



Australian Government
Immigration Assessment Authority

Decision and Reasons

Referred application

IRAN

IAA reference: IAA21/10152

IRAN

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IRAN

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Date and time of decision: 4 February 2022 17:37:00

M Oakman, 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 referred applicants (the applicants) claim to be from Iran. They are a husband [IAA21/010152] (Applicant 1), a wife [IAA21/10155] (Applicant 2), their son [IAA21/10153] (Applicant 3), and their daughter [IAA21/10154] (Applicant 4). Applicants 1, 2 and 3 arrived in Australia [in] July 2013. Applicant 4 was born in Australia in [Year]. The applicants lodged applications for Safe Haven Enterprise visas (SHEV) (XE-790) on 28 September 2017. On 12 November 2021 a delegate of the Minister of Immigration (the delegate) refused to grant the visas.

Information before the IAA

2. I have had regard to the material given by the Secretary under s.473CB of the *Migration Act 1958* (the Act).
3. On 6 December 2021 the IAA received emails from the applicants with further information attached (including further copies of the same material in some instances). The further information consists of:
 - Statutory declaration: from Applicant 1, dated 6 December 2021. The statutory declaration consists of a mix of information that was before the delegate, further detail or clarification in relation to the applicant's existing claims in response to the delegates findings, and a new claim. Although Applicant 1 states in the statutory declaration that it contains no new information and only explains and responds to the delegate's decision, I am not satisfied that is the case. At paragraphs 4 and 5 of the statutory declaration he discusses his (and the family's) anti-regime and anti-Islamic views. Applicant 1 previously provided a statutory declaration dated 20 July 2021 to the Department in which he detailed his claims in relation to his anti-regime views (e.g. he spoke out against the regime at social gatherings), and Applicant 3's rejection of Islam (e.g. Applicant 3 doesn't like to be called a Muslim and tells people that though his parents are Shia, he has no religion). However, in paragraphs 4 and 5 of his 6 December 2021 statutory declaration he claims that as a family they do not want to be known as Muslims; they have no religion; he has expressed views against Islam, including speaking to many people who opposed his views against Islam; and his views against the Quran. These claims were not previously made or disclosed by Applicant 1 or the other applicants. Most of the statutory declaration does not contain new information, but I consider the newly raised claims about the religious views of the applicants to be new information (anti-Islamic views claim new information).
 - Country information: a report from Human Rights Watch (HRW) on the sanctions impact on Iranians' right to health from October 2019; and three journal articles in relation to aspects of epilepsy in Iran from June 2013, December 2013, and March 2017. The journal article dated from March 2017 ("Family Stigma Associated with Epilepsy: A Qualitative Study") was before the delegate and is not new information. The HRW report and the two 2013 journal articles were not before the delegate and are new information (new country information).
 - Photo: of the applicants posing as a family. It is not apparent why a recent (based on the apparent ages of Applicants 3 and 4 in that photo) family photo of the applicants is

relevant to the assessment of their protection claims. I have had no further regard to the photo.

4. The anti-Islamic views claim new information is contained in a statutory declaration dated after the date of the delegate's decision and to that extent it could not have been provided to the delegate as the document did not exist. The anti-Islamic views claim new information appears to relate to both previous and current events. The anti-Islamic views claim new information is, on its face, credible personal information. This new information on the applicants' anti-Islamic views impacts on the assessment of their risk profile if returned to Iran and therefore may have affected consideration of, and is material to, their protection claims. I am satisfied that s.473DD(b) is met and that there are exceptional circumstances to justify considering the anti-Islamic views claim new information.
5. The new country information predates the delegate's decision. The country information considered by the delegate includes reports that discuss the sanctions against Iran and the resulting impact on medical supplies, as well as epilepsy in Iran, including information that is more recent than the new country information. The delegate accepted that there was some societal stigmatisation of children with epilepsy in Iran (as do I) and that the sanctions and banking restrictions have had an adverse effect on the health sector in Iran including shortages of pharmaceuticals and medical items (as do I). The material contained in the new country information is neither personal information in the relevant sense, nor am I satisfied that it may have affected consideration of the applicants' claims. The applicants have not satisfied me as to the matters in s.473DD(b)(i) or (ii) for this material. I am also not satisfied that there are exceptional circumstances to justify considering the new country information.

