



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

**Decision and Reasons**

**Referred application**

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IRAN

IAA reference: IAA21/10114

Date and time of decision: 6 January 2022 10:23:00

R Mathlin, Reviewer

**Decision**

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

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

## Background to the review

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### Visa application

1. The referred applicant (the applicant) claims to be a Faili Kurd from Iran, born on [Date]. He left Iran [in] April 2013 and arrived in Australia by boat, undocumented, [in] May 2013.
2. On 15 June 2017 he lodged an application for a Safe Haven Enterprise visa (SHEV application), making the following claims:
  - He is a stateless, undocumented Faili Kurd. His parents were born in Iraq and were expelled from Iraq to Iran in around 1980
  - The applicant and his only brother were born in Iran
  - From [Year 1] until [Year 2] he attended a number of different private primary schools; at the arrival interview he indicated that he has also attended technical training courses in [Subject] for 3 months in [Year 3], and English language classes in [Year 4]
  - He worked as [an Occupation 1] in Iran from [Year 2] to April 2013
  - He claimed that as an undocumented Faili Kurd he was denied basic rights such as education and healthcare, holding a drivers licence and superannuation. If he returns to Iran he will be subjected to discrimination and serious mistreatment because of his Faili Kurd ethnicity.
  - He claimed that he will be executed because he does not believe in Islam, only God. He believes that religion is only for deceiving people and taking money. In 2002, when he was [Age] years old, he was hit on the head by an officer of the *basij* because he was wearing a red shirt during Muharram, a month when you are supposed to be in mourning and wear only black
  - He departed Iran on a fake Iranian passport which was taken by the people smuggler in [Country 1]
  - He will be accused of being a spy because he departed Iran illegally and has lived outside Iran for many years. He will be punished more severely because of his ethnicity
  - He later provided an untranslated copy of a document which he said was his green card, issued in October 1988 and valid for one year. He said that after 1990 his family had no documents
3. The applicant was interviewed by a delegate of the Minister for Home Affairs (the delegate) on 26 May 2021 (the SHEV interview).
4. On 26 October 2021 the delegate refused to grant the visa. While she accepted that the applicant was a Faili Kurd, she did not accept that he was stateless or undocumented. She relied on country information indicating that it was unlikely that the applicant would have been able to depart Iran without difficulty using a false passport; that on his own account he should have been able to obtain Iranian citizenship through his patriarchal line; and that his education, employment, family and travel history was not consistent with his claim of being stateless and without identity documentation. She found that the applicant was an Iranian citizen.
5. Based on country information, the delegate accepted that Kurds face some discrimination in Iran, but she did not accept that any societal discrimination the applicant might face amounted to serious harm, and she did not accept that he would face discrimination at such a level that it

would threaten his capacity to subsist. She considered country information indicating that Kurdish political activists may face seriously adverse attention from the government, but noted that the applicant stated that he was not politically active in either Iran or Australia.

6. The delegate accepted that the applicant was beaten by the *basij* in 2002 but did not accept that this gave rise to any ongoing adverse interest and found that he was not of adverse interest to the Iranian authorities for any reason at the time of his departure from Iran.
7. The delegate accepted that the applicant did not believe in any religion, but noted his evidence that he had never expressed his religious beliefs publicly in Iran, or converted to another religion or renounced Islam. She found no reason to believe that he would act differently upon return to Iran than he had in the past, and for this reason and based on the country information she did not accept that he would be executed or persecuted because of his religious beliefs.
8. The delegate accepted that the applicant might be identified as a failed asylum seeker on return to Iran, but found that he had left legally on his own passport and that he was not of adverse interest to the authorities either at the time of his departure or for any subsequent reason. Based on country information she found that failed asylum seekers do not face serious harm on return.

