



Australian Government
Immigration Assessment Authority

Decision and Reasons

Referred application

IRAN

IAA reference: IAA21/10142

IRAN

IAA reference: IAA21/10141

Date and time of decision: 21 March 2022 18:23:00

G Deal, Reviewer

Decision

The IAA affirms the decision not to grant the referred applicants protection visas.

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 applicants claim to be a mother (IAA21/10142) (the applicant) and her son who was born in Australia in [Year] (IAA21/10141). The applicant claims to be a Feyli Kurd from Tehran, Iran, who arrived by boat in Australia with her then husband [in] June 2013. On 17 May 2017 the applicant and her then husband lodged a combined application for a Safe Haven Enterprise Visa (visa application) with the Department of Immigration, now the Department of Home Affairs (the Department). Their son was subsequently added to the visa application as a dependant. In June 2020 the applicant and her then husband separated. They subsequently lodged separate claims for protection. The applicant is the primary carer of their son and independent of her ex-husband, including financially. On 28 October 2021 the applicant was interviewed by a delegate of the Minister for Immigration (the delegate) by telephone. The applicant's ex-husband is the subject of a separate decision record.
2. On 8 November 2021, the delegate refused to grant the visas. The delegate accepted the applicant was Kurdish, that she had separated from her ex-husband, and was a single mother. While he accepted that Kurds faced discrimination in Iran due to their ethnicity, the delegate did not accept the applicant had personally experienced this while in Iran. The delegate found the applicant's narrative about her claimed Christian conversion, shallow, vague, and general, her evidence about her claimed devotion to Christianity unconvincing, her knowledge of the faith superficial, and that she had not attended church for several years. The delegate did not accept the applicant was a genuine Christian convert. The delegate accepted the applicant did not follow Islam and would not practise the faith if she returned to Iran but found the applicants did not meet the relevant definition of refugee, did not face a real risk of significant harm, and were not people in respect of whom Australia had protection obligations.

Information before the IAA

3. I have had regard to the review material given by the Secretary under s.473CB of the *Migration Act 1958* (the Act).
4. By emails dated 6 and 10 December 2021 and 16 March 2022¹, the IAA received a submission, several supporting publications, and a letter from a psychologist. The information provided that was before the delegate when he made his decision or argument does not comprise new information and to this extent, I have had regard to it. In addition to the psychologist's report which is new information, the submission makes a number of assertions about the mistreatment of Christian converts and Kurds and declining economic conditions in Iran, placing reliance on several publications which comprise new information.
5. At the primary stage the applicant claimed to suffer from post-natal depression after the birth of her son in [Year]. In her visa interview she said she had been getting medical assistance for this for almost two years, although she provided nothing in support of these claims. The applicant has now provided a copy of a letter from a clinical psychologist in relation to her mental health. The letter is dated 17 December 2021, just over a month after the delegate made his decision. In the letter the psychologist states he has been seeing the applicant since about September 2019, which was before the delegate made his decision and even before the visa interview. It is unclear why such a letter was not sought and provided earlier. The

¹ In response to a request from the IAA after it appeared the applicant's lawyer had accidentally forgotten to attach one of the country information reports referred to in the submission.

applicant was represented at the primary stage by the same lawyer who is representing her at the review stage. There is no explanation for why this information is only being provided now. I am not satisfied that this information could not have been provided to the delegate before his decision was made. The letter was emailed directly to the IAA by the applicant's psychologist and appears credible on its face. While the applicant made passing reference to her mental health issues in the visa interview not much was made of this by her, and nothing was provided in support and it does not appear that the delegate considered this issue. I am satisfied that it is credible personal information which had it been known may have affected consideration of the applicant's claims. The letter is by a qualified mental health specialist and corroborates the applicant's claim to suffer from mental health issues. I am satisfied exceptional circumstances exist to justify considering the information.

6. At the primary stage the applicant claimed to be a Feyli Kurd and a Muslim born Christian convert. The applicant has now referred to publications in support of submissions about the treatment of Christians, Kurds and the economy in Iran published by Iran Human Rights in January and September 2016, the Jerusalem Post in 2020 and June 2021, Open Democracy in 2020, the United Nations Human Rights Office of the High Commissioner (OHCHR) in 2019, The Iran Primer and Amnesty International in 2020 and DW.com, the Los Angeles Times, NPR and ABC News in 2019 as well as a guidance note on Christian converts dated 4 June 2015. All the publications were published before the delegate made his decision in November 2021. The applicant, with the assistance of her lawyer, has submitted that the information ought to be considered as it is "...crucial to the Applicant's case as it emphasises the circumstances that the Applicant has faced in Australia". The applicant was represented by the same lawyer at the primary stage and took the opportunity to provide submissions to the delegate after the visa interview. The applicant and her lawyer have not explained why this information is only being provided now. Nor is this apparent to me. I am not satisfied that this information could not have been provided to the delegate before his decision was made.
7. The NPR article refers to an unidentified healthcare worker who talks briefly about the impacts of the US sanctions on day-to-day life including in relation to medical devices and drugs and the OHCHR article speaks to the discrimination, targeting, and mistreatment suffered by Kurdish people in Iran, including their overrepresentation in jails, however neither contains credible personal information, in the relevant sense. A citizen describing what it is like to live under US sanctions as well as Christians who have been arrested, charged, imprisoned, or otherwise punished under Iranian law are identified in the Los Angeles Times, Iran Human Rights and Jerusalem Post publications and this information appears to comprise credible personal information, in the relevant sense. The remaining publications, while referring to various leaders, businesspeople, experts, journalists, and activists, are relevantly about the prosecution, discrimination and mistreatment suffered by Christians, Kurds, as well as about the Iranian economy and impact of US sanctions, and do not appear to comprise credible personal information, in the relevant sense. All the publications have been provided in support of submissions about the prosecution, discrimination and mistreatment suffered by Christians, Kurds, as well as about the Iranian economy and the impact of US sanctions. Many of the publications are now also dated, some dating as far back as 2015 and 2016. Most are brief. The review material contains recent and more detailed information about the discrimination and other mistreatment suffered by Christians (including converts) and ethnic minorities including Kurds, such as arrest, prosecution, imprisonment, and punishment, as well as about the Iranian economy, unemployment, the impact of US sanctions on day to day living and mental health services. Overall, I am not satisfied that the information is credible personal information which had it been known may have affected consideration of the applicant's claims. I am not satisfied as to the matters in s 473DD(b). I am also not satisfied that there are exceptional circumstances to justify considering the new information.

