



Australian Government
Immigration Assessment Authority

Decision and Reasons

Referred application

IRAQ

IAA reference: IAA22/10329

Date and time of decision: 3 August 2022 09:56:00

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) is a Sunni Muslim from Basra, Iraq. He arrived in Australia as an unauthorised maritime arrival [in] November 2012. He applied for a Temporary Protection Visa on 11 July 2016.
2. A delegate of the Minister for Immigration and Border Protection (the delegate) refused the application on 24 January 2017. The delegate found the applicant did not have a profile of concern and did not face a real chance or real risk of harm as a Sunni Muslim in Basra.
3. The delegate's decision was affirmed by a reviewer of the IAA on 20 September 2017. The applicant sought judicial review, and [in] June 2022 the application was quashed by consent order and remitted 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 26 February 2017 the applicant's representative provided a submission to the IAA commenting on the delegate's decision. The submission also contained new information in the form of extracted articles from 2016 from Iraqi News and Al Jazeera reporting on car bombings by the Islamic State militants in Hilla, targeting Iranian pilgrims in one attack and a Sunni Mosque in another. The reports pre-date the delegate's decision. There is no explanation provided as to why this new information could not have been provided to the delegate before the decision was made, and no reason is apparent to me. I am not satisfied the reports could not have been provided before the delegate's decision was made. The reports do mention some individuals by name, but the names are given as persons reporting on the attacks by Islamic State. It is not information that could be characterised as being personal information about the named persons. I find the reports do not amount to credible personal information that may have affected the consideration of his claims. The applicant has not satisfied me that either s.473DD(b)(i) or (ii) are met, and therefore I must not consider this new information.
6. Following the court remittal by consent, on 1 July 2022 the applicant provided new information in the form of a statement with attachments. New information in the statement includes that in 2018 his brother S was kidnapped for sectarian reasons and rescued by police, and that following this incident brother S moved to [Country 1]. Attached to the statement is new information including a document from the Iraqi Directorate of Immigration and Displacement regarding his family's residence in the Kurdistan Region of Iraq (KRI), two court and police documents regarding brother S's kidnapping, photographs purporting to show brother S in [Country 1], and photographs purporting to show the family in the KRI.
7. The document regarding the family's residence in the KRI, from the Directorate of Immigration and Displacement, post-dates the delegate's decision. This document dated 16 June 2022 could not have been provided before the decision was made. It does however refer to events that occurred in 2015 and no explanation has been provided as to why such a document could not have been provided to the delegate, particularly noting the delegate's questioning of the applicant at the interview about why his family purportedly moved to Erbil

in the KRI yet he was unable to provide an address for them. The document provides the names of 5 people who are said to be registered as displaced persons in the KRI following events they experienced in Hilla on '12/19/215'. I have taken this to mean 19 December 2015. The names in the document do not match the family members disclosed by the applicant in his TPV application, in that they have a different surname, but the first names are roughly similar to his claimed family members. On the face of it, the document may be considered as credible personal information that may have affected the consideration of his claims, in that it purportedly supports the claim the family fled to the KRI after being questioned by the AAH in 2015. I have some concerns however about the genuineness of the document and whether it is credible. I am concerned as to the lack of explanation provided with this new information as to how it was obtained, why it was obtained by the family in 2022, and why it could not have been provided to the delegate before the decision was made in 2017, noting it refers to an alleged displacement to the KRI since 2015. I am also concerned as to why the names in the document are different to those provided by the applicant. I note also it is inconsistent with his claims, in that it states they are registered as displaced persons. The applicant had claimed they 'overstayed their stay' in Erbil because they had nowhere else to go, suggesting they did not have a genuine right or registration to remain there. I find that cumulatively these issues raise doubts about the genuineness of this document. I acknowledge that on the face of the document, if the different names are disregarded, that it could be characterised as satisfying s.473DD(b)(ii). However I give greater weight to the concerns outlined above to conclude that I am not satisfied there are exceptional circumstances to justify considering this new information when I have doubts about the genuineness of the document and I lack explanation from the applicant as to how and why he obtained this document and why it was not provided earlier.

