



**Australian Government**  
**Immigration Assessment Authority**

**Decision and Reasons**

**Referred application**

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IRAQ

IAA reference: IAA19/07711

IRAQ

IAA reference: IAA19/07713

IRAQ

IAA reference: IAA19/07714

IRAQ

IAA reference: IAA19/07712

IRAQ

IAA reference: IAA19/07715

Date and time of decision: 11 February 2020 10:27:00

G Deal, Reviewer

**Decision**

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The IAA affirms the decision not to grant the referred applicants protection visas.

*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

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### Visa application

1. The applicants claim to be Shia Muslims from Baghdad, Iraq. The applicants comprise a father (IAA7711) (the applicant), his wife (IAA7715), the son (IAA7714), the oldest daughter (IAA7712) and the youngest, a daughter (IAA7713). On 27 June 2017 they lodged applications for Temporary Protection Visas (TPV) with the Department of Immigration, now part of the Department of Home Affairs.
2. On 14 November 2019 a delegate of the Minister for Immigration (the delegate) refused to grant the visas. While the delegate accepted the applicant had volunteered with the United States (US) Agency, [Organisation] and the US military and had moved to [Country 1] for a period with his family and had Post Traumatic Stress Disorder (PTSD) she did not accept the applicant received threats from the “20<sup>th</sup> Revolution Battalion” or other militias or that the applicants fled Iraq in 2013 because of this. Overall, the delegate found the applicants did not meet the relevant definition of refugee, did not face a real risk of significant harm and were not persons in respect of whom Australia had protection obligations.

### 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)(review material).
4. The IAA received a submission from the applicant on 17 January 2020. The submission comprises a letter from his migration agents, a statutory declaration declared by the applicant on 9 January 2020 and a letter from his psychologist dated 14 January 2010. The letter from the psychologist is dated after the delegate’s decision and is new information and is discussed below. The letter from his migration agents contains arguments and information that was provided to the Department and in this regard I have considered it. The letter also refers to the statutory declaration which contains new information discussed below.
5. In his visa application and interview the applicant claims he worked for the [Organisation] and US military between 2009 and 2011. He became close with two senior officers in the US military and would often fetch them food. In 2011 he received a threatening letter from the 20<sup>th</sup> Revolution Battalion because of his work and cooperation with the Americans and he and his family fled Iraq for [Country 1] in fear of their safety. He claims he returned to Iraq in 2012, that in 2013 he received a threatening call from the same group and that he and his family fled Iraq in April 2013 in fear of their safety, ultimately bound for Australia. He also provided email correspondence with one of the US officers and work references from both of them. In the statutory declaration the applicant now states the two US officers also met his son (who would have been a toddler at the time) when he brought them food and that they gave him toys and played with him. Other employees knew of their close interactions and he is sure many people knew of their relationship. He told others about how he fetched them food and brought his son with him as he was proud of his relationship with them. A close friend warned him to reduce his involvement with the US officers given the delicate situation with the militias. He was aware that the militias targeted people who used to go to the American Army bases, and you also needed a permit to enter these bases. After receipt of the threatening letter and while living in [Country 1] he was contacted on two separate occasions by friends and told unknown people were looking for him. They were in white cars with tinted windows. This is new information. He states that during the visa interview the delegate did not ask the applicant to

expand on the details of his relationship with the two US officers and that the applicant was not legally represented during the interview and that this gives rise to exceptional circumstances to justify considering the new information. I note that the applicant was represented at the primary stage and while his migration agent did not attend the visa interview she subsequently obtained a recording of that interview and lodged a post interview submission on his behalf. I also note that one of the applicant's central claims is that his close relationship with two US officers led militia to suspect he was a spy and this was the reason he provided the work references and email correspondence with the US officers to the Department. I also consider his work for the US and on-going harassment by the militia group were squarely at issue in the visa interview and do not accept this information could not have been provided to the delegate before her decision was made. In the visa interview the delegate also asked the applicant why the 20<sup>th</sup> Revolution Battalion would still be interested in him on his return in 2012 and asked the applicant if this or any other groups harmed him on his return. The applicant said that after being away for a year (in [Country 1]) he thought they had forgotten him which is in contrast to his new claim he was told while in [Country 1] that people were looking for him in Iraq. As detailed below, I also accept the applicant worked for the US military and had a friendly working relationship with two senior US officers. I consider he has had adequate opportunity to put forward his claims for protection and supporting information. I am not satisfied exceptional circumstances exist to justify considering the new information.

