relation to a country if:
- (a) the non-citizen has a well-founded fear that the country will return the non-citizen to another country; and
 - (b) the Minister has substantial grounds for believing that, as a necessary and foreseeable consequence of the non-citizen availing himself or herself of a right mentioned in subsection (3), there would be a real risk that the non-citizen will suffer significant harm in relation to the other country.

Determining nationality

- (6) For the purposes of subsection (3), the question of whether a non-citizen is a national of a particular country must be determined solely by reference to the law of that country.
- (7) Subsection (6) does not, by implication, affect the interpretation of any other provision of this Act.