



Australian Government

Immigration Assessment Authority

Decision and Reasons

Referred application

IRAQ

IAA reference: IAA23/10535

Date and time of decision: 29 August 2023 18:25:00

M Wei, 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 national of Iraq. He arrived in Australia on [date] April 2013 and lodged an application for a Safe Haven Enterprise Visa (SHEV), Subclass 790 on 4 August 2016. A delegate of the Minister of Immigration (the delegate) refused to grant the visa on 14 March 2017.
2. On 21 September 2017, the IAA affirmed the decision of the delegate. By order of the Federal Circuit and Family Court (the Court) on 16 June 2023, the IAA decision was quashed and the matter remitted to the IAA for reconsideration.¹

Information before the IAA

3. I have had regard to the material given by the Secretary under s.473CB of the *Migration Act 1958* (the Act).
4. On 27 July 2023, the Secretary provided the IAA with review materials including additional documents said not have been provided to the IAA with the original referral in 2017, although they were not identified as information that was not before the delegate.
5. The identified additional material includes a recording of Part 2 of the arrival interview conducted on 5 June 2013 which was provided in 2017. The original referral also included a recording of Part 1 of the arrival interview that took place on 27 May 2012. While the delegate referred to the arrival interview it appears that this was a reference to the written record, and I am not satisfied on what is before me that the audio recordings were also before him. They are new information. I am satisfied there are exceptional circumstances to justify considering this new information as they contain information are very relevant to the applicant's claims for protection and are of a type that one may expect would ordinarily be considered by the decision maker.
6. Another file named 'Unverified Multiple IDs' appears to contain some untranslated personal or identification documents. The documents that relate to the applicant were referred to by the delegate. The remaining documents appear to be about another unrelated person. I am not satisfied they are 'new information' in the legislative sense.
7. Other documents include a detention notice dated 25 April 2013 (informing the applicant that he was under immigration detention on arriving on Cocos Islands), a request for consular access for people in immigration detention form dated 3 May 2013, a Temporary Safe Haven Subclass 449 visa and a Bridging E Subclass 050 visa grant letter dated 9 July 2013, email correspondence of 19 February 2021 between the Department of Home Affairs and the applicant's representative confirming that a recording of the SHEV interview conducted on 19 December 2016 had been posted to the representative by registered post. These documents are of administrative nature. While they provide some procedural context to the applicant's immigration history, I do not consider them relevant to my assessment of the applicant's protection claims. I find they are not new information.

¹ *ETA17 v Minister for Immigration, Citizenship and Multicultural Affairs* [2023] FedCFamC2G 512 (Judge Goodchild, 16 June 2023)

8. According to the Court's judgment in this matter, on judicial review the applicant contended that the interpreter at the arrival interview made a number of errors and provided the Court with a transcript of the arrival interview audio-recording translated by a NAATI interpreter Mr [A]. The alleged interpretation errors relate to the applicant's evidence in Part 2 of the interview when he was asked why he left Iraq. The relevant portions of the transcript of Mr [A] were reproduced in the judgment of the Court at paragraphs 49, 55 and 60.² This new interpretation is new information. Accepting that it is a correction of information of misinterpreted information, and that one would ordinarily expect the interview to have been accurately translated, I am satisfied that there are exceptional circumstances to justify considering the information.
9. I have obtained updated country information,³ namely, more recent information on those matters considered by the delegate. The country information, including the reports from the Department of Foreign Affairs and Trade (DFAT) and the UK Home Office referred to in the delegate's decision, is now more than six years old and of limited value in assessing the real chance or risk of harm in Iraq. This new information provides a current picture of the situation in Iraq. I am satisfied that there are exceptional circumstances to justify considering the new information.
10. In this context I note the IAA previously obtained the DFAT Country Information Report Iraq published on 26 June 2017. This report is no longer current and has been overtaken by DFAT's more recent 2023 publication which I have obtained. I am not satisfied there are exceptional circumstances to justify considering this 2017 report.
11. The applicant has provided no new information or submissions to the IAA either after the initial referral in 2017 or following the recent court remittal. The applicant advised the IAA on 27 July 2023 that his lawyer whom he appointed in 2017 was still his lawyer and directed that correspondence to be sent to that lawyer. Following that advice, the IAA sent an acknowledgement letter together with a copy of the IAA Practice Direction to the applicant's lawyer on 27 July 2023 advising him of the reconsideration and that a decision may be made at any time. I also note that the same lawyer represented the applicant before the Department as well as before the Court. In the circumstances, I have decided to proceed to a decision.