#### **Information before the IAA**

9. I have had regard to the review material given by the Secretary under s.473CB of the *Migration Act 1958* (the Act).
10. On 22 and 23 November 2021 the applicant's representative provided a submission dated 22 November 2021 containing new claims made by the applicant, and documents purporting to support those claims. All of this is new information.
11. The submission stated that the applicant had provided information in his SHEV application that was untrue. The applicant had been advised by the people smugglers who brought him to Australia to claim that he was a stateless Faili Kurd, whereas in fact, he is an Iranian citizen. Because he was afraid of being sent back to Iran and had no knowledge of the Australian legal system and had spent all his money on his journey to Australia, he "found no option but to follow the advices of people smugglers". The submission stated that the applicant left Iran on his genuine Iranian passport [in] April 2013. It stated that he had experienced hardship and suppression because he was a Faili Kurd living in Ilam, on the Iraqi border, and that he left Iran due to his political opinions against the Iranian government and because he did not believe in Islam. The submission also stated that the applicant is an active member of the Kurdish community in Australia who has participated in protests against the Iranian government and in support of the Kurdish community and its claim for independence. Because he feared the Iranian authorities so much, and because he was not sure that his application would remain confidential, he was afraid to "reflect his hatreds towards the Islamic government". When his application was refused, he panicked at the prospect of being returned to Iran, where he would face persecution because of his political activities against the Iranian government, and as a failed asylum seeker.
12. The applicant's representative provided a number of documents in support of the applicant's claim to be an Iranian citizen, and not stateless:
  - His Iranian birth certificate and a translation

- His Iranian identity card and a translation
- His exemption from military service card and a translation

13. This new information clearly pre-dates the SHEV application and the interview. The application was lodged in 2017 and he was interviewed in 2021. By that time the applicant had been in Australia for many years, he had the opportunity seek reliable advice about his situation, and I am not satisfied that he continued to have no option but to follow the advice of the people smuggler and maintain the lie that he was not an Iranian citizen. At the SHEV interview the applicant was questioned in detail about his nationality and his status as a Faili Kurd in Iran, and the delegate put to him numerous concerns that she had about his claim to be stateless. I am satisfied that the applicant has had many opportunities to provide the true information about his citizenship, and I am not satisfied that the information now submitted to the IAA could not have been provided to the delegate before she made the decision. Section 473DD(b)(i) of the Act is therefore not met. However, I am satisfied that the new information as to his Iranian citizenship and the supporting documentary evidence of this is credible personal information which, had it been known, may have affected the consideration of the applicant's claims. The information corrects the applicant's initial claims that he is stateless and undocumented and is central to the determination of whether he meets the requirements for the grant of a protection visa. In these circumstances I am satisfied that s.473DD(b)(ii) of the Act is met. I am also satisfied that there are exceptional circumstances to justify considering this new information, as to rely on information that the applicant now says is not true would undermine the integrity of the refugee determination process: s.473DD(a) of the Act. As the necessary requirements of s.473DD are satisfied, I will consider the new information as to the applicant's nationality.

14. The submission also contains the new claim that the applicant has been politically active with Kurdish independence groups in Australia. The applicant's representative has submitted new information in support of that claim, comprising a series of photographs apparently taken from the [Organisation] [Social media] page, with captions explaining what they depict, and a letter dated 18 November 2021 written by the president of the [Organisation]. The letter is mostly in identical terms to a letter from that organisation dated 18 May 2021 which was before the delegate. Both letters state that the applicant has been a member of the organisation since 2014, but the November 2021 letter contains the following additional information, which I consider is new information:

We are also aware [the applicant] is currently an active human right activist against the Islamic Regime of Iran by actively participating in anti Iranian regime rallies in Sydney and also attending political events. Should [the applicant] return to Iran we highly believe he will be facing prosecution and in risk of being arrested and executed. We do not recommend the Australian government at any cost send a highly profile human right activist such as [the applicant] back to Iran for his own safety and well being.

15. The photographs and captions are as follows:

- Photograph dated [November] 2019 said to depict a protest in front of [Venue 1]: It is not apparent to me that the applicant's face is visible in this photograph
- Photographs dated 15 December 2015 of the applicant with [Mr A] and [Mr B], said to be Kurdish political [Occupation 2]s
- Photograph dated 18 March 2017 said to be taken at Kurdish community's Persian new year celebration
- Photograph dated 30 March 2019 of the applicant with [Mr C], [Country 2] singer
- Photograph dated May 2021 with Sydney Kurdish [Sport] team

