



Australian Government
Immigration Assessment Authority

Decision and Reasons

Referred application

IRAQ

IAA reference: IAA18/06037

Date and time of decision: 6 February 2019 12:38:00

M Wei, 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 an Arab Shia from Iraq. He applied for a Temporary Protection Visa (TPV) on 21 July 2016. A delegate of the Minister for Immigration (the delegate) refused to grant the visa on 6 April 2017. The delegate found that the applicant did not have a well-founded fear of persecution and there was not a real risk of significant harm upon his return to Iraq. On 30 June 2017 the IAA affirmed the decision not to grant the applicant a protection visa. [In] November 2018 the Federal Circuit Court of Australia, by consent, remitted the matter to the IAA for reconsideration.

Information before the IAA

2. I have had regard to the material given by the Secretary under s.473CB of the *Migration Act 1958* (the Act).
3. On 12 October 2018, the applicant's representative provided a submission to the IAA. The submission refers to the applicant's claims and contains arguments in addressing the delegate's decision. I have had regard to these parts of the submission.
4. The submission attaches a report - "Tribal Conflict Resolution in Iraq", last updated by the UNHCR in January 2018 and includes an extract from this article. It also includes an extract from the UK Home Office's report "Country Policy and Information Note, Iraq: Blood Feuds" of August 2017. This new information provides general information on how tribal disputes including 'blood feuds' can arise and the UNHCR's report also provides an overview on tribal conflict resolution in Iraq. While these reports are from credible sources and they could not have been provided to the delegate in their current forms before her decision, given they only provide general and background information on tribal issues and given my factual findings below that the applicant was not involved in a tribal dispute, I am not satisfied there are exceptional circumstances to justify considering the new information.
5. The submission also includes an article dated 15 February 2018, that reports on the water crisis in Iraq's southern regions. Although the applicant's migration agent at the TPV interview referred to report of tribes fighting over water in some southern provinces, he did not identify which reports that he referred to and no report was provided to the delegate. I consider this article is new information. This article concerns tribal conflicts in southern provinces which broke out over agricultural land water quotas and instructions given by the Iraqi Prime Minister over the water issues. The writer also opines on the Iraqi's government's inability to control tribal differences over water issues. The applicant does not claim that his tribe is involved in water dispute. While I have had regard to the applicant migration agent's oral submission below, I am not satisfied that are exceptional circumstances to justify considering this new information under s.473DD.
6. I have obtained and considered a new report by the Department of Foreign Affairs and Trade (DFAT) on Iraq published on 9 October 2018. The delegate referred to the DFAT's February 2015 report. Some time has now passed since the delegate's decision and this 2018 report updates and confirms information in its previous report on situation for persons with a profile similar to the applicant's in Iraq. It has been specifically prepared for protection status determination purpose. This report is based on DFAT's on-the-ground knowledge and discussions with a range of sources in Iraq. It takes into account relevant and credible open

source reports from government and non-government sources, including those produced by Amnesty International, the European Asylum Support Office, Human Rights Watch, the International Committee of the Red Cross, the International Organization for Migration, the UK Border Agency, United Nations sources, the US Department of State and the World Bank, as well as Iraqi governmental and non-governmental organisations and reputable news organisations. I am satisfied there are exceptional circumstances to justify considering this new information.

