



Australian Government
Immigration Assessment Authority

Decision and Reasons

Referred application

IRAQ

IAA reference: IAA16/00159

Date and time of decision: 06 May 2016 16:13:19

Victoria Coleman, 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 Shia Muslim who was born in Kuwait in [year]. He resided in that country as a stateless person until he was deported to Iraq in 1993 and attained citizenship in that country. He resided in [City 1], Al-Muthanna province in the south of Iraq from 1993 until he departed for Australia. The applicant lodged an application for a Temporary Protection Visa, Subclass 785 (TPV application), with the Department of Immigration and Border Protection (DIBP) [in] May 2015.
2. A delegate of the DIBP (the delegate) refused to grant the visa to the applicant [in] April 2016. The delegate accepted the applicant was an Iraqi citizen and a Shia Muslim from [City 1], Al-Muthanna province. It was accepted that the applicant worked for [an overseas company]; that following threats and harassment, he transferred ownership of his business to a member of the Madhi Army; and that he would be perceived as a returnee from the west/failed asylum seeker on return to Iraq. However, on the basis of the applicant's evidence and having regard to relevant country information, the delegate found there was no real chance or real risk of harm to the applicant on return to Iraq for these reasons. The delegate noted that Shia is the majority religion in [City 1], in Al-Muthanna province and found that the applicant did not have a fear of persecution on the basis of his religion. He also noted the applicant did not fear harm in Iraq on the basis that he was born in Kuwait and was a stateless Bidoon in that country.

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 applicant provided a submission to the IAA [in] April 2016 (IAA submission) responding to the findings of the delegate. The content of the submission is in the nature of legal arguments and I do not consider it 'new information' under s.473DC of the Act. I have had regard to this submission.
5. I have obtained new information, not before the delegate, regarding the occupation of Kuwait by Iraq in 1990.¹ At the TPV interview, the applicant gave evidence that he was detained by the Iraqi Army in Kuwait during this period. The delegate did not consider this matter. However, as a claim squarely arises on the applicant's evidence, I have considered whether the applicant will face harm for this reason in Iraq. This new information is directly relevant to assessing the credibility of the applicant's evidence on this matter. There are exceptional reasons to justify considering this information.

Applicant's claims for protection

¹ United States Bureau of Citizenship and Immigration Services (USBIS), Kuwait, "Human Rights After February 28, 1991", USBCIS, 1 March 1992, at <http://www.refworld.org/cgi-bin/texis/vtx/rwmain?page=type&docid=3de8d85a0&skip=0&type=COUNTRYREP&coi=KWT&searchin=title&sort=date>, accessed 27 April 2016: Middle East Watch, "Human rights in Iraq and Iraqi-occupied Kuwait: testimony of Andrew Whitley, Middle East Watch before the House Foreign Affairs Committee", 1 January 1991, CIS1020.

6. The applicant's claims are contained in the information referred, including in the arrival interview, the TPV application and the TPV interview, which were repeated in the IAA submission. They can be summarised as follows:
- Between 1998 and 2004, the applicant had a [business]. This was in the same premises from which he used to do [financial transactions] to and from Iraq.
 - In January 2004 he was employed with [an overseas company]. This [company] specialised in covering the activities of the [Coalition] Army in [City 1], Al-Muthanna. His duties were to [duties deleted]. He used his language skills to familiarise staff with the local environment, especially when arranging meetings with the Tribes. The applicant used to enter the [Coalition] Army compound to [conduct activities]. He also used to cover the [activities of his employer] in [City 1]. Several of the employees were female and he used to drive them to [around]. Members of the Tribes accused him of working for infidels and he overheard them making this observation when he was escorting [company] staff around the area. His work with [company] ceased in December 2004 following the [Coalition's] withdrawal from Iraq.
 - The applicant opened a [business] called [name]. He was the commercial agent of the holding company, [name] which is the largest in Iraq. He quickly developed his business and became very successful.
 - In April 2012 a member of the Madhi Army put pressure on the applicant to leave the company and quit his business. The Madhi Army threatened to kill him if he did not leave the company to them. They accused him of being a traitor and collaborator with the coalition forces on the basis of his previous employment with the [overseas] [company].
 - The applicant was scared and did as they requested, leaving the company to the Madhi Army in July 2012. A person from the Madhi Army, [Mr A], took over the company and the applicant lost everything.
 - The applicant and his family moved in with his wife's parents. The applicant prepared to flee Iraq because he feared the Madhi Army would kill him. The applicant departed Iraq legally via Baghdad International airport [in] August 2012 and travelled to [location]. He then travelled to [other countries], arriving in Australia by boat [in] October 2012.
 - His wife and children continue to reside in [City 1], Al-Muthanna province in the south of Iraq.
7. At the TPV interview the delegate asked the applicant whether he had any other basis for claiming protection and whether he feared harm for any other reason. The applicant confirmed he did not fear harm for any reason, other than those set out above.
8. In the IAA submission the applicant's representative asserted that the applicant was targeted in the past because of his perceived wealth and perceived opposition to Islam (due to working with [company]). It was also contended that, as a previous victim of the Madhi Army, the applicant was more likely to be targeted by them again in the future.
9. The DIBP delegate considered that claims to fear harm on the basis of his religion, his birth and residence in Kuwait as a stateless Bidoon, and as a failed asylum seeker/returnee from a western country, arose on the material.