- Photograph dated [November] 2019 showing the applicant at a [Venue 2] protest against the Turkish government's attack on Afrin Kurds
  - Photographs dated [October] 2019 showing applicant at a protest against the Turkish government at [Venue 3]. An annotation states that the applicant is shown holding the Kurdish flag, which would result in severe punishment if seen by the Iranian government.
16. According to the submission, the applicant was afraid to reveal this information because he feared that his application would not be treated confidentially, and that if he was returned to Iran he would face severe punishment if the information about his political activities in Australia were known.
17. The new information pre-dates the SHEV application and the interview. As noted above, by that time the applicant had been in Australia for a number of years, he had been reassured about the confidentiality of the process, he had the opportunity seek reliable advice about his situation, and I am not satisfied that his explanation that he failed to provide the information out of fear that it would be revealed to the Iranian authorities is true. The delegate specifically asked the applicant at the protection interview whether he had ever been politically active or a member of any political association, and he unequivocally denied it. The applicant has not satisfied me that he could not have provided this new information before the delegate made her decision, and s.473DD(b)(i) is not met. However, the information is, on its face, credible personal information which may have affected the delegate's consideration of the applicant's claims, had it been known. I am therefore satisfied that s.473DD(b)(ii) is met. In these circumstances, and because of the potential importance of this information, if it were accepted, I am satisfied that there are exceptional circumstances to justify considering it. Section 473DD(a) is therefore satisfied.

### **Refugee assessment**

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18. 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**

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

- the person does not have a well-founded fear of persecution if they could take reasonable steps to modify their behaviour, other than certain types of modification.

### **Identity and Nationality**

20. As noted above, while he initially claimed to be a stateless, undocumented Faili Kurd, the applicant has now provided Iranian national identity documents comprising his birth certificate, national identity card and military service exemption. On the basis of these documents, I am satisfied that his identity is as claimed, and that he is a national of Iran. Iran is the receiving country for the purposes of the application.
21. The applicant has provided a consistent and plausible family history which is consistent with country information before me about the situation of Faili Kurds in Iran. At the protection interview he was assisted by an interpreter who spoke the Faili language and appeared to speak Faili fluently. Based on this evidence I accept that the applicant is a Faili Kurd from Ilam in Iran.

### **Credibility**

22. The applicant now admits that he has provided false information in relation to a central matter, his nationality; and that he omitted other key claims about his claimed political activity in Australia from his SHEV application and provided untruthful information when directly asked about it at the protection interview. In these circumstances, I consider that the applicant's credibility is seriously compromised, and I consider that, even having regard to the uncertainty and difficulties of his situation, all of his claims require close examination.

### **Is the applicant at real risk of harm as a Faili Kurd?**

23. Information before me indicates that Faili Kurds who are Iranian citizens have the same rights as any other citizen.<sup>1</sup> However, country information also indicates that minority ethnic groups, including Kurds, may experience discrimination.<sup>2</sup> According to the United States Department of State 2019 Country Report<sup>3</sup> the Iranian government disproportionately targeted minority groups, including Kurds, for arbitrary arrest, prolonged detention, disappearances, and physical abuse. Ethnic minority groups reported political and socioeconomic discrimination, particularly in their access to economic aid, business licenses, university admissions, job opportunities, permission to publish books, and housing and land rights.
24. DFAT assesses that while members of ethnic minority groups can face a moderate risk of official and societal discrimination, such as denial of access to employment and housing, particularly where they are in the minority in the geographic area in which they reside,<sup>4</sup> Kurds are not specifically targeted for discrimination on the basis of their ethnicity or religion, including in their ability to access government services.<sup>5</sup> I note that Kurds are not in the minority in Ilam, however

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<sup>1</sup> DFAT Country Information Report - Iran', Department of Foreign Affairs and Trade, 14 April 2020, 20200414083132, at 3.26

<sup>2</sup> 'World Directory of Minorities and Indigenous Peoples – Iran Overview', Minority Rights Group International, 1 July 2014, CX324703; 'Amnesty International Annual Report 2017-18', Amnesty International, 22 February 2018, NGED867A612, p.200; 'Amnesty International Annual Report 2014/15 – Iran', Amnesty International, NG5A1E6BC57, p. 188.

<sup>3</sup> 'Country Reports on Human Rights Practices for 2019 - Iran', United States Department of State, 11 March 2020, 20200312093514

<sup>4</sup> DFAT Country Information Report - Iran', Department of Foreign Affairs and Trade, 14 April 2020, 20200414083132, at 3.4

<sup>5</sup> DFAT Country Information Report - Iran', Department of Foreign Affairs and Trade, 14 April 2020, 20200414083132, at 3.22

DFAT notes that the provinces where Kurds predominantly live, including Ilam, are under-developed economically and have some of the highest unemployment rates in the country.<sup>6</sup>