6. The applicant provided the Department with letters from his psychologist diagnosing him with PTSD in 2018 and indicating he last saw her in July 2019. The applicant has now provided an updated letter from his psychologist, dated 14 January 2020, indicating he has continued to attend sessions with her in 2020. This is new information. I am satisfied this information could not have been provided to the delegate before her decision was made. I am also satisfied it is credible personal information which may have affected consideration of the referred applicant's claims. Information before the Department indicated the applicant could not afford further mental health care and suggested that the applicant's last session was in July 2019. One of the applicant's central claims is that he has been seriously psychologically impacted by past events. I am satisfied exceptional circumstances exist to justify considering the new information.
7. I have also obtained the 2019 European Asylum Support Office paper on the targeting of individuals.<sup>1</sup> I am satisfied there are exceptional circumstances to justify considering this recently published report which documents the changing conditions in Iraq in relation to those subject to on-going targeting in Iraq. The delegate relied on another older report by the UK Home Office on perceived Western collaborators. The applicant's central claim is that he will be targeted because of his previous work for the Americans.

### **Applicants' claims for protection**

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8. The applicants rely on the same set of claims and their membership of the same family unit.
9. The applicants' claims can be summarised as follows:
  - The applicants are Shia Muslims from Baghdad, Iraq.
  - The applicant volunteered with the [Organisation] and worked for the US military between 2009 and 2011 and became friends with two senior US officers.

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<sup>1</sup> European Asylum Support Office (EASO), 'EASO Country of Origin Information Report - Iraq Targeting of Individuals', 7 March 2019, 20190308091632.

- There were bombings in Iraq at the time.
- The applicant received a threatening letter from the Sunni insurgent group the 20<sup>th</sup> Revolution Battalion because of his cooperation with the Americans and fled to [Country 1] with his family and they applied for refugee status. They were forced to return to Iraq in 2012.
- Three days before they left Iraq ultimately bound for Australia in April 2013, the applicant received a call from the same Sunni group threatening to kill them. They fled in fear of their safety.
- These events have seriously psychologically impacted the applicants and their freedom and the children's education. The applicant has PTSD and issues with his [body] and cannot work.
- They have no support network in Iraq.
- The applicant strongly supports Western influence in Iraq as evidenced by his job choices.
- The applicant believes he will continue to be targeted by the insurgent group because of his past cooperation regardless of whether he becomes involved with the Americans again. The applicant also believes he cannot work for international or American employers in Iraq as this would exacerbate the issues he has faced in the past. Any attempt to flee would also indicate his guilt.
- If returned they will suffer continued fear and psychological torment through continued threats as well as the possibility of physical harm in an attempt to make an example of them.
- He is wanted by other militias and the Iraqi government and is on a list of those cooperating with the US.
- Iraq continues to dwell in civil unrest.
- The applicant is unable to seek the protection of the police as he has no strong political ties in the government to warrant special protection. There are also many ex-insurgents in the militia.

## Factual findings

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10. Based on the evidence, including the documentary evidence, I accept all the applicants are Shia Muslims and that the applicant, applicant wife and the two oldest applicant children are nationals of Iraq and that Iraq is the receiving country. It is claimed the youngest daughter, who was born in Australia, is stateless. However having been born to both a mother and father of Iraqi nationality (based on documentary evidence before me), according to the law of Iraq, she is automatically a national of Iraq at birth and Iraq is the receiving country.<sup>2</sup> I do not accept she is stateless. Based on the evidence, including the documentary evidence, I find all the applicants are nationals of Iraq and that Iraq is the receiving country.
11. While the applicants have travelled and spent time in [Country 1] and [Country 2] it appears this was on a tourist visa and on the evidence I do not consider they have a right to enter and reside in [Country 1] or [Country 2] or in any country other than Iraq.

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<sup>2</sup> UN High Commissioner for Refugees (UNHCR), 'Acquisition of Iraqi Nationality by a child born outside Iraq', 7 May 2019, 20190508090531; National Legislative Bodies, Iraq, 'Iraqi Nationality Law', 1 March 2016, CIS18097; Landinfo Country of Origin Information Centre, 'Iraq: Travel documents and other identity documents, 16 December 2015, CISEC96CF14925.

12. The applicant claims they have no support in Iraq. While the applicant's father passed away in 2017 and the applicants may not have had regular contact with extended family in Iraq I note that collectively the applicant and his wife have two mothers and about half a dozen brothers and sisters living in Baghdad, Iraq, who are also married. I do not accept they have no support in Iraq.
13. There was mention of a bombing in front of the children's school in the applicant wife's arrival interview and while this has not since been specifically mentioned, given the spontaneity of the evidence and the country information before me indicating there were daily bombings in Baghdad at that time I am willing to accept this occurred.<sup>3</sup>
14. It has been consistently claimed they applied for refugee status with the United Nations High Commissioner for Refugees (UNHCR) and International Organisation Migration (IOM), but that the outcomes were unknown, which I accept.
15. The applicant stated in his visa application that their freedom was restricted and they were forced to relocate because of the threats and his children's school studies were largely interrupted as a result, but has not otherwise elaborated on this claim. The applicant had two children in Iraq and when they moved to [Country 1] his son was about [age] and his daughter was about [age]. They returned to Iraq just under a year later and left when his eldest son was about [age] and his daughter was about [age]. He did not have his third child until [after] arriving in Australia. I accept that the applicant children's education was somewhat disrupted in the early years as a result of these movements and that they may have been scared given the generalised violence in Iraq at that time.<sup>4</sup>
16. I also consider the applicants may be identifiable as having sought asylum in Australia.

