



Australian Government

Immigration Assessment Authority

Decision and Reasons

Referred application

IRAQ

IAA reference: IAA19/07574

Date and time of decision: 13 January 2020 11:22:00

V Price, 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 Shia Muslim from Muthannia (also Muthnana, Muthana and Muthanna) province in the southern governorates of Iraq. On 23 June 2017 he lodged an application for a protection visa with the Department.
2. On 21 November 2019 a delegate of the Minister for the Department (the delegate) refused to grant the visa to the applicant.

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. No further information has been obtained or received.

Applicant's claims for protection

5. The applicant applicant's claims as set out in his written statement, oral evidence at the protection visa interview and the post-interview submissions can be summarised as follows:
 - He was born in Al Muthannia in [year] and he and his family resided in Al- Samawah district in Muthannia. The applicant did not complete his high school education, leaving school in grade [number] to work on an unpaid basis in his father's [shop].
 - He is a Shia Muslim but does not consider himself religious and does not adhere strictly to his faith. He does not pray regularly, drinks alcohol and does not believe that the consumption of alcohol is wrong.
 - The applicant's cousin, F, worked as a truck driver for a company contracted to the Iraqi government to transport [goods] to police and security officers stationed [in a location]. In or about 2012, F assisted the applicant to obtain work with this company. In addition to delivering [goods] to the officers [in the location], he and his cousin were involved in smuggling and selling alcohol from the truck.
 - In around October 2012 a police officer witnessed he and F unloading alcohol in Al-Samawa and he reported their activities to the Mahdi Army, a Shia Militia group. Members of the Mahdi Army raided the respective homes of both the applicant and his cousin. The applicant was not home at the time but the men advised his father that he needed to report to their office in [Location]. Fearing for his safety, his father advised him to leave. The applicant and his cousin both hid with their uncle. They remained there for a few days before travelling to Baghdad. Two weeks later they went to [Country 1] and from there travelled to Australia, arriving in November 2012.
 - Militias continued to visit his family home. His father told them that the applicant had left the country and was in Australia. To protect the family, his father was forced to sign a paper acknowledging the applicant's wrongdoing and stating his father was not responsible for his actions. Due to the harassment, his family were forced to move and they now live with the applicant's uncle in Al Samawah.

- His cousin subsequently returned to the Kurdistan Region of Iraq (KRI) to reunite with his wife and children. They then went to [Country 2] where they have sought asylum and have resided there for the past five years.
 - The applicant now works as [an occupation] in Australia. He has since married an Australian citizen. They have one child and at the time of the protection visa interview, his wife was pregnant with their second child.
6. The applicant feared that that extremist Sunni and Shia militias, particularly the Islamic State of Iraq and the Levant (ISIL) and the Mahdi Army, would consider him an infidel opposed to Islam and would harm him on his return to Iraq due to: his past involvement in the sale and distribution of alcohol; his consumption of alcohol; his particular religious views; as a non-observant Muslim; his western behaviour/westernisation and pro-western/American views (having resided in Australia since 2012 and married an Australian citizen); and as a failed asylum seeker and returnee from the west. It was submitted that the inadvertent disclose of some of the applicant's personal information on the Department's website would increase the likelihood that his asylum application will be known to these groups on return to Iraq.
7. The delegate also considered whether the applicant faced harm as a Shia and on the basis of the general security situation in the country.

Refugee assessment

8. Section 5H(1) of the Act provides that a person is a refugee if, in a case where the person has a nationality, he or she is outside the country of his or her nationality and, owing to a well-founded fear of persecution, is unable or unwilling to avail himself or herself of the protection of that country; or in a case where the person does not have a nationality—is outside the country of his or her former habitual residence and owing to a well-founded fear of persecution, is unable or unwilling to return to it.

Well-founded fear of persecution

9. Under s.5J of the Act 'well-founded fear of persecution' involves a number of components which include that:
- the person fears persecution and there is a real chance that the person would be persecuted
 - the real chance of persecution relates to all areas of the receiving country
 - the persecution involves serious harm and systematic and discriminatory conduct
 - the essential and significant reason (or reasons) for the persecution is race, religion, nationality, membership of a particular social group or political opinion
 - the person does not have a well-founded fear of persecution if effective protection measures are available to the person, and
 - the person does not have a well-founded fear of persecution if they could take reasonable steps to modify their behaviour, other than certain types of modification.
10. I find on the oral and documentary evidence before me, including the applicant's birth certificate, citizenship certificate and identity card, that he is a national of Iraq, and that this is his receiving country.