25. DFAT further assesses that Kurds who are active politically are likely to attract adverse attention from the authorities. Those who advocate for greater rights and autonomy and/or self-determination face a high risk of official harassment, monitoring, imprisonment and mistreatment.<sup>7</sup> It should also be noted that most ethnic Kurds are Sunni, and may face discrimination on this basis, but this does not apply to Faili Kurds, who are predominantly Shia.<sup>8</sup>
26. Against this background, the applicant claims that he completed primary school, and later on paid for private courses in [Subject] and English language. He was apprenticed to [an Occupation 1], for whom he worked from [Year 2] until his departure in April 2013. He said at the protection interview that he was able to earn sufficient money from this work to pay the 8000USD required by the smuggler to get him out of Iran. At the SHEV interview the applicant said that because his family is stateless, the house they live in is in the name of another relative; they had to pay large amounts of money for medical treatment; and he was denied school education. Because the applicant now says he is an Iranian citizen, it appears that these claims are not true: if indeed the applicant's family has encountered economic or other discrimination, it was evidently not the result of their statelessness.
27. The evidence before me indicates that the applicant attended school, had a steady job which paid a reasonable wage, and his family live in stable housing. Many of the applicant's initial claims about the discrimination he and his family faced as Faili Kurds revolved around the family's inability to obtain identity documents, and the problems this caused; however, he now says that those claims were not true. On the basis of the credible information before me, I am not satisfied that the applicant has experienced serious harm on account of his Faili Kurdish ethnicity, including discrimination in relation to the denial of access to basic services or significant economic hardship, such as would threaten his capacity to subsist; or denial of the capacity to earn a livelihood. Nor am I satisfied that there is a real chance that he would experience serious harm of this nature, now or in the reasonably foreseeable future, should he return to Iran.

### Religious beliefs

28. In the SHEV application the applicant indicated that he had no religion, "only God". He stated that he dislikes Islam and considers that religion is just to deceive people and make money. He expressed views critical of the requirement to fast during Ramadan, and to cry for imams who lived 1400 years ago. However, the applicant does not claim to have ever spoken out about his religious views or his negative attitude towards Islam in Iran, or to have suffered any adverse consequences because of his views, except for one occasion in about 2002, when he was hit on the head by one or more members of the *basij* who stopped him on the street because he was inappropriately dressed during the mourning period of Muharram. Based on the applicant's description of this event, I find that it was a one-off incident, which did not result in the attribution of an adverse profile of any kind, including as a religious or political non-conformist. The applicant has not claimed that any similar ill treatment was repeated, nor has he claimed that he changed his behaviour as a consequence of the beating. There is no reason arising from

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<sup>6</sup> DFAT Country Information Report - Iran', Department of Foreign Affairs and Trade, 14 April 2020, 20200414083132, at 3.18

<sup>7</sup> DFAT Country Information Report - Iran', Department of Foreign Affairs and Trade, 14 April 2020, 20200414083132, at 3.22

<sup>8</sup> DFAT Country Information Report - Iran', Department of Foreign Affairs and Trade, 14 April 2020, 20200414083132 at 3.23, see also 3.30-3.32

the credible information before me to suggest that the applicant would express his religious views in future, or that he has any wish to do so, or that he would experience harm for reason of his religious beliefs, should he return to Iran.

29. According to country information before me, a Muslim who leaves the faith or converts to another religion can be charged with apostasy, though in practice this is rare.<sup>9</sup> The applicant has not claimed that he has in the past publicly renounced Islam, or that he would do so in the future. I accept that the applicant may not observe Muslim religious practices if he returns to Iran. However, country information indicates that non-practising Muslims are unlikely to come to the attention of the authorities. Mosque attendance is not monitored, and a large number of Iranians do not attend mosque regularly. Secularism is widespread in major cities, particularly among younger, educated and wealthier Iranians.<sup>10</sup> The material before me indicates that a person can choose not to observe the Islamic faith without being assumed to be an apostate. I do not accept that there is a real chance that the applicant would be viewed as an apostate or be charged with apostasy.
30. Based on the applicant's own evidence and the country information, I am not satisfied that there is a real chance that he would experience any harm, let alone serious harm, because of his views about Islam, or for failure to observe Islamic practice, or because he would be viewed as an apostate, should he return to Iran in the reasonably foreseeable future.