Factual findings

Country of Reference

10. The applicant stated he was born in Kuwait to Iraqi parents and that he and his family were stateless Bidoons. They moved to Iraq in 1993 and subsequently obtained Iraqi citizenship. The applicant provided copies of his passport, national identity card and citizenship certificate confirming that he is an Iraqi citizen. These documents indicated that he was born in Baghdad. However, the applicant's oral evidence in the TPV interview was that in order to be granted Iraqi citizenship, he had to declare that Kuwait was not his place of birth and identify an area of Iraq as his birth place. This is supported by information from the Australian Department of Foreign Affairs and Trade (DFAT) that approximately 50,000 Bidoon were granted Iraqi nationality by the Ba'ath regime and that in order to obtain citizenship, they had to renounce association with Kuwait by declaring they were not born in that country.²
11. On the basis of the evidence provided by the applicant and the country information, I accept that: he was born in Kuwait; he resided there as a stateless Bidoon until 1993 when he moved to Iraq; and that he is now a national of Iraq. I find that Iraq is his receiving country for the purpose of assessing his protection visa application.
12. I accept the applicant's oral and written evidence that he resided in [City 1] in Al-Muthanna province in the south of Iraq from 1993 until his departure for Australia in 2012 and that his family continue to reside there. I find this is the area to which he would return.

Ethnicity and Religion

13. On the basis of the applicant's consistent oral and written evidence, and having regard to information that Shia is the dominant religion in Iraq, including in [City 1],³ and that the majority of the population is Arab,⁴ I accept that he is an Arab and a Shia Muslim as claimed.

Detention in Kuwait

14. At the TPV interview the applicant gave evidence that he was detained by the Iraqi Army in December 1990 during the Iraqi occupation of Kuwait. He stated that the Iraqi Army detained anybody they suspected. He was held for approximately eight months, being released in August 1991 following intervention from the Red Cross. The applicant's oral evidence on this matter was spontaneous and he appeared to be recalling events from personal experience. Country information supports that Iraq occupied Kuwait between August 1990 and February 1991, and that during this period the Iraqi Army arbitrarily detained thousands of people.⁵ On the basis of his oral evidence and the supporting country information, I accept the applicant was detained and released in 1991 as claimed.

² Department of Foreign Affairs and Trade (DFAT), "DFAT Country Report Iraq", 13 February 2015, CISEC96CF1160, at [3.84].

³ Ibid at [2.8] and [3.44]; United Kingdom (UK) Home Office, "Security situation in Baghdad, southern governorates and the Kurdistan Region of Iraq (KRI)", 1 April 2015, OG8F59D8D14 at [1.3.28]; and United States of America (USA): Embassy of the United States Iraq, "Snapshot of Muthanna: Poor, Peaceful, and Traditional", 14 March 2006, CXEDA282422832.

⁴ DFAT, "DFAT Country Report Iraq", 13 February 2015, CISEC96CF1160, at [2.7] –[2.8].

⁵ USBIS, Kuwait, "Human Rights After February 28, 1991", USBCIS, 1 March 1992, at <http://www.refworld.org/cgi-bin/tehis/vtx/rwmain?page=type&docid=3de8d85a0&skip=0&type=COUNTRYREP&coi=KWT&searchin=title&sort=date>, accessed 27 April 2016; Middle East Watch, "Human rights in Iraq and Iraqi-occupied Kuwait: testimony of Andrew Whitley, Middle East Watch before the House Foreign Affairs Committee", 1 January 1991, CIS1020 at p.2-3.

