



Australian Government

Immigration Assessment Authority

Decision and Reasons

Referred application

IRAN

IAA reference: IAA21/10217

Date and time of decision: 8 March 2022 19:45:00

D Hughes, Reviewer

Decision

The IAA remits the decision for reconsideration with the direction that:

- there are substantial grounds for believing that, as a necessary and foreseeable consequence of the referred applicant being removed from Australia to a receiving country, there is a real risk that the referred applicant will suffer significant harm.

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

Background to the review

Visa application

1. The referred applicant (the applicant) claims to be a stateless Faili Kurd who previously resided in Iran. She applied for a protection visa on 19 October 2016. A delegate of the Minister for Immigration refused to grant the visa on 17 January 2020.
2. This matter was previously before the IAA. A decision to affirm the delegate's decision was made by the IAA on 23 March 2020 (IAA20/07782). The matter was remitted to the IAA by order of the Federal Circuit and Family Court of Australia [in] November 2021.

Information before the IAA

3. I have had regard to the material given by the Secretary under s.473CB of the *Migration Act 1958* (the Act).
4. In the course of the first review, the applicant made submissions to the IAA on 11, 14 and 17 February 2020. In her first statement, which was slightly revised on 17 February 2020, the applicant expanded on her claims related to her family. She confirmed she separated from her family after leaving detention in Australia. She confirmed she was cut off from her family, including her mother, and close and extended relatives in Iran. She states she would have no support and no documentation on return to Iran. She states she is not traditional and does not do what is expected of women in Iran. She states that she does what she wants and can go out when and with whom she wants. She does not see why she has to change the way she is and follow unfair rules and be jailed, beaten or killed. She states she is suffering from depression and anxiety, and that she is on medication and she sees a psychologist regularly.
5. In her second statement, dated 3 December 2021, the applicant indicated her sister in Iraq had died as a result of Covid-19. She states that prior to her death, her sister had told her that her maternal uncles have threatened to harm her if she returns to Iran because she had tarnished the family's reputation. She states honour killing in the Kurdish community is prevalent. She also fears retribution from the Iranian authorities. Her supporting information indicates she was the victim of domestic violence from her family. She states she fears being removed to Iraq if found working illegally. She states she would not be able to subsist and has no assets or property in Iran.
6. The submission includes three letters. The first letter, dated 1 December 2021, confirms the applicant is a client and accessing services from [Organisation 1] in Sydney. The second letter, dated 25 November 2021, is from the applicant's psychologist. It states she is being treated for depression, anxiety and post-traumatic stress disorder over the last four years. The third letter, dated 1 December 2021, from [Organisation 2], states the applicant is a client of the organisation for reasons of domestic violence, homelessness and financial support. It states she has been receiving intensive support for the last two years.
7. Aspects of these claims and supporting information are new, including that the applicant has been disowned by her extended family in Iran, that she is at threat of harm from these relatives in the form of honour killing; that she was the victim of domestic violence from her family; that her sister has died from Covid; and that she herself has mental health concerns.

8. Through the more recent 2021 submissions, I have been able to consider more recent evidence from third parties regarding the applicant's mental health and other vulnerabilities. That evidence also corroborates her past experiences.
9. The applicant has satisfied me the information is credible personal information which was not previously known and, had it been known, may have affected the consideration of the applicant's claims. I consider the information is credible in the sense that it is capable of being believed. I consider the supporting evidence provides additional context for the somewhat incremental and late progressing of her claims related to her family situation. I note that while her claims have expanded over time, I do consider that her evidence has remained internally consistent. In view of her mental health concerns and other vulnerabilities, I consider there are exceptional circumstances to justify considering the new information.
10. The applicant provided one new report – a 2020 report from Human Rights Watch regarding recent incidents targeting Iranian women who protested against wearing the hijab. While I accept that recent and up to date country information about the treatment of women is broadly material to this assessment, I note the applicant is not claiming to be active or outspoken in relation to her profile. While the applicant has satisfied me that the information could not have been, provided to the Minister before the Minister's delegate made the decision. I am not satisfied that there are exceptional circumstances to justify considering the new HRW report.
11. I have considered whether to obtain the latest DFAT report. The information before the delegate was comprehensive and remains largely up to date. I do not consider there is anything within the 2020 DFAT report that is material to this assessment. I am not satisfied that there are exceptional circumstances to justify considering the new information.
12. I have considered whether to interview the applicant. The matter was remitted on the basis that the IAA should have exercised its discretion to invite the applicant to comment on its concerns regarding her identity documents. As it turns, I do not share the same concerns about the documentation that was provided. I do not consider it is necessary to invite the applicant to a visa interview.

