



Australian Government
Immigration Assessment Authority

Decision and Reasons

Referred application

IRAQ
IAA reference: IAA17/02534

Date and time of decision: 26 July 2017 16:25:00
Mark Oakman, 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 an referred applicant, or their relative or other dependant.

Background to the review

Visa application

1. The referred applicant (the applicant) claims to be a Shia Arab from Karbala, Iraq. He arrived in Australia [in] March 2013 and lodged an application for a Temporary Protection visa (TPV) (XD-785) [in] May 2016. [In] April 2017 a delegate of the Minister for Immigration and Border Protection (the delegate) refused to grant the 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] May 2017 the applicant provided submissions and further information to the IAA. The submissions discuss evidence before the delegate and responds to the delegate's decision based on that material. The further information consists of a copy of the submissions and country information provided to the delegate [in] February 2017 that are part of the referred material before me.
4. It was submitted that at the TPV interview the delegate created an unfair environment for the applicant's interview because the delegate disrupted the applicant's representative on a number of occasions. As the applicant was given the opportunity to make oral submissions at the end of the interview and to provide post interview written submissions, and through his representative made such submissions, I am satisfied that the applicant had the opportunity to put forward all his claims.
5. In accordance with s.473DC(1) of the Act I obtained new information in the form of country information regarding conditions for Shias, civilians and returnees from the West in Iraq from the most recent Department of Foreign Affairs and Trade (DFAT) country report¹ for Iraq. This report is dated 26 June 2017 (DFAT 2017 report) and was not available at the date of the delegate's decision. The delegate relied on information contained in DFAT report for Iraq dated 13 February 2015 which the latest report has updated. Given that I consider DFAT an authoritative source of country information, the DFAT information relied on by the delegate is now more than two years old and the DFAT 2017 report is DFAT's most recent assessment regarding the situation in Iraq and was prepared for the specific purpose of protection status determination, together with the fluid security situation in Iraq, I am satisfied that there are exceptional circumstances to justify considering this new information.

Applicant's claims for protection

6. The applicant's claims can be summarised as follows:
 - He specifically fears persecution because of his religious beliefs (which include his unwillingness to fight and kill people), his political opinion (that being a neutral political stand) and his imputed political opinion. He doesn't have any political ties or loyalties as he has decided to stay neutral, if he is returned to Iraq, he fears he will definitely be singled out and attacked, hurt and even killed;

¹ DFAT, "Country Information Report for Iraq 2017", 26 June 2017, CISED50AD4631.

- He is a peaceful civilian and fears that if returned to Iraq his personal views of peace and non-violence are at great variance to the views of the majority (whether Shia, Sunni, Daesh or any other group in Iraq who is at war). Therefore he strongly believes he will be singled out personally and attacked by any militia group that wants to kill civilians, or by the Shia militia if he does not join their efforts and actions to topple the existing Iraqi government;
- He fears harm from Shia militia groups operating in central and southern Iraq including Asai'b Ahl al-haq (AHA), the Mahdi Army and the Badr Brigades;
- He fears sectarian violence and the security situation in Karbala and Iraq. He also fears intra-Shiite conflict among factions competing for power in Iraq;
- He fears the possibility of the government reintroducing conscription and that he will be forced to join a militia group or government forces and fight against his will;
- He fears, given that many years have passed since his departure from Iraq, that Shiite or other militia groups will believe he is a spy or extort money from him;
- He was in a market in July or August 2012 when an explosion killed a number of people including his friend. He was psychologically affected by the incident;
- The real chance of persecution relates to all areas of Iraq. The whole country faces sectarian violence, and Iraq in its entirety is embroiled with targeted violence; and
- He is unable to live in any other part of the country due to his limited education, skills and contacts and fears he would not be able to work and survive in another part of Iraq.

Factual findings

Receiving country

7. On the basis of the documents and oral evidence given by the applicant, I accept that the applicant is a national of Iraq from Karbala. I find that the applicant's receiving country is Iraq. The applicant has consistently claimed, and I accept, he is Arab and Shia.

