



Australian Government

Immigration Assessment Authority

Decision and Reasons

Referred application

IRAN

IAA reference: IAA20/08619

Date and time of decision: 18 September 2020 11:03:00

S Ryan, 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 national of Iran and arrived in Australia [in] July 2013. On 19 July 2017 he lodged an application for a Safe Haven Enterprise visa (SHEV) and participated in an interview conducted by a delegate of the Minister for Immigration (the delegate) held on 17 June 2020. The delegate refused to grant the visa on 31 July 2020 and referred the matter to the Immigration Assessment Authority (IAA) on 5 August 2020.

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). A written submission was also provided by the applicant to the IAA. The portions of the submission made up of argument responding to the delegate's decision, and reasserting claims and evidence that was before the delegate are not new information and I have had regard to those matters.
3. The submission to the IAA introduces a new claim, that he has converted to Christianity, and seeks to provide new information concerning his political activity in Australia. This information was not provided to the delegate before he made his decision. It is new information.
4. Under s.473DD(b) the applicant must satisfy the IAA in relation to any new information given by the applicant that either the new information was not, and could not, have been provided to the delegate before the decision was made, or, that it is credible personal information which was not previously known and, had it been known, may have affected the consideration of the referred applicant's claims. Additionally, under s.473DD(a), the IAA must be satisfied that there are exceptional circumstances to justify considering the new information.

Christianity

5. The claim that the applicant has converted to Christianity is introduced in the concluding paragraph which summarises the basis on which the applicant's lawyer submits the applicant has a well-founded fear of persecution. The claim has not been previously put forward by the applicant at any stage of the process, indeed it directly contradicts his evidence given during the SHEV interview conducted in June 2020 in which he confirmed that he identified as a non-practicing Shia Muslim. Significantly, the claim is not mentioned elsewhere in the submission to the IAA, which otherwise reiterates the applicant's claim to fear persecution on account of his profile as a Kurdish political activist. It appears this claim may have been inadvertently and erroneously included by the applicant's lawyer in his submission to the IAA. Given these considerations, and in the absence of any supporting evidence or detail, I am not satisfied that there are exceptional circumstances to justify considering the new information

Photographs

6. The submission includes an attachment with seven photographs, which the applicant's lawyer asserts are evidence that the applicant attended protests in support of Kurdish causes in Australia. The submission claims that the applicant had provided these photographs to his lawyer on 17 June 2020, the same day as the SHEV interview. The submission to the IAA asserts that the applicant's lawyer inadvertently failed to provide the photographs to the delegate and

implicitly suggests that the lawyer's failure to provide these photos to the delegate meant the applicant was prevented from providing these to the delegate before the decision was made.

7. I accept that the applicant claimed during the SHEV interview to have photographic evidence of his attendance at protests in Australia and indicated to the delegate he would provide them through his lawyer. The post-interview submission sent by the applicant's lawyer to the delegate on 1 July 2020 makes no mention of this material. On the evidence before me I am not satisfied this information could not have been provided to the delegate before the decision was made.
8. The submission describes the photos as evidence the applicant attended protests but does not provide any further details describing the events depicted in the photos, such as dates and locations or the purpose(s) of the rally. The seven photos, four of which feature the applicant, appear to depict him as a participant at one rally in support of the plight of Kurdish people in Syria. The photos are said to corroborate his claim to have engaged in political activity in Australia.
9. The applicant claimed during the SHEV interview that he attended a protest in support of the cause of Kurds in Syria in Melbourne in late 2019, a claim accepted by the delegate, and which I have also accepted for other reasons given elsewhere in this decision. The photos appear to depict a single event. They do no more than support that conclusion otherwise reached. The limited information contained in these photos does not establish the applicant's claim to have participated in many political rallies in support of Kurdish nationalist or other causes, or to have been involved in the Kurdish community in any other capacity.
10. I am not satisfied these photos, had they been provided to the delegate, may have affected the consideration of the referred applicant's claims. For all of the above reasons, I am also not satisfied that there are exceptional circumstances to justify considering the new information

Applicant's claims for protection

11. The applicant's claims can be summarised as follows:

- He was born in [Year] in a small village in [a] district of Ilam province of Iran. He is of Kurdish ethnicity and is a non-practicing Shia Muslim.
- As a Kurdish person he has faced discrimination in Iran and found it difficult to find employment and support himself and his family. He has always been very interested in Kurdish nationality and identity and would frequently discuss these matters with friends.
- In May 2013 he was part of a small public gathering of people in [District] where he expressed views critical of the Iranian regime and sympathetic to the Kurdish rights movement. Two members of that group objected to his views and he became involved in a verbal altercation with them.
- The next day he became aware that the incident had been reported to authorities and was being investigated. He believes the two other people in the altercation were members of the Basij or Sepah, the paramilitary forces of the Iranian regime. He fled [District] and stayed with a friend in Tehran.
- Shortly afterwards his home was raided by Iranian security forces and a few days later authorities delivered a summons to his family home requiring him to respond to allegations of counter revolution activism against the Iranian regime. He fled Iran in mid-June 2013.