Applicant's claims for protection

7. The applicant's claims can be summarised as follows:

- He was born and lived in Nasiriya, Thi Qar province until 2008 when he went to [Country 1].
- His father was executed by Saddam Hussein's regime in 1991 during the people's uprising because he was a tribal leader of [specified] clan.
- He and his step brother "[Mr A]", were raised by his mother. It was a very hard life without a father.
- After the toppling of Saddam Hussein, a report was recovered from the former Iraqi intelligence agency revealing that some members of Al Menshad ("AM") tribe gave testimony which led to the arrest and execution of his father.
- [Mr A] provoked their tribe to seek revenge against the AM tribe. However their tribe told them they couldn't pursue their demands because the AM tribe were high ranking members of Al Mehdi Army.
- [Mr A] met the elders in AM tribe. They were very aggressive towards him, insulted him, and threatened they would kill him if he proceeded with his complaints.
- After that [Mr A] received many threats. [Mr A] was abducted by some militia members as he exited the military base in Nasiryah in 2006. [Mr A] is still missing. His family believe that the AM tribe killed him.
- From 2006 until 2008 his family were actively looking for [Mr A]. The applicant was psychologically traumatised and in 2008 he went to the AM family seeking an explanation about [Mr A]'s disappearance. A member of the AM tribe hit him, threatened to kill him and said he and [Mr A] were traitors.
- His mother decided to take him and escape to [Country 1], where they stayed from 2008 until November 2012.
- In November 2012 [they] felt it was unsafe to stay in [Country 1]. They returned to Iraq and the applicant lived for almost 2 months hiding in his family home.
- A group belonging to the militia enquired with his mother about the applicants while she was in the market after they returned to Iraq and since he left Iraq. Her mother and Step Brother "[Mr B]" moved to [Country 2] in 2015 because his mother had had enough of the questioning from the AM family.
- He fears going back to Iraq for all these reasons.

Factual findings

8. The applicant arrived in Australia [in] March 2013. An entry interview took place on 14 April 2013. The applicant lodged the TPV application in July 2016 and the TPV interview took place on 22 February 2017.
9. In the oral submission to the delegate at the conclusion of the TPV interview, the applicant's migration agent submitted that the account that the applicant gave in the entry interview about the disappearance of his father, brother and the other tribe and how he went to [Country 1] reflected exactly what the applicant had told the delegate at the TPV interview. However, as set out below, I consider there are a number of omissions and discrepancies in his evidence at the entry interview and his later evidence. Although a formal visa application was made at a later stage, the record of the entry interview indicates that the applicant was given the opportunity to provide some details about the abduction of [Mr A] and why he left Iraq and what he feared if he were to return to Iraq.
10. The review material includes an email sent to the Department on 6 April 2013 and 11 April 2013 with a number of ID documents. There is also a document said to be the applicant's father death certificate. These documents are not translated. I give them no weight.
11. The applicant has consistently claimed that he is a Shia Muslim. He has provided personal identity documents including his Iraqi citizenship certificate and his Iraqi ID card. Based on his consistent evidence, I accept that the applicant is from Nasiriya, Dhi Qar of southern Iraq. I accept the applicant resided in [Country 1] from 2008 until November 2012 when he returned to Nasiriya. The applicant left Iraq for Australia in January 2013. He came to Australia with his step brother "[Mr C]" and a cousin. I am satisfied that the applicant is a national of Iraq and that Iraq is the receiving country for the purposes of the Act.
12. The applicant's claims for protection are essentially built upon his claim that members of the AM tribe were responsible for his father's execution by the Saddam's regime in 1991 and his step brother [Mr A]'s disappearance in 2006 and that he was mistreated and sought out by the members of this tribe after he confronted them in 2008. He claims that this is a tribal matter and his father was his tribe's [tribal] leader.
13. The applicant stated in the visa application that his father was executed by the Saddam's regime and after the fall of the regime, the report recovered from the regime's intelligence agency revealed that some members of the AM tribe were responsible for giving a testimony which led to the arrest and execution of his father in 1991. The applicant was asked at the TPV interview how his family found out that the AM tribe was involved in the execution of his father. He replied that after the fall of Saddam, some of the files came to surface. The files disclosed the names of the people executed by Saddam and the information of the informant. The applicant was then asked how his family came across these files, he stated that people who were in the same situation told his family that his family could go and make enquiries. When further asked with whom to make enquiries, the applicant that 'you can go to the general information in Baghdad and enquiry'. When he was further asked with which department, the applicant stated 'the intelligence department'. In his oral submission, the applicant's migration agent sought to clarify that there was information published by a US based academic who visited the intelligence agency after the fall of the Saddam and it was well known to the Iraqi communities that these documents were published and a lot of people actually knew who was behind the disappearance of their relatives. However, no independent country information was provided.

