



**Australian Government**  

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**Immigration Assessment Authority**

**Decision and Reasons**

**Referred application**

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IRAN

IAA reference: IAA19/06253

Date and time of decision: 29 March 2019 09:43:00

A Lindsay, 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 an undocumented stateless Faili Kurd and Shia Muslim from Iran. The applicant arrived in Australia [in] April 2013 and on 18 March 2017 he lodged an application for a Safe Haven Protection Visa (SHEV).
2. On 14 January 2019 a delegate of the Minister for Immigration (the delegate) refused the grant of this on the grounds that the applicant was not stateless, was an Iranian citizen and that he did not face a real chance of serious harm or a real risk of significant harm if he were to return to Iran.

### Information before the IAA

3. I have had regard to the material given by the Secretary under s.473CB of the *Migration Act 1958* (the Act).
4. On 7 February 2019 a submission was received from a representative on behalf of the applicant. To the extent that they discuss the findings of and other matters before the delegate this is not new information for the purposes of ss.473DC(1) and 473DD and I have considered them.

### Applicant's claims for protection

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5. The applicant's claims can be summarised as follows:
  - His name is '[the Applicant]' and he is an undocumented stateless Faili Kurd who was born and lived his entire life in Iran. He is unable to produce any documents to show his true identity.
  - He suffered discrimination throughout his life in Iran because of this ethnicity as a Faili Kurd and status as a stateless person and was unable to obtain an education, access to health services or lawful work.
  - He is agnostic.
  - His mother committed [suicide] following the death of his brother in a car accident.
  - His father left him and his siblings, while they were still children, to fend for themselves after the death of his mother.
  - His sister committed [suicide] seven or eight years after their father left them with no support.
  - He entered into an agreement to marry [Ms A] and during their engagement she demanded expensive gifts and was disrespectful to him. He called off the engagement and was required by [Ms A]'s family to pay the mahriyeh (dowry) of [number] gold coins, which he could not afford. He was assaulted by [Ms A]'s father and uncles whenever he left the house and they threatened to kill him. [Ms A]'s family made a complaint to the police. The police issued a summons for him to attend court which he did not attend and decided to leave Iran because if he stayed he would either be killed by her family or the authorities would throw him in jail.

- He left Iran on a fraudulently obtained passport issued in his own name via the Tehran Imam Khomeini International Airport. He will face punishment for leaving the country on a false passport if he were to return to Iran.
- In addition to the [amount] Tomans he paid for his fraudulent passport, he paid: [amount]USD to the smuggler to facilitate his travel from [Country 1] to Australia; [amount] USD to an Immigration Officer upon his arrival in [Country 1] and he paid for his own airline tickets and expenses from Iran to [Country 1].
- He did not transfer any money to his sister, or any person in Iran, from Australia.
- If he were to return to Iran he could not express his political views because he would be perceived as anti-regime.
- He will be identified as a returning asylum seeker.

### **Factual findings**

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6. The applicant has not produced any documents to confirm his identity. I accept his identity is [the Applicant] as claimed. For the reasons below I do not accept the applicant is stateless and I am satisfied that the applicant is an Iranian citizen and Iran is the receiving country for the purposes of this review.
7. The applicant has provided inconsistent information about a number of matters related to his claims for protection throughout the visa application process.
8. The applicant speaks Kurdish Faili and advised that it was his preferred dialect to communicate in. When encouraged during the SHEV interview by the delegate to try to locate or identify any documentation from Iran that may assist in establishing his identity, he said on two separate occasions “my identity is my language” without actually providing the delegate with a meaningful response to her request.
9. The applicant claims his entire family are undocumented (unregistered) refugees from Iraq and that his father, mother and [one] brother were all born in Iraq and were forced out by Saddam Hussein for being Shias in about 1980. He and the rest of his siblings were born in Iran and he lived his entire life in the Ilam province. The applicant advised that his paternal grandparents were born in Iran and they moved to Iraq but he did not know when this occurred. He claimed his paternal grandfather was born 100 years earlier and looked after livestock in the mountains [in] the Ilam Province. He identifies as a member of [local tribe].
10. The Department of Foreign Affairs and Trade (DFAT) reports that Faili Kurds in Iran typically reside close to the border to Iraq, particularly in the Kermanshah and Ilam provinces where Kurdish dialects are spoken, Farsi is used less and they are predominantly Shia Muslims.<sup>1</sup> Iran has issued refugees with different types of registration documents over the years, including White Cards which the UNHCR reports were mainly issued when registering those who arrived prior to 1979 and those who arrived during the 1980’s were issued with Green Cards.<sup>2</sup>
11. I am willing to accept the applicant is a Faili Kurd due to his ability to speak in the Kurdish Faili language and the country information outlined above which confirms that the Ilam province,

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<sup>1</sup> Department of Foreign Affairs and Trade (DFAT), “DFAT Thematic Report: Faili Kurds in Iraq and Iran”, 3 December 2014, CIS2F827D91722.

<sup>2</sup> DIBP Tehran, "Feyli Kurds - obtaining identity travel documents", 17 September 2015, CISEC96CF13392.

where the applicant has consistently claimed to live his whole life, is predominantly inhabited by Faili Kurds.

