



**Australian Government**  

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**Immigration Assessment Authority**

**Decision and Reasons**

**Referred application**

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IRAN

IAA reference: IAA21/09940

Date and time of decision: 9 November 2021 10:08:00

J Jennings, Reviewer

**Decision**

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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

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### Visa application

1. The referred applicant (the applicant) claims to be a stateless Faili Kurd born in Iran.
2. On 27 July 2017 he lodged an application for a Safe Haven Enterprise Visa (SHEV), Subclass 790. He claims that as a stateless Faili Kurd he has no rights in Iran. He left Iran illegally in 2013 and came to Australia.
3. In Australia the applicant has been involved in protests and has posted political materials on social media and fears the Iranian authorities will harm him as a political dissident.
4. A delegate of the Minister for Immigration (the delegate) refused to grant the visa on 16 September 2021. The delegate was not satisfied that the applicant was stateless and found the applicant to be a national of Iran. The delegate was not satisfied the applicant had a profile that would indicate he would face a real chance of serious harm or a real risk of significant harm in Iran.

### Information before the IAA

5. I have had regard to the review material given by the Secretary under s.473CB of the *Migration Act 1958* (the Act).
6. In the statement of claims submitted with his protection visa application the applicant stated that due to an unfortunate error of the Department some of his documents and details had been lost. This was clarified at the protection visa interview and the applicant advised that this related to documentation given to him when he was released from immigration detention and was later resolved when the Department issued him an ImmiCard.
7. The IAA received a submission dated 6 October 2021 from the applicant's representative. The submission outlined why the applicant disagreed with the delegate's decision and commented on the "lack of meaningful investigation and poor quality of reasoning" in the decision which "would be indicative of the delegate's approach towards this task with a refusal mindset". The submission asserts the applicant's "serious brain injury with major physical and psychological sequelae that require long-term treatment ... has not been taken into account" and that treatment for this can "only be achieved in Australia". I am satisfied this is argument about matters that were before the delegate and not new information and I have had regard to the submission.

### Applicant's claims for protection

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8. The applicant's claims can be summarised as follows:
  - The applicant claims he was born in Ilam in Iran.
  - He claims to be a Faili Kurd and a Shia Muslim.
  - He claims his parents left Iraq and came to Iran at the time Faili Kurds and Shias were being persecuted by the Saddam Hussein regime. They are not accepted as citizens of either Iraq or Iran and as a result are stateless.

- In Iran they were initially registered as refugees and provided refugee documents which were renewed regularly by the authorities (amayesh cards).
  - As the applicant was born to stateless parents he is also stateless and is not entitled to citizenship in either Iraq or Iran.
  - When the applicant was around [age] years of age (approximately 2000) the authorities did not renew the amayesh cards for the applicant and his family. His parents tried unsuccessfully to have the cards renewed. Consequently, the applicant and his family have been living undocumented in Iran since that time.
  - As a stateless Faili Kurd/refugee in Iran the applicant has no rights; he cannot work legally, he and his father and brothers are generally limited to farming but occasionally pick up some casual work. He cannot access health care, or education or other benefits.
  - He decided to leave Iran. He raised some funds from savings and borrowed money from others to pay a people smuggler to help him come to Australia. He crossed the land border to [a country] where he was given a fake passport which he used to fly to [Country 1]. From there he came onto Australia.
  - In Australia he has become involved with a Kurdish group and has participated in political protests and Kurdish cultural events. He has been an active participant in protests about the mistreatment of the Kurdish people and his involvement has been broadcast on television. He posts material on social media.
  - The applicant fears that if he returns to Iran he will have no rights as a stateless Faili Kurd. He also fears the authorities monitor social media and will punish him for his political activity.
  - In Australia he was involved in a motor vehicle accident and has sustained injuries. A psychology report submitted advised the applicant was referred by a general practitioner in April 2018 for severe depression, depressed mood and problems with attention, concentration, poor memory, appetite, and lack of energy and motivation. The applicant has [medical conditions] following the accident and has been attending [therapy]. In the IAA submission it is stated the applicant can only receive the required treatment for this in Australia where there is no discrimination against him.
9. The psychology report related that the applicant is not a religious person and that “not believing to any religion could cause severe danger and high life risk”. The applicant has made no claims to fear harm in Iran based on religion and has consistently described himself as a Shia Muslim. He was asked at the protection visa interview if he had any other fears of harm in Iran to the claims already made and he did not advance any concerns based on religion. Nor does the IAA submission, which was critical of the delegate’s failure to address the applicant’s medical issues in his assessment, make any comment on religion as a protection claim or indicate this has been missed in the delegate’s assessment.

### **Factual findings**

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10. The review material includes information relating to third parties which the delegate has considered in his assessment. Each of these third parties travelled from Iran to Australia around the same time as the applicant and travelled on the same boat from [Country 1] to Australia as the applicant. On arrival in Australia they each claimed to be stateless Faili Kurds and they originate from the same general area in Iran as the applicant. One of them is his aunt and she travelled with her husband and family.