14. In respect of his step brother [Mr A]'s confrontation with the AM tribe, in his visa application, the applicant stated that [Mr A] took the responsibility of provoking their tribe to seek revenge against the AM tribe, but was told by their tribe that they could not pursue their demands because the AM tribe were high ranking members of the Al Mehdi army. Their tribe also told them that the new militias was much stronger than the government and that they could not intervene in such a case because they predicted that there would be a lot of tribal killings if they intervened. After that [Mr A] went to meet the elders in AM tribe, who were very aggressive towards him. They insulted [Mr A] and threatened to kill him if he proceeded with his complaint. The applicant also stated in the visa application that after [Mr A] confronted the AM tribe, [Mr A] received many threats from this family because [Mr A]'s attempt to seek retribution against this family and also because [Mr A] worked as [Occupation 1] with [Country 3], [Country 4] and [Country 5]. He stated in the application that [Mr A] was abducted in 2006 by some militia members while he exited the military base in Nasiriya which they were told by eye witnesses. However, the government did not do anything as it was unknown to them who kidnapped [Mr A]. [Mr A] is still missing that the applicant and his family believe that AM tribe killed him as well.
15. The applicant was asked at the TPV interview when his step brother [Mr A] confronted members of the AM tribe. He stated that it was in approximately 2005. He added that five months after the confrontation with the AM tribe, [Mr A] went missing. He then stated that it was more likely one to two months not five months.
16. The applicant stated that [Mr A] told the AM tribe members that he wanted to know whether his father was as it was not showing that his father had been executed but showing that he had been missing. [Mr A] further asked where his father's grave was or whether he was dead and said that he wanted to visit his father. The applicant stated that other tribe members humiliated [Mr A] and dismissed him and that they kept threatening 'us' with killing. When the delegate sought to clarify these statements with the applicant given his earlier statement that his father was executed by the Saddam regime, the applicant replied that he and his family heard that his father had been executed, but they did not know where his grave was.
17. In respect of the applicant's own confrontation with the AM tribe, the applicant stated in the visa application that his family were actively looking for [Mr A] from 2006 to 2008. He was psychologically traumatised. Therefore, sometime in 2008, the applicant went to the AM family seeking an explanation about [Mr A]'s disappearance. One of the AM family members hit him and threatened to kill him, saying 'it is now your turn to be killed'. He was also told that he and [Mr A] were traitors. After that he went home and told his mother of what happened. He was still a child at that time and was very fearful for his life. His mother therefore decided to take him and escape to [Country 1], where they stayed from 2008 until November 2012, departing because of the [fighting].
18. At the TPV interview, the applicant stated that he tried looking everywhere for [Mr A], including his work and at the police station. He stated that people used to tell him that the AM family had something to do with [Mr A]'s disappearance. His mother also kept saying that she wanted to know what happened to [Mr A] and where [Mr A]'s grave was. In 2008 he confronted the AM family regarding his brother because he couldn't tolerate keeping quiet anymore. He further stated that the AM tribe became so strong they infiltrated political parties like the Asaib Ahl al-Haq, the Mahdi Army and the government.
19. When asked what he expected from the AM tribe when he confronted them, the applicant stated that he wanted to feel more comfortable in case something was going to happen, because people were pushing him and asking him why he did not go the AM tribe to find out

what happened to his brother. He also added that the AM tribe became so big even the government were not able to control it.