#### **Pro-Kurdish activities in Australia**

31. In the submission of 22 November 2021, it was claimed on behalf of the applicant that he has been involved in pro-Kurdish political activities in Australia, including demonstrations in support of Kurdish independence, which would be viewed very seriously by the Iranian authorities if these activities were known to them. I note that in his SHEV application the applicant did not mention these activities, and at the SHEV interview he stated, in response to a direct question, that he had not been involved in any political activities. He gave the delegate a letter dated 18 May 2021 written by the [Organisation] which confirmed his involvement with that group, but did not indicate that any of his activities were political in nature. The letter did not suggest that the applicant would experience problems in Iran because of his involvement with the group. The later letter dated 21 November 2021 does indicate that the applicant had engaged in political activities in Australia, and says that he would be at risk of prosecution, arrest and execution in Iran.
32. Section 5J(6) of the Act requires any conduct engaged in by an applicant in Australia to be disregarded, unless the applicant satisfies the Minister that the conduct was engaged in otherwise than for the purpose of strengthening their claim to be a refugee. The applicant's involvement with the [Organisation], attendance at demonstrations and other events, and having those events recorded in photographs, is potentially relevant conduct engaged in in Australia. However, it appears that some of the conduct was engaged in well before the applicant's SHEV application was lodged; and in circumstances where he did not even mention the conduct or provide the photographs in his application, or during its consideration by the delegate, I am satisfied that it was engaged in otherwise than for the purposes of strengthening his claims to be a refugee.

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<sup>9</sup> DFAT Country Information Report - Iran', Department of Foreign Affairs and Trade, 14 April 2020, 20200414083132, para. 3.73; see also 'Iran - COI Compilation', Austrian Centre for Country of Origin and Asylum Research and Documentation (ACCORD), 1 July 2018, 20190326122102

<sup>10</sup> DFAT Country Information Report – Iran', Department of Foreign Affairs and Trade, 14 April 2020, para 3.70, 20200414083132 para 3.70 -3.72



33. While it is evident that the applicant has been engaged in the particular activities over some years, he has claimed that he did not mention the activities before the delegate made her decision because he was concerned that the application would not be confidential and he was afraid that the Iranian authorities would find out: this suggests that the applicant does not believe that the Iranian authorities would be aware of the activities other than via his own disclosure, if his SHEV application were available to them. I consider that the applicant's failure to mention the activities in the SHEV application, and his statement at the SHEV interview that he had not been engaged in political activities in Australia, indicates either that the applicant himself did not regard his activities and involvement with [Organisation] as political in nature, and his late claim that the activities are, in fact, political is a gloss now put on them to enhance the prospects of success of his application, even though the conduct itself was not undertaken for this purpose; or that he did not think that his involvement in these activities would cause problems on return to Iran, either because it would not be known to the government or because the government would not be concerned about it, or both.
34. In any case, despite the assertions in the [Organisation] letter, none of the photographs provided by the applicant provides support for the contention as to the anti-Iranian regime nature of his activities in Australia. Moreover, it is not evident to me that the photographs have been displayed publicly, or that they would be accessible to, or have been accessed by the Iranian authorities. Nor is there any information before me to suggest that the Iranian authorities would be aware of the applicant's participation in the original activities recorded in the photographs.
35. Two of the photographs depict the applicant with men described as "Kurdish political [Occupation 2]s"; another photograph shows the applicant with a man described as a "[Country 2] [Occupation 2]". There are no details about who the men are - apart from their names - and there is no explanation as to why being photographed with these people would cause problems for the applicant.
36. Several of the photographs depict the applicant attending demonstrations, but all of these are described in the accompanying captions as being demonstrations against the Turkish government, not the Iranian government. One photograph shows the applicant holding what is said to be the Kurdish flag. It is claimed that this would result in severe punishment if seen by the Iranian authorities, but there is no evidence before me to confirm that the flag is indeed the Kurdish flag, or, if it is, what view the Iranian authorities would have if they were aware that the applicant was holding this flag in Australia. Otherwise, the applicant has not claimed, and there is no information before me to suggest that participating in demonstrations against the Turkish government would cause problems with the Iranian authorities: the submission and the letter from the [Organisation] specifically refer to the applicant's participation in demonstrations *against the Iranian authorities* as being likely to cause problems for him on return.
37. Another photograph shows the applicant with the Sydney Kurdish [Sport] team, whose members are holding a different flag to the one said to be the Kurdish flag. The significance of this photograph is not explained.
38. Another photograph is said to show the applicant at a Kurdish new year celebration and there is a banner referring to "Newroz" in the background; however, there is nothing to indicate that this was a specifically Kurdish celebration. Even though the country information before me indicates that Kurds have been arrested in Iran for activities which include organising Nowruz

celebrations,<sup>11</sup> I am not satisfied that there is a real chance that mere attendance at a Nowruz celebration in Australia would cause problems for the applicant, even if it were to come to the attention of the Iranian authorities, which itself appears to be a remote and speculative possibility.