Problems in Iraq

8. The applicant states he was born in [year] in [his hometown] in Karbala, Iraq. He left school after completing primary school in [year]. He worked in his father's [business], helping with basic chores including cleaning until his father's death in 2007. From 2007 until 2012 he worked as an [occupation]. He lived at the family's home in [his hometown] in Karbala throughout his time in Iraq. His mother continues to live with his [siblings] in the family home. He also has [other siblings] who are [married]. His mother works as [occupation] and supports his [siblings]. He is in contact with his family in Iraq two to three times a month. The applicant said that he cannot read or write Arabic.
9. The applicant claims that he is a peaceful man. He never volunteered for any militia training, never attempted to join the security forces including the police or internal intelligence. He is a dissenting Shia in that he doesn't want to take up armed conflict against anyone in Iraq or the Iraqi government and he holds and expresses opinions that are at variance to those of the majority of Shias in Karbala and other parts of Iraq or anyone else in Iraq. He never associated himself or involved himself with any groups, political or otherwise, and was not involved in any activities or protests against the government. He didn't go to mosque in Iraq and prayed at

home. He continues to pray at home and not attend mosque in Australia. He doesn't think his immediate family attends mosque in Iraq.

10. The applicant claims that in about July or August 2012 he was in the markets with his friend, 'HM'. He went to the supermarket to buy groceries and HM went to get the car. He heard an explosion and saw that HM had been killed in the explosion. The explosion also killed and injured many others. He was not near the explosions so he wasn't harmed physically. However, he lost a good friend and suffered psychologically. He was the one who called HM's parents to tell them their son was dead. He was only about [age] years old at the time of the explosion and he was greatly disturbed by it, the memories never leave him, and his outlook on life in Iraq soured. Neither he nor the authorities are sure who set off the explosion but he understands that Daesh claimed responsibility. In 2012 and since that time random bombings of that type were common in Karbala and throughout Iraq. He confirmed that, other than the psychological impacts from the death of his friend in the explosion, he didn't have any interactions with and wasn't directly harmed by any militia groups in Iraq.
11. The applicant said that his father died from natural causes in 2007. After his father's death they sold all the goods from the shop and didn't continue the business. After that he worked as [occupation]. He didn't need a special [permission] to be [occupation] [and] he made very little from the [work], just enough to get by. He sold his [equipment] for around US\$[amount] about three months before he left Iraq, which paid for his travel to Australia.
12. The applicant provided a number of documents to support his protection claims including identity documents, submissions and country information.
13. Country information confirms that there was an increase in sectarian violence in Iraq from 2013.² The Madhi Army, the Badr Brigades and the AHA are some of the main Shia militia groups operating in Iraq.³ Sunni insurgents have attacked Iraqi civilians and government personnel, with targets including Shia neighbourhoods, mosques and markets.⁴
14. There were some minor discrepancies in the applicant's evidence but overall I am satisfied the applicant was a credible witness. As he generally delivered his evidence at the TPV interview in a natural and responsive manner, and had the opportunity to provide further details in response to the delegate's various questions, I prefer that evidence over his written application to the extent of any inconsistencies. I accept the applicant's claims from his TPV interview and, to the extent they are not inconsistent with his evidence at the TPV interview, I also accept the claims in his written application.

Returning asylum seeker

15. The applicant claims to have left Iraq in December 2012 and travelled by air, using his own passport, to [Country 1] and [Country 2] and then travelled by boat from [Country 2] to [Country 3]. In March 2013 he travelled from [Country 3] to Australia as a passenger in a boat organised by a smuggler. His passport was taken off him in [Country 3]. I find that, if he were to return to Iraq, he may be identified as a returning asylum seeker.

² DFAT, "DFAT Country Report Iraq", 13 February 2015, CISEC96CF1160, 2.26.

³ UK Home Office (UKHO), "Country Information and Guidance Iraq: Security situation in Baghdad, the south and the Kurdistan Region of Iraq (KRI)", 12 August 2016, OGD7C848D67, 4.1.5.

⁴ Jane's Sentinel, "Jane's Sentinel Security Assessment Iraq January 2015 - Security", 26 January 2015, CISEC96CF1245, p8.

Refugee assessment

16. 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

17. 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.

