



Australian Government

Immigration Assessment Authority

Decision and Reasons

Referred application

IRAQ
IAA reference: IAA20/08754

Date and time of decision: 15 December 2020 11:56:00
C Wilson, Reviewer

Decision

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

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

Background to the review

Visa application

1. The referred applicant (the applicant) claims to be a secular Muslim from Iraq. He arrived in Australia as an unauthorised maritime arrival [in] July 2013. He applied for a Temporary Protection visa (TPV) on 11 January 2017.
2. A delegate of the Minister for Immigration and Border Protection (the delegate) refused the application on 9 August 2017. The delegate accepted the applicant had owned a [western product] shop in Basrah, but did not accept he had been targeted by the Mahdi Army for this reason. The delegate accepted the applicant was from a mixed-faith Muslim family but found he did not have a real chance or real risk of harm from militias for this or any other reason.
3. The delegate's decision has been reviewed and affirmed twice before by the IAA¹, but those decisions were quashed by consent orders of the Federal Circuit Court and remitted to the IAA for reconsideration.

Information before the IAA

4. I have had regard to the material given by the Secretary under s.473CB of the *Migration Act 1958* (the Act).
5. On 5 September 2017 the applicant provided two pieces of new information: a translated Iraqi identity card that included his tribal name; and a letter stamped with the seal of the 'Ministry of Waqf and Islamic Affairs, Commission of the Sunni Waqf'.
6. The identity card is dated [May] 2014. There is no explanation why this was not or could not have been provided with his TPV application, noting the card pre-dates the application by 3 years. He was put on notice at the TPV interview that the newly claimed tribal name at that interview was not on any of the identity documents or any name he had previously provided to the Department. His oral response was that he was not able to write his tribal name on identity documents for safety reasons. He did not raise that he in fact had an ID card with the tribal name on it. I consider the provision of a card to the IAA that pre-dated the delegate's interview is inconsistent with his response to the delegate that he did not use the tribal name on identity documents. There is also no explanation as to how the applicant obtained the card a year after he left Iraq. Whilst on the face of it the card may appear capable of being a genuine identity card, I consider there are real doubts about the credibility of it due to the lack of explanation of how it was obtained a year after he left Iraq and why he can produce to the IAA an ID card with the tribal name from 2014 after telling the delegate in 2017 that he did not use the tribal name on any identity documents. In all the circumstances I am not satisfied this identity card is genuine or credible, and I am not satisfied it is credible personal information that may have affected the consideration of his claims. I find s.473DD(b) is not met and I must not consider this information.
7. The letter stamped with the seal of the 'Ministry of Waqf and Islamic Affairs, Commission of the Sunni Waqf' is undated and without any information as to who wrote it and how and when the applicant obtained it. Without a date I cannot know if it was obtained before or after the delegate's decision. On the limited information provided the applicant has not satisfied me it could not have been provided to the delegate before the decision was made. The letter

¹ IAA17/03366, IAA20/08139.

contains assertions that are inconsistent with the applicant's claims. The letter says the mother presently lives with her son under the protection of the [Name] clan, when the applicant claims to be her only son and also that she only moved to live with the tribe after he left Iraq. The letter also says the applicant and his father cannot return to Basrah for safety reasons, however the applicant's father died in [Country 1] in 2001. I consider these inconsistencies are so significant that I do not accept the letter is credible. In all the circumstances I find the letter is not credible, and is therefore not credible personal information that may have affected the consideration of his claims. I find s.473DD(b) is not met and I must not consider this information.

