



Australian Government
Immigration Assessment Authority

Decision and Reasons

Referred application

IRAN

IAA reference: IAA17/03287

Date and time of decision: 1 May 2018 12:24:00

Joanne Jennings, Reviewer

Decision

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

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

Background to the review

Visa application

1. The referred applicant (the applicant) claims to be a stateless Faili Kurd from Iran. On 5 April 2016 she lodged an application for a Safe Haven Enterprise Visa (SHEV), Subclass 790. She is unregistered and undocumented and as a stateless Faili Kurd she fears harm in Iran from the authorities.
2. On 28 July 2017 a delegate of the Minister for Immigration and Border Protection (the delegate) refused to grant the visa. The delegate was not satisfied that the applicant was stateless as claimed or that she would face a real chance of serious harm or a real risk of significant harm in Iran.

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. The IAA received a submission dated 4 September 2017 on behalf of the applicant. In part the representative's submission addressed the delegate's decision and findings and submits that the delegate erred in the decision and in reference to adverse credibility findings made by the delegate refers to the Refugee Review Tribunal: Guidance on the Assessment of Credibility. To that extent the submission may be referred to as argument rather than new information. I have had regard to the sections of the submission that address the delegate's decision and findings
5. The submission cited and extracted information from a range of reports, and with the exception of the Department of Foreign Affairs and Trade (DFAT), "Thematic Report Faili Kurds Iraq and Iran", these were not before the Minister and are new information. There is no information before me to explain why the new information could not have been made available to the Minister or that it contains credible personal information. I am not satisfied that the country information in the reports contains credible personal information, nor has the applicant satisfied me it could not have been provided before the delegate's decision was made. Furthermore, I am not satisfied that any exceptional circumstances exist that justify the IAA considering the new information.
6. The submission also contends that country information, as collated and set out in a recent Refugee Review Tribunal (RRT) decision, (made in 2010), "makes clear that failed asylum seekers returning to Iran have a well-founded fear of persecution". The Practice Direction for Applicants, Representatives and Authorised Recipients (the Practice Direction) specifies that any country information reports must be identified by the source and a copy of the information or an extract of the parts on which the applicant wishes to rely must be provided. The Practice Direction also specifies that the applicant must provide an explanation as to why any new information could not and could not have been provided to the Minister, or is credible personal information which was not previously known and had it been known may have affected the consideration of the applicant's claims. The submission has not provided any explanation in this regard. Noting the RRT decision was made in 2010 and that there is a range of more recent reliable information in the review material, pursuant to ss.473DC(2) and 473FB(5) of the Act I have determined not to accept this information.

Applicant's claims for protection

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

- The applicant's parents are Faili Kurds born in Iraq who were expelled from Iraq before the applicant was born. In Iran they are stateless and have no documentation. The applicant's father was scared he would be arrested or killed in Iran by the authorities and as a consequence her parents did not register as refugees and remained living there as unregistered, undocumented stateless Faili Kurds.
- The applicant was born in Iran and is a Faili Kurd and because of her parents' stateless status she is also stateless and has no documents from Iran or Iraq.
- The applicant has no knowledge of the background of her grandparents.
- The applicant identifies as a Shia Muslim but does not practise; the family had to tell people in Iran they are Shia to avoid being killed.
- Because of their status the family could not access services such as education and health care and her father was too scared to register to obtain such services. The applicant did not attend school and her only learning was reading books at home; her father paid for her brothers to be privately tutored. Her father paid someone to obtain any medications when these were required.
- The applicant married a stateless Faili Kurd in Iran in 2004. Her husband came to Australia in 2009 and is now an Australian citizen.
- The applicant and her brother decided to leave Iran and her husband made arrangements with a people smuggler to obtain a fraudulent passport and to pay bribes at the Teheran airport to facilitate her departure. She left Iran around October 2012 and travelled initially to [one country] and from there to [Country 1] and onto Australia. The passport was taken from her in [Country 1].
- Since being in Australia the applicant has accompanied her husband and brother to a church and has been attending for two years. She does not understand English so does not know about Christianity. She has made friends at the church and enjoys socialising with them.
- The applicant fears harm from the authorities in Iran as an unregistered, undocumented stateless Faili Kurd and for being a failed asylum seeker.

