



Australian Government

Immigration Assessment Authority

Decision and Reasons

Referred application

IRAN

IAA reference: IAA21/09951

Date and time of decision: 2 December 2021 17:02:00

J Maclean, Reviewer

Decision

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

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

Background to the review

Visa application

1. The referred applicant (the applicant) claims to be a stateless Faili Kurd from Iran. On 20 February 2017 he lodged an application for a safe haven enterprise visa (SHEV). A delegate of the Minister for Immigration refused to grant the visa on 20 September 2021 on the basis that the applicant is not owed protection.

Information before the IAA

2. I have had regard to the material given by the Secretary under s.473CB of the *Migration Act 1958* (the Act).
3. On 13 October 2021 the IAA received an email from the applicant's representative attaching a submission (IAA submission) dated 11 October 2021. To the extent the submission reiterates the applicant's claims, takes issue with the delegate's findings, or refers to caselaw, I am satisfied it is not new information, and I have had regard to it.
4. The IAA submission indicates the applicant wishes to add new claims not raised during the interview with the delegate (SHEV interview). He claims that after he arrived in Australia his family was served with a letter inviting him to attend the Basij office in their area, and his family was questioned by the Basij about who arranged for his departure from Iran, and 'some other questions about where he is now'. I am satisfied the applicant did not raise these claims prior to the delegate's decision, and they are new information. The applicant states he did not mention these claims in his written statement, presumably the statement of claims submitted with his SHEV application, because he did not have evidence to prove it, and he did not imagine his application would be refused. He also notes he did not mention it at the SHEV interview because he was not asked what happened after he departed Iran, and now realises it was a mistake not to elaborate on these things during that interview.
5. Given the applicant's reference to not mentioning these claims in his written statement or at the SHEV interview, it is apparent the purported events occurred prior to the delegate's decision. The applicant had the assistance of a representative, who was a solicitor and registered migration agent, to prepare his SHEV application and statement of claims, and the same representative attended the SHEV interview, provided oral submissions at the conclusion of the interview, a written submission after the interview, and continues to represent the applicant before the IAA. At the start of the SHEV interview the applicant was advised it is his responsibility to raise all of his claims and provide evidence in support of those claims, and that if his application is refused he may not have another chance to provide further information to support his claims or to raise new claims. He was asked if he had read and understood the information sheet called 'Important information about your interview for a protection visa', which had been provided to him before the interview, and he said 'Yes'. The information sheet outlines the purpose of the interview, and specifies the extreme importance of telling the truth and presenting all claims for protection during the interview, and providing all information in support, and that there may not be another opportunity to raise new claims if the application is refused. At the conclusion of the SHEV interview the delegate noted that any additional information provided before a decision was made would be considered. Almost four months elapsed between the SHEV interview and the decision being made, during which there was an opportunity to provide additional information, or request further time to do so, however no further information was provided,

and no such request was made. In all the circumstances the applicant has not satisfied me the information could not have been provided prior to the delegate's decision.

6. A copy of the purported letter has not been provided, nor have any details been provided about precisely when and how the letter was served, when the applicant was required to attend, the location of the office he was to attend, who in his family were questioned and where that questioning took place, and, other than asking about the applicant's whereabouts, exactly what other questions were asked. Taking into account the paucity of information provided about these new claims, the potential importance of the information to his visa application, that the applicant has been represented throughout the visa application process, and the various warnings given about providing all information in support of his claims to the delegate, I consider if the events described had actually occurred the applicant would have mentioned them at some stage prior to the delegate making their decision. In all the circumstances, the applicant has not satisfied me these new claims are believable, or that the information is credible. The applicant has not satisfied me either limb of s.473DD(b) is satisfied, and I have not had regard to this new information. In all the circumstances I would also not be satisfied there are exceptional circumstances to justify considering the information.

Applicant's claims for protection

7. The applicant's claims, made in the SHEV application, can be summarised as follows:
 - He is a stateless Faili Kurd who was born in Yazd in Iran, and fears returning to Iran.
 - He was persecuted in Iran because he is a stateless Faili Kurd.
 - His father and mother were born in Iraq, in Baghdad and Kut respectively, and along with other Faili Kurds were deported by Saddam Hussein's regime in the 1980s.
 - His father and two brothers in Iran are unable to find proper jobs because they are stateless.
 - He was not allowed to go to school in Iran, but attended night school as an observer in 2003 or 2004.
 - He was not allowed to work in Iran and worked illegally, without a work permit from authorities, for low wages. In 2001 Iranian authorities notified his employer they could not employ him and he was sacked. He was fearful he would be arrested for working illegally.
 - He was issued with a Green Card in Iran which allowed him to reside only in Yazd, and when he was about [Age] years old the card was replaced by a White Card registered in Khuzestan. The White Card was issued on an annual basis, and was ceased when he came to Australia.
 - In about 2009 or 2010 he was in a relationship with an Iranian girl he wanted to marry, but the Iranian authorities refused to renew his white card if he did so and made him sign a document to that effect. The relationship ended when the girl's family found he was stateless with no official documents.
 - There was an incident when the Basij detained him for a few hours because he was sitting next to the girl.
 - At other times he was harassed by the Basij because they said he had an 'open shirt'.

- In 2008 he was arrested for installing [Products 1] on [Locations]. A file was created for him and his fingerprints were taken. He was made to sign an undertaking he would not return to that work.
- As a stateless person he could not participate in sporting activities, because Faili Kurds are not allowed to register for such activities.
- He did not live a dignified life in Iran, he was unable to work or marry, and his life lacked basic human rights because of his statelessness.
- He departed Iran using a forged Iraqi passport.
- He fears being arrested on return to Iran because he is an undocumented Faili Kurd, as a result of his illegal departure from Iran, and because he has an adverse profile with the Iranian government as a result of his past interactions with them, including the arrest for working with [Products 1].