Applicant's claims for protection

13. The applicant's claims can be summarised as follows:
 - She is a stateless person of Faili Kurdish ethnicity. She was born in Basra, Southern Iraq. Her family was deported from Iraq during the Iraq-Iran War in 1980.
 - They lived as stateless persons in Iran. She never acquired citizenship in Iran and does not have citizenship from any other country, including Iraq.
 - In 2013, she travelled to Australia with her father and two sisters. Her mother was not able to exit Iran. Her mother had acquired Iranian citizenship two or three years prior to their departure from Iran, but the applicant was unable to obtain citizenship due to legal impediments.
 - In Iran, as she did not have citizenship, she was not able to attend government schools or obtain employment. Her father covered her education fees. Even at university, she faced a lot of discrimination. They would call her 'araba'. She did not even have a right to register a sim card in her name, buy a house or get a job.

- As a stateless person, she was not entitled to marry or freely travel outside of Iran. She was not able to speak her own Kurdish language as it was prohibited.
 - After the fall of Saddam Hussein's regime in Iraq, the Iranian regime tried to force them to leave Iran back to Iraq. However, they were not able to return to Iraq as they were not citizens and it was too dangerous.
 - She was not able to obtain her university certificate as they accused her of being an Iraqi. The university only gave her a document stating that she had studied there. They advised her she would need to go back to Iraq and obtain citizenship to be issued a certificate. This as the case despite the fact that they paid for her course privately.
 - She has witnessed discrimination on a daily basis in Iran. She will face discrimination from the society and the government.
14. During the visa interview, the applicant expanded on her claims, indicating she had become estranged from her family after arriving in Australia. Both her parents had refused to speak to her prior to their deaths. She indicated she had brought shame on her family. She now claims to fear harm from her close and extended family, including male relatives in Iran. She contends she will not be able to subsist in Iran.

Factual findings

15. The applicant has been generally consistent about her identity, although her evidence about her birthdate has not always been clear. In the arrival interview, which I am satisfied was before the delegate, her birthdate was recorded as [Date 1 in Year 1]. In her visa application, she states her birthdate as [Date 2 in Year 1].
16. The translation of her 'green card' gives her birthdate as [Date 3 in Year 2], as does her later white card, which was issued [in] 2008. The translation of her family documentation gives her birth year as [Year 2].
17. In the visa interview, the migration agent noted a possible error in her statutory declaration which appears to suggest she was born in [Year 3]. I note this arises in a run on sentence and may actually have been intended to refer to the period of the Iran-Iraq war. I am satisfied that was an unintended error and the applicant has not claimed to have been born in [Year 3].
18. At the visa interview, the applicant reiterated her birthdate was [Date 2]. She contends any errors in her documents was due to the translation between different calendars and administrative error.
19. As these appear to be the only documents that confirm the applicant's identity, the variance in birthdate raised concerns, but equally the applicant's explanations for that variance are plausible. Her claimed birthdate is also plausible when considered against her narrative that she was born in Basra, Iraq before her family was made to leave the country in 1980. I accept the applicant's identity and that she was born in [Date 2].
20. The applicant claims to be a stateless Faili Kurd from Iran. The applicant's evidence about her ethnic background was not particularly detailed or persuasive. She speaks Arabic and does not appear to speak Feyli/Kurdish. At the interview, she could provide little insight into what it means to be a Faili Kurd. It does not appear that she faced direct discrimination or harm while in Iran because of her ethnic profile. She does contend that she was prevented from

obtaining her diploma because of her status, however it does not appear she was prevented from studying. In terms of her identity documentation that recognised her as a refugee, she could provide little insight into how the information was obtained or renewed.