### **Mental and physical health**

17. The applicant claims events in Iraq psychologically impacted him and his family although his supporting evidence only relates to his mental health. In support of this claim the applicant has provided three letters from his psychologist dated [July] and [August] 2019 and [January] 2020. In the letters his psychologist notes that while undertaking further studies in Australia in 2018 the applicant reported frequent difficulties concentrating in class and learning new information which, in turn, would make him anxious. During their initial session it was observed he had difficulties recalling dates and appointment times and he also forgot to complete home tasks appointed during therapy. He relied on his wife to help him recall information. The writer diagnosed the applicant with PTSD. In the August 2019 letter the psychologist states that "it appears" his PTSD has affected his cognitive abilities but that further tests would be required to get a better understanding. At that time it noted the applicant was unable to fund the standard battery of tests required to investigate his memory abilities. I note he has since attended a number of sessions with the psychologist but not undertaken these tests. In the visa interview the applicant appeared capable of comprehending the questions and responding in a meaningful way and I do not consider his condition materially impacted his ability to engage in the interview. The psychologist's letters record that the applicant has attended about 17 sessions with her since being in Australia (sometimes weekly, fortnightly or as infrequently as every two or three months) and that this is on-going. An earlier letter notes he has had some improvements with trauma symptoms but not with his depressive mood and he

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<sup>3</sup> UNHCR, 'UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Asylum-Seekers from Iraq', 31 May 2012, 3577.

<sup>4</sup> Ibid.

worries about the future and in a later letter it states he has not been able to progress during therapy due to difficulties stabilising his current crisis and uncertainty about his future. In the visa interview he said he was not on any prescribed medication for his condition but that he took sleeping pills when required.

18. On the evidence I accept the applicant was diagnosed with PTSD some two years ago and that he has irregularly attended counselling sessions with a psychologist in Australia since mid-2018. I am willing to accept he may suffer minor memory issues, for example in relation to the recall of exact dates because of his condition. I also note that in the visa interview when the delegate asked the applicant why he did not work in Australia the applicant very briefly mentioned [a health condition] (he has not provided any supporting information such as a doctor's letter about this condition) and that he was psychologically unstable and referred to the psychologists' letters. I note the late mention of this claim however, given the spontaneity of his evidence I am willing to accept the applicant has some issues with [his body] but the evidence has been brief and does not indicate he is on any prescribed medication or requires any on-going treatment and I do not accept this is the case or that his condition is serious or debilitating. As detailed above, I also note the applicant was able to meaningfully engage in the visa interview despite his mental health issues and that he is not on any prescribed medication for this condition. I note the applicant has reported previous periods when he was not employed and his father supported him including just under a year when he lived in [County 1] and for a period of about 10 years after he finished his studies (he has said he was helping his father during this period and paid for this). I also note he has undertaken further studies in Australia and that he did not seek assistance with his mental health issues until 2018 (some five years after his arrival in Australia). On the evidence, I do not accept the applicant's physical and mental health issues mean he is unable to work. I note the psychologist's letters also provide details about claimed events in Iraq however as the writer does not claim to have had first-hand experience of events in Iraq I place no weight on them in this regard. The most recent letter from the psychologist also states that it "appears" the applicant's PTSD is linked to the "vulnerability of returning to Iraq" and being "subjected to persecution based on his political beliefs". While I accept past traumatic experiences, like the illegal boat trip to Australia may have impacted his mental health, I do not accept the statement in the psychologist's latest letter that his PTSD "appears" linked to his fears of persecution as evidence of claimed events in Iraq.

