



Australian Government

Immigration Assessment Authority

Decision and Reasons

Referred application

IRAN

IAA reference: IAA18/05460

Date and time of decision: 15 November 2018 14:54:00

S Mansour, 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 Faili Kurd from Iran. On 18 July 2017 he lodged an application for a Safe Haven Enterprise Visa (SHEV).
2. On 6 August 2018, a delegate of the Minister for Immigration and Border Protection (delegate) refused to grant the applicant a SHEV. In summary, the delegate accepted that the applicant was a Faili Kurd, no longer adhered to Islam, that his cousins were harmed by the Iranian authorities and that he was cautioned for wearing traditional Kurdish clothes. The delegate did not accept that the applicant's (other) cousin was recently arrested and harmed, and concluded he did not have a well-founded fear of persecution or face a real risk of significant harm.

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. No further information has been obtained or received.

Applicant's claims for protection

5. The applicant's claims can be summarised as follows:
 - He is a Faili Kurd who was raised as a Shia Muslim but no longer adheres to any religion.
 - He was restricted in speaking his language, wearing traditional Kurdish clothes, and in employment opportunities as a Faili Kurd. Faili Kurds face issues accessing services.
 - His cousin engaged in anti-government student protests, disappeared and his body was found with his arms and legs tied up. He believes his cousin was imprisoned, tortured and murdered by the authorities.
 - His other cousin insulted the Supreme Leader during military service, and was physically assaulted, injected and required to be put into a [hospital] to date.
 - He was reprimanded for speaking Kurdish at university. He stopped attending university.
 - He faced [number] incidences of being approached by police for wearing Kurdish clothes. He was arrested, taken to the police station and made to sign a pledge not to do so again.
 - While the applicant was in Australia his (other) cousin participated in protests against the Iranian government. The authorities arrested and tortured his cousin before releasing him.
 - He fears return to Iran as an individual who sought asylum in a Western country.
 - He fears the Iranian authorities will suspect his involvement in anti-Iranian government political groups while he was in Australia or disbelieve his failed asylum seeker status.

- The recent sanctions against the Iranian government have worsened the economic, social and political situation.

Factual findings

Identity

6. At his Arrival Interview conducted on 6 June and 20 June 2013 (Arrival Interview), the applicant claimed he was stateless.
7. In his written Protection Visa application (PV application), he included a Statutory Declaration, witnessed 8 July 2017 and prepared with the assistance of a former representative (Statutory Declaration). In his Statutory Declaration, he stated that he was an Iranian citizen. He stated that he provided incorrect information at the Arrival Interview including his claimed stateless status. He has since provided identity documents in support of his claimed nationality. At the PV interview, the delegate asked the applicant to what extent the fact that he had a [family member] onshore who had provided his full name, family tree and citizenship status, impacted his decision to correct previously provided incorrect information. The delegate referred to the applicant's sister's disclosure of the applicant's citizenship status to the Department. It is not apparent what material the delegate was referring to in that regard and there is no documentary evidence of the sister's citizenship in the referred material. I have not placed any weight on these references but in any event, the applicant has admitted to Iranian citizenship.
8. In his Statutory Declaration, the applicant also sought to correct several pieces of information about his life in Iran and other details he had supplied at the Arrival Interview including the village he lived in, siblings' names, family composition, military service information and the handling of his passport by the smuggler. He said he was instructed by the smuggler to provide what he now says is incorrect information. At the PV interview, he had multiple opportunities to correct any other information. Despite this, at the PV interview, he provided further incorrect information about the presence of relatives in Australia. He eventually corrected the information. By way of explanation, he referred to his relatives telling him he did not need to say he had relatives in Australia. Despite the applicant's claimed correction of information in his Statutory Declaration, the applicant's credibility is further undermined by his continued provision of wrong information to the delegate at PV interview. I consider that and his delay of many years before correcting the Arrival Interview information to reflect poorly on his credibility as a witness.
9. I accept that the applicant is an Iranian national and Iran is the receiving country for the purposes of this review. The applicant has consistently identified as a Faili Kurd since his arrival to Australia. He has consistently indicated he was born in Ilam province and country information from DFAT indicates this is where Faili Kurds typically reside in Iran. The PV interview was conducted with the assistance of a Faili Kurdish interpreter. I accept that the applicant is a Faili Kurd. Despite some confusion as to his correct name, I am satisfied that his name is as stated in his *shenasnameh* and national identity card.

Religion

10. The applicant claims he was a Shia Muslim by default, and his family were non-practising Muslims. He claims that since coming to Australia, he believes in god but does not practise any religion. Country information from The Economist and Qantara online news sites indicates Iran to be a predominantly non-religious country. Many people are 'leaving the mosques in droves'

and on a spiritual search for meaning. At the PV interview the applicant said he did not want to attend mosque or other religious occasions but he practised Islam in Iran as a student and soldier. I accept that the applicant was overall not a religiously observant Muslim in Iran, apart from certain circumstances. I accept that the applicant no longer identifies as a Shia Muslim and may be considered a non-practising Muslim on return to Iran.

