



**Australian Government**  

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**Immigration Assessment Authority**

**Decision and Reasons**

**Referred application**

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IRAQ

IAA reference: IAA20/08043

Date and time of decision: 8 May 2020 13:30:00

A Wilson, Reviewer

**Decision**

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

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

## Background to the review

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### Visa application

1. The referred applicant (the applicant) claims to be a national of Iraq. He arrived in Australia [in] May 2013. On 20 June 2017 he lodged an application for a temporary protection visa (TPV). On 17 March 2020 a delegate of the Minister for Immigration refused to grant the visa.
2. The delegate accepted several of the applicant's relatives died in the mid-2000s but did not accept they were killed by the applicant's father's family/tribe. The delegate was not otherwise satisfied that the applicant had a well-founded fear of persecution or that there was a real risk he would suffer significant harm for any other reason if returned to Iraq.

### Information before the IAA

3. I have had regard to the material given by the Secretary under s.473CB of the *Migration Act 1958* (the Act).
4. On 9 April 2020 the applicant's new representative provided to the IAA on his behalf a legal submission, a scanned copy of a letter from a general practitioner dated 8 April 2020 and scanned photographs of several packets of prescription medication (the IAA submission). Apart from the information discussed below, the IAA submission restates some of the applicant's claims that were before the delegate and addresses the delegate's decision and issues arising, and to that extent I regard it as argument rather than information and have considered it.
5. The IAA submission includes a new claim for protection that the applicant would be imputed to be a wealthy and liberal heretic and an asylum seeker from a Western country and harmed for that reason. The explanation given as to why the claim was not articulated previously was that the level of assistance the applicant received from his former agent was poor and that the claim arises from the evidence produced in support of the application.
6. On the one hand it is true that the applicant's former agent erroneously certified copies of documents as originals as is submitted. On the other hand, the former agent is a registered migration agent, she submitted a valid TPV application on the applicant's behalf and she provided a post-interview submission on his behalf. These actions when considered in totality do not in my view create an overall impression of poor representation. Irrespective of his former agent's efforts, the applicant also had the opportunity at the TPV interview to put forward his claims and evidence in person and directly to the interviewer. The applicant was advised a number of times by the Department of Home Affairs (the Department), including at the TPV interview, of the importance of telling the truth and providing complete and accurate claims as early as possible and that it was his responsibility to provide all his claims and evidence in support of his claims and that if he did not do so before the delegate made her decision he may not have another opportunity to do so. Furthermore, at the close of the TPV interview the delegate directly asked the applicant whether, apart from the family feud, there was any other reason why he did not want to go back to Iraq to which he responded no. It is not identified what information was already before the delegate that supports this claim either in the applicant's evidence or country information. None is apparent to me. The new claim is not credible in this

context. I am not satisfied s.473DD(b) is met or that there are exceptional circumstances to justify considering the new information.

7. While the applicant did assert at the TPV interview that his brother [A] was 'emotionally unbalanced' and that he cared for [A], the general practitioner's letter diagnosing [A] with severe depression with psychosis and the medication packets indicating [A] is currently prescribed [medications] are new information. The letter and two of the prescriptions post-date the delegate's decision. The other prescription pre-dates the delegate's decision. While the delegate did not expressly request evidence relating to [A]'s mental health she did ask the applicant what [A] had been diagnosed with, what medication he was taking and she did express some surprise that the applicant would not be aware of his brother's diagnosis and medication if he was his brother's carer as he claimed. The delegate also advised the applicant it was his responsibility to provide evidence in support of his claims and provided him with a week after the TPV interview to do so if he wished and the applicant's then representative did provide a post-interview submission. The letter and medication packets contain personal information relating to [A]. However, it is not apparent to me what the relevance of the information about [A]'s health is to the applicant's claims for protection, apart perhaps as purported evidence to support the applicant's assertion at the TPV interview that the evidence [A] gave during his 2012 protection interview, that contradicted the applicant's evidence about the family feud, should not be trusted. If that is the case, the medical evidence does not indicate whether [A] was diagnosed with these conditions at the time he was interviewed or suggest that everything [A] says should be disbelieved. Nor does it overcome the inconsistencies between the applicant's and his mother's evidence about the family feud. I am not satisfied that there are exceptional circumstances to justify considering the new information.
8. In the IAA submission the applicant's new representative submitted it is open to the IAA to conduct a further interview with the applicant in the event concerns are held about his claims. In this regard, I note the delegate discussed a number of reservations about the credibility of the applicant's claims with him at the TPV interview in accordance with s.57 and provided him with an opportunity to comment on that information both orally at the interview and in writing after the interview. The delegate then wrote to the applicant pursuant to s.57 and invited him to comment on additional adverse information. The applicant's then representative provided a response to that letter on the applicant's behalf. The applicant's new representative then provided a comprehensive submission to the IAA. In these circumstances, I consider the applicant was afforded a reasonable opportunity to put forward his claims for protection and I have decided not to exercise my discretion to invite the applicant to provide new information.