### **Former employment**

19. The applicant claims that he worked as a volunteer at [Organisation] for about a year in about 2010. He has said he supervised [workers]. In support of this claim the applicant has provided what appears to be training certificates dated in 2009 and 2010 in his name and his identity card with [details deleted]. While untranslated the date [November] 2011 appears on the card. He has also provided photos of him in front of [a] poster and in a room and with other people in what appears to be an office setting and at a training session. I accept the applicant trained with the organisation and then worked as a volunteer for a year or less commencing in around 2009.
20. The applicant claims that from about 2010 he worked for a local Iraqi company [and] that this company was contracted to provide the US army with [services] which he did from November 2010 to March 2011. It was in this role that he and other colleagues became friends with two high ranking [officers] in the US army. In the visa interview he indicated he became friendly with these officers and would bring them food. In support of this claim he has provided what is essentially a work reference dated in March 2011 from the US military and written by one of

these [officers]. It states that the applicant provided [services] to US soldiers working with the Coalition Forces under his command for four months commencing November 2010 and terminating in March 2011. He had ceased working for them because a competitor provided the same services at a better rate. It notes that the applicant had also worked at the base sometime prior to their arrival and that they had used him because of positive reports. It is a reference letter and so also talks about the applicant's good character and hardworking nature. A second, almost identical, reference letter from another US officer at the same base but dated some six months later was also provided. Email correspondence between the applicant and one of the officers dated in about June 2012 was also provided. In the email the applicant tells the commanding officer he sought protection through the IOM to leave the "bad situation" in Iraq. He asked the commanding officer to confirm with IOM when they emailed him that he worked for him. The commanding officer says that he has already responded to the emails from IOM confirming the applicant worked for him and that he hopes his request to leave Iraq is honoured and says he will pray for the applicant and his family. I accept the applicant worked providing the US military with [services] between November 2010 and March 2011 as claimed and that prior to this he worked at the same site [for] a short period. I am willing to accept that in the four months that he was in this position he forged a friendly working relationship with the two US officers in charge.

21. I also note the applicant's evidence indicates he completed up to tertiary level education in Iraq and is a qualified [Occupation 1]. He worked in various capacities in Iraq. Since being in Australia he appears to have also undertaken further studies. His marriage certificate refers to him as being "well off". The applicant was also able to be officially discharged early from compulsory military service by paying a sum to the Iraqi government. His father ran a [business] and was financially able to support the applicant for periods in the past. The applicant subsequently also worked as [another occupation] starting up a business which he ran in Iraq until shortly prior to his departure from Iraq and he has noted this was the family trade. His father passed away a few years ago, his home was sold and the proceeds distributed among family. His mother brought a home in the north. Given the consistency, spontaneity and detail provided I accept these claims regarding his background, education and work history.

## Threats

22. The applicant claims to have received two threats from the 20<sup>th</sup> Revolution Battalion because of his work for the Americans. The first was a letter. After its receipt in 2011 his family hid at the applicant's father's home and then fled to [Country 1] where they stayed and were largely supported by the applicant wife's brother and the applicant's father. In 2012 the applicant's father fell ill and could no longer financially support the applicant and the applicant returned to Iraq to look after him. His wife and children followed shortly after (the wife's brother could also no longer support them as he left for America). After about a year in Iraq, shortly before they fled in fear of their safety, the applicant claims he received a second threat from the same group. They called him on his mobile phone and said they had monitored him and knew where he was and were going to kill him. In fear of their safety the applicants fled Iraq in April 2013, eventually travelling to Australia illegally by boat from [a named country]. In his visa application he also said that colleagues at the US military base had received similar threatening letters but that he has not been able to contact them and believes they are in hiding.
23. There are significant variations and inconsistencies in the applicant's evidence. For example, the applicant has said he worked at the US military base, received the first threat in 2011 and then fled to [Country 1] where he remained for just under a year before returning to Iraq in 2012 when his father fell ill. While in [Country 1] he and his family applied for refugee status

with the UNHCR. However, a copy of their “Asylum Seeker Certificate” issued by the UNHCR is dated [August] 2010, which is before the applicant worked at the US military based from November 2010 until March 2011 (as evidenced in the work reference letters). In the visa interview when the delegate noted these variations the applicant did not address this issue, rather he just re-iterated his claims and asserted he worked for the US military before he left for [Country 1].