Applicants' claims for protection

6. Applicant 1 is the primary applicant in this matter. Applicants 2, 3 and 4 also make claims. The applicants also claim as members of the same family.
7. The protection claims of applicants may be summarised as follows:
 - The applicants fear harm, if returned to Iran, because of their ethnicity as Faili Kurds. Faili Kurds face extreme discrimination with regard to employment, education and access to health care from the Iranian authorities and the Persian population.
 - Applicant 1 will be harmed because he is an Iranian Kurd who has publicly criticised the Iranian regime in Australia.
 - Applicant 3 will be harmed for not believing in Islam and calling himself a non-Muslim. He can be charged or punished with apostasy in Iran.
 - Applicant 4 will be harmed on the basis of her membership of the particular social group, children with epilepsy. She will not have proper access to proper medical care in Iran and, as a result, will not develop and suffer severely. No child should suffer from a lack of medical treatment in this world. Applicant 4 will be subject to harassment, discrimination, and harm because of her medical condition. Applicant 2 has suffered from depression since the birth of Applicant 4.
 - Applicant 1 has spoken out against the government and Islam in Australia. As a family the applicants do not want to be called Muslim and they have no religion. The Iranian government will harm the applicants if they find out about Applicant 1's views against Islam and the government.

Factual findings

Background

8. Applicant 1 was born in [Year] in Tehran, Iran. Applicant 2 was born in [Year] in [Location], Iran. Applicants 1 and 2 married in 2009. Applicant 3 was born in [Year] in Tehran, Iran. Applicants 1, 2 and 3 left Iran in June 2013 to travel to Australia. Applicant 4 was born in [Year] in Victoria, Australia.

Problems in Iran and activities in Australia

9. The applicants' protection claims have been made by Applicants 1 and 2 in their initial interviews with the Department in 2013, in their September 2017 SHEV applications, in their July 2021 SHEV interviews, in their post-SHEV interview July 2021 statutory declarations, and in Applicant 1's December 2021 statutory declaration to the IAA.
10. In assessing the evidence of Applicants 1 and 2, I have taken into account the difficulties often faced by applicants for protection, particularly those for whom some period has passed since they departed their country of origin. I am also mindful that Applicant 2 suffers from anxiety and depression as discussed further below. However, at the outset I should indicate that, like the delegate, I have significant concerns about the credibility of claims made by Applicants 1 and 2.
11. Applicants 1 and 2 claimed in their 2013 interviews with the Department, in their 2017 SHEV applications and statutory declarations and at their 2021 SHEV interviews that the applicants were stateless Faili Kurds who suffered discrimination in Iran and Applicants 1, 2 and 3 left on fake passports to travel to Australia. After their SHEV interviews they emailed the delegate the July 2021 statutory declarations in which they said they were not stateless but were Iranian citizens and had left Iran on their own legal passports, as well as expressing remorse for their actions. They also provided copies of Iranian ID documents. It is perhaps understandable that a person seeking a protection visa in Australia may on arrival make some claim or claims that were not entirely true with a view of avoiding being immediately sent back to their country of origin. However, Applicants 1 and 2 falsely claimed to be stateless Faili Kurds and to have used fake passports not only in their 2013 arrival interviews, but also in both their September 2017 SHEV application and statutory declarations and at their July 2021 SHEV interviews. These false claims were detailed, including information about how they obtained the fake passports and the false names used in those passports. In preparing their 2017 SHEV applications and statutory declarations they had the assistance of solicitors. I have no doubt that their solicitors would have told them in 2017 about the importance of providing a truthful and complete account of their protection claims to the Department in their application, and that the details of their statutory declarations should be true and correct. In any event, Applicants 1 and 2 would have been aware of those requirements as both the SHEV applications and the statutory declarations themselves contain declarations concerning the truth and accuracy of the material. At the start of their 2021 SHEV interviews, in a joint session, the delegate told Applicants 1 and 2 that it was extremely important they tell the truth and provide the Department with complete and accurate protection claims as early as possible including at the interview and giving false or misleading information to the Department is a serious offence under Australian law and may result in criminal penalties and the refusal of their visa. Despite the 2017 and 2021 indications that they should and must be truthful, Applicants 1 and 2 provided and maintained these false claims, in their SHEV applications and at their SHEV interviews. These actions reflect extremely poorly on