21. I considered her evidence in this regard was unimpressive, but given her experiences and background, notably her departure from Iraq at a very young age and limited status in Iran, I do not consider this obviously undermines or contradicts her claims to any significant extent.
22. I find her contention to have left Iraq in 1980 to be consistent with country information about the movement of Faili Kurds between Iraq and Iran. The country information also clearly refers to persons of her claimed ethnic group living in Iran, and the various status persons from this ethnic group hold in the country. While it appears that her mother obtained Iranian citizenship at some point in the early 2000s, the country information also indicates that citizenship has historically been patrilineal, and this may explain why she was not able to obtain citizenship in Iran.¹
23. In terms of the applicant's identity documentation from Iran, and other supporting documentation provided to demonstrate her identity, I do not consider these documents are obviously problematic. As above, I consider the birthdate issue is explainable. There are some issues with the documents when considered against the country advice – for instance, the annual renewal requirements for these cards. However, I also consider it plausible that there could be irregularities with renewal in relation to such documents, particularly when held by children who do not work or travel for work. The documents themselves seem credible on their face, in particular the white Amayesh card has a holographic stamp and watermarked paper that would appear difficult to fabricate. I consider her identity documentation is at least credible and to some degree corroborative of her claims to be a stateless Faili Kurd in Iran.
24. I have weighed her mother's identity evidence, and while I note there are some irregularities – for example her Iranian-issued birth certificate refers to her marriage being in 2008 and appears to indicate her husband holds his own Iranian birth certificate. However, I again do not consider any of these irregularities are conclusive, particularly where refugees have sought to normalise their status in another country.
25. Based on the range of evidence before me, I agree with the delegate's assessment. I accept that the applicant has not been able to obtain citizenship in either Iran or Iraq, and I am not satisfied that she has access to the documents needed to do so. I have no reason to consider that she can practically access Iranian or Iraqi citizenship at this stage. Based on the information before me, I accept that she is a stateless Faili Kurd, and that Iran is her country of formal habitual reference.

Mental health

26. In the course of the first IAA review, the reviewer did not accept the applicant's new information regarding her mental health concerns. At the time, the applicant has not provided any supporting documentation. I have benefitted from being able to consider additional supporting third party evidence in this regard.

¹ DFAT, 'Thematic Report - Faili Kurds in Iraq and Iran', 3 December 2014, CIS2F827D91722; Country of Origin Information Services Section (COISS), 'Iran: CI150723131013116 – Green Cards – White Booklets – White Cards – Pink Cards – Blue Cards – BAFIA Registration Program (BRP) certificates', 30 July 2015, CRE6D9079221.

27. The applicant has provided a letter from her psychologist in her most recent submission. That opinion expands on the situation with her family, indicating that domestic violence was the catalyst for her leaving her family. It also reiterates the applicant's claims that she fears harm from her male relatives in Iran. It also states that in her psychologist's opinion, the applicant's mental health condition is likely to deteriorate if she returns to Iran and she would not be able to access mental health treatment and intervention.
28. A letter from [Organisation 2] refers to the applicant's reliance on the services of that group and provides some additional corroboration of her mental health and other vulnerabilities. It too refers to the issue of domestic violence. A further letter from [Organisation 1] confirms the applicant is a client of the organisation and accesses services/support.
29. I accept evidence from the applicant's psychologist confirms the applicant suffers from mental health concerns. I consider this and the other evidence provided demonstrates not only her mental health concerns and other vulnerabilities, but also provides some corroboration of her past claims and experiences.
30. I accept she is working part time but relies on other organisations for services and support. I have weighed that in this assessment, as well as the opinion of her psychologist that her mental health would be likely to deteriorate if she returned to Iran. I consider her mental health is a relevant consideration in terms of circumstances on return to Iran.