8. 'New information' has been provided regarding the applicant's family in Australia. On 24 August 2017 the IAA received an email from a third party stating she was the wife of the applicant. She also said they were expecting a child [and] she had a number of personal problems that would be exacerbated if the applicant had to leave Australia. Attached was a letter of support from a social worker dated 18 August 2017. On 18 November 2020 the applicant sent an email containing information that he now has three children aged under 3 with his wife in Australia and that he feared to leave them here and also feared they would be at risk if he took them to Iraq.
9. None of this information was before the delegate. The children were born after the delegate's decision, but the information from his wife indicates she was pregnant shortly after he lodged his application in early 2017. The applicant indicated in his application dated 11 January 2017 that he had never been married nor was he in a de facto relationship. He did not seek to update the Department about his marital status, and raised no claims in his written application, or at the TPV interview held in July 2017 when his wife was pregnant, about or arising from a relationship in Australia. It is not evident to me that information from his wife in Australia or his information now that they have 3 children, has any relevance to his claims for protection. I consider this view is supported by the applicant's decision not to raise anything about a relationship in Australia in his TPV application, at his TPV interview or post interview, even though he was assisted by a migration agent at that time. I find this information whilst new is not 'new information' under s.473DC because I am not satisfied it may be relevant. However, if I am wrong and it is new information under s.473DC, for the following reasons I am not satisfied s.473DD is met. I accept s.473DD(b)(i) is met but I am not satisfied s.473DD(b)(ii) is. The information is credible personal information, but there is no explanation from the applicant as to how it is relevant to his claims for protection and how it may have affected the consideration of his claims, and none is apparent to me. Even though the existence of his 3 children could not have been provided to the delegate as they were not born prior to the decision, in circumstances where he raised no claims regarding his wife in Australia or her pregnancy during his application for the TPV, and in fact concealed that he was in a relationship and expecting a child, and where he has not sought to articulate a new claim as to how he fears persecution in Iraq because he has a wife and 3 children, I am not satisfied there are exceptional circumstances to justify considering the new information in the email from the wife in 2017 and attached letter from the social worker and the applicant's information in 2020 regarding his family in Australia.
10. The applicant also said in his email dated 18 November 2020 that 'the world can change in one day just like how COVID-19 has affected the whole world'. It is not clear what he means by this information, and on the limited information in the email I am not satisfied it may be relevant. I have therefore not accepted it.

11. I have obtained new information in the form of recent country information reports on Iraq by the Department of Foreign Affairs and Trade (DFAT)² and the European Asylum Support Office (EASO).³ The delegate's decision was made more than three years ago, and in such circumstances I am satisfied there are exceptional circumstances to justify considering new information in the form of the most recent country information on the security situation in Iraq. I note the previous reviewer had obtained the DFAT Country Information Report Iraq dated 9 October 2018, however I have not had regard to that report as I am not satisfied there are exceptional circumstances to justify considering that report when a more up to date DFAT report on Iraq is now before me.

Applicant's claims for protection

12. The applicant's claims can be summarised as follows:
- He is a secular and westernised Muslim from Basrah.
 - He came from a religiously mixed family. His late father was Sunni from the [Name] tribe and his mother is Shia. Because of religious friction between his parents his father left Iraq in the 1990s to live and work in [Country 2], and later to [Country 1]. When the applicant was around 13 years old his father died in [Country 1].
 - The applicant followed his mother's religion, Shia, but this caused tension with his younger sister who was Sunni. He became disinterested in religion and distanced himself from it. He became more interested in art, singing, and fashion.
 - He opened a shop in Basrah selling [western products]. He was threatened by the Mahdi Army and told to close the shop. The shop was burned down and he fled to a maternal uncle's house where he made plans to leave Iraq.
 - In Iraq he did not use his father's tribal name because it would identify him as Sunni. His father's [name], which the applicant uses as his family name, also identifies him as Sunni.
 - Shia extremists will threaten and kill him if he returns to Iraq because of his business, his mixed background and for being perceived as Sunni because of his name and father. He will also be imputed with a political opinion that is hostile to the radical Islamist goal of establishing Iraq as an Islamist state under Sharia law.

Refugee assessment

13. 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.

² DFAT, Country Information Report Iraq, 17 August 2020.

³ EASO, Country of Origin Information Report Iraq: Security Situation, 29 October 2020.