Applicants' claims for protection

8. The applicant has made claims, including in relation to her young son. The applicants also rely on their membership of the same family unit.
9. The applicants' claims can be summarised as follows:
 - The applicant is a Feyli Kurd from Tehran, Iran. She is the youngest of four children. Her eldest sister died in a gas explosion as a child. Her father died in a car accident in 2003. Her mother, brother and remaining sister live in Tehran, Iran. She attended school and college in Iran and then worked in [job sector], as [an Occupation 1] and [an Occupation 2] in Iran.
 - She grew up in a progressive non-religious family who were opposed to the Islamic Republic.
 - In 2011 she married her then husband who was from a conservative Muslim family. Their families disapproved of their marriage which caused her and her then husband issues.
 - She and her family were harassed and targeted because of their views and ethnicity and this was compounded by the discrimination she faced as a woman. She was harassed by the *Basij* for non-adherence with Islamic dress codes.
 - Fearing they would face harm she and her then husband legally fled Iran in May 2013 on their genuine passports. The people smuggler took the passports on their journey to Australia.
 - She was born a Shia Muslim however since being in Australia she has converted to Christianity.
 - In [Year] she and her then husband had a son.
 - In about June 2020 she separated from her then husband. She is independent of her ex-husband and the primary carer of their son. She fears harm in Iran as a Christian Faili Kurdish woman, separated from her ex-husband and single parent. She fears her former husband's family will take her son because of her and her ex-husband's Christian conversions.
 - She has mental health issues and has seen a psychologist in Australia since around 2019.
 - If she returns, she will be a failed asylum seeker from a Western country.

Factual findings

10. Based on the evidence before me, including documentary evidence such birth certificates, I accept that the applicant and her then husband married in Tehran, Iran, in 2011, that they are both citizens of Iran and of no other country, that they departed Iran legally on their passports in 2013 at Tehran International Airport and that a people smuggler took their passports on their journey to Australia, as has been consistently detailed. The applicant has provided a copy of an Australian birth certificate for her son who I consider is also an Iranian national under

Iranian law as his father is an Iranian national.² I accept that the applicants are citizens of Iran. I consider Iran the receiving country.

11. The applicant's evidence about her background including her education and work history and her family has been detailed and consistent. In the visa interview in 2021 she confirmed that her mother, brother, and sister still lived together in Tehran, Iran, and that she remained in regular contact with them. I accept the applicant's claimed education and work history as well as claims relating to the composition and location of her family in Iran and her ongoing contact with them.
12. In her arrival interview when asked to briefly explain why she left Iran, in addition to mentioning matters discussed below, the applicant said that her family and her then husband's family disapproved of their marriage and also that they loved children but could not see any future for children in Iran. She also later indicated that they wanted to study abroad. The visa application did not elaborate on these claims briefly mentioning claims related to the harassment of her then husband because of his Kurdish ethnicity and how he had converted to Christianity in Australia. After separating from her then husband in 2020, the applicant lodged her own statement of claims with the Department in 2021 which did not mention the claims about study or children or the family disapproving of their marriage. Other than brief mention of her husband's claimed Christian conversion it focused on other claims related to her and her son. In the visa interview the applicant spontaneously elaborated on how she and her ex-husband remained separated, and she confirmed that she was independent of him, including financially and emotionally, and that their son did not see her ex-husband, which I accept. On the evidence they appear to have had very little if anything to do with one another since separating in 2020. The applicant and her then husband lived in Tehran, where their families also lived, for a couple of years after marrying before leaving Iran. The applicant has not particularised any incident of harm from either family in that time. On the evidence while I am willing to accept that their families may not have embraced their marriage, I am not satisfied they opposed it to the extent claimed, which I consider has been exaggerated. While they have a son, they have been separated for a couple of years, with no sign of reconciliation, have had little to do with one another and the applicant has since pursued her own claims for protection including by lodging her own separate statement of claims and being separately interviewed by the Department. I consider that the applicants' claims are independent of the ex-husband's claims, which is also how the delegate approached this matter.
13. The applicant claims to suffer from mental health issues. In her statement of claims she said that after the birth of her son in [Year] she suffered from post-natal depression which affected her ability to participate in day-to-day life. She said that she was under a lot of stress as a single mother in a new country and that she had "...been getting medical assistance for almost 2 years". In a letter provided at the review stage a clinical psychologist, [Dr A], said the applicant had been referred to him by her general practitioner [Dr B] in relation to her "marital conflict and emotional limbo and guilt feelings" and that he had been "looking after" the applicant since 17 September 2019. The letter notes the applicant had reported she "...was always subject of trauma, pain and unhealthy mind [sic]" and that she felt numb in the body and feared she would have a nervous breakdown. The psychologist diagnosed her with "Major Clinical Depression", "Anxiety disorder co-morbid with PTSD" and "Chronic insomnia". The psychologist provided a large list of symptoms characteristic of the applicant's diagnosis which he said she also presented with. These included "Feeling sad", "Loss of pleasure and interest in things that she usually tends to enjoy", "Insomnia – has trouble falling asleep or waking in the

² Switzerland Research Park Journal, Hossein Alekajbaf, 'The Narratives of Nationality in Iran: Rights and Duties Related to Nationality', 1 November 2013, CIS29472; Multiple Citizenship, 'Iran', 1 January 2017, CXC904066662.

early morning hours”, “Uptight at times”, “Feels that she is burden and expressing suicidal ideation”, “Lacks concentration”, “Transient memory loss or poor concentration and not taking in information due to an elevated level of anxiety and her excessive worry” and “Lacks energy and simple things seem like a major effort”. It indicated that the applicant’s mental health issues had been exacerbated by the more recent refusal of her visa application (the letter was dated after the delegate made his decision). It also stated that the applicant was “...worried losing [sic] her son (whose father is the man she had [sic] privately relationship with him [sic]) and worried for her safety if returning to Iran and facing with Sharia Law [sic]. Based on Islamic Sharia law in Iran, the women who is married, having relationship with another married man [sic] will be subject of harsh punishment under Islamic Law”. In respect of these latter observations, I place no weight on the letter in relation to these brief factual and legal assertions, which fall outside the psychologist’s expertise. I also note that these statements do not entirely reflect the applicant’s own claims. On the evidence, I accept that the applicant suffered post-natal depression after the birth of her son in [Year], that shortly before separating from her ex-husband in 2019 she sought a referral to a psychologist for her mental health and has struggled with her separation, being a single parent, became distressed when her visa application was refused and that she has been diagnosed with “Major Clinical Depression”, “Anxiety disorder co-morbid with PTSD” and “Chronic insomnia”.

