



Australian Government
Immigration Assessment Authority

Decision and Reasons

Referred application

IRAQ

IAA reference: IAA19/07652

Date and time of decision: 24 January 2020 14:35:00

I Sheck, Reviewer

Decision

The IAA remits the decision for reconsideration with the direction that:

- the referred applicant is a refugee within the meaning of s.5H(1) of the *Migration Act 1958*.

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) is an Iraqi national from Baghdad, Iraq. She departed Iraq [in] May 2013 and arrived in Australia [in] May 2013. On 21 September 2017 she lodged an application for a protection visa (PV).
2. On 10 December 2019 a delegate of the Minister for Immigration (the delegate) refused to grant the visa. The delegate did not accept that the applicant had married without the approval of her family and would be the victim of a tribal/honour killing on return to Iraq. The delegate did not accept that the applicant was of any interest to the militia group Mehdi Army or any other Shia or Sunni militia. She concluded that the applicant did not face a real chance of persecution or a real risk of significant harm due to her time in Australia, being a failed asylum seeker, due to general or sectarian violence or for any other reason.

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) (the review material). On 10 January 2020 the IAA received a submission on behalf of the applicant from her representative, [Ms A] of Refugee Advice & Casework Service (RACS). Section 473DD of the Act provides that the IAA must not consider any new information from an applicant unless satisfied there are exceptional circumstances to justify considering the new information, and the new information was not and could not have been provided to the Minister or is credible personal information which was not previously known and had it been known may have affected the consideration of the applicant's claims. The submission by [Ms A] addresses the delegate's decision and restates parts of this and the applicant's evidence. I do not consider the submission contains any new information and I have had regard to it.
4. In addition to the submission, [Ms A] has provided new information and documents to the IAA on 10 January 2020, 14 January 2020, 16 January 2020, 21 January 2020 and 24 January 2020. These are as follows:
 - a) Report from [Ms B], Counsellor, from NSW Service for the Treatment and Rehabilitation of Torture and Trauma Survivors (STARTTS) dated [January] 2020;
 - b) 12 photographs of a building which has been destroyed by fire;
 - c) 6 letters relating to the fire incident with various dates from 28 November 2019 to 2 December 2019 plus translations. All of the letters were translated from Arabic to English on 9 January 2020;
 - d) Submissions relating to the current security situation in Iraq. The submissions reference media articles and travel advisories as follows:
 - i. Al Jazeera 'Iraq rocket attack kills US contractor, wounds military personnel' (28 December 2019);
 - ii. Al Jazeera 'US targets pro-Iran militia bases in Iraq, Syria raids' (30 December 2019);
 - iii. Al Jazeera 'US-Iran tensions: Timeline of events leading to Soleimani killing' (9 January 2020);
 - iv. CNN 'Small rockets land near Baghdad's heavily fortified Green Zone' (9 January 2020)