Applicant's claims for protection

12. The applicant's claims can be summarised as follows:

- He is Shia Muslim from Najaf, Southern Iraq. He did not receive any schooling and worked as a [Occupation 1] in Iraq.
- In 2011, he came to know a girl named '[Ms B]' through his sister [name], as [Ms B] and his sister were friends.

² *ETA17 v Minister for Immigration, Citizenship and Multicultural Affairs* [2023] FedCFamC2G 512 (Judge Goodchild, 16 June 2023)

³ DFAT, 'DFAT Country Information Report: Iraq', 16 January 2023, 20230116100315; UK Home Office, 'Country Policy and Information Note Iraq: Security situation', 25 November 2022, 20221129181904; Musings on Iraq, 'Islamic State Launches Belated Summer Offensive In Iraq', 7 September 2022, 20220908112453; Musings on Iraq, 'Violence Drops In Iraq In January 2023', 7 February 2023, 20230220192721; Musings on Iraq, 'Violence Drops In Iraq For The 2nd Month', 6 March 2023, 20230307191314; Musings on Iraq, 'No Ramadan Offensive By The Islamic State Yet', 3 April 2023, 20230411153859; Musings on Iraq, 'Islamic State Fails To Deliver Ramadan Offensive In Iraq', 2 May 2023, 20230505135955; Musings on Iraq, 'Islamic State Continues Its Decline In Iraq In April 2023, 5 June 2023, 20230606133001; Musings on Iraq, 'Violence Continues To Drop In Iraq In Jun 2023', 3 July 2023; Musings on Iraq, 'Violence In Iraq Continues To Decline For 3rd Month', 2 August 2023, 20230803165601.

- He liked [Ms B] when he saw her in his house and felt something towards her.
- After some time, he spoke to his sister about his willingness to marry [Ms B]. His sister welcomed the idea.
- His sister arranged for him to talk to [Ms B] over the phone and love/relationship between them was developed.
- He managed to meet [Ms B] twice at a [shop] in the main market in Najaf when her family were busy visiting the shrine and during prayer time.
- In about April 2012, he and his family members visited [Ms B]'s family seeking their approval of his marriage proposal to [Ms B]. [Ms B]'s family rejected his proposal citing that [Ms B] was to marry her cousin as this was agreed within their tribe. [Ms B]'s older brother questioned the applicant how he knew his sister and was very aggressive. To avoid any problem, he asked his family to go back home.
- The next day, [Ms B] called him on a private number telling him that she could not meet him anymore as her family were still questioning her about how she met him and had started watching her movements.
- After that, they had no contact for about two months until one day in June 2012 he received a call from [Ms B]. When [Ms B] told him that all her family had gone to Karbala, he suggested he would come and see her. He went to [Ms B]'s house around 11:00am. He sat in [Ms B]'s room with [Ms B] for about 10 minutes before they were seen by [Ms B]'s elder brother. Her brother tried to hit the applicant with a big metal pipe.
- The applicant managed to escape unharmed and returned home. After telling his family what had happened, fearing [Ms B]'s brother might come and kill him, he left home and went to hide in a relative's house in [Village 1] in the outskirts of Najaf.
- Shortly after, [Ms B]'s brothers came to his family home threatening to kill him. The shouting attracted the neighbours and elders in the area who tried to intervene. His brother tried to calm things down by telling [Ms B]'s brothers that he was not happy with the applicant's behaviour and if they found the applicant, they could do anything they wanted with the applicant.
- After about one month staying in [Village 1], he left Najaf and worked for a company in Baghdad for about five months living in an accommodation provided by the company. When the company moved to Karbala, he could not move with them because Karbala was a stronghold for [Ms B]'s tribe. He feared that someone from her tribe would kill him especially her tribe and his tribe had reached a written agreement to shed his blood.
- From January 2013 up to April 2013 before he left Iraq for Australia, he spent most of the time hiding in the Najaf desert living with relatives.
- He did not know if [Ms B]'s tribe/family had done anything to [Ms B]. He however found out from his mother after he came to Australia that [Ms B] did marry her cousin because her reputation was still safe as he and [Ms B] did not frequently meet.
- He fears returning to Iraq due to his relationship with [Ms B] which was not acceptable to her family and her tribe. He had broken their honour of the house by trespassing [Ms B]'s house and her room. [Ms B]'s tribe is big, very powerful and can reach him everywhere.