20. When asked, the applicant stated that his brothers did not accompany him as they did not want to get involved, and before [Mr A] went to confront the AM family they also told [Mr A] that they did not want any more bloodshed or any fight. When asked why he went alone to confront them considering his brothers' advice, knowing what had happened to [Mr A] and how powerful the AM tribe was, he again stated that he was not able to tolerate keeping quiet anymore.
21. The applicant's evidence about how his family found out the AM tribe was responsible for his father's execution was vague overall and not consistent. He stated in the visa application that they found out about this as it was disclosed by report recovered from the regime's intelligence agency. However he stated at the TPV interview in very general terms that 'you can go to the general information in Baghdad and enquire'. He then stated, when pressed, that the inquiry was with 'the intelligence department'.
22. The applicant's evidence also did not provide any insight as why the AM tribe/family who the applicant said had members in the Mahdi army, a key Shia militia group, would have acted as informants for the Sunni dominated Saddam regime.¹
23. The applicant stated in the entry interview and in the visa application unequivocally that his father was executed by the Saddam regime in 1991. He however told the delegate at the TPV interview that [Mr A] told the AM tribe members it was not showing that his father had been executed but showing that he had been missing. When questioned by the delegate why [Mr A] would have said this to the AM tribe members if their father had been executed, the applicant then stated that they heard his father had been executed but they did not know whether his grave was. I do not consider this explains why [Mr A] would have told the AM tribe members that it was not showing that his father had been executed but showing his father had been missing.
24. I have serious concern that [Mr A] would have confronted the AM tribe members wanting to know if his father was dead or where his father's grave was, 15 years after his father's execution. On the applicant evidence, the AM tribe members merely acted as informants and it was the Saddam regime that had carried out the execution of his father. In my opinion it would be meaningless to ask the AM tribe where his father's grave was located.
25. The applicant stated in the visa application that [Mr A] tried to provoke their tribe to seek 'revenge' and 'retribution' against the AM tribe. However, his other evidence was that [Mr A] confronted the AM tribe members and merely sought information from them as to whether his father's grave was and whether his father was dead because he wanted to visit his father. Given also his own tribe had refused to intervene and [Mr A] was warned of the consequence of tribal killings, given [Mr A] was advised by his tribe that the members of the AM tribe were high ranking members of the Mehdi army, I am also not persuaded that [Mr A] had confronted members of the AM tribe.
26. In his entry interview, the applicant stated that [Mr A] was abducted after he received threats from another family who were part the Mahdi army. He made no reference to the AM tribe members being responsible for his father's execution or that [Mr A] confronted the AM tribe.

¹ DFAT, DFAT Country Report – Iraq”, Department of Foreign Affairs and Trade, 13 February 2015, CISEC96CF1160

The applicant's oral evidence at the TPV interview that people used to tell him that members of the AM family had something to do with [Mr A]'s disappearance was also vague.

27. I have taken into account the fact that the applicant may have been quite young ([age] years) at the time of claimed disappearance of [Mr A] and that some of the evidence might not be from his personal experience; nevertheless, I consider that the applicant has not provided convincing and reliable evidence as to the circumstances that led to his father's execution or his brother's disappearance.
28. In his entry interview, the applicant did not claim to have approached the AM family himself alone, neither did he mention that he had been hit or threatened. He stated at the entry interview that 'we' went to the other family and 'said if you want money we will give you money – tell us where my brother is' and they said they did not know. The applicant also stated in the visa application he was very fearful for his life after he confronted the AM family and that he was still a child at that time. I have serious doubts that the applicant would have confronted the AM family by himself as a [age] year old, knowing the powerful AM family's connection to the militia groups and the government, knowing [Mr A]'s fate and in particular, against the advice of his brothers and his own tribe.
29. The applicant further claims that he was in hiding at his home after returning from [Country 1] and during the two months while he was in Nasiriya, people asked his mother about his whereabouts when she was out shopping or in the supermarkets. When asked why he did not move to another location like another part of Nasiriya or Basra, the applicant stated that all his brothers were at the same place and also the smugglers were in Nasiriya and he would be leaving from there for Australia. I consider that in these circumstances, it would not be difficult for the AM tribe members to track down the applicant from his mother and his other family members. I do not accept that the applicant was in hiding given he stayed at the same family home with his mother.
30. The applicant claimed at the TPV interview that the aim of the AM family/tribe was to 'finish' his family because his father had been a tribal leader and because after his father's death, [Mr A] was taking his father's place and after [Mr A] he would take his place. The applicant was asked if this was his personal opinion, to which he replied that it was but was also 'general opinion'. He added that the AM tribe wanted complete control. This was the first time that the applicant claimed that [Mr A] was taking place his father's tribal leader role and that he would take his place. The applicant's evidence that [Mr A]'s interaction with their tribe in seeking revenge against the AM tribe over his father's death did not suggest that [Mr A] was the tribe leader at that time in 2005/2006. There is no credible evidence as to when [Mr A] inherited his father's tribe leader role, noting at the time of his father's death, [Mr A] was only about [age] years old. The applicant did not claim in the entry interview that his father was a tribal leader or that his execution was because of his tribal role. The applicant provided no convincing evidence that his father was a tribal leader or that he would inherit his father's tribal leader status now, approximately 27 years after his father's death and some 12 years after [Mr A]'s disappearance.
31. In respect of [Mr A]'s work as [Occupation 1], the applicant stated in his entry interview that [Mr A] worked as [Occupation 1] for [Country 4] and [Country 3] and had received threats from another family who were part of the Mahdi army prior to his abduction. He stated in the visa application that [Mr A] received many threats issued by the AM family because of [Mr A]'s attempt to seek retribution against the AM family and also because [Mr A] worked as [Occupation 1] with [Country 3], [Country 4] and [Country 5]. He further stated that 'eye witnesses' told them that [Mr A] was abducted in 2006 by some militia members while he

