



Australian Government
Immigration Assessment Authority

Decision and Reasons

Referred application

IRAN
IAA reference: IAA19/06666

Date and time of decision: 25 June 2019 09:36:00
N Becke, Reviewer

Decision

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

Visa application

1. The referred applicant (the applicant) claims to be a stateless male of Faili Kurdish ethnicity from Ilam Province, Iran. On 8 July 2017 he lodged a valid application for a Safe Haven Enterprise Visa (SHEV). On 27 May 2019 a delegate of the Minister for Immigration (the delegate) refused to grant this visa.

Information before the IAA

2. I have had regard to the material given by the Secretary under s.473CB of the *Migration Act 1958* (the Act).

Applicant's claims for protection

3. The applicant's claims can be summarised as follows:
 - In 1980 his parents, who were born in Iraq and are stateless Faili Kurds, were expelled from that country to Iran.
 - In [year] he was born in a rural area of Ilam Province, Iran and as a young child moved to Ilam City with his family.
 - At school he was forced to speak Farsi, and not Kurdish. He left in [number] due to the discrimination he faced and his family's financial situation.
 - Faili Kurds in Iran are not allowed to:
 - Study at university.
 - Access public hospitals and doctors.
 - Undertake any employment apart from manual labour, for which they are given half wages.
 - Wear their national dress.
 - Officially register their marriages.
 - (Faili Kurdish men) marry Iranian citizen women and register the children of these marriages as Iranian citizens.
 - On one occasion the Basij detained him and his friends for several hours because they were sitting outside the applicant's house in traditional Kurdish dress. The Basij assaulted them and swore at them.
 - In [2013] he departed Iran illegally using a fraudulent passport.
 - While he was in Australian immigration detention the Iranian authorities visited his home in Iran, interrogated his family and confiscated his refugee 'green card'.
 - He has connected with the Kurdish community in Australia, initially via social media, and now partakes in meetings and social events. Outspoken pro-Kurdish figures attend some of these events, including on one occasion a [performer]. His attendance at such events has been documented on film and featured on social media, which is closely monitored by the Iranian authorities.

- He only expresses his support for an independent Kurdish state privately, for fear of endangering his family in Iran. However, if he were to return to Iran he would want to continue his involvement with Kurdish independence groups and express his beliefs about the Kurdish struggle in the same way he has in Australia.
- Although he believes in God, he does not currently consider himself a Shia Muslim. He has seen evidence of the Iranian government hanging Kurds who have changed their religion.
- He fears the Iranian authorities will detain, interrogate, torture or kill him or his family because of: his status as a stateless person; his ethnicity as a Faili Kurd; his illegal departure from Iran; his documented involvement with pro-Kurdish figures and groups in Australia; his lack of adherence to Shia Islam; the length of time he has been in Australia; and his forced return to Iran after claiming asylum in Australia.

Refugee assessment

4. 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

5. Under s.5J of the Act ‘well-founded fear of persecution’ involves a number of components which include that:
 - the person fears persecution and there is a real chance that the person would be persecuted
 - the real chance of persecution relates to all areas of the receiving country
 - the persecution involves serious harm and systematic and discriminatory conduct
 - the essential and significant reason (or reasons) for the persecution is race, religion, nationality, membership of a particular social group or political opinion
 - the person does not have a well-founded fear of persecution if effective protection measures are available to the person, and
 - the person does not have a well-founded fear of persecution if they could take reasonable steps to modify their behaviour, other than certain types of modification.

Identity and status in Iran

6. Since the applicant’s arrival in Australia he has been consistent regarding his name, date of birth, ethnicity and home area in Iran, and I am prepared to accept these details as claimed. The applicant chose to use a Kurdish interpreter for his SHEV interview and there is a significant Kurdish population in Ilam Province, where he claims to have been born.¹ However, while the applicant has also been consistent in claiming that he is a stateless

¹ Department of Foreign Affairs and Trade (DFAT), "Country Information Report - Iran ", 7 June 2018, CIS7B839411226

person, there are a number of elements of his evidence regarding his and his family's claimed status in Iran which call into question his credibility on this point.