24. In support of the applicant’s claim to have received a threatening letter he has provided a copy of what looks like a printed leaflet he claims he received from the 20<sup>th</sup> Revolution Battalion in 2011. I note this is undated. It contains the name of the group in the header and states “To” and then sets out the applicant’s name in full, in brackets, and talks about those who sell their conscience to the “Zionist-American foe against their home people” and that they will “give you and those who work with you the fair punishment”. It appears the applicant had this translated into English in Iraq in December 2012. The country information before me indicates militia groups, including Sunni groups, were known to target Iraqi civilians who worked for the US before their withdrawal in 2011 and that there were also bombings and generalised violence in Baghdad around that time.<sup>5</sup>
25. In his visa application the applicant said that after returning from [Country 1] in 2012 he received a threatening call from an anonymous person and that he believed it was someone from the same militant group who had sent him the threatening letter. In the visa interview the delegate asked how he knew it was the same people and the applicant said because they had previously sent him a threatening letter. He also said that they knew who he was by name and had said that they had not forgotten him and knew he had returned and were monitoring him. He said he received the threatening phone call just three days before he fled Iraq in 2013. He also appeared to indicate they were from the Mahdi Army or the government and that he was on a list. I note in his arrival interview he had said he did not know who was targeting him and while he has said this was meant in response to who had called him (rather than who sent the threatening letter) and that he was anxious and could not recall these details in the arrival interview I note the significance of this aspect of his claims and that the name of the group is clearly typed in large print on the top of the claimed threat letter and that he did not mention the 20<sup>th</sup> Revolution Battalion at any point in the arrival interview despite mentioning the threat letter. When the delegate noted these variations in his evidence in the visa interview the applicant’s response was generalised and did not address the issue raised (he said anyone who worked with the Americans could be targeted by either of these groups).
26. The country information before me<sup>6</sup> indicates those who collaborated or were perceived to have collaborated with the international and American companies and the coalition forces were often targeted by militia during US occupation, but that this was less of an issue after the US left in 2011. The 20<sup>th</sup> Revolution Battalion, a Sunni nationalist insurgency, focused on purging Iraq of foreign influence at the time, and focused its resources on attacking US soldiers and bases. However, there has reportedly been little evidence of any significant militant activity by this group after US withdrawal in 2011.
27. I find the claim the 20<sup>th</sup> Revolution Battalion were monitoring the applicant and knew he had returned and that he was of on-going interest to them at odds with the claim they only called

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<sup>5</sup> Stanford, ‘Mapping Militant Organisations – 1920s Revolution Brigades’, 19 August 2015; Department of Foreign Affairs and Trade (DFAT), ‘DFAT Country Information Report - Iraq’, 9 October 2018, CIS7B839419766; UNHCR, ‘UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Asylum-Seekers from Iraq’, 31 May 2012, 3577.

<sup>6</sup> Stanford, ‘Mapping Militant Organisations- 1920s Revolution Brigades’, 19 August 2015; Center for International Security and Cooperation, ‘1920s Revolution Brigades’, 1 February 2019, 2019111124834; UK Home Office, ‘Country Policy and Information Note - Iraq: Perceived collaborators’, 12 January 2018, OG9EF76793.



him about a year after his return to Iraq from [Country 1]. As detailed above, there have also been some irreconcilable variations in relation to the claimed timing of events which raise concerns for me regarding the veracity of these claims. The applicant has also claimed to have opened a [business] in Baghdad in 2012 and based on the consistency and spontaneous detail provided in the visa interview I accept that he did and that he operated this with his business partner until sometime in 2013 (I note he left Iraq in April 2013). In the visa interview the delegate noted that based on this it did not appear he was in hiding at that time. The applicant said that his movements were limited and his business partner worked in the office and he remained in the building indicating he kept a low profile. I agree with the delegate and consider opening a [business] on return from [Country 1] at odds with his claim to have been in hiding at that time and I do not accept that he was. I also note the applicant confirmed he did not recommence working for the [Organisation] or the US military on his return to Iraq in 2012. While he has said he supports Western influence in Iraq, other than being employed by [Organisation] and the US militia he said he did not openly express his political opinions in Iraq. Moreover, the applicant has not claimed he or his family were ever personally approached or harmed by militia or the government while living in Iraq or that his family in Iraq have since been threatened or harmed by any of these groups in connection with him. I note the applicants left Iraq by plane on their genuine passports and without issue in 2013. I also note the claim he was pursued by other militia and the Iraqi government was brief and belatedly raised.

28. I do not accept the applicant received a threatening phone call from the 20<sup>th</sup> Revolution Battalion or any other militia or the Iraqi government three days prior to his departure from Iraq. I do not accept the applicants were wanted by militia or the Iraqi government whether because the applicant was perceived as a spy or otherwise, when they left Iraq in 2013 or that he is on a list of collaborators which claim was briefly and belatedly raised. While there are some issues with his evidence, based on the documentary evidence I am willing to accept the applicant received a threatening leaflet from the 20<sup>th</sup> Revolution Battalion many years ago, as did former colleagues in the area at that time. I also accept he and his family lived for a brief period in [Country 1] about 10 years ago. I consider it plausible they did not want to be in Iraq at that time because of the insecurity in Baghdad.<sup>7</sup>
29. Based on the country information before me I consider it more plausible the applicant and his young family left Iraq in 2013 because of the drastic increase in indiscriminate Islamic State of Iraq and the Levant (ISIL) attacks in Baghdad.<sup>8</sup> I note the applicant has also said they came to Australia for a better future for his children, which I also accept.
30. The applicant has said that he has been unable to contact former colleagues from the US military base. He briefly said he believes this is because they are also hiding and while I accept he has not been able to contact them I consider the claim this is because they are in hiding speculative and I do not accept this aspect of his claim.