### **Applicant's claims for protection**

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9. The applicant's claims as set out in the 2017 TPV application can be summarised as follows:
  - he is an Arab Shia Muslim from Karbala and in 2004, when he was around [age] years old, his father's family killed his father and grandmother on the same day because his father, who was a Sunni, had married a Shia woman.
  - his father's Sunni family threatened the applicant's mother, him and his siblings but his father's brother helped them to move from place to place until his father's family killed his father's brother in 2006.

- he, his mother and his siblings then went to Iran where they stayed for about a year before returning to live along the Iraq-Iran border because his father's family were still looking for them.
- his mother helped his brother [A] to flee from Iraq to Australia in about 2011 and in early April 2013 she helped him do the same.
- he fears if he is returned to Iraq his father's family would take him away or kill him.

10. The applicant made the following additional claim during the 2020 TPV interview:

- in early 2019 his mother told him she heard his father's family might take away his [age] year old sister.

## **Refugee assessment**

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

### **Well-founded fear of persecution**

12. 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.

13. On the basis of the applicant's documentary and oral evidence I accept: he attended school in Karbala until Year [Number]; his mother, some of his siblings and other relatives on his mother's side of the family live in Karbala or elsewhere in southern Iraq; that one sibling lives in Baghdad; and that he is single.

14. In support of his identity the applicant provided copies of an Iraqi Identification Card registered on 14 December 2006 and an Iraqi Citizenship Certificate issued on 22 January 2007. Both

documents state he was born in Karbala. I accept that his name is as claimed and that he is a national of Iraq. Although the applicant claimed to have lived in Iran on several occasions for unspecified periods, there is no evidence to suggest that he has a presently existing right to enter and reside in any country apart from Iraq. I find that Iraq is his receiving country for the purpose of this review.

15. In the 2017 TPV application form the applicant indicated he is an Arab Shia Muslim from Karbala. In the statement accompanying the TPV application the applicant claimed his problems started in 2004 when his father's family killed his father and grandmother 'in one day' because his father was married to a Shia woman and his father was Sunni. At the 2020 TPV interview the applicant claimed for the first time they were killed in front of his brother [A] who would then have been [age] years old and this was responsible for his mental ill-health. The applicant claimed after that his father's family threatened them, his mother and siblings. His uncle, who was his father's brother, assisted them to escape from one area to another until his father's family located his uncle and killed him in 2006. After that they did not have anyone to help them and his father's family were looking for his mother as they wanted to take her away and kill them. The family escaped to Iran and stayed there for about one year, which would have been around 2007. However, the family subsequently returned to Iraq. His father's family were still looking for them so the family decided 'to live in areas between Iraq and Iran'. His mother subsequently decided to get them out of the country to protect them from his father's family. His mother assisted his brother [A] to flee from Iraq to Australia in around 2011 and then she did the same for him. With some help from his brother-in-law, the husband of his oldest sister, the applicant departed Iraq in early April 2013. He wants his mother to come to Australia so she can be safe from the danger facing her and his siblings at the hands of his father's family.
16. When asked at the TPV interview which tribe his father's family were from the applicant stated the [Name 1] tribe. When asked where the tribe was located he said he did not know exactly but they were a big tribe and some of them lived in Baghdad and some lived near Karbala. He said he did not mix with them and only knew their name. When asked whether he had ever met any of relatives from his father's side he said no, apart from his uncle who was his father's brother who used to help them until he was killed in 2006. When asked about the sect of [Name 1] tribe members he said there are Sunnis and Shias among them. He also stated his father's family are all Sunnis but because his father married his mother who was Shia that caused problems. When asked whether his father had converted from the Sunni to the Shia sect, he stated no, he did not. Before adding he did not know about that, all he knew was his father was Sunni. When asked whether he had ever personally been threatened by his father's family, the applicant stated no it was mostly his mother who had been threatened. When asked the name of his mother's tribe he said he did not know but thought it is the [Name 2] tribe. When asked whether his mother's family had always been Shia, he said yes he saw she was Shia so he thinks they were all Shia, before adding he did not know because it's a big family so there might be 'a mix up'. When asked what sect his maternal grandparents belonged to he said they were Shia. When asked whether any of his mother's family had ever converted from the Sunni to Shia sect or from the Shia to Sunni sect he stated he did not know anything.
17. About an hour into the TPV interview when the delegate was discussing his siblings with him, the applicant claimed for the first time he was concerned his father's family intend to take away his unmarried younger sister who had recently turned [age]. When the delegate asked whether there had been a recent threat to take her, the applicant stated yes. When the delegate asked