Departure from Iran

31. The applicant left Iran through Imam Khomeini Airport in Tehran. In her visa application, she states she used a forged passport that included her name and photo.
32. At the interview, she could say with no certainty what the country of issue for her passport was. She had no understanding as to whether there was any visa in the passport. I acknowledge that her evidence is that her father (and sister) took care of the administrative side of things, but I also consider it difficult to accept that she would know so little about her travel document or whether there was any visa within it.
33. Later in her interview, the agent clarified she had travelled on a false Iraqi passport. If it was the case that she travelled on a false Iraqi passport with a false travel permit, I find it very difficult to accept that she and her family would not have familiarised themselves with these documents, their identity details and travel history, in case they were questioned on departure from Iran or arrival in [Country 1]. While not impossible, the country information before me does not indicate that a person could readily or easily depart Iran illegally in this way.² I do not consider the applicant has been completely truthful or credible about her departure from Iran.

Breakdown of relationship with family

34. In her October 2016 statement attached to her visa application, the applicant did not claim to be estranged for her family. However, she does indicate that she has no contact with relatives outside of Australia. It also appears from her employment history that she no longer

² Danish Immigration Service, 'Human Rights Situation for Minorities, Women and Converts, and Entry and Exit Procedures, ID Cards, Summons and Reporting, etc.', 1 April 2009, CIS17329; Danish Refugee Council, Landinfo and Danish Immigration Service 'Iran: On Conversion to Christianity, Issues concerning Kurds and Post-2009 Election Protestors as well as Legal Issues and Exit Procedures', 1 February 2013, CIS25114.

claimed to be dependent on her family from 2013. I do not consider there is anything in this document that obviously contradicts her later claims.

35. In the visa interview, the applicant indicated that her mother and father (and siblings) refused to talk to her after she had come to Australia. She stated this was because she isolated herself from her family and had brought shame on them. At the end of the interview, the representative referred to her as a single person with no family or tribal support. The issue with her siblings in Australia is called a 'social issue'.
36. At the interview, the applicant did not detail the extent of her concerns related to her family. In assessing her profile as a 'single woman', the delegate relied on a 2009 Danish Immigration Service report which indicated that single women, single mothers and divorced women could generally live in Iran without problems. The delegate highlighted that the applicant was educated and had some work experiences. They also considered that Yazd was not a small town. While noting that women are disadvantaged and at risk of violence and discrimination, the country information indicated that women are well represented in certain professions. The delegate also noted that she has family in Iran.
37. In the submissions to the IAA, the applicant clarified that she does not have the support of her family in Australia or Iran. The submissions also contend that the country information cited by the delegate does not fully capture the picture for women in Iran. In particular, the submission highlights that while the situation for women and single women may be far better in Tehran than in smaller and/or more traditional religious cities, it also notes the report states that it depends on the context a woman finds herself in, in terms of her family, the neighbourhood and society at large. For uneducated women and women in smaller towns, it can be difficult so find work and support oneself. In that context, family support will be vital. The report also points to women living on their own as being at risk of harassment or sexual abuse. The representative further highlights that the report does not address the situation for a single woman with the applicant's specific profile – a stateless Faili Kurd who currently has no permission to reside in Iran.
38. In her submissions to the IAA, it is contended the applicant comes from a very traditional Shia family where a woman is not meant to leave home until she is married, and her actions in living an independent life in Australia is considered a stain on the family. It is also contended through her supporting documents that the applicant was subjected to domestic violence.
39. The conservatism of her family is difficult to assess. The applicant's evidence at the visa interview indicated they were not particularly observant Muslims. They would pray and celebrate major Shia commemorations, but they did not regularly attend mosque. When the delegate put to the applicant that her mother had applied for an Australian visa on the basis that she was a religious teacher, the applicant indicated she had no idea about this. Had the applicant's mother had any role of significance within her religious community, I consider the applicant would have been fully aware of this. I prefer the applicant's evidence that her mother was not a particularly religious person and I consider the information in her mother's visa application was contrived.
40. I consider the weight of evidence before me indicates that her family was not particularly religious. While I am not satisfied that the applicant is from a pious family, I do accept they may be culturally and morally conservative. It is apparent from her evidence at the visa interview that she believed she had brought shame on her family and had been disowned. Her offence in this regard appears to be that she chose to live separately from her family and

