



**Australian Government**  

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**Immigration Assessment Authority**

**Decision and Reasons**

**Referred application**

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IRAQ

IAA reference: IAA16/00123

Date and time of decision: 09 March 2016 13:11:02

Patricia Tyson, Reviewer

**Decision**

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

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

## Background to the review

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### Visa application

1. The referred applicant (the applicant) claims to be a Shia Muslim from Karbala, Iraq. [In] June 2015 he lodged an application for a temporary protection visa (TPV), claiming to fear harm from Shia militia group the Al Mahdi Army, the Iraqi government, extremist Sunni group *Ad-Dawlah al-Islamiyah fi al-Iraq* (Daesh)<sup>1</sup>, and the family of his former wife.
2. A delegate of the Minister for Immigration and Border Protection (the delegate) refused to grant the visa. The delegate accepted that the applicant had served as a soldier in the Iraqi National Army and that he had left or deserted the military prior to his departure, but found that any punishment he would face for that reason would be pursuant to a law of general application. The delegate found the applicant's claim to have been personally targeted by the Mahdi Army not credible and concluded there was not a real chance that the applicant would be harmed by that group in the future. The delegate also rejected the applicant's claim to have divorced or separated from his wife. Considering the general situation in Iraq, the delegate found there was not a real chance that the applicant would be harmed in Karbala on the basis of his religion or former service with the army or for any other reason. The delegate therefore concluded that the applicant was not a refugee. Turning to the complementary protection criterion, the delegate similarly found there was not a real risk that the applicant would be harmed on the basis of his religion, being a former soldier, or by Shia militia groups. The delegate concluded that given the large numbers of military deserters in Iraq, information regarding an amnesty for deserters, and lack of information on sanctions for desertion, any penalty imposed on the applicant as a result of his desertion from the army would not amount to significant harm.

### Information before the IAA

3. I have had regard to the material referred by the Secretary under s.473CB of the *Migration Act 1958* (the Act).
4. The IAA received a submission from the applicant's representative on 1 March 2016. I note that the timing and content of this submission was not in compliance with the President's Practice Direction<sup>2</sup> and that under s.473FB(5), the IAA is not required to accept new information or documents from a person if the person fails to comply with a relevant direction that applies to them. However, in any event, to the extent the submission contains new information, I am unable to consider that aspect of it for the reasons below.
5. The submission makes arguments (with reference to case law) regarding the s.5(1)(a) reasons behind the harm the applicant fears as a deserter, from Shia militias and from Sunni insurgents. These arguments are supported by an excerpt from the United Nations High Commission for Refugees (UNHCR) Handbook,<sup>3</sup> which was also referenced in the delegate's decision and is therefore part of the material referred under s.473CB. As these parts of the submission are argument or references to material already before me, I do not consider them

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<sup>1</sup> Also known as Islamic State of Iraq and the Levant (ISIL or ISIS): Department of Foreign Affairs and Trade (DFAT), "DFAT Country Information Report Iraq", 13 February 2015, CISEC96CF1160, 2.4.

<sup>2</sup> Practice Direction for Applicants, Representatives and Authorised Recipients, 16 September 2015, 21, 23,26.

<sup>3</sup> UN High Commissioner for Refugees (UNHCR), *Handbook and Guidelines on Procedures and Criteria for Determining Refugee Status under the 1951 Convention and the 1967 Protocol Relating to the Status of Refugees*, December 2011.

'new information' within the meaning of s.473DC, and have considered them in my findings below.

6. In the submission, the representative makes reference to the risk of harm from Daesh, and the remainder of the submission consists of country information which purports to demonstrate that Daesh can target people in Karbala and Najaf, and that it has targeted Iraqi soldiers. The applicant made the claim that he would be harmed by Daesh before the delegate, and I have considered this claim below. However, the information now submitted in support of this claim predates the delegate's decision and was not included in the material referred by the Secretary. The information submitted by the representative is general country information rather than credible personal information, and as such I am not satisfied that it meets the requirements of s.473DD(b)(ii). Further, the submission does not provide any reason as to why the information could not have been provided to the Minister prior to the making of the delegate's decision. The applicant has not satisfied me that the information meets s.473DD(b)(i). As neither of the alternative requirements in s.473DD(b) are satisfied, I am not permitted to consider the new information included in the submission. I note, however, that material referred by the Secretary does include other information regarding the security situation in Karbala and Najaf and Daesh targeting of soldiers, some of which is broadly similar to that submitted by the applicant, which I have considered below.