39. Based on the information before me, I consider that the applicant's claims to face a real risk of harm in Iran on the basis of his involvement with Kurdish demonstrations and cultural events in Australia are not supported, and highly speculative. There is no credible evidence before me to suggest that there is a real chance that the Iranian authorities would be aware of this activity, or that if they were, the applicant would be regarded as a pro-Kurdish independence activist and be at real risk of harm as a consequence on return to Iran, including during immigration processing, which is addressed below.

### **Returning asylum seeker**

40. The applicant claimed that because he has been away from Iran and living overseas for a long time, and because he left Iran illegally, he will be suspected of being a spy if he returns to Iran. The applicant now says that he left Iran on his own passport, and because of this, and based on country information indicating that it would be very difficult and quite unlikely for a person to be able to depart through Imam Khomeini Airport in Tehran with a false passport,<sup>12</sup> I am satisfied that he left Iran legally.
41. The delegate considered a large volume of country information about the situation of failed asylum seekers returning to Iran. None of this information suggests that Iranians who have lived overseas for a long time and/or who left illegally and/or who are Faili Kurds, are suspected of being spies. Iran only accepts the involuntary return of failed asylum seekers from Australia if they arrived after March 2018. As the applicant arrived in 2013, I am satisfied that if he returns, he would do so voluntarily, travelling on a temporary travel document or laissez-passer.<sup>13</sup> I accept that because of his long absence from Iran and the nature of his travel document he may be identified as a person who sought asylum in an overseas country.
42. DFAT assesses that failed asylum seekers are unlikely to be targeted by the Iranian authorities for the sole reason of having applied for asylum overseas. Iranians have left the country in large numbers since the 1979 revolution, and the authorities apparently accept that many will seek to live and work overseas for economic reasons. Millions of Iranians travel into and out of Iran each year without difficulty, including from Australia. According to DFAT, the authorities pay little attention to failed asylum seekers when they return to Iran. Nationals returning on a laissez-passer are questioned by the Immigration Police at the airport about the circumstances of their departure and why they are travelling on a laissez-passer. Arrest and mistreatment are not

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<sup>11</sup> '2019 Iran Human Rights Monitor Annual Report', Iran Human Rights Monitor (United States), 6 January 2020, 20200420081401 at p.16

<sup>12</sup> DFAT Country Information Report - Iran', Department of Foreign Affairs and Trade, 14 April 2020, 20200414083132; Human Rights Situation for Minorities, Women and Converts, and Entry and Exit Procedures, ID Cards, Summons and Reporting, etc.', Danish Immigration Service, April 2009, p. 37, CIS17329; 'Iran: The passport; its features and procedures for application including whether an applicant who was refused a passport would be notified and have recourse; the use and prevalence of fraudulent or counterfeit passports to exit Iran; ease of illegal entry into and exit from Pakistan, Turkey, and Azerbaijan overland, and Oman and the United Arab Emirates by sea; whether authorities seize passports from certain individuals to prevent their departure from the country (2004 - February 2006)', Immigration and Refugee Board of Canada, 3 April 2006, OGF10222E67; Entry procedures and passport control at Dubai International Airport', DIBP, 13 April 2012, CX286895; 'DFAT Country Information Report Iran' Department of Foreign Affairs and Trade, 21 April 2016, Sections 5.29 and 5.49, CIS38A8012677; 'Iran: On Conversion to Christianity, Issues concerning Kurds and Post-2009 Election Protestors as well as Legal Issues and Exit Procedures', Danish Refugee Council, Landinfo (Norway) and Danish Immigration Service, February 2013, p. 67, CIS25114.

<sup>13</sup> DFAT Country Information Report – Iran', Department of Foreign Affairs and Trade 14 April 2020, 20200414083132, para. 5.27.

common during this process.<sup>14</sup> DFAT says that this questioning usually takes between half and one hour, but may take longer where the returnee is considered evasive or where immigration authorities suspect a criminal history. There is no suggestion that the applicant has a criminal record. DFAT assesses that returning asylum seekers are not imputed with an anti-government political opinion, or harmed, merely because they have made an asylum claim. The treatment of returnees, including failed asylum seekers, depends on the returnees' profile before they left Iran, and those with an existing high profile, particularly political activists, may face a higher risk of coming to official attention on return. DFAT assesses that, unless they were the subject of adverse official attention prior to departing Iran (e.g. for their political activism), returnees are unlikely to attract attention from the authorities, and face a low risk of monitoring, mistreatment or other forms of official discrimination.