12. The applicant asserts he and his family are undocumented and stateless, he is not a citizen of Iran despite living there his entire life and has no entitlement to citizenship in any country. The applicant said that neither he nor his family were able to own anything and they were unable to access a formal education or health care because of this. The applicant claimed he was only able to complete five years of schooling in Iran to learn how to read and write but didn't continue after that because he would have had to pay to attend due to his statelessness. The applicant spoke on more than one occasion of how miserable his life was in Iran.
13. During the Case Assessment and Biodata Interview on 14 May 2013, held just over two weeks after the applicant arrived in Australia, he advised he held a White Card that was issued in Iran and was still held there at that time. In the Arrival Interview, conducted just over one month after the applicant arrived in Australia, he advised he had no Iranian documents to send in order to prove his identity. The applicant then replicated this later account about having no identity documentation to provide in his SHEV application and SHEV interview. When the delegate sought to clarify why the applicant's version had changed about his identity documents and that he had initially told the Department that he possessed a White Card and that it was in Iran, the applicant said, "No. I don't think so. I wasn't in a good mood or mental condition. I don't think so." During the Case Assessment and Biodata interview the applicant said 'no' when asked if he had any health concerns.
14. At the end of the SHEV interview, the migration agent after having had the opportunity to speak privately with the applicant, said that the applicant and his family were issued Green Cards at one time but they were taken away by authorities around the time that his mother died and were not replaced.
15. Despite originally stating he held a White Card which he later denied, the applicant's later account is that he has no documents issued to him by the Iranian authorities, meaning he was not a registered refugee in Iran. When asked about what documents he might hold in Iran, including school records (given he stated he completed up to year [grade]), the applicant said he doesn't know where his school records are and that perhaps they were lost after his mum passed away.
16. Relevantly to this issue, the applicant during the Case Assessment and Biodata Interview the applicant said he was illiterate in the Farsi language. In his Arrival Interview he reported a somewhat more advanced level of the use of Farsi language saying he could speak it a little bit but was more comfortable using Kurdish. His assertion of illiteracy in the Farsi language, or only being able to speak it a little bit, in his earlier interviews conflicts with his evidence in the SHEV application where he stated he could read, write and understand Farsi.
17. The applicant claimed [one] brother was killed in a car accident in 1996. The applicant said that despite the other party involved, who was a Persian, being at fault authorities blamed [the applicant's brother] for the accident and did not take any further action which they felt was because his brother was stateless and not an Iranian citizen. I accept the applicant's [brother] was killed in a car accident as claimed. The applicant's version throughout the application process regarding the death of his [brother] in this manner has been consistent and he has made appropriate references to the lack of justice he feels his family received from the authorities following this accident. Given my conclusion that the applicant is not stateless, I do not accept the authorities failed to take appropriate action in relation to this

incident because the driver of the motor vehicle was an Iranian and the applicant's brother was not because his brother would also be an Iranian citizen.

18. The applicant has provided conflicting information during the application process about the way both his mother and sister died. In the Arrival Interview he advised that his mother died [in] 1997, from [Medical condition 1] and that his sister died in 2004 [from] [Medical condition 2]. The applicant also made mention of his sister dying from [Medical condition 2] in his statement of claim and he also explained that they had no money to take her to the hospital. The timing of the passing of his sister has been consistently provided by the applicant.
19. At the beginning of the SHEV interview when asked if there was anything he would like to add or change in his application, the applicant said because talking about it 'made him feel bad' the previous information he had provided about the way his mother and sister died was not true and that he wanted to correct this. The applicant said that both his mother and sister had died by committing [suicide] but for different reasons and at different times. His mother's suicide was reported by the applicant to be the result of her attending scene of the accident that killed her [son] and seeing his body covered in blood. The applicant said that his sister became severely depressed after their mother died and father remarried and eventually left the children to fend for themselves whilst he moved with his new family to Tehran. The applicant claimed to have been present when his sister took her own life [and] then took her to hospital but after two or three days she passed away.
20. During the Arrival Interview the applicant was advised that he was expected to give true and correct answers to the questions being asked and that he should understand that if the information he gave at a future interview was different from what he said on this occasion, it could raise doubts about the reliability of what he has said. The applicant confirmed he understood what had been said and that he also understood the interpreter. At the end of the interview, when asked if there was anything else he would like to say, the applicant said 'no'.
21. I accept that the applicant's mother died in 1997 and that his sister died in 2004. I do not accept they died as a result of suicide, but rather I am satisfied his mother died of [Medical condition 1] and his sister of [Medical condition 2]. I am unconvinced by the applicant's explanation for why he claims to have provided false information to the Department about the death of his mother and sister on two separate occasions. The applicant was quite comfortable giving evidence at the first instance, which has remained consistent throughout the process, about the death of his [brother] in a car accident. His evidence during the Arrival Interview about the way his mother and sister died, which I have listened to, is unambiguous and clearly stated. I don't accept his later explanation of 'feeling bad about it' given he was quite forthcoming about the death of his brother in what could only be described as tragic and unjust circumstances but felt the need to lie about the way his mother and sister died.
22. The applicant claimed his father remarried after the death of his mother in 1997 and eventually left the applicant and his siblings to fend for themselves whilst he moved with his new wife to Tehran. The applicant said his [surviving] brother started working straight away in [a certain] industry and the applicant himself started work three years later [in] Ilam before working [in a certain] industry himself [until] when he left Iran in 2013. Due to being stateless, the applicant claimed to have received only half of what the normal pay rate was for his work as a labourer and he wasn't entitled to any insurance.