Employment with NTV

15. The applicant claimed that he was employed as [occupations] with a [overseas] [company], between January 2004 and November 2004. Included in his TPV application was a copy of his [company] staff identity card indicating he held the position of [occupation]. At the TPV interview the applicant was able to provide details of his duties with the company. Country information confirms that [Coalition] troops were stationed in [City 1] during this period, primarily to rebuild infrastructure, provide water and help with medical services.⁶ On the basis of the applicant's documentary and oral evidence and the country information, I accept he was employed as [occupations] with [company] between January and November 2004 as claimed.

Threats due to business ownership

16. The applicant claimed that in 2006 he opened a [business] in [City 1] called [name] which supplied [products]. The business started out [small], employing only a few people. However, it became very successful and the applicant was able to increase the size of the [business] and employ more staff. The [business] became a commercial agent of holding company [name], which is the largest in Iraq and he distributed their products in [City 1]. The applicant's oral evidence on these matters was detailed and he appeared to be recalling events from personal experience. I accept as plausible that he was the owner and operator of a successful [business].
17. The applicant has consistently claimed that his [business] was taken from him in 2012. However, his evidence as to how this occurred has differed during his interaction with the DIBP. At his arrival interview the applicant stated that his [business] was taken by his business partner who was a member of the Dawa Party. In contrast, in his written application and in his oral evidence at the TPV interview, the applicant stated that he transferred ownership of his [business] to a business competitor, [Mr A], a member of the Madhi Army, following threats of harm.
18. The discrepancy in his evidence was put to the applicant during the TPV interview and in writing after the interview. At the interview, the applicant stated that he was confused at the arrival interview; he didn't provide accurate details; and believed he would simply be given asylum on the basis of the conditions in his home country. In a written submission to DIBP the applicant's representative indicated, in part, that: little time was given to the applicant's protection claims; he made once mistaken reference to the Dawa party; there was a misunderstanding about his relationship with the business competitor; the applicant's evidence was interrupted; he was not asked about the agents of persecution; and he has since had an opportunity to provide a full account of his claims.
19. I have listened to the recording of the arrival interview. Contrary to the submissions made by the applicant's representative, the recording does not support that the applicant was interrupted in giving evidence on this particular matter. Rather, the DIBP officer provided the applicant with several opportunities to identify the reasons he left Iraq and state why he feared harm on return. However, I acknowledge that the applicant's protection claims were not the focus of the interview. I also note that there are similarities in the claims made at both stages of the process. I am prepared to give the applicant the benefit of the doubt and accept his contentions that he did not provide accurate information at the arrival interview as he believed he would be given protection on the basis of the circumstances in his home country. I accept the account provided in the TPV application represents the applicant's protection visa claims and place no adverse weight on the different account he gave in the arrival interview.

⁶ [Information deleted].

20. The applicant provided detailed oral evidence at the TPV interview regarding the threats he received from [Mr A] and the Mahdi Army, and regarding the pressure placed on him to hand over his business. The applicant explained that both he and [Mr A] had [businesses] in the same area; that [Mr A]'s [business] was smaller; and he became jealous with the expansion and success of the applicant's [business]. [Mr A] wanted to obtain the income from the applicant's [business], but also to use the larger space to meet with fellow members of the Madhi Army. The applicant's oral evidence on these matters was consistent throughout the TPV interview, and was also consistent with his written statement.
21. Information is that the Madhi Army was one of the most powerful Shia militias after the invasion of Iraq in 2003.⁷ The organisation disbanded in 2008 but was officially revived in June 2014 with the establishment of the Saraya al-Salam (the Peace Brigades).⁸ While on one view this suggests the Madhi Army were not active at the time the applicant claimed to have been threatened, there is some information that the Madhi Army in fact reorganised as early as 2010 and would have been operational at the relevant time.⁹ Further, information also supports that two splinter organisations or 'offshoots' of the Madhi Army, the Asa'ib Ahl al-Haq (the AAH or League of the Righteous) and the Kata'ib Hizbullah (Hizbullah Brigades) were established in approximately 2005 and 2007 respectively and were active in the period the applicant claimed to have been threatened.¹⁰ The AAH is considered the most powerful Shia militia operating in Al-Muthanna province¹¹ and given its membership includes many former prominent members of the Madhi Army,¹² I accept as plausible that activities of the AAH would be associated with that organisation. Country information supports that Shia militias, including the Madhi Army and the AAH, are known to engage in criminal acts, such as extortion, as means of raising funds to support their militia activities.¹³ Overall, I consider the applicant's evidence is consistent with this information.
22. Having regard to the applicant's evidence regarding the threats he received, and to country information, I accept that he was in competition with [Mr A] who was a member of a Shia militia, considered by the applicant to be the Madhi Army. I accept that [Mr A] wanted control of the applicant's [business], and that in April or May 2012 he and other members of the militia threatened to harm the applicant if he did not transfer ownership of the [business] to them. I accept that in order to facilitate the transfer of the business, they accused the applicant of collaborating with coalition forces and of working with the enemy of God, due to his past work with [overseas] [company]. I also accept that the applicant did transfer ownership of the [business] to [Mr A] in July 2012 as a result of the threats.