- He has a profile with Iranian authorities as a person involved in Kurdish nationalist causes. If he returned to Iran he will not be able to express his political opinions in support of the Kurdish people and against the Iranian government without risking harm.
- If returned to Iran he will be detained, interrogated and jailed by the Iranian authorities. because he did not comply with the summons and because Kurds are considered a threat to the security of Iran.
- He will be beaten, tortured and killed whilst in detention as he is a Kurd who has been charged with counter revolution activism against the Iranian regime.
- He will be punished by the Iranian government for having made complaints against them whilst in Australia.

Factual findings

Identity and Background

12. There is no issue as to the applicant's claims regarding his ethnic identity or nationality. I accept the applicant's claim to be a Feyli (also spelt 'Faili') Kurd from Ilam Province in Iran. He has provided a range of certified and translated identity documents issued in Iran, including his birth certificate, National identity card, military exemption card, and driver's licence. During the SHEV interview the delegate asked him to describe the [District] area and, while his responses were somewhat limited, they did not raise concerns enough to suggest he did not originate from this area.
13. The applicant departed Iran in June 2013 as the holder of a legitimate Iranian passport issued in his own identity through a formal border control point at Mashad Airport. I accept, as he has claimed, that he is a national of Iran and of no other country. Iran is the receiving country for the purposes of this assessment.
14. The applicant was born in [Year] in a village nearby the city of [District] in Ilam Province in Iran. He lived in his family's home in their village with his parents and [siblings] up until his departure for Australia in 2013. He completed a bachelor's degree in [District] in 2011 and then left Ilam to complete six months of compulsory military service in 2012. He returned to his family home in [District] after receiving an exemption from further military service on medical grounds. He remained in Ilam and undertook various [jobs] and occasionally assisted his father with his [service] but was unable to secure permanent or fulltime work in Iran. He has never been married and does not have children.
15. The applicant confirmed during the SHEV interview that his family continue to live in their family home in the village in [District]. His father is retired, his siblings are unemployed, and the family rely on his father's pension and from income or produce from their farm for support.
16. I accept that the applicant would be readily recognised in Iran as a Feyli Kurd, based on any combination of his name, area of origin, religion, language/dialect and social milieu. As a Feyli Kurd, he may be assumed to be a Shia Muslim (given the country information indicates that the vast majority are Shia), however I also accept the applicant's claim that he does not practise his Muslim faith. The applicant has not claimed to be an atheist, renounced Islam, converted to a different religion, or to have engaged in any form of public expression of his views on religion or religious practice. He did not indicate he had experienced any problems because he was a non-practising Muslim in Iran. The country information before me (particularly The Economist, Qantara, and the Austrian Centre for Country of Origin and Asylum Research and

Documentation) indicates that people who are Shia Muslim but do not practise their religion are widely prevalent in Iran, and that they do not face a real chance of harm for this reason. Regardless, the applicant has not claimed to fear harm on account of being a non-practising Shia Muslim and I accept this is the case.