Refugee assessment

8. 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

9. 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.
10. The applicant claims to be a stateless Faili Kurd, whose parents were born in Iraq and expelled to Iran. During his interactions with the department the applicant has consistently claimed to be of Faili Kurdish ethnicity and Shia Muslim religion. He referred to have been born in Iran in [Year 1] to Faili Kurdish parents who were born in Iraq and deported to Iran in the 1980s by Saddam Hussein’s regime. No identity documents for the applicant have been provided. However, four ‘Foreign Nationals ID Cards’ (and English translations) have been provided which it is purported were issued by Iranian authorities to his parents and two of his brothers. The applicant refers to the cards as ‘White Cards’, and each card notes Iraqi

nationality. At an Irregular Maritime Arrival Entry interview (Arrival interview) on 14 November 2012 the applicant indicated Arabic was his preferred language, and he was assisted by an Arabic interpreter, but also noted he could speak Faili Kurdish. In his SHEV application his preferred language is noted as 'Arabic, Iraqi accent', and it is noted he speaks Arabic, and speaks, reads and writes Farsi. He was assisted by an Arabic interpreter at the SHEV interview, and appeared to converse easily in the language.

11. The applicant's account of his parents being expelled from Iraq at the time in question, accords with country information, which indicates hundreds of thousands of Faili Kurds were expelled from Iraq from 1969, mostly to Iran, that this was exacerbated by the Iran-Iraq war of 1980-1988, and that those expelled were stripped of their Iraqi citizenship, and many had their citizenship documents and their properties confiscated. Many Faili Kurd refugees returned to Iraq after the fall of Saddam Hussein in 2003 and had their Iraqi citizenship reinstated. The Iraqi Nationality Law, adopted in 2006, stipulated that all persons denaturalised by the former government have their Iraqi citizenship restored. The same country information indicates most Faili Kurds are Shia, which distinguishes them from other Iranian Kurds, who are predominantly Sunni Muslim. With regard to language, country information supports that In Iraq many Faili Kurds speak Arabic as their first language.¹ During the SHEV interview the applicant indicated his family had been in a detention camp when they arrived in Iran, but he was unable to say how long that was for. He also confirmed his father had made attempts to obtain Iraqi citizenship, and the family had travelled to Iraq in about 2003 and 2005 to do so, but because they did not have 'any registration' in Iraq the attempts were unsuccessful. His evidence on these issues was rather vague, relying partly on information he overheard, and he seemed unclear as to exactly whether or not the journeys to Iraq were assisted by a smuggler. Given the applicant was not born at the time his family arrived in Iran, and was young at the time of the purported travel to Iraq, I make no adverse inference as a result of the lack of detail provided.
12. In his statement of claims, and at the SHEV interview, the applicant described being granted a 'Green Card' and that card being replaced with a White Card when he was about [Age] years old. The statement of claims refers to the White Card being ceased when he came to Australia, because it was issued on an annual basis. At the SHEV interview he said the White Card was the only identity document he used in Iran, that it had his name and date of birth on it, but that he did not bring it out of Iran. He said the card is renewed each year and if you are not physically present it will not be renewed, and that the authorities took it back in 2012 as he was not there with his family to renew the card.
13. On the information before me, I am prepared to accept the applicant was born in Iran to Faili Kurdish parents who were born in Iraq, but expelled to Iran and had their Iraqi citizenship stripped. I can also accept the applicant the applicant's parents have made unsuccessful attempts to have their Iraqi citizenship reinstated, and that the applicant does not have Iraqi citizenship. In 2020 DFAT indicated they are not aware of the existence of a 'Foreign National Identity Card', and as far as registered refugees are concerned, an *Amayesh* card is the sole form of registration or identification issued, and the majority of Faili Kurds in Iran are registered and have *Amayesh* cards.² Despite DFAT's unawareness, I am prepared to accept the White Cards provided for his family members' are genuine documents evidencing the card holders were registered by the Iranian government as foreign nationals from Iraq, or refugees, and that the applicant also held the same registration until 2012, which was

¹ Department of Foreign Affairs and Trade (DFAT), 'DFAT Thematic report, Faili Kurds in Iraq and Iran', 3 December 2014, CIS2F827D91722; DFAT 'DFAT Country Information Report Iran', 14 April 2020, 20200414083132

² DFAT, 'DFAT Thematic report, Faili Kurds in Iraq and Iran', 3 December 2014, CIS2F827D91722

renewable on a yearly basis. I accept the applicant's White Card was confiscated by Iranian authorities after he departed for Australia, and that this occurred at the time his family members went to renew their registration. For reasons discussed below, I consider the card was confiscated because it had expired, rather than because authorities had been alerted to his departure, or because he was particularly of interest to them for any reason. Overall, I am satisfied the applicant does not have citizenship in any country, including Iraq and Iran, and that he is a stateless Faili Kurd.

