



Australian Government
Immigration Assessment Authority

Decision and Reasons

Referred application

IRAN
IAA reference: IAA20/08008

Date and time of decision: 6 April 2020 16:03:00
G Deal, 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 applicant (the applicant) claims to be a stateless Faili Kurd from Ilam, Iran. [In] July 2013 he arrived by boat in Australia. On 18 July 2017 the applicant lodged an application for a Safe Haven Enterprise Visa (SHEV application) with the Department of Immigration, now part of the Department of Home Affairs.
2. On 6 March 2020 a delegate of the Minister for Immigration (the delegate) refused to grant the visa. The delegate did not find the applicant to be credible and found he had fabricated claims in an effort to strengthen his claims for protection. The delegate did not accept the applicant was stateless or that he left Iran on a forged passport, he considered him to be an Iranian national. The delegate accepted the applicant was born a Shia Muslim. However, the delegate did not accept the applicant was assaulted by Iranian authorities for not attending mosque. While the delegate accepted the applicant may have infrequently attended Christian churches in Australia he considered this was solely for the purposes of strengthening his claims for protection and did not accept the applicant had a genuine interest in Christianity. Overall, the delegate found the applicant did not meet the relevant definition of refugee, did not face a real risk of significant harm and was not a person in respect of whom Australia had protection obligations.

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. By email dated 3 April 2020 the IAA received a submission from the applicant's representative. In addition to information that was before the delegate and arguments, to which I have had regard, it contains new information detailed below.
5. The applicant told the Department he did not believe in the Islamic faith and did not practise it in Iran or Australia although born into it. In the submission the applicant has elaborated on what it is he dislikes about Islam, for example he has said that Mohammad married a six year old girl. He has also said he eats pork and drinks alcohol and will be ostracised for this. This is new information. The applicant told the delegate in the visa interview that he had established his own [business] in Australia. He now elaborates on this stating he employs two people and has completed [a large number of specified projects] in Australia and lists some of the business equipment he owns. This is new information. As detailed below I accept the applicant is a non-practising Muslim and has established a [business] in Australia. I am not satisfied exceptional circumstances exist to justify considering the information.
6. The applicant told the delegate in the visa interview that his two brothers had completed two years of military service and that when he left Iran he was just about to be called up for military service. In the visa interview the delegate referred to country information which indicated it was only Iranian citizens who were required to complete their military service and that he did not have anything before him indicating stateless Faili Kurds were also conscripted as claimed but invited the applicant to provide any further detail or information he had, although this was not provided. Now the applicant very briefly states he will desert the "Kurdish military service". This is new information. I consider this claim was squarely at issue in the visa interview. The applicant was represented at the primary stage and his then migration

agent attended the visa interview with him and assisted him with his post interview submission. The applicant has not explained why this information is only being provided now. It is also a brief and unsupported statement. I am not satisfied exceptional circumstances exist to justify considering the information.

7. I have obtained a 2018 Minority Rights and 2019 UK Home Office report on Iran.¹ I am satisfied there are exceptional circumstances to justify considering this more recently published material which provides more up to date information in relation to the treatment of minorities and returnees to Iran. Material relied on by the delegate other than the 2018 DFAT report was somewhat dated.

Applicant's claims for protection

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

- He is a stateless Faili Kurd from the mountains near Ilam, Iran. He lived with his family in Iran in a tent and in very poor conditions. His father has since passed away from natural causes but his mother and a number of older siblings continue to live in the family village.
- He was discriminated against as an undocumented Faili Kurd in Iran.
- He left Iran just prior to being asked to complete his compulsory military service.
- He left Iran on a passport in someone else's name arranged by a people smuggler.
- While born into the Shia Muslim faith he did not believe in this faith or practise this faith in Iran and was harassed and beaten by authorities because of this. Since being in Australia he has attended Christian churches and wants to convert to Christianity but has not done so to date out of a fear of harm in Iran.
- He has suffered from anxiety, weight loss and insomnia in Australia.
- He is a failed asylum seeker who has been in Australia for a number of years.