- v. DFAT 'Latest update: Iraq', 10 January 2020;
<https://www.smartraveller.gov.au/destinations/middle-east/iraq>;
 - vi. Government of Canada, Iraq, 9 January 2020 <https://travel.gc.ca/destinations/iraq>;
 - vii. Guardian, 'The Guardian view on the US and Iran: relief may be short-lived', 9 January 2020;
 - viii. International Crisis Group, 'A Perilous Turning Point in the U.S.-Iran Confrontation' (3 January 2020);
 - ix. Al Jazeera 'Protesters storm US embassy compound in Baghdad' (1 January 2020);
 - x. CNN, 'Angry Tehran crowds chant: 'Down with the USA' (6 January 2020);
 - xi. Daily mail, 'Protesters chant 'Trump is a terrorist' as 100-strong mob masses outside US embassy in London while global fury at Soleimani's death builds - but Pope calls for 'all sides to keep flame of dialogue alight' (6 January 2020);
 - xii. UK Foreign and Commonwealth Office, 'Foreign Travel Advice: Iraq', 10 January 2020, < <https://www.gov.uk/foreign-travel-advice/iraq/print>;
 - xiii. Metro 'Shia cleric reactivates powerful anti-US army after airstrike kills Iran general', 3 January 2020;
 - xiv. The Jordan Times, 'Iraqi armed factions call meeting to begin Anti-US fight' 7 January 2020;
 - xv. Foreign Policy, 'In Death Suleimani May Achieve His Life's Dream: Preserving Iranian Power in Iraq', (7 January 2020);
 - xvi. The Atlantic, 'The World Paid Attention to the Wrong Iraqi Protests' (7 January 2020);
- e) Written statement of support from [Mr C], the applicant's brother-in-law, dated 13 January 2020;
 - f) Screenshots and text messages from [Mr D] to [Mr E] dated 30 September 2019, plus translations. Translated from Arabic to English 12 January 2020;
 - g) Further screenshots and Whats App text messages; author, recipient and date not stated, plus translations. Translated from Arabic to English 14 January 2020;
 - h) Document entitled "Will to deprive from Inheritance" dated [in] May 2018, plus translations. Translated from Arabic to English 12 January 2020;
 - i) Copy of Marriage certificate of the applicant's sister Z, dated [in] April 2009, plus translation. Translated from Arabic to English 17 January 2020;
 - j) Submissions addressing s.473DD of the Act, relating to the new information as listed at points (e) to (i), dated 15 January 2020;
 - k) An untranslated document claiming to be the marriage certificate of the applicant's sister "I", date unknown.
5. The STARTTS report referred to at (a) above postdates the delegate's decision and could not have been provided to her. Further to this, the author notes that "due to [the applicant's] severe trauma reactions to the contents of her narrative, the assessment of [the applicant] is still ongoing and, at the time of writing this letter, it is not yet complete. It would not have been possible for me to write this letter earlier in the process of assessment, as [the applicant] can only manage a few minutes of disclosure before she becomes overwhelmed by the intensity of her trauma reactions." I accept this is the case. The applicant has been attending counselling since 31 July 2019. The author notes that she "presents with post-traumatic stress symptomatology, as follows: flashbacks, intrusive memories, hypervigilance; nightmares and disrupted sleep patterns. In addition, she feels ever present fears of her paternal family reaching her family and herself, and being tortured to death. She experiences high levels of

anxiety, panic attacks, low mood, and cries frequently and easily. These symptoms and their severity are consistent with her disclosed history of trauma.” This report is of relevance when considering the applicant’s credibility as well as her ability to express herself when discussing her claims and I conclude that there are exceptional circumstances that justify its consideration. I have had regard to the report.