14. In April 2021 the delegate communicated with the applicant’s lawyer to schedule a visa interview. For various reasons the interview had to be re-scheduled a number of times. Two attempted interviews had to be abandoned because of the noise and distraction of the applicant’s young son, who was just [Age] years of age at that time. Eventually, the applicant was interviewed by telephone on 28 October 2021 with the assistance of a Farsi interpreter. His lawyer also participates in the interview. I have carefully listened to the audio recording of the visa interview which went for over one and a half hours. Various measures or steps were taken to ensure the applicant was given adequate opportunity to discuss her claims and evidence at the interview. It appears the applicant speaks some English. At the commencement of the visa interview the delegate asked the applicant if she preferred to speak English or through the translator. The applicant chose to utilise the translator stating that she understood the translator and had no objections to using the translator. The applicant was also clearly advised that if she did not understand what the interpreter said or if she thought the interpreter did not understand her, that she should let the delegate know. The delegate also told the applicant that if she did not understand a question to ask the delegate to repeat or re-phrase it. It appears the applicant was comfortable doing this as she indicated during the visa interview when she did not understand a question or needed it to be repeated. Toward the end of the visa interview the delegate also offered the applicant a short break to collect her thoughts, speak with her lawyer and ensure nothing had been missed, although the lawyer felt it was better to end the interview at that point and provide written submissions instead, which he subsequently did which I have had regard to. The applicant’s lawyer also speaks Farsi and sought to correct some perceived mistranslations during the visa interview. On one such occasion the delegate said that it was preferable if the lawyer did not interrupt and noted that the lawyer could provide submissions after the visa interview, which the lawyer did, and which I have had regard to. The applicant appeared to comprehend the questions put to her by the delegate and respond to them in a meaningful way. While some of the applicant’s responses were brief, the applicant also provided detailed responses at times, for example, when she explained how she became involved in Christianity through her husband, demonstrating she was able to respond in a more fulsome way when she had more information to communicate. While I accept the applicant has more recently suffered mental health issues symptoms of which include transient memory loss and poor concentration, in the circumstances of this matter, including the measures and steps taken and that it does not appear that her condition is acute or debilitating, I am not satisfied that this materially affected

her ability to meaningfully engage in the visa interview. Overall, I consider that the applicant has had adequate opportunity to provide claims for protection and supporting information.

15. The applicant claims she was harassed by Iranian authorities for failure to adhere to Islamic dress codes. In her arrival interview she spontaneously elaborated on how she was harassed by the *Basij* because her top was considered too short and because of her head scarf. She said she was taken to the station and her family were called to collect her and bring her more suitable clothing. She was also asked to sign an undertaking not to break these rules again. The applicant did not subsequently elaborate on these claims. This may be because it was not uncommon for young Iranians to be harassed by the authorities for nonadherence to the strict dress code, or 'bad *hajib*', at that time and she has since focused on seemingly more significant or serious claims.³ On the evidence I am willing to accept that in the 30 or so years the applicant lived in Iran before departing that she was harassed by the *Basij* on one or two occasions for bad *hijab* and taken to the station, asked to sign an undertaking and that her family had to collect her with more suitable clothing.
16. The applicant claims she is from a progressive non-religious Feyli Kurdish family opposed to the regime, that they were harassed and targeted by the Iranian authorities and that the discrimination she suffered was exacerbated because she was a woman. While I acknowledge arrival interviews are not intended as a substitute for visa interviews and can suffer certain limitations, in the arrival interview when asked what her faith was the applicant said "Shia". In the visa application, it was briefly, relevantly, stated that the applicant came from a family that was "not Muslim" and "quite progressive" and that the applicant and her then husband were "harassed and targeted" by the Iranian authorities because of "her attitudes and beliefs". In her statement of claims the applicant said she grew up in a "progressive non-religious" family "opposed to the Regime". As she got older, she came to realise that she could not follow the "policies, laws and customs" of the Islamic Republic. She said that she and her family were "harassed and targeted" by Iranian authorities due to their Kurdish ethnicity. In the visa interview she said that in Iran she identified as a Shia Muslim although she did not practise the faith. When asked about her Kurdish ethnicity in the visa interview she said her family came from Ilam. When asked about problems she faced in Iran the applicant's evidence was brief and generalised. She said the authorities always assumed that they were Sunni, or separatists, and that they faced "a lot" of "difficulties" and "lots" of "discrimination" and had to put up with a lot of "things", without being more specific, despite opportunity to elaborate. When asked how she celebrated the Kurdish traditions and culture she briefly said by dancing and singing. When asked about her claim that her family were "progressive" she said they were open minded when it came to the *hajib* which she always wore halfway and that they were quite liberal and did not object to her wearing lots of makeup. While the applicant requested and used a Farsi interpreter in the visa interview, she has said she speaks Kurdish. In the visa interview she also confirmed that her family owned property and that they were not denied accommodation, medical treatment, the right to vote, education or work, and she said that despite this, she briefly said that work was sometimes difficult.
17. The applicant initially described herself as Kurdish, however in a post interview submission her lawyer said she was a "Feyli" Kurd. The country information before me⁴ indicates that Kurds are concentrated in the north-west of Iran, including in areas like Ilam where the applicant claims her family is from. It also indicates that while Kurds are predominately Sunni, the subset of Feyli Kurds are predominately Shia, like the applicant's family. On the evidence, I accept that

³ Department of Foreign Affairs and Trade (DFAT) 'DFAT Country Information Report Iran', 29 November 2013, CIS26780; DFAT, 'DFAT Country information report Iran', 14 April 2020, 20200414083132.