11. In his decision the delegate noted that some of these third parties have had their visa applications refused by the Minister's delegate because the delegate considered they are citizens of Iran and not stateless as claimed and that in some cases this decision has been affirmed by the IAA. The delegate noted that others among this group of third parties some have since withdrawn claims to be stateless, advised they departed Iran legally and/or have provided documents which indicate they are citizens of Iran.
12. The delegate noted the importance of considering "if the applicant really is a stateless person who happened to be on a boat with numerous other passengers who made false statements to Australian immigration officials about being stateless". The delegate went on to comment that the information provided by the applicant's relatives and others who travelled with him on the boat from [Country 1] to Australia is "relevant to the assessment of his SHEV application because it is open to the decision maker to find that numerous people who travelled on the same boat as the applicant from [Country 1] to Australia have falsely claimed to be stateless" and that it is open "to the decision maker to find the applicant is a citizen of Iran and ... did not depart Iran illegally".
13. The IAA submission addressed the matter of the delegate's findings and commented that "false statements of other passengers on the boat are not solid pieces of evidence to demonstrate that [the applicant] has also made a false statement when claimed he is stateless".
14. I am not persuaded that the circumstances of the people he travelled to Australia with are relevant to an assessment of the applicant's protection visa claims, or that decisions made by other decision makers in the cases of those third parties is relevant or instructive in assessing the applicant's claims. Each case must be assessed on its own merits. In the review before me I have had regard to the applicant's claims, as made in his protection visa application and at his protection visa interview, and to the IAA submission. I have had regard to the applicant's circumstances, including the mental health concerns, the documents provided, and country information regarding Iran and the situation for stateless Faili Kurds in Iran.
15. The applicant claims to be a stateless Faili Kurd without documentation. As outlined in the statement prefacing the protection visa application, Faili Kurds are a group of Shia Muslim Kurds who speak the Faili dialect of Kurdish and who originate from Ilam and other areas in Iran. I take into account that the applicant claims to be literate in Kurdish and to be a Shia Muslim and to have lived all his life in Ilam; this profile is consistent with that of the Faili Kurds.<sup>1</sup> The applicant has engaged with a Kurdish social group in Australia. I am satisfied that the applicant is a Faili Kurd.
16. While I accept the applicant is a Faili Kurd, not all Faili Kurds are stateless, nor are all the Faili Kurds who are stateless unregistered and/or undocumented.<sup>2</sup>
17. From the late 1970s, and exacerbated by the Iran-Iraq war, large numbers of Faili Kurds fled to Iran where they were accepted as refugees and provided health and education services and housing. A strict registration criteria applied and country information advises that not all could comply with this criteria; inability to register may be for reason of having travelled back to Iraq, residing in a "no go" area on the border with Iraq, or not having complied with terms

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<sup>1</sup> Danish Refugee Council, Landinfo (Norway) and Danish Immigration Service Iran, "On Conversion to Christianity, Issues concerning Kurds and Post-2009 Election Protestors as well as Legal Issues and Exit Procedures", February 2013, CIS25114; Danish Immigration Service and the Danish Refugee Council, "Iran: Issues concerning persons of ethnic minorities, Kurds and Ahwazi Arabs", February 2018, CIS7B83941872

<sup>2</sup> Department of Foreign Affairs and Trade (DFAT), "Country Information Report – Iran", 13 April 2020, 20200414083132

of prior registration. A registration fee is payable and registered refugees are issued with an amayesh card, or an earlier version of a refugee registration card.<sup>3</sup>

18. Estimates vary on the number of unregistered Faili Kurds in Iran. While estimates are that there are two million undocumented refugees in Iran this group is largely comprised of refugees from Afghanistan. The number of registered refugees in Iran amounts to nearly one million. Official estimates from the Iranian authorities in 2012 were that there were 43,000 Iraqi refugees in Iran of Iraqi origin which included Arabs as well as Kurds and Faili Kurds; the exact number of stateless people of Iraqi origin currently living in Iran is not known although. UNHCR advice in 2011 was that 5700 Faili Kurds who were registered as refugees in Iran.<sup>4</sup> The Department of Foreign Affairs and Trade (DFAT) cautions that reliable estimates are not available but considers it “probable the majority of Faili Kurd refugees in Iran are registered and have amayesh (refugee registration) cards”.<sup>5</sup> DFAT cited that one “credible academic estimate in 2014 suggested up to 8000 Faili Kurds remained stateless in Iran” but notes that the “numbers of unregistered refugees might also vary due to Faili Kurds travelling to Iraq and returning to Iran”.<sup>6</sup>
19. I have some concerns regarding the applicant’s account of becoming undocumented. His account is the authorities simply failed to renew their cards around 2000 and his family tried to have the cards renewed but were not successful. The applicant has not provided any evidence of this past registration or copies of past amayesh issued to his family, although I note the passage of time since the last claimed card was issued. I accept that he was young at the time, but I am concerned that there is no apparent reason for the failure to renew the cards. As noted above not all refugees could comply with the registration criteria, but having been previously registered and, noting the lack of any indication of travel to Iraq or other activity to preclude renewal, it is not apparent why the authorities would fail to renew the amayesh. The applicant has not indicated the failure to renew the card was because the family could not afford to pay the annual registration fee; while he described the work available to them as being poorly paid he indicated his father has been in regular employment doing farm work, furthermore “vulnerable” families may be exempt from payment.<sup>7</sup> Apart from the reasons already noted that preclude amayesh renewal (and which the applicant has not indicated apply to his family) there is no indication in the country information before me of authorities refusing to renew cards to refugees or stateless Faili Kurds. Furthermore, over time the authorities have modified and improved the registration process and upgraded and modernised the cards.<sup>8</sup> The registration process provides a measure by which the authorities can monitor and place some control over the refugee community, particularly over place of residence and movement within the country, and there seems no utility in refusing to renew the amayesh card of an already established and registered refugee family.
20. At the protection visa interview in support of his claim to be unregistered and undocumented the applicant spoke of the ability to obtain amayesh cards being “chance” with 60 to 70 percent of stateless Faili Kurds not having amayesh cards. However, I am not satisfied the