## Refugee assessment

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31. Under s.36(2)(a) of the Act a criterion for a protection visa is that the applicant for the visa is a non-citizen in Australia in respect of whom the Minister is satisfied Australia has protection obligations because the person is a refugee. 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

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<sup>7</sup> UNHCR, 'UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Asylum-Seekers from Iraq', 31 May 2012, 3577

<sup>8</sup> EASO, 'EASO Country of Origin Information Report - Iraq Security situation', 12 March 2019, 20190313085833.

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**

32. 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.

33. I accept the applicants are Shias from Baghdad, Iraq and that the applicant received a threat letter from a Sunni militia because of his work with Americans and that they were forced to briefly relocate to [Country 1] some 10 years ago because of insecurity in Iraq. I do not accept they were subject to on-going harassment by the Sunni or any other militia groups or the Iraqi government or that they were wanted by any of these groups when they left Iraq in 2013. I accept the applicant has been diagnosed with PTSD.

34. The applicants claim Iraq is unsafe. The applicants are from Baghdad where they have family and I consider if they return to Iraq, they will return to Baghdad. The country information before me<sup>9</sup> indicates that since the applicants left Iraq in 2013, the security situation has improved significantly. In 2017 ISIL was militarily defeated. As a result it is reported smaller armed Sunni militant groups have been rendered insignificant and, consistent with this, the 20<sup>th</sup> Revolution Battalion is reportedly likely inactive. While the applicant has submitted that just because the party is dormant it does not mean members or former members are not active I note that after the threatening letter in 2011 I do not accept he was otherwise personally targeted or wanted by this group or anyone else when he left Iraq in 2013. While ISIL has continued to wage a protracted insurgency, including a number of bombings in Baghdad after its military defeat, intelligence services are now reportedly more capable of thwarting attacks and there was an overall decline in violent incidents in Baghdad in 2018. In 2019 Iraq saw the lowest levels of violence since the 2003 invasion, with some of the lowest levels reported in Baghdad. Baghdad city and the suburbs are generally under the control of

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<sup>9</sup> DFAT, ‘DFAT Country Information Report - Iraq’, 9 October 2018, CIS7B839419766; EASO, ‘EASO Country of Origin Information Report - Iraq Security situation’, 12 March 2019, 20190313085833; Center for International Security and Cooperation, ‘1920s Revolution Brigades’, 1 February 2019, 20191111124834; Maher Nazeh, Reuters, ‘As blast walls come down, Baghdad life edges towards normality’, 11 April 2019, 20190411092220; The Christian Science Monitor, ‘In Baghdad, Iraqis embrace return to normalcy, with eye on its fragility’, 7 May 2018, CXBB8A1DA26792; Joel Wing, Musings on Iraq, ‘Iraq Saw Lowest Violence Ever March 2019’, 3 April 2019, 201904082755; Xinhua (net), ‘Feature: Baghdad nights flourish with decreasing violence’, 21 October 2019, CXBB8A1DA38263.

the authorities including the Popular Mobilisation Forces (PMUs), a state –sanctioned umbrella organisation comprising mainly Shia armed militant groups, originally formed to help in the fight against ISIL. Some have accused the PMUs of past human rights abuses with the central government reportedly lacking consistent control over their activities. However it is reported that the vast majority of more recent violence in Baghdad is ‘personal’, between Shia and stems from ongoing political competition in the aftermath of the 2018 elections but can also relate to criminal violence, the targeting of minorities and prior involvement in activities or armed conflict. In 2019 it was reported that conditions in Iraq were, for the first time since 2003, returning to normal with families staying out until after midnight at markets, restaurants and cafes. There were reports of no attacks by insurgents for more than a year. Some have commented that Baghdad is better than it’s ever been since 2003, in terms of security, freedom of people and demilitarisation of the city.