23. The applicant's employment history varied throughout the application process. His original version from the arrival interview, which he later repeated in his SHEV interview, was that after his father left he was forced on work [in] Ilam [from] 1998 for a few years, before commencing in the [industry] in 2000. This differs with the employment history listed by the applicant in his SHEV application where he said that until 1998 he was a child playing at home with siblings and supported by his family, having finished his schooling in 1995 and he commenced working [in] 1998 with no mention of [that particular work]. The applicant said his father and his new wife lived with them for a while in Ilam before moving to Tehran. I am willing to accept that the applicant's father remarried after the death of his mother in 1997 and that at some stage after that moved with his new wife to Tehran, leaving the applicant and his siblings behind in Ilam. There is no evidence before me to confirm when this happened.
24. During the SHEV interview, the delegate asked if the applicant had sent any money to his family in Iran, which he denied multiple times. The delegate explained that information held by the Department showed that he had transferred money to Iran. The information the delegate was speaking about related to five transactions in amounts varying between \$2,000 and \$3,000 between May 2015 and October 2017 as follows:
- Two transfers from '[variant of the Applicant's name]' with the applicant's correct address and mobile phone number to '[Ms B]' of Tehran, Iran.
  - Transfer from '[the Applicant]' and the applicant's date of birth to '[variant of Ms B's name]' of Tehran, Iran.
  - Transfer from '[the Applicant]' with the applicant's correct name, address, date of birth and mobile number to '[variant of Ms B's name]' of Tehran, Iran.
  - Transfer from '[the Applicant]' with the applicant's correct name, address, date of birth, mobile number and also includes his driver's licence number to '[Mr C]' of Tehran, Iran.
25. When the delegate gave details of these transfers to the applicant during the SHEV interview, the applicant suggested that maybe someone had taken a photograph of his driver's licence and has misused it without his permission. The applicant said he did not know anyone by the name of '[Mr C]'. The delegate noted that a cousin of the applicant who was residing in Australia had the surname [C], which the applicant confirmed as correct but said and that he did not know of anyone in Iran with that surname. I note that in the arrival interview the applicant confirmed his sister's name was [a variant of Ms B's name] and her husband's name was [a variant of Mr C's name] who lived in Tehran.
26. The delegate gave details during the SHEV interview of the strict process involving transfers of money to Iran from Australia, noting that it involves the person receiving the money producing identification that has been formally issued by the government and having a bank account. The delegate confirmed the spelling of the name listed was not as important to the success of the transfer as the account details. The migration agent for the applicant confirmed she was aware of the need for the receiving party to produce identification when money was being transferred into Iran she had experienced that when assisting another client. The applicant confirmed that his sister did not obtain Iranian citizenship through

marriage. Country information reports that any non-Iranian woman who marries an Iranian citizen assumes the husband's citizenship automatically.<sup>3</sup>

27. According to DFAT, to open a bank account in Iran the account holder must hold a valid National Identity card and these are issued to all Iranian nationals over the page of 18.<sup>4</sup> Stateless persons are not identified as being permitted to hold such identification.
28. The delegate sought to clarify how, if the applicant and his sister were undocumented and stateless as he has asserted, his sister was able to produce government issued identification and hold a bank account to receive these funds. Despite the identical or very strong similarities in the names and other personal information listed in relation to the Ordering and Beneficiary Customer's details in the transactions listed above, the information about the need for government issued identification being needed by the receiving party in order to obtain the money and the use of the applicant's own driver's licence, the applicant continued to deny he made any transfers of money to Iran.
29. During the interview, the migration agent spoke with the applicant about the importance of making some inquiries with his sister to determine what had happened in relation to these financial transfers. The applicant confirmed he was able to contact his sister about this. I note that neither the post-interview submission nor the submission to the IAA included any information sought by the applicant from his sister about these financial transfers. The only additional explanation offered, in the post-interview submission, was that his sister's first name was very common.
30. During the Arrival Interview the applicant said 'yes ... all of them' when asked if he had any family members who were solely dependent on him to support them financially. When asked to explain how he was supporting them financially if he was in Australia he said that if he finds a job here he would then sponsor them to come to Australia.
31. The applicant said [a few] of his brothers, his sister and a maternal uncle gave him money to travel to Australia to cover the [amount] USD smugglers fees, [amount] Tomans for the fraudulent passport, his airfares, the [amount] USD he had to pay to bribe the [Country 1] officials at the airport and his other expenses on his way to Australia which included a three month stay in an apartment in [Country 1]. The cost of the applicant's travel to Australia, not including airfares and living expenses whilst in [Country 1], comes to approximately [amount] USD. The applicant described the money given to him by his family as everything they had saved over a period of years.
32. When discussing the [amount] Tomans paid to obtain the fraudulent passport the applicant said that was not a lot of money in Iran. I find this surprising given his assertion that he and his siblings were left to fend for themselves from an early age by his father and worked in jobs where they received half of the pay for low level labouring jobs and that it took four members of his family and himself many years to save the equivalent of at least [amount] USD to enable the applicant to travel to Australia. It cost almost 20% of the total money gathered together to pay for the fraudulent passport yet the applicant asserts it is 'not a lot of money'.
33. I accept that the applicant sent the aforementioned transfers of funds to Iran with the first four being sent to his sister, to an account held in her name. The applicant's explanation about someone taking a photograph of his licence and using that was unconvincing

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<sup>3</sup> DFAT, "DFAT Thematic Report: Fails Kurds in Iraq and Iran", 3 December 2014, CIS2F827D91722.

<sup>4</sup> Ibid.

particularly in light of the very similar and phonetically correct spelling for the person receiving the funds on the first four occasions which very closely resembles his sister's name, his correct particulars being utilised in some form for all transfers, the inconsistent information about him claiming not to know anyone in Iran with the family name '[C]' and his failure to provide any information from his sister about whether she received these funds or not despite claiming he was able to contact her about the matter. The applicant has provided direct and unambiguous evidence that his family is financially dependent on him.

