



**Australian Government**  
**Immigration Assessment Authority**

**Decision and Reasons**

**Referred application**

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IRAN

IAA reference: IAA19/07512

Date and time of decision: 20 December 2019 10:50:00

I Sheck, 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) is an Iranian national from Ilam province. He departed Iran [in] June 2013 and arrived in Australia [in] July 2013. On 28 September 2017 he lodged an application for a protection visa (PV).
2. On 8 November 2019 a delegate of the Minister for Immigration and Border Protection (the delegate) refused to grant the visa. The delegate accepted that the applicant was a Faili Kurd and suffered discrimination due to this but did not accept that he was of any interest to the Iranian authorities or that he was facing criminal charges. The delegate assessed that the applicant would not face serious harm in Iran due to his ethnicity, being a failed asylum seeker or for any other reason.

### 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). The applicant emailed the IAA on 2 December 2019 and 3 December 2019 expressing the view that he thought the delegate's decision was unfair. No further information has been obtained or received.

### Applicant's claims for protection

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4. After his arrival in Australia the applicant was interviewed by an officer of the then Department of Immigration and Border Protection (now part of the Department of Home Affairs) on 13 August 2013. A statement of claims dated 27 September 2017 was lodged with his PV application. On 19 August 2019 the applicant's then representative tendered submissions and additional documents. On 20 August 2019 a statutory declaration from the applicant dated 19 August 2019 was tendered. On 20 August and 28 August 2019 the applicant attended a 2-part interview ("the PV interview") with the delegate at which his then representatives from [his representative's agency] were present. The applicant claims:
  - He is a Faili Kurd and his father was deported from Iraq. The Iranian government oppresses Kurds and accuses them of being spies. He had no job and could not obtain employment;
  - In 2012 he met "F", they fell in love and planned to marry. The applicant asked F's father for her hand in marriage but was refused. F's father, "P", subsequently discovered that the applicant and F had a sexual relationship. He threatened the applicant, causing him to flee the country. P is a member of the Iranian intelligence services. He has charges laid against the applicant. If the applicant returns to Iran he will either be tried and imprisoned by the courts or P and his two sons (F's brothers) will kill him for destroying the family's honour;
  - The applicant fears persecution on the basis of being a returnee from a Western country who has had a failed application for asylum.

## Factual findings

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5. The applicant's evidence regarding his background, family and education has been consistent and I am satisfied that it is as stated. Based on the information provided in his arrival and PV interviews, written statements and identity documents, I find that the applicant's background is as follows: he was born on [date] in [a named city in] Ilam province, Iran and is an Iranian national. His father was born in Iraq and deported to Iran by the Saddam regime. He is now an Iranian national. The applicant has [specified family members]. He and his family are of Faili Kurd ethnicity. He is a Shia Muslim. The family moved to [Town 1], Ilam province, when the applicant was around [age] years of age and the applicant's parents remain in their [Town 1] home. He undertook primary and secondary schooling, completing Year 12 in [year]. He subsequently completed a [qualification]. He completed his military service from [date] to [date], during which time he was employed as [an occupation 1]. In February 2013 he completed a [further qualification] at [a named] University in [another] province. He has not been employed in Australia.

## Kurdish Ethnicity

6. In his arrival interview, completed on 13 August 2013, the applicant advised that his last address in Iran had been his family home in [Town 1]. He left there [in] June 2013 and travelled to Tehran, leaving Imam Khomeini International Airport the following day on his legally issued passport. The applicant advised that he had left Iran because he had no job, he could not obtain employment, he didn't feel safe and couldn't enjoy life. The Iranian government oppressed Kurds and gave them a hard time. He had been particularly affected by this oppression because his father was from Iraq. He had never been arrested or detained but the police and security organisations such as the Basij and the Sepah affected him on a day to day basis. He would be searched, questioned or accused of things. He was not able to wear the clothes he wanted or style his hair the way he wanted to. He had to "not shave" and wear long sleeved shirts. Although the applicant claimed that he was unable to find work he also stated that [during] 2013 he worked [in two occupation 2 roles] at [Agency 1] [in Town 1]. He had undertaken similar work as well as labouring on a casual basis, while he was studying.
7. In the statement of claims lodged with his PV application, the applicant stated that "Kurdish people are marginalised and discriminated against. They are also not allowed to have their own traditional outfits when they go to government offices or departments, or to hospitals or law enforcement offices. In all these places, when a Kurdish person is in the traditional Kurdish clothes, he is kicked out. They also face general discrimination in society and harassment in Iran." At the PV interview the delegate asked the applicant how he had been discriminated against in Iran. He replied that every time he applied for a job he was told that because of his father's background and his language he could not get the job. Country information notes that although no laws discriminate on the basis of ethnicity, including in relation to access to education, employment, or housing Iran does, however, remain a strongly Persian-centric society in practice.<sup>1</sup> I accept that the applicant suffered employment discrimination. The country information does not support that the applicant would be denied all employment on the basis of his ethnicity and he has given a history of casual employment while he was undertaking studies. I further note that the applicant only completed his tertiary studies four months before departing Iran, giving him a limited opportunity in which to seek long-term employment. The delegate asked the applicant whether he had been politically active in Iran or Australia or had any links to Kurdish political parties. He replied that he had not and I accept that this is the case.

