



Australian Government

Immigration Assessment Authority

Decision and Reasons

Referred application

IRAQ

IAA reference: IAA18/05985

Date and time of decision: 22 January 2019 10:15:00

A Wilson, Reviewer

Decision

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

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

Background to the review

Visa application

1. The referred applicant (the applicant) claims to be a Sunni Arab from Iraq. He arrived in Australia [in] July 2013. On 12 May 2017 he lodged an application for a safe haven enterprise visa (SHEV).
2. On 12 November 2018 a delegate of the Minister for Immigration refused to grant the visa. The delegate accepted the applicant was a Sunni Muslim, that his father was a retired army [official], that the applicant was threatened during a 2009 dispute over parking, that the family's Baghdad house was damaged in a 2011 attack on a nearby police station, that in early 2013 an envelope containing a bullet was left on the windscreen of the applicant's car, and that the applicant regularly drank alcohol. However the delegate did not accept the applicant would suffer harm because he was a Sunni Muslim or because of the security situation in Baghdad; because he may consume alcohol on return to Iraq, or that he would be forced to fight as a soldier in the Iraqi army. Nor did the delegate accept the applicant had suffered any difficulties in the three decades he lived in Iraq because of his father's former role in Saddam Hussein's army.

Information before the IAA

3. I have had regard to the material given by the Secretary under s.473CB of the *Migration Act 1958* (the Act).
4. On 14 December 2018 the applicant provided a three page letter to the IAA (the IAA letter), that he stated was prepared with the assistance of a migration agent from [an organisation]. Apart from the issue discussed below, the IAA letter restates many of the applicant's claims that were before the delegate, addresses the delegate's decision and issues arising and to that extent I regard it as argument rather than information and have considered it.
5. In the IAA letter the applicant stated the letter may not represent all his concerns and he is happy to provide further information to assist the IAA to make a correct decision. I take this to be a request for an interview. The IAA is a limited form of review. In limited circumstances it may conduct an interview to obtain new information or provide an opportunity to comment on certain new information that may be adverse. In the assessment of this application I have had regard to the review material and the information provided to the IAA. I consider that throughout the processing of his application the applicant has been given an opportunity to present his claims and respond to relevant issues. I also note that in making this request the applicant did not give any indication of what further information he might want to provide at an interview beyond what he has provided in his letter, or why an interview might be the appropriate means to provide it. I am not satisfied the circumstances warrant the IAA conducting an interview with the applicant.

Applicant's claims for protection

6. The applicant's claims can be summarised as follows:
 - He is a non-practising Sunni Muslim from a wealthy family living in [Village 1] in Baghdad.

- His father was [an officer] in Saddam Hussein’s army until around 1988 when he retired. The applicant was teased as a result of his father’s former position and the family’s wealth.
- In around 2009 or 2010 he was verbally threatened when he refused to pay for parking.
- In October 2011, while the applicant was living in [Country 1], his family’s house suffered damage when an explosion occurred at a nearby police station.
- In February 2013, after he had been drinking alcohol in a club in central Baghdad with friends, he returned to his car and found an envelope containing a bullet on the windscreen.
- He fears he will be killed, hurt, or kidnapped; or that he will be forced to be a soldier; or that he will be unable to get a job and live a normal life.

Refugee assessment

7. 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

8. 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.
9. The applicant provided the delegate with originals and English translations of an Iraqi identity card and an Iraqi citizenship certificate, in support of his claimed identity. On the basis of his oral and documentary evidence, I accept that the applicant’s name is as claimed and that he is a national of Iraq. Although the applicant spent around two and a half years in [Country 1] and short periods of time in [Country 2] and [Country 3], there is no other evidence before me to suggest that the applicant has a right to enter and reside in any other country apart from Iraq. I find that Iraq is his receiving country for the purpose of this review.

10. On the basis of the applicant's documentary and oral evidence I also accept: that he is of Arab ethnicity; that he was born and lived most of his life in the same house in [Village 1] in Baghdad, apart from the period from mid-2010 until early 2013 when he lived in [Country 1] and where he was recognised as a refugee in 2012; that he completed primary and intermediate school; and that he is single.
11. The applicant claimed he may be hurt, killed or abducted by the government, terrorist organisations or extremists on the basis of his Sunni religion, his lifestyle, because his father was a high-ranking [army official] in Saddam Hussein's army, and because his family is living in the most dangerous part of Baghdad. In Iraq there is tension between Sunni and Shiite Muslims. There are lots of problems and lots of bombing. The whole country is in trouble.
12. The applicant claimed his father served as [an official] in the army in the time of Saddam Hussein and many people would tease him because his father was important and because their family had some money. The teasing was not ordinary teasing but of such an intensity that he was worried for his safety. He thinks his father may have been responsible for [a certain task], but he is unsure because he was not allowed to talk about it. He was constantly worried he, his brother or his father would be abducted because his father was such a high ranking officer. Because his father was an officer the applicant would not be able to have any government or state job, because if you are a son of an officer in Saddam Hussein's reign people do not want you working with them. He would not be able to get any job in Iraq and it would be difficult for him to make money and support himself to have a livelihood.
13. I do not accept the applicant's father was [an official] in Saddam Hussein's army. He provided no documentary evidence concerning his father's purported high level role in the army and his evidence in the SHEV application and during the SHEV interview regarding his father's position and what it entailed was vague, despite claiming he was in weekly contact with his family. I am however willing to accept his father occupied some sort of position in Saddam Hussein's army, possibly as an officer, until his retirement in the late Eighties. I also accept as a consequence of his army job his father was a member of the Baath Party. But I do not accept the applicant was teased because of his father's former role. The claim is vague. He has not indicated who teased him, what it involved, how often it happened, or where it occurred. Furthermore, although country information indicates there was some targeting of, and discrimination towards, former Baath Party officials in the years immediately after the fall of Saddam Hussein, the independent information does not support that family members of former Baath party officials were harmed or subjected to discrimination either at that time or more recently¹. In addition, I note the applicant has not claimed that his father suffered any adverse treatment as a result of his former position. His evidence at the SHEV interview was that his father was well regarded. In such circumstances it seems implausible that the applicant who was a child when his father held the role in Saddam's army would be harmed because of this connection more than a decade later. While I acknowledge country information suggests some former high-level Baath party officials may face discrimination in