34. It follows that I am satisfied that the applicant's sister is an Iranian citizen. I am satisfied she possesses a bank account and identification issued by the government that allowed her to receive the funds transferred by the applicant. I note that Iranian citizenship is something that was very likely to have been accessible to the applicant's father through his parents if they were Iranian citizens because they were reported as being born in Iran, and if that is the case then the applicant's father would have automatically acquired Iranian citizenship at birth regardless of where he was born.<sup>5</sup>
35. I also found the applicant's explanation about why he provided inconsistent information about possessing a White Card issued in Iran unconvincing. The applicant had been in Australia for just over two weeks when the Case Assessment and Biodata interview was conducted and he did not raise any health concerns at the time of this interview that might result in him providing incorrect information. I note that being a stateless person from Iran would be supported by him having a White Card, and have concluded that if he wasn't actually stateless, it would not have been possible for him to produce such a document.
36. Whilst there are some undocumented and stateless Faili Kurds in Iran, DFAT reports that the majority of Faili Kurd refugees in Iran are registered.<sup>6</sup> There are still circumstances where a stateless person in Iran will receive a written record which lists their identity, such as a birth record when they are born in a hospital, rather than a *shenasnameh* that citizens receive, or school records from the years of their education they are able to complete.<sup>7</sup> Based on this country information, the absence of documents is not necessarily proof that a person is stateless. The applicant's failure to produce his birth or school records, the White Card he first claimed to have and then subsequently denied or any documentation from the deaths of his three family members including one who died in a motor vehicle accident that was investigated by the authorities leads me to seriously question his credibility in relation to his claim of statelessness. In addition to this, I note the applicant's response to being encouraged by the delegate during the SHEV interview to attempt to locate identity documents in Iran to assist with his application only involved him repeating "my identity is my language" without providing any meaningful response. I am unconvinced that the applicant's school records were lost. I find the applicant was unwilling, rather than unable, to produce documents as part of his attempt to be seen as a stateless person when in fact he was not.
37. In addition I consider the conflicting information regarding his employment history which included his first job [in] Ilam for a period of two years that was later omitted from the employment history in his SHEV application, was also done for the purpose of appearing to be stateless and to support his claim of an inability to gain legal work.
38. I note the applicant's original version of being illiterate in the Farsi language was given at the same time as the initial statement made about possessing a White Card, and find this was provided to support his claim of statelessness and his assertion about an inability to access an

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<sup>5</sup> Ibid.

<sup>6</sup> Ibid.

<sup>7</sup> Ibid.



education as a result. I acknowledge that the applicant is more likely to have spoken in Kurdish whilst living in Ilam based on the country information which confirms this, but based on the inconsistency of his own evidence on the matters related to his statelessness, citizenship and ability to communicate in this language, I am not satisfied he is illiterate in Farsi.

39. I am not satisfied the applicant is stateless or an undocumented refugee. I am satisfied that the applicant is an Iranian citizen and was not restricted from accessing legal work, a formal education or health care.
40. In the Statement of Claim when discussing the discrimination he and his family faced on a daily basis because they were Faili Kurd refugees the applicant said, "We had to obtain a travel permit to travel to other provinces. Iran's border areas with Iraq were no go areas for registered Faili Kurd refugees in Iran, while large parts of central Iran including Tehran, were accessible to us." I note the second two sentences in this particular paragraph from the Statement of Claim are virtually identical to the country information supplied in the 2014 'DFAT Thematic Report on Faili Kurds in Iraq and Iran' at paragraph 5.14 which states, "In general, Iran's border areas with Iraq are currently no-go areas for Faili Kurd refugees. Large parts of central Iran, including Tehran, are currently accessible for registered Faili Kurd refugees." Based on the significant similarities between the country information from the 2014 DFAT report and the applicant's Statement of Claim, in conjunction with the numerous other issues I have identified with the applicant's evidence, I do not accept the similarity between the applicant's Statement of Claim and this DFAT report is a coincidence. Based on my finding that the applicant is an Iranian citizen, I am not satisfied he would have required a permit to travel within Iran.
41. In his Case Management and Biodata Interview and Arrival Interview the applicant identified as a Shia. The applicant later identified as an agnostic in his SHEV application and Statement of Claim. When asked during the SHEV interview what being an agnostic meant to him, the applicant provided a nonsensical explanation which with some clarification from the delegate ended up with him saying he had been born a Muslim and that now he didn't believe in Islam at all. The applicant explained that he had not attended a mosque at any time that he could remember and thinks he stopped going when he was a child. The applicant advised that he had not experienced any harassment from authorities based on the fact that he was a non-practising Muslim in Iran and said that as long as he didn't talk openly about it the authorities didn't bother him.
42. I accept the applicant no longer believes in Islam and that he has not engaged in practices of the Muslim faith since he was a child. I found his evidence in relation to this convincing. I do not accept the applicant is an agnostic because what he described did not accord with being agnostic it merely related to him no longer following Islam.
43. The applicant claimed he was summonsed to appear in court because he failed to pay a mahriyeh or dowry to his former fiancé, [Ms A], even though he called the relationship off prior to them getting married. The applicant said [Ms A]'s family had threatened to kill him and had assaulted him whenever he left the house.
44. During the Case Management and Biodata Interview the applicant listed [Ms A], who was located in Iran, as his fiancé and his marital status as engaged. When asked his reason for leaving his country of nationality or residence, he said he was undocumented and not registered because he is a real Kurd. During this interview the applicant said he had never been arrested, detained or charged with any offences.