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<sup>1</sup> Department of Foreign Affairs and Trade (DFAT), "DFAT Country Information Report - Iran", 7 June 2018, CIS7B839411226; 3.1 and 3.2

## The relationship with F

8. In his 2017 statement of claims the applicant stated that he had not divulged the real reason for his departure from Iran, as he was afraid that the information he gave would be shared with the Iranian authorities. He had now realised that he needed to disclose everything. The applicant stated that in 2012 he met F while at University in [City 1], they became friends and subsequently a deeper relationship developed. Around December 2012 they had sexual relations. The applicant subsequently went with his parents to see F's parents in order to ask for her hand in marriage. F's father, P, refused on the basis that F needed to finish her studies. P was very conservative and worked for the Intelligence Department in [City 1]. Two weeks after the initial approach the applicant's parents went alone to see P and he told them that his daughter would not marry a Kurdish man. A few weeks after this the applicant sent further representatives to P but the answer was the same. F spoke to her mother and asked her to convince P that they should marry; she also told her mother that she and the applicant had a sexual relationship. F's mother informed P of this. In February 2013 P called the applicant and threatened his life. The applicant's father started organising the applicant's departure from Iran.
9. [In] April 2013 the applicant's grandmother died and he, his father and a sister went to [a city in] Iraq for a few days. Three days after their return the applicant went to stay with his sister N in [City 2] for four days. While he was there three men in plain clothes came to the family home in [Town 1]. The applicant's father organised for him to stay with a relative in Tehran, where he remained until his departure. While he was in Tehran he spoke to F on two occasions. Her father would not let her leave the house or see anyone. He had told her he would find the applicant and harm him or kill him. The applicant stated that he has not had any contact with F since he left Iran.
10. In his statutory declaration dated 19 August 2019 the applicant clarified some dates, including that after being threatened by P in February 2013 his father had sent him to stay with his sister E (location not stated). The first part of the PV interview was held on 20 August 2019. The applicant recounted the history of his and F's relationship as previously stated. He added that before commencing a sexual relationship he and F entered into a Sigheh or temporary marriage for one month. It was conducted over the telephone. The dowry was a flower. When asked when this was the interpreter responded September and then said "Between the eighth and ninth month of the Iranian calendar", which is November to December. The delegate asked the applicant on three occasions whether he had any contact with F since leaving Iran and he responded every time that he had not. The delegate then revealed that he was aware that the applicant had sent F money [in] January 2015. The applicant admitted that he had; he could not remember the reason. He just wanted "to close her mouth so she doesn't say anything to her father about where I am".
11. Due to time constraints the PV interview was not completed on 20 August 2019 and continued on 28 August 2019. The applicant advised at the outset that he had not been able to give some information at the first PV interview because he was "scared" but now he wanted to tell the truth. He advised that after being released from immigration detention in 2013 he contacted F through a friend and they remain in contact. The applicant contended that he is not able to call her because her father had confiscated her mobile phone so she calls him. In addition to this her father and brothers beat her, have confined her to the house and she was not allowed to complete her studies. He sent her the money in 2015 because she needed treatment for [a medical issue] and her father would not allow her treatment, saying that she had brought shame on the family and should just die at home. She went for treatment when her father and brothers took a pilgrimage to Mashhad.

12. I accept as plausible that the applicant and F had a relationship including of a sexual nature prior to the applicant's departure from Iran. The applicant first provided details about the relationship in 2017 and stated at that time that he realised he needed to disclose everything. He maintained that his last contact with F was in May 2013 until confronted with evidence by the delegate that showed this to be false. At that point he indicated that there was one further contact in which he wired F some money but could not remember why. Then only eight days later the applicant provided a further variation to this narrative, stating that he and F are in fact still in contact with each other and he provided money to her for medical treatment, without which she may have died. The numerous variations in the narrative significantly undermine the applicant's credibility.