Well-founded fear of persecution

14. 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.
15. I accept the applicant is a citizen of Iraq, based on the identity documents he provided to the Department. The applicant lived all his life in Iraq in Basrah, and told the delegate in the TPV interview that he couldn't live anywhere else in Iraq because he'd always lived in Basrah. I find Iraq is his receiving country and Basrah is the place he is likely to return to.
16. The applicant claims he left Iraq after being targeted for owning a [western product] shop. Whilst this core claim has been generally consistent, the information he has given the Department regarding how long he had the shop and how it was targeted has been inconsistent.
17. At his arrival interview the applicant said he had owned a [western product] shop from 2012 to 2013. He said he received a phone call from someone who identified themselves as from the Mahdi Army and who said either close your shop or we will blow it up and kill you. They threatened him because he sold western [products] and [Accessories]. He received two such calls and then he closed his shop. This happened around February or March 2013. He took the threat seriously because they killed someone in the street who was wearing a [western accessory]. When asked if there was any other reason he left Iraq he said no, that was the only reason.
18. In his statement of claims with his TPV application, the applicant said he operated the [shop] for 4 years. However in the application form under 'employment' he wrote he had the sound recording shop from 2004 to 2013. He wrote in his statement that he was approached in person by the Mahdi Army and told to close the shop, and was also accused of belonging to a heretical Sunni family. He then received a phone call from a neighbouring shop to tell him his shop was on fire. He saw it from a distance but was too afraid to go to the shop, or to go home, so he fled to a maternal uncle's house.
19. At the TPV interview the applicant gave more information about the shop. He said the shop consisted of [deleted]. He made no mention of selling [Accessories], but said he decorated the shop with [items] and sometimes customers also wanted to buy those. He bought [products] from a person called [Mr A]. People would come to his shop to ask for particular [products]. When asked how long he had this shop for he said he opened it in around 2012 and had it for about 8 or 9 months. He said he received three threats about the shop. The first two threats

came on consecutive days and were made by writing on his shop door. He didn't take those threats seriously. Then around the end of 2012 someone from the Mahdi Army came to his shop in person and told him if he didn't close the shop he would be killed. When the shop was burned down he feared they would kill him. Instead of returning home he went to live with a maternal uncle.

20. I have concerns with the inconsistent timeframes given for running the [shop]. I consider the times given in his oral interviews are reasonably consistent and the most plausible. That is, he said at the arrival interview he had the shop from 2012 to 2013 and in the TPV interview he said it was for 8 or 9 months from 2012. I find the claims in his written application, one version being 4 years and the other 9 years, so inconsistent as to be not credible. I accept however the applicant owned a shop where he [sold western products]. I accept this because he has consistently claimed to have had a [shop], and his description of the business at the TPV interview was reasonably detailed and credible. I consider the descriptions of the timeline of the business that he gave in his oral interviews to be more consistent and credible, and accordingly I find he ran the business for about 9 months from 2012 to 2013.
21. The applicant's descriptions of the threats and what happened to his business have not been consistent. He initially said he was telephoned, then in his written application he says the first threat was in person, and in his TPV interview he said the first threat was written on the shop. He has consistently claimed the threats came from the Mahdi Army. The Mahdi Army was a Shia militia group formed by Muqtada al-Sadr in 2003 in response to the US invasion of Iraq. Like many such militia groups they were known for committing abuses and crimes, imposing their own morality standards, and extorting businesses to fund their activities. Since 2003 there had been targeting of artists and singers in Iraq by extremist groups, like the Mahdi Army, because they were considered to be 'un-Islamic' or 'Western' activities. Such targeting occurred at the height of the violence between 2006 and 2008, and in October 2011 a [western product] store in Baghdad was bombed. The situation has since changed, with the UNHCR reporting in 2012 that Iraq's cultural scene was flourishing again.⁴ There is nothing in more recent country information before me to indicate [western product] shop owners or artists or singers have again become a group of adverse interest.⁵
22. Although the situation for artists in Iraq had improved in 2012, given this background I accept it is plausible that the applicant was approached by an extremist, possibly from the Mahdi Army, telling him to close his business down on the basis it was un-Islamic for selling western [products]. I accept he subsequently closed the business. However, given the inconsistencies in his accounts of how long he had the shop and how many and how he received the threats, I also find the applicant has been prone to exaggerating or embellishing his circumstances in Basrah. I consider the claim that the shop was burnt down is such an embellishment, as there as there was no mention of this incident in his arrival interview. I acknowledge an applicant should not be expected to give his full claims for protection at an arrival interview, and may not have had legal advice or fully understood what the information given at that interview may be used for. However, he gave a reasonably detailed description of the threats he received and said he closed the shop for this reason. Had the shop instead been destroyed by fire, I find he would have said so.
23. I also find the claims that the Mahdi Army targeted and threatened him not only for his [shop], but because he was from a 'heretic Sunni family' to be an embellishment. The applicant did not present himself as Sunni in Basrah, his mother's family in Basrah were Shia, and he told the

