



Australian Government
Immigration Assessment Authority

Decision and Reasons

Referred application

IRAN

IAA reference: IAA17/03325

Date and time of decision: 22 May 2018 15:21:00

R Mikhail, 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. On 4 October 2016 the referred applicant (the applicant) lodged an application for a Safe Haven Enterprise Visa (application for protection). In that application he claimed to be a stateless Faili Kurd from Iran. In a statutory declaration submitted to the former Department of Immigration and Border Protection (the Department) on 14 June 2017, he subsequently claimed that he was not stateless but is a citizen of Iran.
2. On 2 August 2017 a delegate of the Minister for Immigration and Border Protection (the delegate) refused the grant of the visa and the applicant was notified by letter dated the same day. The delegate refused the visa on two independent bases, although I note that the covering letter refers to only one of those bases. In his decision statement, the delegate first assessed that the applicant had refused or failed to comply with a request under s.91W(1) of the Act to provide documentary evidence of his identity, nationality or citizenship, or has produced a bogus document, in response to the request, without a reasonable explanation. Secondly, the delegate assessed his claims for protection but found he was not a person in respect of whom Australia has protection obligations under s.36(2)(a) or s.36(2)(aa).

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) (the review material).
4. On 11 September 2017 the IAA received a submission on behalf of the applicant. In part, the submission includes legal argument, and refers to claims already raised by the applicant before the delegate and country information that was before the delegate. I do not consider the above to be new information.
5. The submission also states that the applicant does not wish to pursue a claim that he fears harm due to changing his religion because, as he stated during the protection visa interview, he has not yet made a commitment to become a Christian and is still learning about the religion. It also states that he does not want to pursue a claim that he will be targeted because he is homosexual because, as he stated in the protection visa interview, he is confused about his sexuality and cannot claim he wants to be an openly homosexual man. To the extent that these revised claims constitute new information, I am satisfied that the applicant genuinely no longer wishes to pursue these claims for the reasons he says. However in this particular case I am not satisfied there are exceptional circumstances to justify considering the new information because, for reasons which will become apparent, I have found it unnecessary to explore the applicant's substantive claims for protection.
6. Included with the submission was a new statutory declaration by the applicant dated 6 September 2017. I am satisfied this is new information. As this document post-dates the delegate's decision I am satisfied that it could not have been provided to the Minister before the Minister made the decision. In part, in his new statutory declaration, the applicant refers to aspects of the delegate's decision which he considers unfair and also refers to previous claims he raised before the delegate.
7. In the above declaration, the applicant has also provided information which I find difficult to reconcile with his previous claims before the delegate. In his previous statutory declaration of

14 June 2017, he had claimed he feared returning to Iran because he would be arrested as a result of attempting to force a woman named [Ms A] to have sex with him. During the protection visa interview he said he tried to take her virginity as a form of revenge against her father. When the delegate asked "How far did you go with this? Did you rip her clothes off and try to rape her", the applicant responded "I tried" and the delegate asked "How far did you go? Did you take her clothes off against her will?" and the applicant responded "I did something a bit and just let her to go". The delegate then told him it is quite a serious thing and is considered attempted rape and the applicant acknowledged this and said he was really ashamed to even talk about it. In his new declaration he claims that he would never have forced [Ms A] to have sex with him. He stopped and let go of her as soon as she said no and pulled away from him and he saw her clothes ripped. This seems to me to be inconsistent with his previous claim as to his intention at the time.

8. In his new declaration the applicant also claims that he does not fear being charged and tried before a court for this crime (attempted rape) but fears [Ms A]'s family or the Basij will take the law into their own hands and inflict their own punishment on him. In his first statement provided to the delegate dated 27 September 2016 he claimed that he feared being arrested by the police for what happened with [Ms A] and that the punishment for trying to have sex with a woman without her consent is very severe and, if he is convicted, they may try to hang him. He reiterated his fear of being arrested by the police because he attempted to force [Ms A] to have sex with him in his subsequent statutory declaration of 14 June 2017. During the protection visa interview he claimed that the Basij created a big file on him and he will be hung for what he did and feared that he will be charged and executed for attempted rape. Although I acknowledge that the applicant claimed during the protection visa interview that "with those people" they do not need witnesses or a reason to execute someone and that he was more scared of physical violence from her family, he later claimed during the same interview that he still feared possible charges for attempted rape and for this reason I find his new claim that he does not fear being charged and tried before a court to be inconsistent with his previous evidence.
9. No explanation has been provided in the submission to the IAA or in the applicant's new declaration in regards to the above discrepancies. His new claims about this incident appears to be an attempt to overcome the delegate's consideration of s.5H(2)(b) of the Act as he found the applicant had admitted to a serious non-political crime. Given this, and also because I have ultimately found it unnecessary to consider the applicant's substantive claims, I am not satisfied there are exceptional circumstances to justify considering his new statutory declaration.
10. The submission also refers to excerpts from a UK Home Office report published in July 2016 and a report by the United States Department of State published on 3 March 2017. These reports were not before the delegate and are new information. The excerpts cited from the above reports refer to a number of human rights issues in Sri Lanka. Both reports pre-date the delegate's decision and no explanation has been given for why this information was not and could not have been provided to the delegate. The submission notes that similar information is contained in a report by the Australian Department of Foreign Affairs and Trade (DFAT) that was before the delegate. Other sources of country information before the delegate also refer to similar information. Given this, and as I have found it unnecessary to consider the applicant's substantive claims, I am not satisfied there are exceptional circumstances to justify considering the above country information reports.
11. The submission also refers to an excerpt from a report by the Immigration and Refugee Board of Canada published on 10 March 2015 in regards to the treatment by Iranian authorities of