Factual findings

8. The applicant claims to be a stateless Faili Kurd without documentation. I take into account that the applicant speaks Faili Kurdish, and her account that her parents were living in Iraq and were expelled by the regime around 1978 is consistent with independent information about Faili Kurds now living in Iran.¹ I am satisfied that the applicant is a Faili Kurd.
9. The applicant stated she has no documentation from Iran or Iraq. Country information indicates that Faili Kurds are common in the province of Ilam where the applicant resided, however not all Faili Kurds are stateless, nor are all the Faili Kurds who are stateless unregistered and undocumented.² From the late 1970s, and exacerbated by the Iran-Iraq war,

¹ Department of Foreign Affairs and Trade (DFAT), "DFAT Thematic Report: Faili Kurds in Iraq and Iran", 3 December 2014, CIS2F827D91722

² *ibid*

large numbers of Faili Kurds fled to Iran where they were accepted as refugees and provided health and education services and housing. A strict registration criteria applied and DFAT advises that not all could comply with this criteria; inability to register may be for reason of having travelled back to Iraq, residing in a “no go” area on the border with Iraq, or not having complied with terms of prior registration. A registration fee is payable and registered refugees are issued with an amayesh card, or an earlier version of a refugee registration card. Estimates vary on the number of unregistered Faili Kurds in Iran and DFAT advises that reliable estimates are not available but considers it “probable the majority of Faili Kurd refugees in Iran are registered and have amayesh (refugee registration) cards”.³ DFAT cited that one “credible academic estimate in 2014 suggested up to 8000 Faili Kurds remained stateless in Iran” but notes that the “numbers of unregistered refugees might also vary due to Faili Kurds travelling to Iraq and returning to Iran”.⁴ At the time of the introduction of the amayesh registration card in 2002 a comprehensive registration program was conducted and information collated from open sources and DIBP staff at the Australian Embassy Tehran indicates it “was likely that the majority of Feyli Kurds were registered as refugees under the Amayesh program”.⁵ The number of Faili Kurds in Iran has decreased largely due to the Iraqi government welcoming their return from 2006; the UNHCR published a report in 2008 indicating some 7000 Faili Kurds remained in Iran and by 2011 this number was 5719, and an unsourced report stated in 2010 that unregistered Iraqi refugees in Iran numbered 4000, (although the number of Faili Kurds in this estimate is not specified).⁶

10. The applicant claims that her father did not obtain documentation because of fear of the authorities, and as such the family lived in a tent, farmed land that they leased, and had no access to services such as education or health. She further claims that her father was so fearful of the authorities that they rarely left the area in which they lived and that he paid someone to obtain any medications they required rather than leave the area himself. I have concerns about the applicant’s account in this regard as overall the country information points to most Faili Kurds registering as refugees in Iran and there is no indication that they faced, or now face widespread harm for doing so. DFAT advised in 2011 that contacts were “not aware of Faili Kurds not approaching Iranian authorities due to fear of mistreatment, although they were not prepared to rule this out”⁷ and in 2012 UNHCR advised that 3344 Faili Kurd refugees living in Ilam and Lorestan provinces enrolled in the new health insurance scheme for refugees⁸. The country information does not support the applicant’s claim of widespread arrest of Faili Kurds attempting to register with the Iranian authorities and I also find her account to be implausible in part. From her account her parents chose to live this subsistence lifestyle for themselves and their children because of a fear of any interaction with the authorities that registration would require. Yet her father paid money to a landowner to farm and traded his farm stocks openly in the community. As noted, undocumented refugees in Iran cannot access education and other services and, taking into account that the applicant’s father valued the importance of obtaining an education for his children and paid for private tutoring for his sons and brought books home for the applicant to read, I have difficulty accepting her claim that his fear of the authorities outweighed his concern for the education and general wellbeing of his children. In this regard I also place significant weight on the country information that indicates her father would not have come to harm if he had registered. Furthermore, by remaining undocumented he risked