11. The applicant has not referred to any issues he faced as a result of being a non-observant Muslim in Iran. I am satisfied the applicant did not face issues due to this in Iran.
12. At the PV interview, the applicant claimed that if he returns to Iran, he will educate his family, friends and people around him on the existence of different religions, and that religion is unimportant, man-made and used to control people's minds. The delegate asked the applicant whether he had engaged in this type of activity in Australia where he enjoyed the freedom to do so. The applicant said that he did not undertake religious activity, had solely changed himself, read information through the internet and now understands that religion is man-made. At the PV interview, the delegate asked the applicant how information of him expressing his views to family and friends would come to the attention of anybody who may wish to harm him in Iran. The applicant responded that the Iranian government controlled people through religion and would not want to lose their authority but he failed to explain how these possible future discussions may come to the attention of anybody who wished to harm him.
13. I have concerns as to why the applicant has only raised this claim of wishing to educate people about religion at a late stage of his PV process. Overall, his evidence on this matter was general and unpersuasive and I consider this information to be embellished for the purposes of strengthening his protection claims. The applicant has not engaged in any particular activities relating to vocalising his views on religion in Australia or indicated that he has sought to educate his family and friends in Iran from Australia, for the period of over five years he has been here. I am not satisfied he will or that he genuinely wishes to educate 'people' more broadly on religion in Iran.

Faili Kurd

14. The applicant claims to fear harm on the basis of his Faili Kurd ethnicity. He claimed he was restricted in speaking his language and in employment opportunities. He claimed he stopped attending university including for reason of being reprimanded for speaking his language. He claimed Faili Kurds face issues accessing services. He said he worked as a labourer all his life and on average, in the last two to three years before leaving Iran, earned [amount] to [amount] Toman daily in casual intermittent work. He claimed the Iranian government wanted to keep Kurdish people separate, they could not access good jobs, could only access jobs that Persians did not want and even then were paid half the salary for the same job. He referred to the government pressuring Kurdish persons at university through their dress and language.
15. The Department of Foreign Affairs and Trade (DFAT) has reported it was unaware of cases of Faili Kurds facing adverse attention specifically due to ethnicity including those who were also Iranian citizens. DFAT indicated it was possible that individual Basij members may discriminate against minorities including Faili Kurds. DFAT indicated that treatment of Faili Kurds would depend on their status (whether they held citizenship, were registered refugees or were undocumented). Overall, country information during that period indicated that registered refugees or undocumented Faili Kurds may face difficulties, although there was no evidence of widespread official discrimination or harassment of Faili Kurds on the basis of their former Iraqi citizenship and/or their statelessness. DFAT indicated that Faili Kurd refugees may have lower

level access to some essential services than that offered to Iranian citizens. In 2008, Amnesty International reported that the use of the Kurdish language is frequently thwarted in education but expressions of Kurdish culture, such as dress and music, are respected. In 2014, DFAT reported that Faili Kurds who are Iranian citizens have access to employment on the same basis as other Iranian citizens. At the PV interview, the applicant said that his income was not much but it was only to survive, buy food and clothes. The applicant's evidence indicates he was able to meet his basic needs, access education including university education and apart from being reprimanded for speaking his language at university, he has not otherwise provided any credible details of any discriminatory treatment he faced (noting also my findings below about the claimed police incidences). Moreover, he has not provided any specific details about why his particular job situation was discriminatory, but rather has been general in his claims.

16. Based on country information, the applicant's evidence along with his status as an Iranian citizen, I do not accept that he faced any official discrimination due to his ethnicity in Iran. However, I am willing to accept that he may have faced some low level societal discrimination from time to time such as being harassed at university regarding speaking his language, but am not satisfied that he ceased his tertiary studies for this reason. At the PV interview, he said he left university for many reasons, including financial reasons and because he generally had no future in Iran as a Kurdish person. He referred to the importance of having money as otherwise he would be studying for nothing. I note the applicant managed to complete secondary education and access university studies in Iran and at the PV interview he referred to studying the [number] term of university before dropping out. He also indicated that his income covered his basic needs. Country information indicates equal access to employment to Faili Kurds who are Iranian citizens, and I also do not accept that he was compelled to discontinue education due to issues of access to employment.
17. The applicant has referred generally to his inability to voice himself as a Faili Kurdish person in Iran due to the risk of harm he may face. At the PV interview, he said that one reason he left Iran was for freedom of expression and freedom of speech. He said that he never took part in any protests or demonstrations in Iran because he feared being killed. I find this claim to be exaggerated. In his Statutory Declaration, in the context of putting forth his claims that the authorities will presume him to be associated with Kurdish political groups in Australia, the applicant outlined three such Kurdish groups operating in Australia. The applicant has not claimed to have engaged in any political groups in Australia. Despite his reference to Kurdish groups in Australia and the freedom he currently enjoys to voice himself here, he has not done so. I accept, consistent to his statements, that he attempted to live a quiet life in Iran, however, having regard to the applicant's evidence including based on the applicant's current activities in Australia, I am not satisfied that he is genuinely interested in vocalising such opinions as a Faili Kurdish person, in the public arena currently or in the reasonably foreseeable future in Iran.
18. The applicant claims members of the Iranian police forces [number of times] approached him in the park due to his traditional Kurdish clothing. He said he was arrested, taken to the police station and made to sign a written pledge not to repeat the behaviour before being released. In his Statutory Declaration, he said the [number] incidences occurred around [number] years ago and [number] years ago. At the PV interview, he said that following this, he stopped wearing traditional Kurdish clothes in public places and only did so away from the eye of the Iranian authorities. He later said that this claim was not his 'main issue' and 'not very important.' He said he sometimes wore traditional clothing but not all the time. Earlier in the PV interview, the applicant had said he had never been arrested or charged with a crime in Iran. This directly contradicts these claimed arrest incidences.