7. The information before the delegate indicates that for centuries Faili Kurds lived in the border area between Iraq and Iran. They migrated to Baghdad and other areas of what is now Iraq at the beginning of the twentieth century but from the late 1960s had their Iraqi citizenship revoked and were expelled to Iran where they were accepted as refugees, subject to strict registration conditions.² In 2002, the majority of Iraqi refugees residing in Iran were registered in a comprehensive program referred to as 'amayesh' registration, which is the sole system for renewal of refugee registration. Amayesh cards are renewed annually and enable refugees to access basic services and work permits, and contain information about the town and province where the card holder is permitted to reside.³
8. Faili Kurds are estimated to be only a small proportion of the Iranian Kurdish population, which itself is around ten per cent of Iran's total population. The number of stateless Faili Kurds in Iran is unknown, but it is estimated to be low, as the majority have managed to obtain either Iranian nationality (through paternal lines or marriage) or have since been recognised as Iraqi citizens.⁴
9. Country information before the delegate indicates that a registration scheme for Iraqi refugees has existed in Iran for almost forty years, and that registered refugees have access to healthcare, education and state benefits that unregistered refugees do not. Iraqis who arrived in Iran prior to 1979 were issued white cards, while those who arrived during the 1980s received green cards. However, from 2002 onwards green cards were replaced with amayesh cards, also known as white cards, which must be renewed annually for a fee, and that persons found to be holding an expired card may, in theory, be subject to deportation to Iraq.⁵
10. During the SHEV interview the delegate questioned the applicant regarding his family and their origins. The applicant advised the delegate that his father and mother were born in Iraq, but were not citizens of that country, and that in 1980 they were expelled from Baghdad to Iran. The applicant also claimed that his family hold refugee 'green cards' issued by the Iranian authorities, and throughout the SHEV interview he consistently referred to his family's documentation as such. The applicant has also provided a photocopy of what he claims is his green card, accompanied by an English translation which indicates that the card was valid for one year and his nationality as "Iraq". The translation indicates the card was issued in "Ilam, Iran", but also that the date of issue is "Ilam, Iran". It is unclear whether this anomaly indicates an issue with the document itself or is a translation error. The photocopied document also bears a photo of a [male youth], who I am prepared to accept is the applicant.
11. The applicant's 'residential history' as listed in his SHEV application indicates that he and his family moved from a rural area of Ilam Province to Ilam City when the applicant was around [age] years old. During the SHEV interview the applicant gave evidence that he and his siblings attended [school] in Ilam City, and that he, his siblings and parents have all held jobs there. Given the apparent youth of the applicant in the photo affixed to his green card, and his departure from Iran at the age of [age], I find it difficult to accept that he would have been able to live and work in an urban area for at least ten years using an expired card. I also

² Department of Immigration and Border Protection (DIBP) Tehran, "Feyli Kurds- Obtaining Identity Travel Documents", 17 September 2015, CISEC96CF13392

³ Ibid.

⁴ Ibid.

⁵ Ibid.

find it difficult to accept the applicant's family continue to rely on green cards more than sixteen years after the amayesh replacement scheme commenced.