Harm as a civilian, as a Shia, and as a result of and the security situation in Iraq

18. I accept that the applicant is a Shia from Karbala in southern Iraq. I also accept that the applicant is a civilian and has never trained with or served in the Iraqi security forces, militia or other armed groups.
19. The UN High Commissioner for Refugees (UNHCR) reported in November 2016 that the security situation in many parts of central and northern Iraq continues to be highly volatile and Daesh reportedly claims responsibility for numerous and regular attacks against military and civilian targets in Baghdad and other areas under government control. Some attacks appear deliberately aimed at civilians, including in mosques, markets, restaurants, playgrounds, and often in Shia-majority neighbourhoods or towns.⁵ The UNHCR considers the impact of the ongoing conflict and other acts of violence on civilians is severe and extensive. The death toll spiked in the 2006-2007 sectarian violence in Iraq, followed by a relative reduction in casualty rates between 2010 and 2012. Casualty rates rose again from 2013 and during 2014 and 2015 were at their highest level since 2006-2007. Baghdad Governorate was consistently the worst affected in terms of casualty figures. Six other governorates follow Baghdad in terms of severity of casualty figures, but of the southern provinces only Babel is included in that list.⁶
20. The UK Home Office (UKHO) assesses that in the southern governorates, including Karbala, indiscriminate violence is not at such a level that substantial grounds exist for believing a

⁵ UNHCR, "UNHCR Position on Returns to Iraq", 14 November 2016, CIS38A80122649, paragraphs 5 and 11.

⁶ Ibid paragraph 31.

person, solely by being present there for any length of time, faced a real risk of harm.⁷ An analysis of civilian casualties shows that in Karbala the monthly civilian casualties between June 2014 and July 2016 were generally very low except in 2014 when they peaked at around 25 between October and December 2014. By way of contrast, during the same period the monthly civilian casualty rate in Baghdad varied between around 200 to a peak, also between October and December 2014, of just over 500.⁸ UKHO reports that Babil is the most violent of the southern provinces.⁹ Although Daesh announced in 2014 that it would carry its offensive as far as Karbala and Najaf there were no large scale armed confrontations between Daesh and Iraqi troops in Karbala province and security measures were enhanced in Karbala with Iraq troops reinforced by volunteers.¹⁰ In the southern provinces, other than Babil, the violence is mainly limited to sporadic terrorist attacks of decreasing frequency and intensity, with the number of civilian casualties significantly lower than in Babil and far below the levels reached in central Iraq and Baghdad.¹¹ The UKHO states, subject to their ethnicity and religious sect, in general it may be reasonable for a person to relocate to one of the southern governorates.¹² That report also notes that a UK Upper Tribunal decision concluded that there was not a real risk of an ordinary civilian travelling from Baghdad airport to the southern governorates suffering serious harm en route.¹³

21. DFAT states that Shia communities are subject to both generalised and targeted violence from Daesh, that violence against Shias is particularly prominent in Baghdad and targets Shia areas in Baghdad where people congregate. Recent attacks against Shias in Baghdad are likely to be linked to the Government's success in liberating areas previously held by Daesh and is largely aimed at destabilising the government and increasing Shia / Sunni tensions rather than at specific individuals.¹⁴ DFAT assesses that Shias in the Shia-dominated provinces of southern Iraq face a lower risk of generalised violence than those in Baghdad.¹⁵ Southern Iraq, including Karbala, remains more secure than the rest of the country and generalised criminality is at a lower level than in Baghdad, although there are recent reports of a deterioration of law and order on Basra. Intra-Shia violence can occur but ordinary civilians are not predominantly the targets.¹⁶
22. The country information provided by the applicant includes articles about the March 2016 casualty figures for Iraq, details of a suicide bombing in the southern city of Samawah in May 2016 together with the April 2016 casualty figures for Iraq, details of a suicide bombing in Karbala in June 2016, details of a suicide bombing near Karbala in November 2016, a rocket attack following further protests in the green zone in February 2017 and an article from January 2017 suggesting Daesh after major losses in Mosul is seeking to move its operations to the predominantly Shia central and southern Iraq. The applicant also provided a copy of the DFAT Smart Traveller Advice from 18 November 2016 that advises Australians not to travel to Iraq because of the extremely volatile and dangerous security situation. DFAT travel advice is prepared to inform Australians on the risks associated with travel to Iraq for Australians, including the Australian government's limited ability to provide consular support if required and the particular risks that foreigners in Iraq may face. The DFAT travel advice for Iraq reflects

⁷ UKHO, "Security situation in Baghdad, southern governorates and the Kurdistan Region of Iraq (KRI)", 12 August 2016, OGD7C848D67, 1.2.1, 2.3.5 and 3.1.1.