be active socially. If this is any indication, I consider it demonstrates they are culturally conservative.

41. In her 2021 submission, the applicant indicated that not only did she not have the support of her relatives in Iran, but she had also heard from her late sister that they intended to harm her if she returns. Reference is made to honour killings within Kurdish culture, as well as broader threats from the Iranian authorities. I note there is support for her contention that honour killings are practised in Kurdish cultures in Iran (among others).³
42. While raised very late in this process, if her family is culturally conservative and she is considered to have brought shame on her family, I accept she may have also been rejected by her relatives in Iran. I also consider it plausible that may extend to a threat to the applicant from certain male relatives.
43. I accept the applicant would return to Iran as a single woman without the support of her family. I accept that to some extent she lives a life that falls outside of Iran's conservative moral and cultural requirements, and that she would likely live in this way on return to the country. I have assessed her claims on that basis in my findings below.
44. I have weighed the country advice about the targeting of both Kurds and women who are politically active or outspoken in Iran. While I accept her profile as discussed above, it is clear to me that the applicant is not politically active or otherwise outspoken in relation to her ethnicity, gender or cultural/moral expectations. I am not satisfied she would be active or outspoken on return to Iran. I do not consider this is due to any modification of behaviour. I do not consider she has this additional profile.
45. As she is not a citizen of Iran, the applicant cannot return to the country. If it were the case that she was returned, the information before me indicates that it could only be on a voluntary basis, using a temporary travel document issued by the Iranian authorities. The applicant has no adverse profile with the Iranian authorities. Other than those with adverse profiles, the advice before me is that failed asylum seekers are paid little attention on return to Iran.⁴ In the event that she was able to return to Iran, I am not satisfied the applicant would be of adverse interest to the Iranian authorities for reasons of her asylum claims or any other reason. I have not considered this aspect of her profile further.

Refugee assessment

46. 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

47. Under s.5J of the Act 'well-founded fear of persecution' involves a number of components which include that:

³ Danish Immigration Service, 'Human Rights Situation for Minorities, Women and Converts, and Entry and Exit Procedures, ID Cards, Summons and Reporting, etc.', 1 April 2009, CIS17329.

⁴ DFAT, 'Country Information Report – Iran', 7 June 2018, CIS7B839411226.