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<sup>3</sup> DFAT, “Country Information Report – Iran”, 13 April 2020, 20200414083132

<sup>4</sup> DFAT, “Response to IRN 11487 Iran - Faili Kurds”, 27 April 2011, CX263445; DFAT, “Faili Kurds”, 27 April 2011; CX241170: DFAT, “Faili Kurds”, 18 March 2011; CX234148: UNHCR, “Faili Kurds Seek Way Out of Identity Impasse”, 28 May 2008; CIS25598; United Kingdom Border Agency, “Country of Origin Information Report – Iran”, 16 January 2013, Iraq Regional Response Plan 2012, UN Office for Coordination of Humanitarian Affairs, 24 February 2012; CIS22633:

<sup>5</sup> DFAT, “DFAT Thematic Report: Faili Kurds in Iraq and Iran”, 3 December 2014, CIS2F827D91722

<sup>6</sup> *ibid*

<sup>7</sup> *ibid*

<sup>8</sup> DFAT, “DFAT Thematic Report: Faili Kurds in Iraq and Iran”, 3 December 2014, CIS2F827D91722; DFAT, “Country Information Report – Iran”, 13 April 2020, 20200414083132

applicant's assertion is supported by the country information, including country contemporary to the time of his residence in and departure from Iran; overall the country information points to most Faili Kurds registering as refugees in Iran and DFAT advice is that the majority of Faili Kurd refugees in Iran are registered as refugee.

21. I have had regard to the letters and English language translations the applicant has submitted in support of his claim to be an undocumented stateless Faili Kurd. These appear to be testimonies as to the applicant's undocumented stateless Faili Kurd status handwritten on letterhead titled Islamic Republic of Iran, Ministry of the Interior, Ilam Governor [General]. The signatories are described as "elderly and locally trusted people" who are "aware of [the applicant's] situation".
22. I have a significant concern regarding these documents and the apparent declaration to an official body in Iran of the existence of a family of undocumented stateless Faili Kurds. While DFAT advise deportation is rarely carried out, undocumented stateless Faili Kurds risk the possibility of deportation from Iran.<sup>9</sup> In these circumstances I do not accept that a group of people who know the family would put them at risk of deportation by making such a declaration to an official body and possibly alerting the authorities to their existence. The applicant's own comments at the protection visa interview reflect such concerns; at the protection visa interview he spoke of this letter being sent to him by furtive means because there would be trouble if the authorities know about these letters.
23. Even if I were to put aside this concern I have further concerns as to the corroborative value of these documents in supporting the applicant's claims. It is not apparent if any of the signatories are members of the Council or hold any official position; rather it appears the signatories are persons who have made their declaration which has then been certified by the council (noting the comment on the 2010 document "Considering the testify by the witnesses the information is certified"). As such there is no indication that these documents constitute any official declaration of the applicant's claimed undocumented stateless Faili Kurd status. I also note that three of the signatories share the same family name as his mother, which may indicate they are relatives. As relatives they may be in a position to testify to the family and the applicant's circumstances, but I am concerned this detracts from the value of the document as being an independent verification of the claimed status. In discussing these documents at the protection visa interview the prevalence of fraudulent documentation in Iran was put to the applicant by the delegate and in response the applicant declared that these documents are genuine.
24. In the IAA submission the documents are described as being a "certificate" obtained from the village Islamic Council. While the documents themselves may have been certified by the council, I am not satisfied that they are more than a certification of a testimony made by some locals and do not in themselves signify any official confirmation of that status. As testimony from locals these documents provide some support to the applicant's claims, but I am not satisfied that they represent more than statements made in support by locals, including some who appear to be relatives and are therefore not independent disinterested parties. As such I give these documents little weight.
25. While the country information bears out that a stateless Faili Kurd refugee living in Iran may not have documentation I have had regard to the applicant's account of his circumstances and he has failed to satisfy me that he is an undocumented stateless Faili Kurd as he claims. The country information does not support his assertion that 60 to 70 percent of stateless Faili

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<sup>9</sup> DFAT, "Country Information Report – Iran", 13 April 2020, 20200414083132

Kurds do not have amayesh cards. The claim the authorities simply failed to renew the family amayesh cards is difficult to accept in the context of the country information that indicates the authorities renewed cards annually and made regular upgrades to improve the registration system. Nor is there any indication that the family was otherwise prevented from registering, such as by having returned to Iraq.