⁴ UNHCR, Eligibility Guidelines for Assessing the International Protection Needs of Asylum Seekers from Iraq, 31 May 2012.

⁵ [Deleted].

delegate he never discussed religion and sects when working in his shop. I consider it farfetched that a person from the Mahdi Army who came to threaten him about his [shop] would know his absent, and long deceased father, was a Sunni. Even if the Mahdi Army were only guessing at his religion from his name, I consider that if this occurred the applicant would have mentioned the sectarian nature of the threats when discussing them in his arrival interview. There is no hint in his arrival interview that in addition to having a [western product] shop the Mahdi Army were targeting him for his religion or perceived religion.

24. The applicant has not claimed he would operate a [western product] shop again if he returned to Basrah. He no longer owns a shop, stock, or equipment, having closed the shop before departing Iraq. The applicant worked in a variety of jobs in Iraq, including selling [products], in manufacturing, cleaning, and working in a [workplace], and made no claims to have suffered harm or to fear harm related to these jobs. In Australia he has worked in manufacturing doing [a task]. In Iraq he worked in the business of selling [western products] for only about 9 months. He has not chosen in Australia to work in any industry associated with [western products] or selling [western products]. He has not stated any intention to work in a [western product] shop again in Iraq. I find he would not return to the occupation of selling [western products] or running a [western product] shop if he returns to Iraq.
25. The Mahdi Army as a group is no longer in existence. The applicant was threatened in 2012 or 2013 that he should close the [shop], and he did so. I consider it farfetched that threats made by a member of the Mahdi Army to the applicant 8 years ago would be remembered or would make the applicant a person of adverse interest now or in the reasonably foreseeable future. I find he does not face a real chance of harm now or in the reasonably foreseeable future for reason of owning a [western product] shop from 2012 to 2013 or being threatened by the Mahdi Army at that time.
26. The applicant claimed at the TPV interview that after he left Iraq his mother and sister were forced to flee their home in Basrah to live with his father's tribe in [City]. He said his mother and sister were also not safe in [City] because of the security situation there, particularly the threats from ISIS. He said they lived with cousins of his father but could not give a name or address, and said any member of the tribe could be considered a 'cousin'. He did not know exactly where they were living because they moved between [City] and [Location] and he hadn't spoken to them for 6 months. He didn't know when they left Basrah, but it was sometime after he left Iraq. I note there was no mention of this in his written application, and in his form 866C he had stated that he contacts his family regularly in response to the question of whether he contacts relatives outside of Australia. The applicant's mother has [brothers] and [sisters] in Basrah. I find it unlikely the mother and sister would choose to travel across Iraq to [City] where they did not know anyone and when they had close relatives living nearby in Basrah. His evidence on his mother and sister's location in [City] was vague, and I find this is because they have not in fact moved there. I find they are most likely still in Basrah.
27. The applicant claims his family home in Basrah was targeted and his mother and sister were threatened. He says this occurred when his [shop] was targeted but was also related to his family being seen as Sunni. He says they weren't harmed because as women they did not go out much. He made no mention in his arrival interview of harassment, stone throwing and threats at home for himself, his mother or his sister, either because of the [shop] being targeted or because they were seen as Sunnis. I accept he was not required to give a full account of his claims at his arrival interview. However, the claim that he and his family were targeted because they were seen as Sunni was not even hinted at in his arrival interview. For that interview he said he was Shia, and made no mention even of his father being Sunni or his father leaving Iraq because of religious differences. He said he told the interviewer he was Shia

