



**Australian Government**  

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**Immigration Assessment Authority**

**Decision and Reasons**

**Referred application**

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IRAN  
IAA reference: IAA19/06777

Date and time of decision: 14 August 2019 14:35:00  
R Mikhail, Reviewer

**Decision**

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

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

## Background to the review

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### Visa application

1. The referred applicant (the applicant) claims to be a stateless Faili Kurd from Iran. On 12 April 2017 he lodged an application for a Safe Haven Enterprise Visa (application for protection). On 20 June 2019 a delegate of the Minister for Immigration refused the grant of the 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) (review material).
3. I have obtained new information from the applicant's brother, [Mr A]. [Mr A] provided information to the IAA that he and his wife and children are Iranian citizens, and not stateless as he had previously claimed in their application for protection. The applicant's claims centres on his claimed lack of nationality and that of his family and this new evidence, which was provided after the delegate's decision, casts a different light over some of the evidence the applicant previously advanced. I am satisfied there are exceptional circumstances to consider this new information.

### Applicant's claims for protection

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4. The applicant's claims can be summarised as follows:
  - He is a stateless Faili Kurd from Ilam Province in Iran. His parents were born in Iraq and had fled to Iran before he was born.
  - He has no identity documents and, therefore, had no access to education or government jobs.
  - He was discriminated against because of his legal status and race.
  - He has a profile in Australia as an artist which would put him at risk of imprisonment on return.
  - He is interested in Christianity and would like to become a Christian.

### Identity documents – request from Minister

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5. The facts of this case raise the preliminary issue of whether the grant of the visa is prevented by the operation of ss.65 and 91W or 91WA of the Act. Under s.65 the Minister is to refuse to grant a visa to an applicant if, after considering a valid application for the visa, the Minister is not satisfied that the grant of the visa is not prevented by s.91W (evidence of identity and bogus documents) or s.91WA (bogus documents and destroying identity documents).
6. Section 91WA of the Act prevents the grant of a protection visa to an applicant who provides a 'bogus document' as evidence of their identity, nationality or citizenship or has destroyed or disposed of such evidence or caused it to be destroyed or disposed of. However, that requirement will not apply if the Minister is satisfied that the applicant has a reasonable explanation for providing the bogus document or for the destruction or disposal of that

evidence and either provides documentary evidence of their identity, nationality or citizenship or has taken reasonable steps to provide such evidence.

#### **Application of s.91WA to this case**

7. The applicant has claimed that all members of his family are stateless and that he had travelled to Australia by boat with this brother, [Mr A] and [Mr A]'s wife and children.
8. In support of his application for protection the applicant submitted a copy of what he claimed was a Bureau for Aliens and Foreign Immigrants Affairs (BAFIA) Foreign Nationals ID Card issued in Iran in his mother's name and which listed other members of his immediate family including the applicant as a "Child" dependant of his mother.
9. Country information before me indicates that, over the years, refugees in Iran have been issued with different types of registration documents. Faili Kurds who arrived prior to 1979 were mainly issued with white cards, while the majority of those who arrived in the 1980s received green cards. In 2002 the majority of Iraqi refugees residing in Iran were registered during a comprehensive registration programme referred to as Amayesh registration. From 2002-3 the Amayesh scheme had replaced previous refugee registration processes, becoming the sole system through which a refugee status could be renewed. Amayesh cards are renewed annually. These cards enable refugees to access basic services including in healthcare and education and work permits, and contain information about the town and province the card holder is permitted to reside in. Children born to Amayesh card holders are also generally issued with Amayesh cards. The majority of Faili Kurd refugees are likely to be registered and hold valid Amayesh cards though there are Faili Kurds who live in Iran without documentation and/or being registered with the authorities.<sup>1</sup>
10. [Mr A] has now claimed to the IAA that he and his wife and children are Iranian citizens and are not stateless, as he had previously claimed in their own application for protection.
11. On 22 July 2019 the IAA wrote to the applicant seeking his comment on the above information and advised the applicant that such information may lead the IAA to conclude that he, his brother, and all of his family members are not stateless but are Iranian citizens. Further, that he has Iranian national identity documents and did not depart Iran illegally on a false passport. He was also advised that it may lead the IAA to conclude that he failed to comply with the Department's request under s.91W(1) without a reasonable explanation and that the above card allegedly belonging to his mother is a bogus document and that s.91WA applies to him. He was invited to provide information relevant to this issue, in particular, information relevant to whether he has a reasonable explanation for failing to comply with the Department's request under s.91W and for providing a bogus document as evidence of his identity, nationality or citizenship. He was advised that his comments were to be received by a particular date and, if not, the IAA may make a decision on the review without taking any further action to obtain his views. No response was received from the applicant.
12. I have considered the applicant's oral evidence from his protection visa interview in support of his claims. I found this evidence to be overly vague and evasive particularly when the applicant was questioned by the delegate about his family origins and what documents his family held in Iran. For example, he claimed that he did not know when his parents moved to Iran from Iraq,

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<sup>1</sup> DIBP Tehran, "Feyli Kurds – obtaining identity travel documents", 17 September 2015, CISEC96CF13392; Australian Department of Foreign Affairs and Trade (DFAT), "DFAT Country Information Report: Faili Kurds in Iraq and Iran", 3 December 2014, CIS2F827D91722

where they married, his grandparents' origins, and whether his family had Iraqi citizenship or sought to recover it as he did not "ask about those things". He also did not provide an explanation for why his family were stateless when asked but merely referred to their lack of rights. He did not ask his parents about whether they ever tried to register as refugees in Iran and did not know how they were able to own their own home. I find his lack of knowledge about such critical matters weighs heavily against the credibility of his claim to be stateless. Other aspects of his evidence were incongruous. For example, he claims he paid a significant amount of money for his travel to Australia from his savings and borrowings from family and yet claimed to have worked as a low-paid [worker] to support his family who lived in similar circumstances and were "miserable" like him. Overall I found his oral evidence to be unconvincing.