26. Weighing the country information that indicates the high number of Faili Kurds who have registered their refugee status in Iran; that there is no indication his family otherwise faced any barrier that would have prevented amayesh renewal; that the country information does not indicate the authorities have failed to renew amayesh for already registered refugees (unless for the reasons already discussed). My concerns lead me to doubt that the applicant's claimed undocumented stateless Faili Kurd status is genuine. The testimony letters of support do not overcome my concerns.
27. While I have accepted that the applicant is a Faili Kurd he has failed to satisfy me that he is an undocumented Faili Kurd who is not registered with the Iranian authorities. I do not accept his claim that he was unregistered and undocumented in Iran.
28. In considering his identity and status in Iran further, particularly his claim to be stateless, I have had regard to his account of his departure from Iran, and I find this casts doubt on his claim to be a stateless Faili Kurd. I have particular concerns regarding his account as to how he funded this travel. He stated the total amount he paid for the travel was USD20,000, of which he paid USD3,000 from savings. The delegate noted this was a substantial sum of money and was not satisfied the applicant could have saved this amount. In the IAA submission the representative stated that this amount could have been saved easily in a "few months" because at this time "Iranian currency still had not lost its value against the foreign currencies due to the crippling sanctions".
29. The applicant departed Iran around May 2013 and in his Arrival Entry interview conducted on [date] June 2013 he stated he began to prepare for his travel around three weeks earlier. In the IAA submission the reference to saving for a few months to fund the travel does not accord with the comment he began making arrangements only three weeks prior to his travel. But I am willing to accept the three weeks travel preparation comment may refer simply to the logistics of the travel and that he may have been thinking of traveling earlier and therefore may have been saving for a few months as the IAA submission suggests.
30. But even accepting he may have been saving for a few months, taking into account his claimed personal circumstances and the country information regarding the prevailing economic situation in Iran leading up to his departure, I remain concerned at the claimed ability to save this substantial amount.
31. The country information advises Iran's economy grew from 2008 to 2011 before retracting in 2012, but throughout experienced high inflation, officially stated to be 45 per cent but estimated by DFAT in 2013 to be likely higher. This inflation resulted in increased cost of food and basic living expenses and was deepened by a depressed economy and high unemployment, resulting in many Iranians living below the poverty line.<sup>10</sup>

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<sup>10</sup> United Kingdom Home Office, "Country of Origin Information Report – Iran", 1 June 2011, CIS28510; DFAT, "DFAT Country Information Report Iran", 29 November 2013, CIS26780; DFAT, "DFAT Thematic Report: Faili Kurds in Iraq and Iran", 3 December 2014, CIS2F827D91722

32. Moreover, in the applicant's case the ability to save substantial sums would have been compounded by the claimed limitations to his employment and earning potential. His account has consistently been that as a refugee he could not access legal employment and any work he, his father or brothers have done was illegal, casual, or farming, apart from a period where one brother secured employment as a security guard. The applicant's only other declared employment in Iran outside farming or casual labouring was short term work as [an occupation] which he claims ceased after an altercation with the authorities. At the protection visa interview he was asked about his employment and he described this as not being well paid.
33. The country information confirms the limitations on work for refugees and that Faili Kurds/refugees are frequently employed in low-paying manual labour, although the conditions in Ilam are reported to be better for Faili Kurds than in other parts of the country.<sup>11</sup> Refugees live in poor conditions and are often under paid because of the tenuous nature of their employment; DFAT advises pay and working conditions for Faili Kurd refugees are often significantly worse than for Iranians employed in the same workplaces.<sup>12</sup> The claimed inability to access legal work and to only have worked in poorly paid casual work is difficult to reconcile with the applicant's claim he saved USD3,000 to partially pay for his travel to Australia and cast doubt on the veracity of his claims.
34. I also have concerns about the applicant's account of how he raised the remaining USD17,000 to pay for his travel. At the protection visa interview the delegate asked the applicant about the remaining funds. The applicant's account is that he borrowed USD12,000 from a person in the village he had known since childhood. He explained this person was involved in [specified work] and that he had since repaid these funds by transferring money from Australia.
35. I have concerns about the applicant's description of the repayment of these funds. The delegate asked the applicant detailed questions at the protection visa interview about the repayment arrangements and advised the applicant of the regulations in Australia governing money transfers overseas. The applicant's account was that he had repaid the USD12,000 in four to five transaction via different money exchange agencies; he had no evidence to show of the transactions and was not asked to prove his identity when he made the transactions.<sup>13</sup> I am concerned that the account he was not required to show any identity to the money exchange agencies is not consistent with the regulations governing such transactions as explained to the applicant by the delegate at the protection visa interview. While it may be that an individual agency may fail to adhere to the requirements it is difficult to accept that each of the four or five agencies the applicant used was negligent in this manner.
36. But even if I were to put the above aside, and I note the delegate made no adverse findings based on the claimed failure to adhere to money transfer regulations, other aspects of the applicant's account concern me. When asked at the protection visa interview if he had any evidence of the money transfer the applicant stated that he did not and his reason for not having evidence was that the transfer was via a money exchange agency. I have significant reservations about this explanation which proposes transfers of substantial amounts of money overseas without obtaining any evidence or verification of the transaction, or

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<sup>11</sup> United Kingdom Home Office, "Country of Origin Information Report – Iran", 1 June 2011, CIS28510; DFAT, "DFAT Country Information Report Iran", 29 November 2013, CIS26780; DFAT, "DFAT Thematic Report: Faili Kurds in Iraq and Iran", 3 December 2014, CIS2F827D91722

<sup>12</sup> DFAT, "DFAT Thematic Report: Faili Kurds in Iraq and Iran", 3 December 2014, CIS2F827D91722

<sup>13</sup> There was some clarification regarding the interpreting at the protection visa interview and it was established the applicant was referring to transfer via a money exchange agency rather than a bank transfer.



evidence of receipt of the funds by the end party; such an insecure transaction would leave him vulnerable in the event of a misappropriation by the parties involved in the transfer or complaint if the funds were not been received. I am not satisfied that he would transfer USD12,000 overseas in such circumstances and I am concerned his lack of evidence of such transfers, and his reason for the lack of evidence cast doubt that he has transferred this money as claimed.