³ DFAT, “DFAT Thematic Report: Faili Kurds in Iraq and Iran”, 3 December 2014, CIS2F827D91722

⁴ ibid

⁵ DIBP Tehran, “Feyli Kurds - obtaining identity travel documents”, 17 September 2015, CISEC96CF13392

⁶ ibid

⁷ DFAT, “Response to IRN 11487 Iran - Faili Kurds”, 27 April 2011, CX263445

⁸ DIBP Tehran, “Feyli Kurds - obtaining identity travel documents”, 17 September 2015, CISEC96CF13392

the possibility of deportation from Iran, although DFAT advise that deportation was rarely carried out.⁹

11. The delegate asked the applicant at the SHEV interview questions about her life growing up in Iran, specifically about refugee registration cards. The applicant claimed to have no knowledge of refugee registration cards. I find this difficult to accept; the applicant stated that the family lived in an isolated area with other stateless Faili Kurds, that she married another stateless Faili Kurd and that she knows many stateless Faili Kurds were arrested for trying to register, and repeatedly stated that they were undocumented because her father was too scared to register. The applicant's stated experience indicates contact with other stateless Faili Kurds and some knowledge of the registration process, yet she contends to have no knowledge of the registration cards issued to refugees. I also note in her Entry interview she referred to living in her father's house, although she later claims to have lived in a tent all her life prior to her marriage. I also take into account her claim that her father leased farm land is not consistent with country information that refugees face difficulty renting property in Iran and cannot do so in their own name.¹⁰ While these matters are minor in themselves, I am concerned the applicant's evidence in this regard has been inconsistent and evasive.
12. I accept that the applicant married in Iran in 2004 and that her husband came to Australia, leaving Iran in 2009. At the SHEV interview the applicant stated that she does not know where her husband was born, that his parents are dead and that he has siblings, which she thinks is one brother and one sister, but she does not know them as they live far away and she has never met them. The applicant stated that after their marriage she went to live with her husband in his village which was a short distance from her own village, approximately 30 minutes walking. At a later point in the interview the applicant was asked if her husband's siblings came to their wedding and she stated yes. She was also asked where they live and she stated in the same village where she was living with her husband. This information is inconsistent with her previous statement that she did not know, and had not met his siblings as they lived far away. I also note in her Entry interview she stated that she had been living with her in-laws before leaving Iran. While these inconsistencies in themselves may be considered minor I find the applicant's evidence at her SHEV interview regarding her husband's circumstances to be evasive and I am concerned this indicates an unwillingness to be forthright with information about the identity and status of her husband and I am not satisfied that she was providing a genuine account of his circumstances.
13. In the submission to the IAA the applicant's representative puts forward that her "claim that the family does not have a green card must be accepted as possible" and that credible country information supports that not all Iraqi refugees in Iran hold some form of documentation. While the country information bears out that a Faili Kurd refugee from Iraq now living in Iran may not have documentation I have had regard to the applicant's account of her circumstances and she has failed to satisfy me that she is an undocumented stateless Faili Kurd as she claims. The country information does not support her assertion that many stateless Faili Kurds who tried to register were arrested and killed. Noting the substantial benefit that registration provided and that the applicant claims her family was living a subsistence lifestyle I am not satisfied her father did not register. The claimed fear her father felt of the authorities if he tried to register is not borne out by the country information. Nor is there any indication, as asserted in the submission to the IAA, that the family was otherwise prevented from registering, such as having returned to Iraq or because of other bars to registration.