#### **The actions of P**

13. As noted above, the applicant has consistently maintained that F's father P did not allow their marriage and subsequently threatened the applicant's life in February 2013. The applicant presently maintains that following this threat he went to live with his sister E until April 2013. After his return from [the city in] Iraq he then went to live with his sister N in [City 2] for four days. The applicant states that [City 2] was around [distance] from his father's home in [Town 1] and this is correct. [City 1], where F and her family reside and where the applicant attended University, is also some [similar time] from [Town 1] and [City 2] is next to [City 1]. I find it implausible that the applicant's family would seek to hide him from P, who lives in [City 1], by moving him from [Town 1] to [City 2]. The applicant then claims that he went to Tehran from April until his departure from Iran in June 2013. This is not consistent with his evidence given in 2013 that he lived in the family home until [June] 2013 and [for a specified period] was working at [Agency 1 in Town 1]. In his statement of claims in 2017 the applicant contended that the earlier dates were incorrect and he worked at [Agency 1 in Town 1] [during an earlier period in] 2012.
14. In addition to P's verbal threat to the applicant, the applicant contends that P arranged for various agents to come to his home. In the statement of claims the applicant states that three men in plain clothes came to his home during the four days that he stayed with his sister N in [City 2] in April 2013. They told his parents that they were from the Intelligence division of the Sepah (or Islamic Revolutionary Guard Corps). The applicant further stated in his statement of claims that "about eighteen months", three uniformed men from the Public Prosecutor's Office went to his father's house and asked if the applicant had returned. They physically assaulted the applicant's brother M. It is unclear from this document whether the claimed visit occurred eighteen months *ago*, which would be March 2016, or eighteen months *after his departure*, which would be January 2015. At the PV interview the applicant stated that the first visit from P's men occurred two to three weeks after he had been sent to N's house. This does not match up with his current claim that he was only at N's house in [City 2] for four days and then went to Tehran because of the visit from the men. The applicant also told the delegate that on the occasion when the man assaulted M it was because they had verbally abused his father and M had objected to that. The applicant added that men returned to his father's house in August 2018 and smashed the windows of M's car. The family did not make any complaints "because it gives them a reason to harass us". The delegate asked how many times agents had been to his father's house and he responded Two, which is not consistent with this narrative.
15. The applicant contends that he is facing legal charges in Iran. This was also first raised in the statement of claims in 2017. The applicant stated at that point that bogus charges had been laid against him, due to P's power and position in the Department of Intelligence. He did not know what these charges were but may relate to him being opposed to the regime because of his ethnic background. At the first PV interview the applicant stated that P was looking for him

and had put a complaint against him. He did not know what the complaint was as he hadn't been there. At the second PV interview the applicant stated that when F found out that he was about to leave Iran P had forced her to go to court and make a complaint against the applicant. He is not sure but he thinks that she has claimed that he raped her. He had not mentioned this before because he was afraid.

16. The applicant stated in his statement of claims that he received summonses to attend the [Town 1] Public Court "in August 2013, November 2013, February 2014 and May 2014 in respect of a complaint lodged by P." On 19 August 2019 the applicant produced the summonses in question and English translations. The first document is dated [in] August 2013 and requires the applicant to attend [Town 1] Public Court "10 days after being served the summons". The document further notes "there will be legal consequences for failing to attend and the matter will be referred to the court to make a decision in absentia". The second document is the same as the first apart from the date of issue, which is [in] November 2013. The third document is again the same and is dated [in] February 2014. Contrary to the applicant's claim, the fourth document is not a summons to attend the [Town 1] Public Court but an arrest warrant issued by the [Town 1] Public and Revolutionary Court and addressed to the [Town 1] Police.
17. I have a number of concerns about these documents. Country information indicates that prior to June 2015 summonses are always filled out by hand and only the copy is served to the summoned. The summons is stamped by the issuing authority.<sup>2</sup> None of the summons dated August 2013, November 2013 or February 2014 contain a stamp from the Court as they should. Secondly, as the applicant was not in Iran at the time of service, they could not be delivered to "the summoned". They have however all been signed in the area headed "signature by the summoned." The delegate asked the applicant who had signed the documents and he said he didn't know: his father or brother or someone. I do not accept that a court issued summons is taken to be served on a person when it has been randomly given to and signed by another person. Thirdly, despite the claim that "the matter will be referred to the court to make a decision in absentia" if the summoned person fails to appear, this did not occur but summonses continued to be issued every three months. Finally, the applicant claimed that he had been issued with four summons but this is clearly not the case; the fourth document is an arrest warrant. He has at no point mentioned that there is an arrest warrant in force against him. The applicant has not explained how his family obtained the arrest warrant, which is not addressed to him or his family. Taken overall, I do not accept that these documents are genuine.
18. The applicant has claimed that charges have been laid against him by P or possibly by F. There has been great variation in the possible nature of such charges. The applicant has provided false documents in order to support this claim. He has claimed that P sent men to visit his family home on two occasions but has also described visits by P's agents in April 2013, in January 2015 or March 2016 and in August 2018. He has provided several versions of his whereabouts in the period April to June 2013, including that he was at home in [Town 1], that he was with his sister in [City 2] and that he was with a cousin in Tehran. He has claimed that his last contact with F was in May 2013, in January 2015 and that contact is ongoing. Having regards to these inconsistencies and my concerns about the applicant's credibility I conclude that the entirety of this claim is a fabrication. To clarify: I do not accept that the applicant asked F's father P for her hand in marriage. I do not accept that P was informed that the