8. I accept the new claim and documents regarding his brother S's alleged kidnapping in 2018 could not have been provided prior to the decision being made, as it occurred after the delegate's decision. It may also be characterised as credible personal information that may have affected the consideration of the applicant's claims, being information that a close relative was harmed for 'sectarian reasons' in support of the applicant's claims to fear harm for reason of being Sunni. Having regard to these factors, I am satisfied there are exceptional circumstances to justify considering this new information.
9. In relation to the claim that brother S fled to [Country 1], there is no detail or evidence to support this assertion apart from photographs that purportedly show brother S in [Country 1]. The assertion that brother S fled to [Country 1] in 2018 is information that could not have been provided to the delegate before the decision was made, as the event post-dates the decision. If the photographs were taken in 2018 or later, then they are information that could not have been provided prior to the decision being made. I have some concerns however about the credibility or evidentiary value of the photographs. They are undated, and there is nothing to identify who the person in the photographs is (such as a passport or other identity document). There is nothing to identify that these photographs were taken in [Country 1], apart from a small [Country 1] flag in one photograph. I consider the presence of a flag in a photograph is not necessarily evidence the photo was taken in the country represented by the flag. National flags on a recognisable building may provide such evidence, but this photograph does not. There is also no information to indicate that even if it was evident the photographs were taken in [Country 1], that I should be satisfied they show someone resident in [Country 1] as opposed to someone merely visiting [Country 1] on holiday. The applicant has provided no detail of how brother S travelled to [Country 1], whether he entered the country legally, whether he remained in [Country 1] or travelled elsewhere, or whether he holds a visa or residency rights to remain in [Country 1], if he still lives there. The purported move to [Country 1] in 2018 is not a recent event, and there is no explanation why

more detailed information about his brother's residency has not or cannot be provided. There is also no submission on why I should be satisfied this is credible personal information.¹ On the limited information and lack of explanation before me, I am not satisfied the claim brother S fled to [Country 1], and the undated photographs to purportedly support that, amount to information that is sufficiently credible to be credible personal information that may have affected the consideration of the applicant's claims. I have taken into account that this information could not have been provided before the delegate made their decision, but I have also taken into account the poor evidentiary value of the photographs that are not supported with evidence of who the person in the photographs is, when they were taken, where they were taken, if they are photographs taken in [Country 1] then why they are said to show a person living in [Country 1] as opposed to merely visiting, the lack of information on how brother S travelled to [Country 1], no address of where brother S is living, and no information regarding the basis of his right to reside in [Country 1] since 2018, if that is where he is living. Having regard to my concerns about the credibility, lack of detail, and poor evidentiary value of the information, I am not satisfied there are exceptional circumstances to justify considering this new information. I find s.473DD is not met and I must not consider this new information contained in the photographs and the claim that brother S fled to [Country 1].

10. I have exercised my discretion to obtain new information on the situation for Sunni Muslims in Iraq. I have obtained the following reports: Department of Foreign Affairs and Trade (DFAT) Country Information Report 17 August 2020; European Union Agency for Asylum (EUAA) Iraq Security Situation, January 2022; and EUAA, Iraq Targeting of Individuals, January 2022. I have also obtained the most recent reports from the last few months on the security situation in Iraq from Joel Wing, Musings In Iraq: Violence Hits A new Low in Iraq in May After Islamic State Offensive Ends, 5 June 2022; Violence Hits a New Low In Iraq In June 2022, 6 July 2022; Security in Iraq July 1-7 2022, 10 July 2022; and Security in Iraq July 8-14 2022, 18 July 2022. I am satisfied there are exceptional circumstances to justify considering this new and updated country information relevant to the applicant's claims, in circumstances where more than 5 years has passed since the delegate's decision was made.
11. I note the previous reviewer obtained new information in the form of the DFAT Country Information Report Iraq dated 26 June 2017 and the UK Home Office Country Policy Information Note – Iraq: Sunni (Arab) Muslims dated 28 June 2017. I have not had regard to these reports as I am not satisfied there are exceptional circumstances to justify considering reports from 2017 when I have obtained more recent country information.