⁹ DFAT, "DFAT Thematic Report: Faili Kurds in Iraq and Iran", 3 December 2014, CIS2F827D91722

¹⁰ *ibid*

14. Considering the country information that indicates the high number of Faili Kurds who have registered their refugee status in Iran without any indication of harm as a result; that there is no indication her family otherwise faced any barrier that would have prevented registration; the significant social and economic benefit to refugees who register; the risk, albeit slight, of deportation for remaining unregistered; and that by failing to register the family was restricted to living a subsistence lifestyle, I am not satisfied that the applicant's claim that her father did not register as a refugee with the authorities in Iran is genuine. I do not accept her claim that she was unregistered and undocumented in Iran. As I have not accepted the applicant and her family were unregistered and undocumented I do not accept that they could not access basic services such as education and health care, although I accept that they may have been poor.
15. While I have accepted that the applicant is a Faili Kurd she has failed to satisfy me that she is an undocumented Faili Kurd who is not registered with the Iranian authorities. In considering her identity and status in Iran further, particularly her claim to be stateless, I have had regard to her account of her departure from Iran, and I find this casts doubt on her claim to be a stateless Faili Kurd. The IAA submission draws attention to country information cited in the delegate's decision that demonstrates the possibility of using fraudulent documents to depart Iran if airport officials are bribed as the applicant claims is what happened in her case. Overall country information¹¹ indicates that departure from Iran using a fraudulent passport would be difficult and that Iranian border control is rigorous. To obtain a genuinely issued passport identifying documentation is required and while counterfeit passports can be purchased on the black market the authorities are adept at identifying such documents. In its 2013 report the Danish Immigration Service provided detailed information on security measures at the international airport in Teheran and overall most sources quoted reported strict and efficient security measures. While departure using a fraudulent passport was not entirely ruled out sources indicated the quality of the document would need to be high and bribes paid to officials to facilitate departure would be high, amounting to 10,000 USD or 8,000-10,000 Euros. Most sources indicated that the porous border to Turkey provided an easier and more established people-smuggler route.¹² I am surprised that as the applicant and her brother claim to be undocumented their illegal departure was not arranged via the "easier" illegal route of the land border with Turkey, noting DFAT advice that many Iranians travel to Turkey and from there travel onwards using forged documents.¹³ I find the applicant's willingness to undertake the risk of departing Iran using a fraudulent passport belies her claimed fear of the authorities, particularly her claim that her fear was such that she was not willing to approach the authorities for the lawful purpose of registering as a refugee and that all her life she rarely left the local area for fear of harm from the authorities. I also note she claims her husband made arrangements with a people smuggler for her departure the cost for which totalled approximately [amount] AUD. This amount is substantially less than that cited in country information as the required bribe amount to secure departure through the airport with a fraudulent passport. Considered overall I do not accept the applicant's account that she departed Iran using a fraudulently issued passport to be genuine.
16. I take into account the information that indicates the circumstances in which Faili Kurds can access Iranian citizenship. I have discounted information from the United States Office of

¹¹ Danish Refugee Council, Landinfo and Danish Immigration Service, "On Conversion to Christianity: Issues concerning Kurds and Post-2009 Election Protestors as well as Legal Issues and Exit Procedures", February 2013, CIS25114; UK Home Office, "Country of Origin Information Report - Iran (16 January 2013)", UNHCR Refworld, 1 January 2013' CIS27141; UK Home Office, "Country Information and Guidance – Iran: Illegal Exit," 20 July 2016, OGD7C848D2; UK Home Office, "Iran May 2007", 25 May 2007, iran-250507; DFAT, "DFAT Report – Iran", 21 April 2016 CIS38A8012677

¹² Danish Refugee Council, Landinfo and Danish Immigration Service, "On Conversion to Christianity: Issues concerning Kurds and Post-2009 Election Protestors as well as Legal Issues and Exit Procedures", February 2013, CIS25114