for further information, he said he did not know but his mother heard they want to come and take her. When asked when he learnt of the threat, he stated a year ago, which would be early 2019. He also added his mother is concerned and has a heart condition. When asked who had made the threat the applicant referred to a paternal uncle and his sons. He said his mother will not let his sister out, unless it is necessary and when they do go out it is secretly or his brother-in-law takes them. When the delegate expressed surprise about this given at the start of the TPV interview the applicant had told her there was nothing he wished to add, apart from adjusting his family name, the applicant repeated that they want to take his sister away.

18. At the close of the TPV interview, in accordance with s.57 of the Act, the delegate invited the applicant to comment on information from his brother [A]’s 2012 protection visa interview, the applicant’s July 2013 arrival interview, the applicant’s mother’s 2014 offshore humanitarian visa application, his brother [A]’s travel to Iraq in 2012 and 2015 and financial payments made by the applicant to his mother in Iraq in 2017 that the delegate considered would be the reason, or part of the reason, for refusing to grant a visa. The applicant responded orally at the interview to each of the delegate’s concerns and was advised several times he had seven days after the interview to make or provide any further comment about the information. The applicant was also advised if he needed an extension he could tell his agent to ask the delegate. On 6 March 2020, the day after the TPV interview, the delegate wrote to the applicant and his agent, again in accordance with s.57 of the Act, inviting the applicant to comment on information from a [Social media] page believed to be his and a [Social media] page believed to belong to his sister [M] that the delegate also considered would be the reason, or part of the reason, for refusing to grant a visa. On 13 March 2020 the applicant’s representative provided a response on the applicant’s behalf comprising comments on the information by the applicant in Arabic (and an English translation) and poor quality scans of two Iraqi death certificates (and English translations), without any accompanying explanation about who they related to (the post-interview submission). The first death certificate is for a woman born in the late Thirties who died in Karbala [in] November 2004 from [Cause of death 1]. The second is for a man born in the mid-Sixties whose occupation was [Occupation] and who died in Karbala [in] July 2006 from [Cause of death 2]. On the basis of other information before me it may be that these documents relate to the applicant’s maternal grandmother and a paternal uncle respectively whose deaths are referred to above.
19. I accept the applicant is an Arab Shia Muslim from Karbala. He has consistently claimed this since arriving in Australia. Also the identity documents he has provided confirm that Islam is his religion and Karbala is his place of birth. Furthermore country information indicates that Arabs are the major ethnic group in Iraq comprising 75% of the population and does not indicate they suffer adverse treatment. Country information also indicates that Islam is the official religion of Iraq and that the overwhelming majority of people living in Southern Iraq are Shias<sup>1</sup>.
20. I accept the applicant’s father, maternal grandmother and a paternal uncle died in the mid-2000s. I note there was a sharp increase in sectarian violence in Iraq in the first few years after the overthrow of Saddam Hussein’s regime in 2003<sup>2</sup>. However, I am not satisfied the applicant’s relatives died in the circumstances claimed. While country information broadly supports there are tribal groups in Iraq and that tribal disputes can arise it also indicates there are mechanisms for resolving disputes. While country information also indicates the Iraqi population split more

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<sup>1</sup> DFAT, DFAT Country Information Report: Iraq, 9 October 2018, CIS7B839419766.