Applicant's claims for protection

12. The applicant's claims can be summarised as follows:
 - He was born and lived in Basra, Iraq. He is Sunni Muslim, although his mother and one brother are Shia Muslims. He has [brothers] living in Australia, and [brothers] and [sisters] in Iraq. His father and one brother are deceased.
 - The applicant's family was known to be a wealthy family in Iraq because of the family's successful [import] business. Two older brothers managed the import business, and others ran the wholesale and warehouse. He helped in this business as a child, but from 1999 he worked as a barber. He ran a hairdressing business in partnership from 2008-2011 and then his own barber shop from October 2011 to February 2012.

¹ Such explanation is required by the IAA's Practice Direction dated 1 May 2020.

- His family lived in a Shia dominated area. As Sunnis they experienced threats and pressure. They were insulted and suspected of supporting Saddam Hussein's regime because of their religion.
- In January 2011 his brother A was kidnapped by unknown persons in an area along the Iraqi-[Country 2] border when travelling for business. The kidnappers demanded USD300,000 but brother A was released two weeks later after the family paid USD281,000. Brother A believed the kidnappers came from [Country 2].
- Brother A was threatened that he should not go to the authorities. However he went to the [Country 2] consulate to lodge a complaint but they did not believe him. He spoke openly about the incident to people in the market and warned them not to travel to the border area where he was kidnapped. One day Brother A saw a [Country 2] car without registration numbers parked outside the family home. People in the car started shooting at him but he managed to get inside the house. Brother A left Iraq, travelled to [Country 3], and was resettled in Australia by the UNHCR in December 2014. Another brother AL also travelled to [Country 3], and he too was resettled in Australia.
- The applicant's brother B was shot and killed [in] December 2011 because of brother A's complaint to the authorities. The murderer called another brother M on brother B's phone to tell him this was the beginning and they were going to kill all the family members. The family moved to Hillah in Central Iraq to escape this threat, however the applicant stayed in Basra, living with a maternal uncle in the Zubair area.
- In February 2012 the applicant's barber shop was burned down. The police report concluded that the fire was deliberately lit and an eye-witness said he saw two people standing in front of the shop speaking [Country 2 language] a few minutes before the shop was engulfed in fire.
- The applicant left Iraq in October 2012.
- In December 2015 a group of men from the Asaib Ahl ah-Haq group (AAH) came to his family's home to question two brothers M and K about the family's past in Basra. The AAH said they had information that the family fled from Basra and were Sunni, and suspected they were hiding something. After this the family decided to go to Erbil in the KRI.
- In 2018 brother S was kidnapped in Basra for sectarian reasons. He was freed a few days later by police.
- The applicant fears returning to Iraq because he will be targeted for reason of his Sunni religion. His surname is a known Sunni name which puts him at greater risk than other Sunnis. His family have continued to be targeted since brother A's kidnapping. He also fears harm for reason of his membership of the particular social group wealthy persons in Iraq.

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.

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 from Basra, Iraq, based on the identity documents he provided to the Department. I find Iraq is his receiving country. He claims his family has moved to the KRI, but he still has some family members and relatives in Basra. He has not indicated an intention to join family members in the KRI or return to any area other than Basra in Iraq. The delegate assessed the applicant as likely to return to Basra in Iraq, and no submission has been made by the applicant to dispute this assessment. I consider Basra, the place he lived, has familiarity with, and ran a business in, is the place he would return to.

16. The applicant claims he left Iraq after a series of incidents including the kidnapping of an older brother, the death of another brother, and the destruction of his barber shop. He claims to fear harm in Iraq because of his Sunni religion, the targeting of his family, and being a member of a wealthy family.

17. The applicant claim he came from a wealthy family in Iraq, and that he and his family were targeted for this reason. The applicant has provided a detailed and plausible account of the [import] business run by his family, which was the source of their wealth. I accept they ran such a business, although the business ceased trading after the incidents in 2011. The applicant describes it as famous wholesale business covering most of Iraq. However he also describes it as being run by family, with two brothers managing the imports, two others the wholesale, and the applicant managing the warehouse, when he wasn't elsewhere working as a barber. He has not described any other employees. The description suggests it was a modest sized business, even if it could import and distribute [products] to other parts of Iraq. I accept however it was a profitable business for the family and at that time in their local area the family could have been recognised as wealthy business owners.