45. During the Arrival Interview, the applicant said he was single at the time and made reference to a previous relationship he was in which did not proceed to the stage of getting married and that this relationship was not sexual in nature. When asked what would happen if he were to return to Iran he said that a girl had put in a complaint against him because he had failed to pay the mahriyeh and he would go to jail.
46. In the Statement of Claim, under the heading 'Family honour killings', the applicant talked about a woman [Ms A] who he became engaged to after agreeing to enter into an arranged marriage. The applicant said [Ms A] asked for many expensive gifts which he could not afford and she did not have any respect for him. After two to three months the applicant said he decided not to marry her and told her parents this and the reasons including the expensive gifts and the lack of respect. The applicant asserted that [Ms A]'s father and uncles threatened to kill him and that he was assaulted by them each time he left the house and he feared for his life. About one month later, the applicant said that [Ms A]'s family made a complaint to police that he hadn't paid the mahriyeh and that [Ms A] had a relative who was a police officer who rang the applicant and told him to attend the police station. The applicant said he did not attend the police station and subsequently he was issued with a summons to attend court. This caused him to decide to leave Iran because he was afraid for his safety and sanity.
47. During the SHEV interview, the applicant said he could not remember [Ms A]'s surname because she wasn't in his life for that long to remember everything about her. After initially denying any memory of when he first met her, the applicant then gave details of a relative coming to visit him to find out if he had found someone to marry, which he confirmed he hadn't, and they took him to see someone in the neighbourhood one night and the applicant confirmed this was the first time he and [Ms A] met. The applicant claimed that after an initial meeting [Ms A]'s family were going to conduct an investigation into him and that they would then respond. After about one month [Ms A]'s family invited the applicant to talk about the marriage and he took some elders from within his community to this meeting. During this meeting the applicant claimed they spoke about the conditions of the marriage and once all of the conditions of the marriage were set, a week later the applicant attended with a mullah and he and [Ms A] were formally engaged. The applicant said that [Ms A] was Kurdish and an Iranian citizen, but that her family was even poorer than his. The applicant provided similar details about the length of the engagement and the reasons why he became unhappy and couldn't continue with the relationship and after that [Ms A] made a complaint about him to the police, and then the court. The mahriyeh she asked for when he ended the relationship was said to be [number] gold coins, which the applicant said he did not have. The applicant said he received a summons via a delivery officer to his home which he tore up and threw away. He claimed that after he failed to appear in court, [Ms A]'s family came to his house and broke all of the windows on his home and his neighbours and they were insisting he marry the girl, otherwise it was a matter of honour. The applicant said that he did not go outside the home on this occasion and was not assaulted by [Ms A]'s family at any other time. The applicant claimed he left Iran three months later and during that time he asked if elders from his community would go and talk to her family and tell them that he couldn't afford the mahriyeh. After [Ms A]'s family became aware that the applicant had left Iran, whilst the applicant was on Christmas Island, they attended at his family home one more time but were told by the applicant's brother "it wasn't his business anymore and you can go and get him if they want to or maybe you have killed him". This was the last time [Ms A]'s family approached the applicant's family about the non-payment of the mahriyeh.
48. Whilst the applicant has, since his arrival interview, been reasonably consistent about a failure to pay a mahriyeh, there are a number of not insignificant variances in his account of

this claim. The applicant listed [Ms A] as his fiancé during the Case Management and Biodata interview and then during the arrival interview, only two weeks later he described himself as single and that he did not have a fiancé at that time. During the Case Management and Biodata interview and the Arrival Interview the applicant said he had not been arrested, detained or charged with an offence and in the SHEV application the applicant said he had not been charged with any offence that was currently awaiting legal action. Yet in the SHEV interview he claimed to have received a summons and failed to attend court in relation to non-payment of mahriyeh. Despite stating in his Statement of Claim that he was contacted by a police officer who was a relative of [Ms A] in relation to this matter, in the SHEV interview he said that [Ms A] did not have any police in her immediate family, and confirmed he wasn't sure if there were any in her extended family. I also note that during the three month period between the applicant failing to attend court in response to the summons and him leaving Iran he did not report any further incidents of harassment from [Ms A]'s family and nor did he indicate that the authorities came looking for him because he failed to attend court. The applicant's version in the Statement of Claim that he was assaulted by [Ms A]'s family every time he left the house conflicts with his own evidence in the SHEV interview where he said they had not assaulted him.

49. Country information states that all passengers exiting Iran are checked through passport control and if an individual has an outstanding matter to settle with authorities, this will be verified as part of this process, and if found to be the case the individual would be arrested or have their passport confiscated until the matter had been settled.<sup>8</sup> Based on this country information and my later finding where I did not accept he utilised a fraudulent passport and assistance from the authorities inside the airport to exit the country undetected, the fact that the applicant was able to fly out of Iran on his own passport without issue is further evidence that he was not of interest to authorities at the time of leaving the country.
50. Under Islamic Shari'a a marriage is defined as a civil contract between a man and his wife that includes three elements: the offer of marriage by the woman or her guardian, the acceptance by the man and the mahriyeh (marriage gift or dowry) which is money or an item of value that the husband pays or pledges to pay to the wife after the conclusion of the marriage contract.<sup>9</sup> According to Article 1082 of Iran's Civil Code, the wife becomes the owner of the mahriyeh after the conclusion of the marriage contract and can take possession of it or spend it in any way that she wishes.<sup>10</sup> There are reports of husbands in Iran who have been unable to pay the agreed mahriyeh being jailed, but this country information does not make any reference to such action being taken when the relationship did not progress to the stage of marriage.<sup>11</sup> Iranian law gives men far greater rights than women in relation to divorce, including an incontestable right to it.<sup>12</sup>
51. Whilst both men and women are reported as being vulnerable to honour-related violence in Iran for actions such as sex outside the sanctity of marriage or where their behaviour is seen

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<sup>8</sup> Immigration and Refugee Board of Canada, 'Iran: Exit and entry procedures at airports and land borders, particularly at Mehrabad International airport; identity documents such as birth certificates, and marriage and divorce certificates; incidence of bribery of Iranian border officials to facilitate departure by individuals with fraudulent travel documents or outstanding financial, military or legal obligations, or who are sought by the government for political reasons; the punishment for border officers caught taking such bribes (2004 - February 2006)', 3 April 2006, IRN101052.E, OFG10222E66.