⁸ Ibid 6.2.2.

⁹ Ibid 6.2.2 and 8.2.1.

¹⁰ Ibid 8.2.3.

¹¹ Ibid 8.2.6.

¹² UKHO, "Country Information and Guidance Iraq: Return/Internal relocation", 18 August 2016, OGD7C848D68, 2.2.17.

¹³ Ibid 2.2.18.

¹⁴ DFAT, "Country Information Report for Iraq 2017", 26 June 2017, CISED50AD4631, 3.32.

¹⁵ Ibid 3.34.

¹⁶ Ibid 3.33 and 5.17.

a blanket assessment of the security situation in Iraq. In view of the particular purpose for which the DFAT advice was prepared, and its blanket assessment of the security situation in Iraq, it is of limited value in the assessment of the chance of harm to the applicant in Karbala. Overall, I consider the country information provided by the applicant to be generally consistent with the country information from DFAT, UNHCR and UKHO discussed above. In short, attacks including attacks against civilians and locations where civilians congregate may potentially occur all over Iraq, including in the southern governorates from Daesh. However, the southern governorates, excluding Babil, appear to consistently suffer significantly lower levels of violence and security incidents than Baghdad and the central provinces. Additionally, notwithstanding the article from January 2017 provided by the applicant that suggests Daesh was moving operations to the centre and south, the DFAT report that was prepared in June 2017 assesses the south as a lower risk area and a reasonable relocation option for Shias.

23. The applicant submitted that the delegate was wrong to conclude that he was never personally targeted or harmed in Iraq. He argued that he suffered psychological harm with the death of HM and that terror groups specifically target civilians, including the market explosion in which HM died. I accept that the applicant was psychologically harmed by the explosion at the market in July or August 2012 in which HM died. I also accept based on the country information discussed above that Daesh carries out numerous attacks against civilian targets, particularly in Baghdad. However, I do not agree that because attacks against civilians and locations where civilians congregate may potentially occur all over Iraq, and a bomb exploded in a market area the applicant happened to be attending, that it equates to the applicant being personally targeted.
24. The applicant comes from Karbala in southern Iraq where his immediate family, other than one of his [siblings], still live and I am satisfied this is his home area and the area of Iraq to which he would return. He is Shia and a civilian. Karbala is predominately Shia in population and under the control of the Iraqi government. Country information indicates that the risk of generalised violence for Shia civilians is significantly lower in the southern governorates and ordinary civilians face little risk traveling from Baghdad airport to the southern governorates. I consider that although there is some violence in Karbala, overall it is at such a low level that the chance of the applicant being harmed is remote. I am not satisfied that there is a real chance that the applicant would face serious harm on the basis of his Shia faith or as a civilian if he returned to Iraq, now or in the reasonably foreseeable future.

Unwillingness to join a Shia militia, conscription, political views or imputed political opinion

25. The applicant fears he will be targeted by Shia militia groups, especially the AHA, the Mahdi Army and the Badr Brigades, if he returns to Iraq and refuses to fight. He fears harm from Shia militia groups, including political infighting, in general. He fears the Iraqi government will reintroduce conscription. I accept that the applicant does not believe in violence.
26. Country information from March 2016 indicates that the Iraqi Defence Minister was working on a draft conscription law for the ministerial council and that if a draft law is approved by the council it should be voted on by the Iraqi parliament.¹⁷ The delegate was unable to locate any other country information that suggests any progress has since been made on any draft conscription law.¹⁸ Based on the available country information, I consider that the reintroduction of conscription in Iraq, and any potential conflict between the applicant's non-

¹⁷ "Iraq Considering Compulsory Military Service", BasNews, 7 March 2016, CX6A26A6E3564.

¹⁸ Protection Visa Decision Record, 20 April 2017, p9.

violent beliefs and such a law, is speculative and I do not accept that he is at risk of harm, now or in the foreseeable future.