¹ The Department of Foreign Affairs and Trade (DFAT), "Country Information Report for Iraq 2017", 26 June 2017, CISED50AD4631. UN High Commissioner for Refugees, "UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Asylum-Seekers from Iraq", 31 May 2012, 3577. Immigration and Refugee Board of Canada, IRQ42228.E - Iraq: Reports of violence and acts of revenge by the general population against the officials and their families of Saddam Hussein's regime following Hussein's fall, 15 January 2004, OG4A5676B6. DFAT, "DFAT Country Information Report - Iraq", 9 October 2018, CIS7B839419766. I note the protection visa decision record, included in the review material, referred a number of times to a Country Report on Iraq dated September 2018. Having regard to excerpts from that report cited in the decision record I am satisfied the delegate was in fact referring to this report, the DFAT Country Information Report on Iraq dated 9 October 2018.

employment², I do not accept the applicant would be precluded from obtaining a government job. I note he has not claimed that he has previously sought or been denied such a job or that he intends to seek such a position if he were to return to Iraq. Furthermore I note at the SHEV interview the applicant stated that his brother worked several days a week in a government job which would appear to undermine this claim. Nor do I accept the applicant will be unable to obtain any job or that he will be denied a livelihood if he were to return to Iraq. In the SHEV application the applicant stated he previously worked for several private companies and was self-employed for a period in Baghdad. And his evidence at the SHEV interview was that as a result of income from properties he or his family owned he had no real need to work and only did so when he chose to. Despite his subjective fear that he, his father, or his brother may be kidnapped, and country information indicating the occurrence of kidnappings, although mainly for financial motives in areas such as Baghdad which remained outside ISIL control³, he did not claim that any attempt had been made to abduct either himself or any of his relatives either in the three decades he lived in Iraq or in the several years he lived in [Country 1] or in the five years he has been in Australia. In these circumstances I am not satisfied there is a real chance the applicant will suffer any harm in connection with his father's Baathist links as a result of having served in Saddam's army or that he will be denied the capacity to subsist.

14. The applicant claimed in about late 2009 or 2010 a person in Baghdad threatened him, saying something to the effect of "you're a Sunni, you have no existence anymore in Iraq." He did not know the person, but was parking his car in the street incorrectly. He does not know how the person knew he was Sunni. Most people do not park correctly, and then people would ask them for money. They did not know who these people were, if they were from the government, or some other organisation. The person asked him for money but he did not give him any. He began abusing him, calling him a Sunni and saying he had no right to exist in Iraq. In about June 2010 he left to go to [Country 1] because he did not feel safe in Iraq, because of the threat in relation to the parking but also because of the constant bombings, abduction risk and lack of safety.
15. I accept the applicant was involved in an altercation following a demand that he pay for parking. I am also willing to accept that during their argument the other person made a negative remark about the applicant being a Sunni. Although the other person may have disapproved of Sunnis for sectarian reasons, I am not persuaded he was threatening to harm the applicant because he was a Sunni. He was angry because the applicant would not pay him for a parking spot. As the applicant stated at the SHEV interview he did not know who the other person was, what their religion was, or how they would know he was a Sunni. I also note the matter was resolved by the applicant taking his car and leaving and that the other person did not physically harm him at that time or thereafter. The applicant has not claimed he heard from or saw the other person again either in the intervening months / year until he left for [Country 1] or when he returned from [Country 1] to Iraq for another six months several years later. I am satisfied the chance is remote the applicant will suffer harm in connection with this event.
16. At the SHEV interview when the delegate asked whether he had experienced any threats or discrimination further to the 2009 incident, the applicant claimed on many occasions when he and friends were hanging around chatting outside where he lived in [Village 1] the police would come and say they should not be gathering in groups. And because people had thrown

² DFAT, "Country Information Report for Iraq 2017", 26 June 2017, CISED50AD4631. DFAT, "DFAT Country Information Report - Iraq", 9 October 2018, CIS7B839419766.