11. On his arrival into Australia the applicant claimed that he was born in [month year]. He (later) advised the Department that he believes his correct date of birth may actually be [the previous year], but as there was a delay in the registration of his birth, his identity documents have always stated he was born in [year] and this is his nominated date of birth. He participated in an age determination interview with officers of the Department in December 2012 after which it was determined that he was over 18 and he was allocated a birthdate of 31 December [three years previously]. He has now provided identity documentation (set out above) and accredited translations of those documents, all of which confirm his nominated Iraqi birth date is as originally claimed, [date year]. I accept this is the applicant's date of birth and that his identity is as he has claimed.
12. I accept based on the identity documentation and the oral evidence that the applicant was born in Muthannia province in the Southern Governorates of Iraq and that he resided there, in Samawah, with his family until his departure from the country. The applicant's evidence was that his family continue to reside in Samawah and I find this is the area to which he would return.
13. The applicant has participated in the age determination interview, an Irregular Maritime Arrival and Entry Interview (arrival interview) and a protection visa interview. His evidence regarding his background and experiences in Iraq has been entirely consistent throughout those interviews; it was also detailed and presented in a manner indicative of lived experience. that is before me. Overall I consider the applicant has provided a credible account of his background and life in Iraq and his circumstances here in Australia.
14. I accept on his evidence that he was born to a Shia Muslim family but that he does not consider himself to religious and does not strictly adhere to the Shia Muslim faith. I accept he does not regularly attend prayers, that he has consumed alcohol both in Iraq and here in Australia, that he believes it is acceptable to drink alcohol and that he does not believe the Iraqi Government or militia groups have the right to judge others for their consumption of alcohol.
15. I accept that the applicant has resided in Australia since 2012 and, on the basis of his oral evidence and the marriage certificate presented to the Department; I also accept that the applicant has married an Australian citizen. The applicant has not provided a birth certificate for their claimed child, but I accept that they have one child, and that at the time of the protection visa interview, they were expecting a second.
16. I accept that the applicant left school in grade [number] and went to work for his father who owned and ran a [shop]. I accept that this was unpaid work and he later obtained paid employment with the company for whom his cousin, F was employed as a truck driver. The applicant was unable to name the company but I note his relative youth at the time ([age]) and give weight to the fact that he was able to spontaneously provide details related to the location of the company, the specific duties of he and his cousin, their delivery routes and drop off points, the relevant time frames involved in their deliveries and that he demonstrated an understanding of the contractual relationship between the company and the Iraqi government. I accept that he and his cousin were employed with a company contracted to the Iraqi government to transport [goods] to police and security forces stationed [in a location].
17. The applicant's evidence regarding his involvement of he and his cousin in smuggling alcohol was also detailed with the applicant able to describe the reasons he chose to partake in this activity, identify the brand and type of alcohol, indicate how they obtained the alcohol, how they hid it in their truck, detail how they sold it including the different price structure for

regular customers and new customers. I accept that the applicant and his cousin were involved in transporting and selling alcohol as he has claimed.