12. I also have serious concerns with the applicant's claim to have departed Iran in [2013] using a fraudulent Iranian passport. Country information before the delegate indicates that it would be extremely difficult, if not impossible, for a stateless Kurd to travel outside of Iran other than by land, crossing into Iraq. The Department of Foreign Affairs and Trade (DFAT) also notes that Iran has been issuing biometric passports since 2011 and that it is difficult to pass through Tehran's international airport with a fraudulent passport unless substantial bribery is involved; in the vicinity of 8,000 to 10,000 Euros.⁶ During the SHEV interview the applicant told the delegate that a smuggler obtained the fraudulent passport for him in Ilam, which contained his own name, photo, and date of birth, and that he did not encounter any problems when he showed this passport to an official on his way through Tehran's international airport. Given the circumstances, I consider it implausible the applicant was able to depart Iran without incident using a fraudulent passport.
13. I also consider the applicant's evidence regarding his ability to finance his travel to Australia was lacking credibility. The delegate questioned the applicant regarding the breakdown of costs for his journey, and he responded that the entire journey cost him approximately 26 million Tomans, of which his fraudulent passport cost him 2,000 US Dollars, and that when he arrived in Australia he still had 200 US Dollars in his pocket. The applicant told the delegate that during his time working as a labourer [prior] to his departure from Iran, he was saving money to finance his journey. The applicant further claimed that he was able to save the money because he was not required to contribute to his family's household expenses, and that he gave his earnings to his mother for safekeeping. I consider this at odds with his evidence earlier in the SHEV interview that due to their statelessness his family were not able to open bank accounts, but that they did not need to store their savings anywhere, because their earnings and expenses were equal and they did not have much money. In this context, I find the applicant's claim that his mother hid a substantial amount of money for him over a [long] period to be lacking credibility.
14. The applicant has also claimed that he was unable to attend school after Grade [number] because he and his siblings were not entitled to free education and his father was unable to pay, that his [family] worked as labourers in the construction industry on half the wage of Iranian citizens, and his mother made bread to supplement the family income. Overall, given the applicant's claimed circumstances, I find it implausible that he would have had the resources, or accumulated the resources in the time he says he did, to obtain a fraudulent Iranian passport (sophisticated enough to pass examination at Tehran and Qatar international airports), airline ticket(s) and the smuggler's fee from [another country] to Australia.
15. Also of concern is the information which the delegate put to the applicant for comment during the SHEV interview. The delegate asked the applicant if he had any relatives in Australia and he responded that he had [a relative], from his father's side of the family, called '[Mr A]'. When questioned about [Mr A] the applicant claimed that when he had first arrived in Australia he had had some contact with [Mr A] via [social media], but had still never met in person. The delegate then asked the applicant if he knew [Mr A]'s brother '[Mr B]' and the applicant responded in the negative. The delegate then put to the applicant that the Department had information [Mr B] had resided in Australia until 2012 when he returned to

⁶ Danish Refugee Council, Landinfo and Danish Immigration Service, "Iran: On Conversion to Christianity, Issues concerning Kurds and Post-2009 Election Protestors as well as Legal Issues and Exit Procedures", 1 February 2013, CIS25114

Iran using an Iranian travel document. The delegate further put to the applicant that as [Mr A] and [Mr B] were his paternal [relatives], and Iranian citizenship is passed through the paternal line of the family, then the applicant is an Iranian citizen, and not stateless. The applicant responded that he is not an Iranian citizen and that he had “no clue” as to how [Mr B] had obtained an Iranian passport. The delegate suggested that the applicant may wish to speak to his family in Iran to obtain more information and advised him he could provide his response after the SHEV interview.