³ DFAT, "DFAT Country Information Report - Iraq", 9 October 2018, CIS7B839419766. United Kingdom: Upper Tribunal (Immigration and Asylum Chamber), "BA (Returns to Baghdad) Iraq CG", 23 January 2017, CISED50AD169.

explosives at the police station, when he was driving past and had forgotten to turn his car's interior light on the police would point their guns at him and tell him to turn the light on so they could see who was in the car. Also when the family were driving into the house they would have to drive slowly and put on their hazard lights.

17. I accept the interactions described above involving the applicant and the police occurred. However I do not accept they were threats or discrimination aimed at the applicant because of his religion, social class or because of his father's Baathist connections. The applicant's own evidence was that the police simply wanted him and his friends to disperse into smaller groups or gather elsewhere. Also at the SHEV interview the applicant agreed with the delegate that the police scrutiny was nothing to do with his religion and was instead related to the police's security concerns about the nearby police station. This is also confirmed by country information indicating that ISIL often targeted police stations⁴. In these circumstances I find the exchanges between the applicant and the police occurred in the context of police trepidation about security in the Baghdad neighbourhood of [Village 1]. They were not connected with or personally aimed at the applicant. I am satisfied the chance is remote the applicant will suffer harm in connection with these events.
18. The applicant claimed in around October 2011, while he was in [Country 1], a police station that was located next to, and in front of his family's house in Iraq was attacked. His sister told him that the police station was blown up, and the house the family were living in fell on their heads and was really badly damaged. His sister-in-law was cooking at the time and was struck by the falling roof. His family fixed the house and still live there. The police station has also been rebuilt and it is still a target for attacks. There has been smaller bombs placed at this station, and armed people have stormed this station. It is a very dangerous area. His family are living in constant fear, they cannot even sit in the garden or be out in the open near the house, for fear of being in the middle of another attack. Sometimes the police close and block the road due to safety concerns, which stops his family from entering or leaving the house. In support of this claim he provided photographs he stated showed the damage to the family's home.
19. Although the photographs are undated, I accept in late 2011 the applicant's family's home suffered minor damage and that his sister-in-law suffered a minor injury as a result of the detonation of a bomb at a nearby police station. The claim is consistent with country information indicating that police stations, in Baghdad and elsewhere in Iraq, were being targeted by ISIL at that time⁵. Also the delegate referred to but did not cite country information confirming a bomb blast at a police station in [Village 1] at around that time. I do not accept the explosion was targeted at the applicant, who in any case was not in the country, or his family, because of their religion or social class or for any other reason. The applicant's evidence and the country information both confirm the police station was the object of the attack. And while I accept the police may still seek to maintain security around the [Village 1] police station, I do not accept it has continued to be attacked over the subsequent seven years. Apart from the applicant's assertion, there is no evidence before me

⁴ DFAT, "Country Information Report for Iraq 2017", 26 June 2017, CISED50AD4631. UN High Commissioner for Refugees, "UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Asylum-Seekers from Iraq", 31 May 2012, 3577. United Kingdom: Upper Tribunal (Immigration and Asylum Chamber), "BA (Returns to Baghdad) Iraq CG", 23 January 2017, CISED50AD169. UN High Commissioner for Refugees (UNHCR), "UNHCR Position on Returns to Iraq", 14 November 2016, CIS38A80122649.

⁵ DFAT, "Country Information Report for Iraq 2017", 26 June 2017, CISED50AD4631. UN High Commissioner for Refugees, "UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Asylum-Seekers from Iraq", 31 May 2012, 3577. United Kingdom: Upper Tribunal (Immigration and Asylum Chamber), "BA (Returns to Baghdad) Iraq CG", 23 January 2017, CISED50AD169. UN High Commissioner for Refugees (UNHCR), "UNHCR Position on Returns to Iraq", 14 November 2016, CIS38A80122649.

to suggest this is the case. And while I acknowledge there was [an] attack in the suburb of [Village 1]⁶, I do not accept that [Village 1] is a very dangerous area in Iraq, or that the applicant's family are living in constant fear. Reliable sources of country information indicate that violence in Baghdad is at its lowest in a decade and has declined significantly, particularly since the government recaptured the last territory held by ISIL in late 2017⁷. Additionally, the applicant's statements at the SHEV interview that his father sleeps on the roof terrace of the house to escape the heat and that his family had not personally experienced or witnessed any explosions, apart from the 2011 incident at the police station, tends to undermine this claim. I am satisfied the chance is remote the applicant will suffer harm in connection with this event that occurred over seven years ago.