6. The photographs and letters referred to at (b) and (c) above relate to the destruction of three buildings (including two adjacent shops) which were damaged by fire [in] November 2019. The owner of one of the shops was [Mr D], the applicant’s husband’s brother. It is contended by [Ms A] that, while it is difficult to prove who was responsible for the attack, the applicant and her husband have formed the view that it was a member of the applicant’s family. There is no information on why these documents could not have been provided to the delegate and I am not satisfied that they could not have been. [Ms A] further contends that the photographs and letters comprise credible personal information which was not previously known. Although this may be the case I am not satisfied that, had it been known, this information may have affected consideration of the applicant’s claims. Although it is clear that the fire occurred, a letter dated 1 December 2019 and signed by [Mr D] notes that the property “was burnt down during the demonstrations”. The fire incident report notes that the fire “resulted from actions of disorder”. I find the contention that the applicant’s family members carried out the attack to be speculative and unsupported by the evidence provided. I do not accept that there are exceptional circumstances that justify consideration of this new information and have not had regard to it.
7. [Ms A] submits that the current security situation in Iraq is volatile and is relevant to the assessment of any harm the applicant would face were she returned to Iraq. Further to this, recent attacks by the US within Iraq including the assassination of Qassem Soleimani have exacerbated anti-Western sentiment. As a returnee from a Western country the applicant could be adversely affected by this changed situation. All of the media reports referenced by [Ms A] post-date the delegate’s decision and could not have been provided to the delegate. Given the significant deterioration in the security situation since the delegate’s decision, with attacks by foreign powers on Iraqi territory, I accept that there are exceptional circumstances that justify consideration of this new information. I have had regard to the submissions, media reports and travel advisories as quoted.
8. The applicant has submitted a letter (at (e) above) from another of her husband’s brothers, [Mr C]. [Mr C] essentially recounts what the applicant and her husband have told him about their situation. He also notes that his brother [Mr D] (as referred to above) told him some six months ago that he was threatened by a member of the applicant’s family. [Mr C] also forwards the opinion that he knows little about the fire but it could be connected to the applicant’s situation. I am not of the view that this document provides independent corroboration of the applicant’s assertions regarding the fire or her situation more broadly. I am not satisfied that there are exceptional circumstances that justify consideration of the statement and have not had regard to it.
9. The documents at (f) and (g) comprise screenshots and text messages of a conversation that occurred on 30 September 2019. It is entirely unclear from the original documents (including translations) which lines of text have been sent by which of the participants in the conversation or in the conversation at (g), who the participants are. Some of the comments appear to be veiled threats. [Ms A] submits that the conversations are between the applicant’s brother [Mr D] and an unidentified member of the applicant’s family. The applicant is of the view that they were sent by her [brother]. She became aware of them when [Mr D] visited

Australia in September-October 2019. The applicant has not satisfied me that either limb of s.473DD(b) has been met and I have not had regard to these documents.

10. As noted at (h) above, the applicant has tendered a screenshot of a document signed by her father which disinherits her from his will. The document is dated [in] May 2018. [Ms A] notes that the applicant's sister Z showed her the letter at that time but she does not know why it was drawn up at that time. Inasmuch as the document is capable of being believed, it corroborates the applicant's claim of estrangement from her father, therefore meeting the requirements of 473DD(b)(ii). Although the applicant has been represented throughout her visa application process, [Ms A] notes that she was only advised of the existence of this letter by the applicant after the delegate's decision was made. [Ms A] further contends that the applicant's limited education and severe mental health issues, which hinder her ability to self-advocate, comprise exceptional circumstances that justify consideration of the document. I agree and have had regard to the new information.
11. The applicant has also tendered a copy of her sister Z's marriage certificate dated [April] 2009. [Ms A] points out that this document has been signed by Z's father and contrasts this to the applicant's own marriage certificate, which was not. I note in this case a guardian's signature was required because Z was aged [age] at the time of her marriage and so a minor. The applicant married at the age of [age] therefore no guardian's signature was required. I am not of the view that this document adds in any material way to the applicant's case nor that there are exceptional circumstances that justify its consideration.
12. The further document referred to at (k) above purports to be a further marriage certificate relating to the applicant's other sister "I". As the document is untranslated I cannot be satisfied that it is relevant information for the purposes of s.473DC.

Applicant's claims for protection

13. After her arrival in Australia the applicant was interviewed by officers of the then Department of Immigration and Border Protection (now the Department of Home Affairs) on 5 June 2013 and 9 July 2013. The applicant provided details of her claim in a statutory declaration dated 24 August 2017 lodged with her PV application. On 6 October 2017 her then representative provided submissions. On 12 September 2019 the applicant attended an interview ("the PV interview") with the delegate at which [Ms A] was present. Additional documents were provided to the delegate prior to the PV interview. [Ms A] provided post-interview submissions and additional documents on 15 October 2019. On 30 October 2019 the delegate wrote to the applicant, requesting further information. [Ms A] provided a response to this on 22 November 2019. The applicant claims:
 - She married her husband T [in] May 2011. She did not advise her family of this because she was of the view that they would not approve the marriage. Two months after the wedding she moved to another suburb of Baghdad and lived in a rental property organised by T. He would visit her regularly but continued to reside with his first wife H and their children;
 - Because of T's visits the applicant's neighbours concluded that she was an immoral woman. As a consequence of this she was raped by a taxi driver, a local man; her landlord's nephew attempted to rape her when attending to renovations in her property; she received physical threats as well as threats over social media from her neighbours, who included members of the Mehdi Army. T organised for her to leave Iraq for her own safety;