Refugee assessment

9. 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

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

¹ UK Home Office 'Country Policy and Information Note - Iran: Illegal exit ', 26 February 2019, 20190301152539; Ceasefire Centre for Civilian Rights (United Kingdom), Centre for Supporters of Human Rights (United Kingdom), Minority Rights Group International (United Kingdom), 'Rights Denied: Violations against ethnic and religious minorities in Iran', 13 March 2018, CIS7B83941441.

- 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.
11. In his visa application the applicant said he had suffered weight loss, sleeplessness and some anxiety and restlessness in the last three years and had seen doctors for this but that he did not have a diagnosed condition and had not seen a psychologist. The applicant has not provided anything further in relation to this claim, despite opportunities and being represented. While I am willing to accept he suffers some anxiety and sleeplessness, given his circumstances, I do not accept his condition is acute or debilitating or that he is being treated for this. The applicant has also said he only had limited assistance with his visa application from his then migration agent although he has not elaborated on this. He was assisted by a competent migration agent with his visa application and his statement of claims accompanying his visa application is detailed. He appeared able to understand the questions posed to him and respond in a meaningful manner in the visa interview and he did not indicate any difficulties at that time. He was also represented at the visa interview and had the assistance of his then migration agent with submissions to the Department after the visa interview. I consider the applicant has had adequate opportunity to present his claims and that he was able to meaningfully engage in the visa interview.
 12. The applicant claims he and his family were discriminated against and harassed and lived in very poor conditions in Ilam as stateless Faili Kurds.
 13. I have taken into account that the applicant claims to be stateless and to have come from a disadvantaged background and to have had limited education as well as other issues that can adversely impact an applicant's evidence including cultural differences and communication and translation issues. I note that as requested the applicant had a Faili Kurd interpreter at the visa interview who he said he understood and agreed to proceed with and he did not indicate otherwise during that interview or following the interview.
 14. For the reasons that follow I have serious concerns regarding the applicant's credibility and his claim to be stateless. The delegate also had serious concerns regarding the applicant's credibility and did not accept he was stateless.
 15. In the visa interview the applicant said he only had two [social media] accounts. One was for his [business] and the second was his own personal account and was in his first name but the surname on the account, "[Surname 1]", was just a nickname and he explained the meaning of this name. He also later said he had transferred money to his brother "A" in Iran, since being in Australia. The delegate told the applicant that financial transaction records indicated that the applicant had transferred money in 2017 to someone in Ilam Iran with the same first name as his brother "A" but that this person's surname was the same as the applicant's claimed nickname on his [social media] account, namely "[Surname 1]". The delegate provided the

applicant with this document and said this might lead him to conclude that the applicant had misled the Department as to his identity. In a post interview submission the applicant briefly said he did not make this transaction but that it did show his correct birthdate as per his Australian driver's licence. He said he lost his driver's licence a while ago and believes someone used this to transfer money to Iran but that it was not him and that he did not know the transferee. I find this explanation unconvincing.