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<sup>2</sup> 'Iran: CI160505105926661 – Ahwazi Arabs – Cultural Activists – 'Disturbing Public Order' – 'Creating Public Anxiety' – 'Creating Groups Against the Government' – Court Summonses', Country of Origin Information Services Section (COISS), 19 May 2016, CROD9DEFA159; p.8

applicant had deflowered his daughter. I do not accept that P is a member of the Ettela'at, the Sepah or any other Iranian Intelligence Services. I do not accept that P threatened the applicant, had charges laid against him or sent agents to his family home. I do not accept that the applicant's decision to depart from his family home in [Town 1] and leave Iran was in any way related to any actions of P. I do not accept that because of her relationship with the applicant, F was beaten by P and her brothers, removed from her University studies, confined to her house and denied medical treatment.

19. In the submissions of August 2019 it is claimed that the applicant fears harm on account of his membership of a particular social group or groups, these being men who have pre-marital relations with Iranian women or men who have relationships with women without the acceptance of their families. It is also submitted that the applicant may be a victim of an honour related conflict due to such a relationship. I have accepted as plausible that the applicant and F had a relationship while the applicant lived in Iran. Country information from 2016 notes that pre-marital and extra-marital relations are common and unmarried couples appearing together in public is very common, particularly in the middle and upper classes.<sup>3</sup> I acknowledge however that this may not be the case in rural or more conservative areas of Iran. [Representative A], in her submissions, has referenced a number of reports and media articles on adultery, which are not of relevance here. She also notes that "Under the Shari'a law, sexual intercourse is only permitted within a marriage and sex out of marriage is considered to be a hadd crime."<sup>4</sup> While this is the case, the applicant now claims that he and F underwent a Sigheh or temporary marriage prior to commencing a sexual relationship, therefore no hadd crime has been committed. For the reasons discussed above, I am not satisfied that the applicant is of any adverse interest to F's father or any other of her family members. I cannot therefore be satisfied that the applicant is the member of a particular social group men who have relationships with women without the acceptance of their families.

## Refugee assessment

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20. 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

21. 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

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<sup>3</sup> DFAT, "DFAT Country Information Report Iran", 21 April 2016, CIS38A8012677; 3.87

<sup>4</sup> Iran Human Rights Documentation Centre, "Gender Inequality and Discrimination: The Case of Iranian Women", 8 March 2013