- He fears harm due to his membership of a particular social group, namely, an Iraqi person who breached strict social norms while initiating illicit relations with a girl', which is inextricably linked with religious dictates because religion and social norms are linked in Iraq.

Factual findings and 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. The information before me indicates that the applicant attended his arrival/entry interview shortly after his arrival in Australia on [date] April 2023. The first part of the entry interview was held on 27 May 2013 (i.e. about one month after he arrived in Australia) with the assistance of an Arabic/English interpreter. At this interview, the applicant was asked about his basic personal information including his residential addresses in Iraq, his employment and his family members. The second part of the interview took place on 5 June 2013, during which he was asked about his reasons for leaving Iraq, his reasons for not being able to return to Iraq and matters about his travel to Australia.

16. The applicant was invited to apply for a protection visa in May 2016. He lodged his SHEV application on 4 August 2016 with the assistance of a registered migration agent/lawyer. The applicant attended a protection visa interview (SHEV interview) on 19 December 2016 before the delegate in the presence of his lawyer.

17. Based on the evidence before me, including the applicant's Iraqi identification documents, I accept that the applicant is from Najaf governorate, Southern Iraq. I accept that apart from a short period of a few months' working in Baghdad, the applicant had lived mostly in [Village 1]

and [Village 2], both within Najaf governorate, and worked as a [Occupation 1] in Iraq before he left for Australia in 2013.

18. I accept that the applicant's siblings, including six brothers and five sisters, are living in various parts in Najaf, with his mother living with two of his brothers in [Village 2]. Three other brothers also live close by in a separate residence in [Village 2]. I accept that his father passed away in 2010 due to [an illness].
19. The applicant has consistently claimed that he is a Shia Muslim. I accept this. The applicant was asked at the SHEV interview if he had faced any harm in Iraq on the basis of his religion, to which he replied 'no' and stated that it was because he lived in the south. The applicant also told the delegate that he practised his religion at home in Iraq. He also practices his religion at home in Australia. Although he went to a mosque a couple of times in the past he has stopped. The applicant's evidence was that his family also practises their religion at home. I accept this.
20. At his arrival/entry interview, the applicant stated that he worked with the US troops at the US base in 2006. The Mahdi Army warned and stopped him from working with the Americans. The applicant made no reference to his working with the US troops in his SHEV application. When asked at the SHEV interview, the applicant told the delegate that he worked with the US troops for two weeks in 2006 [doing specified work]. However, the Mahdi Army visited his house and advised him not to work with the Americans or he would be harmed. As such he stopped working for the Americans and had faced no further issue from the Mahdi Army. He added that some people who did not leave their jobs were killed by the Mahdi Army. The applicant also confirmed at the SHEV interview that he did not serve in the Iraqi military.
21. I accept that the applicant [worked] for the US Troops in 2006 for two weeks and stopped working there after receiving a threat from the Mahdi Army. The applicant does not claim to have face any further problems from the Mahdi Army or any other militia groups after the 2006 incident. I find this was the case. I find that the applicant was not, and has not been of any ongoing interest to the Mahdi Army or militias after he left his job in 2006.
22. The applicant's claims for protection are centred on his claimed relationship with a girl named '[Ms B]' from a different tribe whom he said was his sister' friend. I have taken into account that the applicant broadly raised this claim at the entry interview held on 5 June 2013. In light of the information now before me (including the relevant portions of the transcript prepared by Mr [A]), I accept the applicant's response to the question why he had left Iraq was that he was in love with a girl 'from the tribe'. I accept that the interpreter at that interview incorrectly interpreted his response as being that he loved a girl 'from the same tribe'.
23. In his SHEV statement, the applicant stated that he met [Ms B] in 2011 through his sister as they were friends for some time and that he liked her when he saw her in his house. He felt something towards her. After some time he spoke to his sister about his willingness to marry [Ms B]. The applicant also stated that he was a very shy person so he could not talk to [Ms B] and that their social traditions also prevented him from approaching her and talking to her directly. As his sister welcomed this idea, she arranged for the applicant to speak with [Ms B] at some specific time. The applicant stated that he rang [Ms B] and was very anxious at that time and could not tell her about how he felt and was only able to talk about general things about her family and how they lived as such. The applicant also stated in the SHEV application that he kept calling [Ms B] but [Ms B] did not return his calls most of the time because she was afraid that her family might discover them as they lived in a very conservative area. Najaf was regarded as the holiest city in Iraq and it was almost impossible to talk freely or meet girls freely. Nevertheless, the applicant stated that after some time, he was able to arrange with