14. The applicant only makes claims for protection against Iran, and the statement of claims refers to Iran as the country of reference, and his only former country of habitual residence. I am satisfied the applicant resided only in Iran prior to travelling to Australia, and the country of former habitual residence for the purpose of the definition of receiving country in s.5 of the Act, and his receiving country is Iran for the purposes of this assessment.
15. I accept the applicant's consistent evidence that he is of the Shia Muslim religion. It is not apparent to me he indicated he experienced any discrimination or harm on account of his religion in Iran, or that he makes any claims for that reason.
16. I also accept the applicant's broadly consistent evidence about his life and family in Iran and Australia, as follows: he was born and spent the first two years of his life in Yazd; he moved with his family to [Village], [City] in the Khuzestan Province of Iran in about 1989; his parents and two of his three brothers continue to live in [Village] in [City]; his father work as [an Occupation 1]; his mother does not work; one of his brothers in Iran was learning to be [an Occupation 1], but the applicant is unsure about the work he currently does; the other brother in Iran is unemployed; his brother [Mr A] travelled to Australia in 2010 and presently resides in Australia; he married his wife in Sydney in 2016, and they have two children together, born in [Year 2] and [Year 3].
17. The applicant claims he did not go to school in Iran, because he was born in Yazd but moved to [City], and he could not register in a school in a city other than Yazd. However, he attended night school in [City] in 2003 or 2004 for one hour per night, and that he was only able to do so by enrolling through someone he knew, and he was not a normal student but an observer. At the Arrival interview he indicated he attended primary school for one week, and later studied at evening school in [City], from 2009 to 2012. At the SHEV interview the applicant said the White Card was only an identity card, and did not give any rights or access to services. When the delegate suggested that country information supported that people who hold a White Card can go to school, the applicant said that was not the case in his situation, that he was living in a small village and had to go to a bigger area to study, and he did not go to school at all. He said his parents moved to [City] when he was two years old. There were not many Arabic speakers in the area they had lived in, and they did not speak Farsi, so although they were not allowed to move and it was illegal, they had to move. He also said if he had stayed in Yazd there was a good chance he would have received an education.
18. DFAT identifies three groups of Faili Kurds in Iran, those who are Iranian citizens, Faili Kurds of Iraqi origin who are registered as refugees in Iran, and Faili Kurds of Iraqi origin who are not registered as refugees in Iran. Country information indicates registered Faili Kurd refugees might face some restrictions on their movement in the country, and while they may receive access to healthcare, education and state benefits, it is possible that such access is at a level lower than that offered to Iranian citizens. DFAT indicates *Amayesh* card holders can move freely within the province in which they are registered, but are subject to restrictions regarding their ability to relocate to other parts of Iran. Local sources told DFAT that, in practice *Amayesh* card holders often ignore movement restrictions, but where they do they

would find it difficult to find formal employment. There are credible reports that Iraqi refugees are often better integrated than other refugees in Iran, because they are often of the same ethnicity as Iranians in the province in which they are hosted.³

19. I note the identity cards the applicant provided for his family members indicate the city and province as '[City – alternative spelling]' City in 'Khoozestan' Province, presumably indicating the location they are required to reside. Although it is not apparent to me when these family members were first able to have their location changed from Yazd to [City] on their White Cards, it is apparent they were able to make that change at some point in time. In all the circumstances I am not satisfied the applicant would have been unable to change the relevant location on his identity document at the same time his family did, or that this was the reason he did not receive an education. Nevertheless, I can accept as a registered foreign national/refugee the applicant might not have had the same rights afforded to Iranian citizens, and that he received limited formal education, primarily at night school in [City], and did not gain any formal qualification. In his statement of claims the applicant also referred to not being allowed to participate in sports activities because Faili Kurds are not allowed to get formal unions or registration in sporting activities. No country information has been provided to support that Faili Kurds having refugee registration are prevented from registering for or engaging in sporting activities, and I am not satisfied that was the case for this applicant.
20. The applicant also referred to difficulties regarding employment. In his statement of claims and SHEV application he referred to not being allowed to work in Iran, and being unemployed from January 2011 until he left Iran in 2012. He said prior to that he worked illegally, for low wages, as [an Occupation 2] in a shop owned by an Iranian citizen, and that he did this work from January 2001 to January 2011. He also indicated he worked in a stall selling [Products 2] from January 1998 until January 2000, and from January 2000 to January 2001 he worked in a stall selling [Products 3]. In his statement of claims the applicant said in 2001 Iranian authorities notified his employer they could not employ him, and he was sacked. He said all employment in Iran was done without a permit from authorities, and he was fearful he would be arrested for that illegal work. The applicant has provided an 'Information Leaflet' from the 'Iranian Department of Trade in Persian', and English translation. The document is addressed 'To all units providing goods and services in the City of [City] [Village]', and specifies that those with trading permits who have leased their businesses to foreign residents are required to vacate the foreign residents from their businesses by 19 July 2001 or their permits will be cancelled. The date of the leaflet was issued is not apparent from the translation, nor is it apparent the applicant indicated he was leasing the business/stall he was working at, such that the leaflet had any applicability to his circumstances. Nevertheless, I am prepared to accept the leaflet is a genuine document issued by an Iranian government body.
21. Country information indicates unregistered refugees in Iran, of whatever origin, have no right to work, and it is unlikely a stateless Faili Kurd could apply for a work permit. However, DFAT have been told that in practice, many Faili Kurds, both registered and unregistered, have informal access to employment, and this is normally tolerated by authorities. Some Faili Kurds are self-employed while others might find Iranian employers prepared to disregard the law. DFAT has been told that Faili Kurds are frequently employed in low-paying manual labour.⁴

³ DFAT, 'DFAT Thematic report, Faili Kurds in Iraq and Iran', 3 December 2014, CIS2F827D91722; DFAT 'DFAT Country Information Report Iran', 14 April 2020, 20200414083132