exited the military base in Nasiriya. At the TPV interview, when the applicant was specifically asked why the AM tribe abducted and killed [Mr A], the applicant spoke in vague terms that [Mr A] received threats prior to his being kidnapped, that he looked for [Mr A] everywhere and people used to say to him that the AM family had something to do with it and why he did not go and enquire about it. He made no mention of his brother's work as [Occupation 1] until later at the interview after the delegate asked him if he had any comments regarding the concerns/questions she had raised. He then stated that [Mr A] worked as [Occupation 1] for [Country 3] and [Country 6] and [Mr A] was called a traitor by the AM family members when he confronted them. Overall, the applicant's evidence about [Mr A]'s work as [Occupation 1] for the foreign [countries] was inconsistent (whether he worked for [Country 6] or [Country 4]), vague and lacked meaningful details. His evidence as to why [Mr A] was threatened and abducted and by whom have also shifted: he suggested it was a family who were part of the Mahdi army and was because [Mr A]'s work as [Occupation 1] at the entry interview, whereas he stated in the visa application it was the AM family/tribe because [Mr A]'s attempt to seek retribution against this family and also because his work as [Occupation 1]. His evidence at the TPV interview suggested [Mr A]'s work as [Occupation 1] was not something at the forefront of his mind at all.

32. The applicant also changed his evidence as to his past employment. He stated at the TPV interview that he worked in a [business] owned by a friend from 2007 to 2008. The delegate put to the applicant that he stated in the visa application that this business was their family business. The applicant then stated that the business was adjoining to his house, maybe it was noted as family business because his mother, his step brother [Mr C] and he himself all worked there. I note the visa application states that the applicant worked from January 2005 to July 2008 approximately in a '[family business]' and 'assisted my family business'. I am not persuaded that he would have noted in the visa application that it was a family business because three of his family members worked there. I do not accept that his family did not own that business. When he was asked about what he did in [Country 1], he initially replied 'nothing'. When he was further asked how he supported himself and his mother financially, the applicant then stated that he had some savings and he tried working in some shops, and that he received money from his brothers. While the applicant stated in the visa application that he was unemployed after July 2008, I note that he stated in the entry interview that he worked between 2010 and 2011 in a [specified business] in [Country 1]. I have the impression that the applicant has not been candid about his past employment. This also adds to my concern about his general credibility.
33. On the evidence before me, I am not satisfied that the applicant is a credible witness. While I am willing to accept that the applicant's father might have been executed by the Saddam regime, I am not satisfied that AM tribe members were responsible for his father's execution. I am not satisfied that his father was a leader of his tribe or that he was executed for this reason. I do not accept that [Mr A] confronted the AM tribe members about their father. I do not accept that [Mr A] worked as [Occupation 1] for foreign [countries]. I am prepared to accept [Mr A] went missing or died in 2005/2006, I am however, not satisfied that [Mr A] was abducted or killed by the militias or someone associated with the AM family or tribe. I do not accept that the applicant confronted AM tribe members about [Mr A]'s disappearance. I do not accept that the applicant was threatened by members of the AM family or militias. I do not accept that the applicant went to [Country 1] for the reasons claimed. I do not accept that the applicant or his family were involved in a tribal dispute with the AM tribe. I do not accept that the applicant was sought out by anyone after he returned from [Country 1] while in Iraq or any time after he left Iraq. I find that the applicant was not of adverse interest to anyone when he left Iraq in 2008 for [Country 1] and in 2013 for Australia.