[Ms B] to meet her in the main market where [Ms B] used to visit with her family. [Ms B] would contact him when she found a space of time while her family were busy visiting the sacred shrine. During prayer time [Ms B] used to leave her family and meet him in a nearby gold market where 'there were a lot of people around (sometimes millions)'. They thought it was a good idea to meet there because no one would notice them as people from all over Iraq would come and visit the holy shrines in Najaf.

24. At the SHEV interview, the applicant told the delegate that he managed to meet [Ms B] twice in a [shop] in the main market. He said that young people used to meet there and [Ms B] was able to manage about 15 minutes to meet him. The applicant also said at the interview that [Ms B] used to tell him that her family was very strict in terms of family and tribal traditions. According to the applicant, [Ms B]'s tribal tradition was that the girls were to marry their first cousins. The applicant said that it was very hard for [Ms B] to meet him because of their tradition and [Ms B] was scared that someone might see her and that would cause problems.
25. Country information⁴ from around that time supports that Iraq was a conservative society. An article from USA Today noted that arranged marriages were common, 'premarital relationship of any sort' was 'frowned on' and that 'finding a place for young people to physically meet [was] difficult'. The UK Home Office's 2011 Iraq report also refers to Iraq being overall a conservative and tribal based society where social freedoms of the individual, and even more so of girls and women were limited by the family's honour and tribal and religious customs. It reported that honour killings were still taking place then in alarming rates in all the cities of the centre, south and north, and that many women and girls, and to a lesser extent, men and boys were at risk of death if they were accused of behaviour believed to have brought shame on the family: such as loss of virginity, infidelity, a demand for divorce or a refusal of marriage. Women could be killed based solely on suspicions or rumours without the opportunity to defend themselves.
26. The applicant's evidence suggests that [Ms B] was aware of her tribal traditions/the strictness of her family and was scared of being seen by others. On the applicant's evidence, he was also aware of that his 'social traditions prevented him from approaching her [[Ms B]] and talking to her [[Ms B]] directly' and that he lived in a very conservative area which 'was almost impossible to talk freely or meet girls freely. I note that the applicant would be around [age]-[age] years old and [Ms B] (on his evidence who was born in [year]) around [age]-[age] years old at the time of these claimed events. In light of the country information referred to above and given [Ms B] used to visit his sister at his home and his sister welcomed his idea to marry, I find it is difficult to believe that they would not just meet at his home rather than a couple of clandestine meetings for a brief period in public. Like the delegate, I do not find it plausible that [Ms B] who was aware of her tribal traditions/the strictness of her family and who was scared of being seen by others would have risked setting up secret meetings with the applicant during her outings with her family just to meet the applicant for a brief period. I note that the applicant claimed that they thought it would be a good idea to meet in the busy [shop] because people from all over Iraq came to visit the holy shrines and there were a lot of people around, sometimes millions, so no one would notice them. I however do not find this evidence sits very well with his evidence that [Ms B]'s tribe was big, powerful and well known with members in different areas.
27. The applicant claims that he and his family members including his mother, his elder brother, his sister and a cousin visited [Ms B]'s home in April 2012 asking for her family's permission to

⁴ UK Home Office, 'Iraq August 2011', 30 August 2011, 3319; USA Today, 'Parents disapprove, but Internet romance a big hit,' 21 March 2011, CXCB3E63420990; Al Monitor, 'In Iraq, Honor Crimes Spread to Cities', 11 October 2013.