- 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.
48. Based on the assessment above, I have accepted the applicant is a stateless Faili Kurd.
49. DFAT states that there are three main groups of Faili Kurds live in Iran: Iranian citizens, those of Iraqi origin who are registered refugees, and those of Iraqi origin who are not registered refugees. Based on her documentation, I am satisfied the applicant was a registered refugee. Older country advice indicates she may be unable to reobtain her registration.⁵ However, I note that DFAT also states that it is not aware of specific instances whereby authorities have singled out Faili Kurds for mistreatment, regardless of the category to which they belong.⁶
50. While I accept DFAT's advice that official and societal discrimination against ethnic minorities, does occur, I am not satisfied the applicant has faced serious discrimination or mistreatment in the past for reasons of her ethnicity as a Faili Kurd. I accept that she may have experienced some low level discrimination at school (being called 'araba'). I accept her family had to pay for her studies, but I am not satisfied that she was denied her qualification due to her ethnicity. I do consider it plausible that she was unable to obtain her qualification at the end of her studies due to her lack of citizenship or identity documentation from Iran (or Iraq).
51. Beyond that, I accept her brothers may have faced disruption and interference from officials in travelling within Iran, but I do not consider that constituted serious harm. Beyond their inability to have their status formalised, I find her family was otherwise able to live a relatively unfettered life in Iran.
52. Based on the advice before me, I accept there are barriers and challenges for Faili Kurds living in Iran, particularly those that are not citizens. However, I also consider the applicant and her family have demonstrated that Faili Kurds can live and subsist in Iran. I am not satisfied there is any credible threat of Faili Kurds being deported to Iran.⁷ In all the circumstances, I am not satisfied the applicant's status as a Faili Kurd in Iran, of itself, gives rise to a real chance or risk of harm if she were to return to live in Iran now or in the reasonably foreseeable future. Nevertheless, I do consider it relevant to her cumulative profile, as discussed below.
53. In my assessment, the applicant's profile related to her gender is unique and significant to this assessment. On one hand, DFAT highlights that Iran is reasonably progressive in relation to women's rights. Women enjoy considerable legal protections in many areas, including personal safety, participation in the workforce, and mandatory schooling for girls. Women are well represented in government and certain professional roles. However, hard-line sharia interpretations and conservative cultural and societal norms continue to limit the extent to

⁵ DFAT, 'Thematic Report - Faili Kurds in Iraq and Iran', 3 December 2014, CIS2F827D91722.

⁶ DFAT, 'Country Information Report – Iran', 7 June 2018, CIS7B839411226.

⁷ DFAT, 'Thematic Report - Faili Kurds in Iraq and Iran', 3 December 2014, CIS2F827D91722.

which women are able to participate in Iranian society. Women face considerable barriers to their full participation in society. Women generally require the permission of a male guardian to travel alone and face considerable societal harassment for doing so, particularly in more conservative rural areas.⁸ One report indicates that a woman living on her own could in some places be at risk of being seen as 'morally depraved'. She may be in danger of harassment and may risk sexual abuse.⁹

54. DFAT assesses that most Iranian women face persistent societal discrimination and the threat of gender-based violence. Legislation, long-standing traditional values and gender roles continue to restrict the participation of women in the workforce and community. Activists attempting to promote women's rights face a high risk of official discrimination, which may include arrest, monitoring, harassment, and travel bans.¹⁰
55. I find the applicant would be returning to Yazd. The delegate indicated in their assessment that Yazd has a population of 500,000. I have no information before me as to whether Yazd is a conservative or progressive city when it comes to the treatment of women. While I accept that country advice indicates that there may be more likelihood of 'social stigma' for single women in smaller towns, I do not consider that obviously rules out a woman in Iran facing stigma in a larger city, particularly if she is living within a smaller, conservative community.
56. I consider the applicant would return to live as a single woman in Yazd. In doing so, she would have no male support. If she were to continue to live in ways inconsistent with her community's conservative moral and cultural expectations, I consider there could be a chance or risk that she would face harm or harassment from the authorities (the Basij), or harassment or violence from other persons in her community, including sexual violence.¹¹ I consider there is an additional risk of stigma if her relatives or community were to engage in rumours or gossip about her within that community. I am satisfied that threat is credible.
57. Beyond this threat, I have considered the direct threat to her from her family members. The evidence before me is not conclusive about the statistical prevalence of honour killings in Iran, but it is clear from the country advice that it does occur, notably within Kurdish communities as the applicant contends. It includes the targeting of family members who have damaged a family's reputation by their actions – for matters such as extramarital sex and liberal behaviour.¹²
58. I have accepted she is estranged from her family and I find her claims to fear harm from her male relatives in Iran to be credible. I consider the risk to the applicant is most acute in her family's former home area in Yazd or if she was to seek to travel to where her mother's extended family live in Qom (for clarity, I have no reason to consider she would seek to travel to Qom unless forced to or she had no other option). If she returned to Yazd or Qom, I consider there is a more than remote chance that she would be harmed for reasons of her cumulative profile related to her gender.