19. The delegate asked the applicant why the authorities would take issue with his Kurdish clothing given Ilam was a Kurdish area. The applicant said the authorities wanted to prevent people from thinking of their culture in terms of dress. He referred to Kurdish people being under pressure in Iran, Iraq, Turkey and Syria to stop thinking about their future. I do not find the applicant's general explanation pertaining to the regional situation of Kurdish persons to be convincing regarding his day-to-day ability to wear Kurdish dress in a majority Kurdish area. DFAT has reported that Kurds and those in Kurdish areas might face harassment or additional attention from police and military forces. However, generally Kurds in Ilam (from where the applicant originates) and Kermanshah are Shia and would normally face less challenges in interacting with the Government than other (Sunni) Kurds. The applicant has not put forth any claims or evidence as to why the Iranian authorities would have regarded him differently to other Shia Muslims in Ilam. Amnesty International also indicated that expressions of Kurdish culture, such as dress, were respected. Given the generality of his evidence, my overall credibility concerns and country information, I am not satisfied that the applicant was arrested due to his Kurdish dress nor of any events arising as a result.
20. The applicant claims there is a lack of available services for Kurdish people in Kurdish areas, where the Iranian government fails to build infrastructure. He said he felt he had to leave Iran or he otherwise would have killed himself due to failure to cope with the living circumstances. He said he had seen this occur to many friends who committed suicide. He has not provided any specific examples of how his access to any essential services was hindered in Iran. The applicant has not provided any credible evidence or details of any mental health issues he may have faced in Iran, apart from this assertion in his Statutory Declaration. While DFAT has indicated that Faili Kurd refugees may have lower level access to some essential services than that offered to Iranian citizens, 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 accessing services based on their ethnicity or religion. The other country information before me does not indicate otherwise. Considering the applicant is an Iranian citizen, the limited information he has provided in respect of this matter, his prior fabricated claim of statelessness and country information, I find his statements to be an embellishment of his living circumstances in Iran and overall claims. I am not satisfied that the applicant lacked access to any essential services in Iran.

Cousins' activities

21. The applicant claims that when he was around [age] years old, his cousin was involved in anti-government student protests. He claims his cousin disappeared and his body was found in a [place] by a [specified person], bearing signs of torture. He believes the authorities tortured and killed him. He said the secret service went to his cousin's family's home and warned them not to complain or take any action or else they would face harm. At the PV interview, the delegate gave the applicant multiple opportunities to explain how this claimed incident related to him. The applicant provided general statements about the mistreatment of individuals, including Kurdish persons, if they spoke out against the Iranian government including by attending rallies or protests. The applicant said that Kurdish people often speak out for their rights. He said he would have faced the same fate as his cousin if he continued his education.
22. The applicant provided vague responses about the link between this claimed incident and his own claims for protection. However, he was generally consistent regarding the details about the event itself in his Statutory Declaration and at the PV interview including the location, timing and circumstances of the incident. I am prepared to accept this claimed incident occurred considering the nature of the evidence the applicant gave is commensurate with his

young age at the time of the incident. However, I do not accept the incident with the applicant's cousin has any connection to the applicant's own claims for protection. The applicant has not claimed to have participated in any student protests. Noting the time span since the event occurred and the applicant's own evidence, I am not satisfied the applicant faced any adverse attention by the authorities for reason of or relating to his cousins' profile.