13. Further, the applicant provided no documentary evidence in support of his claims other than his mother' refugee identity card. I note the card indicates that it was valid for one year from the date of issue but no date of issue is noted which I find an oddity. When questioned about this by the delegate he said he did not know when it was issued and had not seen the card when he was in Iran and had only seen it when he received it in Australia. I find his response very difficult to believe given he claims to have suffered in Iran and left, in part, because of a lack of identity documentation and I find it implausible that he would not know that his mother had held such a card. The applicant is listed as a child in this document which indicates it was issued quite a number of years ago. When asked if he had his own green card he said "I do not know I can't remember now I didn't have it at all I didn't see it". He also claimed that his siblings might have been issued with such cards but he did not see it. He did not know the process for renewing such cards or the services associated with the card and did not know if this was the only card issued to his family as he did not "ask about it much". Once again, a very unconvincing response given the nature of his claims for protection and I find it very difficult to believe that he would be unfamiliar with the process for renewing such cards or the services he could obtain with these cards as a stateless Faili Kurd in Iran. When asked again when the card was issued he said he did not know and all he knew was that "they got tough on those things and did not give any documents" and if they did they were not worth anything as they could not work or study. This does not accord with the country information before me about the benefits associated with these cards and the regular issuance of these cards. He then claimed his family do not currently have any identity documents and provides no explanation for this. When asked if he had ever talked to his family recently about them being stateless and if they ever attempted to get documents to register their children he said he had not asked which, again, is very difficult as he allegedly saw his mother's refugee identity card in Australia for the first time which one would have thought would have raised some questions on his part. The applicant's very apparent lack of knowledge about the Iranian refugee registration system that applies to Faili Kurd refugees and his own family history is indicative of the fact that he and his family did not live as stateless refugees in Iran.
14. The delegate had similar concerns in respect of the applicant's claimed statelessness and ultimately found that the applicant was an Iranian citizen. The applicant did not provide any submissions to the IAA in response to this finding.
15. The applicant's brother has admitted to being an Iranian citizen and country information that was before the delegate indicates that Iranian citizenship is derived through paternal descent.<sup>2</sup> The fact that the applicant's brother has Iranian citizenship is strongly indicative that the applicant has Iranian citizenship. I have also given consideration that the applicant, again, did not provide any response when this information was put to him for comment by the IAA.

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

16. Taking into account all of the information before me, I am satisfied the applicant is an Iranian citizen. I am also satisfied the refugee identity card he provided for his mother is a bogus document as defined in s.5 of the Act as I am satisfied it is counterfeit or was not issued in relation to his mother.
17. Section 91WA refers to documents provided by an applicant as evidence of their identity, nationality or citizenship. In the context of claims of statelessness I am satisfied that this provision also relates to documentary evidence provided as evidence of an applicant's lack of nationality.
18. I find that the applicant's mother's refugee identity card is a bogus document which was provided by the applicant as evidence of his lack of nationality.
19. Section 91WA(2) states that subsection (1) does not apply if the applicant (a) has a reasonable explanation for providing a bogus document and (b) either provides documentary evidence of his identity, nationality or citizenship or has taken reasonable steps to do so.
20. The delegate was satisfied the applicant had taken reasonable steps to produce documentary evidence to support his identity as he had provided his Australian Driver's Licence which she found to be satisfactory. Nonetheless, I have had regard to the purpose of s.91WA which is to encourage applicants for protection visas to provide genuine documentary evidence of their identity, nationality or citizenship as establishing an applicant's identity is a critical factor in assessing their claims for protection. I do not consider the provision of the applicant's Australian Driver's Licence sufficient for the purpose of s.91WA as it does not establish his identity for the purpose of assessing his claims for protection.
21. The applicant has not responded to the letter from the IAA seeking further information in this regard. He has not produced relevant documentary evidence of his identity, nationality or citizenship from Iran or provided evidence of having taken reasonable steps to do so. I am not satisfied s.91WA(2) has been met.
22. Section 91WA applies to the applicant. Therefore, the grant of the visa is prevented by that section.
23. In the circumstances, I have found it unnecessary to consider whether the applicant satisfies the criteria in s.36(2) for a protection visa.

## **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:

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***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

...

#### **91WA Providing bogus documents or destroying identity documents**

(1) The Minister must refuse to grant a protection visa to an applicant for a protection visa if:

- (a) the applicant provides a bogus document as evidence of the applicant's identity, nationality or citizenship; or
- (b) the Minister is satisfied that the applicant:
  - (i) has destroyed or disposed of documentary evidence of the applicant's identity, nationality or citizenship; or
  - (ii) has caused such documentary evidence to be destroyed or disposed of.

(2) Subsection (1) does not apply if the Minister is satisfied that the applicant:

- (a) has a reasonable explanation for providing the bogus document or for the destruction or disposal of the documentary evidence; and
- (b) either:
  - (i) provides documentary evidence of his or her identity, nationality or citizenship; or
  - (ii) has taken reasonable steps to provide such evidence.

(3) For the purposes of this section, a person provides a document if the person provides, gives or presents the document or causes the document to be provided, given or presented.