- While in [Country 1] en route to Australia the applicant and her husband T were seen by the applicant's sister Z and her husband S, who were also travelling to Australia. S is T's stepson (H's son from a previous marriage). Z and S informed the applicant's family and T's first wife H that the applicant and T were married. If she returns to Iraq her or T's families will kill her. The families have now obtained a declaration from the Sheikhs of both of their tribes authorising the killing of the applicant and her children;
- She could not relocate to another area of Baghdad or Iraq. As a single woman or single woman with children she would be particularly vulnerable to further abuse including rape or sexual assault;
- She could not return to Iraq because of the ongoing violence and security situation. The Iraqi government does not have the means to protect her.

Factual findings

14. Based on the information provided in her visa application and identity documents, I accept that the applicant's background is as follows: she was born on [date] in [District 1], Baghdad and is an Iraqi national. She has [a number of siblings]. Her mother was killed by gunshots in 2009; her father remains in the family home in [specified address] and runs a [specified] shop. Her sister Z, born in [year], resides in Australia. The applicant completed only primary schooling and has never been in paid employment. She married [in] May 2011. Her husband T was determined to be a refugee by [Country 2 in] August 2014. The applicant and T's son was born in Australia on [date] and their daughter on [date].
15. The applicant's narrative regarding her marriage to T, her move to another suburb of Baghdad and her harassment in that suburb prior to her departure from Iraq has been entirely consistent and is as summarised in the two dot points above. She gave the same information, in some detail, in her arrival interview in 2013, in her statutory declaration in 2017 and at the PV interview in 2019. In [Ms A]'s submissions to the delegate of 14 October 2019 it is added that the applicant commenced a sexual relationship with T before their 2011 marriage. The delegate did not accept this statement as it had not previously been mentioned. In submissions to the IAA [Ms A] indicates that the applicant only proffered this information after several appointments. I accept as plausible that the applicant saw this action as shameful and was reluctant to divulge it.
16. The delegate found the applicant to be "unreliable in her testimony and ... not a credible witness of truth." It appears that in coming to this conclusion the delegate gave particular weight to the money transfers made by the applicant to various members of her family, as well as a number of other parties in Iraq and in [Country 3]. In the period [February] 2017 to [July 2018] the records show there are 50 money transfers made by the applicant, ranging from around \$100 to over \$2,000 and totalling over \$24,000. The applicant submitted that these transfers were made by her sister Z but she accompanied Z to make the transfers and they were made in the applicant's name and using her identity documents. The delegate rejected this statement on the basis that Z had her own drivers' licence; Z additionally made transfers to family members in her own name, as did her husband S, so there would be no need to make any transfers in the applicant's name. Further to this, the applicant had stated at the PV interview "that she reconnected with her sister [Z] in January 2019, when [Z] moved from [a city] to Sydney."
17. The applicant has maintained that she was unaware of any other transfers made by Z or S and had simply believed her sister Z when she said that she needed the applicant's identity

documents in order to make the transfers. Although this appears particularly naïve, it is not entirely implausible. In relation to the applicant's statement at the PV interview, the delegate has erred in her finding. When asked when she resumed contact with her sister, the applicant had responded "I started to be in contact just before I gave birth; [month] or [month]". She did not give a year. Although the delegate has assumed that the applicant referred to the birth of her daughter in [2019], her son had been born in [2017]. I conclude that the applicant was referring to the birth of her first child and that she resumed contact with Z in January 2017. As a consequence of this I accept the applicant's evidence that her name and identity documents were used by Z to facilitate the numerous money transfers to a wide variety of people that occurred from [date] to July 2018.