23. The applicant claims another cousin spoke out against the Supreme Leader during military service. As a consequence, his cousin was assaulted, injected and put into a [hospital], where he remains to date. In his Statutory Declaration, the applicant said this cousin had been in hospital for approximately [number] years. I have concerns about the plausibility of this claimed incident including the hospitalisation of the applicant's cousin for such an extended period due to being assaulted and 'injected' and thus whether it has been put forth in an attempt to strengthen the applicant's claims.
24. At the PV interview, the delegate gave the applicant opportunities to explain why this claimed incident related to his own protection claims. The applicant said that he himself faced no issues during his military service and was treated 'like other people' because he was not involved in politics. He later said that as a Kurdish person, he was given more difficult duties during military service such as standing at a checkpoint for six to eight hours, but that he coped with the situation. The applicant referred to being fearful to engage in political speech or activity during military service. Noting the applicant's inconsistent statements, I do not accept he faced issues stemming from his ethnicity while undertaking his military service. DFAT reports that conditions for military service conscripts are often poor, with low pay, poor living conditions, malnutrition and frequent physical and psychological abuse by senior officers but the conditions can vary considerably depending on individual placements and circumstances. I am not satisfied that the applicant faced more difficult work or poorer conditions during his military service, on account of his ethnicity.
25. I do not accept that there was an incident which took place with a cousin of the applicant during military service, noting the applicant's overall poor credibility, plausibility issues pertaining to the circumstances of the incident and his vagueness and inconsistencies at PV interview regarding how the claimed incident linked to his own claims.
26. At the PV interview, the applicant raised a new claim following the 'natural justice' break. He said four to five months previously, persons in Ilam protested against the Iranian government. He said he asked his brother to take part in the protest but his brother refused because their other brother [works in the Defence Force]. He initially said he asked his cousin and mobilised people to go and his cousin went. He then corrected the interpreter, stating he did not tell his cousin to go but his cousin did go. He said his cousin was arrested for [number] days, during which he was tortured. On release, he claimed his cousin fled Ilam and now lives in the mountainous area around Ilam. When asked multiple times by the delegate whether his cousin had been charged with a crime, the applicant provided unconvincing, implausible responses. He indicated that his cousin was not charged or sent to court. He said his cousin was arrested then released but afterwards a second attempt at arresting him occurred, despite the absence of any charges. If his cousin were of such adverse interest to the Iranian authorities as claimed, due to participating in protests, it is unclear why they would release him or fail to charge him with any crime. The timing of raising this new claim is somewhat questionable. In light of the applicant's overall lack of credibility, his delay in providing this information both prior to and during the PV interview and the lack of plausibility regarding the circumstances of this claimed event, I am not satisfied this event took place.

Refugee assessment

27. 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

28. 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.

29. I accept that the applicant is a Faili Kurd. I accept he may have faced low level harassment and discrimination due to his ethnicity from time to time but do not accept that he was prevented from obtaining an education, services or employment as a result. I do not accept the applicant developed any profile with the Iranian authorities either prior to or after his departure from Iran.

30. Country information from DFAT indicates that Faili Kurds who are Iranian citizens do not face adverse attention specifically due to their ethnicity and generally enjoy the same rights as other Iranian citizens, including equivalent access to employment, services, education and identity documentation. DFAT indicates that all Iranian citizens are entitled to basic health care coverage provided by the government and 90 per cent have health insurance. In 2014, Iran introduced a Health Transformation Plan aimed at improving efficiency, equity and effectiveness, especially in poorer and rural areas. According to the Iranian Constitution, the government commits to providing all citizens with free education up to secondary school level. Nevertheless, in 2016, DFAT reported that Kurds can face considerable societal discrimination which is not usually the result of official or state-directed policies and is rarely coupled with community-level violence. However, DFAT did not specify the nature of such discrimination, the category of Kurds it may affect or the circumstances in which it may have occurred. More recently in 2018, DFAT reported that it was not aware of specific instances whereby the Iranian authorities had singled out Faili Kurds for mistreatment, regardless of the category to which they belonged.

31. DFAT indicates that Faili Kurds who are Iranian citizens have access to employment on the same basis as citizens. The other country information before me does not indicate otherwise. I

note the applicant has been able to access work for most of his life. While he has claimed his wages were poor, country information from DFAT indicates that income and wealth inequality is pronounced in Iran with an estimated 40 per cent of Iranians living below the World Bank defined moderate poverty line of less than US\$3.10 per day. The Ministry of Economic Affairs and Finance reported that in 2017, unemployment in some sectors of the Iranian population was as high as 60 per cent. Despite the unfortunate employment situation, the evidence before me does not indicate that the applicant would be singled out in facing difficult employment conditions based on broad economic struggles in the country. Moreover, the applicant's evidence indicates he was not discriminated against on the basis of employment opportunities or conditions. I accept he may face poor economic conditions, and poor wages on return to Iran but I am not satisfied he would be precluded from obtaining employment or that his capacity to subsist would be threatened. The applicant completed schooling in Iran, commenced university before leaving for the reasons outlined earlier, accessed ongoing employment and has not otherwise raised specific claims regarding any impediments he personally faced in accessing services in Iran. I am not satisfied the applicant, as an Iranian citizen, lacked access to any essential services in Iran or was otherwise deprived of education or earning a livelihood.