¹³ DFAT, "DFAT Country Information Report Iran", 21 April 2016, CIS38A8012677

Personnel Management Investigations Service stating in 2001 that citizenship through naturalization is available following five years residence and the meeting of other criteria¹⁴ as DFAT advises that refugees do not normally meet the requirements because applicants “must either be highly qualified or have sufficient capital to invest in and run a business in Iran”.¹⁵ Historically Faili Kurds originate from the Kermanshah region of Iran and many migrated to Baghdad and other areas of what is now Iraq at the beginning of the 20th century. Those who can prove their Iranian antecedents can access Iranian citizenship and large numbers have availed themselves of this citizenship. DFAT cited a “credible academic report” from the University of Oxford which estimates that prior to 2003, Iran had granted citizenship to up to 100,000 Faili Kurd refugees of Iraqi origin, who could prove their Iranian origins; however DFAT caution their in-country sources were unable to verify this information and that “while some Faili Kurds might have Iranian ancestry, if their ancestors did not register with Iranian authorities at the time, establishing this ancestry would be difficult, if not impossible”.¹⁶ In this regard the origins of the applicant’s grandparents would be relevant and I have difficulty accepting the applicant claims that she does not know the origins of her grandparents as she was not given this information by her parents and that throughout her life the origins of her grandparents was never raised or discussed. The origin of her grandparents is an important factor in her asserted status of stateless and I consider it implausible that this was never discussed amongst the family and their origin is unknown to the applicant.

17. The applicant was put on notice by the delegate at the SHEV interview about her concerns regarding the applicant’s claims and I note that the applicant maintained her claim to be a stateless Faili Kurd without documents. I take into account the applicant’s difficulty, beyond her own evidence, in proving an absence of documentation. However, considered overall the applicant’s evidence lacks detail, is evasive in part and is inconsistent with country information, and I find her account that her father did not register because of fear of harm, but rather lived a subsistence existence, to be implausible. The weight of country information points to most Faili Kurds being either registered with the authorities, or to being citizens. While I accept that the applicant is a Faili Kurd, I am not satisfied that she is unregistered and therefore undocumented as she claims. I have considered if the applicant may be registered as a refugee; if that were to be the case the applicant would have access to registration documentation to support her status in regard to being a stateless Faili Kurd. However she has not provided such documents and has maintained her claim to be unregistered and undocumented. Considered together with my concerns that her account of her departure using a fraudulent document is not genuine I conclude that the applicant is seeking to conceal her status and has deliberately withheld identity documents.
18. In the light of the implausibilities in her account of her circumstances and the reasons given for why her father did not register as a refugee, her claimed lack of knowledge of her family history regarding the origins of her grandparents, her ability to leave Iran using a passport and pass security at the international airport, and considered together with her apparent willingness not to tell the truth about matters such as her husband’s family circumstances, I do not accept that the applicant has provided a truthful account of her circumstances. While I accept that the applicant is a Faili Kurd, I am not satisfied that she is an undocumented Faili Kurd. Taking account of country information that indicates many Faili Kurds have re-availed themselves of Iranian citizenship and considered together with the above, I am satisfied that

¹⁴ United States Office of Personnel Management Investigations Service, CIS14049: "Citizenship Laws of the World", 1 March 2001

¹⁵ DFAT, “DFAT Thematic Report: Faili Kurds in Iraq and Iran”, 3 December 2014, CIS2F827D91722

¹⁶ *ibid*

the applicant is an Iranian citizen. Consistent with this finding I am satisfied that the applicant departed Iran legally using her genuinely issued Iranian passport.

19. I note that the applicant did not raise claims regarding her attendance at church in Australia until toward the end of her SHEV interview, however despite the late advance of this claim I accept that she has made links with people connected with the church and that they have invited her to events and she has attended. At her interview the applicant described meeting ladies at the church who she likes and who like her. When asked by the delegate at the interview to talk about Christianity the applicant stated that she does not know much as she does not speak English. When asked if she had been baptised into the church the applicant stated that she did not know. I note the contention in the IAA submission that the applicant took the opportunity to investigate Christianity while in Australia but from her account the applicant does not understand English and has not learnt about Christianity and there is no indication that she has adopted Christianity. From her account I accepted the applicant has made friends with members of a Christian church in Australia and she socialises with these people. I do not accept that the applicant has converted to Christianity.

20. I accept that the applicant no longer practises as a Shia.

Refugee assessment

21. 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

22. 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.