because he was brought to Australia by Shias and surrounded by Shias in detention. But even if that were true he also said he was Shia in his application lodged four years later. If the applicant and his family had been targeted for reason of the father being Sunni or for being perceived as Sunni themselves I find he would have raised this at the earliest opportunity. I consider the claims that he or his family were harassed at home by the Mahdi Army or any other militias for being perceived as Sunni is an embellishment.

28. The applicant describes himself as a secularised Muslim. He initially claimed to be a Shia Muslim (in his arrival interview in 2013 and written application in 2017) but said at the TPV interview in 2017 that he did not identify with either the Shia or Sunni sect of Islam. He said he had never attended a mosque in Iraq and had only practised the religion by praying at home. He had not attended any mosques in Australia either. He stated in his written claims and at the TPV interview that there was conflict in the family with his father practising as a Sunni and his mother as a Shia. He stated his sister followed the father in being Sunni, and his father encouraged her to join him in [Country 1] because she shared with him the same religious and sectarian concerns. However the applicant identified as a Shia which caused his father to express his reservations towards his son. I consider the applicant has embellished these claims about religious discussions and differences between himself, his father, and his sister. When the father left for [Country 2] the applicant and his sister were young children, and the last time they saw their father the applicant was only [age] and his sister only [age]. I do not accept children of this age who weren't attending mosque, and who were even younger when the father left Iraq for alleged religious differences, were seriously discussing issues of religious differences. I consider the applicant identified himself as Shia when he first arrived in Australia because that is the religion he has most been exposed to by his mother and other relatives in Basrah including maternal uncles. He appears to have had little exposure to the Sunni sect from his father, noting he was never taken to mosque and his father left Iraq when he was a young child. I accept however that now he identifies only as culturally Muslim, neither Shia nor Sunni, and that he is secularised. I make no findings on whether his sister is Sunni or Shia as I consider there is insufficient evidence before me to make such a finding. Even if she does identify as Sunni, there is nothing to suggest this caused any real issue between the applicant and his sister and I do not accept it would in the reasonably foreseeable future.
29. I accept the applicant was from a mixed-religion home, with his parents following different sects of Islam. For the reasons given I do not accept he was targeted in 2012 for this reason, and there is no other claim that this caused harm for him apart from his father choosing to leave Iraq. I do not accept his parents' mixed-marriage would cause him to be targeted if he returns to Iraq. DFAT reports there are no laws preventing marriage between Sunni and Shia couples, and that such marriages have increased in prevalence as sectarian tensions have reduced over the last decade.⁶ Despite the increase in prevalence, mixed marriages are still not common and there are still concerns and opposition from some families, but the marriage in question happened more than 30 years ago and the applicant's father has been deceased for nearly 20 years. I consider it farfetched that his parents' mixed marriage in the 1980s would give rise to a real chance of harm for the applicant in the reasonably foreseeable future.
30. The applicant claims his tribe identifies him as Sunni and that for this reason the tribal name was deliberately left off documents. However, he also claims his father's [name] is a Sunni name and this too identified him as Sunni. He says a well-known Sunni sheikh in Iraq has the same name. On his evidence, whether he used the tribal name or just his father's name as his family name, which he did, he would be identified as Sunni. Although his father was Sunni, his father was absent from the applicant's life from a young age. His mother was Shia, and all the

⁶ DFAT, Country Information Report Iraq, 17 August 2020.

applicant's maternal relatives in Basrah were Shia. He claims to have had no relatives from his father's Sunni family in Basrah. But apart from the incident with the shop in 2012 or 2013, there is no claim that prior to 2012 the applicant was targeted or suffered discrimination for having a Sunni family name or the same family name as a well-known Sunni sheikh. For reasons given above, I do not accept he was targeted in part or at all in 2012 or 2013 for being perceived as Sunni.