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

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7. The applicant's claims are contained in the information referred to the IAA. They can be summarised as follows:
  - In 2005 the applicant claims to have joined the Iraqi National Army. He worked [at] an army base in southern Baghdad, although he continued to reside in Karbala. In November 2008, following the orders of his general, he took down posters of local militia men that had been posted on walls around the base, one of which was a picture of Muqtada, the leader of the Al Mahdi Army.
  - [In] December 2008 the applicant arrived at his family's home in Karbala on holiday leave. A bomb [exploded] outside the house, and the applicant woke up in hospital with [injuries].
  - The applicant later found out that one of the soldiers belonged to the militia and had identified the applicant as the person who had taken down the poster. As many militia serve in the military, the militia would have had information about the applicant's address and leave.
  - While the applicant was in hospital, a neighbour who had a relationship with the militia told the applicant's father that the militia knew the applicant was in hospital and warned the applicant's father to hide the applicant because the militia wanted to kill him.
  - The applicant went into hiding in [Town 1], Najaf until he left Iraq in 2012. The army generals knew about his situation and told the applicant to stay in hiding. He continued receiving a wage from the army until approximately two months prior to his departure. While he was in hiding, the applicant's family received three threatening phone calls from unknown persons.
  - The militia are ruthless and do not respect the particular Shi'ite sect to which the applicant belongs. They are still active and now stronger, and the applicant's family and friends have told him not to return because the militia are still looking for him. The

applicant fears he will be seriously harmed or killed by the militia, on the basis of his imputed and real opinion against them.

- The applicant travelled to Australia with [his] [relatives]. The applicant's [relative] and his [relative] (the [relatives] of these other [relatives]) were killed by the militia, although the applicant does not know the reason behind this. Although their killer was found, the militia pressured the investigator to drop the case, the killer was released and the situation resolved under local law. The applicant fears he may similarly suffer consequences under local law for his actions. He claims that the government of Iraq will be unable to protect him because they are not strong enough to stop militias, and because some of the militia who want to kill him are part of the government.
- The applicant married a woman in Iraq in [2010], with whom he has one child. He and his former wife separated prior to his departure and underwent a religious divorce by telephone from Australia. He now has an Australian partner and child, and is in the process of obtaining a legal Iraqi divorce. His ex-wife's brothers have threatened to kill him because of the divorce and his new partner and child, and he also fears retribution under local law.
- The applicant fears that he will be jailed because he left the army without signing resignation papers. He also fears harm from Daesh on the basis of his Shia religion, and Al Qaeda because he was in the army.

## **Refugee assessment**

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8. 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**

9. 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
  - 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

## **Applicant's background**

10. I find that the applicant is a national of Iraq and that Iraq is his receiving country for the purpose of this application. I make this finding on the basis of the following identity documents submitted to the Department: copy biodata page of Iraqi passport, issued [in] 2012, copy and translation of Iraqi ID card, issued [in] 2015 (obtained by his father in Iraq), copy and translation of Iraqi citizenship certificate dated [in] 2005, and copy Iraqi Ministry of Defence military ID card dated [in] 2008.
11. I also accept that the applicant is a Shia Muslim, originally from Karbala. He has made these claims consistently throughout the protection visa process, and I note that the majority of Karbala's population are Shia.<sup>4</sup> On the applicant's claims, he lived in Karbala until 2008, and then lived with family in [Town 1], Najaf for a period of over three years. I find that both [Town 1] and Karbala are the applicant's home areas.
12. I further accept that the applicant served as a soldier in the Iraqi National Army. He has made this claim consistently since arriving in Australia, and submitted to the Department a military ID card issued [in] 2008 which bears his name and lists his [rank], and what appear to be various photographs of himself in army uniform.

## **Harm from Shi'ite militias**

13. The applicant has claimed that he will be harmed by Shia militias, including the Al Mahdi Army, on a number of different grounds.

### *Incident with the poster*

14. The Mahdi Army, or Jaysh Al-Mahdi, was the armed wing of the Sadrist Movement led by cleric Muqtada Al-Sadr.<sup>5</sup> The leader of the Mahdi Army agreed to a ceasefire in March 2008<sup>6</sup> and the group transitioned into a non-violent organisation, with a small armed wing known as the Promised Day Brigades.<sup>7</sup> However, former Mahdi Army militia men have now reportedly reorganised to help the Iraqi Security Forces (ISF) counter Daesh.<sup>8</sup> In addition, many operating Shi'ite militias are Mahdi Army offshoots, such as the Asa'ib Ahl al-Haq (AAH, League of the Family of the Righteous), Khata'ib Hezbollah (Hezbollah Battalions), and the Promised Day Brigade.<sup>9</sup>
15. The applicant has consistently claimed in his arrival interview [in] November 2012, statutory declaration submitted with the TPV application and in the TPV interview [in] October 2015 that while working at the army base in Baghdad, he was asked to remove a poster of a militia leader, which ripped as he removed it, and that [in] December 2008 when he returned home there was an explosion outside his house, injuring him. On the basis of the applicant's consistent evidence, I accept that both these incidents occurred.

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<sup>4</sup> DFAT, "DFAT Country Report Iraq", 13 February 2015, CISEC96CF1160, 5.22.

<sup>5</sup> UNHCR, "UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Asylum-Seekers from Iraq", 31 May 2012, 3577, p.11.

<sup>6</sup> "Mahdi Army", Stanford University, 24 July 2015, CXBD6A0DE12780.