<sup>2</sup> DFAT, DFAT Country Information Report: Iraq, 9 October 2018, CIS7B839419766.  
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along religious lines after 2003<sup>3</sup>, for a number of reasons I am not satisfied the applicant's parents were in a mixed Sunni-Shia marriage that sparked a sectarian feud between their respective families and tribes that continues to this day. Nor am I satisfied that the applicant's Sunni father and Shia maternal grandmother were murdered in 2004 by the father's family/[Name 1] tribe; that the applicant's paternal uncle was killed in 2006 by the father's family/[Name 1] tribe; or that the applicant, his mother and siblings were threatened by father's family/[Name 1] tribe and as a result had to frequently move between Iraq and Iran.

21. Firstly, key aspects of the applicant's claims made in the 2017 TPV application and repeated at the 2020 TPV interview differ markedly in a number of respects from the claims his mother made in an offshore humanitarian visa application, the claims his brother [A] made in his protection visa interview and the claims the applicant made when he arrived in Australia in 2013. As noted above, in the TPV application and interview the applicant claimed he feared he would be harmed by his father's Sunni [Name 1] family/tribe because his father married his Shia mother. However, his mother attributed her husband and mother's deaths to her family's Sunni [Name 2] tribe and said they were killed because her family objected to her and her parents converting from the Sunni to the Shia faith. His mother also said her brother-in-law was killed in 2008 by her Sunni family, two years later than the applicant claimed. His brother [A] also repeatedly stated in his protection visa interview that the problems he experienced were with his mother's Sunni [Name 2] family/tribe. He also indicated the violence was the result of his mother and her parents converting from the Sunni to Shia faith. Like his mother, [A] also referred to his uncle being murdered by the [Name 2] tribe in 2008. This is also similar to what the applicant said at the arrival interview conducted in July 2013, that his mother's Sunni tribe killed his father and maternal grandmother and threatened them. Secondly, apart from the applicant's assertion, there is no independent country information before me concerning the size, location or religious sect affiliation of either the [Name 1] or [Name 2] tribes. Thirdly, if there was an ongoing sectarian feud between the families/tribes, it does not seem credible that the applicant's mother and most of his siblings could have continued to live in Karbala or Kut in southern Iraq for another seven years, which is the period the applicant has been absent from Iraq, without suffering harm, even if they did sometimes travel to Iran. Although not conclusive, information before the Department referred to by the delegate during the TPV interview indicating the applicant's brother [A] had returned from Australia to Iraq in 2012 and 2015, is highly suggestive that the family is not of adverse interest to anyone. The applicant has not provided a death certificate for his father. Although he indicated at the TPV interview he thought his mother had a copy, he has provided no explanation as to why the certificate was not provided. The death certificates he has provided that appear to relate to the applicant's maternal grandmother and paternal uncle do not overcome my other significant concerns outlined above and below about the credibility of these claims, particularly in the context of country information indicating fraudulent documents are commonly and cheaply available in Iraq<sup>4</sup>. I also note the poor quality copies of the death certificates include little in the way of any official looking markings and they both describe the place of death as 'hospital'. One also refers to an investigation and judge's decision but no other information has been provided about why there was an enquiry or the occupation of the deceased. I place no weight on the certificates.

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<sup>3</sup> DFAT, DFAT Country Information Report: Iraq, 9 October 2018, CIS7B839419766.