16. Several weeks later, the applicant provided the delegate with a new statutory declaration, dated 5 June 2018, in which the applicant continues to rely on the contents of his SHEV application, but also provides new information, namely:
 - He has never met [Mr B] because the applicant is from Ilam, whereas [Mr B] is from Tehran.
 - Prior to his arrival in Australia he had heard either [Mr B] or [Mr A] was living in Australia but did not know which [relative] was here, or under what circumstances, and had not had any contact with either of them.
 - While he was in detention [Mr A] contacted him on [social media] and they exchanged messages. Following his release from detention he also exchanged messages with [Mr B], which ceased around May 2016. He cannot recall the contents of any of these messages, which were brief. For this reason, when the delegate asked him during the SHEV interview if he knew [Mr A] had a brother who lived in Australia, he had responded in the negative.
 - He was shocked when the delegate told him that [Mr B] had an Iranian travel document and that [Mr B] and [Mr A] were Iranian citizens. It is possible that because [Mr B] lives in Tehran, he may have been able to bribe an official to get citizenship. Money can buy anything in Iran.
 - He has spoken to his father who said he has not been in contact with [Mr B] and doesn't know how [Mr B] obtained an Iranian passport.
17. I do not consider that the applicant's statutory declaration of 5 June 2018 adequately addresses the information that one of his paternal [relatives] is an Iranian citizen. The applicant has claimed his parents have bad memories of their expulsion from Iraq to Iran, and do not like to speak about it; however he has applied for protection in Australia because of the difficulties he claims to have faced as a stateless Faili Kurd. I do not accept the applicant would be unaware of matters so central to his application for protection.
18. I am prepared to accept the applicant was born in Iran to Faili Kurdish parents, who had been expelled from Iraq several years earlier, and I consider it plausible that he may have, in the past, been stateless. While I have not drawn a conclusion about the authenticity of the undated photocopy of a green card the applicant has presented, given his apparent youth in the affixed photo, I do not consider it corroborates his claim that he was stateless at the time of his departure from Iran at the age of [age deleted]. For the reasons discussed above, the applicant's evidence regarding his family's continuing use of green cards, his ability to depart Iran using a fraudulent passport, and his relationship to his paternal [relatives], at least one of whom is an Iranian citizen, are also matters of concern. While none of these factors are singularly conclusive, when taken together, and in the context of the applicant's inability to provide more detailed information regarding his background, I consider they are indicative of a lack of credibility and an attempt to withhold information about his true circumstances.

19. On the evidence overall, I find the applicant is a national of Iran. I do not accept the applicant's passport was fraudulent, or that he departed Iran illegally. I do not accept that a year after his departure the Iranian authorities came to his family home and confiscated his green card because of his illegal departure. I am not satisfied there is a real chance of the applicant being harmed for reasons of being stateless or undocumented, or because of the manner of his departure.

Faili Kurdish ethnicity

20. DFAT has stated that it is aware of sufficient incidences of official and societal discrimination against ethnic minorities to suggest a pattern of behaviour, particularly where those groups are the minority in the geographic area in which they reside. However, DFAT also notes that the experience of different ethnic groups is not uniform, and the overwhelming majority of ethnic minority communities are integrated into Iranian society, participate in politics, and identify with the Iranian nation.⁷
21. In his written SHEV statement the applicant made various claims regarding the inability of Faili Kurds to access tertiary education, the public health system, equal wages or non-manual labour job opportunities in Iran. The applicant also claimed in his written SHEV statement that Faili Kurds cannot wear their traditional dress, register their marriages, or register the births of children where the father is Faili Kurd, but did not specify if he was referring to the small cohort of stateless Faili Kurds in Iran, or Iranian citizens of Faili Kurdish ethnicity. In the applicant's written SHEV statement he has claimed, "I was constantly reminded I was inferior because I was a Kurdish Faili. The Basij and local police would constantly interrogate us about why we were gathering together outside our homes or in other parts of the village."
22. During the SHEV interview the delegate asked the applicant if he had ever faced harm from the Iranian authorities and he responded that the authorities didn't respect their tradition, culture or clothes and then referred to a specific incident with the Basij when he was around [age] years old, which is also referred to in his written SHEV statement. I accept that in approximately [year deleted] the Basij detained the applicant and his friends while they were sitting outside the applicant's house wearing traditional Kurdish dress. I accept that during this encounter the Basij assaulted and verbally abused the applicant and his friends, told them they did not have the right to gather outside, and then released them several hours later.
23. The applicant has not specified how many of his friends were gathered on that day, or what they were doing, but he told the delegate that the Basij knew that they were stateless and wanted to teach them a lesson. I consider it plausible that the applicant and his friends may have been targeted on this occasion because of their Kurdish ethnicity, their traditional Kurdish dress or because they were in a group. While I accept that this incident occurred some [many] years ago, there is an absence of country information to suggest that the Iranian authorities now target Kurds for wearing their traditional dress or gathering in groups, where those gatherings are not linked to political activism.
24. The applicant also told the delegate that he also left school in Grade [Number] because of discrimination, and his family's financial situation. I accept that the official language of instruction in the Iranian school system is Farsi, and that the applicant perceived this as discriminatory. However, country information from sources such as DFAT and the Department of Immigration and Border Protection (DIBP) indicates that registered refugee