<sup>9</sup> Mohammad H. Nayyeri, Iran Human Rights Documentation Centre, "Gender Inequality and Discrimination: The Case of Iranian Women", 1 March 2013, CIS25511.

<sup>10</sup> Ibid.

<sup>11</sup> Ibid.

<sup>12</sup> Ibid.

to have damaged the family's reputation, but women and girls are the most likely victims of honour killings.<sup>13</sup>

52. I accept the applicant was engaged to [Ms A], that they entered into an agreement to marry and that he ended the relationship. I do not accept that the applicant was obligated to pay [number] coins or any form of mahriyeh to [Ms A] or her family if the relationship did not progress to them getting married. The applicant did not marry [Ms A] and as such he did not finalise the marriage contract which is what must happen, according to Iranian law, to render the mahriyeh payable. There is no country information before me which indicates that mahriyeh is payable if the marriage does not proceed. It follows that I do not accept that the applicant was summoned by the police to appear before court for non-payment of the mahriyeh or was of any interest to authorities in this regard at that time. In reaching this conclusion I note that the applicant has provided inconsistent accounts throughout the application process about whether he has ever been arrested, detained or charged with any offence and [Ms A] having a relative who was a police officer. The fact that Iranian authorities did not take any action to locate the applicant during the three month period following his failure to appear in court and prior to him leaving Iran also undermines his claim to have received a summons from the police to attend court. I do not accept that [Ms A]'s family intended to kill or injure the applicant or that he faces any ongoing risk of harm because he ended the engagement. In this regard, the applicant has also provided inconsistent information about whether he was assaulted by them and the fact that during the three month period between his failure to attend court and leaving the country, he did not provide any evidence of ongoing threats or assaults from her or her family.
53. The applicant claimed that due to his status as a stateless Faili Kurd he obtained a fake passport in his own name to enable him to leave the country. The applicant said he travelled to [Tehran] from his home town to obtain the fraudulent passport ten days prior to leaving the country, which was made in his own name, cost [amount] Tomans and took five days to prepare. The applicant claimed the maker of the fraudulent passport told him to buy a ticket for a particular day and to be sure to leave the country on that day which he did. The applicant said that when he was passing through the check point at Imam Khomeini airport a person in a glass room who he gave his passport to laughed, stamped his passport and said 'do not return'. The applicant said he did not pay any bribes to move through the airport and was able to exit Iran through the airport without any issues on his fraudulent passport. I note the applicant did not state he was told by the person who prepared the passport to ensure his flight out left at a certain time on the date specified, that he should ensure he lined up at a certain booth in the passport control area of the airport or should seek to identify a certain official working in one of the booths in the passport control area to facilitate his safe exit from the country.
54. Country information reports that while counterfeit Iranian passports can be purchased rather easily on the black market authorities are generally adept at identifying these documents via stringent control procedures such as a 'double check' mechanism in the law enforcement database and the use of technical equipment to scrutinise travel documents.<sup>14</sup> In 2006, it was reported as highly improbable that anyone with a forged passport where the name and

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<sup>13</sup> UK Home Office, "Country Policy and Information Note: Iran: Honour crimes against women", 25 October 2017, OG6E7028861.

<sup>14</sup> Immigration and Refugee Board of Canada 2006, "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; ease of illegal entry into and exit from Pakistan, Turkey, and Azerbaijan overland, and Oman and the United Arab Emirates by sea; whether authorities seize passports from certain individuals to prevent their departure from the country (2004 - February 2006)", 3 April 2006, IRN101054.E, OFG10222E67.

number of the document do not tally with what is listed within the passport control system would be able to leave the country.<sup>15</sup> In 2013, it was reported that it would not be possible to exit the Imam Khomeini International Airport on a forged passport because of the very strict security in place, but they indicated it may be possible if this occurred in conjunction with bribing officials to exit the country.<sup>16</sup>

55. I do not accept that the applicant left Iran on a fraudulently obtained passport in his own name. Leaving aside the claimed statelessness, based on this country information, the applicant's own evidence about him not bribing any officials at the airport and the numerous inconsistencies in the information he has provided in support of his claims, I consider it implausible that the applicant, by flying out of the country on the date specified by the person who produced the counterfeit passport, coincidentally ended up at the particular passport control booth which contained the official who happened to be working in conjunction with the maker of the counterfeit passport to facilitate him moving through passport control undetected.
56. I am satisfied that the applicant left on his own Iranian passport, which provides further support for my earlier finding that he is an Iranian citizen and not undocumented or stateless.<sup>17</sup>
57. The applicant claimed he suffered discrimination throughout his life in Iran because of his ethnicity as a Faili Kurd and his statelessness. I do not accept the applicant is stateless. I do accept he is of Faili Kurd ethnicity.
58. In his Statement of Claim the applicant's claims of discrimination were mostly based on him being a 'refugee originally from Iraq' or an 'undocumented' Faili Kurd. The applicant said he was unable to live freely by expressing his traditional cultural practices and that displaying the Kurdish flag is forbidden in Iran. The applicant claimed that whenever he saw authorities he had to hide because they would always blame him or look for an excuse to beat him or wrongly accuse him simply because of his ethnicity. The applicant did not elaborate on this claim or provide any examples of the traditional cultural practices he was prevented from expressing or of him being beaten or wrongly accused of something by authorities because of his ethnicity.
59. DFAT, after holding discussions with a range of credible non-government sources, could not identify cases of where Faili Kurds who were also Iranian citizens had faced adverse attention specifically because of their ethnicity or evidence to show that Faili Kurds were harassed or discriminated against by authorities because of their ethnicity.<sup>18</sup> Faili Kurds who are citizens of Iran can access services and employment on the same basis as other Iranian citizens and they appear to face little to no discrimination in access to services on the basis of their ethnicity.<sup>19</sup> Faili Kurds, along with approximately 90 percent of the population in Iran, are mostly Shia Muslims, which distinguishes them from other Iranian Kurds who are Sunni Muslims.<sup>20</sup> In practice, government policy and legislation heavily favours the majority Shia population, which leads to pervasive structural discrimination against non-Shia Muslims and

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<sup>15</sup> Ibid.