20. The applicant claimed he was forced to return to Iraq from [Country 1] in early 2013 because the security situation in [Country 1] became very poor. After he returned he went out in February 2013 with some friends who he had not seen in a long time. They were in a popular area, [drinking] alcohol at a fashionable nightclub on that street. He came out to his car on that particular night and found a small white envelope without any writing on it under the wipers of his car windscreen. The envelope had a bullet in it. This was a prevalent way of threatening people in Iraq. At that time Iraq wanted a state that followed Islamic rules where drinking alcohol is prohibited. A lot of young men were killed for this reason. Sometimes bottle shop owners were also killed for this reason. Four months ago the government tried to pass a law that said it was illegal to drink alcohol; though it was not successful, the government always harasses people they think are drinking alcohol.
21. I am willing to accept an anonymous threat was left on the windscreen of the applicant's car while it was parked in an entertainment district in Baghdad well known as being a place where alcohol is sold and consumed. I note the applicant's evidence that this type of threat was a common occurrence. I conclude the anonymous threat was not targeted at him personally but rather was a general warning to patrons of the area. The threat was not addressed to the applicant nor was it signed and I am not persuaded whoever left the threat on the car knew the applicant was Sunni, wealthy, or the son of former Baathist rather than just presuming he was a customer in the area given his car was parked there. According to the applicant it was his first and only visit to that particular club so it seems highly unlikely he would have been known. As discussed below the applicant drank alcohol at friends' homes and in his regular club for several more months prior to his departure from Iraq without experiencing adverse treatment. I am satisfied the chance is remote the applicant will suffer harm in connection with the anonymous threat.
22. The applicant claimed he would regularly drink alcohol at '[a club]' and at friends' places, mostly on the weekends - possibly three to four times a week. But he would ensure that he would not appear to be drunk, or be drinking in public. In Iraq, which is mostly a Muslim country, drinking alcohol is a risk, as individuals who have a more extreme interpretation of Islam might threaten or kill them if they knew, and the government would also use it as an excuse to harass them. He lived in [Village 1], which was a popular shopping destination where alcohol shops existed and a lot of alcohol shops in that area were bombed, and it is considered the most dangerous area in Iraq at present.
23. I accept the applicant drank alcohol several times a week at private clubs or houses in Baghdad. At the SHEV interview he discussed when and where he drank in a manner

⁶ [Source deleted].

⁷ Joel Wing, "3,230 Dead, 1,128 Wounded In Iraq June 2017", Musings on Iraq, 8 July 2017, CISED50AD4799. DFAT, "DFAT Country Information Report - Iraq", 9 October 2018, CIS7B839419766.

consistent with lived experience. Also country information indicates that although selling alcohol has been prohibited in Iraq since late 2016, it is unclear to what extent this unpopular law has been enforced. Additionally country information supports that the law did not make it illegal to consume alcohol,⁸ and many Iraqis do drink alcohol despite some conservative elements in Iraqi society frowning upon the practice⁹. I also accept that, apart from the first six months he was in Australia, the applicant has continued to be a social drinker of alcohol here.

24. On the basis of his past behaviour, I accept if the applicant were to return to Iraq he may drink alcohol in clubs or friends' homes as he did previously. While I acknowledge that from time to time armed groups have attacked alcohol sellers, usually Christians or Yezidis, in a number of locations in Iraq in the past, country information does not support that persons who drink alcohol in the manner described by the applicant suffer harm¹⁰. In addition I note that, apart from the February 2013 incident outside the club the applicant only visited on that one occasion, the applicant drank alcohol regularly at his regular club and friends' homes without incident. I am not satisfied there is a real chance the applicant will suffer harm if he consumes alcohol in Iraq now or in the reasonably foreseeable future.
25. The applicant claimed as a Sunni living in Iraq he faced difficulties getting a job and living freely. The government is currently a Shiite government, and they do not help Sunnis at all. He will be harmed in some way, most likely government agencies and terrorists, because it is not safe at all there. As a Sunni Muslim he would be under a greater threat than a Shiite Muslim. The government of Iraq gives very few rights to Sunnis. It would not be possible for him to change his religion - but to be safer in Iraq would require him to renounce Sunni Islam and to move to a different area. However this is impossible. He would face harm because of his personal situation and because he lives in [Village 1], the most dangerous area in Iraq. Where his home and family is is very unsafe. He is really scared about bombs in the streets in Iraq. Less than a month ago, which would have been April 2017, he saw on Facebook there were bombings in Bayaa which is very close to the area where his family lives. His family and friends regularly tell him about the troubles in Iraq, and they constantly live in fear of an attack occurring, or of them being targeted for harm. His brother has bought an apartment in [Country 2] because the government gave him residency there. It is likely his family will have to flee Iraq to live there because it is so unsafe. He would be very likely killed or harmed by a car bomb or similar incident targeted at Sunnis. He heard there was a large attack at a shopping centre in [Village 1] where a lot of people were killed, including two of his friends. There was also a shop across the road from where he lived, and he heard that it was destroyed. He also heard of a number of different stores in the area being destroyed, but we did not know exactly who was responsible. In support of his claims the applicant provided country information from 2016-2017 drawing on a range of sources and discussing the security situation, human rights abuses, and the treatment of Sunnis in Iraq, and the banning of the sale of alcohol in Iraq.
26. At the SHEV interview the delegate expressed doubt the applicant would be personally targeted if he were to return to Baghdad given his family had continued to reside safely in a secure area in [Village 1] and live a regular and comfortable life there, including his mother travelling outside Iraq for an overseas holiday, despite some security incidents continuing to occur in Baghdad. In response the applicant stated he would still be of interest because of his

⁸ Associated Press (AP), "Iraq's parliament passes law banning alcohol", 24 October 2016, CX6A26A6E11532. US Department of State, 'International Religious Freedom Report for 2017 – Iraq', 29 May 2018, OGD95BE927497.