Entry Interview

17. The applicant took part in an 'Arrival and Induction' interview (the Entry Interview) with the then Department of Immigration held on 16 August 2013. The applicant has claimed in his SHEV application that he left Iran shortly after becoming a person of interest to Iranian authorities as a Kurdish political activist. These claims are significantly different to the information the applicant gave during the Entry Interview in which the applicant made no mention of having been in an altercation with members of the Iranian security forces, or that he had fled his home in [District] as he had fled after being summonsed to respond to allegations he was a Kurdish political activist. He instead claimed that he had left Iran because he was part of an ethnic minority facing discrimination and had suffered financial problems.
18. In the written statement provided with his SHEV application in 2017 the applicant has sought to explain the information he provided at the Entry Interview concerning the reasons he had left Iran, claiming he had been fearful of divulging the truth of his situation in Iran out of fear. He claimed that he had been suffering from shock and anxiety after the boat on which he travelled to Australia had sunk and he had witnessed people drown, and that he was scared that if he disclosed that he had failed to answer a summons from the Iranian authorities he would be forced to return to Iran. During the SHEV interview he further claimed that he had been fearful that, if he were known to Australian authorities as a person accused of being involved in violent activities in Iran, this would cause him to be transferred to Nauru or Manus Island.
19. I take into account the nature of the Entry Interview, noting it is not conducted for the purpose of a full exploration of a persons' claim to asylum. Although it does, in part, expressly seek to elicit a person's reasons for departing their country and other matters; such as their circumstances in their home country and reasons for travelling to Australia; that may be regarded as matters pertinent to a protection claim.
20. I also take into account that the interview was conducted one month after the applicant had completed an arduous journey from Iran to Australia, and that during the journey he had witnessed the drowning of fellow passengers when their boat sank. This was doubtlessly a distressing event for the applicant, and this may have continued to have had some ongoing impact on him. There is no medical evidence before me suggesting the applicant was diagnosed or being treated for a mental health condition in 2013 or at any time after this incident. Although the Entry Interviewer noted on the written record that the applicant had seemed quite withdrawn during the interview.
21. Having reviewed the audio record I consider that the Entry Interview, held one month after his arrival to Australia, was conducted in calm manner and it is not apparent that the applicant was in a state of anxiety or distress, such that his capacity to give recall information and give evidence during that interview was compromised. While I take into account the interviewer's observation that the applicant appeared withdrawn, I note that the applicant responded promptly and appropriately to each question and gave detailed accounts of his biographical circumstances in Iran, his reasons for leaving Iran and his journey to Australia during that interview.
22. The applicant was advised at the start of the interview that the purpose was to give him an opportunity to provide any reasons why he should not be removed from Australia. He was

advised that the Australian government was careful to protect the privacy of all information he gave during the interview and that this would not be made available to authorities in Iran. The interviewer also cautioned him that if he were to provide different information in a future interview this could raise doubts about what he has said.

23. It is evident from the flow of the interview and from the detailed nature of his responses that he understood the accredited Farsi interpreter and the questions he was being asked. In response to the question *"Why did you leave Iran?"* the applicant initially provided a brief and general response about experiencing discrimination as a Kurd and the poor economic situation in Iran. The interviewer then asked him questions about his personal situation in Iran and invited him to provide more specific information about the nature of his problems. It is not apparent that the interviewer interrupted him or otherwise sought to limit his responses to these questions. I consider it particularly telling that the interviewer asked him two direct questions as to whether anything had specifically happened to him or his family that had made him leave Iran and his responses did not indicate he had ever had any involvement in Kurdish activism or that he had fled after being investigated and issued with a summons as a person suspected by Iranian authorities to be an anti-regime activist.
24. The applicant told the interviewer that he had not been involved in any protests or activities against the Iranian government but, when asked about whether Iranian police or security forces had any impact on his life he responded *"because we were Kurds there were always police coming around & harassing us"*. He later indicated that one of the reasons he had chosen to travel to Australia was because of the human rights situation in Iran. These and other statements made by the applicant during the Entry Interview suggests his state of mind was such that he was willing to be critical of the Iranian authorities and repeatedly voiced his opinion that Kurdish people are treated in a discriminatory fashion in Iran.
25. The applicant was advised upon arrival, and during the Entry Interview, that he may be sent to a regional processing centre outside Australia. He has not explained how he had come to believe that if he disclosed to Australian authorities any aspect of his story that he was suspected by Iranian authorities to be an anti-regime activist, or that he had received a summons requiring him to respond to allegations that he was involved in anti-regime activities that this would cause him to be transferred to Nauru or Manus Island. Nor has he explained when or why he ceased to hold that fear. Considering his willingness to openly criticise the Iranian authorities during the Entry Interview, the fact that most of the story he has subsequently put forward could have been raised without any inference of violent conduct, and that he has first introduced this additional explanation during the 2020 SHEV interview, I find this explanation unpersuasive.
26. His claim to have been the subject of formal investigations by Iranian authorities as a Kurdish anti-regime activist is the central element of what he now puts forward as the reasons he left Iran, and fears returning. Given the significance of the omissions, and the information he did provide during the Entry Interview, I do not accept that the applicant's omission of any part of his claim to have been targeted by Iranian authorities as a suspected anti-regime activist can be plausibly attributed to the nature of the Entry Interview, or to any of the other reasons given by the applicant.