⁸ DFAT, 'Country Information Report – Iran', 7 June 2018, CIS7B839411226.

⁹ Danish Immigration Service, 'Human Rights Situation for Minorities, Women and Converts, and Entry and Exit Procedures, ID Cards, Summons and Reporting, etc.', 1 April 2009, CIS17329

¹⁰ DFAT, 'Country Information Report – Iran', 7 June 2018, CIS7B839411226.

¹¹ DFAT, 'Country Information Report – Iran', 21 April 2016, CIS38A8012677; UK Home Office, 'Country Information and Guidance - Iran: Women', 16 February 2016, OGD7C848D3.

¹² DFAT, 'Country Information Report – Iran', 7 June 2018, CIS7B839411226; Danish Immigration Service, 'Human Rights Situation for Minorities, Women and Converts, and Entry and Exit Procedures, ID Cards, Summons and Reporting, etc.', 1 April 2009, CIS17329.

59. However, I am not satisfied her profile is such that the real chance of harm extends to all areas in Iran. Specifically, I am not satisfied there would be a real chance of the applicant facing harm for these reasons in Tehran. Within Tehran, I consider her profile would still expose her to some degree of risk, however I also consider her relatives or family would not be able to target her in Tehran, and I consider the risk of community gossip or rumour would be reduced. In terms of her liberal behaviour, I consider this would to some extent be more tolerated in Tehran,¹³ or at least that she would be less exposed to harm for these reasons. Significantly, I note the applicant continues to wear hijab in Australia. Based on the advice before me, I consider that would reduce the risk of her having a profile or being targeted on the basis of her gender profile within Tehran. While I accept that there would be some risk in Tehran on the basis of her cumulative profile, I am not satisfied there is a real chance of her facing harm for these reasons.
60. As the real chance of harm does not relate to all areas of Iran, her fears of persecution are not well founded.

Refugee: conclusion

61. The applicant does not meet the requirements of the definition of refugee in s.5H(1). The applicant does not meet s.36(2)(a).

Complementary protection assessment

62. 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

63. 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.
64. 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.
65. I have accepted the applicant would face a real chance of harm on the basis of her profile related to her gender as discussed above, if she were to return to live in Yazd or Qom. For the same reasons, I am satisfied there is a real risk that she would face significant harm if she were to return to live in these cities, now or in the reasonably foreseeable future.

¹³ DFAT, 'Country Information Report – Iran', 7 June 2018, CIS7B839411226; Danish Immigration Service, 'Human Rights Situation for Minorities, Women and Converts, and Entry and Exit Procedures, ID Cards, Summons and Reporting, etc.', 1 April 2009, CIS17329.

Qualifications to the real risk threshold

66. Section 36(2B) provides that there is taken not to be a real risk that a person will suffer significant harm in a country if:
- it would be reasonable for the person to relocate to an area of the country where there would not be a real risk that the person will suffer significant harm
 - the person could obtain, from an authority of the country, protection such that there would not be a real risk that the person will suffer significant harm, or
 - the real risk is one faced by the population of the country generally and is not faced by the person personally.
67. Having found the applicant would not face a real chance or risk of harm outside of Yazd and Qom, I have considered whether it would be reasonable for the applicant to relocate to an area where she would not face a real risk of significant harm, specifically Tehran.
68. DFAT has indicated that it is possible that a woman without male protection could successfully internally relocate to Tehran or another major city from other parts of Iran. However, class, ethnic, cultural and other factors would impact on the likelihood of successful integration.¹⁴
69. The applicant is educated. Based on the information in her visa application, she can speak Arabic and Persian, which I consider would assist her if she sought to relocate to Tehran. She has some limited work experience in Iran, and she has worked in childcare part time in Australia. While she is educated, I again note her qualification was not conferred at the end of her studies. She has also not worked in her field in the intervening years. Given her uncertain official status, it is not clear whether she would be able to access anything other than informal work.¹⁵ I consider those may be barriers to her being able to subsist in Iran
70. Within Tehran, I am not satisfied the applicant would have any existing networks, or any family, social or tribal support. She would have no access to pre-arranged accommodation on arrival in Tehran. There are some indications of state and NGO operated women's shelters in Iran, but they are limited in number. DFAT advises that these shelters are unlikely to provide comprehensive services and sufficient protections for women escaping an abusive situation.¹⁶ I consider these are factors that go against her prospects of relocating.
71. Beyond her lack of support networks, the applicant has ongoing mental health issues. It does appear that her mental health concerns are under control, but it also appears that she continues to rely on counselling and the support of other services and organisations. The advice from her psychologist indicates a concern that the applicant's mental health would deteriorate if she was unable to access mental health treatment and intervention. It appears she may be able to access medical support in Iran,¹⁷ however I consider the context of her return may exacerbate her mental health issues.