18. In submissions to the IAA in 2017 the applicant is critical of the delegate's finding that the family were no longer wealthy since the closure of the business and departure of [brothers] to Australia. His representative complains that the delegate did not ask for evidence of the family's wealth, but neither has the applicant tried to provide new information in either 2017 or 2022 regarding the family's wealth. The basis of the family's wealth, as presented in his application, was the successful [import] business they operated in Iraq. That source of income ended more than 10 years ago. The applicant says his brothers in Iraq now operate a small shop in Erbil. The applicant confirmed he does not own any property in Iraq, he only

leased the barber shop he ran from 2011 to 2012, and that after that was burned down he had nothing. They no longer own a house in Basra. The applicant has not provided evidence to indicate his family or relatives are currently wealthy or perceived as such, nor that he himself is currently a wealthy individual. In any event, he was not targeted when he lived in Basra for reason of his family's wealth. I acknowledge the applicant operated his own barber business in Basra, but it appears to have been a relatively modest business that he operated for less than a year between 2011 and 2012. I do not accept the applicant, on return to Basra, would be perceived as wealthy or a member of a wealthy family because of the import business and his barber shop that were closed more than 10 years ago. I find he does not face a real chance of harm for being a member of a particular social group of wealthy persons or wealthy families in Basra, as I am not satisfied on the evidence that he is a member of such a group nor that he would be perceived to be.

19. The applicant claims that in early 2011 his brother A was kidnapped in a region on the border of Iraq and [Country 2]. His brother was travelling at that time for business reasons. The identity of the kidnappers is unknown, but the ransom was to be paid In [Country 2], leading the family to believe the kidnappers were [Country 2 people]. After the family paid a ransom of USD281,000 the brother was released. The applicant claims brother A was warned not to report the kidnapping to the authorities, and was threatened his family would be killed if he lodged a complaint. If such a threat was made, I consider it may have been to avoid bringing official attention to the extortion racket the kidnappers were running on the border, rather than any real ongoing threat to applicant A and his family. The circumstances of the kidnapping suggest it was an attack for reasons of extortion. There is no evidence brother A or the family were contacted or targeted in Basra prior to the kidnapping on the border. They were not contacted and threatened after the money was paid. There were no threats made by the kidnappers relevant to brother A's religion or any sectarian issues. That he was released unharmed after money was paid supports a conclusion this was extortion, not sectarian violence.
20. The applicant claims however there were consequences for the family in Basra, after brother A talked openly in the market about the kidnapping. He says that one day [a Country 2] car without registration was parked outside their house, and people in the car shot at his brother. Brother A was unharmed in the incident as he managed to get inside the house before they could shoot him. I find this account lacks detail and I consider it may not be credible. The applicant does not claim to have witnessed this incident, and has not provided evidence from anyone who may have been there. No date was given for this incident, not even an approximate one. It is just described as happening 'one day'. He has not explained why he says the car outside the house was [a Country 2] car, when it did not have any number plates that may have indicated such information. It seems unlikely that people waiting for the brother outside the house, and then shooting at him when he arrived home, were unable to even wound him as he entered the house. There is no police report that this incident occurred. Brother A lives in Australia, but has not provided any evidence, such as a statement, to support this allegation or provide plausible detail. Having regard to the limited information provided, and my concerns regarding the credibility of the account, I am not satisfied this incident occurred.
21. The applicant says his brother B was killed by gunshot [in] December 2011. The applicant claims the killer used brother B's mobile phone to call another brother M to say this was the beginning and they would kill all the family members. It is not apparent, from the information allegedly provided to brother M, who the killer was or why they killed brother B or why they wanted to kill the rest of the family. The death certificate notes the killing was reported by the police, but no police report has ever been provided by the applicant. The applicant says