37. I also have significant difficulty accepting a person he knew from the village would have been in a position to lend such an amount, or indeed willing to do so, even if their relationship dated from their childhood. I have noted the strained economic situation in Iran in 2012/2013 and it is difficult to accept a person employed [in] a village area would have access to such a substantial amount of money. Nor am I persuaded they would have been readily willing to lend such a substantial amount, particularly noting that repayment may be insecure or take a significant amount of time (from the declaration in his protection visa application the applicant did not work in Australia until November 2016, some three and half years after the claimed transaction) and the lender may be without these funds for a substantial time while continuing to live in economically strained Iran.
38. At the protection visa interview he was asked about the loan of the remaining USD5,000 and he replied USD2,500 was borrowed from [a relative]. When asked about the remaining USD2,500 he replied USD1,000 was provided by [a relative] of his father and the remaining funds came from people he did not know. It is not apparent how these relatives could access and provide these funds if they are also stateless Faili Kurds such as the applicant claims he and his family are. I am also concerned about the somewhat imprecise reference to borrowing USD1,5000 from people he does not know. I reiterate that in the context of economically depressed Iran these are substantial amounts of money and in these circumstances, I find it very difficult to accept that people the applicant has stated he does not even know would lend such amounts, moreover that they would lend such amounts for such a precarious venture where repayment may not be guaranteed or secure.
39. Considered overall I have significant concerns with the applicant's account he departed Iran illegally using the services of a people smuggler to whom he paid USD20,000 for the travel. I take into account his explanations at the protection visa interview as follows; the delegate outlined the provisions for remitting funds overseas and the applicant's description of his own experience was not consistent with this; as well as claiming to have sent money without showing identity documents he claims to have done so at multiple money transfer agencies. He has no evidence of the transfers, and from his account he was given none; considering the substantial funds involved it is difficult to accept he would not obtain and keep evidence in case of any dispute over receipt of the funds. The applicant has failed to satisfy me his account of his illegal departure from Iran is true. I do not accept this claim. I am satisfied the applicant has fabricated his account of his illegal departure in an attempt to enhance his claim to be stateless.
40. At the protection visa interview the applicant denied being a citizen of Iran and in response to information put to him by the delegate about Faili Kurd citizens in Iran the applicant stated the group of Faili Kurds who are Iranian citizens came to Iran at the time of the Shah, before the Islamic Revolution. In my assessment of the applicant's claim to be stateless and not a citizen of Iran I take into account the information that indicates the circumstances in which Faili Kurds are citizens or can access Iranian citizenship. Historically Faili Kurds originate from the Kermanshah region of Iran and many migrated to Baghdad and other areas of what is now Iraq at the beginning of the 20th century. Those who can prove their Iranian antecedents can access Iranian citizenship and large numbers have availed themselves of this

citizenship. DFAT cited a “credible academic report” from the University of Oxford which estimates that prior to 2003, Iran had granted citizenship to up to 100,000 Faili Kurd refugees of Iraqi origin, who could prove their Iranian origins; however DFAT caution their in-country sources were unable to verify this information and that “while some Faili Kurds might have Iranian ancestry, if their ancestors did not register with Iranian authorities at the time, establishing this ancestry would be difficult, if not impossible”.<sup>14</sup>

41. The applicant was put on notice by the delegate at the SHEV interview about the delegate’s concerns regarding his claims and the applicant maintained his claim to be a stateless Faili Kurd without documents. I take into account the applicant’s difficulty, beyond his own evidence, in proving an absence of documentation and as already noted I have given the letters endorsed by the village council little weight. But I am concerned that considered overall the applicant’s evidence and account contain implausibilities that cast doubt on the genuineness of his claims. The weight of country information points to most Faili Kurds being either registered with the authorities, or to being citizens.<sup>15</sup> While I accept that the applicant is a Faili Kurd, I am not satisfied that he is unregistered and therefore undocumented as he claims.
42. I have considered if the applicant may be registered as a refugee; if that were to be the case the applicant would have access to registration documentation to support his claimed status. However, he has not provided such documents and has maintained the claim to be unregistered and undocumented. But I find his account regarding the lack of renewal of the amayesh to be implausible and not supported by country information. Considered together with my concerns about his account of his departure I conclude that the applicant is seeking to conceal his status and has deliberately withheld identity documents.
43. In the light of the implausibilities in his account of his circumstances I do not accept that the applicant has provided a truthful account of his circumstances. While I accept that the applicant is a Faili Kurd, I am not satisfied that he is an undocumented Faili Kurd. Taking account of country information that indicates many Faili Kurds are citizens or have re-availed themselves of Iranian citizenship and considered together with the above, I am satisfied that the applicant is an Iranian citizen. I find that Iran is the receiving country for the purpose of this review.
44. Consistent with this finding and noting I have not accepted the account he departed Iran illegally is true, I am satisfied that the applicant departed Iran legally using a genuinely issued Iranian passport. Having found the applicant is a citizen of Iran I do not accept he could not work legally, access education and other services, or that his movement in Iran was restricted.
45. I accept the applicant has been involved with [Organisation 1] and has posted material on social media; the applicant has provided evidence of this involvement. I have some concern as to claims he has been active in protests in Australia regarding Kurdish political issues, which I have discussed further below in Refugee Assessment, but I am willing to accept he has attended such events.