27. The AHA, Madhi Army and Badr Brigades are now generally under the umbrella of the Popular Mobilisation Forces (PMF) and, together with the Iraqi security forces, involved in fighting against Daesh.¹⁹ DFAT states that there is violence between Shia militia groups, including those in the PMF, but says there is credible information to suggest that ordinary civilians are not the ones predominantly at risk of being caught in the intra-Shia violence.²⁰ The Shia militias, including PMF groups, are also reported to be involved in some human rights abuses against civilians.²¹ The applicant provided some articles about protests, in 2016 and 2017, in the green zone in Baghdad by followers of al-Sadr, the leader of the Mahdi Army. Al-Sadr has previously denounced sectarian violence and militia killings²² and the 2017 article indicates that al-Sadr called off the protest following the deaths of some of his followers. The country information makes reference to Daesh conscripting children,²³ but does not suggest that the Shia militias, including the PMF, engage in forced recruitment to obtain members. The delegate was unable to locate any other country information that suggests that the Shia militias use conscription or engage in forced recruitment in southern Iraq.²⁴ There is nothing in the country information to suggest that not volunteering for or otherwise refusing to join a Shia militia tends to impute a person with anti-government, anti-Shia militia or other political views. Additionally, there is no suggestion in the country information that people are targeted by militias for not attending mosque or otherwise imputed with anti-Shia or other political views.
28. The applicant was not involved with any militia or armed tribal groups when he was in Iraq and given his non-violent beliefs I accept he will not become involved in such groups if he returns to Iraq. He and his family are Shia. He does not claim that he or any of his immediate family was ever subject to any harm or other adverse attention from any Shia militias while he was in Iraq or since he left for Australia. The country information does not suggest that the applicant is at risk of forced recruitment by Shia militias or that he will be imputed with any political opinion because he will not become actively involved with the Shia militias or does not attend mosque. I am not satisfied that the applicant would face a real risk of harm because of his non-violent beliefs, for not becoming involved with any Shia militias, for any imputed political opinion, and/or from Shia militias or political infighting in general, if returned to Iraq, now or in the foreseeable future.

Unsuccessful asylum seeker and returnee from the West

29. I accept that the applicant will be returning to Iraq as an unsuccessful asylum seeker who left Iraq and has been living in the West, in Australia, for more than four years.
30. DFAT suggests that it is well accepted by Iraqis that people may seek asylum overseas and then return home when conditions have improved.²⁵ There is limited evidence to suggest voluntary returnees from the West can encounter difficulties in re-assimilating into the community, and that evidence suggests that return may be difficult where a person does not return to their

¹⁹ United States Congressional Research Service, "Iraq: Politics, Security, and U.S. Policy", 22 June 2015, CISEC96CF12978, pp17 and 32.

²⁰ DFAT, "Country Information Report for Iraq 2017", 26 June 2017, CISED50AD4631, 3.33 and 5.17.

²¹ Ibid, 2.31 and 5.6

²² Al-Sadr decides to freeze al-Salam brigades - Iraq suffers from brazen militias", Shafaq News, 17 February 2015, CXBD6A0DE12771.

²³ UNHCR, "UNHCR Position on Returns to Iraq", 14 November 2016, CIS38A80122649, paragraph 9.

²⁴ Protection Visa Decision Record, 20 April 2017, p9.

²⁵ DFAT, "Country Information Report for Iraq 2017", 26 June 2017, CISED50AD4631, 5.25.

original community.²⁶ However, the applicant will be returning to Karbala where most of his immediate family lives and where he lived all his life when he was previously in Iraq.