18. Independent information confirms that in and around the time of the claimed events that the Mahdi Army was active in the southern governorates of Iraq.¹ In the conservative Shi'ite communities such as Kerbala and Najaf (in the south) alcohol shops were banned under local laws and in major centres of Baghdad, Basrah, Kirkuk and Mosul shops and bars were severely restricted by the conservative political and social atmosphere.² Information also states that during this period the increasing influence of Shi'ite extremists led to the targeting of persons engaged in professions, or providing goods or services that were considered immoral which included alcohol sellers.³ I do not share the delegate's noted concerns that the police officer who was alleged to have witnessed the applicant and his cousin transporting alcohol did not question or arrest them at that time, but instead reported their conduct to Shia militias. The information does not indicate that the transportation and sale of alcohol was prohibited by law throughout Iraq, including in Muthannia where their actions were discovered, or that the police were prosecuting such individuals in the areas where it was banned. Rather, it was the militia groups who were targeting such individuals. Moreover, by 2012 members of Shia militia groups, including the Mahdi Army had been integrated into the Iraqi Security Forces (ISF) (which includes the police force).⁴
19. Overall, I consider that the applicant's evidence as to how they were discovered selling alcohol was broadly consistent since his arrival in Australia, detailed and plausible when considered against the above independent information. I also consider his claims regarding the subsequent visit to the homes of he and his cousin are consistent with the conduct undertaken by Shia militia groups.⁵ I accept that the applicant and his cousin came to the adverse attention of a Shia militia group, most likely the Mahdi Army for selling and transporting alcohol. I accept that members of the militia group visited their respective homes, threatened them and that the applicant was asked to attend the office, which he did not do. I accept that the applicant and his cousin hid with their uncle and then travelled to Baghdad where they remained for two weeks before departing the country and travelling to Australia. I am also prepared to accept that members of the militia made subsequent visits to the applicant's family home seeking his whereabouts, that his father advised them he was in Australia, he signed papers indicating that he was not responsible for the applicant's activities and that the family subsequently moved and now reside with the applicant's uncle.
20. The applicant's cousin F returned to Iraq to reunite with his family. However, I accept the applicant's evidence that he did not return home but went to the KRI, which is not reported to have a Shia militia presence.⁶ I also accept the applicant's evidence that F and his family now reside in [Country 2] and have sought asylum in that country. In these circumstances, I draw no adverse inferences from F's return to Iraq in assessing the applicant's protection claims. However, the applicant's oral evidence at the protection visa interview was that he did not

¹ United Nations High Commissioner for Refugees (UNHCR), 'UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Asylum-Seekers from Iraq', 31 May 2012 CIS27173 (UNHCR 2012 Report).

² Ibid.

³ Ibid; and Rudlaw, 'Muslim clerics in Iraqi parliament urge government to shut down bars, brothels and liquor stores', 15 March 2016, CX6A26A6E10960.

⁴ UNHCR 2012 Report.

⁵ Ibid.

⁶ Ibid; UNHCR, 'Position on Returns to Iraq', 27 October 2014, CIS2F827D91427 (UNHCR 2014 Report); Australian Department of Foreign Affairs and Trade (DFAT), 'Country Report Iraq, 13 February 2015, CISEC96CF1160 (DFAT 2015 Report); DFAT, 'Country Information Report Iraq', 9 October 2018, CIS7B839419766 (DFAT 2018 Report); Stanford University, 'Mapping Militant Organisations - Mahdi Army', https://web.stanford.edu/group/mapping_militants/cgi-bin/groups/view/57, (Mapping Militants Mahdi Army).

believe that anyone was now looking for him in relation to his past activities, also stating that he did not consider that anyone would be waiting to harm him on his return. Further, the independent information below regarding the current targets of Shia militias, including the Mahdi Army, does not indicate they are targeting individuals who were involved in the past smuggling and selling of alcohol.⁷ In these circumstances, and noting that the applicant ceased selling and transporting alcohol in 2012 and that it has now been over seven years since his departure from Iraq, I am not satisfied that any Shia militias, including members of the Mahdi Army, would remain interested in harming the applicant for his past, or his cousin F's, involvement in the transportation, distribution and sale of alcohol. I am not satisfied that he faces a real chance of harm for this reason on return to Iraq now or in the reasonably foreseeable future.

21. Independent information is that the situation in Iraq has changed since the applicant's 2009 departure. In 2017 the government and its associated forces declared victory over Sunni insurgent group, ISIL.⁸ The ISF have retaken territory previously held by ISIL and remain in control of Baghdad and the southern governorates of Iraq. ISIL retain some capacity to conduct small scale attacks, however there has been a significant reduction in their operation and activities and they are now operating in rural areas in the west, central and north of the country including Anbar, Diyala, Kirkuk, Ninewa and Salah al-Din (not Muthannia).⁹ Information confirms the general downward trend of violent insurgent activity throughout southern Iraq: Musings on Iraq noted that March 2019 witnessed the lowest level of violence since the 2003 invasion and there have been few or no reported instances of violence or insurgent activity in the southern governorates, including in Muthannia, into late 2019.¹⁰
22. Shia militias continue to operate in Baghdad and the southern governorates. In about 2014 over 200 such groups unified to form the Popular Mobilisation Forces or Units (the PMF).¹¹ The PMF was formally bought under centralised control as an independent military organisation in 2018 and they now work alongside the ISF fighting against the Sunni insurgency, including against ISIL. The leaders of two of the largest Shia militia groups, the Mahdi Army and the Badr organisation, both of which are in the PMF, came out strongest in the March 2018 elections and concerns have been noted that the PMF has increased their power and influence in Iraq since that time.¹² Concerns have also been raised by various human rights organisations that the government lacks the capacity to control the actions of the PMF, and that PMF groups continue to commit human rights abuses and engage in other criminal activity including:

⁷ DFAT 2018 Report; European Asylum Support Office (EASO), 'Country Guidance: Iraq - Guidance note and common analysis', 30 June 2019, 20190830112436 (EASO Guidance Note 2019); 'Country of Origin Information Report - Iraq Security situation', 12 March 2019, 20190313085833 (EASO Security Situation Report 2019); EASO 'Country of Origin Information Report - Iraq Targeting of Individuals', 7 March 2019, 20190308091632 (EASO Targeting of Individuals Report 2019) (Collectively 'the EASO Reports'); and UNHCR, 'International Protection Considerations with Regard to People Fleeing the Republic of Iraq', 3 May, 201920190506112913 (UNHCR 2019 Report).

⁷ DFAT 2018 Report; the EASO Reports; and UNHCR 2019 Report.

⁸ DFAT 2018 Report; EASO Security Situation Report 2019; EASO Targeting of Individuals Report 2019; and UNHCR 2019 Report.

⁹ DFAT 2018 Report; EASO Security Situation Report 2019; EASO Targeting of Individuals Report 2019; and UNHCR 2019 Report; Musings on Iraq, 'Iraq Saw Lowest Violence Ever March 2019', 3 April 2019, 20190404082755; Musings on Iraq - 'Islamic State Might Be Coming Out Of Its Winter Hibernation In Iraq', 4 March 2019, 20190305090042; Musings on Iraq, 'Slight Uptick In Islamic State Ops In Iraq As New Year Begins', 4 February 2019, 20190205083846; Musings on Iraq, 'Review Of Security Trends In Iraq 2018', 15 January 2019, 20190116101402 (collectively, 2019 Musings on Iraq Reports); and GardaWorld, 'Weekly Iraq .Xplored report', 16 November 2019, 20191118091132 (GardaWorld November 2019 Report).

¹⁰ DFAT 2018 Report; EASO Reports; UNHCR 2019 Report; 2019 Musings on Iraq Reports; and GardaWorld November 2019 Report.

¹¹ DFAT 2018 Report; EASO Reports; and UNHCR 2019 Report.

¹² DFAT 2018 Report; the EASO Reports; and UNHCR 2019 Report.

politically and financially motivated criminal activities; enforced disappearances; extortion; torture; and extra-judicial killings.¹³ Information also is that the PMF have very good intelligence capabilities that reach out to most of the Iraqi society and have the capacity to target whomever they want.¹⁴

23. I have accepted that the applicant came to the attention of a Shia militia organisation in the past due to selling alcohol. In 2016 the government of Iraq passed a law banning the production, importation and sales of alcohol in 2016.¹⁵ The ban was generally supported by conservative elements of society and was implemented in Basra, Dhi Qar, Maysan and Muthannia.¹⁶ There are examples of Shia militias, including those in the PMF, targeting alcohol sellers in 2016 and 2017.¹⁷ In this case, the applicant has not claimed that he would transport, sell or distribute alcohol on return to Iraq. He has attained skills working as [an occupation], and he has not engaged in the transportation or sale of alcohol in Australia. I am not satisfied that he has any need or any interest in returning to such work on return to Iraq and am not satisfied that this due to any fear of doing so, but rather consider it is due to a lack of interest in pursuing this work. I am not satisfied that he would transport, sell or distribute alcohol on return to Iraq.
24. However, in any event, even if he did, information before me is that generally attacks against alcohol sellers occur less frequently than they did in the past, and that Iraqi society is now characterised by more openness.¹⁸ Of those incidents that do occur, it is largely members of the Christian and Yezidi communities who have been subjected to bribes by police, and whose shops and cafes have been targeted by Shia militias/PMF.¹⁹ The applicant would not fall within these categories on return to Iraq. Further, information also states that, despite the bans, southern Iraqi's are still allowed to legally consume and own alcohol, though many exercise caution in doing so, and that generally the Shia militias do not wish to destroy the good reputation they have achieved by targeting their own ethnic population.²⁰ The information also does not evidence that the government is prosecuting those involved in the alcohol trade despite the ban, and I am not satisfied that the applicant would be subject to any such prosecution. Moreover, as set out above, ISIL are not in control or active in Muthannia. Having regard to the evidence before me, including the independent information and the applicant's profile, I consider the chance the applicant will face harm from Shia militias (including the PMF and the Mahdi Army), ISIL, the government, the authorities or anyone else, due to transporting, selling or distributing alcohol on return to Iraq to be so remote so as not to be real. On the totality of the evidence before me, I am not satisfied that the applicant faces a real chance of harm on return to Iraq now or in the reasonably foreseeable future for any reason associated with his past or future involvement in the transportation, distribution and sale of alcohol.
25. I have accepted above that the applicant's father signed a paper absolving himself of responsibility for the applicant in order to protect his family from the adverse attention from Shia militias. The applicant's evidence (set out in his protection visa application) was that he