<sup>7</sup> AH Cordesman & S Khazai, "Patterns of Violence in Iraq", 24 October 2012, CIS24454, p.46.

<sup>8</sup> United States Congressional Research Service, "Iraq: Politics, Governance, and Human Rights Jan 2015", 30 January 2015, CISEC96CF1146, p.10.

<sup>9</sup> Ibid.

16. While information indicates that, as the applicant claims, Shia militias, including the Mahdi Army, have been integrated into the ISF<sup>10</sup> and that armed Shi'ite groups have singled out individuals for attack, including security officials,<sup>11</sup> I have some doubt as to the connection between the tearing down of the poster and the explosion outside the applicant's house for the below reasons:

- The applicant's evidence as to how he knew that the militia had become aware of the poster and that this was the reason behind the attack was vague. In his statutory declaration he referred to the militia having spread rumours that he had torn up the posters and stepped on them, to someone having tipped off the militia, and to the news quickly spreading that he had removed the picture because there are many members of the militia in the military. He repeated at the TPV interview that he had found out after he left hospital that a soldier had informed the militia that he was the person who had taken down the photo. However, the applicant's only explanation as to how he knew about the militia connection was that a neighbour who he thinks may have had a relationship with the militia and whose name he has forgotten, warned his father after the attack that the militia were aware that the applicant was in hospital and would try to kill him. The basis for the applicant's belief that there were rumours that he had torn and stepped on the poster or that he had been informed on by a soldier is unclear.
- Furthermore, the applicant claimed that the [injuries] were serious enough to require an operation. His claim at the TPV interview that he nonetheless left the hospital the following morning because of the neighbour's warning, requiring only one follow-up visit from a doctor and bandage changes by a nurse, appears somewhat implausible given the injuries he claimed to have suffered.
- In addition, the applicant claimed in his statutory declaration that there were many members of the militia in the military, and that the militia had information about him, such as when he was going on leave and where he lived. However, when asked at the TPV interview why, in that case and particularly given that the applicant had his pay personally delivered to him, the militia could not have located him in Najaf, the applicant changed his evidence, claiming that he only knew of one soldier who was in the militia and did not know who that person actually was. I find this evidence contradictory to the clear implication in the applicant's statutory declaration that the militia had information about him because of the many militia in the military.

17. The representative's submission refers to a number of different s.5J(1)(a) motivations that the militia may have had for targeting a member of the Iraqi army. However, even accepting that Shia militias did target the applicant because of the poster incident or his service in the army more broadly, for the reasons below I am not satisfied that they thereafter maintained any interest in him, or that there is a real chance that they would seek to harm him in the future.

18. According to country information, the Mahdi Army was a dominant force in Shia majority areas,<sup>12</sup> with presence of its offshoot groups mainly reported in the southern governorates, including Karbala and Najaf.<sup>13</sup> UNHCR indicates that the mobility and reach of armed groups should not be underestimated when determining whether a person could relocate to another

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<sup>10</sup> UNHCR "UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Asylum-Seekers from Iraq", 31 May 2012, 3577, p.11.

<sup>11</sup> Ibid, p.12.

<sup>12</sup> "Mahdi Army" 2011, New York Times, 18 January 2011, CX317512.

<sup>13</sup> UNHCR "UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Asylum-Seekers from Iraq", 31 May 2012, 3577, p.11.

area of the country to avoid being harmed.<sup>14</sup> As mentioned above, there is evidence that Shia militias, including the Mahdi Army, have been integrated into the ISF.<sup>15</sup>

19. The applicant claims to have remained at the home of his mother's relatives in [Town 1], Najaf (an area with a Shia militia presence) between approximately [December] 2008 and [October] 2012. In the period immediately after the explosion, he received a visit from a doctor and a number of visits from a nurse. Thereafter, as claimed at the TPV interview, he also received visits from his family and from a colleague from the army who delivered his pay, and married and had a child. He also indicated that his army leader knew his situation and that he was in hiding. Although the applicant may have been in the countryside, he nonetheless remained in the one location and his whereabouts were known by a number of people outside his family, including within the army. In circumstances where the applicant has claimed that the militia initially obtained his details through army connections, a possibility supported by country information, and considering that he was staying with relatives in an area where the Mahdi Army had been a dominant force and where its offshoot groups were present, I find that had the militia wanted to locate the applicant, they could have done so.
20. While the applicant said at the TPV interview that he was being protected by his tribe, nothing in his evidence indicates that the militia made any attempt to find him. Even on the applicant's own claims, the only basis on which he believes that the militia continued to pursue him after December 2008 was a warning given by a neighbour to his father immediately after the explosion, and three threatening phone calls to his family from unidentified persons over a period of more than three years. Although he says in his statutory declaration that friends and family have warned him that the militia continue to look for him, he expressly said at the TPV interview that other than the phone calls, the last of which he said took place in 2012, 'so far there's nothing else happening'.
21. The applicant remained in Iraq for over three years following the attack, during which he suffered no further harm. Although he was in hiding, on my finding above, the militia would have had the capacity to locate him if they had wanted to. I find that the reason the applicant was not subsequently harmed by the militia was not because he was in hiding, but because he was not of sufficient ongoing interest to them. The only indication of any potential ongoing interest in the applicant in the years following the attack is the phone calls. These were made by unknown persons, were sparse and irregular, and the most recent of them took place over three years ago. Even if the militia did target the applicant in the bomb incident because of the poster or his army membership, I am not satisfied that they had any ongoing interest in the applicant or intention to harm him at the time he left Iraq, let alone now, over seven years after the incident. I am not satisfied that there is a real chance that if the applicant returns to Iraq, he will be harmed by Shia militias in the reasonably foreseeable future.