35. The country information before me<sup>10</sup> consistently indicates the risk of harm to Iraqis who worked with or were perceived to have worked with international or Western companies and the coalition forces declined after US withdrawal in 2011. It indicates Shia militia are now more focused on the fight against the ISIL insurgency. I also note the country information detailed above which indicates Sunni militia are now insignificant and inactive. In a submission to the IAA the applicant misquoted the UK Home Office report on perceived Western collaborators, relied on by the delegate in her decision, when he submitted that the report indicates a present risk to those who worked for Western employers or are perceived as having collaborated with foreign coalition forces because the report actually states that it is those workers (or perceived collaborators) who are in ISIL controlled territory or areas with high levels of insurgent activity that are at risk, with the risk in Baghdad reportedly low. While I acknowledge, as the applicant has submitted, that a low risk does not mean no risk, I note that, the level of risk, among other things, informs whether there is a ‘real chance’, which is the relevant test.
36. I accept the applicant worked for [Organisation] and the US military, forged a friendly working relationship with two US officers and received a threatening leaflet from the 20<sup>th</sup> Revolution Battalion many years ago because of his cooperation with the Americans. I do not accept he or any of the other applicants were wanted by militia or the Iraqi government when they left Iraq in 2013 whether in connection with the applicant’s work, as a perceived spy, because of being on a list or otherwise. I also note both the applicant’s role with the US military and his role with the [Organisation] were now some time ago. The country information detailed above indicates that with ISIL’s relatively recent military defeat Sunni militia are insignificant and the Sunni group that targeted the applicant all those years ago are now likely inactive. The risk for perceived Western collaborators in Baghdad is reportedly low. Moreover, the country information before me indicates security conditions in Baghdad have greatly improved in recent years with things reportedly safer than they have been since 2003. The applicant has said he could not work for a Western employer in Iraq because this would exacerbate past issues. He studied to be [an Occupation 1] and with the [Organisation] and has worked in various capacities including for the US military providing [services] and in [another business], which is the family trade and I consider he may apply to work in any of these areas in Iraq. Given I do not accept he was wanted by militia or the Iraqi government because of his past employment when he left Iraq and the country information before me which indicates the risk is to those who work for Western or international employers in ISIL controlled territory or areas with high levels of insurgent activity and that this risk is low in Baghdad (where I consider the applicants will return) I do not accept the applicant’s claim he fears working for Western or

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<sup>10</sup> UK Home Office, 'Country Policy and Information Note - Iraq: Perceived collaborators', 12 January 2018, OG9EF76793; EASO, 'EASO Country of Origin Information Report - Iraq Targeting of Individuals', 7 March 2019, 20190308091632.

international employers. The applicant has said that he believes in Western or international intervention in Iraq. Other than past employment the applicant has not claimed he was harmed for publicly expressing his political opinion in Iraq, or specified fears of harm for openly expressing his political views. He has said he did not openly express his political opinions in Iraq and he has not done so in Australia either. It is for these reasons (rather than out of a fear of harm) that I do not consider he will express his political opinions publicly in Iraq. Based on the applicant's profile and the country information detailed above I am not satisfied the applicants face a real chance of harm now or in the reasonably foreseeable future on account of their past experiences in Iraq (including past employment and the threat letter), the applicant's employment, political views or generalised violence.

37. I accept the applicant's son and eldest daughter's education was briefly disrupted in Iraq. The applicant children appear to have attended school while in Australia. The oldest has since finished high school, the middle child is about [age] and the youngest is about [age]. The country information before me<sup>11</sup> indicates mandatory primary education and that most children could expect to receive about 10.1 years of schooling in Iraq. It also reports there are significant issues with the education system in Iraq for all students with a lack of basic services and facilities, overcrowding and a shortage of qualified teachers. It notes this is reportedly more of an issue in areas affected by the conflict or those hosting significant numbers of internally displaced persons. I note as detailed above I consider the applicant children will return to Baghdad. Based on the country information detailed above while I accept the applicant children's education may be impacted given the lack of basic facilities and services and qualified [Occupation 1] within Iraq's [system] I am not satisfied this amounts to 'serious harm' or that it involves 'systematic or discriminatory conduct'.
38. I accept the applicants are Shia Muslims which DFAT<sup>12</sup> indicates is the dominant faith in Iraq. It also notes it is reported that Shias face little to no discrimination, including official discrimination, in Iraq. The applicants have not claimed to have been harmed or threatened specifically on account of faith in the past. I do not accept the applicants face a real chance of harm on account of their faith.
39. I accept the applicant suffers from PTSD and irregularly attends counselling for this. In her letters his psychologist also states it is vital he continue his treatment and that continued uncertainty and the possibility of returning to Iraq has negatively impacted his recovery. While I accept he has [health] issues I do not accept these are serious or require on-going treatment. The country information before me<sup>13</sup> indicates while public healthcare is available in Iraq health infrastructure has suffered as a result of years of conflict. Mental health care is available but not a priority. The cost of mental health services in private facilities is prohibitive for most Iraqis. International aid organisations also reportedly send their own qualified teams to care and support moderate to severe cases. The country information also indicates hospitals and clinics, both private and public, providing mental health care, are concentrated in Baghdad. It does not indicate discrimination in terms of the treatment of patients. I note the applicant has only said he takes sleeping pills when he cannot sleep and that he is not otherwise medicated for his condition. While it has been on-going he has only more recently irregularly attended counselling in Australia. Based on the country information detailed above I accept counselling services may not be readily available in Iraq and that the applicant may face delays or even be unable to attend counselling sessions like he has in Australia but based on the country

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<sup>11</sup> UNHCR, 'International Protection Considerations with Regard to People Fleeing the Republic of Iraq', 3 May 2019, 20190506112913; DFAT, 'DFAT Country Information Report - Iraq - 9 October 2018', 9 October 2018, CIS7B839419766.