have her hand, which was rejected by her family due to their tribe's tradition that she should marry her first cousin. The applicant stated in the visa application that [Ms B]'s older brother started questioning the applicant about how he 'knew' his sister and was very rude. He also stated in the visa application that when [Ms B] called him the following day, she told him that her brother was suspicious that she and the applicant have a relationship and was going to watch her movement. His written statement was also that [Ms B] told him that they could not meet anymore because her family 'started watching her' and 'questioning her about how did she knew' the applicant. Given [Ms B] was a friend to his sister for some time and used to visit his family's home, like the delegate, I do not find the applicant's evidence convincing that [Ms B]'s family would have kept questioning how she knew the applicant. At the SHEV interview, the delegate asked the applicant if [Ms B]'s family knew about the applicant's meetings and relationship with [Ms B] at that time, the applicant responded by saying that he thought that they knew at the time because they kept saying that they must have met and known each other for the applicant to come asking for her hand. When the delegate asked the applicant to explain why [Ms B]'s brother would suspect the applicant's familiarity with [Ms B] considering it was entirely plausible that he heard about [Ms B] from his sister. The applicant responded that they knew but not to a point that he would have asked for her hand to get engaged because the tribe traditions used to be that the girl had to marry her cousin. The applicant's evidence that 'they knew' in my view was a shift away from his earlier evidence that he was asked at the time when he was at [Ms B]'s home how he knew [Ms B] and [Ms B] told him the following day that her family started questioning her about how she knew the applicant, which suggests that her family did not know how he and [Ms B] knew each other. I am also not convinced about his explanation given at the SHEV interview suggesting that her family had suspected he and [Ms B] were romantically involved rather than mere familiarity because he went to ask for her hand despite her tribe's tradition, noting the country information referred to above indicates that arranged marriages were common and premarital relationship of any sort was frowned on.

28. Turning to the claimed meeting with [Ms B] at her home in June 2012, I also consider the applicant's evidence problematic in several respects. The applicant's evidence was that that he did not see [Ms B] for almost two months and that she did not call him until he got a call from her on a day in June 2012. After [Ms B] told him that all her family had gone to Karbala, he suggested that he would go and see her because they were waiting all this time to see each other. I do not find this claim sits well with his other evidence that they had no contact with each other after [Ms B] told him that they could not meet anymore because she was being watched by her family who had forbidden her from seeing the applicant or coming to visit his sister. This also does not sit well with his evidence that [Ms B]'s family had been very hostile in response to his/ his family's proposal asking for her hand and his response to their hostility was to leave to avoid problems. In this respect, I note that the applicant stated in his visa application that [Ms B]'s brother was very rude so he asked his family to go back home to avoid any problem with them. At the SHEV interview the applicant described that [Ms B]'s older brother kept talking to them in a way that was full of hatred and evil and that by reading the facial expression of everybody else sitting there, he could feel the evil, not only by their words but from their non-verbal expression. As such he told his family to leave to avoid problem. Also, if [Ms B]'s family were watching her movements as claimed, it is difficult to believe that her family would have left her alone at home while the whole family travelled to another city. According to the applicant, [Ms B]'s brother appeared after he and [Ms B] sat down in her room 'for almost 10 minutes', which suggests that her brother was either still at home or not far away from home. It also difficult to believe that [Ms B] would have not made sure that everyone had actually left town before she contacted the applicant and allowed the applicant to come to her home. Given that [Ms B] had not called or seen the applicant for almost two months and given the applicant's observation of her family's hatred and aggression toward him

and his family at the time he proposed and his response to their hostility was to leave then, I find it very difficult to believe that the applicant would have decided to meet [Ms B] in her house, which as he described it, would amount to trespassing her house and breaking the honour of the house which was a big problem for the tribe.