¹³ DFAT 2018 Report; the EASO Reports; and UNHCR 2019 Report.

¹⁴ EASO Targeting of Individuals Report 2019.

¹⁵ Ibid.

¹⁶ Ibid.

¹⁷ Ibid; and UNHCR, 2019 Report

¹⁸ EASO Targeting of Individuals Report 2019; and Danish Immigration Service and Landinfo, 'Northern Iraq: Security situation and the situation for internally displaced persons (IDPs) in the disputed areas, incl. possibility to enter and access the Kurdistan Region of Iraq (KRI)', 5 November 2018, CIS7B8394110112 (Landinfo 2018 Report).

¹⁹ EASO Targeting of Individuals Report 2019; EASO Guidance Note Report 2019; Landinfo 2018 Report; and UNHCR 2019 Report.

²⁰ EASO Targeting of Individuals Report 2019; and Landinfo 2018 Report.

remains in regular communication with his family in Iraq and for the reasons set out above, I have found that is of no interest to Shia militias (including the Mahdi Army) for his past involvement in selling alcohol and nor am I satisfied that the applicant faces a real chance of harm from Shia militias, or anyone else, on return to Iraq due to the transportation, distribution and sale of alcohol. In these circumstances, I am not satisfied that the applicant's family will continue to disown him on his return to Iraq or that they or the applicant will face harm for failing to abide by the paper signed by his father. Nor am I satisfied that the applicant will not have familial support on return to Iraq or that he faces a real chance of harm for this reason.

26. Protests over corruption, government neglect, unemployment and poor services erupted in the southern provinces of Dhi Qar, Basra, Maysan and Muthannia in 2018.²¹ Some became violent leading to deaths and injuries among protesters and security forces, including in Samawah, and several protest leaders and activists were reportedly assassinated by militias. That situation calmed down following the reinforcement of local security and imposition of a curfew, though protests activity continues in the southern governorates with violent incidents reported.²² Violence between different Shia armed groups also occurs in the southern governorates, and information indicates that intra-Shia violence in the south is often linked to other criminal activities including robbery, kidnapping (for ransom), drug trafficking, extortion and payment of protection fees.²³ Relevantly, other than those involved in alcohol sales which discussed above, the European Asylum Support Office (EASO) has identified the following groups who are currently of adverse interest to the PMF and Shia militias in Iraq: current political opponents (largely other Shia militias); some members of the Sunni community in retaliatory attacks following major terrorism incidents; activists and journalists critical of the PMF; certain individuals who deviate from Shia morality norms (including LGBTI individuals and Christians); and certain business owners who are targeted for extortion.²⁴ This is generally supported by information from the Australian Department of Foreign Affairs and Trade (DFAT).²⁵ Further, DFAT states that intra-Shia violence predominantly affects those who are actively involved in a Shia militia or tribal group.²⁶
27. In this case, there is nothing in the applicant's profile to indicate he that currently falls within the above identified categories of those currently of adverse interest to the Shia militias, or that he will have such a profile on return to Iraq in the foreseeable future. Nor is there anything in his profile to indicate that he will engage in any political or protest activity or that he will be involved with any militia or tribal group, or otherwise be caught up in intra-Shia violence on return to Muthannia in the reasonably foreseeable future. Overall, the information before me is that there has been a decline of insurgent activity, with the cessation of major military operations against ISIL and a steady decline of attacks over the course of 2018 and into 2019. DFAT reported in 2018 that generally the southern governorates of Iraq, including Muthannia, are more secure than other parts of the country.²⁷ I accept that a lower chance of harm in one area does not preclude there being a real chance, however, having regard to the nature and frequency of the incidents, and to the above country information, I am not satisfied that the level of harm arising from the general security situation rises to the level of a real chance in the southern governorates of Iraq including Muthannia.