<sup>4</sup> DFAT, DFAT Country Information Report: Iraq, 9 October 2018, CIS7B839419766.  
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22. I accept the applicant and his family may have spent some time in Iran over the years. Country information refers to the movement of Iraqi Shias to Iran and back to Iraq as conditions allowed<sup>5</sup>. The applicant's evidence about when he was in Iran was evasive and he provided no documentation to support the assertion he lived in Iran for any significant period. There is some evidence of his mother living in Iran for several years around the time the applicant left Iraq. Although there is also evidence of her living in Karbala in more recent times. I also note after arriving in Australia in 2013 the applicant said his family mainly went to Iran for holidays. I am not satisfied the applicant or his family were living in hiding in Karbala or elsewhere in Iraq or in Iran. I find it is very likely the applicant would return to Karbala, the city in southern Iraq where he was born and educated, where he lived for several years immediately prior to travelling to Australia, where some siblings and other relatives still live and which is an area that is overwhelmingly Shia<sup>6</sup>.
23. I accept that when the applicant arrived in Australia in mid-2013 he was a [age] years old minor and I have been mindful of his relative youth when evaluating his claims for protection. Although I also note when the applicant entered Australia he already had relatives living here, including an older brother, a maternal aunt and her husband who were able provide him with some support and assistance. In addition, at the arrival interview the applicant was accompanied by a responsible adult. When the applicant lodged the TPV application, with the assistance of a registered migration agent, he was a [age] year old adult. The applicant is now a [age] year old adult.
24. The applicant has offered a variety of explanations for significant inconsistencies in his evidence over time and between his account of the purported family/tribal feud and the accounts given by both his mother and his brother [A] of the same events as set out above. I have considered but am not persuaded by the explanations the applicant has provided. I have listened to the audio recording of the TPV interview. I am not satisfied the applicant and interpreter had difficulties understanding each other because they had different accents or for any other reason or that 'confusion ensued' as the interview progressed. Neither the applicant nor his representative has provided any examples of misunderstandings or of occasions when the interpreter failed to communicate aspects of the applicant's claims. It is true that the interpreter sought to clarify what the applicant said on a couple of occasions. This is a normal occurrence in this type of interview and indicative of the interpreter seeking to accurately repeat what the applicant had said. I do not accept the applicant's explanation that he feared raising concerns about the interpreter because it may have disrupted the interview and affected the assessment of his application. The delegate explained to him at the beginning of the interview that the interpreter was only there to interpret what was said and told him he could ask the delegate to repeat or reword any question. The applicant said he understood and had no objection to the interpreter. As noted above, I do not accept the applicant received inadequate representation and it is not otherwise apparent why he did not raise concerns about the interpreter. I also note on several occasions the applicant responded to the delegate's question before it was interpreted indicating he has some understanding of English.
25. I am not satisfied that poor representation by the applicant's previous registered migration agent explains significant inconsistencies in his claims. Nor am I satisfied that the applicant tried but was unable to correct his previous representative's mistakes and tried to revert to what he

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<sup>5</sup> DFAT, DFAT Country Information Report: Iraq, 9 October 2018, CIS7B839419766.

<sup>6</sup> Department of Foreign Affairs and Trade (DFAT), DFAT Country Information Report: Iraq, 9 October 2018, CIS7B839419766. IAA20/08043



said when he arrived in 2013. At the TPV interview the applicant was advised of the importance of telling the truth and providing complete and accurate claims. He was asked whether there was anything he would like to add or change in the TPV application. Initially he corrected his family name and later he referred to a threat against his sister. He did not signal any change to his key claim relating to the family/tribal feud. On multiple occasions he repeated it was his father's Sunni [Name 1] family/tribe he feared.