brother B's death is related to brother A's kidnapping and his speaking openly about this afterwards in the market, but he has not explained why. There is no evidence to connect the two events. He says his family moved to Hilla after brother B's death to escape this threat, but if this was the people involved in the incident on the [Country 2] border, who had gone to the trouble to find a family member of brother A in Basra, then they could equally follow the family to Hilla. Furthermore, the applicant remained in Basra province to run his business, and brother S remained in Basra until at least 2018 if not later, and they were not attacked following brother B's death. On the information provided, I am not satisfied the kidnapping of brother A and the shooting death of brother B are linked. The lack of provision of a police report from the applicant suggests there is no report to support his claim that the incidents were linked, or that the killing was anything more than a criminal event or tragic accident. I do not accept the whole family were threatened because of brother B's shooting. I do not accept brother M received a phone call telling him the whole family would be killed. I do not accept brother B's death in Basra is evidence the whole family were targeted for unknown reasons.

22. The applicant says his barber shop in Basra was destroyed by fire in February 2012, and has provided photographs of a burnt out shop to support this claim. He says the same people involved in kidnapping brother A and killing brother B must have been behind this arson. He bases this on an alleged report to the police by a witness who says he heard two men speaking [Country 2 language] shortly before the fire started. The applicant has not provided any police or witness report to support this. I am prepared to accept the photographs of the burnt out shop is the applicant's shop, and that the fire coupled with the departure of his two older brothers for Australia may have been the catalyst for him too to depart Iraq. But on the information before me, I am not satisfied it was a targeted attack nor that it had any connection to his brother. The fire occurred overnight, and it is not evident on the limited information that it was necessarily an arson attack; it may for example have been an electrical fault. His lack of provision of a police report or statement from the alleged witness raises doubts about his claims that [Country 2 people] were involved in the fire. There is no information that any group claimed responsibility for it, and no evidence of threats prior to or after the fire that might suggest he was being targeted for reason of his religion, family or any other reason. Taking into account the lack of evidence about the cause of the fire, that it occurred overnight when he and his employees were not working and therefore not at risk of personal injury, and lack of evidence of any threats made to him, I am not satisfied the fire at his shop was an attack against the applicant. I do not accept this is evidence he was targeted by any [Country 2] or Iraqi militant group, or the authorities, or anyone else.
23. It is alleged that the AAH group visited the applicant's family in December 2015, then living in Hilla, to make enquiries about their history in Basra. The applicant's evidence is that the family moved to Hilla in 2011. There is no plausible explanation why if they were of adverse interest to a Shia group, that it would take that group 4 years to visit them. The representative suggests the visit occurred in 2015 because Shia militia groups were making enquiries then because of what the whole province was going through due to Islamic State. I have considered this explanation, but I consider it still does not address the issue of why they waited four years before speaking to the family when Islamic State was active in Iraq prior to 2015, and even if Islamic State was relevant, why they would want to talk to the family about their history in Basra, an area that was never under Islamic State control. The family are said to have fled Hilla for Erbil in the KRI shortly after the visit by AAH. I do not accept the applicant has adequately explained why they would move to the KRI, an area that required for a sponsor to even enter and was difficult to settle in without family, tribal or political

connections.² The applicant said his brother had a friend there, but provides no further background of this friend or why he would sponsor the family. If the family needed to flee Hilla, they had relatives in other areas, such as Baghdad, or could have left Iraq as three of the sons did. The only information provided about the alleged visit by AAH is that they said they had information that the family was Sunni from Basra and they were suspected of hiding something. It is not even clear how the family knew these men were members of the AAH. There is no information that the family were threatened or harmed during the visit, nor that any questions were asked about the [sons] in Australia. Given the lack of detail provided about this claim and that no adverse attention was paid to the family by AAH or any other group for the first 4 years they lived in Hilla, I am not satisfied such a visit occurred. If I am wrong in this regard, I note the alleged visit involved men asking questions about the family's presence in Hilla and why they left Basra. There is nothing to suggest they had any adverse interest in the applicant. They had no interest in the other brother S who was still living in Basra. I do not accept any group in Hilla, if they spoke to his family once there in 2015, would have an ongoing adverse interest to look for the applicant, should he return to Basra from Australia now or in the reasonably foreseeable future.