Applicants 1 and 2. I also do not consider their expressions of remorse, or that they finally admitting they had made false claims to ultimately be to their credit. It is clear from listening to the SHEV interview recording that, given the delegate made it very clear in the joint session that concluded the interviews that he doubted several of their claims for the reasons expressed at that time, Applicants 1 and 2 could be in little doubt that their claims were largely disbelieved. Overall, based on their making and maintaining these false claims in their 2017 SHEV applications and statutory declarations, and at their 2021 SHEV interviews, I do not consider Applicants 1 and 2 to be either reliable or credible witnesses.

12. Although they resiled from their claim of being stateless etc, Applicants 1 and 2 maintained the applicants are Faili Kurds and suffered discrimination and harassment when they lived in Iran and would face discrimination and harassment if they returned to Iran. In relation to their claim to be Faili Kurds:

- I do not consider it credible that, in view of their claimed Faili Kurd heritage, neither Applicant 1 nor Applicant 2 was aware of where their parents and grandparents were born and lived in Iraq.
- I do not consider it credible that throughout the protection visa process Applicants 1 and 2 asked for Persian language interpreters and not Kurdish ones. Applicant 2 said at the SHEV interview that she asked for Persian interpreters because on a few occasions she previously asked for Kurdish ones they were the wrong dialect. Nothing in the documentation before the IAA suggests the applicants asked the Department for a Kurdish rather than Persian interpreter.
- I do not consider it credible that, if the applicants had indicated to their solicitors whilst preparing the SHEV applications and statutory declarations in 2017 that they wanted a Kurdish interpreter of a particular dialect, the solicitors did not state in the SHEV applications they required a Kurdish interpreter for any interviews nor that they had to use a Persian interpreter to complete the applications and statutory declarations even though the applicants wanted a Kurdish one.
- At the SHEV interview Applicant 2 said Kurdish was her mother tongue and, in the joint session at the end of the interview, also said that she spoke Kurdish at home to her husband and they both spoke Kurdish to their children. I do not consider it credible that, in the supporting material (discussed further below) in relation to the medical conditions of Applicants 4 and 2, there is no reference to the applicants' using Kurdish at home, rather than English and Persian, and where the use of an interpreter is mentioned in that material, the interpreters were Persian (Farsi). Applicant 1 said in his statutory declaration to the IAA that they decided to let Applicants 3 and 4 learn Persian and English for now, for various reasons, and teach them Kurdish when they were older. I do not consider this change between the evidence of Applicant 1 and Applicant 2 about the use of Kurdish at home to be credible.
- Applicant 1 claimed to have suffered harm working in the bazaar in Tehran on three occasions in 2006, 2008 and 2011, when he was beaten and/or stabbed. I do not consider it credible, given he is an Iranian citizen, that these serious attacks could have occurred without him receiving proper medical attention and the incident being reported to the authorities on at least one, if not all, of those occasions. I also do not consider it credible that Applicant 1 does not appear to have had any lasting or long term affects, other than his claim of scars, from his multiple stab wounds.
- Applicant 1 claimed in his 2017 statutory declaration that those attacks were in the context of him being discriminated against for being Kurdish, when wearing Kurdish

dress, and/or reacting to such discrimination. At the SHEV interview, when the delegate said to him that country information did not suggest that Kurds in Tehran were subject to attacks and stabbings, Applicant 1 said no one told him why they beat or stabbed him, and he doesn't know the reason for it. I do not consider this change in his evidence to be credible.