⁷ Amnesty International, "Absolute Impunity Militia Rule in Iraq", 14 October 2014, CIS2F827D91404, p.17.

⁸ Ibid.

⁹ Mapping Militant Organizations Project; Stanford University, "Mahdi Army", 1 February 2012, CIS23026, p. 2

¹⁰ Ibid; ORSAM- Centre for Middle Eastern Strategic Studies (ORSAM), "A New Controversial Actor in Post-ISIS Iraq: Al-Hashd Al-Shaabi (the Popular Mobilisation Forces)", 1 May 2015, CISEC96CF13198, p.15; and Special Inspector General for Iraq Reconstruction, "Quarterly Report to the United States Congress", 1 October 2011, CIS21828, p.56.

¹¹ ORSAM, "A New Controversial Actor in Post-ISIS Iraq: Al-Hashd Al-Shaabi (the Popular Mobilisation Forces)", 1 May 2015, CISEC96CF13198, p.13 and 15;

¹² Ibid p.15; and Amnesty International, "Absolute Impunity Militia Rule in Iraq", 14 October 2014, CIS2F827D91404, p.17.

¹³ DFAT, DFAT Country Report Iraq", 13 February 2015, CISEC96CF1160 at [2.30] and [2.36]-[2.38]; and Amnesty International, "Absolute Impunity Militia Rule in Iraq", 14 October 2014, CIS2F827D91404; ORSAM, "A New Controversial Actor in Post-ISIS Iraq: Al-Hashd Al-Shaabi (the Popular Mobilisation Forces)", 1 May 2015, CISEC96CF13198, p.15; Special Inspector General for Iraq Reconstruction, "Quarterly Report to the United States Congress", 1 October 2011, CIS21828, 56; and Mapping Militant Organizations Project; Stanford University, "Mahdi Army", 1 February 2012, CIS23026, p. 1-3.

Asylum seeker/returnee from a western country

23. I accept on the evidence before me that the applicant would be returning to Iraq as a failed asylum seeker/returnee from a western country.

Refugee assessment

24. 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

25. 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.

Stateless Bidoon

26. I have accepted the applicant was born in Kuwait, that he was a stateless Bidoon and that he moved to Iraq in 1993. The applicant has not indicated that he has been harmed in the past in Iraq for any reason associated with his birth in Kuwait or his former status as a stateless Bidoon. He has made no claims to fear harm on this basis in the future and he is now an Iraqi citizen. I am not satisfied that he faces a real chance of any harm for this reason if he return to Iraq now or in the reasonably foreseeable future.

Detention in Kuwait

27. I have accepted that the applicant was detained by the Iraqi Army during the occupation of Kuwait, for a period of approximately eight months between December 1990 and 1991. The applicant stated that following his release from detention he returned to his family home in Kuwait. The applicant’s evidence was that, at that time, the Iraqi Army detained anyone they considered suspicious. However, he and his family went to Iraq in 1993 and the applicant has since obtained Iraqi citizenship. The applicant’s evidence was that he resided in [City 1], Al-Muthanna province in Iraq from 1993 until 2012 and he has not claimed to have been harmed

by the Iraqi Army or anyone else during that time as a result of his detention in Kuwait. I note that more than 25 years have now passed since his detention and that the applicant has not claimed to fear any harm for this reason in the future. Having regard to these matters cumulatively, I am not satisfied that the applicant faces a real chance of any harm on the basis of his detention in Kuwait if he returns to Iraq now or in the reasonably foreseeable future.