¹⁴ DFAT, 'Country Information Report – Iran', 21 April 2016, CIS38A8012677.

¹⁵ UNHCR/World Food Program (WFP), 'Joint Assessment Mission Settlement-based Refugees in Iran 8th-19th June 2008', 1 January 2008, CIS20176; DFAT Thematic Report - Faili Kurds in Iraq and Iran, 3 December 2014, CIS2F827D91722.

¹⁶ DFAT, 'Country Information Report – Iran', 21 April 2016, CIS38A8012677.

¹⁷ UNHCR/World Food Program (WFP), 'Joint Assessment Mission Settlement-based Refugees in Iran 8th-19th June 2008', 1 January 2008, CIS20176.

72. While the applicant has some education and work experience, I consider her profile as a single woman and undocumented stateless Faili Kurd, with mental health concerns and no family support networks, means that that the applicant would be particularly vulnerable in relocating within Iran. I consider she would be vulnerable to harm and/or that she may not be able to subsist. In all the circumstances, I am not satisfied it would be reasonable for her to relocate within Iran, to Tehran, to avoid significant harm.
73. In terms of state protection, DFAT states that the Iranian Penal Code does not specifically criminalise honour crimes, and (in line with sharia principles) provides for reduced sentences for those who commit them. In cases where authorities have attempted to stop the phenomenon of honour killings by sentencing some perpetrators to long prison terms, new strategies have quickly evolved to circumvent these punishments, including through hiring third parties to commit the murder.¹⁸ More generally, an individual woman's access to protection from abuse varies significantly in Iran depending on a range of factors, including class, social background, level of education, ethnic origin, social and legal status.¹⁹ Given her vulnerable status as a single woman, with no official qualification, from a minority ethnic group and potentially having no legal status as a Faili Kurd, and in the context of threats from her family related to her perceived contravention of moral or cultural expectations, I am not satisfied the applicant has a profile where she could obtain, from an authority of Iran, protection such that there would not be a real risk that the applicant will suffer significant harm.
74. I consider the risk to the applicant turns significantly on her specific profile related to her gender, her lack of status as a stateless Faili Kurd, and her additional risk profile through her family. I find the risk of harm is not faced by the population of the country generally, but is a risk faced by the applicant personally.
75. As none of the qualifications apply, I find there is a real risk that the applicant will suffer significant harm if she returns to Iran, now or in the reasonably foreseeable future.

Complementary protection: conclusion

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

Decision

The IAA remits the decision for reconsideration with the direction that:

- there are substantial grounds for believing that, as a necessary and foreseeable consequence of the referred applicant being removed from Australia to a receiving country, there is a real risk that the referred applicant will suffer significant harm.

¹⁸ DFAT, 'Country Information Report – Iran', 7 June 2018, CIS7B839411226.

¹⁹ DFAT, 'Country Information Report – Iran', 21 April 2016, CIS38A8012677; UK Home Office, 'Country Information and Guidance - Iran: Women', 16 February 2016, OGD7C848D3.

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.