13. In his statutory declaration of July 2021, Applicant 1 made new claims. He claimed that although he was not a political activist, he spoke out against the Iranian government in many social settings in Australia, and he would be harmed if returned to Iran for criticising the Iranian regime in Australia. He also claimed that Applicant 3, at [Age], does not like to be called a Muslim; when asked his religion he says his parents are Shia, but he has no religion; and he could be killed or severely punished in Iran for not being a Muslim. Applicant 1 also made new claims in his statutory declaration to the IAA. He claimed that as a family the applicants do not want to be known as Muslims; they have no religion; Applicant 1 has expressed views against Islam, including speaking to many people who opposed his views against Islam and who he fears might expose him to Iranian agents for attacking their religion; he expresses negative views on the Quran; and the applicants face harm if returned to Iran for their anti-Islamic views. In relation to these claims:

- I do not consider it credible that these claims (except the in relation to Applicant 3's anti-Muslim views, as he was only [Age] at that time), if true, were not made in the SHEV applications and statutory declarations in 2017.
- I do not consider it credible that these claims, if true, were not made during the 2021 SHEV interviews of Applicants 1 and 2. The delegate asked Applicants 1 and 2 during the interview if they had put forward all their protection claims, and they said they had.
- Applicant 1's explanation in his statutory declaration of July 2021 for not talking about the claims made in that document before, was he was focussed on his daughter's health. I do not consider that explanation to be convincing, particularly given the medical material discussed further below indicates that Applicant 4 has not had a seizure for some time, her epilepsy was controlled by her medication and that an NDIS plan was in place from November 2020 for Applicant 4. Nor is it coincidental that these news claims were only made after the delegate flagged his concerns in relation to their being stateless Faili Kurds at the SHEV interview or after the delegate's decision was published.

14. The matters discussed above in relation to the evidence of Applicants 1 and 2 go beyond minor errors and discrepancies that could be attributed to factors such as recall problems, misunderstandings in interpreted material, cultural communication issues, a lack of cohesive narration due to trauma, and/or Applicant 2's anxiety and depression. I am not satisfied that Applicants 1 and 2 are reliable or credible witnesses nor am I satisfied that they have provided a truthful and accurate account of their biographical details, their problems in Iran or their activities in Australia. In particular, I am not satisfied that they, or their families in Iran, are Faili Kurds; that they were subject to any of the claimed discrimination, harassment or harm in Iran, including the claimed attacks on Applicant 1 in the bazaar; that the applicants are not Muslim Shias; and that Applicant 1, or any of the applicants, has expressed any anti-regime or anti-Islamic views in Australia. I am not satisfied that Applicants 1 and 2 have provided accurate details about their background, including their address histories, in so far as those histories purport to support their claims in relation to being Faili Kurd and to have suffered discrimination and harm. Given I am not satisfied that the applicants have expressed any anti-regime or anti-Islamic views in Australia, where they are otherwise free to do so, I am also not satisfied that, if returned to Iran, they would have a genuine interest or desire to do so in Iran. I accept, based on their late concession and the supporting documents supplied,

that Applicants 1, 2 and 3 are Iranian citizens and they left Iran using their own legal passports.

Medical issues

15. Supporting documents were provided in relation to the health of Applicants 2 and 4. The material includes: medical records from [Hospital], Melbourne, in relation to Applicant 4 for various dates in 2017; Paediatricians' letters dated 11 December 2019 and 2 June 2020 in relation to Applicant 4; NDIS plan approval for Applicant 4 dated [November] 2020 and NDIS Family Support Plan dated [January] 2021; an Epilepsy Management Plan and Seizure Management Plan in relation to Applicant 4 from March 2021; and a GP's letter dated 6 July 2021 in relation to Applicants 2 and 4. I am satisfied based on those documents that Applicant 4 first experienced seizures in 2017. She has been diagnosed with temporal lobe epilepsy; neurocutaneous melanosis, expressive delay; and she is under the care of her GP and a neurologist, dermatologist, neurosurgeon, paediatrician and speech therapist. Her neurological problem affected her speech and hearing, and as a result her social behaviours and development scales have been affected. Her seizures are currently controlled by two medications, with her last some 18 months prior to March 2021, and earlier considered surgery was no longer necessary because of the controlled seizures. She will also require surgeries in relation to the removal of a large mole. She is under the care of the NDIS. I accept that Applicant 2, due to Applicant 4's conditions, is stressed and affected by depression and anxiety, for which she has been prescribed an antidepressant and plans to see a counsellor. I am also satisfied based on those documents that Applicants 2 and 4 may require ongoing care and treatment for their medical conditions, and related issues, now and in the reasonably foreseeable future.