Ethnicity and Religion

28. I have accepted the applicant is a Shia Muslim of Arab ethnicity. The applicant has not claimed that he was harmed in the past due to his ethnicity or on the basis of being a Shia Muslim and nor has he claimed to fear harm for these reasons in the future. The applicant gave oral evidence at the TPV interview that his home area of [City 1] in Al-Muthanna is safe in comparison to other areas of the country. This evidence is consistent with country information that discrimination against Shias in areas under government control is rare; that Shias in Shia dominated areas of southern Iraq are at a low risk of violence; and that Al-Muthanna, a predominately Shia area, is under the control of the Iraqi Government.¹⁴ On the basis of the applicant's own claims and evidence, and having regard to relevant country information which supports his claims, I am not satisfied that the applicant faces a real chance of harm on the basis of his ethnicity or religion if he returns to [City 1], Al-Muthanna province in Iraq now or in the reasonably foreseeable future.

Harm from Tribes due to work with [company]

29. I have accepted that the applicant worked with [overseas] [company] between January and November 2004. The applicant claimed that he overheard members of the Tribes making comments that he was an infidel because he worked for this company. However, the applicant's his oral evidence was that he was never directly threatened by the Tribes, or subjected to any harm from them as a result of his work with [company], either during the time he was working for that company or in the years since his work ceased. He has not been employed with this company for over 11 years and the applicant's evidence is that the [Coalition] withdrew from Iraq in [year]. He has not claimed to fear harm from the Tribes on this basis in the future. Having regard to these matters, I am not satisfied that the applicant faces a real chance of any harm from the Tribes on the basis of his previous work with [company] if he returns to Iraq now or in the reasonably foreseeable future.

Harm from Shia militias

30. I have accepted that in July 2012 the applicant transferred ownership of his business to [Mr A], a member of a Shia militia, considered by the applicant to be the Madhi Army, following threats of harm. However, I need to consider whether he faces a real chance of harm on return to Iraq now or in the reasonably foreseeable future.

31. Information is that Shia militia groups are currently fighting alongside Iraq Security Forces (ISF) and are armed and backed by the Government of Iraq.¹⁵ These groups operate with varying

¹⁴ DFAT, "DFAT Country Report Iraq", 13 February 2015, CISEC96CF1160, at [2.26] and [3.47]; UK Home Office, "Security situation in Baghdad, southern governorates and the Kurdistan Region of Iraq (KRI)", UK Home Office, 1 April 2015, OG8F59D8D14 at [2.6.43]; and USA: Embassy of the United States Iraq, "Snapshot of Muthanna: Poor, Peaceful, and Traditional", 14 March 2006, CXEDA282422832.

¹⁵ Amnesty International, "Absolute Impunity: Militia Rule in Iraq", 14 October 2014, CIS2F827D91404, p.4 and 17-18; DFAT, "DFAT Country Report Iraq", 13 February 2015, CISEC96CF1160, at [2.36] –[2.38]; and ORSAM, "A New Controversial Actor in Post-ISIS Iraq: Al-Hashd Al-Shaabi (the Popular Mobilisation Forces)", 1 May 2015, CISEC96CF13198, p.7-12.

degrees of Government co-operation, ranging from tacit consent to co-ordinated or joint operations.¹⁶ As noted above, the Madhi Army were officially revived in 2014, as the Saraya al-Salam, and are now active in central and southern Iraq.¹⁷ Further, the AAH is a dominant militia in the applicant's home area of Al-Muthanna.¹⁸ Armed Shia militias, including the Madhi Army and the AAH, are known to engage in criminal activities, including extortion, as means of raising funds to support their activities and their targets include businessmen, merchants and professionals.¹⁹ There is some information that Shia Muslims have been the victims of such activities, particularly in and around Baghdad, with reference to Shias being kidnapped and released on payment of ransom.²⁰

32. However, recent information, postdating the applicant's departure from Iraq, indicates that Shia militias currently predominately target Sunni Muslims, or sometimes Christians and Kurds for extortion and other types of harm.²¹ For example, a 2014 Amnesty International report notes that the Shia militias 'mostly kidnap Sunni's because the victims can be easily labelled as terrorists' and 'nobody is going to do anything about it'.²² Relevantly, recent information also supports that Sunnis and Kurds are predominately the targets of Shia militia activity in the south of Iraq.²³ I note that recent reports do not cite any specific examples of the targeting of Shia Muslims by Shia militia in the south of Iraq.²⁴ The DFAT has further advised that Shias in Shia dominated areas of southern Iraq, are at a low risk of generalised violence.²⁵ As noted above, Shia is the majority religion in the applicant's home area of [City 1].²⁶

33. In his written statement to the DIBP the applicant claimed that his work with [company] led to the Madhi Army and [Mr A] accusing him of being a collaborator with collusion forces. In the IAA submission, his representative contended they also targeted the applicant because he was perceived to be opposed to Islam as the [Country] do not believe in God. I have accepted above that these accusations were made to the applicant to facilitate the transfer of the

¹⁶ Amnesty International, "Absolute Impunity: Militia Rule in Iraq", 14 October 2014, CIS2F827D91404, p.4.