Profile in Iran as a Kurdish nationalist

27. The applicant claims he was forced to flee Iran in June 2013 after he had become known to Iranian authorities as an anti-regime activist. He claims this profile came from an incident that occurred in late May 2013 where, in a small gathering of people in [District], he expressed opinions criticising the Iranian regime in its treatment of the Kurds. Two men from the group

angrily objected to his views and others from the group needed to intervene to stop a physical fight between the applicant and the two men. The applicant suspects the two men were plain clothes members of Basij or Sepah.

28. According to his written statement, by the next day he had heard that people who witnessed the altercation were preparing a petition and gathering evidence alleging that the applicant had caused a physical altercation, was involved in political activities promoting Kurdish national identity, and causing social unrest. He fled his village and stayed with a friend in Tehran. A few days later, whilst he was in Tehran, authorities raided his family home in [District], gathered material evidence of his interest in the Kurdish cause, and asked for the applicant. He has claimed that he was the subject of an official report finding the applicant was involved in anti-government activities and counter revolution activism, and that a week after the raid, a written summons was handed to his parents requiring him to respond to the allegations. He fled Iran and approximately one week later, while he was in [Country], his parents received a second summons. He has not produced a copy of either of those documents.
29. I have serious concerns with the evidence given by the applicant with respect to these claims. Seven years have now elapsed since the claimed events, and the applicant has not provided updated or clear evidence as to his legal status in Iran, claiming only that he was charged in 2013 with 'allegations of counter revolution activism against the Iranian regime'. He has not provided any information of substance as to how these 'charges' have progressed since he departed Iran. I note that he has claimed the authorities twice delivered summons pertaining to the applicant to his family home in [District], his family have all continued to live in the same home, and that he confirmed during the SHEV interview that he remains in frequent contact with them. He indicated in the SHEV application form that he was not aware of being the subject of any criminal investigations or that he has criminal charges pending against him. When asked by the delegate during the SHEV interview the applicant confirmed he has never committed or been charged with a crime in any country.
30. The evidence given by the applicant does not suggest that, since July 2013, his parents or any member of his family have had any further interactions with Iranian authorities concerning these matters. I find it difficult to believe that, if it were true that the applicant had been accused of an altercation on two members of Iran's security forces, his family home was raided days after, and Kurdish nationalist materials were found in their home, that his family would not have faced further adverse attention from Iranian authorities. Given the nature of the allegations against him, coupled with the fact that he had failed to comply with two summonses, it is also difficult to believe that the Iranian authorities would have abandoned the prosecution of these matters after his departure from Iran.
31. There is also an absence of any corroborative evidence concerning his claims to have been the subject of official investigation and/or prosecution by Iranian authorities. The applicant has claimed to be aware of the contents of a formal report into his conduct and to have twice received formal written notification in the form of summonses from Iranian authorities that he is suspected or known to be involved in violent anti-regime activities, but has not provided any evidence of these. When asked during the SHEV interview whether he could provide any corroborative evidence of the Iranian authorities interest in him, he responded that both of the summonses had been lost, that the events took place a long time ago, and that his dad is an aged person and doesn't have access to a computer.
32. I do not find any of these explanations to be persuasive, noting the claimed significance of these events to his family, the applicant's adult siblings live in the same house, and that he has provided scanned copies of other personal documents produced in Iran. I also note that the

applicant has had assistance from legal representatives to prepare his SHEV application and provide supporting evidence throughout the process, including in this matter before the IAA.

33. The applicant has also given inconsistent evidence concerning the timing of the first written summons. He indicated in the 2017 written statement provided with his SHEV application that the first summons was issued in July 2013, weeks after he had left Iran. However, when asked about these events during the SHEV interview, the applicant indicated he had fled [District] after the altercation to stay at his friend's house in Tehran, and that he had not left immediately as he was waiting to see whether the matter would escalate. He stated that he was in Tehran when his house was raided and that, when a summons was delivered to his family shortly after, he had decided to leave Iran.
34. I consider the applicant's apparent uneventful departure through immigration checkpoints at Mashad airport in June 2013 is a strong indicator that he was not a person of interest to Iranian authorities at that time. The country information before me; particularly the April 2020 Australian Department of Foreign Affairs and Trade (DFAT) '*Country Information Report on Iran*' and the Refugee Board of Canada report on '*Human Rights Situation for Minorities..*'; confirms that Iranian security forces have the power to impose extrajudicial travel bans on persons of interest to them. Significantly both reports describe how the Iranian regime routinely and very effectively uses these powers to prevent civil and political activists, including those with unfinalised court matters, from departing Iran. If these summonses were issued, as he said at the SHEV interview, while he was still in Iran, it is very difficult to believe that he would not have been prevented by authorities from leaving the country.
35. In light of these concerns, I am not satisfied that any part of this aspect of the applicant's claims is credible. I am not satisfied he was at a gathering where he expressed views critical of the Iranian regime and which led to him becoming involved in an altercation with two plainclothes members of Iranian security forces after publicly criticising the Iranian regime in May 2013. I am not satisfied that he was investigated in relation to his involvement in Kurdish rights/nationalist activism, or that his family home was raided by authorities. I am not satisfied that in June 2013 he was known, alleged or suspected by Iranian authorities to be an anti-regime or Kurdish nationalist activist. I am also not satisfied that since leaving that country he has been investigated, charged or convicted of any offences in Iran.