⁴ DFAT, 'DFAT Country Information Report Iran', 29 November 2013, CIS26780.

the applicant is a Feyli Kurd and she is from a Shia Muslim family. The country information before me⁵ also indicates that while Kurds could suffer societal discrimination, it was those associated with separatist groups or who sought to assert Kurdish cultural or political rights who were of most interest and that most Kurds did not come to the attention of the authorities or were subject to only low levels of adverse attention by the state. It also indicated that undocumented Feyli Kurds or those who were registered refugees suffered discrimination, however the applicant and her family in Iran are Iranian citizens and the applicant has indicated she and her family enjoyed the same rights as other Iranian citizens.

18. While the applicant's family originated from Ilam, the applicant was born and raised in Tehran as an Iranian citizen with all the rights that come with that, is proficient in the Farsi language and was born into a Shia Muslim family (the predominate faith in Iran)⁶. The applicant and her family appear to be well integrated into Iranian society. The applicant has consistently claimed her family were progressive, spontaneously elaborated on this in the visa interview and on the evidence, I accept that her family are non-conservative Shia Muslims open minded about her wearing her *hijab* loosely and makeup. While I accept the applicant was harassed by Iranian authorities for bad *hijab*, based on her brief and generalised evidence I find her claims that she and her family were or are openly opposed to the regime and that they faced a lot of difficulties or discrimination or targeting on account of this, their ethnicity, for being non-religious or as a woman (in the case of the applicant), unsupported and I do not accept these aspects of her claim. I also note that the applicant left Iran legally on her own genuine passport in 2013 and there is nothing to indicate she had difficulties obtaining her passport or departing at the airport. I do not accept that the applicant was wanted by the authorities or anyone else when she left Iran in 2013.
19. The applicant claims she never really believed in Islam while in Iran or practised the faith and that after coming to Australia she converted to Christianity and attended church and bible studies classes. However, there are a number of issues with the evidence that raise concerns for me regarding the genuineness of her claimed conversion.
20. According to the 2017 visa application, after arriving in Australia the applicant's ex-husband was introduced to Christianity and the Christian community warmly welcomed him and he converted to the faith. In the applicant's statement of claims she said she and her ex-husband were given assistance by the church with integrating into Australia society. Her ex-husband started to attend bible studies classes and became more involved with the church and she was baptised. In the visa interview she said she also attended bible studies like her husband. She said that her husband encouraged her to go to church and assured her she would like it and that when she found the people kind, loving, and honest, she became more interested. A baptism certificate shows she was baptised on 2 October 2016 by [Pastor C] at the [Church] in New South Wales and I accept she was baptised on this day. In her statement of claims the applicant said she stopped attending church after she became pregnant with her son (who was born in [Year]). She said that after giving birth, she suffered from post-natal depression making day to day life difficult. In the visa interview she said that she went to church a few times after her son was born. She said she stopped going when she became depressed after the birth of her son because she was facing a lot of fears and challenges as she was worried and scared about how she was going to raise the child by herself. I note the applicant gave birth to her son in [Year] and did not become a single mother until some [Number] years later, when she separated from her then husband in around June 2020.

⁵ DFAT, 'DFAT Country Information Report Iran', 29 November 2013, CIS26780.

⁶ DFAT, 'DFAT Country Information Report Iran', 29 November 2013, CIS26780.

21. While not determinative in and of itself I found the applicant's knowledge of Christianity superficial. This may be reflective of her limited engagement with the faith since her baptism some five years ago. When the applicant was questioned about her knowledge of the faith in the visa interview, she listed Christmas, Good Friday, and Easter as Christian religious holidays she could recall. She said that the main principles of Christianity were repentance, believing in Jesus and his resurrection and salvation. Resurrection was when Jesus came back to life. Jesus had two parts to his life the heavenly and the earthly. He was born to Mary on 25 December and worked as a carpenter. At 30 years of age, he declared his mission for God. When asked if she knew any bible stories or prayers the applicant said she did not. Although she had been baptised, she said she did not know the significance of baptism and then said that it was about Jesus' life and Jesus was a kind of father. In the post interview submission, the applicant's lawyer reiterated that the applicant had said she had not been as dedicated as she wanted to be to Christianity because of her mental health issues. He also indicated that at the applicant's particular church her baptism was a prerequisite to her participating in the church.
22. When the applicant was asked more probing questions about her personal connection with the faith in the visa interview, her evidence was repetitive and superficial. For example, when asked why she was baptised she indicated it was because her husband was. When asked what it was about Christianity that attracted her, she said it was the kind and good people and its ability to build people or humanity. When asked what the best thing about being a Christian was to her, she said it was about kindness and love and humanity and building people. When asked what it meant to her to be a Christian, she said it was to be a good human and be kind to others. She also mentioned that the Christian community provided food and vouchers to help during the Covid-19 Pandemic.
23. In the visa interview the applicant indicated that her practise of Christianity was now limited to celebrating Christmas and praying to God at home sometimes, which simply involved her talking to God (because she does not know any Christian prayers). She said she could not remember when she last attended church. She said her mother knew about her conversion but that her mother had not said anything about it. She said that if she returned to Iran, she would attend a Christian church. The delegate asked why she would attend church in Iran when she did not attend church in Australia. The applicant said she had family in Iran who could look after her son and so she would be able to attend church. When the delegate indicated that he may take the view that she only engaged in her Christian activities to strengthen her claims for protection the applicant said that it was his decision and that she could only say that she was not a Muslim.
24. I accept that as a young Iranian the applicant may have questioned Islam while in Iran, which is reportedly not uncommon.⁷ I also accept that after the applicant and her then husband was assisted by the Christian community in Australia the applicant was struck by the kindness and generosity of the Christian community, was baptised, and attended limited bible studies classes and services. The evidence of the applicant's attendance at church and engagement with the Christian community has been hazy, although it is clear she has not attended church, bible studies or been otherwise actively involved with the church and its community for some five years, at least. I acknowledge the challenges that the applicant has faced, including mental health issues, separation from her husband and having to raise her son on her own, however, I also note that the applicant has relied on the Christian community in the past as a source of support in difficult times and I do not find the applicant's explanation for not having been actively involved in the church for such an extended period of time convincing and I do not

⁷ LSE Middle East Centre (United Kingdom), 'The Revival of Nationalism and Secularism in Modern Iran', November 2015, CISEC96CF14725.

accept it. Based on her limited and historical involvement with the Christian church and community, superficial knowledge of the faith, and unconvincing evidence in relation to her own connection with the faith I do not accept the applicant is a genuine Christian convert and it is for this reason (rather than out of a fear of being harmed) that I do not accept that if she were to return to Iran that she would be actively involved in Christianity or perceived as a Christian. The applicant has been in Australia for some eight years and there is no indication she or her son practise Islam. I accept as plausible that the applicants do not follow Islam and would not practise the faith if returned to Iran.