⁴ DFAT 'DFAT Country Information Report Iran', 14 April 2020, 20200414083132

22. The applicant has provided no country information regarding the conditions placed on those holding White Card registration, or to support that conditions for those having White Cards is different to *Amayesh* holders. I am satisfied the applicant was registered with Iranian authorities up until the time he left Iran, albeit having a White Card rather than under the *Amayesh* registration scheme. Although the post-interview submission suggests the applicant came to the attention of authorities as a result of 'his illegal employment as [an Occupation 2]', he worked in the [Occupation 2] shop for 10 years, and no details have been provided about what problems he encountered with authorities as a result of that work. Unlike the job he held in 2001, which he claims he was sacked from due to intervention of authorities, it is not apparent to me why he stopped working in the [Occupation 2] shop, or that he was forced to leave that job for any reason. Considering the country information, I am prepared to accept that even though he was registered with Iranian authorities, he did not hold a work permit for the work he performed in Iran, and he may have been paid lower wages than an Iranian citizen would have been. I am also prepared to accept his employer terminated his prior employment in January 2001, and that the termination may have been influenced by receiving or becoming aware of the Information Leaflet. It is not apparent to me the applicant suggested any further actions were taken against him at the time his employment was terminated in 2001, such as his White Card being confiscated, or being detained or questioned by authorities. The Information Leaflet is general in nature and content, being applicable to foreign residents of 'Afghanistan, Iraq and Other Countries', and I am not satisfied it related specifically to the applicant, or that it is indicative authorities were aware of the work he was doing without a work permit, or that he was specifically being targeted by authorities at that time for any reason. Considering the various jobs the applicant worked in, the length of time he worked for the one employer in the [Occupation 2] shop, and the country information which supports that informal employment undertaken by Faili Kurds is normally tolerated, although I am satisfied the applicant did not hold a formal work permit in relation to the work he did in Iran, the applicant has not satisfied me was unable to find and maintain work, or earn enough money to support himself in Iran.
23. The applicant makes a number claims in relation to interactions he had with Iranian authorities. At the end of the SHEV interview he mentioned for the first time that he was arrested in 2008 for setting up [Products] on [Locations]. He said he signed an undertaking that he would not do that work again, and he did not do that work again. In relation to the undertaking he said 'we are afraid of these things' and if he did the thing the undertaking was about again 'the punishment is severe, incarceration, torture, humiliation' and they will not forgive you for it and they will make you pay for it. In his submission at the end of the SHEV interview the applicant's representative suggested that a file was created for the applicant when he was arrested in 2008, his fingerprints were taken and he was told if anything happens in the future it will be easy to track him, and he will be singled out. Notably, the applicant did not mention working as a [Product 1] dish installer during the Arrival interview, or when noting his employment in the SHEV application. His statement of claims also makes no mention of being arrested for that reason or making the purported undertaking. However, at the Arrival interview when asked 'Were there any armed groups, political groups, or religious groups operating in the area you lived?' the applicant said Ettelaat and Basij were 'looking for [Products 1]'. When asked 'What was the nature and level of your involvement with them?' he said he was not involved with them. The applicant was specifically asked during the Arrival interview whether he had ever been arrested or detained by the police or security organisations, and although he said 'No', he did go on to describe being detained for a couple of hours with his girlfriend and being harassed by authorities, specifically the Basij (which will be discussed further below), but did not refer to being arrested in 2008, being fingerprinted, or signing an undertaking.

24. I am aware of the caution that needs to be exercised when relying on interviews such as the Arrival interview attended by the applicant, the purpose of which was not for assessment of protection claims. However, the applicant was warned at the start of the Arrival interview that he needed to be honest and accurate with the information provided, and when asked if he would do that he said he would. The applicant made this claim almost as an afterthought, after almost two hours of the SHEV interview had elapsed, and after a break during which he had the opportunity to have a discussion with his representative. His evidence on the issue was extremely brief and lacked details of exactly when in 2008 he was arrested, where he was arrested, which office the authorities took him to, how long he was detained for, and the manner of his release. Notably the applicant did not himself refer to being fingerprinted, and this claim was only made in oral submissions by his representative at the conclusion of the interview. I consider the applicant's complete failure to mention at the Arrival interview or in his statement of claims, his work installing [Products 1], and that he was detained, fingerprinted, and required to sign an undertaking, is extremely significant particularly given the importance he placed on the giving of an undertaking during the SHEV interview, and the submissions his representative made about the significance of a file being created for him and his fingerprints being taken. I did not find the applicant's evidence to be compelling or convincing, and I consider if these events had genuinely occurred the applicant would have mentioned them at an earlier stage. I do not accept the applicant was involved in the installation of [Products 1], that he was arrested by authorities in 2008 for that reason, that he signed an undertaking, or that he was fingerprinted or a file was created for him.
25. In addition to the 2008 incident above, which I have not accepted occurred, the applicant claims that in 2009 or 2010 he was in love with an Iranian girl and wanted to marry her, but Iranian authorities refused to renew his White Card if he married an Iranian citizen, and made him sign a document to that effect. In his statement of claims the applicant refers to being detained by the Basij for a few hours on one occasion because they saw him sitting next to the girl on the side of a river. At his Arrival interview he referred to being detained with his girlfriend one year ago, which would equate to about November 2011 given the interview was conducted in November 2012. In oral submissions at the end of the SHEV interview the applicant's representative suggested the couple were arrested. The applicant claims the relationship ended because her family saw he was a stateless person with no official documents. On another occasion he describes being harassed by the Basij because they said he had 'open shirt', but other than the information in the statement of claims no specific details have been provided about how many times this occurred, nor any details about any particular incident, such as when and where they occurred, or exactly how he was harassed.
26. DFAT reports that close contact between unmarried men and women is illegal, as is being in a de facto relationship. While prohibited by the law and frowned upon by the religious establishment and more conservative Iranians, relations outside of marriage occur in practice. DFAT assesses that there is greater tolerance today for mixed-gender interactions, and authorities generally tolerate unmarried couples being together in public, particularly in the major cities. Local sources told DFAT that, in Tehran, unmarried couples appearing together in public does not meet societal resistance. In the event of arrest, DFAT understands that an unmarried couple would be taken to the nearest police station and their parents or guardians summoned. Typically, the unmarried couple would sign a written statement and then be released. A fine may be imposed occasionally. With regard to dress, all men and women in Iran are required to adhere in public to a conservative dress code, with men being subject to less strict controls on personal appearance than women. However, DFAT is aware

that some men have claimed to have been harassed or discriminated against on the basis of their appearance.⁵