*Harm as a Shia, because of family relationships, dress and drinking alcohol*

22. Apart from the poster and explosion incidents described above, the applicant does not claim to have otherwise encountered or have been harmed by the militia. He claimed at the TPV interview that the militia harm people who they considered to be drunk, or who wear shorts, and that if he dressed the way he was at the interview, he would be harmed (this statement appears to have been characterised by the delegate as a claim to not agree philosophically with the general religious and social norms of militia groups). However, he confirmed he had encountered no harm from them in the past for such reasons and expressed no intention or

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<sup>14</sup> Ibid, p.53.

<sup>15</sup> Ibid, p.11.

desire to wear shorts or drink alcohol in Iraq. I consider the prospect of the applicant being harmed for such reasons in the future to be remote.

23. The applicant travelled to Australia with [his] [relatives]. According to his statutory declaration and evidence at the arrival and TPV interviews, the applicant's [relative] and [relative] were killed by the militia. Their killer then threatened one of the [relatives] who travelled with the applicant. The applicant says in his statutory declaration that the situation was resolved under local law. The applicant did not make any claim to fear harm as a result of these events or the relationship to his [relatives], but instead said that he feared he would similarly face harm under local law. However, as I have found that the applicant is no longer of any interest to the militia, I am not satisfied that he will face any harm under local law as a result of that incident. Further, as even the applicant himself is unaware of the reasons behind the attacks on his [relatives], I am not satisfied that there is a real chance that he will face any harm because of his connection to these relatives.
24. The applicant claimed in his statutory declaration that the militia do not respect the particular Shi'ite sect to which he belongs. However, when asked about this claim at the TPV interview, he said that if somebody goes against the militia they will be harmed. He appeared to be saying not that he would be harmed because of his (unspecified) sect, but that despite the Mahdi Army being a Shia militia, they nonetheless harm fellow Shias who cross them. While I accept this is the case, given my above findings I do not accept that there is a real chance that this particular applicant would be harmed by Shia militias.

#### *Conclusion*

25. I am not satisfied that there is a real chance that the applicant will be harmed by Shia militias or otherwise suffer some retribution under tribal law because of his religion, the poster incident, army membership, an imputed or actual political opinion, his dress or behaviour, relationship with his [relatives], a combination of these factors, or for any other reason.

#### **Desertion from military**

26. The submission from the applicant's representative makes a number of arguments regarding the applicant's claim to fear persecution for desertion. It extracts UNHCR guidance indicating that a deserter may be a refugee if they have other relevant motives for leaving or remaining outside the country, have other reasons to fear persecution, or would face disproportionate punishment on account of race, religion, nationality, membership of a particular social group or political opinion. The representative goes on to put forward various s.5J(1)(a) reasons for the harm the applicant fears.
27. I accept there may be circumstances where an applicant who fears punishment for desertion will meet the requirements of s.5J(1). However, in this particular case I am not satisfied that there is, in any event, a real chance that the applicant will face harm because he will be viewed as an army deserter. The applicant claimed at the TPV interview that he did not fill out the required paper work to formally resign, which would have involved continuing to work while waiting for his papers to be processed with the Minister. He claims that the person who delivered his payments told him he either had to return to service or stop getting payments.
28. The fact that his payments then stopped suggests to me that the army must have taken some steps to formalise the applicant's resignation in their own records and that he would not be viewed as a deserter. However, even if he did fail to complete required paperwork and would be viewed as a deserter as he claims, country information strongly suggests that the applicant



will not face any penalty. In 2014 a de facto amnesty was granted to soldiers who had deserted in an attempt to bolster the ranks of the army following mass desertions,<sup>16</sup> and in May 2015, Iraqi Prime Minister and Commander-in-Chief of the Armed Forces announced the halt of legal action against members of the armed forces, including for the offenses of escape and absenteeism.<sup>17</sup> Given that there is no evidence before me that the Iraqi authorities instigated any legal proceedings against the applicant following his departure from Iraq, and in light of the mass desertions that have occurred since that time and the announcement of an amnesty, I am not satisfied that there is a real chance that the applicant would face any penalty or other harm as a result of his leaving the military.