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<sup>14</sup> DFAT, “DFAT Thematic Report: Faili Kurds in Iraq and Iran”, 3 December 2014, CIS2F827D91722

<sup>15</sup> United Kingdom Home Office, “Country of Origin Information Report – Iran”, 1 June 2011, CIS28510; DFAT, “DFAT Country Information Report Iran”, 29 November 2013, CIS26780; DFAT, “DFAT Thematic Report: Faili Kurds in Iraq and Iran”, 3 December 2014, CIS2F827D91722; UNHCR, “2012 UNHCR Country Operations Profile – Islamic Republic of Iran”, 2012; CX284851; DFAT, “Faili Kurds”, 27 April 2011, CX241170:

46. I accept that the applicant sustained injuries in an accident requiring ongoing treatment and therapy.

### **Refugee assessment**

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47. 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**

48. 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.
49. I have accepted that the applicant is a Faili Kurd. Faili Kurds are a minority group in Iran and country information reports the existence of official and societal discrimination against ethnic minorities in Iran, particularly in relation to cultural practices such as use of language, economic aid, business licenses, university admissions, job opportunities, permission to publish books, and housing and land rights.<sup>16</sup> Faili Kurds who are citizens of Iran enjoy the same rights as other Iranians and DFAT advises it is “not aware of specific instances whereby authorities have singled out Faili Kurds for mistreatment”.<sup>17</sup> Reporting in 2014 DFAT noted societal discrimination against Faili Kurds cannot be ruled out in individual cases but that Faili Kurds in Iran who are Iranian citizens can access services on the same basis as other Iranian citizens and “appear to face little to no discrimination in access to services”.<sup>18</sup> Taking account of the country information I am not satisfied that the applicant would experience serious harm in Iran on the basis of his ethnicity.
50. I have accepted the applicant has engaged with the [Organisation 1], has attended some public protests and has posted material on social media. The applicant has provided letters of

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<sup>16</sup> Danish Immigration Service, “Human Rights Situation for Minorities, Women and Converts, and Entry and Exit Procedures, ID Cards, Summons and Reporting, etc”, April 2009, CIS17329; DFAT, “Country Information Report – Iran”, 13 April 2020, 20200414083132

<sup>17</sup> DFAT, “Country Information Report – Iran”, 13 April 2020, 20200414083132

<sup>18</sup> DFAT, “DFAT Thematic Report: Faili Kurds in Iraq and Iran”, 3 December 2014, CIS2F827D91722

support from other Society members and copies of social media activity attesting to his involvement.

51. The IAA submission described the applicant as an activist political dissident who is in serious danger should he return to Iran. Country information from reputable international sources reports restriction of cultural and political activities by the Iranian authorities and that the authorities have pursued activists linked to Kurdish political groups.<sup>19</sup> DFAT further advises that the Iranian Government has been engaged in a low-level insurgency with Kurdish militias in border areas between Iran and Iraq and that as a consequence Kurds in those areas may face harassment or additional attention from the police and military forces. However, DFAT notes that in general Kurds in Ilam are Shia, so would normally face less challenges in interacting with the government than other Sunni Kurds, who are largely present in the north.<sup>20</sup> Noting the profile of Kurdish activist who is of concern to the Iranian authorities and taking into account the applicant's own activities, as discussed below, I am not satisfied he would come to harm in Iran for reason of these activities.
52. The letters of support from the [Organisation 1] attest to the applicant's involvement with the group from approximately 2015; he is described as "contributing to the community" and being involved with [various activities]. These letters of support indicate a cultural and community engagement; there is no indication in these letters of the applicant engaging in political activism or being a dissident.
53. In addition to notifications of cultural events and charity events to raise funds for people in the north of Kurdistan the social media posts also show the applicant has posted notifications of protests in Australia and material discussing the plight of Kurds and mistreatment Kurds have experienced. Not all the posts are in English and none of the [social media] material has been translated into English but from the graphics some posts are evidently political. Much of the material is focussed on Kurdistan and is critical of the mistreatment of Kurds by the Turkish government, rather than Iran. Of the [social media] material the Kurdistan flag is evident in one photograph. The material dates from 2014 to 2020. The [social media] material provided shows the applicant has posted [number] [posts] with no evident Replies or Likes to these [posts], and that he has [number] Followers. The [social media] material is mostly material the applicant has Liked or re-posted, generally without further comment. He has signalled an intention to attend a protest event at [a venue]. The material overall has attracted some Likes, Shares and Comments, the largest being a post showing the applicant was with [number] others at [an event] hosted by the [Organisation 1].
54. Overall, the applicant's social media activity shows a person involved in Kurdish cultural activities in Australia, who has attended events in Australia, including protests about the mistreatment of Kurds. His social media activity has been limited to a small number of [social media] comments, and his [social media] posts are largely him re-posting material created by others. This material does not indicate the applicant has a wide audience or that he is influencing people in any manner which is negative to the Iranian authorities or would be of