27. There are an estimated 8 million Kurds living in Iran, about 10 per cent of the population, who are predominantly Sunni Muslim, and are concentrated in the north-western provinces, including Ilam Province. Faili Kurds are a sub-group of the larger Kurdish population, most having originated from Iraq, and typically residing close to the Iraqi border, including in Ilam Province. Faili Kurds are distinguishable from other Iranian Kurds by their location and distinctive dialect, and by religion, with most Faili Kurds adhering to the Shia branch of Islam, as is the case for most Iranians. DFAT assesses that members of minority ethnic groups face a moderate risk of official and societal discrimination, particularly where they are in the minority in the geographic area in which they reside, and which may take the form of denial of access to employment and housing, but is unlikely to include violence on the grounds of ethnicity alone. The risk to members of ethnic minority groups who are involved (or are perceived to be involved) in activism, including those advocating for greater political and cultural rights or speaking out against perceived violations, is higher.
28. With regard to Kurds generally, DFAT assesses Kurds are not specifically targeted for discrimination on the basis of their ethnicity or religion, including in their ability to access government services, and are afforded the same state protections as other ethnic minorities. DFAT further assesses that, like other ethnic minorities, Kurds who are active politically are likely to attract adverse attention from the authorities. Those who advocate for greater rights and autonomy and/or self-determination face a high risk of official harassment, monitoring, imprisonment and mistreatment. More specifically with regard to Faili Kurds, DFAT indicates Faili Kurds who are citizens of Iran enjoy the same rights as other Iranians, and DFAT is not aware of specific instances whereby authorities have singled out Faili Kurds for mistreatment.
29. Country information reports that Iranian authorities are highly sensitive to organised political activities by Kurds, and Kurdish political prisoners charged with national security offences represent almost half the total number of political prisoners in Iran, and constitute a disproportionately high number of those who receive the death penalty and are executed. Some of those arrested were reportedly charged with crimes relating to civic activism, and membership of banned Kurdish political parties, and handed prison sentences of up to 15 years. NGOs report that in 2018 three Kurdish men convicted of participating in armed struggle against the state were executed. International sources report that the government uses security, media and other laws to arrest and prosecute Kurds for exercising freedom of expression and association, some Kurdish-language newspapers, journals and books have reportedly been banned, and Kurdish NGOs have been denied registration permits and security charges brought against people working with such organisations, which NGOs claim has suppressed legitimate activity. However, DFAT assesses that Kurds are not specifically targeted for discrimination on the basis of their ethnicity or religion, including in their ability to access government services, and are afforded the same state protections as other ethnic minorities. DFAT further assesses that, like other ethnic minorities, Kurds who are active politically are likely to attract adverse attention from the authorities. Those who advocate for greater rights and autonomy and/or self-determination face a high risk of official harassment, monitoring, imprisonment and mistreatment.⁶

⁵ DFAT 'DFAT Country Information Report Iran', 14 April 2020, 20200414083132

⁶ DFAT 'DFAT Country Information Report Iran', 14 April 2020, 20200414083132; US Department of State, 'Country Reports on Human Rights Practices for 2020 - Iran', 30 March 2021, 20210331113214

30. The applicant's account of being detained with his girlfriend for a few hours broadly accords with country information suggesting an unmarried couple would be taken to the nearest police station and their parents or guardians summoned, and they may be requested to sign a written statement. Country information also reports that societal discrimination against ethnic minorities does occur,⁷ and in that context I can also accept the girl's family discovered he was stateless during this incident and the relationship ended at the time. No country information has been provided by the applicant to support that a White Card would not have been renewed if the holder married an Iranian citizen. In any event, I consider it implausible authorities would have requested the applicant sign a document such as the one purported, which is not an undertaking for the applicant to do or not do something, but rather appears to be merely an acknowledgement of actions the authorities may take. In all the circumstances, I do not accept the applicant was threatened as claimed, or that he was required to sign the purported document. Despite the lack of detail provided about the harassment he experienced for perceived breach of the dress code, in the context of the country information I am prepared to accept he may have been stopped by authorities on occasion and harassed about perceived breaches of the dress code. Although I can accept this may have occurred on a number of occasions, I am not satisfied it occurred frequently or regularly, or that any harassment he experienced was other than low-level.
31. In oral submissions at the end of the SHEV interview and in the written post-interview written submission, the applicant's representative refers to the applicant's brother, [Mr A], having made similar claims as the applicant, and notes that he has been granted protection in Australia. A copy of a statutory declaration by [Mr A], dated 3 December 2020, is in the information before me. The submission refers to the statement being presented to the department on 3 December 2020 to support [Mr A]'s claims for protection, and I can accept that to be the case. I have taken the documentary evidence and submissions concerning [Mr A] into account in reaching my decision. Among other things, in his statutory declaration [Mr A] refers to being born in Iran, but being a stateless Faili Kurd, to being unable to obtain Iraqi citizenship or to find work during an illegal visit to Iraq, and to experiencing difficulties in obtaining schooling in Iran. [Mr A] also refers to he, his father, and brothers, changing their surname from [B], which is a pure Kurdish tribal name, to [A], which is a very common name of the people in Ahwaz, Iran. He indicates they did so about six years prior, that everyone in Iran knew his family were Kurdish because of the previous surname, so his father thought of 'putting an end to this frequent problem in Iran'.
32. The applicant claims that his surname, [B], is a Kurdish name, and that the name was perceived as anti-Iranian, and the family perceived to be loyal to the Kurdish separatists in Iran, and therefore they changed their name to [A]. The applicant claims he has not changed his surname, and that he would be unable to do so on return because he will be undocumented, and that on return to Iran he will face the same problems the family suffered there. At the SHEV interview the applicant said that authorities made life very difficult for Kurds, and that he is afraid of military intelligence and Sepah because they think he is in opposition to the regime, and they do not tolerate opposition. Other than the incidents noted above, neither the applicant, or [Mr A], in his statutory declaration, provide any details about the problems they or other family members experienced for having a Kurdish surname, or exactly what occurred at those times. I am prepared to accept the applicant may be identified as a Kurd by his surname, but I am not satisfied simply having a Kurdish surname would result in being regarded as sympathetic to Kurdish political views, or otherwise imputed with anti-Iranian political views, or that changing to a different surname would alleviate such imputation. Even though the applicant has provided no country information to