<sup>16</sup> Danish Immigration Service, LANDINFO and Danish Refugee Council, "Iran: On Conversion to Christianity, Issues concerning Kurds and Post-2009 Election Protestors as well as Legal Issues and Exit Procedures", February 2013, CIS25114.

<sup>17</sup> DFAT, "DFAT Country Information Report Iran", 29 November 2013, CIS26780; DIBP Tehran, "Feyli Kurds - obtaining identity travel documents", 17 September 2015, CISEC96CF13392.

<sup>18</sup> DFAT, "DFAT Thematic Report: Faili Kurds in Iraq and Iran", 3 December 2014, CIS2F827D91722.

<sup>19</sup> Ibid.

<sup>20</sup> DFAT, "DFAT Country Information Report: Iran", 7 June 2018, CIS7B839411226.

religious minorities.<sup>21</sup> DFAT reported that societal discrimination against Faili Kurds who are citizens is not widespread, but their sources would not rule out the possibility that it may occur on occasion to certain individuals within this ethnic group.<sup>22</sup> DFAT also reported that it was not aware of specific instances where authorities have singled out Faili Kurds for mistreatment.<sup>23</sup>

60. The applicant did not provide any examples or evidence of cultural practices he could not participate in or of him being beaten or wrongly accused of something by authorities because of his ethnicity. When asked during the Arrival Interview if police, security or intelligence organisations impacted on his daily life in Iran his only reference was to being persecuted on the basis because he didn't have documentation and was stateless. I have not accepted his claim of statelessness, and the applicant's claims regarding his inability to find legal work, access health care or a formal education on the basis of being a Faili Kurd are not supported by the country information before me, or any evidence produced by him, and I do not accept this was the case.
61. The applicant claims that because he has sought asylum in a Western country he will be suspected of having spoken out against the regime and punished by the authorities. I accept that if the applicant were to return to Iran he would have to do so using temporary travel documents and that authorities may conclude that he is a returning asylum seeker.

## Refugee assessment

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62. 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

63. 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.

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<sup>21</sup> Ibid.

<sup>22</sup> DFAT, "DFAT Thematic Report: Faili Kurds in Iraq and Iran", 3 December 2014, CIS2F827D91722.

<sup>23</sup> DFAT, "DFAT Country Information Report: Iran", 7 June 2018, CIS7B839411226.

64. I accept the applicant was in a relation with a woman, [Ms A] and ended his engagement to her. I do not accept however, that the applicant was obligated to pay any form of mahriyeh to [Ms A] or her family. I do not accept the applicant was of any interest to the Iranian authorities in relation to this event or that [Ms A]'s family intends to kill or injure the applicant. I am not satisfied that he faces a real chance of harm as a result of his relationship with [Ms A].
65. I have accepted that the applicant no longer believes in Islam and that he has not engaged in practices of the Muslim faith since he was a child. I note the applicant did not report any instances where he received adverse attention from authorities or others in Iran because of he did not engage in the practices of the Muslim faith.
66. Country information indicates that it is highly unlikely that authorities would monitor religious observance by Iranians and as a result it would generally be unlikely that it would become know that a person was no longer faithful to Shia Islam.<sup>24</sup> It is reported that those who no longer believe in Islam are unlikely to come to the attention of security authorities unless they seek to publicise their views.<sup>25</sup> The number of people who do not practise or follow the Muslim faith are reported as increasing in Iran and it is also becoming more readily accepted there.<sup>26</sup>
67. I am not satisfied the applicant faces a real chance of any harm as the result of his religious views and non-practice.
68. The applicant claims he cannot express his political views in Iran because he will be perceived as being against the regime.
69. In his Arrival Interview, the applicant confirmed that neither he nor his family had been associated or involved with any political groups, organisations or activities or demonstrations against the Iranian government. In his Statement of Claim he said that Faili Kurds are often suspected by the authorities of being members of a Kurdish separatist group, but the applicant did not provide any evidence either in this document or at all throughout the application process to indicate he was a member of such a group. In the SHEV interview when asked what he means when he says he can't express his political views in Iran the applicant said that because he is a Faili Kurd he is not allowed to speak about the cruelty against his people. The applicant asserts he is not able to say anything, "no choice, no options, nothing". The applicant did not give any details about what his political views are or the types of cruelty his people had experienced and overall I find his evidence about this unconvincing.
70. Despite the fact that Iranians are able to criticise the government of the day robustly, both in public conversation and online in social media, provided they do not engage in certain 'red line' topics, international sources report that the Iranian government uses security, media and other laws to arrest and prosecute Kurds for exercising freedom of expression and association and they have prohibited the use of the Kurdish language in publications and in schools.<sup>27</sup> DFAT reported that Kurdish separatist activity in Iran had mostly been at a lower level than in neighbouring countries, partly due to the fact that their living standards tend to be higher, and many prefer to work within the Iranian political system to strengthen their

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<sup>24</sup> DFAT, "DFAT Country Information Report Iran", 21 April 2016, CIS38A8012677.

<sup>25</sup> Ibid.

<sup>26</sup> Danish Immigration Service, "Update on the situation for Christian Converts in Iran", June 2014, CIS28931.