29. The applicant claims that [Ms B]'s brothers and her tribe sought to kill him after her brother caught him sitting with in her room and his tribe denounced him. The applicant provided copy of an undated handwritten document with English translation (translated by a NATTI accredited translator on 22 July 2016) purported to be a letter/ written agreement reached between his [Tribe 1] and [Ms B]'s [Tribe 2]. The document states the [Tribe 1] consents for the [Tribe 2] to waste the applicant's blood because he 'encroached up their honour (their women) and did not observe the tribal law'. It further stays that the [Tribe 2] has been given the authority to revenge and take the applicant's life. The document was purportedly to have been signed by a Sheikh from his tribe and a Sheikh from the [Tribe 2].
30. The document is not dated. It states that the applicant 'encroached up their honour (their women) and did not observe the tribal law', but beyond the reference to 'honour' and 'women' provides no details of the transgression.
31. In his SHEV application, the applicant stated that he could not relocate with his company from Baghdad to Karbala because Karbala was a stronghold for [Ms B]'s tribe and he feared that someone from her tribe would kill him especially as her tribe and his tribe agreed to shed his blood and had reached a written agreement. This suggests that the document was issued before the applicant left Iraq. The applicant was asked at the SHEV interview why he had presented this letter to the Department. He replied that that was the reason he fled because he could not stay there. When he was asked when the elders of his tribe issued this letter, he replied that he could not remember the date and suggested that the date might be stated on the document. He added that after he left, [Ms B]'s family kept coming to his family to look for him and it came to the point that his own tribe wanted to desert him in order to settle this problem. After the interpreter confirmed there was no date on the document, the delegate asked the applicant whether the letter was issued after he had left Iraq or when he was still there. The applicant said that he thought it was after he fled Iraq and that his brother sent it to him in an email.
32. Even considering the passage of time since his departure from Iraq, i.e., a period of approximately three years and three months past at the time of his written statement and a period of approximately three years and eight months at the time of the SHEV interview, I consider the receipt of a document which officially denounced him and authorised [Ms B]'s tribe to take his life would have some significance to the applicant. Yet his evidence about the document has been opaque. His written statement indicates the document was issued before he stopped working for the Baghdad company (i.e. in January 2013) while his evidence at the SHEV interview indicates it was issued after he came to Australia, noting he also indicated he received this document by email from his brother after he left Iraq. I find it also concerning given the nature of the purported document and considering that the SHEV interview took place in less than five months after his written statement was dated.
33. Considering these matters, this document does not alleviate my various concerns raised above and I give it no weight.
34. The applicant told the delegate at the SHEV interview that he did not know what happened to [Ms B] but also said he learnt from his mother that [Ms B] did marry her cousin. He added that because their 'actual relationship' was not 'frequent meetings' so 'her reputation was still

safe'. This suggestion that her reputation was still safe seems at odds with the serious consequence he claimed he faced. Moreover, [Ms B]'s seemingly not facing any similar consequences when the country information suggests that women, although not exclusively, but more so than men, faced serious adverse consequences for behaviour considered shameful, is also at odds of the consequence the applicant claimed he faced.

35. I do not find the applicant's evidence about his claimed illicit or improper relationship with [Ms B] convincing, plausible or credible at all. I am prepared to accept that the applicant might know of a girl named [Ms B], who was a friend of his sister's and used to visit his sister at his family home. However, I am not satisfied that the applicant fell in love with this girl or that his sister set him up by contacting the girl directly. I am not satisfied that he met the girl alone twice in the main market, that he later proposed to the girl's family or that he visited the girl at her home and was caught by his brother. I am not satisfied that the girl's family and/or her tribe sought to kill the applicant or that there was an agreement between his tribe and her tribe in which his tribe authorised her tribe to take his life. I am not satisfied that the applicant was perceived or may be perceived to have been in any kind of improper relationship with [Ms B] or that he had breached any conservative social norms or tribal traditions. I am not satisfied that the applicant was ever in hiding before he left for Australia.
36. I am not satisfied that the applicant was of any adverse interest to anyone when he left Iraq in April 2013.
37. Iraq has a population of approximately 40-42 million with the vast majority being Muslims. Shia Muslims make up 55 to 60 percent of the overall Iraqi population and they are the majority in Southern Iraq.⁵ The applicant is from Najaf where he grew up and worked for most of his life with the exception of a brief period in Baghdad. The applicant has family members living in Najaf, Southern Iraq. I consider that the applicant is very likely to return to Najaf governorate if he were to return to Iraq.
38. I have found above that the applicant was not of any personal adverse interest to anyone at the time he left Iraq in 2013. There is no suggestion, nor is any credible evidence before me to indicate that the applicant has come to the adverse interest of anyone since he came to Australia.
39. The applicant does not claim to have faced harm as a Shia in the past saying that it was because he was from the Southern Iraq. He practiced his religion at home while he was in Iraq and largely at home in Australia, and there is no suggestion that would change if he were to return to Iraq. The applicant does not claim, nor is there any credible evidence to indicate that his family members have faced harm as Shia Muslims.
40. DFAT report, when referring to Iraq's general security situation, indicates that security incidents in Iraq occur often which can be carried out by a wide range of actors. Violent crime is common.⁶ Country information also indicates that Islamic State continues to launch attacks on security forces, as well as targeting community leaders and civilians who they deem as government collaborators. Other militias also carry out strikes on government targets.⁷ The country information on the other hand also indicates that incidence of violence overall has significantly declined in recent years. According to the ACLED data cited by the UK Home