43. A report of a factfinding mission by the Danish Refugee Council, drawing on information from a range of sources, is broadly consistent with DFAT's advice. The Danish report notes advice from the IOM based on its operation of an Assisted Voluntary Return programme dealing with people returning to Iran from countries including Australia and Indonesia (where they were in transit on their way to Australia). IOM advised that a long stay abroad is not a problem if the person left the country legally, which I am satisfied the applicant did. People returning on temporary travel documents such as a laissez-passer will be questioned, possibly for up to a few hours, but IOM is not aware of any arrests.<sup>15</sup>
44. There are some reports of returnees to Iran, including asylum seekers, being at risk of harm. For example, a representative of the Jesuit Refugee Service speaking unofficially, advised in 2020 that his personal contacts had advised that there was no guarantee that the Iranian authorities would not take punitive action against a returnee who was perceived to have left the country for any reason other than simply to work abroad; he was told that the family would need to contact the authorities and negotiate terms of return.<sup>16</sup> This view appears somewhat speculative, however, in the face of reports from organisations such as the IOM which has monitored returning Iranians and found no reports of ill treatment; the German government, too, has reported that between 2016 and 2018 over one thousand Iranian asylum seekers returned voluntarily to Iran from Germany with no known significant problems.<sup>17</sup>
45. The large volume of information considered by the delegate includes reports, some of which are up to ten years old, of some returnees facing difficulties on return. I attribute less weight to these older reports than I do to more recent information; moreover, the information regarding people who faced problems on return indicates that they were politically active prior to their departure from Iran or while overseas, or had an adverse profile for other reasons.<sup>18</sup> While I

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<sup>14</sup> DFAT Country Information Report - Iran', Department of Foreign Affairs and Trade, 14 April 2020, 20200414083132, para. 5.29

<sup>15</sup> Danish Refugee Council, Landinfo and Danish Immigration Service, "Iran: On Conversion to Christianity, Issues concerning Kurds and Post-2009 Election Protestors as well as Legal Issues and Exit Procedures", Danish Refugee Council, Landinfo and Danish Immigration Service, 1 February 2013, CIS25114

<sup>16</sup> Research Directorate, Immigration and Refugee Board of Canada 'IRN200133.E - Iran: Treatment by Iranian authorities of failed refugee claimants and family members of persons who have left Iran and claimed refugee status (2017-February 2020)', Immigration and Refugee Board of Canada, 9 March 2020, 20200402123733.

<sup>17</sup> Ibid

<sup>18</sup> AMNESTY INTERNATIONAL - URGENT ACTION: UA 125/11: Student activists held in Iran', Amnesty International, 6 May 2011, CX264288; 'IRAN: The Kurdish asylum seeker Rahim Rostami, charged with "actions against the nation's security", released on bail', Iran Human Rights, 19 June 2011, CX274950; 'We are ordered to crush you': Expanding Repression of Dissent in Iran', Amnesty International, 28 February 2012, CIS22610, p. 56; IRN200133.E - Iran: Treatment by Iranian authorities of failed refugee claimants and family members of persons who have left Iran and claimed refugee status (2017-February 2020)', Immigration and Refugee Board of Canada, 9 March 2020, 20200402123733; 'Zahra Majd Sequestered for Opinions of her Dissident Spouse', Human Rights Activists News Agency (HRANA), 15 October 2018, CXBB8A1DA36878; 'Iranian poet/activist arrested at Tehran airport', Radio Zamaneh, 8 January 2016, CX6A26A6E140;

accept that the fact that the applicant is a Faili Kurd could be a factor in the way he is treated on return, there is no independent information to support a conclusion that the mere fact that the applicant is a Faili Kurd would result in an unusual degree of scrutiny or result in serious harm, even if he returns on a temporary travel document and is identified as a failed asylum seeker.