32. DFAT indicates that Kurds who attempt to publicly assert their cultural or political rights are perceived to threaten the constitutional foundations of Iran and face increased risk of coming to the attention of the state. Amnesty International has reported that Kurdish human rights defenders, community activists and journalists face arbitrary arrest, prosecution, torture, imprisonment and grossly unfair trials before Revolutionary Courts and the death penalty. However, such circumstances and profiles do not apply to the applicant. I have concluded that the applicant has no genuine intention or desire to be involved in activities that may bring him the attention of the Iranian authorities
33. DFAT indicates credible reports of Kurds targeted by authorities for perceived links or family members with perceived links to Kurdish political groups but that most Iranian Kurds do not come to the attention of the authorities or only come to low level adverse attention by the state. Those who become known to the Iranian authorities are likely to face harassment due to their activities. I have not accepted the applicant's claimed arrests by the police, or that the claimed incident with his cousin had any perceptible link to the applicant. The applicant also said that his siblings had never been arrested or charged with a crime in Iran. The applicant has not become known to the authorities including for reason of any family links.
34. Overall, I am not satisfied that the treatment the applicant may face, on account of or stemming from his Kurdish ethnicity, amounts to serious harm.
35. I accept that the applicant no longer identifies as a Shia Muslim and may be considered a non-practising Muslim on return to Iran. The applicant has not engaged in any religious activities in Australia, nor has he indicated that he has sought to educate his family and friends in Iran from Australia. Country information from DFAT indicates that a Muslim who leaves their faith or converts to another religion can be charged with apostasy under Iranian law. Separately, persons of any faith may be charged with blasphemy for making comments deemed derogatory towards the Prophet Mohammad, other Shi'a holy figures or other divine prophets. Nonetheless, country information indicates that Iranian society is largely non-religious with increasing numbers of individuals who choose not to practice the country's official religion Shia Islam. DFAT indicates that it is unlikely for individuals to be prosecuted on charges of apostasy and highly unlikely that the government would monitor religious observance such as mosque attendance or participation in religious occasions. Accordingly, a non-practising Muslim is unlikely to come to the attention of the authorities. A perceived apostate is only likely to

attract attention through public manifestations of their new faith, attendance at house churches or through informants.

36. The applicant has not converted to a new religion or faced issues due to his lack of religious observance in Iran in the past. Based on my factual findings and country information, I am not satisfied he would attract adverse attention by the authorities for reason of being considered a non-practising Muslim. It is possible he may discuss issues of the existence of other religions, religion being man-made and used to control people's minds, with his family members and friends. I note the interrelation of such topics of discussion to politics, given Iran is a theocracy. DFAT recently reported that Iranians are able to criticise the government of the day robustly, both in public conversation and online in social media, though this freedom is not unlimited and there are well-established 'red lines.' However, I do not accept that the applicant's comments to family members or friends in the private sphere about particularly uncontroversial information such as the existence of religions other than Islam or his views of religion as a man-made construct would attract the adverse attention of the Iranian authorities. I am not satisfied he faces a real chance of serious harm on this basis.
37. The applicant claims he fears harm on return to Iran, having sought asylum abroad in a Western country. He claimed the Iranian government would suspect his involvement in political groups or other activities that are against the Iranian government during his long term presence in Australia. He said he would be questioned and disbelieved if he denied such involvement, taken away and nobody would know what happened to him. He claims he would face close monitoring in Iran.
38. At the PV interview, the applicant also said the Iranian authorities would jail and torture him and would not believe him to be a failed asylum seeker. He referred to the authorities being suspicious of his return and whether the Australian government had told him to do something.
39. There is no evidence to suggest the applicant had any existing profile with the Iranian authorities at the time that he left Iran legally on his genuine passport. There is also no evidence that the applicant has since developed any profile with the Iranian authorities. The applicant claims he threw his passport into the ocean under instructions of the smuggler. I accept this may have been the case. Country information from DFAT indicates the Iranian authorities are aware that many Iranians will seek to live and work overseas for economic reasons and they pay little attention to failed asylum seekers unless the individual has already come to official attention prior to departure.
40. Given the country information and the applicant's circumstances, I do not consider it plausible that the Iranian authorities would disbelieve he was a failed asylum seeker. I am satisfied that the applicant would be considered to be a failed asylum seeker returning from Australia, in Iran. Iran has historically refused the issuance of travel documents for the facilitation of involuntary returns of its citizens from abroad, but on 19 March 2018, Iran and Australia signed a Memorandum of Understanding (MOU) on Consular Matters including an agreement by Iran to facilitate the return of Iranians who arrived after this date and who have no legal right to stay in Australia. The applicant is not affected by this MOU, having arrived before March 2018 and because he is no longer in possession of his passport, if he is to return to Iran he will require travel documents which are issued only to voluntary returnees. If the applicant returns to Iran I am satisfied it will be as a voluntary returnee.
41. Country information from DFAT indicates that the Iranian authorities would usually question a voluntary returnee only if the individual has already come to the official attention of the government, such as committing a crime in Iran before departing. I have not accepted that the

applicant came to the official attention of the authorities prior to departing Iran. DFAT indicates that the Iranian authorities pay little attention to failed asylum seekers on their return to Iran. Since the 1979 revolution, Iranians have departed Iran in large masses and the authorities accept that Iranians will seek to live and work abroad for economic reasons. The Iranian authorities have little interest in prosecuting failed asylum seekers for activities engaged in abroad, including activities relating to protection claims. Persons with existing high profiles may face a higher risk of coming to official attention on return, particularly political activists.