31. In 2017 DFAT assessed that discrimination and violence towards Sunnis in non-Sunni areas had increased since the rise of ISIS. The removal of the privileged position of Sunnis under the Ba'ath Party regime and the association of Sunnis with ISIS had intensified the tensions between Sunnis and Shias in Iraq.⁷ The applicant provided an article dated 2015 detailing targeting of Sunnis in Basrah, although most of the named persons in the article appear to have been leaders in the community and not ordinary Sunnis.⁸ I note also that article was not translated in full by the applicant but was a 'summary translation'. The applicant says the area he used to live in was a Sunni area, but since leaving the Sunnis have been expelled and it is now a Shia area. Some articles were provided by the applicant of the displacement and harassment of some Sunnis in Basrah in 2013 and 2014.⁹ Even if some Sunni families were displaced in Basrah, I do not accept the applicant's family were identified as such nor displaced. I note also Basrah is not an exclusively Shia city in any event. The population of Basrah is majority Shia, but there is also a significant Sunni minority population there.¹⁰ As a secularised Muslim, and noting the applicant's maternal uncles in Basrah are Shia and the applicant has never identified as Sunni nor been targeted as such, I do not accept he could not return to live in Basrah.
32. DFAT advises the security situation in Iraq, while varying according to location, is highly unstable and fluid. The situation in southern Iraq however is comparatively more secure than the rest of the country and has been for some years.¹¹ The 2018 DFAT reported Basrah has had issues with a deterioration in law and order, however the level of criminality in Basrah was still lower than in Baghdad.¹² EASO reports the security void resulting from the deployment of forces in 2014 to fight ISIS in central and northern Iraq left the southern region open to tribal clashes, criminal activity and political violence.¹³ Recent violence in Basrah however has centred around mass protests in 2019 and 2020 against the Iraqi government. EASO reported there were few security incidents in the south, but the incidents that did occur mainly resulted from intra-tribal disputes and/or criminal activity. Incidents of note in 2019 and 2020 reported by EASO involved tribal clashes and targeted assassinations of prominent persons including political and tribal leaders, protestors and activists. There is no information before me that the applicant has ever involved himself in tribal business such that he would engage in tribal clashes. For the first half of 2020 there were only two conflict related incidents reported in Basrah, with three deaths.¹⁴ The information before me does not indicate that the violence against civilians or harming civilians as innocent bystanders in Basrah is at a level that amounts to more than a remote chance of an ordinary civilian being targeted or harmed.

⁷ DFAT, Country Information Report Iraq, 26 June 2017.

⁸ HIRAK Net, The crimes of the Shiite Militias against the Sunnis in Basrah and South Iraq, 16 November 2015.

⁹ UN envoy warns against targeting of Sunnis in Iraq's Basra province, 20 August 2014; BBC, Violence in Iraq sparks new sectarian displacement, 6 November 2013.

¹⁰ EASO, Country of Origin Information Report Iraq: Security Situation, 29 October 2020.

¹¹ UK Home Office, Security situation in Baghdad, southern governorates and the Kurdistan Region of Iraq, 1 April 2015; Huffington Post, Southern Iraq is a Safe Place, 27 May 2015; DFAT, Country Information Report Iraq, 13 February 2015, DFAT, Country Information Report Iraq, 26 June 2017.

¹² DFAT, Country Information Report Iraq, 26 June 2017.

¹³ EASO, Country of Origin Information Report Iraq: Security Situation, 29 October 2020.

¹⁴ EASO, Country of Origin Information Report Iraq: Security Situation, 29 October 2020.