25. I accept the applicants may be identifiable as people who have sought asylum in Australia, a Western country.

Refugee assessment

26. 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

27. 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.

28. I accept that the applicant is a Feyli Kurd from Tehran, and that she and her son are Iranian citizens and that they still have family in Tehran. I consider that if the applicants were to return to Iran that they would very likely return to Tehran. I accept that on a couple of isolated occasions the applicant was harassed by the *Basij* for bad *hajib*, as was not uncommon, and that she is from a more progressive Shia Muslim family and that since being in Australia she has abandoned Islam, had a son, attended limited church services and bible studies classes, been baptised, and separated from her husband. I also accept she left Iran legally in 2013 and that if she were to return to Iran, she and her son may be identifiable as having sought asylum in a Western country. I accept the applicant suffers from mental health issues. The applicant has also made submissions regarding relocation, although I have not had to consider this issue.

29. I accept the applicants do not follow Islam and would not practise the faith if they were to return to Iran. Recent, detailed, and independent country information before me⁸ reports that Shia Islam is the official state religion in Iran. While certain recognised religious minorities are protected under the *Constitution*, religious minorities reportedly suffer systemic discrimination. Apostasy (where a Muslim leaves his or her faith or converts to another faith) and blasphemy (utterances that are deemed derogatory toward the Prophet Mohammed and other Shia holy figures or divine prophets) may be punished, including by execution, although execution is reportedly now rare. While more common in the years following the Iranian revolution when defendants also often faced national security charges, blasphemy and apostasy cases are no longer an everyday occurrence. Nonetheless the authorities continue to use religiously based charges against a diverse range of people, including Shia members of the reform movement, Muslim born converts to Christianity, some religious minorities and others who challenge prevailing interpretations of Islam or espouse unconventional religious beliefs. The UK Home Office's report indicates that mere conversion to Christianity is not enough to put a person at real risk of persecution. It indicates that the risk will depend on how 'visible' (for example, if they proselytise in Iran or have previously come to the attention of the Iranian authorities) a person is, and that the authorities tend to target the leaders and organisers of house churches rather than ordinary converts who do not proselytise. Over the last decade or so Iran has also been undergoing a period of demographic and ideological change and there has been a revival of interest in democracy, nationalism, secularism, and constitutionalism.⁹ The sources report that secularism is now widespread, particularly in major cities and among younger and wealthier Iranians. A significant proportion of the population do not attend mosque or pray on a regular basis. Alcohol consumption is common. Official sources told DFAT that beyond an expectation that people do not eat in public or hold parties during the holy month of Ramadan, how one observed Islam was an individual choice. While those caught eating in public during Ramadan run the risk of arrest and prosecution, DFAT noted that it had heard anecdotally that many Iranians did not strictly observe Ramadan and ate, drank, and smoked at home and that some restaurants (especially in Tehran) served food discretely during this period. Even those who become atheist are unlikely to come to the attention of the authorities, unless they widely publicise their non-belief (in which case they face a moderate level of official and societal discrimination, meaning that the number of incidents suggests a pattern of discrimination). DFAT assesses that non-practising Muslims face a low risk of official and societal discrimination, particularly in major cities like Tehran, meaning that while there are incidents, they are insufficient to indicate a pattern of discrimination. DFAT also reports that the authorities have little interest in prosecuting failed asylum seekers for activities conducted outside Iran, including converting to Christianity or protesting outside Iranian diplomatic missions. For the reasons already discussed I accept the applicant was baptised in 2016 and attended a limited number of services and bible studies classes around that time however I do not accept she is a genuine Christian convert or that she would be perceived as such or that she would practise Christianity if she were to return to Iran, now or in the reasonably foreseeable future. I also note that her family are a progressive Shia Muslim family. Based on the country information above and the applicants' profiles in this matter I am not satisfied they face a real chance of harm on account of privately held views on religion, for not following Islam or practising the faith or on account of the applicant's baptism and limited Christian activities in Australia.

⁸ UK Home Office, 'Country Policy and Information Note - Iran: Christians and Christian converts', 27 February 2020, 20200228081848; DFAT, 'DFAT Country information report Iran', 14 April 2020, 20200414083132.

⁹ LSE Middle East Centre (United Kingdom), 'The Revival of Nationalism and Secularism in Modern Iran', November 2015, CISEC96CF14725.

30. I accept the applicant was harassed by the *Basij* for 'bad *hijab*' in Iran. Recent, independent, and detailed information before me¹⁰ reports those in Iran of all religions have had to adhere to conservative dress codes since shortly after the 1979 revolution. Women are more likely to be targeted by authorities for non-adherence than men. Seventy percent of Iranian women are reportedly in favour of relaxing dress codes. Under the code women are required to wear loose all-covering clothing and a headscarf. For women, the penalties for non-adherence can include imprisonment, fines, and lashes, although in practice these penalties are reportedly rare. There have also been reports of women with bad *hajib* being insulted and assaulted by the morality police and hard-line supporters of the regime. However, generally, if found breaching the code women are let off with a warning and may be taken to the police station to sign an undertaking not to repeat the offence and their families may be asked to collect them and to bring more suitable clothing. Some repeat offenders may incur a criminal record, which could later impact job prospects. An anti-*hijab* protest movement that emerged in 2018 led to increased enforcement and anti-*hijab* activists are at risk of being targeted by the authorities. A prominent lawyer representing anti-*hajib* protestors has also been lashed and sentenced in the past. While there is still momentum online, the movement has since waned. While still enforced by the authorities including in Tehran, enforcement reportedly fluctuates. The codes are reportedly not uniformly adhered to with numerous women wearing their *hijabs* loosely with parts of their hair showing recently observed in Tehran. The general public in Iran are reportedly now more used to this, especially in larger cities like Tehran, making it easier for women to challenge dress codes in those areas. While the applicant has expressed a dislike of the dress codes and I accept that like the majority of women in Iran, she would like a relaxation to these rules, the evidence does not indicate the applicant is an anti-*hijab* activist and images of the applicant before me show her wearing modest clothing and a headscarf and I consider that if the applicant were to return to Iran, she would adhere to dress codes as she had done for most of her life in Iran and as is custom in Iran (rather than out of a fear of being harmed). The applicant was harassed by the *Basij* on a couple of isolated occasions when she was younger. Based on the country information above and the applicant's profile, I accept that like many Iranians the applicant may at times be warned by the *Basij* or other authorities in relation to adherence with strict dress codes, however I am not satisfied that this amounts to serious harm. I am not satisfied the applicant faces a real chance of serious harm on account of Iran's dress codes for women or her past experiences in Iran.
31. I accept the applicant is a Feyli Kurd. Recent, detailed, and independent sources before me¹¹ report that the overwhelming majority of ethnic minority communities in Iran are integrated into Iranian society and that Kurds are not specifically targeted for discrimination on the basis of their ethnicity or faith. DFAT reports it is not aware of specific instances where authorities have singled out Faili Kurds for mistreatment and that those with Iranian citizenship enjoy the same rights as other citizens. Nonetheless official and societal discrimination against ethnic minorities reportedly occurs. There is a view among Kurds that the state holds them back and Kurds have traditionally harboured separatist tendencies. The Iranian authorities are highly sensitive to organised Kurdish political activity, particularly in the north-western provinces in areas such as Ilam, where Kurds are concentrated. Clashes between the Iranian government and Kurdish political parties have continued over the last 20 years. Any sort of political or civic activism may be seen through a security lens with cultural activities also often interpreted as political and the authorities may assume that active Kurds are connected to a political party.