42. The International Organisation for Migration (IOM) also indicates that a long stay abroad outside of Iran is not in itself an issue for voluntary returnees, as long as they left Iran legally. Those who left with their passports and are returned on a Laissez-passer will be questioned by the Immigration Police at the airport. This questioning may take a few hours, however according to IOM nobody has been arrested when travelling back on a Laissez-passer.
43. I do not accept that the applicant would have an adverse profile on return to Iran, such that he would face a real chance of any adverse attention by the Iranian authorities leading to more than routine questioning on return, although on the DFAT information even that is remote. I am not satisfied that any routine questioning that the applicant may face on return to Iran would meet the threshold of serious harm or that it is systematic or discriminatory conduct. I am not satisfied he faces a real chance of serious harm on this basis.
44. At the PV interview, the applicant referred to the recent sanctions against the Iranian government. He said that these have worsened the country's economic, social and political situation. Prior to these embargos and sanctions, he said the situation was already bad including that of persons facing arrests. He referred to the worsening situation for his family and relatives economically. He spoke generally and did not refer to any specific issues arising as a result. As per DFAT's recent reporting, a wide range of international sanctions have applied to Iran since the time of the 1979 revolution. US sanctions have targeted Iranian banks for helping finance Iran's nuclear and ballistic missile programs and terrorist groups. I accept that the international sanctions on Iran may place additional pressure on Iran's economy generally. I am not satisfied on the country information before me or in the applicant's evidence, that there would be any consequences for the applicant personally on this basis that can be said to result in serious harm or systematic and discriminatory conduct.
45. Considering the applicant's claims as a whole and the treatment I have found he may face on return, I am not satisfied there is a real chance of him suffering persecution in the reasonably foreseeable future.

Refugee: conclusion

46. 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

47. 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

48. 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.

49. I accept that the applicant may face some low level societal discrimination and harassment in Iran in the future. I also accept that the applicant may face routine questioning on re-entry to Iran, that the economic situation in Iran is poor, and that this may affect the availability of employment and wages. I am not satisfied that such conduct meets the threshold required to establish significant harm. I am not satisfied that it will involve pain or suffering that may reasonably be regarded as cruel or inhuman in nature, severe pain or suffering or extreme humiliation. It does not amount to the death penalty, arbitrary deprivation of life or torture. I am not satisfied that there is a real risk the applicant will face significant harm on return to Iran.

50. In relation to the remainder of the applicant's claims, I have found there is not a real chance the applicant will be harmed on return to Iran. The same standard applies in assessing real chance and real risk.¹ Based on the factual findings and country information outlined above, I find that the applicant will not face a real risk of significant harm on return to Iran.

Complementary protection: conclusion

51. 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.

¹ MIAC v SZQRB (2013) 210 FCR 505.

Applicable law

Migration Act 1958

5 (1) Interpretation

In this Act, unless the contrary intention appears:

...

bogus document, in relation to a person, means a document that the Minister reasonably suspects is a document that:

- (a) purports to have been, but was not, issued in respect of the person; or
- (b) is counterfeit or has been altered by a person who does not have authority to do so; or
- (c) was obtained because of a false or misleading statement, whether or not made knowingly

...

cruel or inhuman treatment or punishment means an act or omission by which:

- (a) severe pain or suffering, whether physical or mental, is intentionally inflicted on a person; or
- (b) pain or suffering, whether physical or mental, is intentionally inflicted on a person so long as, in all the circumstances, the act or omission could reasonably be regarded as cruel or inhuman in nature; but does not include an act or omission:
 - (c) that is not inconsistent with Article 7 of the Covenant; or
 - (d) arising only from, inherent in or incidental to, lawful sanctions that are not inconsistent with the Articles of the Covenant.

...

degrading treatment or punishment means an act or omission that causes, and is intended to cause, extreme humiliation which is unreasonable, but does not include an act or omission:

- (a) that is not inconsistent with Article 7 of the Covenant; or
- (b) that causes, and is intended to cause, extreme humiliation arising only from, inherent in or incidental to, lawful sanctions that are not inconsistent with the Articles of the Covenant.