Public activity in Australia

36. The applicant has claimed to have been closely associated with the Kurdish community in Melbourne since 2014 and that during this time he has been involved in many Kurdish cultural activities and attended more than a dozen public protests supporting Kurdish causes.
37. I note that in the detailed statement of claims he provided with his SHEV application in July 2017 he made no mention of being involved in the Kurdish community in Australia, or any political activities since leaving Iran. At the SHEV interview, when asked whether he was involved in any political activities in Australia he described being closely involved in the Kurdish community in Melbourne and having attended many public protests for the Kurdish cause since 2014. When the delegate asked him to be more specific about his involvement in protests in Australia, he described having attended a rally protesting in protest of the attack by Turkish forces on Kurds in Raqqa, Syria. He indicated that the rally had been held in Melbourne at the end of 2019.
38. After the SHEV interview the applicant submitted a letter from [an organisation] prepared in June 2020 in which the author, the spokesperson for the group, attests the applicant has been a member of the group since 2014 and describes him having contributed in meaningful ways to

his community. The letter also attests to him having regularly participated in activities aimed at condemning the abuse of the human rights especially of Kurds in Iran, Turkey and Syria. This appears to be a form letter and, as noted by the delegate, it does not provide any detail specifying the nature of the applicant's roles or his personal contributions to the organisation and its events.

39. Most tellingly, when invited by the delegate during the SHEV interview to speak about his involvement in the Kurdish community association, his political activity and involvement in protests, the applicant's evidence was brief and meagre, lacking any specific and persuasive detail. He was unable to specify any protest activity other than his attendance at one rally in late 2019. When asked about other participants and organisers, he named the spokesperson of [the organisation], who is identified on the letter, but was unable to name any other participants at the protest. The evidence he gave concerning his involvement with [the organisation] was very limited and lacked the detail one may expect from someone claiming to have had a close and active association with a community organisation for more than six years.
40. The submission to the IAA is critical of the delegate for failing to ask the applicant to explain further about his role in the Kurdish protests, however I consider the applicant, who was accompanied by his lawyer during the interview, was given a reasonable opportunity to provide evidence on these matters during the SHEV interview. The delegate cautioned the applicant at the beginning of the interview that it was his responsibility to put forward all of his claims for protection and evidence in support. The delegate asked the applicant about any political activities in Australia and responded to his evidence with several follow up questions inviting further evidence concerning his political activity and involvement with [the organisation]. He did not interrupt the applicant's responses or otherwise seek to prevent the applicant from giving evidence on this topic. I further note that the delegate asked the applicant several times in the latter stages of the interview whether there were any further matters he wished to raise or comment on, and both he and his lawyer indicated they had no further information to add.
41. The applicant has claimed to have had a close association with [the organisation] for a period of six years and to have regularly taken part in cultural events and participated in many political rallies promoting Kurdish nationalism and criticising the Iranian regime. During the SHEV interview he estimated he had attended more than a dozen rallies since 2014. If this were true, and considering the nature of his protection claims, it is difficult to understand why he made no mention of this in the detailed statement of claims provided with the 2017 SHEV application, noting he received assistance from a legal practitioner in preparing those claims. He first raised this claim in the SHEV interview and the paucity of the evidence he gave concerning his activities in Australia suggests he has embellished the frequency and significance of his involvement. For reasons given earlier I have found that the evidence given by the applicant concerning his profile with Iranian authorities and the events leading up to his departure from Iran is not credible. I have serious concerns that he has also sought to embellish his profile in Australia as a political activist supporting Kurdish causes and publicly criticising the Iranian regime. The [organisation] letter has only limited evidentiary value in my view, and it does not overcome my concerns with his claims to have been regularly involved in any form of political activity in Australia.
42. I am not satisfied that his claim to have been regularly involved in public activities criticising the Iranian regime and/or supporting Kurdish causes whilst in Australia is credible. I do accept the applicant has an association with the [organisation], however the evidence given by the applicant's involvement has been very limited, and does not suggest he holds or has ever held any formal or prominent role within this organisation, or any other political organisation, or within the Kurdish community in Australia. Neither the applicant or the [organisation] has given any detailed information concerning the organisation, its aims or its activities.