⁷ DFAT 'DFAT Country Information Report Iran', 14 April 2020, 20200414083132

support that being undocumented would affect his ability to change his surname, or that he would not be able to change his surname, just as his family members had done some years earlier, I am also prepared to accept he may not be able to change his surname.

33. Overall, considering the applicant's evidence in the context of the country information, I have accepted the applicant experienced some societal discrimination from the girl's parents because of his status as an undocumented Faili Kurd, and I can accept it is possible he may experience some societal discrimination in the future in Iran, including because he has a Kurdish surname. Although experiencing societal discrimination may be hurtful, I am not satisfied it amounts to serious harm for this applicant. On the evidence before me, I am not satisfied the attention of authorities in relation to being in public with his girlfriend, or with regard to his dress, resulted because the applicant was singled out, or had a profile of interest with authorities, including because he was a stateless Faili Kurd holding a White Card, but rather they resulted from general enforcement of perceived breaches of moral or dress codes. Although I consider it unlikely, I accept it is possible he may experience low-level harassment from authorities should he engage in such behaviours on return to Iran, and it is also possible he may be escorted to the police station and asked to sign an undertaking not to do so in future. The applicant has not indicated he was ever harmed by Iranian authorities during his previous interactions with them, and I am not satisfied he would be harmed in the future for the reasons claimed, or that such treatment would amount to serious harm for him. The applicant has not indicated he has ever participated in any protests or other activities that could be considered as being in opposition to the regime, or anti-Iranian, or that he would do so in the future. I am not satisfied he was imputed with a political opinion against the government for any reason whilst he was in Iran previously, or that there is a real chance he would be imputed with such views if returned to Iran, such that he would be of interest or harmed for that reason. I am not satisfied the applicant was of interest to Iranian authorities for any reason at the time he left Iran, including on account of his Kurdish surname, as a result of him being a stateless Faili Kurd holding a White Card, or for any actual or imputed anti-government political opinion, or that there is a real chance he would be harmed for those reasons if returned.
34. The applicant claims his White Card was 'cancelled and ceased' after he departed Iran, and at the SHEV interview his representative suggested that when the applicant's father was renewing the family White Cards the applicant's card was seized by the Iranian government because he was not in the country. The back of the White Cards the applicant provided for his family members notes that 'Law Enforcement Forces are obligated to confiscate expired Cards'. I accept the applicant's White Card was confiscated when his family members cards were renewed, and he no longer holds that registration. In all the circumstances, I am satisfied it was confiscated because the applicant was not present to renew it, rather than because of any adverse profile the applicant held.
35. Country information reports that some Faili Kurds are unable to register as refugees for a variety of reasons, including because they have not complied with the terms of their prior registration, because they missed the annual re-registration deadline and their refugee registration card has expired, or because they exited Iran and then returned.⁸ I have accepted the applicant previously was registered as a refugee in Iran, and I can accept his registration was cancelled when the card was confiscated, after he departed the country, and that if he returned to Iran he may not be able to re-register, and therefore that he would be an unregistered Faili Kurd refugee.

⁸ DFAT, 'DFAT Thematic report, Faili Kurds in Iraq and Iran', 3 December 2014, CIS2F827D91722