failed refugee claimants. This report was not before the delegate and is new information. The report pre-dates the delegate's decision and no explanation has been given as to why it was not and could not have been provided earlier. In part, the excerpt refers to information provided in another source that was before the delegate. Other information referred to about the treatment of failed asylum seekers by the Iranian authorities were published in 2010 and 2011. In his decision, the delegate considered a number of sources on this topic including more recent sources that post-date 2011 which I consider more current and appropriate in assessing this claim. For these reasons, and as I have ultimately found it unnecessary to consider the applicant's substantive claims, I am not satisfied there are exceptional circumstances to justify considering the above information.

12. There are a number of documents in the review material which appear to be Sri Lankan identity documents and unrelated to the applicant in this matter. I have not considered these documents in my assessment.

Applicant's claims for protection

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

- He is of Faili Kurdish ethnicity and is a citizen of Iran.
- He was born into a Shia Muslim faith but no longer practises Islam and has been attending Church in Australia and is researching Christianity but has not yet converted to Christianity.
- He was targeted by Basij officers when he was about [age] years old in connection with a past incident where his brother had insulted a well-respected [neighbour]. During this incident he was detained after being caught drinking in public with his friends and was raped during his detention. He did not tell anyone about the rape and feared his family would kill him over the shame.
- When he was around [age] years old he started spending time with a girl called [Ms A] who was the adopted daughter of [the neighbour]. In approximately late January 2013, he attempted to forcibly have sex with her as revenge towards her father. Her family found out what happened and wanted to hurt him. He was very scared from her family and the authorities and his own family so his brother assisted him to leave Iran and he left [in] February 2013 legally using his own passport.
- Since he departed Iran, the Basij have visited his family looking for him and his brother and father were detained. His family also found out about the rape.
- He suffers from post-traumatic stress disorder and has been receiving treatment from a psychologist in Australia as a result of the rape. He is also uncertain about his sexuality but does not want to be bisexual or homosexual.
- The Basij have created a file on him in regards to the attempted rape, that he has changed his religion and is homosexual.
- His family in Iran have also been told that he has changed his religion and he is homosexual.
- His passport was taken by the people smuggler during his journey to Australia and he is unable to provide any other identity documents from Iran because his family refused to send them to him as it is not safe for him to return to Iran and because his other siblings

have declared that he is no longer part of their family because they believe he has changed his religion and is homosexual.

- He also fears return to Iran on the basis of being a failed asylum seeker.

Identity documents – request from Minister

14. The critical issue in this case is whether the grant of the visa is prevented by s.91W of the Act. Under s.65(1), after considering a valid application for a visa, the Minister is to grant the visa if satisfied that (among other things) the visa criteria have been satisfied and the grant of the visa is not prevented by s.91W. If not so satisfied, the visa must be refused.
15. Section 91W(1) of the Act permits the Minister or an officer to request an applicant for a protection visa to produce, for inspection, documentary evidence of the applicant's identity, nationality or citizenship. Subsection 91W(2) provides that the Minister must refuse to grant the protection visa if the applicant, without a reasonable explanation, refuses or fails to comply with such a request, or produces a 'bogus document' (defined in s.5(1)) in response to the request, and at the time of the request, the applicant was warned, either orally or in writing, that the Minister cannot grant the protection visa if the applicant refuses or fails to comply with the request or produces a bogus document in response to the request. However, subsection (2) does not apply if the Minister is satisfied that the applicant has a reasonable explanation for the failure or refusal, and either produces the relevant documentary evidence or has taken reasonable steps to produce such evidence.