²¹ DFAT 2018 Report; EASO Security Situation Report 2019; GardaWorld November 2019 Report; and UNHCR 2019 Report.

²² DFAT 2018 Report; EASO Security Situation Report 2019; GardaWorld November 2019 Report; and UNHCR 2019 Report.

²³ DFAT 2018 Report; and EASO Targeting of Individuals Report 2019.

²⁴ EASO Targeting of Individuals Report 2019.

²⁵ DFAT 2018 Report.

²⁶ Ibid.

²⁷ Ibid.

28. On the above information and taking into account the applicant's profile and circumstances, I am not satisfied he faces a real chance of harm on return to the southern governorates of Iraq, including Muthannia due to the general security situation. Moreover, given the reduced capacity of ISIL and noting they are not currently focusing their activities in the southern governorates of Iraq, I am not satisfied the applicant faces a real chance of harm from ISIL or their Sunni insurgent supporters, on return to the southern governorates, including Muthannia, now or in the reasonably foreseeable future for any reason, including due to sectarian violence and the general security situation.
29. Although the applicant in this case has identified as a non-practising Shia, his family are of the Shia faith, he has identified as Shia on his visa application and the delegate considered whether he faced harm for this reason. DFAT advised in 2018 that as the majority community in Iraq with a dominant role in the government, Shias face little to no official discrimination.²⁸ Reported instances of societal discrimination, particularly in relation to economic and employment opportunities, are likely to be associated with patronage and nepotism, such as not having the right contacts to secure access to jobs or housing rather than due to religion, but even then, overall DFAT assessed that Shia's face little or no risk of societal discrimination in Shia areas, which includes Muthannia.²⁹ The applicant did not complete high school but he has had steady employment in Iraq and has worked as [an occupation] in Australia. During the protection visa interview, he indicated he had recently been unable to work due to an injury for which he was being treated. However, the evidence before me does not indicate that this would affect his ability to obtain work in the reasonably foreseeable future and nor has he otherwise claimed to fear harm for this reason on return to Iraq. His parents, brother and uncle continue to reside Muthannia, and I am not satisfied that his family will be unable to assist the applicant on his return. I am not satisfied that he will be unable to find accommodation, employment, or that he will otherwise face a real chance of discrimination or harm as a Shia Muslim.
30. DFAT advised in 2018 that anti-Shia violence has reduced in 2018 following the defeat of ISIL. They have assessed that Shias face a moderate risk of violence during significant Shia religious festivals and pilgrimages.³⁰ There are examples of such violence in Kerbala and Najaf. However, there is no suggestion this is occurring in Muthannia the area to which the applicant would return.³¹ Nor does the applicant's evidence indicate he would travel elsewhere on pilgrimage, particularly given his claims he does not practise his faith. Any such harm is likely to arise from ISIL and I have found above that he does not face a real chance of harm from them for any reason. I am not satisfied that the applicant faces a real chance of harm arising from his attendance at significant religious festivals. Nor having regard to the information from DFAT and the above information on the security situation in the southern governorates, am I satisfied that he faces a real chance of harm as a Shia on return to the southern governorates of Iraq now or in the reasonably foreseeable future.
31. The applicant has claimed to fear harm on the basis of his religious beliefs and due to his, western behaviour/ westernisation and pro-western/American views. I have accepted above that he is a Shia Muslim but that he is not particularly religious. I have accepted that he has consumed alcohol both in Iraq and here in Australia, that he believes it is acceptable to drink alcohol and that he does not believe the Iraqi Government or militia groups have the right to judge others for their consumption of alcohol. I accept that he will consume alcohol on return to Muthannia in the reasonably foreseeable future and that he will not engage in daily prayers

²⁸ Ibid.

²⁹ Ibid.

³⁰ Ibid.

