



**Australian Government**  

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**Immigration Assessment Authority**

**Decision and Reasons**

**Referred application**

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IRAQ

IAA reference: IAA23/10540

Date and time of decision: 24 August 2023 16:09:00

D Hughes, Reviewer

**Decision**

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

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

## Background to the review

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### Visa application

1. The applicant, a national of Iraq, lodged an application for a Temporary Protection (Subclass 785) visa on 13 October 2019.
2. On 9 November 2021, the applicant's Temporary Protection (Subclass 785) visa was cancelled under s.128 of the *Migration Act 1958* (the Act) for non-compliance with condition 8570 of that visa, as he had departed Australia and entered a country without seeking or obtaining written approval from the Minister of Immigration.
3. As the applicant's Temporary Protection visa was cancelled prior to 15 February 2023, his application for a Temporary Protection visa would not have been taken to be an application for a Resolution of Status (Class CD) visa under r.2.08G of the Migration Regulations 1994.
4. On 3 August 2023, a delegate of the Minister for Immigration refused to grant the applicant a further Temporary Protection visa on the basis that he did not satisfy s.36(2) of the Act.
5. The applicant is a 'fast track applicant' by operation of Migration (Fast Track Applicant Class – Temporary Protection and Safe Haven Enterprise Visa Holders) Instrument 2019 (LIN 19/007).

### Protection visa assessment

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6. Under s.36(2) of the Act, the criteria for the grant of a protection visa require that the applicant for the visa is a 'non-citizen in Australia'. This means that a protection visa may only be granted if the applicant is physically present in Australia.
7. Based on information included in the review material, I am satisfied the applicant was not in Australia at the time of the delegate's decision on 3 August 2023. There is no information before me to suggest the applicant holds a substantive visa or any other type of visa that would permit him to lawfully re-enter Australia.
8. I am satisfied the applicant is not a 'non-citizen in Australia' and therefore he does not meet the requirements of s.36(2) of the Act. The applicant does not satisfy the criteria for the grant of the visa.

### Decision

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

***Migration Act 1958***

**36 Protection visas – criteria provided for by this Act**

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- (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 under the Refugees Convention as amended by the Refugees Protocol 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.

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