Application of s.91W to this case

16. On 21 January 2016 the applicant was sent a letter from the Department inviting him to apply for a Temporary Protection or Safe Haven Enterprise Visa. In that letter he was advised that he would need to satisfy the Department about his identity, nationality or citizenship and if he was unable to do so he must provide a detailed explanation for this. After lodging his application for protection, the applicant was sent another letter dated 11 October 2016 from the Department requesting that he produce documentary evidence of his identity, nationality or citizenship and informing him that if he refused or failed to comply with the request or produced a bogus document in response to the request, and the Minister is not satisfied that he has a reasonable explanation for doing so, the Minister must refuse to grant him a protection visa. During the applicant's protection visa interview, the delegate also made clear to the applicant that he needed to provide evidence of his identity and that he should explain to his family in Iran that there is a greater chance he will be returned to Iran if he does not provide this evidence and gave him seven days to provide that evidence.
17. I am satisfied the applicant was given a request under s.91W(1) of the Act, requesting that he provide documentary evidence of his identity, nationality or citizenship and that the request met the requirements of s.91W(2)(d).
18. In the applicant's arrival interview held in 2013 and in his application for protection, he claimed that he was a stateless Faili Kurd from Iran and had departed Iran on a fraudulent passport. However, a week prior to his protection visa interview, he provided a new statutory declaration dated 14 June 2017 to the Department where he claimed that he was in fact an Iranian citizen of Faili Kurd ethnicity and had departed Iran using his own genuine passport. He claims he was told by other people during the journey and in the detention centre that the only way to be prevented from being sent back from Australia was to say that he was stateless. Having considered the applicant's oral evidence in respect of his background and life in Iran

and knowledge of the country and that he speaks Farsi, I accept that the applicant is a citizen of Iran and that he initially falsely claimed that he was stateless for the reasons he has given.

19. In the above statutory declaration, the applicant claimed that he is unable to provide any identity documents from Iran. He claims the passport he travelled on was taken by the people smuggler during the journey to Australia and I accept this as plausible. He further claimed that some of his family members had refused to send him any documents because they say it is not safe for him to return to Iran and he explained in the protection visa interview that they fear he will return out of concern for his mother. He thinks his identity documents are in the possession of his other brother, [Mr B], who he claims will not send the applicant his documents or even a copy of his documents because he scared the applicant will use them to return to Iran. In addition, his other brothers, [Mr C and Mr D], have declared that he is no longer part of the family because they have been told that he was raped in Iran as a teenager and that he has changed his religion and that he is homosexual and for these reasons his brothers will not assist him at all and they have his documents. I note his claim that [Mr C and Mr D] have his documents is inconsistent with this claim that [Mr B] has his documents which causes me to doubt the credibility of the claim that [Mr C and Mr D] have his documents. Nonetheless, during the protection visa interview, the applicant further claimed that he had asked his sister to send him a copy of his identity documents and she said she would and he was given seven days to provide these documents to the delegate. There is no evidence that the applicant provided any evidence of his identity, nationality and citizenship to the delegate after the protection visa interview, or that he provided any further explanation for not doing so. I find that the applicant failed to comply with the Minister's request to provide documentary evidence of his identity, nationality or citizenship.
20. Even if the applicant's brothers, [Mr C and Mr D], had disowned him for the reasons he claimed, the applicant has claimed to have other siblings in Iran who he remains in contact with and I do not accept that [Mr C and Mr D] have all his identity documents. I do not accept as plausible, the applicant's claim that these siblings have refused to send him any documents because they are afraid that he will return to Iran when the applicant has been advised that his application for protection will be refused if he does not provide such evidence. He also subsequently indicated his sister was willing to assist him in providing him with such documents but he still failed to provide any documentary evidence of his identity, nationality or citizenship to the Department without further explanation. Although the delegate's decision was based, in part, on this failure, the applicant did not seek to address this in his submission or in the information he provided to the IAA.
21. I am not satisfied the applicant has provided a reasonable explanation for failing to produce evidence of his identity, nationality or citizenship. I am not satisfied s.91W(3) of the Act has been met.
22. Section 91W applies to the applicant. Therefore, the grant of the visa is prevented by that section.

Decision

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

Migration Act 1958

91W Evidence of identity and bogus documents

- (1) The Minister or an officer may, either orally or in writing, request an applicant for a protection visa to produce, for inspection by the Minister or the officer, documentary evidence of the applicant's identity, nationality or citizenship.
- (2) The Minister must refuse to grant the protection visa to the applicant if:
 - (a) the applicant has been given a request under subsection (1); and
 - (b) the applicant refuses or fails to comply with the request, or produces a bogus document in response to the request; and
 - (c) the applicant does not have a reasonable explanation for refusing or failing to comply with the request, or for producing the bogus document; and
 - (d) when the request was made, the applicant was given a warning, either orally or in writing, that the Minister cannot grant the protection visa to the applicant if the applicant:
 - (i) refuses or fails to comply with the request; or
 - (ii) produces a bogus document in response to the request.
- (3) Subsection (2) does not apply if the Minister is satisfied that the applicant:
 - (a) has a reasonable explanation for refusing or failing to comply with the request or producing the bogus document; and
 - (b) either:
 - (i) produces documentary evidence of his or her identity, nationality or citizenship; or
 - (ii) has taken reasonable steps to produce such evidence.
- (4) For the purposes of this section, a person produces a document if the person produces, gives, presents or provides the document or causes the document to be produced, given, presented or provided.

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