31. The applicant submitted that he may be targeted by militias as a suspected spy or for extortion because he would be returning after a number of years as an asylum seeker from the West. DFAT notes that generalised criminality is lower in southern Iraq than in Baghdad, but also indicates that some Shia militia groups have been criticised for engaging in criminal activities and also accused of extorting civilians.²⁷ However, DFAT and other country information does not suggest there is any specific targeting of returnees from the West by criminal gangs or militias and the UNHCR only mentions that criminal groups target members of certain religious minorities who are perceived as wealthy.²⁸ Although those who have worked or associated with the international community in Iraq face risks of societal discrimination and violence,²⁹ there is no suggestion in the country information that returnees from the West are generally considered to be spies or otherwise viewed with suspicion.
32. The applicant does not claim he or his family were previously the targets of extortion or that his family was subject to any extortion since he left Iraq. The country information does not suggest returned asylum seekers are generally treated with suspicion or targeted in Iraq. He is Shia and not from a religious minority. He does not claim he worked for or was associated with the international community in Iraq. I am satisfied that the chance of harm to the applicant from militia or criminal groups, either as a suspected spy or as the target of extortion, as a returned asylum seeker is remote.
33. The applicant claimed that because of his limited education, skills and contacts it would be difficult for him to survive, particularly elsewhere in Iraq. Unemployment is high in Iraq, including in the south.³⁰ However, the applicant has approximately eight years work experience from his time working in his father's shop and as [occupation]. His travelling to, and settling in, Australia shows a level of independence and resourcefulness. UKHO notes that those who do not speak Arabic are less likely to find work.³¹ Although he cannot read or write Arabic, he can speak it. Country information indicates that Iraqis have access to, and many rely on, the Public Distribution System (PDS) for food.³² The applicant provided copies of his identification documents which he would need to access the PDS during the visa application process. The applicant's mother, who works as [occupation], supports his [siblings] in Iraq, he remains in regular contact with his family (two to three times a month) and there is nothing in the evidence to suggest that his mother would be unable or unwilling to assist the applicant with some level of support if he returns to Karbala. In the circumstances, I am satisfied that, if returned to Iraq, the applicant would not suffer any significant economic hardship that would threaten his capacity to subsist or otherwise constitute serious harm, now or in the reasonably foreseeable future.
34. I am not satisfied that the applicant faces a real chance of persecution on the basis that he is an asylum seeker who left Iraq and has lived in Australia for more than four years, if returned to Iraq, now or in the reasonably foreseeable future.

²⁶ Ibid.

²⁷ Ibid 2.31, 5.6 and 5.17.

²⁸ UNHCR, "UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Asylum Seekers from Iraq", 31 May 2012, CIS27173, p25.

²⁹ Ibid pp16-17.

³⁰ DFAT, "Country Information Report for Iraq 2017", 26 June 2017, CISED50AD4631, 2.19 and 5.19.

³¹ UKHO, "Country Information and Guidance Iraq: Return/Internal relocation", 18 August 2016, OGD7C848D68, 2.2.15.

³² UNHCR, "UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Asylum Seekers from Iraq", 31 May 2012, CIS27173, pp51 and 54.

35. Overall, I am not satisfied that the applicant faces a real chance of persecution now or in the reasonably foreseeable future if he returned to Iraq, for having lived and made claims for asylum in the West, as a Shia, as a civilian, because of his political views, for any imputed political opinion, from generalised violence or any combination of these. The applicant does not have a well-founded fear of persecution within the meaning of s.5J.

Refugee: conclusion

36. 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

37. 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

38. 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.

39. I accept that applicant may face some economic hardship if returned to Iraq. However, I am not satisfied on the evidence that any such hardship will amount to severe pain or suffering, or pain and suffering that could reasonably be considered as cruel or inhuman in nature or to amount to extreme humiliation. I am not satisfied that the applicant faces hardship that amounts to significant harm as defined in ss.36(2A) and 5 of the Act.

40. I have found that there is not a real chance of harm to the applicant, now or in the foreseeable future, in Karbala, the area of Iraq to which I find he would return, whether from generalised violence, for having lived and made a claim for asylum in the West, because of his Shia faith, as a civilian, because of his non-violent beliefs, for any imputed political opinion, for not becoming involved with any Shia militias, from Shia militias or political infighting, or a combination of these. As 'real risk' and 'real chance' involve the application of the same standard,³³ it follows that I am also satisfied that there is no real risk of significant harm if he returns to Iraq.

41. Having considered the applicant's circumstances individually and cumulatively, I am not satisfied that he faces a real risk of significant harm.

³³ *MIAC v SZQRB* (2013) 210 FCR 505.

Complementary protection: conclusion

42. 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

...

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.

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36 Protection visas – criteria provided for by this Act

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- (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.