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<sup>19</sup> United States Department of State, "Country Reports on Human Rights Practices for 2019 – Iran", 11 March 2020, 20200312093514; UK Home Office, "Country Background Note: Iran", 15 November 2019; 20191126100520; Human Rights Watch, "World Report 2019", 20190118091502; Minority Rights Group International, "World Directory of Minorities and Indigenous Peoples - Iran Overview", July 2014, CX324703; Amnesty International, "Amnesty International Report 2016-2017", 23 February 2017, NG2A465F54; Human Rights Watch, "Human Rights Watch World Report 2017", 13 January 2017, NG2A465F52; US Department of State, "Iran – Country Reports on Human Rights Practices 2016" , 3 March 2017, OGD95BE926964

<sup>20</sup> DFAT, "DFAT Thematic Report: Fails Kurds in Iraq and Iran", 3 December 2014, CIS2F827D91722; DFAT, "DFAT Country Information Report Iran", 21 April 2016, CIS38A8012677; DFAT, "Country Information Report – Iran", 13 April 2020, 20200414083132

concern to the Iranian authorities. I am not satisfied this activity supports the contention he is an activist political dissident in serious danger from the Iranian authorities.

55. Similarly, I am not satisfied his attendance at some protests would be of concern to the Iranian authorities. At the protection visa interview the applicant initially spoke of being politically active and being active whenever there is a protest, but when questioned in detail he reported having attended [number] protests. Of those he could only give a broad account; the first protest he attended being to [details deleted] but he could not remember the year of the protest; a further protest was held at the [venue] to protest [an issue]; a further protest was at [a venue] and another protest was at another building. Even taking into account the effects on the applicant's memory following his brain injury the applicant's description of his involvement in protest activity in Australia was basic and does not point to an activist political dissident. Moreover, he was asked at the protection visa interview if he was leader or organiser of these protests and the applicant responded that he was active in helping with [events]; he did not indicate any leadership or organisational role in protests. While I accept he has attended protests, and I accept that he may have appeared on television doing so, I am not satisfied this would attract adverse attention should he return to Iran. The indications are the applicant has not been a leader or organiser of protests; he has attended such events as a participant and at most has attended [number] in the approximately six/seven years he has lived in the community in Australia and been involved with the [Organisation 1].
56. I am not satisfied that there is a real chance he would be experience any harm on this basis should he return to Iran. DFAT notes that according to international observers, Iranian authorities pay little attention to failed asylum seekers on their return to Iran.<sup>21</sup> Since the 1979 revolution many Iranians have left the country in large numbers to live abroad and "international observers report that Iranian authorities have little interest in prosecuting failed asylum seekers for activities conducted outside Iran, including in relation to protection claims."<sup>22</sup> Overall the country information points to Kurdish rights activists attracting attention but I am not satisfied the applicant's activities or the protests he has attended would cause him to be imputed as an insurgent or activist or otherwise of concern.<sup>23</sup> I note the reports from the Center for Human Rights in Iran and others of asylum seekers who have come to adverse attention on return to Iran.<sup>24</sup> Notwithstanding the report of an asylum seeker who was lashed on return from Norway in 2017 those of adverse interest are those involved in anti-government activities, either in Iran or during their time abroad and/or are members of an oppositional political party or involved in political activities in other ways.<sup>25</sup> I am not satisfied that the applicant's activities in Australia would attract adverse interest should he return to Iran. Nor does the country information indicate that returning asylum seekers are imputed with an anti-government political opinion or harmed because of their

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<sup>21</sup> DFAT, "Country Information Report – Iran", 13 April 2020, 20200414083132

<sup>22</sup> *ibid*

<sup>23</sup> Nalia Radio and Television (Iraq), "27 Kurds Executed In Iran For Political, Security Reasons In 2016, Says Rights Org", 23 April 2017, CXC9040666158; Danish Immigration Service and Danish Refugee Council, "Issues concerning persons of ethnic minorities, Kurds and Ahwazi Arabs", February 2018, CIS7B83941872

<sup>24</sup> Immigration and Refugee Board of Canada, "IRN200133.E - Iran: Treatment by Iranian authorities of failed refugee claimants and family members of persons who have left Iran and claimed refugee status (2017-February 2020)", 9 March 2020, 20200402123733; Center for Human Rights in Iran (United States), "Reformist Political Activist Turned Refugee Briefly Arrested Upon Return to Iran", 18 October 2017, CXC90406615858; , Iran Human Rights (Norway), "The Kurdish asylum seeker Rahim Rostami, charged with "actions against the nation's security", released on bail'19 June 2011, CX274950

<sup>25</sup> Iran Human Rights (Norway), "Woman Asylum Seeker Lashed 80 Times After Being Deported to Iran From Norway", 20 September 2017, CXC90406614387

asylum claim and I am not satisfied that there is a real chance he would be harmed on this basis as a returning asylum seeker, even considered with his activities in Australia.