24. The applicant says his brother S was kidnapped in Basra in 2018 for sectarian reasons. It is not clear from the paucity of information provided what is meant by this. It may be he is suggesting brother S was involved in a Sunni militia or other such group that may have made him a sectarian target, or that he is saying brother S was kidnapped merely for being a Sunni. He says brother S was freed by police and an investigation into the kidnapping commenced on the day he was released. No further information has been provided as to whether anyone was ever charged with the kidnapping. There is nothing to suggest any other relative was threatened because of this event. There is no evidence or suggestion this kidnapping had anything to do with the kidnapping of brother A on the Iraqi-[Country 2] border in 2011. On the limited information provided, I am not satisfied the applicant faces a real chance of harm now in the reasonably foreseeable future if brother S was kidnapped and detained for 3 days for 'sectarian reason', beaten, but then freed by police in 2018.
25. Even if I accept most of the applicant's family moved on to Hilla, and then Erbil in the KRI, at least one brother and other relatives remained living in Basra. These relatives were not targeted after the applicant left Iraq for reason of the events in 2011 and 2012 including brother A's kidnapping, or his public complaints about it, or the death of brother B, or the fire at the applicant's barber shop. I do not accept the family faced any ongoing threats or harm in Basra or Hilla or elsewhere for reason of the events suffered by the family in 2011 and 2012. If brother S was kidnapped in 2018, that was described as being for sectarian reasons. There is no evidence or claim of any connection between that incident and anything that had happened in the past to the family. I find that if the applicant returns to Basra now or in the reasonably foreseeable future, he does not face a real chance of harm for any of the past events affecting his family including the fire at his barber shop, the kidnapping of brother A in 2011, brother B's death in 2011, the alleged visit by the AAH to the family in Hilla in 2015, if that occurred, or the alleged kidnapping of brother S in 2018.
26. There is a long history in Iraq of tension between Sunni and Shia Arabs. Around 97 per cent of Iraqis are Muslim, with Shias constituting 55 to 60 percent of the population and Sunnis around 40 percent. Shias live predominantly in the south and east of Iraq, and Sunnis comprise the majority in the west and centre. The governorate of Basra, in the south of Iraq,

² DFAT, Country Information Report Iraq, 13 February 2015.

has a population estimated at between 3.2 and 5 million people. The majority are Shia but there is a significant Sunni population living in Basra.³

27. Sectarianism rapidly increased in violent waves after the 2003 US invasion. However since Islamic State was largely defeated in Iraq in December 2017, the level of sectarian violence between Sunnis and Shias has reduced substantially. Sunnis associated with Saddam Hussain's Baath party or Islamic State, or perceived to be, can face adverse interest from Shia militias. The applicant claimed that following the downfall of Saddam Hussein in 2003 he and his family were insulted and suspected of supporting Saddam Hussein merely because they were Sunnis. Insults directed to his family may have occurred at the height or immediate aftermath of the downfall of Saddam Hussein. There is nothing to indicate he was an actual supporter of Saddam Hussein or the Baath party, and I do not accept he would now be viewed as such merely for being Sunni. There is also nothing to indicate the applicant is associated with Islamic State or would be perceived to be. Such perception could more likely be made of young men from formerly Islamic State held areas, but Basra is not such an area.
28. DFAT advises the security situation in Iraq is highly unstable and fluid, but varies according to location. The situation in the southern governorates of Iraq is comparatively more secure than the rest of the country and has been for some years. The Iraqi government forces are in control of the southern governorates, including Basra. In 2020 DFAT reported Basra had some issues with a deterioration in law and order, however the level of criminality was lower than in Baghdad.⁴ In 2015 DFAT reported that Sunnis in mixed provinces faced a high risk of violence from Shia armed opposition groups⁵, however in its 2020 report DFAT was silent on this issue, except to say generally that sectarian violence between Sunnis and Shias had reduced substantially.⁶ The lack of reporting by DFAT of a risk to Sunnis from Shia armed groups in mixed areas in 2020 suggests that risk had diminished since 2015. This conclusion is in line with the reported significant reduction in Sunni-Shia violence since 2017.⁷
29. In 2022 EUAA reported that more than a million Sunni civilians remained internally displaced. Young Sunni men were detained on suspicion of links to Islamic State, with such detentions occurring more likely in areas previously held by Islamic State. Basra is not such an area. There were also reports of random arrests of innocent Sunnis in Baghdad, and there are reports of abuse and torture being carried out during arbitrary detentions. Islamic State and Shia led militants were also reported to be carrying out attacks in areas surrounding Baghdad to perpetuate conflict between Shias and Sunnis. Specific attacks against Sunnis were provided as examples. None of this reporting by EUAA however refers to any specific sectarian incidents against Sunnis in Basra.⁸
30. EUAA reports Basra has seen increases in tribal conflicts over access to resources, drug trafficking at the ports, and paramilitary groups operating at the border with [Country 2]. Recent violent incidents of note include: attacks against protestors in August 2020, killing between two and five people; the killing of an anti-government protestor by police in November 2020; nine improvised explosive device attacks targeting supply convoys or shipping stations of the International Coalition against Islamic State; the killing of a prominent female activist in August 2020; the death of one person in an armed clan conflict in