43. I accept the applicant's claim that he was one of many hundreds of people attending one rally protesting Turkey's attack on Kurds in Raqqa, Syria in late 2019, although I note that the applicant confirmed during the SHEV that he played no part in organising the rally and did not speak publicly. I am not satisfied that he attended any other political rallies prior to this, and I note he gave evidence in the SHEV application that he has not subsequently attended any further political rallies. There is no evidence that the applicant has been engaged in other forms of public political expression, such as social media posts or other forms of online activity, and I am not satisfied he has done so.
44. While I am willing to accept the applicant chose to attend the November 2019 rally out of sympathy for the situation for the Kurds in Raqqa, the lack of any credible evidence that he has otherwise been politically active in Australia raises some concern in my mind that his motivation in attending this single event may have been, at least in part, for the purpose of the visa application. Considering the meagre evidence provided by the applicant I find his involvement with the [organisation] was limited and largely social in nature.

Refugee assessment

45. 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

46. 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.
47. For the reasons given above I am not satisfied the applicant was involved in a small public gathering in 2013 where he voiced anti-regime opinions, or that he was involved in an altercation that led to him being the subject of an official investigation into allegations that he has engaged in anti-regime activities. Nor am I satisfied that he was the subject of two summonses issued by the Iranian authorities in relation to these matters and to which he failed to respond. I am not satisfied that he faces a real chance of harm for these reasons.

48. I accept the applicant's claim to be a Feyli Kurd from Ilam Province who identifies himself as a non-practicing Shia Muslim.
49. According to DFAT there are an estimated 8 million Kurds living in Iran, mostly concentrated in four North-Western provinces, including the applicant's home province of Ilam, which borders with Iraq. Feyli Kurds make up a small minority of the Kurdish population and are generally distinguishable from other Kurdish groups by their religion (Shia), location and language. DFAT make the broad observation that Feyli Kurds who are citizens of Iran, as is the case for the applicant and his family, enjoy the same rights as other Iranians and that DFAT is not aware of specific instances whereby authorities have singled out Feyli Kurds for mistreatment.
50. The applicant has repeatedly expressed the view that Kurds face discrimination and economic disadvantage in Iran and looking more broadly at the situation for Kurds, his opinions are supported by analyses in the independent country reporting before me. Amnesty International's 2019 report '*Iran – Failing on all Fronts*', describes how Iran's continued economic neglect of regions with large minority populations has exacerbated poverty in those communities. DFAT similarly observes in April 2020 that the provinces in which Iranian Kurds are concentrated suffer economic deprivation compared to other parts of the country and have some of the highest rates of unemployment
51. The 2018 Danish Immigration Service (DIS) report '*Iran: Issues concerning persons of ethnic minorities*' and the United States Department of State (USD) '*Country Reports on Human Rights Practices for 2019*' assess that the Iranian security forces disproportionately targeted minority groups, and that Kurds were one of Iran's many minority groups reporting political and socioeconomic discrimination, particularly in their access to economic aid, business licences, university admissions, job opportunities, permission to publish books, and housing and land rights.
52. DFAT report a local Kurdish source confirming that a sentiment prevalent among Kurds is that the Iranian regime deliberately holds them back, but also observes many Kurds accept that independence from Iran is not a viable option. Thus, according to DFAT, most Kurds in Iran are committed to working within the Iranian political system to strengthen their rights as citizens and improve economic conditions in Kurdish-majority areas. The USD reports similarly that the focus of ethnic Kurds in Iran is campaigning for greater regional autonomy. Notwithstanding this wider sentiment, DFAT also report the continued presence of several Kurdish militant groups operating in Iran whose aim is Kurdish self-determination and who occasionally engage in armed clashes with Iranian security forces. DFAT reports terrorist attacks in Iran are rare and those that have occurred in recent years involved attacks on the Iranian government and its institutions that were committed by Ahwaz Arab nationalists and Sunni Islamist groups.
53. The reporting before me indicates the Iranian regime has a heightened sensitivity towards organised political activity by Kurds, apparent in the large presence of Iranian security and intelligence forces in Kurdish areas. DFAT cites the July 2019 report of the UN Special Rapporteur on the situation of human rights in Iran which indicates Kurdish political prisoners charged with national security offences represent almost half the total number of political prisoners in Iran.
54. The USD observes that Iranian authorities do not prohibit the use of the Kurdish language in general, but cites international sources reporting that the Iran is known to detain and prosecute Kurdish people involved in publishing or distributing material that is openly critical of the Iranian regime. DFAT, DIS and Amnesty International confirm that instances of persecution generally involve those persons who are directly engaged in public advocacy and activism or associated with political activities, such as the promotion of Kurdish separatism or women's rights.