⁹ European Asylum Support Office (EASO), EASO COI Meeting Report – Iraq', 11 July 2017, CISED50AD4807.

¹⁰ Associated Press (AP), "Iraq's parliament passes law banning alcohol", 24 October 2016, CX6A26A6E11532. US Department of State, 'International Religious Freedom Report for 2017 – Iraq', 29 May 2018, OGD95BE927497.

father's previous work for the military and because of the constant explosions in his area. When the delegate indicated his parents and siblings, including his father, had continued to live there without incident and that as a result he was sceptical the applicant would be targeted, the applicant stated everyone is targeted in that area. He keeps telling his family to leave but they will not listen to him. Because of the dynamics of the area and because of their religion they were always targeted.

27. I accept the applicant is a Sunni Muslim. He has consistently made this claim and the neighbourhood he lived in is known as being a religiously mixed community located in central Baghdad¹¹. I also accept he is a non-practising Sunni. At the SHEV interview he spoke about his religious background in a credible manner consistent with lived experience. He stated he did not attend the mosque and he only occasionally prayed at home. I note he has not claimed, and the country information before me does not support, that he will suffer harm in Iraq because he does not practise his religion in a devout manner. Nor do I accept that the applicant has or intends to renounce his Sunni faith or that he will be forced to do so.
28. I do not accept that the Shia dominated government in Iraq do not help Sunnis at all or that Sunnis have very few rights in Iraq. Country information before me indicates Sunni Arab citizens comprise approximately 24% of the population and are active and present in the government and the bureaucracy, although they may be at risk of discrimination in areas where they are a minority depending on the individual's local influence and connections¹². I do not accept the applicant faced difficulties getting a job in Iraq. He previously worked for several private companies in Baghdad and was self-employed for a period in Baghdad. And his evidence was that he did not work the majority of the time he lived in [Village 1] because his wealth meant he did not need to do so unless he chose to.
29. I do not accept that his home area of [Village 1] in Baghdad is the most dangerous or even a particularly unsafe area in Iraq. While I acknowledge that ISIL carried out two [attacks] in [Village 1] aimed at Shias but which also killed [others]¹³, the country information before me does not support that the suburb has been a particular focus for ISIL or other armed groups or has been a noteworthy site for abductions. Moreover country information indicates violence across Baghdad has fallen significantly since then, particularly after December 2017 when the Iraqi government recaptured the last areas under ISIL control, and violence is said to be at its lowest level since 2003¹⁴. Relevantly in October 2018 DFAT assessed that Sunnis face a low risk of societal violence outside areas recently controlled by ISIL¹⁵. And another expert expressed the view that Sunnis who have long been resident in Baghdad, such as the applicant and his family, know the rules and pitfalls that allow them to evade adverse attention and are generally well integrated into their community¹⁶.
30. I am not satisfied there is a real chance the applicant will suffer harm from the government, terrorists, or extremists because he is a Sunni Muslim, because he is wealthy and from

¹¹ DFAT, "DFAT Country Information Report - Iraq", 9 October 2018, CIS7B839419766. DFAT, "Country Information Report for Iraq 2017", 26 June 2017, CISED50AD4631. UK Home Office, "Country Information and Guidance Iraq: Security situation in Baghdad, the south and the Kurdistan Region of Iraq (KRI)", 12 August 2016, OGD7C848D67.

¹² United Kingdom: Upper Tribunal (Immigration and Asylum Chamber), "BA (Returns to Baghdad) Iraq CG", 23 January 2017, CISED50AD169. DFAT, "DFAT Country Information Report - Iraq", 9 October 2018, CIS7B839419766. DFAT, "Country Information Report for Iraq 2017", 26 June 2017, CISED50AD4631.

¹³ [Source deleted].

¹⁴ Joel Wing, "3,230 Dead, 1,128 Wounded In Iraq June 2017", Musings on Iraq, 8 July 2017, CISED50AD4799. DFAT, "DFAT Country Information Report - Iraq", 9 October 2018, CIS7B839419766.

¹⁵ DFAT, "DFAT Country Information Report - Iraq", 9 October 2018, CIS7B839419766.

¹⁶ European Asylum Support Office (EASO), EASO COI Meeting Report – Iraq', 11 July 2017, CISED50AD4807.

[Village 1], because of his father's service in Saddam Hussein's army over twenty years ago, or because of some combination of these factors considered holistically.