33. The country information indicates that since ISIS was defeated in Iraq in December 2017, the sectarian violence between Sunnis and Shias had reduced substantially. There is information Sunnis associated with ISIS may be targeted in Iraq, but on the information before me I do not accept ordinary Sunnis or perceived Sunnis in Basrah or southern Iraq are.¹⁵ I do not accept even if the applicant was perceived to be Sunni that he would be imputed with an association to ISIS, as there is nothing in his profile to suggest any such association. If the applicant is perceived to be Sunni because of his family name, or in the remote chance people become aware of his father's tribe, I do not accept this gives him a profile as anything more than an ordinary Sunni who is not involved in ISIS, tribal disputes, criminal activity, or protest activity. I consider the applicant is an ordinary secular Muslim and even if he is perceived to be Sunni because of his name or tribe or similarity of his name to a Sunni sheikh, I find the chance of him facing harm in sectarian, militia, intra-tribal or criminal violence in Basrah is too remote to amount to a real chance.
34. It was submitted the applicant as a secular Muslim would be imputed with a political opinion of being hostile to the radical Islamist goal of establishing an Islamist state based on Sharia law in Iraq. I accept the applicant is secular, but there is nothing to indicate he has publicly advocated his views or been active against radical Islamists. He has not engaged in public protest in person or online, in either Iraq or Australia. There is nothing to suggest he would be active in Iraq in opposing radical Islamists. I consider he has no profile of being actively opposed to radical Islamists and I do not accept one would be imputed to him. The country information before me does not suggest secular Muslim men who otherwise do not have a profile are targeted for such an imputed political opinion by radical Islamists.
35. In his application the applicant said the authorities were against him and other youths like him because of his open mind and the way he dressed. That is, for having westernised tastes in music, the arts and clothes. At the TPV interview he said he was hit by the police in the street once or twice for the way he looked. I accept persons who appear westernised may face harm in areas controlled by ISIS, but I do not accept this is the case in Basrah where there is not an ISIS presence. The applicant did not claim to have experienced serious harm from the police for his western appearance or views, but rather harassment on the street once or twice. Although he may still have an open mind and western tastes, he is no longer a youth or running a [shop] or otherwise a person with a profile. As an ordinary secular Muslim man in Basrah, even if he is wearing westernised clothing and has western tastes, I consider the chance of him facing harm from the police or others for this reason is too remote to amount to a real chance.
36. I accept the applicant will be returning to Iraq from a western country but there is no information before me to indicate this would cause him problems in Basrah. Basrah is a large city, with a population of over 2 million people.¹⁶ I rely on information from DFAT regarding the well accepted practice of asylum seekers returning to Iraq. There is considerable evidence that even Iraqis who are granted protection in western countries often return to Iraq to see family, establish and manage businesses, or take up or resume employment.¹⁷ The UNHCR reports that since mid-2015 there has been an increasing number of Iraqi nationals opting to return from Europe to Iraq.¹⁸ I note also that Basrah has an international airport¹⁹, which the

¹⁵ DFAT, Country Information Report Iraq, 17 August 2020; EASO, Country of Origin Information Report Iraq: Security Situation, 29 October 2020.

¹⁶ DFAT, Country Information Report Iraq, 17 August 2020.

¹⁷ DFAT, Country Information Report Iraq, 17 August 2020.

¹⁸ UNHCR Position on Returns to Iraq, 14 November 2016.

¹⁹ Centre for Aviation, Basrah International Airport, 3 August 2016.

applicant used to depart Iraq, and he can return directly to Basrah. I do not accept the applicant has a real chance of harm in returning to Basrah from a western country.

37. Even considered cumulatively, as a secular Muslim who once owned a [western product] shop, with mixed-religion parents, who may possibly be perceived as Sunni, with western taste in music and clothes, and would be returning from a western country, I do not accept the applicant has a profile that would give rise to a real chance of harm in Basrah. I find he does not have a well-founded fear of persecution in Iraq.