57. The applicant has not claimed he would continue similar activities should he return to Iran. He has not claimed to have been involved in any political activities in Iran in the past. The letters from the [Organisation 1] indicate a largely social focus for the applicant's involvement and his social media posting includes notifications for social and cultural events. I note the psychology report referred to the applicant being separated from his parents with whom he enjoyed a close relationship and his concerns resulting from being socially isolated and not involved in social activities in Australia. Should the applicant return to Iran he would have access to his family and social network and may not continue to engage in the social and Kurdish cultural activities he has enjoyed in Australia, or in the social media activity and attending events to protest mistreatment of Kurds. But even if he were to continue such activity I am not satisfied it would raise adverse concerns for the authorities.
58. I note the report that in 2016 a number of Kurds were arrested after a large public Newroz celebration for wearing Kurdish outfits and dancing folk dances during the festivities, but I take into account that this occurred in the northern Kurdistan region where there is heightened security and which is the base for political activists calling for an independent Kurdistan.<sup>26</sup> I accept that the authorities may seek to repress protests, but the indications are that those who are detained at protests are organisers and activists.<sup>27</sup> I am not satisfied that there is a real chance the applicant would experience harm should he return to Iran and engage in similar activities to those he has engaged in while in Australia.
59. While I have not accepted the applicant departed Iran legally I accept that he may not have the passport he used to leave Iran or that this may no longer be valid and that to return to Iran he would require documentation to be issued to facilitate his travel, but country information advises that historically Iran does not accept involuntary returnees and does not issue travel documents to involuntary returnees.<sup>28</sup> I find that if the applicant is returned to Iran it would be on a voluntary basis and there is no indication in the information before me that voluntary returnees face harm on return. Sources advise that Iranians returned on a laissez-passer will be questioned by the Immigration Police at the airport and while this questioning may take a few hours the country information does not support a finding returnees are harmed in this process.<sup>29</sup>
60. I have accepted that the applicant sustained injuries in an accident requiring ongoing treatment and therapy. I note the psychologist report of the need for long term treatment and the comments in the IAA submission that he can only receive the required treatment in Australia where there is no discrimination against him.
61. I have not accepted the applicant is stateless and the country information advises that Iranian citizens have access to free health care through the public system. The health system in Iran is highly regarded in the region and spending on health care is a priority. In 2018 the Ministry

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<sup>26</sup> DFAT, "DFAT Country Information Report Iran", 21 April 2016, CIS38A8012677; Radio Zamaneh, "Iranian Kurds appear targeted for arrests during Norooz", 26 March 2016, CX6A26A6E2558

<sup>27</sup> Radio Farda (Czech Republic), "Anatomy of Suppression in Iran - the Institutions and Tactics that Repeatedly Quash Dissent", 21 August 2018, CXBB8A1DA34009; Center for Human Rights in Iran (United States), "Rouhani's Intelligence Ministry and Khamenei's IRGC Widen Crackdown Ahead of Election", 16 March 2017, CXC9040664493; DFAT, "Country Information Report – Iran", 13 April 2020, 20200414083132; US Department of State, "Iran – Country Reports on Human Rights Practices 2016", 3 March 2017, OGD95BE926964

<sup>28</sup> DFAT, "Country Information Report – Iran", 13 April 2020, 20200414083132

<sup>29</sup> DFAT, "Country Information Report – Iran", 13 April 2020, 20200414083132; UK Home Office, "Country Background Note: Iran", 15 November 2019, 20191126100520

of Health and Medical Education found that nearly one-quarter of adults suffer from some form of mental illness and the government has developed a mental health care policy to increase the availability of mental health services, including in rural areas.<sup>30</sup> The country information does not support a finding that Faili Kurds are discriminated against in accessing health care in Iran. I am not satisfied the applicant would be denied access to the required treatment in Iran or face any discrimination that would prevent him accessing health care he may require. I am not satisfied he would face harm on this basis.

62. I have considered the applicant's circumstances as a whole, and I am not satisfied there is a real chance of the applicant suffering persecution in the reasonably foreseeable future in Iran on any of the bases claimed.

### **Refugee: conclusion**

63. 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**

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64. 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**

65. 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.
66. 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.
67. DFAT report that societal discrimination against Faili Kurds cannot be ruled out in individual cases but that Faili Kurds in Iran who are Iranian citizens can access services on the same basis as other Iranian citizens with "little to no discrimination".<sup>31</sup> I am not satisfied on the evidence before me that any discrimination the applicant may face will involve deprivation of life, the death penalty, torture, cruel or inhuman treatment or punishment, or degrading treatment or punishment and I am not satisfied the applicant would face a real risk of significant harm in Iran for reasons of his ethnicity.

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<sup>30</sup> DFAT, "Country Information Report – Iran", 13 April 2020, 20200414083132

<sup>31</sup> DFAT, "DFAT Thematic Report: Faili Kurds in Iraq and Iran", 3 December 2014, CIS2F827D91722; DFAT, "Country Information Report – Iran", 13 April 2020, 20200414083132

68. I have found that being questioned on return to Iran would not amount to serious harm. I also find this does not amount to significant harm as defined.
69. I have otherwise found that there is not a real chance that the applicant faces harm on any of the bases claimed. Noting that the “real risk” test for complementary protection is the same standard as the “real chance” test, and based on the same information, and for the reasons set out above, I am also satisfied that there is not a real risk that he would face significant harm for these reasons.

**Complementary protection: conclusion**

70. 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**

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



## Applicable law

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### **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.