16. I also note that the country information before me indicates that documentation is required to open a bank account in Iran.² The delegate asked the applicant how he transferred money to his brother in Iran when his brother did not have any documentation. The applicant's explanation was unconvincing and not entirely coherent but essentially he said his brother knew the people at the money transfer and they gave him the money without documentation, the applicant just rang it through and then they gave it to his brother. I do not accept this explanation as plausible.
17. Additionally, the delegate provided the applicant with a screenshot of a third [social media] Account he had found in open source material in the applicant's claimed name featuring a photo of the applicant. The delegate said that one of the "friends" on this account shared the applicant's mother's maiden name, had travelled to Australia on the same boat as the applicant and was also from Ilam Iran and a Faili Kurd but was an Iranian national and not stateless. The delegate asked the applicant if this was his maternal cousin and noted that the information raised concerns for him in relation to the applicant's claims about his family's statelessness. In the visa interview the applicant said he knew someone with the name "AA" but he was just a friend he met on the boat. In a post interview submission the applicant said that while the [social media] Account featured his photo and name he did not create it and did not know who did. He also said "AA" was a common name and that he was not his maternal cousin. He said that the names of this person's parents provided by the delegate did not match the names of the applicant's maternal uncles and aunts which he spontaneously provided in the visa interview, which is correct. Nonetheless I consider the explanation that someone else created a fake profile in his claimed name featuring his photo somewhat farfetched and I do not accept it and I consider this is also the applicant's [social media] account and that he has sought to mislead the Department about this. I note the applicant has not claimed to fear harm on account of his social media accounts and that they do not contain anything that could be perceived as critical of Islam or the regime.
18. The applicant has also provided a number of different birth dates. In his arrival interview he said he was a minor of [age] years of age and that he was born in [Year 1]. In his visa application he said he was born in [Year 2]. In his visa interview he said he was born in [Year 3]. He explained that until coming to Australia he did not know what year he was born because no one asked him this in the mountains where he lived and he only confirmed this after speaking with his parents. The delegate asked how his parents knew and the applicant indicated it was based on memory stating they had no documents. Later in the visa interview he said his Australian driver's licence listed his birth date as [Year 3] He has also consistently said he was born in Ilam, Iran. I accept he was born in [Year 3] in Ilam, Iran. He still has family in Ilam and I consider if he were to return it would very likely be to there. Given the consistency of the claim that he is from Ilam where many Faili Kurds reside, was born into the Shia faith (one of

² Department of Foreign Affairs and Trade (DFAT), 'DFAT Thematic Information Report - Faili Kurds in Iraq and Iran', 3 December 2014, CIS2F827D91722.

the distinguishing features of Faili Kurds as opposed to other Kurds) and asked for a Faili Kurd interpreter in the visa interview I accept he is of Faili Kurd ethnicity.³

19. The applicant's knowledge of his family history has been vague and varied while in contrast, he has been somewhat adamant that no one has or had citizenship or documentation. When the applicant was asked about his parent's families, the applicant said he did not know much. His father came from Iraq but was expelled during the time of Saddam Hussein. His mother's family were also expelled from Iraq but his mother was born in Iran once they moved. He said they had no contact with his father's family in Iraq as there was no phone to call them and then they passed away. He initially said he did not know where his paternal grandfather was born. When the delegate said he found it difficult to understand how the applicant had such limited knowledge of his family history the applicant said his paternal grandfather was born in Iraq, he was sure of this. He did not know where his mother's parents were born. While I acknowledge these events were some time ago and before the applicant was born and that the applicant claims he and his parents have had no formal education I am also surprised he has such little knowledge of his family history.
20. I have also found aspects of the applicant's claims somewhat farfetched. In the visa interview the applicant said he and his family had lived in the mountains in a tent all his life and up until his departure in 2013. He said they had no running water (only a well) electricity or gas (only cooking on an open flame). However he also said he spoke to his brother by phone. The delegate asked him how his brother had a phone in such a remote location. The applicant said he went to the top of the hill where the reception was better. The delegate asked how he recharged the phone given they have no electricity. The applicant said whenever his brother's phone needed recharging he would take a taxi into Ilam which was a one to two hour journey each way and that he recharged it in Ilam, vaguely stating there were places there to recharge it.
21. The country information before me⁴ indicates the Iranian government accepted most Faili Kurds expelled from Iraq as refugees and provided health and education services and housing and it is probable that the majority of Faili Kurd refugees in Iran are registered and have some kind of documentation. It also indicates that prior to 2003 Iran had granted Iranian citizenship to some 100,000 Faili Kurds. It reports the Iranian government has significantly improved the processing of Faili Kurd's claims to citizenship in recent years which can be attained in a number of ways including through paternal or maternal descent in certain circumstances and marriage among other ways. Further, laws have changed in Iraq enabling those expelled to have their Iraqi citizenship re-instated and that many have been returning since 2003 with reports that the majority have done this and that even those without documentation have been able to achieve this through various means. It also notes there are no reports of widespread official discrimination or harassment of Faili Kurds in Iran whether documented or undocumented. Faili Kurds of Iranian nationality reportedly have access to the same services as other Iranian nationals. It notes that those who are not citizens might face some restrictions in terms of accessing healthcare and education particularly when compared to citizens.
22. The applicant claims his father presented himself to the Iranian Government when he fled Iraq and entered Iran and that they gave him land to live on but no documents. I find this surprising given the country information detailed above indicates those who interfaced with the government and were given somewhere to live were also afforded other benefits and