23. As set out above, I have not accepted the applicant is an unregistered, undocumented Faili Kurd as claimed. I am satisfied that she is a Faili Kurd and an Iranian citizen. Country information indicates that Faili Kurds who are citizens of Iran can access services and employment on the same basis as any other Iranian citizen, and that they face little or no

official discrimination, although there are reports that ethnic minorities, including Faili Kurds, can experience some societal discrimination, however DFAT assesses that this type of societal discrimination against Faili Kurds is not widespread.¹⁷ However from the applicant's account there is no indication that she or other family members experienced harm in Iran as a Faili Kurd. Based on the applicant's evidence, I am not satisfied that she has been subjected to discrimination or significant economic harm, despite being poor, or denied the capacity to earn a livelihood, or to access basic services in ways which have threatened her capacity to subsist, or that she would be should she return to Iran. I do not accept there is a real chance that she would face harm in Iran as a Faili Kurd.

24. I have accepted that the applicant does not practise Islam and has attended church in Australia and made friends with Christians. Country information indicates non-practising Muslims now form a large part of the population of urban Iranians and many Iranians do not regularly attend mosque or Friday prayers and DFAT assesses it is unlikely that the authorities would monitor religious observance, such as attendance at mosque.¹⁸ A November 2014 article of the Economist newspaper notes that "Islam plays a smaller role in public life today than it did a decade ago" and the power of clerics has "waned" and while "Iranians remain a spiritual people who see Islam as part of their identity", many have moved away from "institutionalised" religion.¹⁹ In 2014 the Danish Immigration Service quoted an advocacy officer of the United Council of Iranian Churches who "assessed that there are more and more atheists in Iran and that this is more accepted among some Iranians".²⁰ While apostates can be punished under sharia law for leaving the Muslim faith prosecution of cases is rare²¹; DFAT advises that the last known application of the death penalty for apostasy occurred in 1990 and in 2011 an apostate was sentenced to death however, following international pressure, the conviction was subsequently commuted and the death penalty was dropped. The Austrian Centre for Country of Origin and Asylum Research and Documentation reported the execution in 2011 of an IRGC Commander who was convicted of apostasy but I note that this person was also claiming to be God and that he was charged with apostasy and "encouraging prostitution" and the "nature of [his] activities and religious claims are not clear".²² DFAT "considers it unlikely that individuals will be prosecuted on charges of apostasy"²³ and the Danish Immigration Service noted that it was not aware of recent cases.²⁴ Country information indicates that apostates may come to the attention of the authorities through public manifestation of a new faith²⁵ and I note the applicant fears harm because of her Christian friends in Australia and for visiting churches. However, while it was advanced the applicant explored Christianity from her own account she has almost no knowledge of Christianity and has not adopted Christianity, or another faith. I am not satisfied that she would be viewed as an apostate should she return to Iran.

25. I have not accepted that the applicant departed Iran illegally, however to return to Iran she may require documentation to be issued to facilitate her travel but country information advises that Iran does not accept involuntary returnees and does not issue travel documents to

¹⁷ DFAT, "DFAT Thematic Report: Faili Kurds in Iraq and Iran", 3 December 2014, CIS2F827D91722

¹⁸ DFAT, "DFAT Country Information Report Iran", 21 April 2016, CIS38A8012677

¹⁹ Austrian Centre for Country of Origin and Asylum Research and Documentation (ACCORD), "Iran: Freedom of Religion; Treatment of Religious and Ethnic Minorities COI Compilation September 2015", 1 September 2015, CISEC96CF13622

²⁰ Danish Immigration Service, "Update on the Situation for Christian Converts in Iran", June 2014, CIS28931

²¹ *ibid*

²² ACCORD, "Iran: Freedom of Religion; Treatment of Religious and Ethnic Minorities COI Compilation September 2015", 1 September 2015, CISEC96CF13622

²³ DFAT, "DFAT Country Information Report Iran", 21 April 2016, CIS38A8012677

²⁴ Danish Immigration Service, "Update on the Situation for Christian Converts in Iran", June 2014, CIS28931

²⁵ DFAT, "DFAT Country Information Report Iran", 21 April 2016, CIS38A8012677

involuntary returnees²⁶. I find that if the applicant is returned to Iran it would be on a voluntary basis. There is no indication in the information before me that voluntary returnees face harm on return. The International Organization for Migration was cited by the UK Home Office as reporting "Iranians who have left the country on their passports and are returned on a Laissez-passer will be questioned by the Immigration Police at the airport. This questioning may take few hours, but according to IOM nobody has been arrested when travelling back on a Laissez-passer".²⁷ Country information indicates that people of interest may be questioned on return but I do not accept that the applicant would be of interest to the Iranian authorities. I accept the applicant may be questioned because of her travel document, but I do not accept this would result in any adverse interest in the applicant or that she would be harmed during that questioning or process or that such would amount to serious harm.