26. Nor am I satisfied the applicant has been denied procedural fairness because of the manner in which the delegate conducted the TPV interview. It is true that the applicant's then registered migration agent did not attend the interview and that there was no support person present in the interview room with the applicant. However, I do not accept that the applicant was hindered because of this. Furthermore the applicant did not express concern about his agent's absence at that time and the agent subsequently submitted a post-interview submission on his behalf. I also note the applicant's brother [A] attended the immigration office with the applicant but waited outside the interview room. While it is also true that the applicant told the delegate he had not read the statement he provided with the TPV application, I do not accept the applicant did not know what claims were contained in the statement. Firstly, he said he sat and talked with his then agent who is an Arabic speaker and she wrote down what he said. Secondly, the statement is provided in Arabic, which he reads, as well as in an English translation. Nor do I accept the delegate's questions were 'brief and rapid', that the delegate did not allow the applicant to respond adequately, focused only on credibility and did not attempt to elucidate the applicant's claims. The delegate asked closed and open questions and sometimes follow up questions. Contrary to submissions, the delegate did put a number of concerns to the applicant in accordance with s.57 towards the end of TPV interview. The applicant responded to those concerns orally and was invited to provide further comments in writing if he wished. The delegate also wrote to the applicant pursuant to s.57 about additional concerns, to which the applicant responded. The interview did not run for three and three quarter hours without a break as asserted by the representative. The interview ran for approximately two and one quarter hours, with two breaks. The first short break was at the applicant's request and the second was at the interpreter's request. At the close of the interview the delegate offered the applicant another break to gather his thoughts, a so called 'natural justice break', but the applicant declined the offer stating he did not require it as he had nothing further to add. I am satisfied the applicant had a meaningful opportunity to put forward his claims for protection.
27. I have listened to the audio recording of the applicant's brother's 2012 protection visa interview. I am not satisfied the evidence his brother gave then should be disregarded because of his brother's mental state eight years later, as the applicant suggested at the TPV interview. While his brother sounded somewhat fragile at the 2012 interview his evidence was coherent and, contrary to the applicant's claims, he consistently and repeatedly stated his fear of harm related to his mother's Sunni family who were from the [Name 2] tribe, as did his representative who attended the interview with him. In the IAA submission it was asserted the applicant's brother now holds a protection visa that was granted on the same grounds as claimed by the applicant and that it would be unfair to deny protection to the applicant. There is no information before me confirming the applicant's brother has been granted protection in Australia or, if that is the case, what grounds his application was approved on<sup>7</sup>. In any event, the IAA is not bound by other AAT or IAA decisions, although they may be of interest. Applications for protection are decided

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<sup>7</sup> I also note the applicant has not claimed he was seeking a visa on the basis of membership of his brother's family unit and in any event it would appear he would be precluded as his brother did not apply for the same visa subclass.  
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on their individual merits having regard to the available information. Furthermore, if the applicant's brother has been granted a protection visa it appears likely it was some years ago and country conditions in Iraq may have changed since then. Nor am I satisfied serious inconsistencies between the applicant's account of the family feud and his mother's account contained in the offshore humanitarian visa application can be explained by him being young when the feud began or her being unwilling to discuss the issue with him. Given it was the basis of her humanitarian visa application and she provided a lengthy statement about what had happened I do not accept she was unwilling to talk about the issue. I accept that when he was a child the applicant may not have been fully aware of the reasons behind family tensions. However, given he continues to speak to his mother regularly, he is now an adult and he is relying on these events as the basis of his claims for protection, I consider it unbelievable he would not have sought clarification about the events from his mother or perhaps his older sister, who with her husband seems to have provided him with assistance in the past, or from his aunt in Australia, who is his mother's sister, and who he is in contact with. It seems unbelievable that all of them would have been unwilling to discuss family history with the applicant as an adult when he is seeking protection on that basis.

28. Given I am not satisfied an ongoing sectarian feud has been perpetrated against the applicant and Shia members of his family by his father's Sunni [Name 1] family/tribe since at least the early 2000s, it follows that I am not satisfied that relatives of his father threatened to take away the applicant's younger sister in 2019. I also note the applicant provided very limited information about the purported threat.
29. I accept the applicant is an Arab Shia Muslim from Karbala. Around 60 per cent of the Iraqi population are Shia and they form the majority community within Iraq with a dominant role in government. DFAT assess that Shias face little or no official discrimination and no societal discrimination in Shia areas but that they are at moderate risk of violence during significant Shia religious festivals and pilgrimages. Anti-Shia violence reduced in 2018 following the defeat of ISIL but isolated incidents of anti-Shia violence continue to occur, as well as violence between opposing Shia militias. DFAT also observe that Southern Iraq, which includes Karbala where the applicant lived and Kut where he said his mother has sometimes lived, is more secure than other parts of the country, although there is criminality and drug abuse in the region<sup>8</sup>. On the basis of the applicant's own evidence I find that although he regards himself as a Shia Muslim he does not actively practise his religion. He was not able to identify any Shia rituals and said he did not go to the mosque or attend celebrations. I also note he did not claim in the TPV application, at the TPV interview or for that matter when he arrived in Australia in 2013 that he had had any difficulties in Iraq in the past in connection with his religion, apart from the family/tribal feud that I am not satisfied occurred. Given the applicant does not actively practise his religion I find the chance is remote that he will be harmed in an attack on a Shia religious event. I also note that country information does not support that nominal Shia Muslims are harmed and I find there is not a real chance the applicant will suffer any harm because he does not practise his religion.
30. I accept that Sunni militants, like ISIL, infrequently carry out small scale attacks against Shias in southern Iraq<sup>9</sup>, although seldom in Karbala where the applicant is from; and that episodes of tribal and intra-Shia violence occur, often associated with criminal activity. I note neither the