³ DFAT, 'DFAT Thematic Information Report - Faili Kurds in Iraq and Iran', 3 December 2014, CIS2F827D91722; DFAT 'DFAT Country Information Report - Iran', 7 June 2018, CIS7B839411226.

⁴ DFAT, 'DFAT Thematic Information Report - Faili Kurds in Iraq and Iran', 3 December 2014, CIS2F827D91722; National Legislative Bodies, Iraq, National Legislative Bodies, Iraq, 'Iraqi Nationality Law', 1 March 2006, CIS18097.

documentation and that most Faili Kurds fleeing Iraq were recognised as refugees. When the delegate raised this as an issue in the visa interview the applicant briefly reasserted his father was not given documents.

23. The delegate asked the applicant how his brother bought a mobile phone without documentation. The applicant said you could get a mobile phone without registration and that you only needed documents for a land line phone. I note the country information before me indicates that normally identity documents would also be required for a mobile phone.⁵
24. The applicant has also said his two brothers each completed two years of military service. The country information before me indicates that it is only citizens of Iraq who have to complete compulsory military service of up to 24 months after they turn 18.⁶ When the delegate raised this as an issue in the visa interview the applicant said that they came and took Faili Kurds from the area and that his brothers were not issued with any documentation when they finished and so they had wasted two years of their lives. The delegate said he was not aware of any information to suggest this but invited the applicant to provide anything further in this regard although nothing was provided. I also note the country information before me which indicates undocumented Faili Kurds are technically subject to deportation from Iran.⁷ The applicant also told the delegate that he left at a time when he was about to also be called up for military service. I note the significance of this aspect of his claims and am surprised he did not mention it earlier. I also note that when the applicant left Iran he was about [age] years of age. I do not accept the applicant left Iran just before being called up to do his military service.
25. The applicant also said that he and his father worked growing produce on someone else's land and as [Occupation 1]. When asked for more details about this the applicant's evidence was vague and appeared to change when the delegate identified issues. For example, he was asked how much they earned in "toumans" for this work and the applicant vaguely said they were given money to manage their lives, for food and whatever they needed. When the delegate asked if he knew how much they were paid the applicant said 2000 toumans. The delegate asked how often that was and the applicant said it was daily. As noted by the delegate in the interview this is an exceedingly small amount (and many times less than even wages below the minimum wage in Iran paid for example to labourers) and when he asked the applicant if that was given to each of them or for both of them the applicant appeared to change the narrative now saying that the 2000 toumans was how much they gave the landowner for the contract to use the land.⁸
26. The applicant claims he left Iran on an Iranian passport issued in someone else's name and with their details but with his own photo. The country information before me⁹ indicates that it is not impossible to leave on a forged passport or to bribe officials at the airport in Iran however it notes that security is tight and it would be very difficult as relevant data bases contain the name and photo and other particulars of each person and the passport is checked against this database at the airport. Given the number of passport checks at the airport it would require bribing a number of officials. There are also harsh penalties for officials found to

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

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

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

⁸ Iranian Labour News Agency (ILNA), 'Iran's poor face a logjam in the labyrinths of work', 2 November 2009, CX257345; <https://www.xe.com/currencytables/?from=IRR&date=2010-01-01>.