According to the UN Special Rapporteur some of those Kurdish political prisoners who were prosecuted were reportedly charged with crimes relating to civic activism and membership of banned Kurdish political parties. DFAT assesses that Kurds who are active politically and/or who advocate for greater rights and autonomy and/or self-determination face a high risk of official harassment, monitoring, imprisonment and mistreatment.

55. The same DFAT 2020 report also assesses that ordinary Iranians engage frequently in robust criticism of the government of the day, both in public conversation and online in social media, without attracting the adverse attention of Iranian security apparatus. However, DFAT also observe that this this freedom has well-established limits, such as insulting the Supreme Leader, and that publicly expressed critical commentary on certain topics can lead to prosecution under national security legislation and that the opinions of prominent public figures attract particular scrutiny.
56. The applicant has consistently claimed that he and his family are citizens and are recognised as such by the Iranian authorities and I do not consider that the country information before me concerning the treatment of those Feyli Kurds in Iran who are stateless, or undocumented, or registered refugees in Iran is relevant to the applicant. Similarly, some analysis observes that most Kurds in Iran are Sunni Muslims and therefore face intersectional discrimination based on their religious sect and ethnicity. For reasons given earlier I am satisfied that the applicant would be readily identified in Iran as a Feyli Kurd, who are known to be Shia Muslims. I consider it very unlikely that he would be mistakenly imputed to be a Sunni Muslim.
57. The country information before me suggests that the Feyli Kurds who are citizens of Iran are unlikely to face persecution based solely on their ethnicity. Intersecting factors likely to heighten the risk of harm faced by a Kurd includes their religious sect, engagement in activities such as becoming prominently involved in Kurdish political parties, the public assertion of minority rights/women's rights/trade union/environmental activism, and/or those prominently asserting their opinions whilst working as journalists, human rights lawyers, online activists, students, filmmakers, musicians and writers.
58. In his interactions with the Australia government the applicant has consistently expressed his opinion that Kurds in Iran face discrimination with respect to their treatment by police and the military and have limited economic opportunities. I accept that his opinions in this respect are sincerely held. However for all of the reasons given above, I consider there is little credible evidence that his interest or activities extend much further than his private expression of his cultural identity, in forms such speaking in Kurdish, listening to Kurdish music, displaying Kurdish symbols in his house. I am willing to accept the applicant's evidence that he exchanged opinions privately with friends and family about issues relating to the situation for Kurds in Iran and other countries in their area. When he was asked about his activities in Iran, he confirmed he had never been a member or otherwise associated with any Kurdish political party or insurgent/separatist group; stating that no such groups operated in his area. For the reasons given earlier I am not satisfied that the applicant has been involved in any political activity in Iran or participated in any anti-regime activities, in support of the Kurdish cause or for any other reason.
59. The applicant has not claimed to have had any involvement in any organised political activity or any affiliation or association with a political party or movement in Iran. When asked about his knowledge of Kurdish political parties in Iran his responses indicated he was aware of a few groups and that he was sympathetic to their cause. Nevertheless, he also stated during the SHEV interview that he had no involvement with such groups, and that none operate in his area. There

is no country information indicating the presence of Kurdish separatist or other forms of Kurdish activist movements in Ilam and I accept the applicant's evidence in this regard.