34. The applicant claimed that the AM tribe was very powerful. His migration agent reiterated in his oral submission that the AM tribe was very powerful and that the applicant was in a weaker situation. He further stated that in south Iraq tribes were competing who's controlling whom and they were strengthening themselves through affiliation with the militia groups. I accept some tribes may have affiliation with militia groups. However, there is no credible information before me to support, and I am not satisfied, that the applicant's tribe is weaker than other tribes in Nasiriya or Iraq.
35. During the TPV interview, when the applicant was asked about his family members, he initially stated that his mother lived in their family home. However, he subsequently changed his evidence, stating that his mother and his step brother 'A' having moved to [Country 2] in 2015 because his mother had had enough of the questioning from the AM family. He also stated that his mother and [Mr B] had registered with the UNHCR in [Country 2]. When the delegate asked when his mother and [Mr B] went to [Country 2], he stated it was in 2015 approximately. In the TPV application lodged in July 2016, he stated that his mother and [Mr B]'s 'country of current residence' was Iraq. Such an inconsistency with the visa application that was lodged about a year after his mother and [Mr B]'s claimed move to [Country 2] is concerning. The delegate did not accept that the applicant's mother and his step brother [Mr B] have moved to [Country 2] and found they continued to reside in Dhi Qar. The submission to the IAA does not dispute this finding of delegate, neither any further information or independent evidence was provided to the IAA to support the applicant's claim that his mother and [Mr B] have moved to [Country 2]. I note information obtained by the delegate from other Australian government agency, while indicates a money transfer was made to [Mr B] in [Country 2] by the applicant's step brother [Mr C] in September 2015, the information also indicates that the applicant made a money transfer to [Mr B] in Nasiriya, Dhi Qar in May 2016. In any event, even I accept that the applicant's mother and [Mr B] have moved to [Country 2], in light of my findings above, I do not accept they moved to [Country 2] due to the claimed problem from the AM family or because of the applicant.

Refugee assessment

36. 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

37. 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.
38. I accept that applicant's father was executed by the Saddam regime in 1991. There is no credible evidence before me to support, and I am not satisfied, that the applicant faces a real chance of harm because of his father's death over 27 years ago. I have not accepted [Mr A]'s disappearance was due to the reasons claimed by the applicant. The applicant has not claimed to fear harm otherwise because of [Mr A]'s disappearance or death. The applicant was in Iraq for approximately two years after [Mr A]'s disappearance/death and before he went to [Country 2] and faced no difficulty during that period. It is now some 12 years since [Mr A]'s disappearance and I am not satisfied that the applicant faces a real chance of harm because of [Mr A]'s disappearance or death in 2005/2006.
39. I accept the applicant is a Shia Muslim. The only place that the applicant lived in Iraq was his home area in Nasiriya in southern Iraq, where the majority population is Shia. He has one step brother in Australia. Even I accept that the applicant's mother and his step brother [Mr B] are now living in [Country 2], he still have his sisters and their family residing in Nasiriya. I am satisfied that the applicant would return to Nasiriya, a Shia dominated area, if he were to return to Iraq. The applicant would be returning to Iraq in his [age]. I accept that the applicant is a member of his tribe. I do not accept that the applicant's father was a tribal leader, neither do I accept there was ever a tribal dispute or a dispute between the applicant and his family with members of the AM family/tribe. I do not accept that the applicant belongs to a weaker tribe.
40. The applicant does not suggest he faced discriminations as a Shia in the past. While the applicant claimed loosely that it was a very hard life without a father, his other evidence was that his mother owns a house and other lands. The applicant also completed intermediate high school in Iraq. DFAT assessed that Shias faces little or no official discrimination as the majority community with a dominant role in the government. Shias also do not face societal discrimination in Shia areas.²
41. The applicant's migration agent, in his oral submission to the delegate at the conclusion of the TPV interview submitted that tribal problems were prevalent in the southern provinces and the tribal situation in Nasiriya and other southern provinces was no different from Basra, the second largest city in Iraq. He also referred 'some reports' that tribes were fighting over water resources in the south and to reports observing the power vacuum in the south as a result of the army fighting the ISIL, such that the tribes were now the real authority in the south. He further submitted that the applicant would face serious harm if he were to return to Iraq because the tribes were more powerful and they were more able to target the applicant.
42. Although Shia communities have been subject to general and targeted violence by Sunni-linked insurgent groups and extremists in the past several years, with the rise of Islamic State of Iraq and the Levant (ISIL) in 2014, it has been consistently reported that southern Iraq including Nasiriya and Basrah were considered safe for residents, internally displaced persons