³¹ DFAT 2018 Report; the EASO Reports; and UNHCR 2019 Report.

on return. I also accept that he has resided in Australia since 2012 and that he has married an Australian citizen, with whom he has a family and I accept this will become known on return. I accept that some of the applicant's personal information was inadvertently made available on the Department's website in about 2014. The available information included his name, date of birth, nationality, gender and details about his detention. It did not include any information relating to his protection or asylum application in Australia and I am not satisfied that the release of his information will of itself result in a real chance of any harm to the applicant on return to Iraq. However, due to the manner in which he will be returned, I accept the applicant will be identified as a failed asylum seeker and/or a returnee from the west on his return to Iraq and that his long term residence in Australia will also become known on return.

32. The Iraqi Constitution establishes Islam as the main foundation of all legislation and while there are protections for freedom of religious belief and practice; Muslims are unable to convert from the Muslim faith.³² However, DFAT states that they are not aware of any prosecutions for conversion.³³ In this case the applicant has not claimed to have converted to another faith and I do not accept that he will be perceived to have done so, that he will be considered an apostate or that faces a real chance of being prosecuted or harmed as an apostate and/or for converting to another faith.
33. Information is that those with secular views are often aligned with and treated as atheists, and that persons who openly say they are not religious may be at risk of arrest and prosecution.³⁴ In 2018 arrest warrants were issued for four individuals on atheism charges in Dhi Qar (in the southern governorates), though only one was actually arrested and the report does not indicate what happened to him.³⁵ EASO also cites several cases from 2014 and 2017 in which atheists in Baghdad were threatened by Shia militias; however, it is unclear whether these threats were acted upon, and the EASO report does not refer to more recent cases of such harm.³⁶ Atheism and secularism are on the rise among the youth in Iraq and bookstores, cafés and Facebook groups, some with thousands of members, are forums where secular ideas can be discussed.³⁷ I accept that there have been instances in which some secular Shia Muslims, including one who openly expressed his views on social media, have faced threats by Shia militias.³⁸ I also accept that some individuals have been arrested on atheism charges in Dhi Qar in the southern governorates of Iraq. However, on the totality of the information I am not satisfied that there is the systematic targeting of secularised/moderate/ non-observant or non-practising Shia Muslims in the southern governorates either by the government or Shia militias (including the PMF) or that the information indicates that all moderate/secular Shia Muslims/non-observant or non-practising Shias are considered infidels or that they face a real chance of harm or prosecution.
34. In this case, the applicant's evidence was that he has never been particularly religious. He did not practise his Shia faith in the past, and his evidence did not disclose that he was ever harmed or threatened by anyone, including any militias for this reason in the past. He has not publically expressed his religious views in Australia (including as it relates to the consumption of alcohol and his views that the government and militias do not have the right to judge such behaviour) despite having the opportunity to do so which indicates to me that he does not have any interest in doing so in the future, and I am not satisfied that he will do so on return to

³² DFAT 2018 Report.

³³ Ibid.

³⁴ UNHCR 2019 Report; and EASO Targeting of Individuals Report 2019.

³⁵ EASO Targeting of Individuals Report 2019.

³⁶ Ibid; and EASO Guidance Note 2019.

³⁷ EASO Targeting of Individuals Report 2019.

³⁸ Ibid.

Iraq. However, even if he wished to do so, there are forums available in Iraq for likeminded individuals to share and express their religious views and on the information cited above, I consider he can do so without facing a real chance of harm. Further, the information before me does not support that Muslims who consume alcohol are being targeted for that reason. Rather, as noted above, information indicates that: Christian and Yazidi alcohol sellers are primarily targeted for harm; society is more open about such matters than in the past; southern Iraqi's are allowed to legally consume and own alcohol; and that generally the Shia militias do not wish to destroy the good reputation they have achieved by targeting their own ethnic population in relation to these matters.³⁹ In these circumstances, I am not satisfied that the applicant faces a real chance of being harmed for consuming alcohol or holding views in support of doing so.