¹⁰ Immigration and Refugee Board of Canada, 'IRN200129.E - Iran: Dress codes, including enforcement (2016-February 2020)', 21 February 2020, 20200316121334; Iran, 14 April 2020, 20200414083132.

¹¹ Danish Immigration Service, 'Iranian Kurds: Consequences of political activities in Iran and KRI', 7 February 2020, 20200210101317; DFAT, 'DFAT Country Information Report - Iran', 14 April 2020, 20200414083132; Amnesty International, 'Human Rights in the Middle East and North Africa: Review of 2019', 18 February 2020, 20200219090219.

The authorities use various laws to arrest and prosecute Kurds for exercising freedom of expression and association. Kurdish political activists, civil activists and members of Kurdish political parties are likely to attract adverse attention from the authorities. In 2019 there were a series of protests across the country in response to government fuel hikes. The government cracked down on these in a violent manner. The number of resulting deaths were relatively high in Kurdish populated provinces when compared with other provinces of Iran. Ethnic minorities, including Kurds, are overrepresented among political prisoners and on death row and there is a real chance of severe mistreatment by the authorities if detained in these circumstances. Teaching the Kurdish language is also prohibited in most educational institutions and some Kurdish-language publications have reportedly been banned. Iran's official unemployment rate of 10.6 percent is thought to be understated and closer to 26.6 percent, and the underdeveloped provinces where Kurds are concentrated are reported to have some of the highest unemployment rates. Overall, DFAT assesses that members of ethnic minority groups face a moderate risk of official and societal discrimination, meaning that incidents are sufficient in number to suggest a pattern of discrimination, particularly where they are the minority in the geographic area in which they are located. It may take the form of denial of access to employment and housing but is unlikely to include violence on the basis of ethnicity alone. The risk is increased for those involved in political activism. I do not accept the applicant and her family are openly or publicly opposed to the regime or activists or engaged in promoting Kurdish cultural activities or that they have faced a lot of difficulties or discrimination or targeting. The applicant lived in Tehran all her life with her family, not in the underdeveloped north-western provinces dominated by Kurds. The applicant and her family are Iranian citizens and well-integrated into Iranian society. The applicant speaks Persian proficiently and was educated up to college level and trained and worked as [an Occupation 1], in [job sector] and as [an Occupation 2] in Iran. Her family, including an older brother, still live in Tehran where I consider the applicants would very likely return. Based on the country information above and the applicant's particular profile I am not satisfied she faces a real chance of harm on account of her Kurdish ethnicity.

32. I accept the applicant suffers from mental health issues. DFAT reports that all Iranian citizens are entitled to basic health care and that while the system suffers from overcrowding and doctor shortages, the quality of public healthcare is good, and is a major government priority. It also reports that one quarter of adults in Iran suffer from some form of mental illness, particularly women, and that this is pronounced in Tehran. Iran has had a national policy on mental health since 1986 and the government has increased the availability of counselling services and therapeutic interventions for patients. While generally under-resourced a small number of non-government organisations also work in the field of mental health, and while prohibitively expensive for the average person, private mental health services are also available, particularly in the Tehran. The applicant first saw her psychologist in 2019. I also note that the applicant has family in Tehran who she remains in contact with, and she has indicated could look after her son on occasion, in contrast to Australia where she has indicated she has found it difficult to raise her son alone without any support. Based on the country information above and the applicant's profile I do not accept the applicant faces a real chance of harm on account of her mental health issues.

33. I accept that the applicant is a single mother. Independent and recent information before me¹² reports that women enjoy considerable legal protections in many areas including personal

¹² DFAT, 'DFAT Country Information Report - Iran', 14 April 2020, 20200414083132; Center for Human Rights in Iran (United States), 'Women's Rights in Iran', 6 January 2021, 20210412161119; UK Home Office, 'Country Policy and Information Note - Iran: Women fearing 'honour'-based violence', 25 March 2021, 20210326092125; Iran Human Rights Documentation Centre, 'Access to Justice for Victims of Sexual Violence in Iran', February 2020, 20200303113708.