⁹ Danish Immigration Service, 'Human Rights Situation for Minorities, Women and Converts, and Entry and Exit Procedures, ID Cards, Summons and Reporting, etc.', 1 April 2009, CIS17329; Canadian IRB: Immigration and Refugee Board of Canada, Immigration and Refugee Board of Canada 'IRN101052.E - Iran: Exit and entry procedures at airports and land borders, particularly at Mehrabad International airport; identity documents such as birth certificates, and marriage and divorce certificates', 3 April 2006, OGF10222E66.

be involved. While I note the applicant has said his brother organised the passport and his father organised the payment to the smuggler and so he did not know much about these aspects, his evidence about his experience at the airport and how he claims to have repaid the cost of his journey from working in Australia (25 million tumans he claims his father borrowed from a friend which he says he repaid when in Australia) has also been vague and unconvincing. When asked about his departure, the applicant said the smuggler accompanied him from Ilam to the airport and into the airport until the last exit. He said that other than being asked what his name was at the airport and where he was going he had no issues departing. The delegate asked how he thought he was able to pass through the airport without issue and the applicant indicated he was not sure but said that perhaps the smuggler had bribed people. When the delegate noted that the country information indicated it was very difficult to leave Iran on a false passport the applicant said he did not face any problems and that he was dizzy and sleepy when he left. When asked how he repaid the money the applicant said it was a long time ago and he just paid the money and "they" gave it at the other side. Despite rephrasing the question a number of times the applicant's responses in relation to whom he repaid the money were generalised and the only name he was able to eventually provide was of a man he indicated worked for the money exchange. While I accept the applicant left Iran at the airport without issue as this has been consistently claimed, on the evidence I do not accept the applicant left on a false passport as claimed.

27. On the evidence as detailed above, including the lack of detail, variations, aspects which have been farfetched or inconsistent, the country information and that I consider the applicant has sought to mislead the Department with transaction records indicating he has a different surname than that claimed I do not accept the applicant is a stateless Faili Kurd or that he left Iran on a passport in someone else's name or bribed officials. I consider he left Iran on his own genuine Iranian passport in 2013 without issue and that he is an Iranian national and that Iran is the receiving country.
28. The applicant has made a number of generalised claims in his visa application that as a stateless Faili Kurd he did not have any rights or entitlements in Iran; he could not buy a house or land; he could not marry; they were denied medical care and his father passed away because of this; they had to work illegally; the Iranian authorities would harass everyone in the mountains and his father was handcuffed on one occasion; and the police would steal their money and other possessions. The delegate questioned the applicant in more detail about his education but I found the applicant's evidence brief and unconvincing. The applicant said he did not attend school, his mother took him and tried to enrol him but they would not allow it as he had no documentation. The closest school was in Ilam which was one to two hours from their home by car. The delegate asked the applicant if there were any schools closer to his home and the applicant said there were not. He has also indicated his parents are uneducated. He also said that they used to bury their money at home as they did not have bank accounts and the officers would take it but he has not otherwise elaborated on this. He has otherwise not elaborated on the other generalised claims, despite opportunities in the visa interview and after the visa interview. I also note that in his decision the delegate did not accept the applicant suffered the discrimination claimed. As detailed above I do not accept the applicant is stateless. The country information before me indicates Faili Kurds who are Iranian citizens do not come to the adverse attention of authorities because of their ethnicity and that they have access to the same services and the same rights as other Iranian citizens and face little to no discrimination in accessing these based on their ethnicity and religion.¹⁰ I do not accept the applicant has faced the harassment and discrimination claimed which I consider he has exaggerated in an effort to strengthen his claims for protection. I do not accept he has not had

¹⁰ DFAT, 'DFAT Thematic Information Report - Faili Kurds in Iraq and Iran', 3 December 2014, CIS2F827D91722.

any education. I do not accept he had to work illegally. Given the consistency I am willing to accept he worked on the land with his father from 2001 until he left in 2013.