35. In respect of those associated with the west, EASO advised in 2019 advises that Shia militias are not currently focusing on these individuals but are instead focused on combating the threat from ISIL.⁴⁰ Further, DFAT advised in 2018 that there is considerable evidence that Iraqis have returned to Iraq, sometimes only months after securing residency in Australia, to reunite with families, establish and manage businesses or take up or resume employment.⁴¹ DFAT states that practice of seeking asylum in the west 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. The information, including that above regarding the current targets of the PMF, does not support that returnees from the west (including those who have been here long term) are being systematically targeted for harm in the southern governorates. DFAT states that returning to Iraq can be difficult, particularly if the individual does not return to their original community.⁴² However, as noted above the applicant will be returning to an area where he used to reside. He has family who continue to live there and I am not satisfied on the evidence that they will not be able to assist and support him on return if required. The applicant was gainfully employed in the past and has been here in Australia and the evidence before me does not indicate that he will be unable to find either accommodation or employment on return to Iraq, or that he will be otherwise be unable to access services as a returnee from the west and/or a failed asylum seeker.
36. In this case, the applicant's wife was born in Iraq and their marriage was conducted according to Islamic rites and there is no suggestion that his wife is from a different faith to that of the applicant. The information before me does not to indicate that Shia militias (including the PMF and the Mahdi Army) or anyone else, are targeting individuals on the basis of their marriage to Australian citizens and/or because they have Australian citizen children. Overall, I am not satisfied that his particular religious views and practices as set out above, his western behaviour, westernisation, long term residence and asylum application in Australia, and/or his marriage and family with an Australian citizen, will lead to the applicant being imputed with anti-Islamic views, pro-American views and/or being considered an infidel. Further, as set out above, I have found that the applicant does not face a real chance of harm from ISIL for any reason.
37. On the totality of the claims and evidence before me, including the independent information and the applicant's particular circumstances taken individually and cumulatively, I am not satisfied that he faces a real chance of harm on return to Muthannia now or in the reasonably foreseeable future for any reason associated with his particular religious views and practices as

³⁹ EASO Targeting of Individuals Report 2019; and Landinfo 2018 Report.

⁴⁰ EASO Targeting of Individuals Report 2019.

⁴¹ Ibid.

⁴² Ibid.

discussed above, western behaviour, westernisation, his long-term residence and asylum application in Australia and/or his marriage and family with an Australian citizen.

38. The applicant has not contended that this wife and family will return to Iraq with him and I accept that he will be separated from them on his return. I am sympathetic to this situation and accept that it will be very difficult for the applicant and for his family and that it will cause them distress. However, he has not claimed to fear harm on return to Iraq for this reason and nor am I satisfied that his separation from his wife and children and any distress arising from this is for one of the five grounds in s.5J(1)(a) of the Act; or that it rises to the level of serious harm, having regard to the non-exhaustive list set out in s.5J(5) of the Act.
39. Having regard to the independent information cited above regarding the security situation in the southern governorates of Iraq. I am satisfied that the applicant can safely access Muthannia without facing a real chance of harm.
40. On the totality of the evidence before me, including the independent information and the applicant's particular profile and circumstances, taken individually and cumulatively, I am not satisfied that the applicant faces a real chance of harm or persecution on return to the southern governorates of Iraq, including Muthannia, now or in the reasonably foreseeable future for any of the reasons claimed.

Refugee: conclusion

41. 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

42. 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

43. 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.
44. I make the same factual findings as set out above.
45. The applicant has not contended that this wife and family will return to Iraq with him and I accept that he will be separated from them on his return. I am sympathetic to this situation

and accept that it will be very difficult for the applicant and for his family and that it will cause them distress. However, he has not claimed to fear harm on return to Iraq for this reason and nor am I satisfied that his separation from his wife and children and any distress arising from this falls within the exhaustive definition of significant harm in s.36(2A) of the Act, in that it does not amount to being arbitrarily deprived of life; facing the death penalty; torture; cruel or inhuman treatment or punishment; or degrading treatment or punishment.

46. I have otherwise found above that the applicant does not face a real chance of harm on return to the southern governorates of Iraq, including Muthannia for the reasons claimed (set out and discussed above). As 'real chance' and 'real risk' involve the same standard,⁴³ I similarly find on the same evidence and for the reasons discussed above, including the independent information and the applicant's particular profile and circumstances taken individually and cumulatively, that these matters also do not give rise to a real risk of harm for the purpose of s.36(2)(aa) of the Act.
47. Having regard to the independent information above regarding the security situation in the southern governorates of Iraq, I am satisfied that the applicant can safely access Muthannia without facing a real risk of harm for the purpose of s.36(2)(aa).
48. On the totality of the evidence before me, including the independent information and the applicant's particular profile and circumstances, taken individually and cumulatively, I am not satisfied that he faces a real risk of significant harm on return to the southern governorates of Iraq, including Muthannia, for the purpose of s.36(2)(aa) of the Act.

Complementary protection: conclusion

49. 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.

⁴³ *MIAC v SZQRB* (2013) 210 FCR 505.

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.