31. The applicant claimed he may also be forced to be a soldier in the Iraqi Army and fight against terrorist organisations such as ISIL. This is a very real worry because he is a young man. He also fears he will have difficulty living a normal life or getting a job.
32. I do not accept the applicant will be forced to join the Iraqi Security Forces (ISF). Apart from his assertion, there is nothing in the information before me to suggest individuals have been conscripted into the ISF after its creation in 2003. In addition, it would seem highly unlikely that [age]-year-old man whose only military experience has been three months of compulsory military service under the former regime around 20 years ago would be compelled or considered suitable to join the army. Nor do I accept the applicant will be unable to obtain a job, should he wish to work, or otherwise live his life in [Village 1] in Baghdad. The applicant's own evidence was that because of his family's wealth, derived from income from properties, he had little need to work during the 30 years he lived in Iraq and that when he did choose to work for short periods it was mainly for personal interest and social reasons. Also his own evidence was when he lived in [Village 1] he carried on his social life, meeting friends in the street near his home, visiting them in their homes, and attending clubs.
33. Although the applicant did not claim to fear harm in this regard, the delegate considered whether he was at risk of harm as an asylum seeker and returnee from a Western country.
34. DFAT is aware of considerable evidence that Iraqis who are granted protection return to Iraq, sometimes only months after securing residency in Australia, to reunite with families, establish and manage businesses or take up or resume employment. The practice of seeking asylum and then returning to Iraq once conditions permit is well accepted amongst Iraqis, as evidenced by the large numbers of dual nationals from the US, Western Europe and Australia who return to Iraq. DFAT has limited evidence to suggest that voluntary returnees face difficulties in assimilating back into their communities. However, local sources have said that returning to Iraq can be difficult, particularly if the individual does not return to their original community¹⁷. Other country information indicates the number of returns to Iraq facilitated by the International Organization for Migration (IOM) increased from approximately 100 per month in early 2015 to often more than 1000 per month in mid-2016. Eligible returnees could utilise reception and counselling services and also receive a reintegration grant from IOM. Although it was noted reintegration can be more difficult for returnees who have come back after years rather than months¹⁸. In 2017 the UK Upper Tribunal expressed the view that the evidence does not show a real risk to a returnee in Baghdad on the ground of kidnapping alone¹⁹.
35. I accept that it may be suspected that the applicant has sought asylum overseas. I also accept that the applicant has been absent from Iraq for some years. However I note he will be returning to his home area of [Village 1] in Baghdad where his parents and siblings have continued to live while he has been in Australia. I also note he travelled out of Iraq in 2010

¹⁷ DFAT, "Country Information Report for Iraq 2017", 26 June 2017, CISED50AD4631. DFAT, "DFAT Country Information Report - Iraq", 9 October 2018, CIS7B839419766.

¹⁸ International Organization for Migration, 'Movement and Assisted Migration', February 2013, CXC28129415379; Helen Nianias, 'The returnees: what happens when refugees decide to go back home?', The Guardian (UK), 20 July 2016, CX6A26A6E6704.

¹⁹ United Kingdom: Upper Tribunal (Immigration and Asylum Chamber), "BA (Returns to Baghdad) Iraq CG", 23 January 2017, CISED50AD169.

and back into the country in early 2013 without difficulty. After that he remained at his family home for another six months before he departed for Australia and was not subject to attempted abduction or other adverse treatment in this period. I consider the applicant was not of interest to the government, terrorists, or extremists at the time he departed Iraq in mid-2013. On the information before me I am not satisfied there is a real chance that the applicant will suffer any harm as an asylum seeker and returnee from a Western country now or in the reasonably foreseeable future.

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 have concluded that the applicant does not face a real chance of harm from the Iraqi government, terrorists, or extremists because of his father's former involvement in Saddam Hussein's army over two decades ago; because of an argument over parking or an explosion at a police station near his family's home or an anonymous note left on his windscreen; because of his wealthy lifestyle or because he may consume alcohol; because he is a Sunni Muslim / a non-practising Sunni Muslim; because of security conditions in [Village 1] or Bagdad more broadly; or as an asylum seeker and returnee from a Western country. As 'real risk' and 'real chance' involve the application of the same standard²⁰, I am also not satisfied that the applicant would face a real risk of significant harm for the purposes of s.36(2)(aa) on these grounds.

²⁰ *MIAC v SZQRB* (2013) 210 FCR 505.

Complementary protection: conclusion

40. There are not substantial grounds for believing that, as a necessary and foreseeable consequence of being returned from Australia to a receiving country, there is a real risk that the applicant will suffer significant harm. The applicant does not meet s.36(2)(aa).

Decision

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

Applicable law

Migration Act 1958

5 (1) Interpretation

In this Act, unless the contrary intention appears:

...

bogus document, in relation to a person, means a document that the Minister reasonably suspects is a document that:

- (a) purports to have been, but was not, issued in respect of the person; or
- (b) is counterfeit or has been altered by a person who does not have authority to do so; or
- (c) was obtained because of a false or misleading statement, whether or not made knowingly

...

cruel or inhuman treatment or punishment means an act or omission by which:

- (a) severe pain or suffering, whether physical or mental, is intentionally inflicted on a person; or
- (b) pain or suffering, whether physical or mental, is intentionally inflicted on a person so long as, in all the circumstances, the act or omission could reasonably be regarded as cruel or inhuman in nature; but does not include an act or omission:
 - (c) that is not inconsistent with Article 7 of the Covenant; or
 - (d) arising only from, inherent in or incidental to, lawful sanctions that are not inconsistent with the Articles of the Covenant.