29. A report from the UK¹¹ indicates Kurds in Kurdish dominated areas like Ilam, where the applicant is from and where I consider he would most likely to return, are subject to underdeveloped and poor conditions characterised by open-air sewerage and uncollected garbage. DFAT¹² has consistently indicated that Iranian Faili Kurds are not subject to official discrimination in Iran and that they have access to the same services as other nationals of Iran. It is noted Faili Kurds are a subset of the broader Kurdish population and follow Shia Islam (in contrast to the broader Kurdish community who are generally Sunni and therefore also subject to increased discrimination on account of their faith). Kurdish communities comprise unregistered and registered refugees as well as Iranian nationals. It is reported that Kurds who originate from Iraq like the applicant's family are more accepted in Iran than others like Afghan refugees because they are generally perceived as being of the same ethnicity. I note the applicant is an Iranian national and that his family continues to reside in the family village where they have lived since he was born. He worked with his father on land in their area when he was in Iran. I also note the applicant is a single male in his late [age range] with no evident health issues that mean he is unable to work. He has worked for some five years in Australia in manual labour and formwork and in the visa interview said he had established his own business. I do not accept he had no education in Iran. He has not sought to undertake studies in Australia. He has family in his family village where he grew up. Based on the applicant's profile and the country information detailed above I accept the applicant may return to an area that is underdeveloped and poorer with uncollected garbage and open-air sewerage and may have to initially work in more menial roles on his return such as farming however I am not satisfied this would threaten the applicant's capacity to subsist or that these circumstances would otherwise amount to serious harm.
30. The applicant has consistently claimed to be a non-practising Muslim. In the visa interview after going through other claims the delegate asked him if there were any more reasons why he left Iran. The applicant said that he did not attend mosque in Iran attracting adverse attention from the authorities. When asked for more details about this the applicant said he attended every Friday but that he was not "deeply" following the religion he only went because he had to. When asked if he had ever encountered any difficulties in Iran because of this he said on two or three occasions he and other young people in the area who were not attending mosque were kicked and slapped by the authorities and that they went after that. When the delegate noted these aspects were not mentioned in his visa application the applicant essentially said he had mentioned it before, but this is not the case and I do not accept these brief and belatedly raised aspects of his claims which I consider he has fabricated in an effort to strengthen his claims for protection. When asked how he conducted himself with regard to religion in Australia the applicant said he had attended church with his girlfriend sometimes and believed in god and wanted to be baptised. However the applicant's evidence merely indicated that in the seven or so years he had been in Australia he had only attended church six or seven times while accompanying his girlfriend who is [from Country 1]. He could not remember the name or where any of these churches were other than the suburb and they were sometimes conducted in [Country 1 language] which he could not understand. He said he did not want to convert before he knew what his future held because it would be difficult for him in Iran if he did. When asked what Catholics believe in the applicant said "Jesus". When

¹¹ Ceasefire Centre for Civilian Rights (United Kingdom), Centre for Supporters of Human Rights (United Kingdom), Minority Rights Group International (United Kingdom), 'Rights Denied: Violations against ethnic and religious minorities in Iran', 13 March 2018, CIS7B83941441.

¹² DFAT, 'DFAT Thematic Information Report - Faili Kurds in Iraq and Iran', 3 December 2014, CIS2F827D91722; DFAT 'DFAT Country Information Report - Iran', 7 June 2018, CIS7B839411226.

asked to expand the applicant said he did not have much information about it and he was trying to read more. He said he had not been baptised but referred to his “conversion” meaning he now followed Christianity as opposed to Islam. I accept the applicant is a non-practising Muslim. I am willing to accept that out of curiosity the applicant has attended events with his girlfriend including mass on just over a handful of occasions in the seven or so years he has been in Australia. I do not accept the applicant has a genuine and on-going commitment to Christianity or intention to convert to the faith and it is for this reason (rather than out of a fear of harm) that I do not consider he will practise the faith or proselytise on his return to Iran.

