



**Australian Government**  

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**Immigration Assessment Authority**

**Decision and Reasons**

**Referred application**

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IRAQ

IAA reference: IAA16/00549

Date and time of decision: 11 November 2016 17:47:00

Urvi Bhatt, 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 an referred applicant, or their relative or other dependant.*

## Background to the review

### Visa application

1. The referred applicant (the applicant) is a Shia Arab from [town 1], Karbala Province, Iraq. The applicant lodged an application for a Safe Haven Enterprise Visa (SHEV) [in] August 2015. [In] August 2016 a delegate for the Minister for Immigration and Border Protection (the delegate) refused to grant this visa.

### Information before the IAA

2. I have had regard to the material referred by the Secretary under s.473CB of the *Migration Act 1958* (the Act).
3. [In] September 2016, the IAA received a submission and a statutory declaration from the applicant. The applicant submits that he was unable to clarify certain discrepancies and respond to questions during the SHEV interview as three interpreters were used during the interview and he had difficulty understanding them. The first was physically present and the last two were telephone interpreters. He claimed to have difficulty understanding the first interpreter and stated that she also had trouble explaining certain terminology used by the delegate. He stated there was a lot of interference with the second interpreter used via phone and that the questions he was asked with the third interpreter were difficult to answer when the interpreter was not physically present. For example he was asked to describe supporting photos but the interpreter could not see what he was explaining which made it difficult for him to explain. I have listened to the SHEV interview carefully. During the interview the delegate took time to explain to the applicant the process of the interview and asked him open questions, sometimes multiple times in order to provide him with the opportunity to provide any additional information. The delegate also explained the importance of providing as much detail as possible and put to the applicant her concerns in respect to the credibility of his claims. The delegate also asked the applicant if he was able to understand the interpreter. On all three occasions, the applicant confirmed that he did. Further the delegate terminated the call with the second interpreter on the basis of the interference and this interpreter was not used. I do not accept the applicant's reason for not being able to provide responses to questions asked during the SHEV interview and I have concluded that he had an opportunity to present his case. The information contained in the statutory declaration and submission to the IAA, is information which the applicant had presented to the delegate during the SHEV interview. In the submission he has included a discussion on why he does not agree with the delegate's decision. I do not consider this to be new information and have had regard to it.
4. Contained in the submission were excerpts of two articles. The first is an article, published by Al Jazeera on a bombing in Karbala killing 18 people, dated 29 August 2016. The second article is by the United Nations Assistance Mission to Iraq (UNAMI), titled 'Iraq records over 1770 casualties,' published on 1 September 2016. Both of these articles were not before the delegate at the time of the decision and I consider them to be new information. The articles detail relevant incidents which have occurred in the applicant's home area since the delegate's decision. I am satisfied there are exceptional circumstances to justify their consideration and I am satisfied these articles were not or could not have been provided to the delegate prior to her decision.
5. The applicant has provided a letter of appreciation from the [agency head]. The contents of the letter confirms that the applicant has demonstrated great effort in fighting the terrorists and

fugitives and he is awarded a promotion to the position of [position title]. The letter is dated [in]September 2008. During the SHEV interview the applicant advised the delegate he had received such a letter and explained the content which is consistent with the letter submitted to the IAA. While the specific letter was not before the delegate, I accept the applicant described it in a detailed manner to the delegate and therefore I do not consider it to be new information and have had regard to it.

6. I have also obtained new information to assist in making my assessment of the applicant's previous employment. This country information, published by [a source] on the [Government agency], published [January] 2012,<sup>1</sup> was not before the delegate. As the delegate's credibility findings differs to my findings, I consider there to be exceptional circumstances to justify considering this new information.

### **Applicant's claims for protection**

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7. The applicant's claims are contained in the information referred and subsequently given to the IAA. They can be summarised as follows:
  - The applicant is a Shia Muslim Arab from [town 1], Karbala Province, Iraq.
  - In 2002 he commenced working as a [government official] for the [Government Agency] in Karbala. In 2004, he was requested to work alongside the [Coalition] forces in [Team 1]. After the [Coalition forces] left Iraq in 2011, he continued to do the same work but without the protection of the [Coalition forces].
  - In mid-2012 he started receiving death threats via text messages from unknown terrorists. In September 2012, his [assets] were burnt down and he feared for his life so he fled Iraq. He does not know who burnt his [assets] but thinks it was the terrorists who had threatened him via text message.
  - He will be considered a spy upon return to Iraq on the basis of previously engaging with the [Coalition forces] in his role as a [government official] and because he has had a significant absence from Iraq and has been residing in a western country.