² DFAT, "DFAT Country Report – Iraq", 13 February 2015, CISEC96CF1160; DFAT, "DFAT Country Information Report – Iraq", 9 October 2018, CIS7B839419766

and returnees from overseas.³ Although DFAT states that Shias face a moderate risk (as per DFAT, 'moderate risk' means 'DFAT is aware of sufficient incidents to suggest a pattern of behaviour') of violence during significant Shia religious festivals and pilgrimages, this appears to refer to Iraq more broadly. DFAT also reported that violence against Shias has reduced in 2018 following the defeat of ISIL, though isolated incidents of violence in Shia dominated areas continues to occur.⁴ I accept militias and tribes in the south can be powerful and may have gained more strength because of the war against the ISIL in the north prior to 2018. I accept that tribal disputes do arise for various reasons in south Iraq. I also accept that random criminal acts also occur in the south. Local sources report that Shias who are actively involved in a militia group face a greater risk of intra-Shia violence than ordinary civilians, who may be perceived to be part of a militia or tribal group's constituency.⁵ I consider that the country information before me overall suggests that the chance of harm is remote to ordinary Shias in south Iraq including Nasiriya, either from ISIL or other Sunni extremists, from the Shia's militias, from members of other tribes or because of random criminal acts.

43. When the applicant was asked at the TPV interview whether anything had happened to him because of his religious beliefs, he responded 'no'. The applicant does not indicate that he has any concern for reasons of his religion or he attends significant Shia religious festivals and pilgrimages. I have not accepted applicant's claimed dispute with the AM tribe members. There is no credible evidence to suggest that the applicant's tribe has been involved in any tribal dispute. The applicant left Iraq from Basra International airport. I am satisfied that the applicant could safely return to Nasiriya via Basra airport. On the evidence before me, I am not satisfied that the applicant faces a real chance of any harm, if he were to return to Iraq, now or in the reasonably foreseeable future. The applicant does not have a well-founded fear of persecution.

Refugee: conclusion

44. 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

45. 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

46. Under s.36(2A), a person will suffer 'significant harm' if:
- the person will be arbitrarily deprived of his or her life

³ UNHCR, "UNHCR Position on Returns to Iraq", 14 November 2016, CIS38A80122649; UK Home Office, "Country Information and Guidance - Iraq Internal relocation (including documentation and feasibility of return)", 17 November 2015, OG8F59D8D50; UK Home Office, "Security situation in Baghdad, southern governorates and the Kurdistan Region of Iraq (KRI)", 01 April 2015, OG8F59D8D14; Huffington Post, The "Southern Iraq Is a Safe Place", 27 May 2015, CXBD6A0DE7300; DFAT, "DFAT Country Report – Iraq", 13 February 2015, CISEC96CF1160

⁴ DFAT, "DFAT Country Information Report – Iraq", 9 October 2018, CIS7B839419766

⁵ Ibid.

- 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.

47. I have found above that the applicant does not face a real chance of any harm, if he were to return to Nasiriya, from the militias/other tribal members/anyone else, or for reasons of general security situation. As real chance and real risk involve the same threshold, based on the same information discussed above, I am not satisfied that the applicant faces a real risk of any harm including significant harm on these bases, if he were to return to Nasiriya, Iraq, now or in the reasonably foreseeable future.

Complementary protection: conclusion

48. 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.