...

degrading treatment or punishment means an act or omission that causes, and is intended to cause, extreme humiliation which is unreasonable, but does not include an act or omission:

- (a) that is not inconsistent with Article 7 of the Covenant; or
- (b) that causes, and is intended to cause, extreme humiliation arising only from, inherent in or incidental to, lawful sanctions that are not inconsistent with the Articles of the Covenant.

...

receiving country, in relation to a non-citizen, means:

- (a) a country of which the non-citizen is a national, to be determined solely by reference to the law of the relevant country; or
- (b) if the non-citizen has no country of nationality—a country of his or her former habitual residence, regardless of whether it would be possible to return the non-citizen to the country.

...

torture means an act or omission by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person:

- (a) for the purpose of obtaining from the person or from a third person information or a confession; or
- (b) for the purpose of punishing the person for an act which that person or a third person has committed or is suspected of having committed; or
- (c) for the purpose of intimidating or coercing the person or a third person; or
- (d) for a purpose related to a purpose mentioned in paragraph (a), (b) or (c); or
- (e) for any reason based on discrimination that is inconsistent with the Articles of the Covenant; but does not include an act or omission arising only from, inherent in or incidental to, lawful sanctions that are not inconsistent with the Articles of the Covenant.

...

5H Meaning of refugee

(1) For the purposes of the application of this Act and the regulations to a particular person in Australia, the person is a refugee if the person:

- (a) in a case where the person has a nationality—is outside the country of his or her nationality and, owing to a well-founded fear of persecution, is unable or unwilling to avail himself or herself of the protection of that country; or
- (b) in a case where the person does not have a nationality—is outside the country of his or her former habitual residence and owing to a well-founded fear of persecution, is unable or unwilling to return to it.

Note: For the meaning of ***well-founded fear of persecution***, see section 5J.

...

5J Meaning of well-founded fear of persecution

- (1) For the purposes of the application of this Act and the regulations to a particular person, the person has a well-founded fear of persecution if:
 - (a) the person fears being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion; and
 - (b) there is a real chance that, if the person returned to the receiving country, the person would be persecuted for one or more of the reasons mentioned in paragraph (a); and
 - (c) the real chance of persecution relates to all areas of a receiving country.

Note: For membership of a particular social group, see sections 5K and 5L.
- (2) A person does not have a well-founded fear of persecution if effective protection measures are available to the person in a receiving country.

Note: For effective protection measures, see section 5LA.
- (3) A person does not have a well-founded fear of persecution if the person could take reasonable steps to modify his or her behaviour so as to avoid a real chance of persecution in a receiving country, other than a modification that would:
 - (a) conflict with a characteristic that is fundamental to the person's identity or conscience; or
 - (b) conceal an innate or immutable characteristic of the person; or
 - (c) without limiting paragraph (a) or (b), require the person to do any of the following:
 - (i) alter his or her religious beliefs, including by renouncing a religious conversion, or conceal his or her true religious beliefs, or cease to be involved in the practice of his or her faith;
 - (ii) conceal his or her true race, ethnicity, nationality or country of origin;
 - (iii) alter his or her political beliefs or conceal his or her true political beliefs;
 - (iv) conceal a physical, psychological or intellectual disability;
 - (v) enter into or remain in a marriage to which that person is opposed, or accept the forced marriage of a child;
 - (vi) alter his or her sexual orientation or gender identity or conceal his or her true sexual orientation, gender identity or intersex status.
- (4) If a person fears persecution for one or more of the reasons mentioned in paragraph (1)(a):
 - (a) that reason must be the essential and significant reason, or those reasons must be the essential and significant reasons, for the persecution; and
 - (b) the persecution must involve serious harm to the person; and
 - (c) the persecution must involve systematic and discriminatory conduct.
- (5) Without limiting what is serious harm for the purposes of paragraph (4)(b), the following are instances of **serious harm** for the purposes of that paragraph:
 - (a) a threat to the person's life or liberty;
 - (b) significant physical harassment of the person;
 - (c) significant physical ill-treatment of the person;
 - (d) significant economic hardship that threatens the person's capacity to subsist;
 - (e) denial of access to basic services, where the denial threatens the person's capacity to subsist;
 - (f) denial of capacity to earn a livelihood of any kind, where the denial threatens the person's capacity to subsist.
- (6) In determining whether the person has a **well-founded fear of persecution** for one or more of the reasons mentioned in paragraph (1)(a), any conduct engaged in by the person in Australia is to be disregarded unless the person satisfies the Minister that the person engaged in the conduct otherwise than for the purpose of strengthening the person's claim to be a refugee.

5K Membership of a particular social group consisting of family

For the purposes of the application of this Act and the regulations to a particular person (the **first person**), in determining whether the first person has a well-founded fear of persecution for the reason of membership of a particular social group that consists of the first person's family:

- (a) disregard any fear of persecution, or any persecution, that any other member or former member (whether alive or dead) of the family has ever experienced, where the reason for the fear or persecution is not a reason mentioned in paragraph 5J(1)(a); and
- (b) disregard any fear of persecution, or any persecution, that:
 - (i) the first person has ever experienced; or

- (ii) any other member or former member (whether alive or dead) of the family has ever experienced;

where it is reasonable to conclude that the fear or persecution would not exist if it were assumed that the fear or persecution mentioned in paragraph (a) had never existed.