³ DFAT, Country Information Report Iraq, 17 August 2020; EUAA, Iraq Security Situation, January 2022.

⁴ DFAT, Country Information Report Iraq, 17 August 2020.

⁵ DFAT, Country Information Report Iraq, 13 February 2015.

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

⁷ DFAT, Country Information Report Iraq, 17 August 2020.

⁸ EUAA, Iraq Targeting of Individuals, January 2022.

November 2020; the shooting of two men (one killed) in a market in May 2021 caused by an old tribal dispute; and an armed conflict erupting between two tribal militias at another market killing two people in July 2021. These incidents of note were largely targeted and concerned protestors or those involved in tribal disputes.⁹ Recent reports on the security situation in Iraq do not contain any information on incidents in Basra.¹⁰ I am unaware of any incidents of attacks in Basra on Sunnis in 2022, and the applicant has not sought to provide any information to show otherwise.

31. The applicant claims he and his family suffered threats and pressure in Basra for reason of their Sunni religion. He says he and his brothers witnessed hatred by the local community and local traders, and the government used to create problems for them when trying to clear goods brought in from [Country 4]. He also says they were insulted, being called Sunni and Wahabi. It is not clear what he means by witnessing hatred; whether he is saying that hatred was directed towards him or his family, or that he witnessed it being directed to others. That his family could successfully run an import business appear inconsistent with a claim that the government tried to create problems for them. Any problems experienced in clearing goods from [Country 4] do not appear to have been impactful. In any event, he is not proposing he would run an import business on return to Iraq. It is plausible, in a country with tension between Sunnis and Shias, that he or his family were on occasion insulted or perceived to be hated by Shias. There is no evidence before me however that this impacted the applicant's life such as to affect his ability to subsist nor cause serious harm in any other way. Should he experience insults or harassment in Basra in the future for reason of his religion, I am not satisfied that such treatment would amount to serious harm for the purposes of s.5J.
32. The country information does not indicate ordinary Sunni citizens in Basra are targeted for harm. I consider the applicant would be returning to Basra as an ordinary Sunni. For reasons given above, I do not accept he has a profile in his community as a wealthy person. There is no history of protest activity by the applicant or anything to suggest he would engage in such activity in the future, nor that he is involved in any tribal business or disputes nor that he would involve himself in such disputes in the future. I acknowledge his claim that his brother S was detained and beaten for 3 days in 2018 'for sectarian reasons' but the information provided with that claim is vague, and there is not country information before me to indicate men in Basra are facing a real chance of such kidnapping or harm. For these reasons, I do not accept the applicant as an ordinary Sunni in Basra faces a real chance of harm for reason of his religion. I find the country information also supports a conclusion that violence against civilians or harm caused to innocent bystanders in Basra is not at a level that would amount to a more than remote chance of an ordinary Sunni being targeted or caught up in violence.
33. The applicant says his surname is recognisably Sunni, and his representative submits this puts him at higher risk than other Sunnis of facing persecution. He has not provided any supporting evidence that his surname is recognisably Sunni, nor that his surname is such that he is in a select group of Sunnis who are more recognisable by their name than other Sunnis, nor that he or his family faced persecution in the past for this reason. Having regard to the situation for Sunnis in Basra, even if the applicant's surname is recognisably Sunni, I do not accept he faces a real chance of harm for reason of his surname.
34. Although the applicant did not claim to fear harm for reason of his profession as a barber, the delegate considered this claim may have arisen on the material. I accept the applicant was a

⁹ EUAA, Iraq Security Situation, January 2022.