### **Family of first wife**

29. The applicant has given somewhat inconsistent evidence regarding his marital status. At his arrival interview, he indicated he was married and provided details of his wife in Iraq. In his protection visa application, he indicated that he had separated from his wife in September 2012 and was in the process of obtaining a divorce. His Iraqi ID card, issued in [2015] and obtained by his father, lists his status as married and includes the name of his Iraqi wife. At the TPV interview, the applicant clarified that he and his wife had been having some problems prior to his departure from Iraq and that they underwent a religious divorce over the telephone while he was in Australia. He said that at the time of the TPV interview, he had obtained a power of attorney from the Iraqi consulate to enable his father to begin legal divorce proceedings on his behalf, but had not yet sent that document to Iraq. Whether or not the applicant is formally divorced, I accept that given the religious divorce and the fact that he has a new partner and child, the relationship has ended.
30. However, I am not satisfied that there is a real chance that the applicant will be harmed by the family of his former wife. The applicant's own evidence at the TPV interview suggests a level of acceptance of the situation by his first wife's family. Firstly, he indicated that although his [child] lives with his first wife, [he/she] often ('a lot of the time') stays with his own family in Karbala. Secondly, he said that because he had a religious divorce, a legal divorce was not necessary in Iraq, and that it was in fact his wife's family who had requested the legal divorce, so that they could change her national ID card. He said that without the legal divorce, she remained his wife on his national ID card and, if he wanted to, he could 'take her back'. In my view, the ongoing contact between the applicant's family and his [child], and the request by the wife's family that the divorce be formalised, are inconsistent with an intention on the part of the wife's family members to harm the applicant. I am not satisfied that the applicant faces a real chance of death, retribution under local law or other harm on this basis.

### **Harm from Daesh and other militant groups**

31. The applicant has also claimed to fear harm from Sunni insurgent group Daesh. In 2014 Daesh seized control of parts of central, north and western Iraq, specifically the city of Mosul and large parts of the provinces of Anbar, Salah al-Din, Diyala and Kirkuk,<sup>18</sup> and has carried out attacks in Baghdad.<sup>19</sup> However, Karbala and Najaf are both under control of the ISF.<sup>20</sup>

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<sup>16</sup> "Iraq Army Woos Deserters Back to War on ISIS", New York Times, 28 September 2014, CX1B9ECAB11500.

<sup>17</sup> "Abadi pardons Iraqi military deserters and others", Iraqi News, 17 May 2015, CXBD6A0DE14049.

<sup>18</sup> DFAT, "DFAT Country Report Iraq", 13 February 2015, CISEC96CF1160, 2.6, 2.27-2.28.

<sup>19</sup> UK Home Office, "Security situation in Baghdad, southern governorates and the Kurdistan Region of Iraq (KRI)", 1 April 2015, OG8F59D8D14, 1.3.13.

<sup>20</sup> Ibid, 2.6.43.

## *Shia religion*

32. DFAT report that Shia are subject to violence by Sunni insurgent groups.<sup>21</sup> UNHCR also state that Daesh and associated groups have committed gross human rights abuses, and that religious and ethnic minority groups, including Shias, are intentionally and systematically targeted.<sup>22</sup> However, such violence is more prevalent in Baghdad and the north and central areas of Iraq,<sup>23</sup> with southern governorates experiencing fewer attacks.<sup>24</sup>
33. Nonetheless, UNHCR reports that the southern governorates do still see some security incidents, often in the form of car bomb attacks, and also targeted killings and kidnappings, and sectarian reprisal attacks against individuals.<sup>25</sup> An earlier assessment by UNHCR identified Shi'ite civilians as a key target for Sunni armed groups, particularly when performing religious duties, attending funerals or mournings, or when on pilgrimages, and said that such attacks have occurred in both Karbala and Najaf.<sup>26</sup> More recently, analysts suggest that Daesh has and will continue to target Shia religious sites, including in Karbala and Najaf, in attempts to escalate sectarian tensions in the region.<sup>27</sup> Data from 2014 indicates that in 2014, there were a total of 200 security-related deaths in Karbala in 2014, and 18 in Najaf,<sup>28</sup> although these figures are not limited to attacks on Shia targets.
34. However, while accepting that such attacks do occur in the south, their incidence is relatively low. DFAT assesses that Shias in southern Iraq are at low risk of generalised violence.<sup>29</sup> Furthermore, country information indicates that attacks are generally targeted at members of political parties, religious and tribal figures, Government employees and professionals.<sup>30</sup> The applicant does not fall within these profiles.
35. I accept that Sunni insurgent groups do conduct attacks on Shia religious targets, and it is possible that the applicant could be caught up in such an incident. However, the test for real chance is not one of possibility alone. Rather, there must be a 'substantial, as distinct from a remote chance, of persecution occurring'<sup>31</sup>; a 'far-fetched possibility of persecution must be excluded'<sup>32</sup>. Having regard to the low incidence of such attacks, and DFAT's assessment of the low risk to Shias in the south, I am not satisfied that there is a real chance of the applicant being harmed in Karbala or Najaf by Daesh or other Sunni insurgent groups.