### **Factual findings**

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#### **Identity**

8. The applicant has provided inconsistent names since his arrival in Australia, however during the SHEV interview, he clarified that the names he had provided earlier were a result of him not providing his tribal name, grandfather's name and father's name during his previous interviews. The delegate accepted this explanation and the applicant's stated identity. In respect to the applicant's nationality, he has provided a number of identification documents including a copy of an expired Iraqi passport, an English translation of his Iraqi citizenship card English translation of his marriage certificate. There has never been any doubt in respect to the applicant's nationality, race (Arab) or religion (Shia Muslim) and on the evidence before me, I accept the applicant's identity as stated and that Iraq is the receiving country for the purpose of this assessment.

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<sup>1</sup> [Source deleted].

## Previous Employment

9. The applicant has been consistent in stating that he was previously employed as a [government official] and was based in Karbala, a southern Province of Iraq. In support the applicant has provided photographs of him in an [distinctive clothing] consistent with available country information<sup>2</sup>, his [occupational] identification card with an English translation, issued [date] and expiry date [date] and a letter of support from the [agency head] commending him on his service, dated [in] September 2008.
10. During the SHEV interview the applicant was asked about his role as an Iraqi [government official]. He claimed to have joined in 2002 [and] enjoyed the role so continued to work as a [government official]. His said his role was a [government official], but could not specify his rank any further. In his written claims he stated that in 2004 he commenced working alongside the [Coalition forces] and would assist in undertaking raids on suspected terrorist organisations. During the SHEV interview, he stated he was selected in 2006 to become part of [Team 1]. He received specialist training for one year [and] coming into contact with terrorists. He commenced this role in late 2007 or early 2008.
11. During the SHEV interview he said he did not deal with the [Coalition forces] on a daily basis as those higher than him would communicate with them. In the same interview he also stated that he would conduct raids with the [Coalition forces] and his role was to be directly involved in the raids with the [Coalition forces]. He claimed to have conducted raids every day or every night.
12. The applicant was asked to detail his role as a [Team 1] member and specifically how this differed to his normal role as an Iraqi [government official]. [Details of role deleted]. The applicant reiterated this information in his submission to the IAA.
13. The [government agency] falls under the authorities of the [particular Ministry]. [Details of agency deleted].<sup>3</sup>
14. Country information states that Provincial [Team 1] teams were formed by some governors and provincial [agency] chiefs. [Details deleted].
15. I accept the applicant was a member of the Iraqi [government agency] and commenced working with them in 2002. On his own evidence he was a low ranking [government official]. However, I have doubts in respect to the applicant's claimed role as a [Team 1] member who participated in regular raids. During the SHEV interview the applicant's account of his role, training received and participation in raids was vague and unconvincing. There were also aspects of the applicant's evidence at the interview which was internally inconsistent. In his submission to the IAA the applicant stated that the inconsistencies were a result of the interpretation errors however I do not accept this to be the case given he was provided a number of opportunities to explain his role. Based on the country information cited above, I am willing to afford the applicant the benefit of the doubt and accept that he may, as a [government official], have assisted in occasional raids with the Coalition forces. However, given the applicant's vague account of his claimed role in [Team 1], I do not accept he was a permanent or regular member of [Team 1], or that he conducted daily raids as claimed.

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<sup>2</sup> [Source deleted].

<sup>3</sup> [Source deleted].