safety and participation in the workforce and that they can drive, work, and attend university. Gender equality is reportedly a government priority. It also reports that after divorce the children can be placed in the father's care after seven years of age, the age of criminal responsibility for girls is nine while for boys it is 15, a women's testimony in court is worth half of that of a man's, and that flogging/death sentences for adultery disproportionately affect women. It also reports that women have gained greater rights to divorce in recent years although the laws are still tilted heavily in favour of men. A women can obtain divorce with the husband's permission or if the court determines he cannot provide for his family, he has violated the terms of the marriage contract, he is a drug addict, insane or impotent. Women who are activists or pushing Iran's moral boundaries face a high risk of arrest and severe punishment. Women may also be the victims of honour crimes being an act of violence or abuse by a husband or other relative against a woman where she is seen to have damaged the family's reputation by acting in a way against social or cultural norms. For example, by having extramarital sex, refusing an arranged marriage, entering a love marriage without the family's consent, becoming the victim of a rape, having same-sex relations or being excessively liberal in her behaviour and dress. It appears that women from conservative or traditional religious families or rural and tribal regions are at greater risk of honour killings and discriminatory practises such as restrictions on travelling alone. Other than rape, which is difficult for women to prove and successfully prosecute, other forms of sexual assault are not criminalised in Iran. Domestic violence occurs frequently across Iran. Other country information before me¹³ notes how patriarchal cultural norms, antiodivorce attitudes and the critical importance of marriage for Iranian women may lead to a divorced woman being stigmatised as a "second-hand" object and pitied or discriminated against in society. Single women who disclosed their marital status when renting may find it more difficult to rent a house in a more traditional or conservative or poorer area of Tehran. Some also reported sexual harassment at work. A husband can limit the type of work undertaken by his wife and women are significantly underrepresented in the labour market. Despite this, it is also reported that marriage has been on the decline and divorces on the increase for several years in Iran, particularly Tehran. In 2016 it was reported that there were some 3 million educated Iranian women over 30 who were unmarried and that the numbers were increasing. While dated, the Iran Human Rights Documentation Centre report before me¹⁴ provides some more useful detail in relation to the information reported in the recent reports noted above. It reports that fathers (and in the event of their death, grandfathers) are the natural guardians of children in the event of divorce, and mothers have custody up until the age of seven, when custody devolves upon the father, and this is sometimes also used by fathers with no interest in caring for the child to exact revenge upon their ex-wife. Although, this is not reportedly necessarily a given and it is also possible in some cases for women to retain custody of children after seven years of age.

34. In the applicant's statement of claims she said I "...fear harm [sic] due to my own and my ex-husbands [sic] conversion to Christianity as conversion and apostacy [sic] are criminalised in Iran. Because of this, there is a risk that my child will be taken away by my ex-husband's family, who will not recognise our child due to our conversion to Christianity". I note that the country information above does not indicate that children are taken in the circumstances described by the applicant. Even if the applicant's ex-husband has converted to Christianity, I do not accept the applicant is a genuine Christian convert, would be perceived as such or would practise Christianity if returned to Iran. While Iranian society, laws and customs are clearly patriarchal

¹³ Taylor & Francis, Zare, S, Aguilar-Vafaie, ME, Ahmadi, F, 'Perception of Identity Threat as the Main Disturbance of Iranian Divorced Women: A Qualitative Study', 11 January 2017, CISED50AD5992; IranWire, 'Women Living Alone: A Threat to Society', 15 May 2015, CXBD6A0DE6450.

¹⁴ Iran Human Rights Documentation Centre 'Gender Inequality and Discrimination: The Case of Iranian Women', 1 March 2013, CIS25511.

there is no credible evidence to indicate that her ex-husband or ex-husband's family has any interest in taking custody of the applicant's son as the applicant has speculated. The applicant has been the primary carer of her young son since separating from her ex-husband in 2020. She is independent of her ex-husband, including financially and emotionally, and the son does not see the father. The applicant left Iran some nine years ago and her son was born in Australia and they have had little if anything to do with the ex-husband since around mid-2020. As noted above I also do not accept that the applicant's ex-husband's family were as disapproving of his relationship with the applicant as claimed. The country information above indicates that while all Iranian laws are tilted heavily in the man's favour it is also possible for the mother to retain custody of a child after the age of seven under the law. On the evidence I am not satisfied there is a real chance that the applicant's ex-husband or his family will take her son as claimed. In her statement of claims the applicant also said that if she were to return to Iran she would be "...discriminated against due to my gender and not afforded the same rights as that of men in Iran" and that she fears she will be harmed as a "Kurdish women, who is a single parent. I will be discriminated against and neither myself or my child will be able to receive any assistance or protection if I were to return". In her post interview submission, it was also briefly submitted that the applicant's "...threat of harm is increased due to her being a women, where she will also face gender discrimination and multiple forms of misogyny that will threaten her capacity to subsist". As already noted, I am not satisfied the applicant faces a real chance of harm on account of her ethnicity. The weight of country information above does not support that women are denied assistance or protection in Iran on account of being a Kurdish single mother. The applicant is separated and has little to no contact with her ex-husband or his family, she has been in Australia for some nine years, has not studied in that time or indicated any desire to commence study in the foreseeable future, her family are progressive Shia Muslims, she was educated and worked in various capacities in Iran, and I consider she would very likely return to Tehran, a large city, where she has family including an older brother. I also note the country information above reporting on the decline in marriages and increases in divorce in Iran in more recent years. The applicant has also briefly submitted that the "Convention of the Rights of the Child" should be taken into account. My task under this review is an assessment of whether the applicants satisfy s 36 of the Act. Based on the country information above, while the applicant may face some discrimination in the form of stigma and pity from others as a single mother and delays in finding suitable employment, I am not satisfied in this particular matter that this would threaten her capacity to subsist or otherwise amount to serious harm.

35. I accept the applicants may be identifiable as failed asylum seekers who sought asylum in a Western country. I have had regard to recent, independent, and detailed reports by DFAT, the UK Home Office, the Immigration and Refugee Board of Canada and Danish Immigration Service in considering the treatment of returnees and failed asylum seekers.¹⁵ DFAT notes that historically Iran has refused to accept involuntary returnees.¹⁶ Those without a valid passport can obtain a *laissez-passer* from an Iranian diplomatic mission on proof of identity and nationality. The Immigration and Refugee Board of Canada indicates that there is no guarantee of safety for returning asylum seekers who have left Iran permanently for reasons other than to work abroad, although the examples it subsequently discusses are confined to activists and

¹⁵ DFAT, 'DFAT Country information report Iran', 14 April 2020, 20200414083132; UK Home Office, 'Country Policy and Information Note - Iran: Christians and Christian converts', 27 February 2020, 20200228081848; 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)', 9 March 2020, 20200402123733; Danish Immigration Service, 'Iranian Kurds: Consequences of political activities in Iran and KRI', 7 February 2020, 20200210101317.