18. As noted above, the applicant has been consistent in her testimony regarding her secret marriage to T and her escape from the family home. The applicant provided the Department with identity documents in 2017 including her marriage contract however this has not been translated. At the PV interview the interpreter translated the document. Of relevance is the statement that the marriage has the consent of T's first wife H. The delegate put this to the applicant who stated that this was not the case: H had not consented to the marriage and was at the time unaware of it. They had paid some money to someone at the Court "to do this thing for you" and that person recorded that consent had been given when it had not. I accept as plausible that this occurred; country information indicates that bribery of officials and corruption is commonplace in Iraq.¹
19. At the PV interview the applicant stated that she left her family home early in the morning. Her father was at work and the rest of her siblings were asleep. No-one saw her go. The applicant stated that she spoke to her sister "I" in 2017 and "I" told her that the family assumed that she had gone to live with a relative and would come back but as time passed they realised that she would not come back. When they realised this the applicant's father and cousins said that they would have to deal with it and kill her. I have some concerns regarding the plausibility of this part of the narrative. The applicant has not indicated that her family tried to contact her at any point after her disappearance or whether they turned their minds to the fact that harm may have come to her, she may have for instance been kidnapped. Did they contact the police at all? Did they contact their relatives? The applicant then claims that T took her to another area of Baghdad where he had arranged a rental property for her. "It is a Mehdi Army area everyone is with them". Again, I have some concerns with the applicant's narrative. Why would T, a Sunni Muslim, take the applicant to live alone in an area dominated by the Mehdi Army, a Shia militia group known as an instigator of sectarian violence?² The applicant has claimed that she was raped by a taxi driver but did not tell her husband. Then how did he find out? The applicant has not however been asked these questions and may not have information to give on any of these points, which largely concern the actions of parties other than herself.
20. Although there are some aspects of the applicant's case that cause me concern they are not of sufficient significance for me to conclude that she is not a credible witness overall. I also note her counsellor's recent observations that the applicant "often talks about her fear of being returned to Iraq ..., and each time she has been overwhelmed by her trauma response."³ I accept that her limited education and significant mental health issues may have impacted on her ability to fully present her claims. I therefore accept her consistent and detailed claims that she married without her father's permission or approval and that she subsequently ran

¹ Department of Foreign Affairs and Trade (DFAT), "DFAT Country Information Report - Iraq", 9 October 2018, CIS7B839419766; 2.18, 5.27 and 5.38

² Stanford University, Mapping Militant Organisations: Mahdi Army, 17 January 2017

³ Report from [Ms B], Counsellor, STARTTS, 9 January 2020

away from her family home. Country information indicates that a woman can be considered to have breached tribal honour by engaging in friendships or pre-marital relationships with a member of the opposite sex; refusing to marry a man chosen by the family; marrying against the family's wishes; committing adultery; or being a victim of rape or kidnapping.⁴ I accept that the applicant is considered to have shamed her family and her tribe due to her actions.