Receiving country

16. As discussed above, although they initially claimed otherwise, Applicants 1, 2 and 3 left Iran on valid Iranian passports and are Iranian citizens. The country information also indicates that Applicant 4, as a child of Applicant 1, is automatically granted Iranian citizenship.¹ I find that the applicants are Iranian nationals, and their receiving country is Iran.

Asylum Seekers and return to Iran

17. Applicants 1, 2 and 3 left Iran in about June 2013 through Tehran Airport. They travelled on genuine Iranian passports. They subsequently travelled from [Country] to Australia in a boat organised by smugglers. Applicant 4 was born in Australia. I find that, if the applicants were to return to Iran, they may be considered returned asylum seekers by the Iranian authorities. Their passports were lost in the water on the boat.
18. As discussed above I am not satisfied that Applicants 1 and 2 have provided entirely accurate biographical details. However, as they both claim to have lived in Tehran from shortly after their marriage, and Applicant 3 was born in Tehran, I am satisfied that they lived in Tehran in the years immediately before they departed Iran in 2013. On that basis, and as there is an international airport in Tehran, I am satisfied that Tehran is the area to which the applicants will return. Applicants 1 and 2 have family in Iran and they have remained in contact with them. Given those factors, I am satisfied that the families of Applicants 1 and 2 in Iran will be

¹ Department of Foreign Affairs and Trade (DFAT), "DFAT Country Information Report—Iran", 14 April 2020, 20200414083132.

able to provide the applicants with a basic level of support, if needed, now or in the reasonably foreseeable future, if they return to Iran.

Refugee assessment

19. 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

20. 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.
21. I accept that Applicant 4 is a child with epilepsy and that Applicants 2 and 4 may seek medical treatment and other services for their health-related issues discussed above, if returned to Iran.
22. Country information suggests that children with epilepsy may face some societal stigmatisation in Iran.² The Department of Foreign Affairs and Trade (DFAT) indicates that the government remains the main provider of primary health care services across the country, although the private sector also plays a significant role. The quality of healthcare in the public sector is of a good standard but overcrowding and doctor shortages are major challenges. Iran’s private health care system is highly regarded and attracts patients from other countries in the region. Numerous NGOs are active on health issues, particularly in specialised fields. Sanctions and COVID-19 have placed significant strains on the local health care system. The need for mental health services in Iran is significant. As part of its implementation of the Health System Development Plan, the government increased the availability of counselling services and therapeutic interventions for mental illness. Private mental health services are available, particularly in Tehran, but are prohibitive financially for the average person. A small number of NGOs work in the field of mental health, but these outfits are generally under-

² “Prevalence of Epilepsy in Iran: A Meta-Analysis and Systematic Review”, Iranian Journal of Child Neurology, Kourosh Sayehmiri, Hamed Tavan, Fatemeh Sayehmiri, Iman Mohammadi and Kristin V. Carson, 1 January 2014, CISEFCB23F6917; and “Family Stigma Associated With Epilepsy: A Qualitative Study”, Amjad, R M, Nasrabadi, A N and Navab, E, Journal of Caring Sciences, vol.6, iss.1, 2017, CISED50AD8682.

resourced. DFAT notes that humanitarian goods (including medicine) are exempt from US sanctions; however, fears of attracting secondary US sanctions particularly among banks, has affected Iran's ability to import goods and services, including essential medicines and medical equipment. While most medicines are produced domestically, Iran relies on the import of raw materials for their production. Local sources told DFAT that sanctions have caused steep increases in the price of medicine and some shortages, including of cancer medicines. HRW, in October 2019, claimed US sanctions were harming Iranians' right to health, particularly those suffering from rare diseases and/or conditions requiring specialised treatment, and called on the US to establish a mechanism to expedite the financing of humanitarian exports to Iran. UN Special Rapporteurs have expressed similar concerns.³ Other country information confirms that the US sanctions have resulted in shortages of medicines and other medical equipment in Iran, with foreign medicine required the treatment of life-threatening or rare conditions remaining scarce.⁴