36. Faili Kurd refugees who are citizens of Iran enjoy the same rights as other Iranians. However, DFAT reports that unregistered refugees do not generally enjoy access to services in Iran because Iranian citizens and documented refugees are prioritised. Identity documents are normally required to buy a house, car, mobile phone or to establish utilities accounts. A legally recognised lease would also require identification, but it is possible a private undocumented arrangement could be made between the lessor and lessee. Access to healthcare without identification is possible, but a fee would need to be paid, rather than relying on health insurance, and Faili Kurds without identification would normally not be able to access the formal education system. As noted above, unregistered refugees in Iran, of whatever origin, have no right to work, and it is unlikely a stateless Faili Kurd could get a work permit. However, in practice many registered and unregistered Faili Kurds have informal access to employment, which is normally tolerated by authorities. Despite the restrictions on unregistered refugees, DFAT is not aware of specific instances whereby authorities have singled out Faili Kurds for mistreatment, regardless of the category to which they belong.⁹
37. I accept if the applicant returns to Iran as an unregistered Faili Kurd refugee there will be restrictions on the activities he can directly engage in without identification. However, he has a number of relatives there who are registered, and who he remains in contact with, and I consider he will have their support and assistance to facilitate him securing accommodation by purchase or lease, establishing utilities connections and accounts, and making other purchases which require identification. I accept that without registration he may have to pay to access healthcare, and he may not have access to education. It is not apparent to me the applicant has indicated he would seek to access education on return to Iran, he has not indicated he has attended any educational institution in Australia, where he would be free to do so, and I do not accept he would. It is not apparent to me the applicant has any health condition at this time that would require urgent or regular medical attention, however I accept he may need to pay in the future when the need for healthcare arises. I accept he is unlikely to be able to get a work permit, but note he was able to work for various employers in Iran previously despite not having a work permit, and I consider he will be able to do find and maintain similar work again if returned to Iran. I have accepted that because of his refugee status he may have previously been paid a lower wage than an Iranian citizen, and I accept that may be the case on return to Iran. Despite that, I am not satisfied the applicant would be unable to subsist in Iran, or that these conditions amount to serious harm for him. Separately I note, the information before me does not indicate the laws governing the treatment of undocumented refugees are discriminatory on their face, intent or application. The laws or restrictions are of general application, applicable to all undocumented refugees, and I am not satisfied the applicant would be selectively targeted by the laws, such that it would constitute persecution.
38. The applicant claims, in his statement of claims, to have departed Iran using a forged Iranian passport. At the Arrival interview he indicated he departed on a false Iraqi passport not in his name, but with his photograph, and at the SHEV interview he clarified that there had been an error in the statement of claims, and it was an Iraqi passport. At the SHEV interview when asked whether the passport was genuine or not, he said he was not sure, but it had his photograph and he thinks it was genuine. He went on to say he did not have any problems with authorities when departing from the country. In oral submissions at the conclusion of the SHEV interview the applicant's representative indicated the applicant had told him the type of passport used did not have a digital photograph, but rather had a photograph which could be substituted, and that the airport in Iran was designed to track Iranian passports

⁹ DFAT, 'DFAT Thematic report, Faili Kurds in Iraq and Iran', 3 December 2014, CIS2F827D91722; DFAT 'DFAT Country Information Report Iran', 14 April 2020, 20200414083132

rather than foreign passports. The applicant has consistently referred to throwing the passport in the sea in [Country], and I can accept that to be the case, and that he no longer has the document in his possession.

39. In his IAA submission the applicant contends his profile on return would be heightened because his white card was 'cancelled and ceased' by the Iranian authorities after he departed Iran, which means Iranian authorities knew he used a fake passport to exit to leave from Imam Khomeini International Airport. It is also suggested that because he has 'a record or "file"' in Iran that his circumstances are different to those of someone returned to Iran who does not have 'adverse information against them'. It is contended 'it is reasonable to think that the confiscation of the white card was a result of the specific record that the applicant has in that country (when his finger prints were taken and file was created)... also it is reasonable to think that the Iranian government will not generally become aware of someone's departure from Iran if he or she uses fake passport at that time unless the person has specific record in that country, because this person has already passed the Iranian airport checks without problems which means that some adverse information triggered some sort of notification to the Iranian government that someone like the applicant is not present in Iran'.
40. Country information from 2020 indicates the chances of obtaining a fraudulent Iranian passport or a genuine passport through fraudulent means are low, and that security procedures at Imam Khomeini International Airport in Tehran are robust, including computerised cross-checking and multiple layers of physical security and document checking. Immigration officials are considered highly competent, and a source told DFAT that it was 'next to impossible' to bypass security procedures at Imam Khomeini International Airport, and the likelihood of an individual exiting Imam Khomeini International Airport with a fraudulent passport is extremely low. Despite that, DFAT cannot discount the existence of corruption in relation to official documentation.¹⁰
41. The applicant has indicated he had no problems with authorities when leaving from the airport. The competence of Iranian Immigration officials and the stringent procedures at the airport is indicative those authorities did not have suspicions about the genuineness of the document, or the applicant would not have been able to leave using the document. It is not clear from the information provided exactly when the applicant contends Iranian authorities became aware he used a fraudulent passport to exit from the International Airport, how a person using a fraudulent passport not in their own name would trigger a notification about their absence from Iran, whether or not they have a previous file or record with authorities in the country, or how the departure on the passport would be linked to the applicant's White Card registration, such that the applicant's profile would be heightened, and I reject those contentions. I note the applicant appears to be claiming that the passport he used was an older style, and not machine-readable, and in all the circumstances, including considering an Iraqi passport was used rather than an Iranian passport, I am prepared to accept the applicant departed Iran illegally using a genuine Iraqi passport having his photograph, but a different name.
42. I have found the applicant is currently stateless, but that Iran was his country of former habitual residence, and also his receiving country. Regardless of whether he can return to Iran or not, the legislation requires the IAA to assess the applicant against the relevant country of former habitual residence, in this case Iran. I note that the inability to re-enter a

¹⁰ DFAT 'DFAT Country Information Report Iran', 14 April 2020, 20200414083132

country where a person was habitually resident because that person has no right of entry does not, without more, constitute persecution.¹¹