## Previous Threats

16. In his written claims and during the SHEV interview, the applicant stated that he feared harm in Iraq on the basis of previously receiving threats via text message and because his [assets] were burnt down. He claims he was targeted as he was a member of the Iraqi [government agency].
17. During the SHEV interview the applicant stated that in August 2012 he started receiving threats via text message. The message stated, 'leave the [government agency], do not work for the [agency] or you will be killed.' He advised his manager of this threat and he sent a letter to the court. The court investigated the text message and found it was sent by someone using the false identity of an [overseas national] and because this person was [overseas] they could not investigate the individual. The applicant's manager and the court did not investigate the matter any further.
18. On [date] after the applicant and his family returned from [an event] they found his [assets] destroyed by a fire. The applicant stated that he reported this incident to the police, criminal investigation team and the fire brigade. The applicant was asked if he had any evidence of reporting this to the authorities. He stated he did not as it was all completed over the phone and he did not wait around in Iraq to obtain the documentation. The applicant provided photographs of what appear to be a burnt [claimed assets].
19. During the SHEV interview, the applicant was asked who he thought had sent him the text messages, burnt his [assets]. He stated that he knew it was the terrorists who burnt his [asset] as they had previously threatened him via text message. The applicant was asked how he knew the threats were from terrorists. He stated he did not know.
20. Subsequent to [his asset] being burnt the applicant relocated his family to another [house]. The applicant departed Iraq in October 2012 as he feared for his life. The applicant's father and brother [salvaged the burnt assets] and six months after the incident, the applicant's family moved back into the home where they currently reside. He claimed his family are safely residing in the same house as the applicant has left the [government agency] and left the country.
21. The applicant was asked from whom he feared. He stated 'terrorist organisations.' He was asked to specify which terrorist organisations he was referring to and he claimed, 'the whole country is full of them, I do not know which one.' Later in the same interview he stated he fears harm from 'Jaish Al Mahdi (JAM) who are now called Daesh.' Country information identifies JAM as being a key Shia militia group fighting alongside the Iraqi government forces in the fight against Daesh, a key Sunni militant group operating in Iraq.<sup>4</sup>
22. The applicant commenced in the [government agency] in [year] and has not claimed to have faced any threats or any other type of harm until [year]. Throughout this period the applicant resided at the same residential address and worked as a full time [government official] and has occasionally participated in raids since 2008. During the SHEV interview the applicant was unable to provide an unconvincing account of who these claimed threats were from. On the applicant's own evidence, he does not know why he thinks the text messages and the burning of his [assets] was conducted by terrorist groups. I have taken into consideration the photographic evidence provided by the applicant, however there are no identifying features in these photos which link them to the applicant. Based on the evidence before me, I do not accept that the applicant has ever been threatened as claimed, or that his [asset] was burnt by

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<sup>4</sup> Department of Foreign Affairs and Trade (DFAT), "DFAT Country Report Iraq," 13 February 2015, CISEC96CF1160 at 2.36, 2.27 and 2.31

any terrorists groups on the basis of being a [government official] or for occasionally participating raids alongside the Coalition. It follows that I do not accept the applicant's [siblings] have been questioned about the applicant's whereabouts since his departure from Iraq.

## Refugee assessment

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23. 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

24. 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.

25. I accept the applicant is a Shia Muslim from Karbala Province who worked as a low ranking [government official] between [year] and [year] and occasionally assisted the Coalition in conducting some raids but that he was not a permanent member of any [Team 1]. I do not accept the applicant has ever been threatened or harmed by anyone on the basis of his previous employment as a [government official] or for any other reason. I accept the applicant will be returning to Iraq as a failed asylum seeker from a western country.

26. Shias constitute a 60 to 65 percent majority in Iraq.<sup>5</sup> As of January 2014, the Iraqi government forces retained control over Baghdad and southern Iraq, as well as parts of Salah al-Din, Diyala, Wasit, Babil, Karbala, Al-Najaf, Maison, Al-Muthanna, Thi-Qar, Al Qadisiyah and Basra.<sup>6</sup>

27. Shia communities are subject to both general and targeted violence by Sunni-linked insurgent groups and extremists. The violence is largely aimed at destabilising the government and communities, rather than being targeted at individuals. However, Shia who are also members of government security services, detainees or ethnic minorities also appear to have been

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<sup>5</sup> DFAT, "DFAT Country Report Iraq," 13 February 2015, CISEC96CF1160 at 2.8

<sup>6</sup> DFAT, "DFAT Country Report Iraq," 13 February 2015, CISEC96CF1160 at 2.28

specifically targeted by Daesh. While senior political or government leadership may also be targets, the state provides extensive security for them.<sup>7</sup>