60. In considering the applicant's activities in Australia, I accept he has an association with a Kurdish community group in Melbourne, the [organisation], but for reasons given earlier I find that this has not involved any prominent or public activities promoting the Kurdish nationalist cause, or critical of the Iranian regime. While I accept that the applicant participated in a rally protesting the Turkish military's attack on Kurds in Syria, there is no information that the Iranian authorities are aware of his participation in that protest, and even if they did, that this conduct would be perceived as advocacy for Kurdish separatism or criticism of the Iranian regime. I do not accept that, as a result of his very limited involvement in political activity in Australia, that he has an adverse profile with Iranian authorities as an anti-government dissident; either on account of his actual or imputed views.
61. I note that, even within the relatively safe confines of Australia, his engagement in public political activity has been very limited and consider his association with the Kurdish group [organisation] is largely social in nature. Considering the meagre evidence he has provided concerning his political activities in support of Kurdish causes in Australia, I am not satisfied that he is known to Iranian authorities as a supporter of Kurdish nationalist causes, or as a person making public or prominent criticism of the Iranian regime.
62. I find that, on return to Iran, the applicant would continue his personal interest in his Kurdish identity and would engage in private conversations on related topics with his friends and family, as he has done in the past. I accept that these conversations may include criticism of the policies of the Iranian regime towards Kurds. On the evidence provided by the applicant I am not satisfied that he has any intention to join a political party or Kurdish insurgent group, or engage in public activities in support of Kurdish rights, or engage in other forms of anti-regime activism if he returned to Iran.
63. While I take into account his attendance at a public political rally in support of Syrian Kurds in November 2019, I consider this is a one off event, and I am not satisfied he has provided any credible evidence to support the claim he has regularly engaged in public political activity of any form. Noting that, aside from his attendance at one rally, he has not engaged in any other forms of political activity over a period of more than six years in the relatively safer confines of Australia, I am satisfied that his reasons for not engaging in political activism or public expression of dissident opinions in Iran would not be out of fear, but due to a lack of interest in expressing his views publicly.
64. The applicant has claimed he fears being punished by the Iranian government for having made complaints against them whilst in Australia. He has put forward this claim in the briefest form in the 2017 written statement and did not mention or expand on this claim during the SHEV interview, in the post interview submissions, or in the submissions to the IAA. For the reasons given earlier I am not satisfied he would be known to Iranian authorities as a person who has made complaints against them whilst in Australia and consider it no more than a remote possibility that he would face any harm for this reason.
65. The country information before me indicates that, as a Feyli Kurd in Iran, he may face some forms of official discrimination; including in gaining access to university studies, some forms of employment, business licences and economic aid.
66. The applicant's own experiences in this regard were expressed in very broad terms, stating that it is very hard for Kurdish people to obtain a professional job and that he has found it hard to

obtain a job. He has not specified any particular fields of employment or education where he has sought opportunities, and these were denied on the basis of his Kurdish ethnicity. He has claimed that Kurds experience '*constant harassment*' by the police but has not provided any specific examples where he has personally experienced this, nor described the forms of harm that he has experienced as a result.

67. The applicant would be returning to live with his family in their home in Ilam, a Kurdish majority area. Furthermore, I note the applicant was able to study in Iran to a tertiary level, completed a period of compulsory military service, and obtained some work in the past, and I am not satisfied that he would be prevented from obtaining similar kinds of work if he returned. I am not satisfied that any educational or economic restrictions on Kurds in Iran, such that they exist, are to the extent that they would result in significant economic hardship that threatens capacity to subsist, or amounts to a denial of capacity to earn a livelihood of any kind, or otherwise amounts to serious harm.
68. For all of these reasons I consider the chance of the applicant facing serious harm, for the reasons of being a Feyli Kurd from Ilam who identifies as a non-practicing Shia Muslim is remote. I am not satisfied the applicant faces a real chance of persecution on these bases.

Refugee: conclusion

69. 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

70. 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

71. 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.
72. The expressions 'torture', 'cruel or inhuman treatment or punishment' and 'degrading treatment or punishment' are in turn defined in s.5(1) of the Act.
73. I accept that, as a Faili Kurd in Iran the applicant may suffer some forms of official discrimination. As noted earlier, the applicant would be returning to live with his family in Ilam, which is a Kurdish majority area and I consider it significant that the applicant has raised this

at the most general level, and has not provided any specific and credible evidence where he has personally experienced instances of harm as a result of discrimination on the basis of his Kurdish ethnicity.

74. While I accept that, as Kurd in Ilam, the applicant may experience discrimination and disadvantage in such areas as university studies, some forms of employment, business licences and economic aid, I am not satisfied that any harm that may be faced by the applicant amounts to torture, or cruel or inhuman treatment or punishment, or degrading treatment or punishment. Nor am I satisfied there is a real risk it would amount to his being arbitrarily deprived of his life or subjected to the death penalty. I do not consider that any forms of discrimination he may face in Iran, as a Feyli Kurd from Ilam who identifies as a non-practicing Shia Muslim, are sufficiently serious as to rise to the level of significant harm.
75. I am not satisfied there is a real risk that the applicant will suffer significant harm as provided under s.36(2A) of the Act.

Complementary protection: conclusion

76. 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.