<sup>27</sup> DFAT, "DFAT Country Information Report: Iran", 7 June 2018, CIS7B839411226.

rights as citizens.<sup>28</sup> DFAT was not aware of instances where Faili Kurds in Iran were singled out for mistreatment as a sub-group of Kurdish people<sup>29</sup> and there is no country information before me which supports the applicant's claim that the government often suspects that Faili Kurds are members of Kurdish separatist groups.

71. The applicant said he has been involved with the Kurdish community whilst living in Australia. When asked to clarify this during the SHEV interview the applicant explained that he had been to a Kurdish community hall two or three times to participate in celebrations such as for the beginning of the new year. The applicant said that on one occasion he went to this hall and they were talking about politics and he thought maybe he should stay away from that. The applicant did not explain why he should stay away from a meeting of Kurdish people in Australia talking about politics, or even if the politics being discussed related specifically to the situation in Iran.
72. I do not accept that the applicant would be suspected of being a member of a Kurdish separatist group simply because he is a Faili Kurd, based on the country information outlined above. I note the reports from the international observers on Iran's response to Kurdish people exercising freedom of expression and association however I don't accept the applicant holds any political views which are opposed to the Iranian regime. I note he has not produced any credible evidence to show he has engaged in any activism or promotion of his views in Iran or Australia, even in an anonymised way such as under an alias in an online forum. The applicant's own evidence is that he has only interacted with the Kurdish community in Australia on two or three occasions during the five year period he has lived in this country and removed himself from a function which appeared to be political in nature. The applicant also did not provide any evidence of a desire to promote his views publicly in the future, whatever they might be, and I don't accept he has any interest in actually doing so.
73. I have not accepted the applicant experienced discrimination on the basis of his ethnicity as a Faili Kurd or that he would be suspected of being a member of a Kurdish separatist group purely based on his ethnicity as a Faili Kurd. Based on the country information outlined above, the applicant's own profile and experiences I consider the possibility of him being discriminated against on the basis of being a Faili Kurd is remote.
74. Whilst I accept the applicant is sympathetic to the plight of the Kurdish people, I am also not satisfied he possesses a genuine desire or intention to actively promote or publish any views that he might hold now or in the foreseeable future.
75. I am not satisfied the applicant faces a real chance of any harm on these bases.
76. The applicant claims he will be harmed as a failed asylum seeker upon returning to Iran because the authorities will suspect he has spoken out against the country. The country information before me does not support this proposition.
77. DFAT has reported that 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, including the making of protection claims.<sup>30</sup> According to DFAT, an Iranian who no longer possesses a valid passport can obtain temporary travel documents through a program run by the International Organisation for Migration (IOM) to assist voluntary returnees to Iran. Authorities usually question a voluntary returnee, only if they

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<sup>28</sup> Ibid.

<sup>29</sup> Ibid.

<sup>30</sup> Ibid.



have already come to official attention, such as by committing a crime in Iran before departing.<sup>31</sup> I do not accept that the applicant has previously come to official attention.

78. Prior to a Memorandum of Understanding (MOU) being signed on 19 March 2018 between Australia and Iran, Iran refused to issue travel documents to allow involuntary returnees to return to the country. That MOU now facilitates the return of involuntary returnees however it only covers returnees who arrived in Australia after it was signed.<sup>32</sup> The applicant is not such a person, and if he is to return, I consider it would be only be on a voluntary basis.
79. The country information before me does not support a finding that persons who are not of interest to the Iranian authorities previously (such as the applicant) and who have sought asylum in Western countries, such as Australia and resided there for a significant period, are imputed to hold an anti-Iranian government political opinion or that they are suspected of being a spy or face a real chance of harm on that basis. I am not satisfied the applicant would face any questioning if he were to return to Iran or that he faces a real chance of harm on this basis.
80. Overall, I am not satisfied the applicant has a well-founded fear of persecution.

#### **Refugee: conclusion**

81. 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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82. 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**

83. 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.
84. I have concluded that the applicant does not face a real chance of any harm for the reasons claimed. As 'real chance' and 'real risk' are of same threshold, I am therefore satisfied that the applicant does not face a real risk of harm, including significant harm, for any reason.

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<sup>31</sup> Ibid.

<sup>32</sup> Ibid.

**Complementary protection: conclusion**

85. There are not substantial grounds for believing that, as a necessary and foreseeable consequence of being returned from Australia to a receiving country, there is a real risk that the applicant will suffer significant harm. The applicant does not meet s.36(2)(aa).

**Decision**

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

## Applicable law

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### ***Migration Act 1958***

#### **5 (1) Interpretation**

In this Act, unless the contrary intention appears:

...

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

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

...

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

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

but does not include an act or omission:

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

...

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

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

...

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

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

...

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

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

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

...

#### **5H Meaning of refugee**

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

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

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

...

### 5J Meaning of well-founded fear of persecution

- (1) For the purposes of the application of this Act and the regulations to a particular person, the person has a well-founded fear of persecution if:
  - (a) the person fears being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion; and
  - (b) there is a real chance that, if the person returned to the receiving country, the person would be persecuted for one or more of the reasons mentioned in paragraph (a); and
  - (c) the real chance of persecution relates to all areas of a receiving country.

Note: For membership of a particular social group, see sections 5K and 5L.
- (2) A person does not have a well-founded fear of persecution if effective protection measures are available to the person in a receiving country.

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

### 5K Membership of a particular social group consisting of family

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

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

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

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

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

#### **5L Membership of a particular social group other than family**

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

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

#### **5LA Effective protection measures**

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

...

#### **36 Protection visas – criteria provided for by this Act**

...

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

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

...

*Protection obligations*

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

*Determining nationality*

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