- 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.
22. The applicant is an Iranian national; accordingly, Iran is his receiving country. I have accepted that the applicant is of Kurdish ethnicity. DFAT assesses that members of ethnic minority groups, including Kurds, face a moderate risk of official and societal discrimination, particularly where they are in the minority in the geographic area in which they reside. The risk to members of ethnic minority groups who are involved (or are perceived to be involved) in activism is higher.<sup>5</sup> The applicant has stated that he is not and has never been politically active. I accept that he has not been involved in any political activities related to his ethnicity and I conclude that he would not be so involved in the future. In the submissions of 19 August 2019 [Representative A] refers at length to the persecution suffered by Kurds in Iran and references a number of reports. In the absence of any public assertion of cultural or political rights, the review material does not however support a finding that Kurds face a real chance of serious harm from the Iranian authorities. I have not accepted that the applicant was subject to harassment by the Iranian intelligence services due to his ethnicity or for any other reason.
23. The applicant stated at his arrival interview that one of the reasons he left Iran was because he could not get a job. At the PV interview he stated that he had applied with the [relevant authority] for employment as [an occupation 1] (for which he had both experience and the relevant qualifications) but was unsuccessful. He gave a history of employment as [an occupation][and two occupation 2 roles]. Country information indicates that unemployment is an ongoing problem in Iran, in 2017 the Interior Minister reported that unemployment in some sectors of the population was as high as 60 per cent.<sup>6</sup> Although the country information indicates that minorities including Kurds may be subject to societal discrimination including employment discrimination,<sup>7</sup> the material before me does not support the conclusion that the applicant would be denied access to any employment or that he would be unable to subsist because of his ethnicity. I conclude that the applicant does not face a real chance of serious harm of the basis of his ethnicity.
24. I have accepted that the applicant had a relationship, including a sexual relationship, with F while resident in Iran and had a Sigheh or temporary marriage with her. I have not accepted that he was threatened and targeted by F's father but have found that he was of no interest to F's father prior to his departure from Iran. I am not satisfied that the applicant would face a real chance of harm from F's father or her brothers in the foreseeable future, due to his past relationship with F. The country information does not support that he would be of any interest to the authorities due to his past relationship. He does not have a well-founded fear of persecution on this basis.
25. At his arrival interview the applicant also stated that "they will send me straight to prison" on return due to his seeking asylum in Australia. The applicant departed from Iran legally using his own passport. As he no longer has the passport, I accept that he would return on a temporary travel document or laissez-passer. DFAT advises that where temporary travel documents have

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<sup>5</sup> DFAT, "DFAT Country Information Report - Iran", 7 June 2018, CIS7B839411226; 3.6

<sup>6</sup> Ibid; 2.11

<sup>7</sup> Ibid, page 5



been issued by Iranian diplomatic representatives overseas, authorities at the airport will be forewarned about a person's return because of Iran's sophisticated government systems. However, the person will generally only be questioned if they have done something to attract the specific attention of authorities; the vast majority of people questioned would be released after an hour or two.<sup>8</sup> Other than the claims relating to F's father, which I have rejected, the applicant does not claim to have done anything, either in Iran or in Australia, that would attract adverse attention on return. The applicant has maintained that he is not politically active; I have had regard to [Representative A's] submissions, in particular that [i]t remains uncertain as to whether either the Iranian authorities or paramilitaries aligned to the regime impute returnees with anti-government or anti-Islamic Republic political views simply for applying for protection abroad.<sup>9</sup> There is no suggestion arising from the evidence that the applicant would be imputed with a political opinion that would be of concern to the authorities for any reason. I am therefore not satisfied that the applicant faces a real chance of harm on return to Iran either because he may draw the attention of the authorities because of the documents on which he would most likely be travelling, or because he has sought asylum overseas.

### **Refugee: conclusion**

26. 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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27. 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**

28. 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.

29. I accept that the applicant was subject to societal discrimination in Iran due to his Kurdish ethnicity and may again face such actions in the future. I am not satisfied that such behaviour or its consequences, though regrettable, constitutes significant harm. It does not amount to the death penalty; an arbitrary deprivation of life or torture. Further, on the evidence, it does not amount to pain or suffering, severe pain or suffering or extreme humiliation. I have

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<sup>8</sup> DFAT, "DFAT Country Information Report - Iran", 7 June 2018, CIS7B839411226; 5.34

<sup>9</sup> Australia: Refugee Review Tribunal, Iran: 1. Please provide information on the treatment of failed asylum seekers upon return to Iran. Are people who claim asylum abroad imputed with anti-regime views and subject to harm upon return?, 19 August 2010, IRN37255

concluded above that the applicant does not face a real chance of harm in Iran due to his former relationship with F or on the basis that he sought asylum in Australia. As 'real risk' and 'real chance' involve the application of the same standard,<sup>10</sup> I am equally not satisfied that the applicant faces a real risk of significant harm on return for the purposes of s.36(2)(aa) for these reasons, including when considered individually or cumulatively.

#### **Complementary protection: conclusion**

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

#### **Decision**

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

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<sup>10</sup> *MIAC v SZQRB* (2013) 210 FCR 505

## Applicable law

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

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

In this Act, unless the contrary intention appears:

...

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

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

...

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

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

but does not include an act or omission:

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

...

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

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

...

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

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

...

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

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

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

...

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

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

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

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

...

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

...

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

...

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

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

...

*Protection obligations*

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

*Determining nationality*

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