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

children (such as the applicant claims he was), and all Iranian citizens (regardless of ethnicity), can access the public education system. On the evidence, I do not accept the applicant's father was forced to pay for his children's education for the reasons claimed.

25. The applicant has not provided any other examples of how the numerous purported restrictions, referred to in his written SHEV statement, have affected him personally. In any event, I am satisfied the applicant is an Iranian citizen and country information before the delegate indicates that Faili Kurds who are Iranian citizens can access services, employment and state protection on the same basis as other Iranian citizens. While DFAT states that it is not aware of specific instances whereby the authorities have singled out Faili Kurds for mistreatment, I consider it plausible that some Kurds in Iran may experience a degree of official or societal discrimination.⁸ However, given the applicant's circumstances overall, I consider the chance that he would experience serious harm in Iran because of his Faili Kurdish ethnicity, to be remote.
26. In his written SHEV statement the applicant has claimed that since his arrival in Australia he has become involved with various pro-Kurdish community groups, some of which advocate for a separate Kurdish state. The applicant also claimed that if he returns to Iran he wants to continue his involvement with Kurdish independence groups, express his beliefs in the same way he has in Australia and protest against the treatment of Kurdish people in Iran. The applicant also claimed that the Iranian authorities would consider him to be a Kurdish activist, impute him with an anti-Iranian government political opinion, and then arrest, detain and kill him on this basis.
27. At the outset of the SHEV interview the delegate advised the applicant that the contents of his SHEV application, including the recording of the SHEV interview would not be made available to the authorities in Iran, and later asked the applicant for further details about his claimed pro-Kurdish views. The applicant did not elaborate on these views, apart from reiterating that he participates in ceremonies, traditional dances for happiness, discussions on how to preserve the Kurdish language, and any other activities which these community groups organise; but that he does so "privately", so as not to endanger his family. When asked if he had been politically active while he was in Iran the applicant responded that he didn't dare, and then added that he had not been interested in politics.
28. The delegate also asked the applicant if he comments on pro-Kurdish matters using social media, and he responded that he makes online comments on "[celebratory] events", such as "[comment deleted]". The applicant showed the delegate an image on social media of a Kurdish celebration and pointed to one of his own comments, which he noted was made in Kurdish and not Farsi, that this is "[comment deleted]". I accept that such an image and the applicant's related comments are visible on social media.
29. The applicant said that he had also met people in Australia who are well known for supporting the Kurdish cause, including a [performer] called [Mr C]. When the delegate asked the applicant how he came to meet [Mr C] the applicant responded that he saw [Mr C]'s appearance advertised on [social media] and added that [Mr C] is a popular man. The applicant showed the delegate a photo on social media of himself, in traditional Kurdish dress, and [Mr C] at a Kurdish [event]. The applicant showed the delegate a comment he had made on the photo, that it was "[comment deleted]". Although the image is not part of the referred materials, I accept that it, and a related comment from the applicant, are visible on social media.

⁸ Ibid.