...

receiving country, in relation to a non-citizen, means:

- (a) a country of which the non-citizen is a national, to be determined solely by reference to the law of the relevant country; or
- (b) if the non-citizen has no country of nationality—a country of his or her former habitual residence, regardless of whether it would be possible to return the non-citizen to the country.

...

torture means an act or omission by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person:

- (a) for the purpose of obtaining from the person or from a third person information or a confession; or
- (b) for the purpose of punishing the person for an act which that person or a third person has committed or is suspected of having committed; or
- (c) for the purpose of intimidating or coercing the person or a third person; or
- (d) for a purpose related to a purpose mentioned in paragraph (a), (b) or (c); or
- (e) for any reason based on discrimination that is inconsistent with the Articles of the Covenant; but does not include an act or omission arising only from, inherent in or incidental to, lawful sanctions that are not inconsistent with the Articles of the Covenant.

...

5H Meaning of refugee

(1) For the purposes of the application of this Act and the regulations to a particular person in Australia, the person is a refugee if the person:

- (a) in a case where the person has a nationality—is outside the country of his or her nationality and, owing to a well-founded fear of persecution, is unable or unwilling to avail himself or herself of the protection of that country; or
- (b) in a case where the person does not have a nationality—is outside the country of his or her former habitual residence and owing to a well-founded fear of persecution, is unable or unwilling to return to it.

Note: For the meaning of ***well-founded fear of persecution***, see section 5J.

...

5J Meaning of well-founded fear of persecution

- (1) For the purposes of the application of this Act and the regulations to a particular person, the person has a well-founded fear of persecution if:
 - (a) the person fears being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion; and
 - (b) there is a real chance that, if the person returned to the receiving country, the person would be persecuted for one or more of the reasons mentioned in paragraph (a); and
 - (c) the real chance of persecution relates to all areas of a receiving country.

Note: For membership of a particular social group, see sections 5K and 5L.
- (2) A person does not have a well-founded fear of persecution if effective protection measures are available to the person in a receiving country.

Note: For effective protection measures, see section 5LA.
- (3) A person does not have a well-founded fear of persecution if the person could take reasonable steps to modify his or her behaviour so as to avoid a real chance of persecution in a receiving country, other than a modification that would:
 - (a) conflict with a characteristic that is fundamental to the person's identity or conscience; or
 - (b) conceal an innate or immutable characteristic of the person; or
 - (c) without limiting paragraph (a) or (b), require the person to do any of the following:
 - (i) alter his or her religious beliefs, including by renouncing a religious conversion, or conceal his or her true religious beliefs, or cease to be involved in the practice of his or her faith;
 - (ii) conceal his or her true race, ethnicity, nationality or country of origin;
 - (iii) alter his or her political beliefs or conceal his or her true political beliefs;
 - (iv) conceal a physical, psychological or intellectual disability;
 - (v) enter into or remain in a marriage to which that person is opposed, or accept the forced marriage of a child;
 - (vi) alter his or her sexual orientation or gender identity or conceal his or her true sexual orientation, gender identity or intersex status.
- (4) If a person fears persecution for one or more of the reasons mentioned in paragraph (1)(a):
 - (a) that reason must be the essential and significant reason, or those reasons must be the essential and significant reasons, for the persecution; and
 - (b) the persecution must involve serious harm to the person; and
 - (c) the persecution must involve systematic and discriminatory conduct.
- (5) Without limiting what is serious harm for the purposes of paragraph (4)(b), the following are instances of **serious harm** for the purposes of that paragraph:
 - (a) a threat to the person's life or liberty;
 - (b) significant physical harassment of the person;
 - (c) significant physical ill-treatment of the person;
 - (d) significant economic hardship that threatens the person's capacity to subsist;
 - (e) denial of access to basic services, where the denial threatens the person's capacity to subsist;
 - (f) denial of capacity to earn a livelihood of any kind, where the denial threatens the person's capacity to subsist.
- (6) In determining whether the person has a **well-founded fear of persecution** for one or more of the reasons mentioned in paragraph (1)(a), any conduct engaged in by the person in Australia is to be disregarded unless the person satisfies the Minister that the person engaged in the conduct otherwise than for the purpose of strengthening the person's claim to be a refugee.

5K Membership of a particular social group consisting of family

For the purposes of the application of this Act and the regulations to a particular person (the **first person**), in determining whether the first person has a well-founded fear of persecution for the reason of membership of a particular social group that consists of the first person's family:

- (a) disregard any fear of persecution, or any persecution, that any other member or former member (whether alive or dead) of the family has ever experienced, where the reason for the fear or persecution is not a reason mentioned in paragraph 5J(1)(a); and
- (b) disregard any fear of persecution, or any persecution, that:
 - (i) the first person has ever experienced; or

- (ii) any other member or former member (whether alive or dead) of the family has ever experienced;

where it is reasonable to conclude that the fear or persecution would not exist if it were assumed that the fear or persecution mentioned in paragraph (a) had never existed.