26. Nor am I satisfied that she would face harm as a returning asylum seeker. The country information does not indicate that returning asylum seekers are routinely imputed with an anti-government political opinion or harmed because of their asylum claim, or for reason of being in a western country. Reports of asylum seekers being arrested on return relate to those involved in anti-government activities, either in Iran or during their time abroad²⁸ and "member[s]s of an oppositional political party or involved in political activities in other ways".²⁹ There is no indication that the applicant has been involved with anti-government activities that would attract adverse attention on return to Iran.
27. I have considered the applicant's circumstances as whole, and I am not satisfied there is a real chance of the applicant suffering persecution in the reasonably foreseeable future in Iran on the basis of her ethnicity, religion, or returning to Iran as an involuntary returnee asylum seeker from a western country.

Refugee: conclusion

28. 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

29. 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

30. Under s.36(2A), a person will suffer 'significant harm' if:

²⁶ DFAT, "DFAT Country Information Report Iran", 21 April 2016, CIS38A8012677

²⁷ UK Home Office, "Country Information and Guidance – Iran: Illegal Exit", 20 July 2016, pp.7 and 13-15, OGD7C848D28

²⁸ Radio Zamaneh, "Iranian poet/activist arrested at Tehran airport", 8 January 2016, CX6A26A6E140; International Campaign for Human Rights in Iran, "New Video: Iranian Expats Face Arrest upon Return to their Homeland", 23 April 2015, CXBD6A0DE5203; Radio Zamaneh, "Jailing of returning journalists called part of anti-Rohani plan", 31 July 2014, CX324017; Committee to Protect Journalists, "Rouhani has yet to deliver on press reforms in Iran", 13 March 2014, CX318970

²⁹ Danish Refugee Council and Danish Immigration Service, "Iranian Kurds: On Conditions for Iranian Kurdish Parties in Iran and KRI, Activities in the Kurdish Area of Iran, Conditions in Border Area and Situation of Returnees from KRI to Iran", September 2013, CIS26587

- 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.

31. DFAT report that societal discrimination against Faili Kurds cannot be ruled out in individual cases but that Faili Kurds in Iran who are Iranian citizens can access services on the same basis as other Iranian citizens and “appear to face little to no discrimination in access to services”.³⁰ There is no indication that the applicant experienced harm in Iran as a Faili Kurd and I am not satisfied on the information before me that any discrimination the applicant may face will involve deprivation of life, the death penalty, torture, cruel or inhuman treatment or punishment, or degrading treatment or punishment. I am not satisfied the applicant would face a real risk of significant harm for reasons of her ethnicity should she return to Iran.

32. I have found that being questioned on return to Iran would not amount to serious harm. I also find this does not amount to significant harm. The harm does not include deprivation of life, the death penalty, or torture; nor am I satisfied she will be subject to cruel, inhuman or degrading treatment or punishment as defined.

33. I have found that there is not a real chance that the applicant faces harm on the basis of her ethnicity, religion, or returning to Iran as an involuntary returnee asylum seeker from a western country. Noting that the “real risk” test for complementary protection is the same standard as the “real chance” test,³¹ and based on the same information, and for the reasons set out above, I am also satisfied that there is not a real risk that she would face significant harm for these reasons.

Complementary protection: conclusion

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

Decision

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

³⁰ DFAT, “DFAT Thematic Report: Faili Kurds in Iraq and Iran”, 3 December 2014, CIS2F827D91722

³¹ *MIAC v SZQRB* (2013) 210 FCR 505

Applicable law

Migration Act 1958

5 (1) Interpretation

...

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.