28. Since early 2013, Sunni extremist groups have increased attacks on a range of targets particularly those associated with the government. Insurgents have attacked Iraqi civilians and government personnel (mainly the Iraq Security Forces and the police) and facilities, including checkpoints and police stations.<sup>8</sup> Insurgent activity is highest in cities and provinces with a mixed ethnic or religious composition (the northern, western and central provinces, especially Ninewa, Diyala, Salah al-Din, Anbar and Baghdad).<sup>9</sup> Levels of violence in the southern provinces (a majority Shia area) are much lower. Sunni groups have attacked locations in southern provinces, but the casualty rate is much lower than elsewhere in Iraq.<sup>10</sup>
29. DFAT assess that working for particular areas of the government can increase vulnerability to deliberate killing by (mainly Sunni) insurgents. Senior and mid ranking government officials in the law and justice sector and members of the Iraqi police or security forces, face a moderate to high risk of violence. Other government officials are subject to a low risk of violence.<sup>11</sup> The risks to current and former members of the security forces in northern and central Iraq, particularly Shias, increased in mid-2014. For example, DFAT is aware of credible reports that up to 190 Iraqi soldiers were executed by Daesh in Tikrit in June 2014. All senior officials in government and the bureaucracy are provided protective security details by the government. However the state does not have the capacity to provide adequate protection for all government officials.<sup>12</sup> DFAT has no evidence to suggest that the families of officials or security forces are targeted by insurgency groups as a matter of course. However there are credible reports of family of security officials being injured or killed during attacks on the official in their cars or homes.<sup>13</sup>
30. The applicant will be returning to Karbala, a southern governorate of Iraq and one which is Shia dominated.<sup>14</sup> DFAT assesses that the Shia-dominated provinces have experienced fewer violent attacks<sup>15</sup> and that Shias in Shia-dominated provinces of southern Iraq are at a low risk of generalised violence, whereas Shias in Baghdad province face a moderate risk of generalised violence.<sup>16</sup>
31. There have been reports of attacks in Karbala in 2006 and 2007, however in 2007, the US Army handed over responsibility for security of Karbala province to the Iraqi military. At the time of the hand over Karbala was described as being more peaceful than many other sections of the war torn country.<sup>17</sup> In 2010, Karbala averaged 0.3 security incidents per 10 000 people and Karbala was the first governorate to have a full US pull out.<sup>18</sup> Shia militias have been resurgent in 2014 in response to increasing sectarianism and calls to defend Shia religious sites. In Shia dominant areas, Shia militia have been acting under the auspices of supporting Iraqi Security

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<sup>7</sup> DFAT, "DFAT Country Report Iraq," 13 February 2015, CISEC96CF1160 at 3.45

<sup>8</sup> DFAT, "DFAT Country Report Iraq," 13 February 2015, CISEC96CF1160 at 2.32

<sup>9</sup> DFAT, "DFAT Country Report Iraq," 13 February 2015, CISEC96CF1160 at 2.34

<sup>10</sup> DFAT, "DFAT Country Report Iraq," 13 February 2015, CISEC96CF1160 at 2.35

<sup>11</sup> DFAT, "DFAT Country Report Iraq," 13 February 2015, CISEC96CF1160 at 3.69

<sup>12</sup> DFAT, "DFAT Country Report Iraq," 13 February 2015, CISEC96CF1160 at 3.70

<sup>13</sup> DFAT, "DFAT Country Report Iraq," 13 February 2015, CISEC96CF1160 at 3.71

<sup>14</sup> DFAT, "DFAT Country Report Iraq," 13 February 2015, CISEC96CF1160 at 5.21

<sup>15</sup> DFAT, "DFAT Country Report Iraq," 13 February 2015, CISEC96CF1160 at 3.46

<sup>16</sup> DFAT, "DFAT Country Report Iraq," 13 February 2015, CISEC96CF1160 at 3.47

<sup>17</sup> Timelines of History, "Timeline Iraq 2006-2007", 5 May 2016, CIS1ACBC92950, "Wounded officer highest-ranking to be injured in Iraq", CNN, 29 October 2007, CXE90FC0120258

<sup>18</sup> "U.S. Forces Pull Out Of Iraq's Karbala Province", Musings on Iraq, 16 May 2011, CXCB3E63420874