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<sup>8</sup> DFAT, DFAT Country Information Report: Iraq, 9 October 2018, CIS7B839419766.

<sup>9</sup> DFAT, DFAT Country Information Report: Iraq, 9 October 2018, CIS7B839419766.  
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applicant nor his representative has provided any more recent country information to demonstrate there has been any diminution in the security situation in Karbala. I am aware that the observation that southern Iraq is 'more secure' than other parts of the country does not automatically lead to a conclusion of no real chance of harm. However having regard to the frequency and nature of the incidents in Karbala governorate, they are such that the risk of harm may best be described as remote. I also note that the applicant has not claimed that he is a member of a Shia militia. Having regard to his particular circumstances, and the nature and frequency of sectarian and security incidents and other violence in Karbala governorate, I am not satisfied that the level of risk is such that it rises to a real chance. I am not satisfied there is a real chance the applicant will suffer any harm for reason of religion or because of the general security situation in Karbala.

31. In response to Question 50 in the 2017 TPV application the applicant claimed he departed Iraq illegally, although he did not claim he feared harm in connection with this. Country information indicates valid documentation (usually a passport) and appropriate approval (such as a visa) for entry to the intended destination is required in order to exit Iraq<sup>10</sup>. In response to Question 52 the applicant indicated he had a passport when he left Iraq but it was taken from him by the smuggler on his journey to Australia. At the 2020 TPV interview the applicant reiterated that he left Iraq using a passport in his name that his brother-in-law assisted him to obtain. Soon after arriving in Australia in 2013 the applicant had also stated he obtained a passport in his name and a visa for [another country]. In light of this evidence, I do not accept the applicant left Iraq illegally. His consistent description of his departure reflects that he left the country legally.
32. Overall, I am not satisfied the applicant has a well-founded fear of persecution in Iraq.

### **Refugee: conclusion**

33. The applicant does not meet the requirements of the definition of refugee in s.5H(1). The applicant does not meet s.36(2)(a).

### **Complementary protection assessment**

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34. 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**

35. 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

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<sup>10</sup> DFAT, DFAT Country Information Report: Iraq, 9 October 2018, CIS7B839419766. IAA20/08043

- 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.

36. 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.

37. I have concluded that the applicant does not face a real chance of harm for any of the reasons claimed. As 'real risk' and 'real chance' involve the application of the same standard<sup>11</sup>, I am also not satisfied that the applicant would face a real risk of significant harm for the purposes of s.36(2)(aa) on these grounds.

#### **Complementary protection: conclusion**

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

#### **Decision**

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

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<sup>11</sup> *MIAC v SZQRB* (2013) 210 FCR 505.  
IAA20/08043

## 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:
- the person fears being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion; and
  - 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
  - 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:
- conflict with a characteristic that is fundamental to the person's identity or conscience; or
  - conceal an innate or immutable characteristic of the person; or
  - without limiting paragraph (a) or (b), require the person to do any of the following:
    - 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;
    - conceal his or her true race, ethnicity, nationality or country of origin;
    - alter his or her political beliefs or conceal his or her true political beliefs;
    - conceal a physical, psychological or intellectual disability;
    - enter into or remain in a marriage to which that person is opposed, or accept the forced marriage of a child;
    - 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):
- that reason must be the essential and significant reason, or those reasons must be the essential and significant reasons, for the persecution; and
  - the persecution must involve serious harm to the person; and
  - 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 threat to the person's life or liberty;
  - significant physical harassment of the person;
  - significant physical ill-treatment of the person;
  - significant economic hardship that threatens the person's capacity to subsist;
  - denial of access to basic services, where the denial threatens the person's capacity to subsist;
  - 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.