## *Former employment as a soldier*

36. The applicant claimed during the TPV interview that Al Qaeda will kill anyone in the army, and the representative's submission similarly argues that Sunni insurgents may harm Iraqi army soldiers on the basis of an imputed political opinion. The applicant said that if he returns to Iraq, he will have to go back to the army because has no job. On the applicant's evidence he

<sup>21</sup> DFAT, "DFAT Country Report Iraq", 13 February 2015, CISEC96CF1160, 3.45.

<sup>22</sup> UNHCR, "UNHCR Position on Returns to Iraq", 27 October 2014, CIS2F827D91427, 3.

<sup>23</sup> Ibid; DFAT, "DFAT Country Report Iraq", 13 February 2015, CISEC96CF1160, 3.46.

<sup>24</sup> DFAT, "DFAT Country Report Iraq", 13 February 2015, CISEC96CF1160, 3.46.

<sup>25</sup> UNHCR, "UNHCR Position on Returns to Iraq", 27 October 2014, UN4E592C09, 15.

<sup>26</sup> UNHCR "UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Asylum-Seekers from Iraq", 31 May 2012, 3577, p.25.

<sup>27</sup> "ISIS's Military Operations During Ramadan", Institute for the Study of War, 7 June 2015, CISEC96CF12803.

<sup>28</sup> UK Home Office, "Security situation in Baghdad, southern governorates and the Kurdistan Region of Iraq (KRI)", 1 April 2015, OG8F59D8D14, 2.3.5.

<sup>29</sup> DFAT, "DFAT Country Report Iraq", 13 February 2015, CISEC96CF1160, 3.47.

<sup>30</sup> UNHCR, "UNHCR Position on Returns to Iraq", 27 October 2014, UN4E592C09, 4; and UK Home Office, "Security situation in Baghdad, southern governorates and the Kurdistan Region of Iraq (KRI)", 1 April 2015, OG8F59D8D14, 1.3.29.

<sup>31</sup> *Chan v MIEA* (1989) 169 CLR 379 per Mason CJ at 389.

<sup>32</sup> *Chan v MIEA* (1989) 169 CLR 379 per McHugh J at 429.

has not actively served in the army for over seven years. The applicant has multiple family members in Karbala and Najaf to whom he can turn for support. In addition to his army service, he has previously assisted his father in a [business], and carried out some farm work while living in Najaf. I am not satisfied that the applicant will return to the army, particularly given his claim to have deserted or otherwise left the army prior to his departure. However, I have nonetheless considered whether the applicant may face a real chance of harm from Al Qaeda or other groups because of his past employment with the Iraqi National Army.

37. Al Qaeda in Iraq has been a key player in the Sunni insurgency since 2003 and has been blamed for many attacks against the ISF and Shi'ite population. While most active in northern, western and central Iraq, it also had a presence in Karbala.<sup>33</sup> According to country information, Al Qaeda in Iraq adopted the name Islamic State of Iraq and the Levant (ISIL) or Islamic State of Iraq and Syria (ISIS) in 2013.<sup>34</sup>
38. In its 2012 Eligibility Guidelines, UNHCR listed individuals associated with the ISF, including former members of the ISF, as being likely to be in need of protection, depending upon the particular circumstances of the case.<sup>35</sup> UNHCR indicate that attacks on the ISF have been carried out by both Sunni and Shi'ite groups, including Al Qaeda.<sup>36</sup> However, many of the examples provided by UNHCR relate to attacks on patrols, convoys, checkpoints and army bases, suggesting that the attacks are against active soldiers.<sup>37</sup> Further, while UNHCR indicates that there have also been attacks on off-duty members of the ISF, the examples it gives of targeted attacks occurred in Baghdad, northern and central Iraq, and appear to have been directed at senior officials.<sup>38</sup> UNHCR states that targeted attacks on senior officials are less frequent in the south.<sup>39</sup> Of the examples it does give, none occurred in Karbala or Najaf.<sup>40</sup>
39. More recently, Daesh have been implicated in executions of *hors de combat* soldiers,<sup>41</sup> including captured Shia security officers.<sup>42</sup> DFAT assesses that Shias who are also members of government security services have been specifically targeted by Daesh.<sup>43</sup> DFAT also indicates a risk to former members of the security forces, particularly Shias.<sup>44</sup> However, this is in the context of northern and central Iraq rather than the south.<sup>45</sup> While I have had regard to the assessments of both UNHCR and DFAT that former soldiers may be targeted or harmed, the applicant has not actively served for over seven years, was not high-ranking and will be returning to the relatively more secure south. I am not satisfied there is a real chance of the applicant being harmed on the basis of his former service, either alone or in combination with his Shia religion.

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<sup>33</sup> UNHCR "UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Asylum-Seekers from Iraq", 31 May 2012, 3577, p.10.

<sup>34</sup> United States Congressional Research Service, "Iraq: Politics, Governance, and Human Rights Jan 2015", 30 January 2015, CISEC96CF1146, p.8.