30. In the applicant's post SHEV interview statutory declaration of 5 June 2018, he claims to have attended further Kurdish celebrations and events in Australia, including in public parks where the Kurdish flag has been raised. The applicant has also provided a letter of support from [a] "[community group]" [in Australia], dated [in] May 2018, and signed by the [community group] President and Secretary. The letter states that the applicant has regularly attended their community events over the past three years, that he has a strong connection with the [group's] board and that they trust he is of Faili Kurdish ethnicity. The letter confirms the [group's] support for the applicant's migration matter, but does not refer to the applicant's claimed statelessness.
31. Overall, the applicant's evidence regarding his involvement with the Kurdish community in Australia was brief and unconvincing. I am prepared to accept that he has attended [community] events, including where the Kurdish flag has been raised, and that he is responsible for the two online comments he showed the delegate. However, I do not consider these generic comments, even when considered in the context in which they appear, constitute, or would be perceived as, the expression of a pro-Kurdish political belief. I also do not consider, on the evidence overall, that the applicant withheld his expression of any such beliefs at the SHEV interview because he was concerned for his or his family's safety. I also consider the applicant's explanation of how he came to meet [Mr C] is not indicative of a meaningful or ongoing connection between them.
32. The applicant has claimed that the Iranian authorities closely monitor social media; however, on the evidence before me regarding the extent of his online activity, I do not accept he would come to the attention of the Iranian authorities because of it. DFAT indicates that Iranians are able to criticise the government of the day robustly, both in public conversation and online in social media. This freedom is not unlimited, however – a number of well-established 'red line' topics are off-limits and critical commentary may lead to prosecution under national security legislation. Some human rights observers report there is some uncertainty over whether or not a topic is actually 'red line'. DFAT also indicates that the Iranian authorities are highly sensitive to political activism, particularly when it is perceived as a threat to the Islamic Republic, and have targeted ethnic minority activists for arrest and prosecution on national security grounds.⁹
33. On the evidence overall, I do not consider it credible that the applicant would have a profile with the Iranian authorities because of his superficial involvement and association with Kurdish community groups or figures in Australia, including those who have espoused separatist views. While I accept the applicant may hold pro-Kurdish and anti-Iranian government political views, he has had little engagement, and displayed little interest, in the sort of matters which country information indicates are of concern to the Iranian authorities, such as pro-separatist, or pro-ethnic minority, political activism. I am not satisfied the applicant would become a political activist, or protest against the Iranian government, upon return as he has claimed he would, and I consider he does not publicise his political views because he has little interest in doing so, rather than out of fear of reprisals from the Iranian authorities as claimed. I am not satisfied the applicant, a Faili Kurd, faces a real chance of harm in Iran on account of his pro-Kurdish and anti-Iranian government political opinion.
34. The applicant has claimed that he does not currently consider himself a Shia Muslim and is currently investigating other (unspecified) religions but has not chosen one, which I accept. While the delegate concluded that the applicant is an atheist, and considered country information relating to the treatment of such persons in Iran, the applicant has clearly stated

⁹ Ibid.

his belief in God, and I do not accept he is an atheist. Country information indicates there is a great diversity of attitudes and treatment of persons who hold non-mainstream religious views in Iran, depending on level of education and other factors. In general, ordinary Iranian citizens seem to be fairly tolerant, and, when left without interference from authorities, more curious about digressing religious belief and practice than condemning. Many Iranians also have a secular attitude, rejecting all religions, Islam included, and there is a growing number of people who appear to be looking for an alternative to the official version of Islam.¹⁰ While apostasy is a crime in Iran, and in rare cases has resulted in the application of the death penalty, such cases are also usually linked to political, or national security related, charges.¹¹

35. In the applicant's written SHEV statement he claimed that the Iranian authorities are more likely to target Kurds who no longer follow Islam, but did not provide any examples, or other evidence, in support of this. The applicant has not claimed that he is interested in sharing his views on religion, and I do not consider that he would come to the attention of the Iranian authorities because he does not currently consider himself a Shia Muslim, or because of his unspecified religious investigations, or that he faces a real chance of any harm for these reasons.