¹⁶ More recently Iran entered into a Memorandum of Understanding with Australia agreeing to facilitate the return of Iranians who have arrived in Australia after March 2018 and who have exhausted all legal and administrative avenues to regularise their immigration status in Australia.

a gay refugee claimant. The Danish Immigration Service notes a small number of cases where returnees were detained or otherwise harmed, although little detail about the background of these individuals is provided. Its report suggests that those who seek asylum in Europe face a higher level of suspicion on return as well as questioning about their claims and activities against the regime. A UK Home Office report also indicates returnees will be questioned on their return including about their refugee claims abroad. Where a returnee divulges that they claimed to be Christian abroad it is reasonably likely they will be transferred for further questioning and may be required to sign an undertaking renouncing their claimed Christianity. It states this will not entail a real risk of ill-treatment. Previous adverse contact with the Iranian security services, contact with someone of interest to the Iranian authorities, attendance at a church with perceived connections with Iranian house churches, or overt social media content indicating they are actively promoting Christianity or proselytising may result in them being detained for a prolonged period for questioning, which may give rise to an increased risk of harm. DFAT reports that returnees with an existing high profile, such as political activists, face a higher risk of coming to official attention on return and that those who were not subject to adverse official attention prior to departing are unlikely to attract adverse attention from authorities on return. It reports that the authorities pay little attention to failed asylum seekers on their return. Those returning on a *laissez-passer* are also reportedly questioned by authorities at the airport for up to an hour about the circumstances of their departure and why they are travelling on a *laissez-passer*. This may take longer if they are evasive in their answers or suspected of a criminal history. It states that arrest and mistreatment during this process is not common. DFAT also reports that the authorities have little interest in prosecuting returnees for activities conducted outside Iran, including for making posts critical of the regime on social media, protesting outside Iranian diplomatic missions or converting to Christianity. The biggest challenge faced by failed asylum seekers on return is reportedly reintegrating economically and finding meaningful employment.

36. The applicant arrived in Australia in 2013 and her son was born in [Year]. Given Iran's policy regarding involuntary returnees prior to March 2018, I consider that if the applicants were to return to Iran it would be on a voluntary basis. The applicant left Iran on her own genuine passport which was taken by the smuggler. I consider that if the applicants were to return to Iran it would be on *laissez-passers*. The applicant left Iran legally in 2013 and I do not accept she was wanted by the Iranian authorities or anyone else when she left. As already discussed, I do not accept the applicant is a genuine Christian convert or would be perceived as such or that she would practise the faith if she were to Iran to Iran. She is not an activist and I do not accept she faces a real chance of harm on account of her ethnicity. The evidence before me does not indicate she has been involved with a church affiliated with an Iranian house church or that she is connected with someone wanted by the authorities. While the applicant may be briefly questioned by authorities at the airport about her claims, the circumstances of her departure and the reason she and her son are travelling on *laissez-passers*, and required to sign an undertaking denouncing Christianity, on the evidence I am not satisfied there is a real chance she would be otherwise questioned, detained, or harmed even when taking into account her mental health issues. The applicant was educated and worked in various capacities in Iran. The applicant's family live in Tehran, which as noted above is where I consider the applicants would very likely return. The applicant is relatively young at [Age] years of age. Since 2020 the applicant has been focused on caring for her young son after the breakdown of her marriage and she has said it has been stressful. The son is now a bit older, turning [Age] in June 2022. She was more recently diagnosed with "Major Clinical Depression", "Anxiety disorder comorbid with PTSD" and "Chronic insomnia" although as noted above I do not consider her condition acute or debilitating and Iran has a good public health system including counselling services, and other therapeutic interventions available to its citizens. In the visa interview the applicant also indicated that her family could sometimes look after her son if they were to

return to Iran. Based on the country information above and her profile, including as a women, I accept the applicant may face delays in finding meaningful employment however, in this particular matter I am not satisfied that this would threaten her capacity to subsist or otherwise amount to serious harm.

37. I am not satisfied that the applicants have a well-founded fear of persecution for any reason or reasons claimed.

Refugee: conclusion

38. The applicants meet do not meet the requirements of the definition of refugee in s.5H(1). The applicants do not meet s.36(2)(a).

Complementary protection assessment

39. Under s.36(2)(aa) of the Act, 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

40. 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.

41. 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.

42. For the reasons already discussed I accept that like many Iranians the applicant may at times be warned by the *Basij* or other authorities in relation to adherence with strict dress codes, however I am not satisfied that this amounts to 'significant harm' as defined for the purposes of s 36(2A). It would not involve the applicant being arbitrarily deprived of her life, subject to the death penalty or torture or cruel or inhuman treatment or punishment or degrading treatment or punishment.

43. As detailed above I accept the applicant may face some discrimination in the form of stigma and pity from others as a single mother and delays in finding suitable employment. However, I am not satisfied that this amounts to 'significant harm' as defined for the purposes of s 36 (2A).

44. As detailed above I accept the applicant may be briefly questioned by authorities at the airport about her claims, the circumstances of her departure and the reason she and her son are travelling on *laissez-passeurs*, required to sign an undertaking denouncing Christianity, and may face delays in finding meaningful employment. However, I am not satisfied that this amounts

to 'significant harm' as defined for the purposes of s 36 (2A) even when taking into account her mental health issues and what she may experience as a Kurdish single mother and women in Iran.

45. In considering the applicants' refugee status I have otherwise concluded that there was no 'real chance' the applicants would suffer harm on their return to Iran for the other reasons claimed. 'Real chance' and 'real risk' involve the same standard. For the same reasons, I am also not satisfied the applicants would face a 'real risk' of significant harm.

Complementary protection: conclusion

46. 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 applicants will suffer significant harm. The applicants do not meet s.36(2)(aa).

Member of same family unit

47. Under s.36(2)(b) or s.36(2)(c) of the Act, an applicant may meet the criteria for a protection visa if they are a member of the same family unit as a person who (i) is mentioned in s.36(2)(a) or (aa) and (ii) holds a protection visa of the same class as that applied for by the applicant. A person is a 'member of the same family unit' as another if either is a member of the family unit of the other or each is a member of the family unit of a third person: s.5(1). For the purpose of s.5(1), the expression 'member of the family unit' is defined in r.1.12 of the Migration Regulations 1994 to include a dependent child.
48. As none of the applicants meet the definition of refugee or the complementary protection criterion, it follows that they also do not meet the family unit criterion in either s.36(2)(b) or s.36(2)(c).

Decision

The IAA affirms the decision not to grant the referred applicants protection visas.

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.