<sup>12</sup> DFAT, 'DFAT Country Information Report - Iraq', 9 October 2018, CIS7B839419766.

<sup>13</sup> UK Home Office, 'Country Policy and Information Note - Iraq: Medical and healthcare issues', 8 May 2019, 20190509095221; DFAT, 'DFAT Country Information Report - Iraq', 9 October 2018, CIS7B839419766.

information detailed above I am not satisfied this amounts to 'systematic or discriminatory conduct' or is for one of the reasons detailed in s.5J (1)(a) of the Act.

40. The applicants have not claimed to fear harm as failed asylum seekers from the West although I consider this claim may arise given the applicant claims to fear harm as a perceived Western collaborator and has been in Australia for a number of years. The country information before me<sup>14</sup> notes that there is considerable evidence to suggest that Iraqis granted protection return to Iraq only a matter of months later for a host reasons including to reunite with family and that this practice is well accepted among Iraqis. It also reports that there is limited evidence to suggest returnees face difficulties in assimilating back into their communities although local sources have said that returning to Iraq can be difficult particularly if the individual does not return to their original community. I consider the applicants will return to Baghdad where they have family. I also note the applicant's background, education and work history detailed above. Based on the evidence before me, the country information detailed above and the applicants' profiles I do not accept the applicants face a real chance of harm for being failed asylum seekers.

41. I am not satisfied the applicants have a well-founded fear of persecution whether on account of their origin, faith, past experiences, political views, the applicant's mental health, employment or because they may be identifiable as having sought asylum in Australia.

#### **Refugee: conclusion**

42. The applicants meet do not meet the requirements of the definition of refugee in s.5H(1). The applicants do not meet s.36(2)(a).

#### **Complementary protection assessment**

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43. Under s.36(2)(aa) of the Act, 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**

44. 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.

45. The expressions 'torture', 'cruel or inhuman treatment or punishment' and 'degrading treatment or punishment' are in turn defined in s.5(1) of the Act.

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<sup>14</sup> DFAT, 'DFAT Country Information Report - Iraq', 9 October 2018, CIS7B8839419766; UNHCR, International Protection Considerations with Regard to People Fleeing the Republic of Iraq, 3 May 2019, 20190506112913.

46. As detailed above I accept the applicant children's education may be impacted given the lack of basic facilities and services and qualified teachers within Iraq's education system. However, I am not satisfied that these circumstances amount to 'significant harm', as defined for the purposes of s.36(2A). There is not a real risk they would be arbitrarily deprived of their life or subject to the death penalty on return or be subject to torture. Furthermore, the evidence before me does not support a conclusion that there is an intention to inflict severe pain or suffering, pain or suffering that could reasonably be regarded as cruel or inhuman in nature or to cause extreme humiliation.
47. I accept counselling services may not be readily available in Iraq and that the applicant may face delays or even be unable to attend counselling sessions like he has in Australia for his PTSD. However, I am not satisfied that these circumstances amount to 'significant harm'. There is not a real risk he will be arbitrarily deprived of his life, that the death penalty will be carried out on him or that he will be subjected to torture and the evidence does not support a finding that there is an intention to inflict severe pain or suffering or pain or suffering that could be regarded as cruel or inhuman in nature or to cause extreme humiliation.
48. In considering the applicants' refugee status, I have otherwise concluded that there was no 'real chance' the applicants would suffer harm on their return to Iraq for the other reasons claimed. 'Real chance' and 'real risk' involve the same standard. For the same reasons, I am also not satisfied the applicant would face a 'real risk' of significant harm.

#### **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 applicants will suffer significant harm. The applicants do not meet s.36(2)(aa).

#### **Member of same family unit**

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50. Under s.36(2)(b) or s.36(2)(c) of the Act, an applicant may meet the criteria for a protection visa if they are a member of the same family unit as a person who (i) is mentioned in s.36(2)(a) or (aa) and (ii) holds a protection visa of the same class as that applied for by the applicant. A person is a 'member of the same family unit' as another if either is a member of the family unit of the other or each is a member of the family unit of a third person: s.5(1). For the purpose of s.5(1), the expression 'member of the family unit' is defined in r.1.12 of the Migration Regulations 1994 to include a spouse or child.
51. As none of the applicants meets the definition of refugee or the complementary protection criterion, it follows that they also do not meet the family unit criterion in either s.36(2)(b) or s.36(2)(c).

#### **Decision**

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The IAA affirms the decision not to grant the referred applicants protection visas.

## Applicable law

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### ***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.