Returning Asylum Seeker from Australia/Western Country

36. I accept the applicant departed Iran in [2013] and sought asylum in Australia; however I do not accept that he used a fraudulent Iranian passport to do so. For the reasons stated above, I am satisfied that the applicant is in fact an Iranian citizen and that he departed Iran lawfully, using his own passport.
37. It is possible that the Iranian authorities may become aware, upon the applicant's return, that he had been living in Australia during his time abroad and that he had sought asylum here. I note that Iran does not facilitate the involuntary return of Iranian citizens from Australia if they arrived before 19 March 2018.¹² The applicant has claimed that he would only return to Iran if forced; however, given the country information, I am satisfied that he could only return on a voluntary basis.
38. According to international observers, Iranian authorities pay little attention to failed asylum seekers on their return. Iranians have left the country in large numbers since the 1979 revolution, and authorities accept that many will seek to live and work overseas for economic reasons. International observers report that Iranian authorities have little interest in prosecuting failed asylum seekers for activities conducted outside Iran, including in relation to protection claims. This includes posting social media comments critical of the government; as heavy internet filtering means most Iranians will never see them. Authorities will usually question a voluntary returnee on return only if they have already come to official attention, such as by committing a crime in Iran before departing. Those with an existing high profile may face a higher risk of coming to official attention on return to Iran, particularly political activists.¹³
39. With reference to the applicant's particular circumstances, I have found he departed Iran lawfully, and there is no credible evidence before me to indicate he has an adverse profile with the Iranian authorities. I am not satisfied the applicant's Faili Kurdish ethnicity, his

¹⁰ Austrian Centre for Country of Origin and Asylum Research and Documentation (ACCORD), "Iran: Freedom of Religion; Treatment of Religious and Ethnic Minorities COI Compilation", 1 September 2015, CISEC96CF13622

¹¹ DFAT, "Country Information Report - Iran ", 7 June 2018, CIS7B839411226

¹² Ibid.

¹³ Ibid.

activities or presence here, or his lack of adherence to Shia Islam, would lead any differential treatment upon re-entry. Nor does the country information before the delegate support a finding that persons who have sought asylum in Western countries, such as Australia, where he has spent a considerable period of time, are imputed to hold an anti-Iranian government political opinion. I am not satisfied the applicant had a profile of interest to the Iranian authorities for any reason prior to his departure or since, or would attract the adverse attention of the Iranian authorities. I am not satisfied the applicant faces a real chance of any harm on this basis.

40. I am also not satisfied he faces a real chance of persecution for any of the above reasons, should he return to Iran. The applicant does not have a well-founded fear of persecution within the meaning of s.5J.

Refugee: conclusion

41. 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

42. 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

43. 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.
44. I have accepted that the applicant may face some level of official or societal discrimination as an Iranian citizen of Faili Kurdish ethnicity in Iran. Having considered the applicant's own circumstances, and evidence discussed above, I am not satisfied that this would amount to the arbitrary deprivation of life, the death penalty or torture. I am also not satisfied that such discrimination could reasonably be regarded as cruel or inhuman in nature, that causes severe pain or suffering, whether physical or mental, or causes extreme humiliation, as required in the definitions of cruel or inhuman treatment or punishment or degrading treatment or punishment. I am not satisfied such treatment amounts to significant harm, and find there is not a real risk of significant harm on this basis.
45. I have otherwise concluded that the applicant does not face a real chance of harm in Iran because of his pro-Kurdish and anti-Iranian government political views, or because of the connections he has made with Kurdish community groups in Australia and pro-Kurdish

individuals who hold separatist views. I have also concluded that the applicant does not face a real chance of harm because he does not currently consider himself a Shia Muslim and has investigated other religions. I accept that the applicant would be returning to Iran as a (voluntary) failed asylum seeker who has spent a considerable period of time in Australia; however I have concluded that he would not face a real chance of any harm for this reason. For the same reasons I also find there is not a real risk he will suffer significant harm.

46. After having regard to the applicant's circumstances, I am not satisfied that he faces a real risk of suffering significant harm.

Complementary protection: conclusion

47. 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

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

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.