<sup>35</sup> UNHCR "UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Asylum-Seekers from Iraq", 31 May 2012, 3577, p.6.

<sup>36</sup> See *ibid*, p.10-12, 15.

<sup>37</sup> *Ibid*, p.15.

<sup>38</sup> *Ibid*.

<sup>39</sup> *Ibid*.

<sup>40</sup> *Ibid*, p.15 and footnote 280.

<sup>41</sup> UNHCR, "UNHCR Position on Returns to Iraq", 27 October 2014, CIS2F827D91427, 4.

<sup>42</sup> Human Rights Watch, "World Report 2015: Iraq", 29 January 2015, CXBD6A0DE813; Amnesty International, "Amnesty International Annual Report 2014-2015 - Iraq", NG5A1E6BC110.

<sup>43</sup> DFAT, "DFAT Country Report Iraq", 13 February 2015, CISEC96CF1160, 3.45.

<sup>44</sup> *Ibid*, 3.70; 4.3.

<sup>45</sup> *Ibid*, 3.70; 4.3.

## Conclusion

40. I am not satisfied that there is a real chance that the applicant will be harmed by Sunni insurgent groups on the basis of his Shia religion, previous service as a soldier with the Iraqi National Army, or a combination of these factors.

## Failed asylum seeker and returnee from Australia

41. If the applicant returns to Iraq, he will do so as a failed asylum seeker, having spent a considerable period of time in Australia, a western country. According to DFAT, a number of Iraqis return home to Iraq from Australia for personal or work reasons, and the practice of seeking asylum and later returning home is well-accepted amongst Iraqis, as evidenced by the number of dual nationals from Western countries returning to Iraq to take up residence and jobs.<sup>46</sup> DFAT states it has seen no evidence to suggest that voluntary returnees from the west are not assimilated back into their communities.<sup>47</sup> Particularly referring to southern Iraq, DFAT states that it is aware of over 100 Iraqis who have returned to southern Iraq after having failed to obtain asylum in Australia, and is not aware of those returnees facing significant problems.<sup>48</sup>
42. I have considered the applicant's circumstances, including his relationship with his Australian citizen partner and child. However, given the evidence of the acceptance within Iraq of asylum-seeking in the west and the lack of harm to returnees, I am not satisfied that there is a real chance that the applicant will be harmed on the basis of his connection to Australia or status as a failed asylum seeker.

## Conflict in Iraq

43. I have also considered whether the applicant otherwise faces a real chance of harm as a result of the general situation and conflict in Iraq. Since 2013, Sunni insurgents have increased attacks against a range of targets, particularly those associated with the government, including the security forces.<sup>49</sup> However, such activity is highest in northern, western and central Iraq, and levels of violence in the majority Shia southern provinces are much lower.<sup>50</sup> Nonetheless, UNHCR reports that the southern governorates do still see some security incidents, often in the form of car bomb attacks, and also targeted killings and kidnappings, and sectarian reprisal attacks against individuals.<sup>51</sup> While the majority of security incidents were targeted attacks, mass casualty attacks do occur, including in Karbala and, less frequently, Najaf.<sup>52</sup> Some of these, including an incident in July 2014 in Karbala which left 45 dead, occurred as a result of intra-Shi'ite tensions.<sup>53</sup> According to one source cited by the UK Home Office, Shi'ite insurgency lead to 160 fatalities across Karbala and Quadisiya, another southern governorate.<sup>54</sup> The same source reports that there were a total of 200 security-related deaths in Karbala in 2014, and 18 in Najaf.<sup>55</sup> It is unclear, however, whether those attacks were on Sunni or Shia targets.

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<sup>46</sup> Ibid, 5.27.

<sup>47</sup> Ibid.

<sup>48</sup> Ibid, 5.25.

<sup>49</sup> Ibid, 2.32.

<sup>50</sup> Ibid, 2.34-2.35.

<sup>51</sup> UNHCR, "UNHCR Position on Returns to Iraq", 27 October 2014, UN4E592C09, p.6.

<sup>52</sup> UK Home Office, "Security situation in Baghdad, southern governorates and the Kurdistan Region of Iraq (KRI)", 1 April 2015, OG8F59D8D14, 1.3.29; 2.3.5.

<sup>53</sup> Ibid, 2.6.48.

<sup>54</sup> Ibid, 2.6.48.

<sup>55</sup> Ibid, 2.3.5.

44. In 2014 UNHCR urged against any forcible returns to Iraq and assessed that many Iraqis were likely to fall within the criteria for refugee status or complementary protection under various international instruments.<sup>56</sup> However, it does not state that this is the case for all Iraqis and, in relation to complementary protection, refers to various regional instruments that have no application in this jurisdiction. As such, I do not give this assessment weight as an indication that all Iraqis are at a real chance of suffering harm.
45. I have found above that there is not a real chance that the applicant will be harmed in Karbala or Najaf by Daesh, other Sunni insurgent groups or Shia militias on the basis of the poster incident, his past service with the army, his Shia religion, or other personal circumstances. While acknowledging the conflict, violence and insecurity in Iraq, and that a number of attacks have occurred in Karbala, I find the prospect of the applicant being caught up in an attack to be remote. Considering whether the applicant could safely access Karbala or Najaf on return without having to travel through the more dangerous central and northern areas, country information indicates that there is an adequate road network in southern Iraq, an international airport in the southern governorate of Basra, and that internal flights are available to Najaf from Baghdad.<sup>57</sup> I am not satisfied that there is a real chance that the applicant will face harm in Karbala or Najaf, or in accessing those areas.