23. I accept from the country information that as a child with epilepsy, Applicant 4 may face a level of societal discrimination, including social stigma. Although facing some discrimination, including negative attitudes, a level of social isolation or otherwise, may be hurtful and/or upsetting, I am not satisfied it amounts to significant ill treatment or any other type of harm that may be regarded as serious harm. The information before me suggests she will be returning with the other applicants, living in Tehran, where her parents have lived before, and her parents have family in Iran who can provide the applicants with a basic level of support if required. While I accept that children with epilepsy in Iran endure some forms of societal discrimination, considering her and her family's circumstances, I am not satisfied that any societal discrimination, including social stigma, that the Applicant 4 may face, as a child with epilepsy, would amount to serious harm, if returned to Iran, now or in the reasonably foreseeable future.
24. I accept that Applicant 2 and Applicant 4 may seek medical treatment and other services for their health-related issues, if returned to Iran. Based on the country information, I accept that there will be challenges for the applicants in accessing medical treatment and care in Tehran, due to resourcing and capacity issues, largely because of the strains placed upon the health systems in Iran due to the Sanctions, including shortages of medicines, and COVID. However, the reports before me do not indicate Iranian citizens suffer any discrimination in relation to accessing the medical and related treatment, care and services that are available in Iran. The information available to me does not suggest that if Applicants 2 and 4 seek treatment, they would be denied any medical and related treatment, care and services as a result of any systematic and discriminatory conduct, including for any of the reasons in s.5J(1)(a) or otherwise.
25. I accept that, if returned to Iran, the applicants may be considered returning asylum seekers from Australia, a Western country where they have spent more than eight years.
26. DFAT indicates that Iran did not permit the involuntary return of its citizens from Australia (by refusing to issue the necessary travel documents – *laissez-passeurs*), but after the signing of a memorandum of understanding with Australia in March 2018 Iran agreed to facilitate the return of Iranians who have no legal right to remain in Australia and who arrived after that date. Applicants 1, 2 and 3 arrived in Australia in July 2013 and I am satisfied that if the applicants were to return to Iran it would only be on a voluntary basis. As the passports of

³ DFAT "DFAT Country Information Report—Iran", 14 April 2020, 20200414083132.

⁴ "Iran Sanctions", Congressional Research Service, 22 April 2019, 20190502091738; and "Situation of human rights in the Islamic Republic of Iran (14 May 2021)", United Nations General Assembly, 14 May 2021, 20210624120211.

Applicants 1, 2 and 3 were lost on their way to Australia, and Applicant 4 does not have a passport, the applicants may require temporary travel documents issued by Iranian diplomatic representatives to return to Iran. DFAT also indicates that authorities at the airport in Iran will be forewarned about the return of persons on temporary travel documents because of their sophisticated systems.⁵