21. Numerous reports referenced by [Ms A] support that the consequences of breaching family honour in Iraq are severe, particularly for women. The family is the number one perpetrator of violence against women in Iraq.⁵ Loss of honour to a family or tribe may result in the culprit being sentenced to capital punishment.⁶ The applicant has provided a document dated [in] May 2018 signed by her father, stating that she is disinherited. She has provided a further document dated [in] June 2019 entitled "Denunciations and Blood Spilling", in which the chieftain of her tribe authorises that she, her husband T and their children be murdered. The witnesses to this document include the chieftain of T's tribe. The applicant's representatives sent a copy of this document to the president of the Organization of Women's Freedom in Iraq, who was of the view that "The statement that you shared looks authentic, and I would strongly advise that you help the woman seeking refuge in every possible way. She will definitely be killed if she goes back to Iraq." I am satisfied that both of the tendered documents are genuine. I accept that the applicant is estranged from her father and family members in Iraq. I conclude that if the applicant returns to Iraq she will be unable to seek the support of any of her family members and if she attempts to do so she will be harmed or killed. I accept that if members of her family locate her she may be harmed or killed.
22. The applicant also claims to fear harm from her husband's first wife, H, and members of her family. T's two sons with H, now young adults, also travelled to Australia and consider the applicant to be the cause of the breakdown of their parents' marriage. The applicant has provided an incident report which discusses her assault by one of these sons, M, in [2019], shortly before the birth of her daughter. I accept as plausible that H and her family may seek to harm the applicant, should she return to Iraq. In considering whether the applicant would have the protection of her husband in Iraq, he has been determined by [Country 2] to be a refugee. [Ms A] contends in her submissions to the delegate that he is unable and unwilling to return to Iraq and I accept that this is the case. The applicant's children are presently aged nearly one and nearly three. [Ms A] contends that T would be unwilling and unable to care for the children alone therefore they would accompany the applicant to Iraq if she was returned. I also accept that this is the case.

Refugee assessment

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

⁴ Minority Rights Group International, "The Lost Women of Iraq: Family-based violence during armed conflict", October 2015; p 26

⁵ UN High Commissioner for Refugees (UNHCR), "International Protection Considerations with Regard to People Fleeing the Republic of Iraq", May 2019, 20190506112913; p.92

⁶ Ibid; p.107

Well-founded fear of persecution

24. Under s.5J of the Act ‘well-founded fear of persecution’ involves a number of components which include that:

- the person fears persecution and there is a real chance that the person would be persecuted
- the real chance of persecution relates to all areas of the receiving country
- the persecution involves serious harm and systematic and discriminatory conduct
- the essential and significant reason (or reasons) for the persecution is race, religion, nationality, membership of a particular social group or political opinion
- the person does not have a well-founded fear of persecution if effective protection measures are available to the person, and
- the person does not have a well-founded fear of persecution if they could take reasonable steps to modify their behaviour, other than certain types of modification.

25. I have found that the applicant is a national of Iraq. It follows that Iraq is her receiving country. She is a member of the particular social group “women who have breached tribal traditions”. I have accepted that if she were to return to Iraq there is a real chance that she would be subject to serious harm including death at the hands of members of her own family due to having breached tribal traditions by marrying without approval and running away from home. In considering whether the applicant could seek help from the Iraqi police or authorities regarding the threats made against her, the Iraqi Penal Code allows for lenient punishments for “honour killings” on the grounds of provocation or if the accused had “honourable motives”. “Honour crimes” are reported to be frequently committed with impunity given the high level of societal acceptance, including among law enforcement officials, of this type of crime as a supposedly appropriate response to perceived transgressions of “honour.”⁷ I am satisfied that effective protection measures are not available to her.

26. In considering whether the applicant’s real chance of persecution relates to all areas of Iraq, I note that she left her home in [specified address] around July 2011 and resided in another area of Baghdad for some 18 months. Some 6.6 million people live in Baghdad.⁸ There is no indication that members of the applicant’s family located her after she left the family home. There is nothing before me to indicate that they would locate her on return, if she avoided the area(s) of Baghdad where her family members live, and I find they would not. The applicant has advised that she has no family outside of Baghdad. I am satisfied that she would not face a real chance of harm from family members in other cities in Iraq. As the real chance of persecution does not extend to all parts of the country the applicant does not have a well-founded fear of persecution for this reason.