#### **Refugee: conclusion**

46. I have concluded above that there is not a real chance that the applicant will suffer harm from Shia militias, Sunni insurgent groups including Daesh, the Iraqi government, the family of his former wife, under tribal law, as a result of the conflict, on the basis of his religion or former employment as a soldier, as failed asylum seeker and returnee from Australia, or on any other basis. Nor am I satisfied that there is a real chance that the applicant will suffer harm as a result of some combination of these circumstances. As I am not satisfied that there is a real chance that, if the applicant returned to Iraq, he would be persecuted, the applicant does not meet s.5J(1)(b) and therefore does not have a well-founded fear of persecution.
47. The applicant does not meet the requirements of the definition of refugee in s.5H(1) and therefore does not meet s.36(2)(a).

#### **Complementary protection assessment**

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48. 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**

49. Under s.36(2A), a person will suffer 'significant harm' if
- the person will be arbitrarily deprived of his or her life; or

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<sup>56</sup> UNHCR, "UNHCR Position on Returns to Iraq", 27 October 2014, UN4E592C09, 27.

<sup>57</sup> UK Home Office, "Country Information and Guidance Iraq Internal Relocation (and Technical Obstacles)", 24 December 2014, OG180885B46, 1.3.72 and Annex L.

- the death penalty will be carried out on the person; or
- the person will be subjected to torture; or
- the person will be subjected to cruel or inhuman treatment or punishment; or
- the person will be subjected to degrading treatment or punishment.

50. I have found above that there is not a real chance that the applicant will suffer harm in Iraq from Shia militias, Sunni insurgent groups including Daesh, the Iraqi government, the family of his former wife, under tribal law, as a result of the conflict, on the basis of his religion or former employment as a soldier, as a failed asylum seeker and returnee from Australia, or on any other basis. As 'real chance' and 'real risk' involve the same standard<sup>58</sup>, I similarly find that, for the purpose of s.36(2)(aa), there is not a real risk that the applicant will suffer harm.

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

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

#### **Decision**

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

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<sup>58</sup> *MIAC v SZQRB* (2013) 210 FCR 505.

## Applicable law

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### ***Migration Act 1958***

#### **5 (1) Interpretation**

...

***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.

#### **91W Evidence of identity and bogus documents**

- (1) The Minister or an officer may, either orally or in writing, request an applicant for a protection visa to produce, for inspection by the Minister or the officer, documentary evidence of the applicant's identity, nationality or citizenship.
- (2) The Minister must refuse to grant the protection visa to the applicant if:
- (a) the applicant has been given a request under subsection (1); and
  - (b) the applicant refuses or fails to comply with the request, or produces a bogus document in response to the request; and
  - (c) the applicant does not have a reasonable explanation for refusing or failing to comply with the request, or for producing the bogus document; and
  - (d) when the request was made, the applicant was given a warning, either orally or in writing, that the Minister cannot grant the protection visa to the applicant if the applicant:
    - (i) refuses or fails to comply with the request; or
    - (ii) produces a bogus document in response to the request.
- (3) Subsection (2) does not apply if the Minister is satisfied that the applicant:
- (a) has a reasonable explanation for refusing or failing to comply with the request or producing the bogus document; and
  - (b) either:
    - (i) produces documentary evidence of his or her identity, nationality or citizenship; or

- (ii) has taken reasonable steps to produce such evidence.
- (4) For the purposes of this section, a person produces a document if the person produces, gives, presents or provides the document or causes the document to be produced, given, presented or provided.

...

**91WA Providing bogus documents or destroying identity documents**

- (1) The Minister must refuse to grant a protection visa to an applicant for a protection visa if:
  - (a) the applicant provides a bogus document as evidence of the applicant's identity, nationality or citizenship; or
  - (b) the Minister is satisfied that the applicant:
    - (i) has destroyed or disposed of documentary evidence of the applicant's identity, nationality or citizenship; or
    - (ii) has caused such documentary evidence to be destroyed or disposed of.
- (2) Subsection (1) does not apply if the Minister is satisfied that the applicant:
  - (a) has a reasonable explanation for providing the bogus document or for the destruction or disposal of the documentary evidence; and
  - (b) either:
    - (i) provides documentary evidence of his or her identity, nationality or citizenship; or
    - (ii) has taken reasonable steps to provide such evidence.
- (3) For the purposes of this section, a person provides a document if the person provides, gives or presents the document or causes the document to be provided, given or presented.

...