Refugee: conclusion

38. 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

39. 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

40. 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.
41. 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.
42. I rely on country information referred to above regarding the security situation in Basrah and the southern governorates of Iraq to find the applicant does not face a real risk of significant harm from generalised violence.
43. For reasons given above, I find the applicant will not run a [western product] shop if he returns to Basrah. I find he does not face a real risk of significant harm in selling western [products] when I find he will not do so.
44. I have found the applicant does not face a real chance of harm for past ownership of a [western product] shop and threats received for doing so, being a secular Muslim, having parents of mixed-religion, being a perceived as a Sunni for reason of his father or his name or his tribe or imputed association with a known Sunni sheikh, an imputed political opinion of being hostile to radical Islamists, having western tastes in music and clothes, or returning from Australia.

'Real chance' and 'real risk' has been found to equate to the same threshold. For the same reasons given above, I find the applicant will not face a real risk of significant harm for any of the reasons claimed or at all.

Complementary protection: conclusion

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

Decision

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

Applicable law

Migration Act 1958

5 (1) Interpretation

In this Act, unless the contrary intention appears:

...

bogus document, in relation to a person, means a document that the Minister reasonably suspects is a document that:

- (a) purports to have been, but was not, issued in respect of the person; or
- (b) is counterfeit or has been altered by a person who does not have authority to do so; or
- (c) was obtained because of a false or misleading statement, whether or not made knowingly

...

cruel or inhuman treatment or punishment means an act or omission by which:

- (a) severe pain or suffering, whether physical or mental, is intentionally inflicted on a person; or
- (b) pain or suffering, whether physical or mental, is intentionally inflicted on a person so long as, in all the circumstances, the act or omission could reasonably be regarded as cruel or inhuman in nature;

but does not include an act or omission:

- (c) that is not inconsistent with Article 7 of the Covenant; or
- (d) arising only from, inherent in or incidental to, lawful sanctions that are not inconsistent with the Articles of the Covenant.

...

degrading treatment or punishment means an act or omission that causes, and is intended to cause, extreme humiliation which is unreasonable, but does not include an act or omission:

- (a) that is not inconsistent with Article 7 of the Covenant; or
- (b) that causes, and is intended to cause, extreme humiliation arising only from, inherent in or incidental to, lawful sanctions that are not inconsistent with the Articles of the Covenant.

...

receiving country, in relation to a non-citizen, means:

- (a) a country of which the non-citizen is a national, to be determined solely by reference to the law of the relevant country; or
- (b) if the non-citizen has no country of nationality—a country of his or her former habitual residence, regardless of whether it would be possible to return the non-citizen to the country.

...

torture means an act or omission by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person:

- (a) for the purpose of obtaining from the person or from a third person information or a confession; or
 - (b) for the purpose of punishing the person for an act which that person or a third person has committed or is suspected of having committed; or
 - (c) for the purpose of intimidating or coercing the person or a third person; or
 - (d) for a purpose related to a purpose mentioned in paragraph (a), (b) or (c); or
 - (e) for any reason based on discrimination that is inconsistent with the Articles of the Covenant;
- but does not include an act or omission arising only from, inherent in or incidental to, lawful sanctions that are not inconsistent with the Articles of the Covenant.

...

5H Meaning of refugee

(1) For the purposes of the application of this Act and the regulations to a particular person in Australia, the person is a refugee if the person:

- (a) in a case where the person has a nationality—is outside the country of his or her nationality and, owing to a well-founded fear of persecution, is unable or unwilling to avail himself or herself of the protection of that country; or
- (b) in a case where the person does not have a nationality—is outside the country of his or her former habitual residence and owing to a well-founded fear of persecution, is unable or unwilling to return to it.

Note: For the meaning of ***well-founded fear of persecution***, see section 5J.

...

5J Meaning of well-founded fear of persecution

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

5K Membership of a particular social group consisting of family

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

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

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

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

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

5L Membership of a particular social group other than family

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

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

5LA Effective protection measures

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

...

36 Protection visas – criteria provided for by this Act

...

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

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

...

Protection obligations

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

Determining nationality

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