27. The applicant is estranged from her family and would be without any family support on return to Iraq. Her husband T, who is a refugee, would not return to Iraq with her. Should she return to Iraq she would be an unaccompanied woman with two young children and no male support. She has minimal education and has never been in paid employment. She has no skills that would enable her to support herself or her children. Country information indicates that

⁷ UNHCR, “International Protection Considerations with Regard to People Fleeing the Republic of Iraq”, May 2019, 20190506112913; p.92

⁸ European Asylum Support Office (EASO), “EASO Country of Origin Information Report - Iraq Key socio-economic indicators”, 4 February 2019, 20190205091157; p.15

women without male relatives, including women-headed households, divorced women and widows are placed in a vulnerable position economically and in terms of exposure to harassment.⁹ Traditional social norms designate a family-centred and domestic role for women rather than work outside the home. It is socially not acceptable that women live on their own without men. Those who do not conform to this will often encounter negative attitudes from society and are at a particularly high risk of violence.¹⁰ Single mothers and their children are reported to face social rejection and stigmatization.¹¹ I am satisfied that as a single or unaccompanied woman with children, the applicant would face a real chance of harassment, stigmatization and violence. This constitutes serious harm. Country information indicates that this situation exists in all parts of Iraq. I am satisfied she has a well-founded fear of persecution for the purposes of s.5J(1).

28. In considering whether the applicant could obtain protection from the state against the real chance of serious harm, in all of Iraq, most cases of violence against women are thought to remain unreported due to high levels of social stigmatization, societal perceptions that domestic issues should be dealt with as “family matters”, lack of police and judicial personnel trained to deal with gender-based violence cases, as well as a lack of protective legislation. The 2017 DFAT report notes that the Iraqi Police Service and the Federal Police face capacity constraints. Members often lack training and basic equipment.¹² More recently, DFAT has assessed that corruption is widespread at many levels, including bribery to reduce or drop charges. The Minister of Interior admitted to UK media in 2016 that many Iraqis do not trust police because of their ‘failure to stop the bombers’ and ‘pervasive’ corruption.¹³ Access to justice for women and persons of diverse sexual orientations and/or gender identities is reported to be hampered by patriarchal gender norms that continue to persist among members of law enforcement agencies and the judiciary.¹⁴ I am satisfied that effective protection measures are not available to the applicant in Iraq and s.5J(2) does not apply.
29. There are no steps that the applicant could take by way of modifying her behaviour, so as to avoid persecution due to being an unaccompanied woman with children. She therefore has a well-founded fear of persecution on the basis of being an unaccompanied woman with children. As I have determined that the applicant has a well-founded fear of persecution on this basis, I have therefore found it unnecessary to make conclusive findings in relation to her other claims regarding a fear of harm from militia groups, due to being a returnee from a western country or due to the deteriorating security situation in Iraq.

Refugee: conclusion

30. The applicant meets the requirements of the definition of refugee in s.5H(1).

⁹ EASO, “EASO Country of Origin Information Report - Iraq Key socio-economic indicators”, 4 February 2019, 20190205091157; p.45

¹⁰ Ibid; p.46

¹¹ UNHCR, “International Protection Considerations with Regard to People Fleeing the Republic of Iraq”, May 2019, 20190506112913; p.86

¹² DFAT, “DFAT Country Report, Iraq”, 26 June 2017, CISED50AD4631; 5.8

¹³ DFAT, “DFAT Country Information Report - Iraq”, 9 October 2018, CIS7B839419766; 5.7

¹⁴ UNHCR, “International Protection Considerations with Regard to People Fleeing the Republic of Iraq”, May 2019, 20190506112913; p.43

Decision

The IAA remits the decision for reconsideration with the direction that:

- the referred applicant is a refugee within the meaning of s.5H(1) of the *Migration Act 1958*.

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.

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5J Meaning of well-founded fear of persecution

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

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

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

5K Membership of a particular social group consisting of family

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

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

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

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

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

5L Membership of a particular social group other than family

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

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

5LA Effective protection measures

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

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36 Protection visas – criteria provided for by this Act

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

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

...

Protection obligations

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

Determining nationality

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