Forces against Daesh.<sup>19</sup> Reporting from March and May 2015, indicates that Shia Popular Mobilisation Units (PMUs) have a training facility in Karbala.<sup>20</sup> PMUs are groups of mostly Shia militias that responded to a June 2014 fatwa calling able bodied Iraqi citizens to fight Daesh and protect sacred Shia shrines in Karbala.<sup>21</sup> An estimated 1500 PMU members in Karbala and Najaf whose aim is to protect the cities from Daesh.<sup>22</sup> The Peace Brigade and Asaib Ahl al-Haq, both Shia militia groups have a strong presence in southern Iraq, including in Karbala to protect Shia shrines in the city.<sup>23</sup> JAM, are a key Shia militia group and have conducted attacks on Sunnis and share an anti-Sunni outlook.<sup>24</sup>

32. Karbala province borders the vast Anbar region, which is a Daesh stronghold. Baghdad's early efforts in the counter-offensive that followed the devastating jihadist assault launched across Iraq in June 2014 focused on securing Karbala and the other holy Shia city of Najaf, further south. Military operations against Daesh south of Baghdad were successful.<sup>25</sup> In an article provided by the applicant to the IAA, it is evident that there have been Daesh attacks in Karbala as recently as August 2016.<sup>26</sup> The reporting indicates Daesh's objective was to target religious holy sites in Karbala. According to the casualties recorded in August 2016, Baghdad was the worst affected with 907 civilian casualties, followed by Nineveh with 116 killed and 83 injured, then Kirkuk with 81 killed and 13 injured, while Karbala recorded 17 killed and 25 injured.
33. The applicant, upon return will be returning to Karbala, his home area where his family continue to reside. I note he will be returning as a Shia Muslim and former [government official]. I accept he had some involvement with the Coalition forces through the occasional participation in raids as a low ranking [government official]. On the evidence before me, I find that there is less than a remote chance someone with the applicant's profile will be harmed by any terrorist organisations. Country information cited above indicates that while Shia militia groups are active, they are fighting alongside the government against Daesh. While there have been reports of Daesh attacks in Karbala, these attacks are targeting the Shia religious sites. While country information cited above indicates that some security forces are targeted, there is no evidence that Daesh or any other militant group are actively targeting [government official]s with the applicant's profile. I am not satisfied there is a real chance the applicant will be targeted on the basis of being a former [government official] and the applicant has not indicated that he would re-join the [government agency] upon return to Iraq and has not claimed any fear of harm on this basis. Country information cited above indicates that Karbala itself, given its religious relevance, has maintained tight security and low levels of security incidents. I also note the applicant will be returning to a Shia majority province of Iraq which continues to be controlled by the Iraqi government. On the evidence before the delegate, the applicant can access Karbala via the international airport in Basra. I am not satisfied the applicant will face a real chance of harm upon return to Karbala on the basis of being a former [government official] or a Shia, now or in the reasonably foreseeable future.

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<sup>19</sup> DFAT, "DFAT Country Report Iraq," 13 February 2015, CISEC96CF1160 at 2.37

<sup>20</sup> "Official -15,000 join Hashd al-Shaabi to battle ISIS in Iraq", Rudaw, 9 June 2015, CXBD6A0DE15229, ORSAM - Center for Middle Eastern Strategic Studies, "A New Controversial Actor in Post-ISIS Iraq: Al-Hashd Al-Shaabi (The Popular Mobilization Forces)", 1 May 2015, CISEC96CF13198

<sup>21</sup> Kenneth Katzman, "Iraq: Politics, Security, and U.S. Policy", United States Congressional Research Service, 22 June 2015, CISEC96CF12978 "Why Iraq needs to depoliticize their Popular Mobilization Units", Al Monitor, 10 July 2015, CXBD6A0DE10998

<sup>22</sup> "Iraq Sadr threatens Islamic State", Rudaw, 20 May 2015, CXBD6A0DE15230

<sup>23</sup> ORSAM - Center for Middle Eastern Strategic Studies, "A New Controversial Actor in Post-ISIS Iraq: Al-Hashd Al-Shaabi (The Popular Mobilization Forces)", 1 May 2015, CISEC96CF13198

<sup>24</sup> DFAT, "DFAT Country Report Iraq," 13 February 2015, CISEC96CF1160 at 2.36

<sup>25</sup> "Iraqi Shias gather at Karbala shrine for Ashura rituals", Al Bawaba, 24 October 2015, CXBD6A0DE17539