Note: Section 5G may be relevant for determining family relationships for the purposes of this section.

5L Membership of a particular social group other than family

For the purposes of the application of this Act and the regulations to a particular person, the person is to be treated as a member of a particular social group (other than the person's family) if:

- (a) a characteristic is shared by each member of the group; and
- (b) the person shares, or is perceived as sharing, the characteristic; and
- (c) any of the following apply:
 - (i) the characteristic is an innate or immutable characteristic;
 - (ii) the characteristic is so fundamental to a member's identity or conscience, the member should not be forced to renounce it;
 - (iii) the characteristic distinguishes the group from society; and
- (d) the characteristic is not a fear of persecution.

5LA Effective protection measures

- (1) For the purposes of the application of this Act and the regulations to a particular person, effective protection measures are available to the person in a receiving country if:
 - (a) protection against persecution could be provided to the person by:
 - (i) the relevant State; or
 - (ii) a party or organisation, including an international organisation, that controls the relevant State or a substantial part of the territory of the relevant State; and
 - (b) the relevant State, party or organisation mentioned in paragraph (a) is willing and able to offer such protection.
- (2) A relevant State, party or organisation mentioned in paragraph (1)(a) is taken to be able to offer protection against persecution to a person if:
 - (a) the person can access the protection; and
 - (b) the protection is durable; and
 - (c) in the case of protection provided by the relevant State—the protection consists of an appropriate criminal law, a reasonably effective police force and an impartial judicial system.

...

36 Protection visas – criteria provided for by this Act

...

- (2) A criterion for a protection visa is that the applicant for the visa is:
 - (a) a non-citizen in Australia in respect of whom the Minister is satisfied Australia has protection obligations because the person is a refugee; or
 - (aa) a non-citizen in Australia (other than a non-citizen mentioned in paragraph (a)) in respect of whom the Minister is satisfied Australia has protection obligations because the Minister has substantial grounds for believing that, as a necessary and foreseeable consequence of the non-citizen being removed from Australia to a receiving country, there is a real risk that the non-citizen will suffer significant harm; or
 - (b) a non-citizen in Australia who is a member of the same family unit as a non-citizen who:
 - (i) is mentioned in paragraph (a); and
 - (ii) holds a protection visa of the same class as that applied for by the applicant; or
 - (c) a non-citizen in Australia who is a member of the same family unit as a non-citizen who:
 - (i) is mentioned in paragraph (aa); and
 - (ii) holds a protection visa of the same class as that applied for by the applicant.
- (2A) A non-citizen will suffer **significant harm** if:
 - (a) the non-citizen will be arbitrarily deprived of his or her life; or
 - (b) the death penalty will be carried out on the non-citizen; or
 - (c) the non-citizen will be subjected to torture; or
 - (d) the non-citizen will be subjected to cruel or inhuman treatment or punishment; or
 - (e) the non-citizen will be subjected to degrading treatment or punishment.

- (2B) However, there is taken not to be a real risk that a non-citizen will suffer significant harm in a country if the Minister is satisfied that:
- (a) it would be reasonable for the non-citizen to relocate to an area of the country where there would not be a real risk that the non-citizen will suffer significant harm; or
 - (b) the non-citizen could obtain, from an authority of the country, protection such that there would not be a real risk that the non-citizen will suffer significant harm; or
 - (c) the real risk is one faced by the population of the country generally and is not faced by the non-citizen personally.

...

Protection obligations

- (3) Australia is taken not to have protection obligations in respect of a non-citizen who has not taken all possible steps to avail himself or herself of a right to enter and reside in, whether temporarily or permanently and however that right arose or is expressed, any country apart from Australia, including countries of which the non-citizen is a national.
- (4) However, subsection (3) does not apply in relation to a country in respect of which:
- (a) the non-citizen has a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion; or
 - (b) the Minister has substantial grounds for believing that, as a necessary and foreseeable consequence of the non-citizen availing himself or herself of a right mentioned in subsection (3), there would be a real risk that the non-citizen will suffer significant harm in relation to the country.
- (5) Subsection (3) does not apply in relation to a country if the non-citizen has a well-founded fear that:
- (a) the country will return the non-citizen to another country; and
 - (b) the non-citizen will be persecuted in that other country for reasons of race, religion, nationality, membership of a particular social group or political opinion.
- (5A) Also, subsection (3) does not apply in relation to a country if:
- (a) the non-citizen has a well-founded fear that the country will return the non-citizen to another country; and
 - (b) the Minister has substantial grounds for believing that, as a necessary and foreseeable consequence of the non-citizen availing himself or herself of a right mentioned in subsection (3), there would be a real risk that the non-citizen will suffer significant harm in relation to the other country.

Determining nationality

- (6) For the purposes of subsection (3), the question of whether a non-citizen is a national of a particular country must be determined solely by reference to the law of that country.
- (7) Subsection (6) does not, by implication, affect the interpretation of any other provision of this Act.