¹⁰ Joel Wing, Musings In Iraq: Violence Hits A new Low in Iraq in May After Islamic State Offensive Ends, 5 June 2022; Violence Hits a New Low In Iraq In June 2022, 6 July 2022; Security in Iraq July 1-7 2022, 10 July 2022; and Security in Iraq July 8-14 2022, 18 July 2022.

barber in Iraq, and told the delegate at the TPV interview that he worked as a barber in Australia. I consider he would likely return to such work if he returned to Basra. In the past, barbers were amongst groups of people targeted, such as artists and musicians, for a perception of anti-Islamic behaviour and affiliation with the west. The UNHCR reported in 2009 that since 2003 some liquor, music and barber shops had been attacked, including attacks in Basra by Shia extremists for un-Islamic behaviour.¹¹ The subsequent UNHCR report however made no mention of barbers or barber shops being targeted.¹² There is nothing in more recent DFAT and EUAA reports to indicate barbers or barber shops are targeted.¹³ I find the applicant does not face a real chance of harm for reason of working as a barber or running a barber shop in Basra now or in the reasonably foreseeable future.

35. The applicant would be returning to Basra as a failed asylum seeker who spent 10 years in a western country. He has brothers in Australia who he claims were resettled here by the UNHCR. He has not expressly claimed to fear harm for reason of living in Australia or having brothers resettled in the west, but I have considered these factors as part of an assessment of his situation. DFAT reports the practice of seeking asylum and then returning to Iraq when conditions permit is well accepted among Iraqis. Even Iraqis who are granted protection in western countries are reported to be returning to Iraq to see family, establish and manage businesses, or to take up or resume employment. DFAT says there are large numbers of dual nationals from the US, Western Europe and Australia who return to Iraq.¹⁴ His brother A has commenced a new [import] business in Australia, although the applicant says the business does not operate in or trade with Iraq. There is nothing to suggest the brother's business is known in Iraq nor that any person or group in Iraq would have an adverse interest in it. I do not accept the applicant would be of adverse interest to any group in Basra because of his time in Australia, or because of his brothers' resettlement and residence in Australia. I find he does not face a real chance of harm in Basra because of his time in Australia or his family members here.
36. For these reasons, and considered cumulatively, I am not satisfied that the applicant has a real chance of harm in the reasonably foreseeable future for reason of his Sunni religion, his surname, his family's past business and actual or perceived wealth, any past incident of harm to his family members, the fire at his barber shop, working as a barber, returning as a failed asylum seeker from the west with close relatives still living in Australia, or because of the situation in Basra more generally. I find his fear of persecution is not well-founded.

Refugee: conclusion

37. 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

38. 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

¹¹ UNHCR, Guidelines for Assessing the International Protection Needs of Iraqi Asylum-Seekers, 2009.

¹² UNHCR, Guidelines for Assessing the International Protection Needs of Asylum-Seekers from Iraq, 31 May 2012.

¹³ DFAT, Country Information Report Iraq, 17 August 2020; EUAA, Iraq Targeting of Individuals, January 2022.

¹⁴ DFAT, Country Information Report Iraq, 17 August 2020.

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

39. 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.
40. 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.
41. I have found the applicant does not face a real chance of harm for reason of his Sunni religion, his name, the fire at his barber shop, working as a barber, his family's business and wealth from that business, the kidnappings of his brothers, the death of another brother in 2011, the alleged visit by the AAH to his family in 2015, returning as a failed asylum seeker from a western country, or his brothers' residence in 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 does not face a real risk of significant harm for any of the reasons claimed, whether considered singularly or cumulatively.
42. I also rely on country information referred to above regarding the security situation in Basra governorate and the broader southern governorates of Iraq to find the applicant does not face a real risk of significant harm from generalised or sectarian violence in Basra.

Complementary protection: conclusion

43. 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.