43. Iran has historically refused to issue travel documents (*laissez-passers*) to allow the involuntary returns from abroad. In March 2018, Iran and Australia signed a Memorandum of Understanding (MOU) on Consular Matters including an agreement by Iran to facilitate the return of Iranians who arrived after this date and who have no legal right to stay in Australia. The applicant does not fall within that category, and if returned to Iran in the foreseeable future, I am satisfied it would only be on a voluntary basis.¹²
44. I accept if he returned to Iran it would be done using temporary travel documents, and as a result it is likely Iranian authorities would assume he sought protection in Australia. In cases where an Iranian diplomatic mission has issued temporary travel documents, authorities will be forewarned of the person's imminent return. Those who return on a *laissez-passer* are questioned by the Immigration Police at Imam Khomeini International Airport in Tehran about the circumstances of their departure and why they are traveling on a *laissez-passer*. Questioning usually takes between 30 minutes and one hour, but may take longer where the returnee is considered evasive in their answers and/or immigration authorities suspect a criminal history on the part of the returnee. Arrest and mistreatment are not common during this process. DFAT reports that Iranian authorities pay little attention to failed asylum seekers on their return as they accept many will seek to live and work overseas for economic reasons. 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, and unless they were the subject of adverse official attention prior to departing Iran, for example for their political activism, returnees are unlikely to attract attention from the authorities, and face a low risk of monitoring, mistreatment or other forms of official discrimination.¹³
45. Country information reports the penalty for leaving Iran without a valid passport (or similar travel document) is between one and three years' imprisonment, or a fine of between 100,000 and 500,000 rials (approximately AUD1-5 at the time of the report). A special court located in Tehran's Mehrabad Airport deals with such cases. The court assesses the background of the individual, the date of their departure from the country, the reason for their illegal departure, their connection with any organisations or groups, and any other circumstances. This procedure also applies to people who are deported back to Iran and who are not in possession of a passport containing an exit visa. The UK Home Office, in a February 2019 Country Policy and Information Note, assesses that individuals who exit Iran illegally and have not previously attracted the adverse attention of the authorities – for example, for their political activism – face a low risk of prosecution. If prosecuted, the most likely punishment is a fine.¹⁴
46. I accept it is possible if the applicant were returned to Iran he may be questioned at the airport about returning on a temporary travel document and the circumstances of his departure. I also accept it is possible he may be referred to the special court to deal with the matter of his illegal departure. I am not satisfied the applicant was of adverse interest to authorities at the time he departed Iran, such that he would be of interest for that reason on return. I accept it is possible he may be prosecuted in relation to his illegal departure, and he may receive a small fine. I am not satisfied the applicant would be harmed at the airport, or if

¹¹ BZADW v MIAC [2013] FCCA 1229; BZADW v MIBP [2014] FCA 541

¹² DFAT 'DFAT Country Information Report Iran', 14 April 2020, 20200414083132

¹³ DFAT 'DFAT Country Information Report Iran', 14 April 2020, 20200414083132

¹⁴ DFAT 'DFAT Country Information Report Iran', 14 April 2020, 20200414083132

referred to the court, or that this treatment amounts to serious harm for him. The country information before me does not support a finding that persons who have sought asylum in Western countries, such as Australia, are imputed to hold anti-Iranian government political opinions for having done so, and I am not satisfied the applicant would otherwise be imputed with such an opinion, including as a Faili Kurd with a Kurdish surname, and who is presently undocumented. I am not satisfied there is a real chance the applicant would suffer serious harm for being a failed asylum seeker who sought protection in Australia, for having resided there for a significant period of time, or if he were prosecuted in relation to his illegal departure.

47. I have had regard to the applicant's submission that all aspects of his claims need to be assessed cumulatively. Considering all of the claims I have accepted, I am not satisfied there is a real chance the applicant will suffer serious harm on return to Iran, for any reason, now or in the foreseeable future, whether those claims are considered separately or together. I am not satisfied the applicant faces a real chance of persecution.

Refugee: conclusion

48. 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

49. 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

50. 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.
51. 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.
52. I accept if he returns to Iran the applicant may face some societal discrimination as a Faili Kurd refugee, and he will be subject to some restrictions as a result of his status as an unregistered refugee, such as having to pay to access to health services, being unable to obtain a work permit, and being unable to engage in a number of transactions due to not having identity documents, and he may experience some harassment, a fine, and potentially be required to sign an undertaking for breaches of the moral or dress code. Although such

treatment may be hurtful and stressful, I am not satisfied it would amount to significant harm for this applicant. There is no evidence to indicate the applicant faces a real risk of the death penalty for any reason, and I do not accept there is a real risk the applicant will be arbitrarily deprived of his life or tortured for any breaches of the moral or dress code, or as a result of restrictions placed on him as an unregistered refugee, or that a fine, signing an undertaking, or societal discrimination or harassment amounts to pain or suffering that is cruel or inhuman in nature, severe pain or suffering, or extreme humiliation for the purposes of the definition of cruel or inhuman treatment or punishment or degrading treatment or punishment, as set out in the Act. I am also not satisfied any aspect of this treatment would amount to significant harm, if considered separately or together.

53. I accept the applicant may be subject to questioning at the airport on his return, that he may be referred to a court and prosecuted for his illegal departure, and receive a small fine. I am not satisfied the applicant will suffer the death penalty, arbitrary deprivation of life, or torture in consequence of his illegal departure. The evidence does not suggest that the treatment and penalties the applicant may be subject to on his return, including because of his illegal departure is intended to inflict pain or suffering that can reasonably be regarded as cruel or inhuman in nature, severe pain or suffering, or that it is intended to cause extreme humiliation, as required in the definitions of cruel or inhuman treatment or punishment or degrading treatment or punishment. There is no suggestion the applicant faces the death penalty for any reason. I do not accept there is a real risk the applicant would face being arbitrarily deprived of life or tortured for any reason. I am not satisfied there is a real risk of significant harm on this basis, or when considered in combination with any treatment he may experience as an unregistered Faili Kurd refugee, or for any moral or dress code violations.
54. I have otherwise concluded there is not a real chance the applicant will face any harm on return to Iran based on his profile and history. For the same reasons, I am also not satisfied there is a real risk of any harm, including significant harm, should he return to Iran.

Complementary protection: conclusion

55. 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.