Note: Section 5G may be relevant for determining family relationships for the purposes of this section.

5L Membership of a particular social group other than family

For the purposes of the application of this Act and the regulations to a particular person, the person is to be treated as a member of a particular social group (other than the person's family) if:

- (a) a characteristic is shared by each member of the group; and
- (b) the person shares, or is perceived as sharing, the characteristic; and
- (c) any of the following apply:
 - (i) the characteristic is an innate or immutable characteristic;
 - (ii) the characteristic is so fundamental to a member's identity or conscience, the member should not be forced to renounce it;
 - (iii) the characteristic distinguishes the group from society; and
- (d) the characteristic is not a fear of persecution.

5LA Effective protection measures

- (1) For the purposes of the application of this Act and the regulations to a particular person, effective protection measures are available to the person in a receiving country if:
 - (a) protection against persecution could be provided to the person by:
 - (i) the relevant State; or
 - (ii) a party or organisation, including an international organisation, that controls the relevant State or a substantial part of the territory of the relevant State; and
 - (b) the relevant State, party or organisation mentioned in paragraph (a) is willing and able to offer such protection.
- (2) A relevant State, party or organisation mentioned in paragraph (1)(a) is taken to be able to offer protection against persecution to a person if:
 - (a) the person can access the protection; and
 - (b) the protection is durable; and
 - (c) in the case of protection provided by the relevant State—the protection consists of an appropriate criminal law, a reasonably effective police force and an impartial judicial system.

...

36 Protection visas – criteria provided for by this Act

...

- (2) A criterion for a protection visa is that the applicant for the visa is:
 - (a) a non-citizen in Australia in respect of whom the Minister is satisfied Australia has protection obligations because the person is a refugee; or
 - (aa) a non-citizen in Australia (other than a non-citizen mentioned in paragraph (a)) in respect of whom the Minister is satisfied Australia has protection obligations because the Minister has substantial grounds for believing that, as a necessary and foreseeable consequence of the non-citizen being removed from Australia to a receiving country, there is a real risk that the non-citizen will suffer significant harm; or
 - (b) a non-citizen in Australia who is a member of the same family unit as a non-citizen who:
 - (i) is mentioned in paragraph (a); and
 - (ii) holds a protection visa of the same class as that applied for by the applicant; or
 - (c) a non-citizen in Australia who is a member of the same family unit as a non-citizen who:
 - (i) is mentioned in paragraph (aa); and
 - (ii) holds a protection visa of the same class as that applied for by the applicant.
- (2A) A non-citizen will suffer **significant harm** if:
 - (a) the non-citizen will be arbitrarily deprived of his or her life; or
 - (b) the death penalty will be carried out on the non-citizen; or
 - (c) the non-citizen will be subjected to torture; or
 - (d) the non-citizen will be subjected to cruel or inhuman treatment or punishment; or
 - (e) the non-citizen will be subjected to degrading treatment or punishment.

- (2B) However, there is taken not to be a real risk that a non-citizen will suffer significant harm in a country if the Minister is satisfied that:
- (a) it would be reasonable for the non-citizen to relocate to an area of the country where there would not be a real risk that the non-citizen will suffer significant harm; or
 - (b) the non-citizen could obtain, from an authority of the country, protection such that there would not be a real risk that the non-citizen will suffer significant harm; or
 - (c) the real risk is one faced by the population of the country generally and is not faced by the non-citizen personally.

...

Protection obligations

- (3) Australia is taken not to have protection obligations in respect of a non-citizen who has not taken all possible steps to avail himself or herself of a right to enter and reside in, whether temporarily or permanently and however that right arose or is expressed, any country apart from Australia, including countries of which the non-citizen is a national.
- (4) However, subsection (3) does not apply in relation to a country in respect of which:
- (a) the non-citizen has a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion; or
 - (b) the Minister has substantial grounds for believing that, as a necessary and foreseeable consequence of the non-citizen availing himself or herself of a right mentioned in subsection (3), there would be a real risk that the non-citizen will suffer significant harm in relation to the country.
- (5) Subsection (3) does not apply in relation to a country if the non-citizen has a well-founded fear that:
- (a) the country will return the non-citizen to another country; and
 - (b) the non-citizen will be persecuted in that other country for reasons of race, religion, nationality, membership of a particular social group or political opinion.
- (5A) Also, subsection (3) does not apply in relation to a country if:
- (a) the non-citizen has a well-founded fear that the country will return the non-citizen to another country; and
 - (b) the Minister has substantial grounds for believing that, as a necessary and foreseeable consequence of the non-citizen availing himself or herself of a right mentioned in subsection (3), there would be a real risk that the non-citizen will suffer significant harm in relation to the other country.

Determining nationality

- (6) For the purposes of subsection (3), the question of whether a non-citizen is a national of a particular country must be determined solely by reference to the law of that country.
- (7) Subsection (6) does not, by implication, affect the interpretation of any other provision of this Act.