⁵ DFAT, 'DFAT Country Information Report: Iraq', 16 January 2023, 20230116100315; UK Home Office, 'Country Policy and Information Note Iraq: Security situation', 25 November 2022, 20221129181904.

⁶ DFAT, 'DFAT Country Information Report: Iraq', 16 January 2023, 20230116100315

⁷ UK Home Office, 'Country Policy and Information Note Iraq: Security situation', 25 November 2022, 20221129181904; DFAT, 'DFAT Country Information Report: Iraq', 16 January 2023, 20230116100315

Office, the numbers of reported incidents in Najaf and some other Southern areas were quite low in 2021 and 2022. The Musings on Iraq most recently assessed that the Islamic State is no longer an effective insurgency; rather it is solely focused upon surviving and is barely able to carry out any offensive operations. The ACLED data cited by the UK Home Office notes that the number of civilian fatalities for the reporting periods in 2021 and 2022 'remain a very small proportion of the total population' (the total civilian fatalities of all governorates between 1 January 2022 and 8 July 2022 was 213, amounting to '0.000005%' of the population) and significantly lower than during the period of intense conflict during 2014 and 2017. It observed highest numbers were in Baghdad, Diyala, Ninewa and Maysan. There were no incidents in Najaf reported by Musings on Iraq for the period January to July 2023.⁸ It is possible that there may be future incidence of violence in Najaf governate, but I am not satisfied there is a real chance that the applicant will face any harm from any one or any group. I am not satisfied that the applicant faces a real chance of harm as a result of sectarian or general violence, if he were to return to Najaf, Southern Iraq, now or in the reasonably foreseeable future. Najaf also has an international airport.⁹ The evidence before me does not support a conclusion that the applicant could not safely return. I am not satisfied that the applicant faces a real chance of persecution for any of the reasons claimed if he were to return to Iraq now or in the reasonably foreseeable future.

Refugee: conclusion

41. 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

42. 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

43. 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

⁸ UK Home Office, 'Country Policy and Information Note Iraq: Security situation', 25 November 2022, 20221129181904; Musings on Iraq, 'Islamic State Launches Belated Summer Offensive In Iraq', 7 September 2022, 20220908112453; Musings on Iraq, 'Violence Drops In Iraq In January 2023', 7 February 2023, 20230220192721; Musings on Iraq, 'Violence Drops In Iraq For The 2nd Month', 6 March 2023, 20230307191314; Musings on Iraq, 'No Ramadan Offensive By The Islamic State Yet', 3 April 2023, 20230411153859; Musings on Iraq, 'Islamic State Fails To Deliver Ramadan Offensive In Iraq', 2 May 2023, 20230505135955; Musings on Iraq, 'Islamic State Continues Its Decline In Iraq In April 2023', 5 June 2023, 20230606133001; Musings on Iraq, 'Violence Continues To Drop In Iraq In Jun 2023', 3 July 2023; Musings on Iraq, 'Violence In Iraq Continues To Decline For 3rd Month', 2 August 2023, 20230803165601.

⁹ UK Home Office, 'Country Information and Guidance - Iraq Internal relocation (including documentation and feasibility of return)', 17 November 2015, OG8F59D8D50

- the person will be subjected to degrading treatment or punishment.

44. 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.

45. I have concluded above that there is not a real chance the applicant would face any harm. As real chance and real risk involve the same threshold, I am not satisfied there are substantial grounds for believing that, as a necessary and foreseeable consequence of being returned from Australia to Iraq, there is a real risk that the applicant will suffer harm, including significant harm.

Complementary protection: conclusion

46. 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.