<sup>26</sup> "Attack kills 18 people near Karbala in Iraq," Al Jazeera, 29 August 2016, as cited in submission to the IAA

34. The applicant further claims that as he has formerly worked with the [Coalition forces] and been absent from Iraq for a period of time, he will be considered a spy upon return as people may assume he has been overseas in a western country participating in training. DFAT reports that members of rights groups have advised that people were at risk in the past because they have worked with Western governments (and particularly the US government). Many of those most at risk of being targeted (for example, those most closely involved with the US military) have already moved abroad. In government-controlled areas, the opposition to the US and other Western nations had diminished somewhat in recent years and overall, DFAT assesses the risk of violence to those who have worked with the international community is now moderate.<sup>27</sup> The applicant worked sporadically with the [Coalition forces] between 2006/2008 until the US withdrawal in 2011 and on my findings, did not suffer harm from any militant groups during this period. I also note that he did not work with them consistently throughout this period, and when he did participate in raids he did so as a low ranking [government official]. I have also considered the applicant has been absent from Iraq for a period of four years, however I am not satisfied this will elevate his profile to result in facing a real chance of harm. DFAT also has considerable evidence showing a number of Iraqis returning home, sometimes only months after securing residency in Australia, to reunite with families, to set up businesses or take up or resume positions in the government or public sector. The practice of seeking asylum then returning home once conditions permit is well accepted among Iraqis as is evidenced by large numbers of dual nationals from the US, Western Europe and Australia returning to take up residence and jobs in Iraq. DFAT has met many Iraqis who have gained protection visas and then returned to Iraq. DFAT has seen no evidence to suggest voluntary returnees from the West are not assimilated back into their communities.<sup>28</sup>
35. The Iraqi government now provides a range of incentives to encourage Iraqis who have not been able to gain asylum overseas to return to Iraq voluntarily. Incentives provided can include reinstatement as the returnee's previous place of employment (in the public sector); access to educational opportunities; and financial incentives and business loans. Senior government officials told DFAT in early 2014 that the government now offers returnees employment in provinces with lower levels of violence, whether or not that was their original place of employment.<sup>29</sup>
36. I am not satisfied the applicant will be perceived to be a spy and I am not satisfied the applicant has a profile which would attract the attention of any militia groups upon return to Iraq on this basis, now or in the reasonably foreseeable future. I am not satisfied there is a real chance the applicant would be harmed on the basis of returning to Iraq as a failed asylum seeker from a western country, now or in the reasonably foreseeable future. Nor am I satisfied that when considered in combination with his religion and his former [role] with links to the [Coalition] forces that he will face a real chance of serious harm on return.

### **Refugee: conclusion**

37. 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).

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<sup>27</sup> DFAT, "DFAT Country Report Iraq," 13 February 2015, CISEC96CF1160 at 3.72

<sup>28</sup> DFAT, "DFAT Country Report Iraq," 13 February 2015, CISEC96CF1160 at 5.27

<sup>29</sup> DFAT, "DFAT Country Report Iraq," 13 February 2015, CISEC96CF1160 at 5.28

## **Complementary protection assessment**

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38. 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**

39. 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.

40. I accept the applicant was a former low ranking [government official] who has previously worked alongside the Coalition forces in Karbala, Iraq. The applicant did not claim that he would re-join the [government agency] upon return to Iraq. I have found there is no real chance the applicant will face harm on this basis. As real chance equates to real risk, I am satisfied the applicant will not face a real risk of significant harm.

41. The applicant will be returning to Karbala as a Shia Muslim and I have found not real chance the applicant will face harm on this basis. As real chance equates to real risk, I am satisfied the applicant will not face a real risk of significant harm.

42. I accept the applicant will be returning to Iraq as someone who is a failed asylum seeker from a western country. I have found not real chance the applicant will face harm on this basis. As real chance equates to real risk, I am satisfied the applicant will not face a real risk of significant harm.

43. Taking into account the applicant's claims cumulatively, that he will be returning as a former low ranking [government official] who worked with the Coalition forces, a Shia Muslim from Karbala who has resided in Australia for a period of time and failed to seek asylum, I am not satisfied there is a real risk of significant harm.

### **Complementary protection: conclusion**

44. 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**

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***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.