27. Those who return on a laissez-passer are questioned by the Immigration Police at Tehran Airport about the circumstances of their departure and why they are traveling on a laissez-passer.⁶ Questioning usually takes between 30 minutes and one hour but may take longer where the returnee is considered evasive in their answers and/or immigration authorities suspect a criminal history on the part of the returnee. Arrest and mistreatment are not common during this process. Iranian authorities pay little attention to failed asylum seekers on their return. Iranians have left the country in large numbers since the 1979 revolution, and authorities accept that many will seek to live and work overseas for economic reasons. International observers report that Iranian authorities have little interest in prosecuting failed asylum seekers for activities conducted outside Iran. DFAT assesses that, unless they were subject to adverse official attention before leaving Iran, returnees are unlikely to attract attention from the authorities, and face a low risk of monitoring, mistreatment, or other forms of official discrimination. DFAT also assesses that people of Western appearance face a low risk of official and societal discrimination.⁷
28. I accept that, if returned to Iran, Applicants 1 and 2 may be questioned about the family's return on temporary travel documents, the circumstances of their departure, and they may be briefly detained at the airport before being released. The departure of Applicants 1, 2 and 3 from Iran was legal and they were not of any adverse interest to the Iranian authorities at that time, nor on my findings, have they engaged in any activities in Australia that would be of adverse interest to the Iranian authorities. Applicant 3 is a child of [Age] who left Iran when he was just over [Age], Applicant 4 is a child of [Age] and she was born in Australia, and I am not satisfied either of the children would be questioned by Iranian authorities at the airport. There is no country information before me to suggest children would be separated from their parents at the airport, and I consider Applicants 3 and 4 will be able to remain with one or both of Applicants 1 and 2 during any brief questioning at the airport, prior to them being allowed to leave together. I am not satisfied the applicants would be harmed at the airport, or that this treatment amounts to serious harm for the applicants, even taking into consideration the health issues of Applicants 2 and 4, together with the ages of Applicants 3 and 4. The country information before me does not support a finding that persons who have sought asylum or spent time in Western countries, including Australia, are imputed to hold a political opinion that is against the Iranian government or that they are otherwise of adverse interest to the authorities.
29. I am not satisfied that the applicants face a real chance of harm as returning asylum seekers from Australia, now or in the reasonably foreseeable future.
30. Considering the applicants' circumstances and profiles as a whole, in the context of the country conditions in Iran I am not satisfied that the applicants face a real chance of persecution now or in the reasonably foreseeable future. The applicants do not have a well-founded fear of persecution within the meaning of s.5J.

⁵ DFAT "DFAT Country Information Report—Iran", 14 April 2020, 20200414083132.

⁶ DFAT "DFAT Country Information Report—Iran", 14 April 2020, 20200414083132

⁷ DFAT "DFAT Country Information Report—Iran", 14 April 2020, 20200414083132.

Refugee: conclusion

31. The applicants 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

32. 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

33. 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.
34. 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.
35. I accept that, as a child with epilepsy, Applicant 4 may face some societal discrimination, including social stigma, if returned to Iran. In considering her and her family's circumstances, I am not satisfied that any such treatment or harassment, amounts to a level of pain, suffering or humiliation required by the definition of torture in s.5(1) of the Act, nor cruel or inhuman or degrading treatment or punishment, such as to amount to significant harm as defined in s.36(2A) of the Act.
36. Based on country information discussed above I accept that Applicants 2 and 4 may face some level of difficulty if they seek to access medical services in Tehran. However, I am satisfied based on the same country information that any difficulties the applicants may have in accessing any medical treatment, care and services for their conditions does not amount to significant harm as it is due to a lack of capacity and resourcing, mainly due to the Sanctions and the impact of COVID-19, rather than an intentional infliction by the Iranian authorities, or anyone else, to cause extreme humiliation or mental or physical pain or suffering, severe pain or suffering and it does not amount to torture or an arbitrary deprivation of life or the death penalty. I am not satisfied the applicants face discriminatory treatment due to difficulties in accessing medical treatment and other services for their health-related issues that amount to significant harm as defined in ss.36(2A) and 5 of the Act.
37. I accept that on arrival at the airport in Iran the applicants are likely to be briefly detained and Applicants 1 and 2 may be questioned about their departure, and why the family are

travelling on temporary documents, but I am not satisfied that the applicants will be harmed during this process. I am not satisfied their processing and questioning at the airport amounts to pain or suffering, severe pain or suffering, or extreme humiliation, or that there is a real risk of the death penalty, torture or arbitrary deprivation of life, for the applicants. I am not satisfied that in the process of returning to Iran there is a real risk the applicants will suffer significant harm, even taking into consideration the health issues of Applicants 2 and 4, and the young ages of Applicants 3 and 4.

38. I have found that the applicants do not otherwise face a real chance of harm in relation to their claims or profiles. As 'real risk' and 'real chance' involve the application of the same standard,⁸ they also do not face a real risk of any harm in Iran. I am not satisfied that the applicants face a real risk of significant harm in Iran.

Complementary protection: conclusion

39. 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

40. 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 spouses and their children.
41. As none of the applicants meets 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.

⁸ *MIAC v SZQRB* (2013) 210 FCR 505.

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.