46. I consider that the weight of the available information indicates that asylum seekers and others who may face problems on return to Iran were engaged in political activities and had a profile for this reason prior to their departure, or were, and were known to be, engaged in political activities overseas. I have found that the applicant did not have an adverse profile and was not of interest to the Iranian authorities at the time of his departure; and I have found that, even accepting that he has attended Kurdish community events in Australia as depicted in the photographs he has submitted, there is no credible evidence before me to suggest that this would be known to the Iranian authorities, or even if it were known, that there is a real chance that it would be of concern. As noted above, the photographs do not, on their face, support the assertion, or a finding, that he has engaged in anti-Iranian regime activities in Australia.
47. I am satisfied that the applicant has not undertaken any activities, either prior to his departure from Iran or subsequently, that would result in his facing a real chance of harm on return, even if he were also identified as a failed asylum seeker and taking into account the fact that he is a Faili Kurd. I am satisfied, on the evidence, that he might be questioned on arrival, possibly for up to a few hours, but I do not consider that this constitutes any relevant form of harm. Based on the country information and those of the applicant's claims that I accept, including that he is a Faili Kurd, I am not satisfied that there is a real chance that the applicant would face serious harm on return if he was identified as a failed asylum seeker.

#### **Refugee: conclusion**

48. Based on the credible evidence given by the applicant and the country information, I am not satisfied that the applicant faces a real chance of serious harm on return to Iran for any of the reasons claimed – because he is a Faili Kurd, because he might be identified at the airport as a person who has lived outside Iran for a long time, because of his religious views, because he has participated in activities with the Kurdish community in Australia, or for those reasons considered cumulatively.
49. 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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50. 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.

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'New Video: Iranian Expats Face Arrest upon Return to their Homeland', International Campaign for Human Rights in Iran, 23 April 2015, CXBD6AODE5203; 'Jailing of returning journalists called part of anti-Rohani plan', Radio Zamaneh, 31 July 2014, CX324017

## Real risk of significant harm

51. 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.

52. 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.

53. The applicant has not made claims that he is entitled to complementary protection for any reasons other than those put forward and considered in relation to the refugee criterion. As discussed above, I have found that the applicant does not face a real chance of being harmed by the Iranian authorities because he is, or would be imputed to be, an apostate or a non-practising Muslim. I have accepted that the applicant was, in the past, beaten on one occasion by the *basij* for non-compliance with Iran's religious norms, however according to his own evidence, this was a one-off incident which occurred in 2002. There is no credible information before me to suggest that the applicant would express his religious views in future, or that he has any wish to do so, or that there is a real risk that he would experience harm of any kind for reason of his religious beliefs or behaviour, should he return to Iran.<sup>19</sup>

54. I have not accepted that the applicant's participation in activities with [Organisation] in Australia would be known to, or of concern to, the Iranian authorities, and I am not satisfied that the applicant faces a real risk of harm because he would be perceived to be a pro-Kurdish or anti-Iranian political activist.

55. I have found that the applicant might be subjected to brief questioning if he is identified as a failed asylum seeker on return to Iran. The information before me does not support a finding that there is a real chance or risk that he would be subjected to more severe mistreatment for any reason, including if he were identified as a Faili Kurd. I am not satisfied that questioning for a period of a few hours amounts to any form of significant harm, as defined for the purposes of the complementary protection provisions.

56. It is possible that the applicant has in the past suffered some minor discrimination as a Faili Kurd. However, as noted above, he is an Iranian citizen and is therefore entitled to the same rights and access to services as any other Iranian. Based on the applicant's evidence about his past experience, I do not accept that there is a real risk that he would in the future suffer discrimination in relation to housing, education, employment or access to services; or insults or any other mistreatment from individuals or from government agencies that would constitute significant harm as defined, including cruel, inhuman or degrading treatment or punishment. There is no basis arising from the credible evidence before me to support a finding that the

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<sup>19</sup> In *MIAC v SZQRB (2013) 210 FCR 505* the 19 the Full Federal Court held that the "real risk" test in the complementary protection provisions imposes the same standard as the "real chance" test applicable to the assessment of "well-founded fear" (The Court in that case was considering the language in the Refugees Convention.)

applicant faces a real risk of significant harm for any other reason, or arising from his personal circumstances considered cumulatively.

**Complementary protection: conclusion**

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

**Decision**

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

## Applicable law

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### **Migration Act 1958**

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

In this Act, unless the contrary intention appears:

...

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

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

...

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

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

but does not include an act or omission:

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

...

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

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

...

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

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

...

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

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

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

...

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

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

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

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

...

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

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

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

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

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



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

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

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

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

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

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

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

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

...

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

...

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

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

...

*Protection obligations*

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

*Determining nationality*

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