31. DFAT¹³ reports that apostasy (which can include Muslims leaving the faith) and blasphemy (for otherwise insulting the Prophet) can technically be also punishable by death. It notes that the death penalty for these is now rare. Additionally, in the past those charged and executed also faced a litany of other crimes related to national security. More recently religiously based charges appear to be used to target Muslims who convert to Christianity and proselytise or those who challenge the prevailing interpretation of Islam or espouse unconventional religious beliefs. DFAT also reports that the Iranian authorities have little interest in prosecuting returnees for activities conducted abroad. The information before me does not indicate that merely not practising the faith (with the exception of non-adherence to dress codes and the segregation of sexes) would attract the adverse attention of the authorities. The applicant has said he did not regularly practise his Muslim faith in Iran and there is no credible evidence before me to indicate he was harmed on account of this. I am not satisfied the applicant faces a real chance of harm on account of his Christian activities in Australia or for being a non-practising Muslim.
32. I accept the applicant may have been affected by a Departmental data breach in 2014, resulting in the applicant’s name, date of birth, nationality, detention status and irregular maritime arrival becoming accessible for a period of time. The applicant has said he fears harm from Iranian authorities because of this. The possibility that the Iranian authorities accessed these details cannot be ruled out. I do not consider the applicant was wanted by the authorities or those working with them when he left Iran in 2013 or that he otherwise has a profile of adverse interest to the Iranian authorities. There is also nothing before me to suggest that details of his claims have been made publicly available. I am not satisfied the applicant faces a real chance of harm on account of the data breach.
33. The applicant fears harm as someone who has sought asylum in Australia. The country information before me¹⁴ notes that Iran has historically refused to accept involuntary returnees and as such I consider if the applicant were to return it would be under these circumstances.¹⁵ Returnees re-entering on their passport or temporary travel documents issued by Iranian diplomatic representatives do not attract much interest from authorities and will generally only be questioned if they are already on the authority’s radar, for example, because they committed a crime in Iran before they left. A long stay abroad in itself will also not attract the attention of the authorities if the person left Iran legally and while someone returning on a *laissez-passer* may be questioned on return it is not reported that anyone has been arrested in these circumstances. Millions of Iranians reportedly return to Iran each year without issue. It is also reported that the Iranian authorities pay little attention to failed asylum seekers and have little interest in prosecuting them for activities conducted outside Iran such

¹³ DFAT, ‘DFAT Country Information Report – Iran’, 7 June 2018, CIS7B839411226.

¹⁴ DFAT, DFAT Country Information Report - Iran, 7 June 2018, CIS7B839411226; DFAT, ‘DFAT Country Information Report Iran April 2016’, 21 April 2016, CIS38A8012677; UK Home Office, ‘Country Policy and Information Note - Iran: Illegal exit’, 26 February 2019, 20190301152539.

¹⁵ Under a more recent Memorandum of Understanding with Australia Iran has agreed to facilitate the return of Iranians who arrived after 19 March 2018 and have no legal right to remain in Australia.

engaging in Christian activities. They accept that many Iranians travel overseas for a number of reasons including work. I do not accept the applicant left Iran illegally. I consider he left legally on his own genuine Iranian passport. I accept he disposed of his passport on his journey to Australia and will be re-entering on a temporary travel document. Based on the applicant's profile and the country information detailed above I am not satisfied there is a real chance he will suffer harm on account of being a returning asylum seeker from Australia.

34. I am not satisfied the applicant has a well-founded fear of persecution.

Refugee: conclusion

35. 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

36. 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

37. 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.

38. The expressions 'torture', 'cruel or inhuman treatment or punishment' and 'degrading treatment or punishment' are in turn defined in s.5(1) of the Act.

39. For the reasons already discussed above I accept the applicant may return to an area that is underdeveloped and poorer with uncollected garbage and open-air sewerage and may have to initially work in more menial roles such as farming but I am not satisfied that these circumstances would amount to 'significant harm'. The harm does not include the arbitrary deprivation of life, the death penalty, or torture; nor am I satisfied he will be subject to cruel, inhuman or degrading treatment or punishment, as defined.

40. In considering the applicant's refugee status, I have concluded that there was no 'real chance' the applicant would suffer harm on his return to Iran for the other reasons claimed. 'Real chance' and 'real risk' involve the same standard. For the same reasons, I am also not satisfied the applicant would face a 'real risk' of significant harm.

Complementary protection: conclusion

41. 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.

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.