¹⁷ Ibid, p. 17; and ORSAM, "A New Controversial Actor in Post-ISIS Iraq: Al- Hashd Al-Shaabi (the Popular Mobilisation Forces)", 1 May 2015, CISEC96CF13198, p.15 and 16.

¹⁸ ORSAM, "A New Controversial Actor in Post-ISIS Iraq: Al- Hashd Al-Shaabi (the Popular Mobilisation Forces)", 1 May 2015, CISEC96CF13198, p.13 and 15.

¹⁹ DFAT, "DFAT Country Report Iraq", 13 February 2015, CISEC96CF1160 at [2.30] and [2.36]-[2.38]; Amnesty International, "Absolute Impunity Militia Rule in Iraq", 14 October 2014, CIS2F827D91404; ORSAM, "A New Controversial Actor in Post-ISIS Iraq: Al- Hashd Al-Shaabi (the Popular Mobilisation Forces)", 1 May 2015, CISEC96CF13198, p.15; and Special Inspector General for Iraq Reconstruction, "Quarterly Report to the United States Congress", 1 October 2011 CIS21828, 56; UK Home Office, "Security situation in Baghdad, southern governorates and the Kurdistan Region of Iraq (KRI)", 1 April 2015, OG8F59D8D14 at [2.6.47]; and Mapping Militant Organizations Project; Stanford University, "Mahdi Army", 1 February 2012, CIS23026, p. 1-4.

²⁰ Amnesty International, "Absolute Impunity: Militia Rule in Iraq", 14 October 2014, CIS2F827D91404, p.9; and Institute for the Study of War, "Iraq's sectarian crisis reignites as Shi'a militias execute civilians and remobilize", 1 May 2013, CIS27053, p.5.

²¹ Amnesty International, "Absolute Impunity: Militia Rule in Iraq", 14 October 2014, CIS2F827D91404, p7-9; UK Home Office, "Security situation in Baghdad, southern governorates and the Kurdistan Region of Iraq (KRI)", 1 April 2015, OG8F59D8D14 at [2.6.49]; and DFAT, "DFAT Country Report Iraq", 13 February 2015, CISEC96CF1160, at [2.38] and [3.45]-[3.55].

²² Amnesty International, "Absolute Impunity: Militia Rule in Iraq", 14 October 2014, CIS2F827D91404, p.9.

²³ UK Home Office, "Security situation in Baghdad, southern governorates and the Kurdistan Region of Iraq (KRI)", 1 April 2015, OG8F59D8D14, [2.6.49]-[2.6.52]; DFAT, "DFAT Country Report Iraq", 13 February 2015, CISEC96CF1160, at [3.55].

²⁴ UK Home Office, "Security situation in Baghdad, southern governorates and the Kurdistan Region of Iraq (KRI)", 1 April 2015, OG8F59D8D14, [2.6.49]-[2.6.52]; Amnesty International, "Absolute Impunity: Militia Rule in Iraq", 14 October 2014, CIS2F827D91404; and DFAT, "DFAT Country Report Iraq", 13 February 2015, CISEC96CF1160 at [2.30], [2.36]-[2.38] and [3.45]-[3.55].

²⁵ DFAT, "DFAT Country Report Iraq", 13 February 2015, CISEC96CF1160, at [3.47].

²⁶ Ibid, at [2.8] and [3.44]; UK Home Office, "Security situation in Baghdad, southern governorates and the Kurdistan Region of Iraq (KRI)", 1 April 2015, OG8F59D8D14 at [1.3.28; and United States of America (USA): Embassy of the United States Iraq, "Snapshot of Muthanna: Poor, Peaceful, and Traditional", 14 March 2006, CXEDA282422832.

business. However, on the applicant's own evidence at the TPV interview, the militia members merely used his work with [company] as an excuse to justify their extortion demands. The reason he was targeted was because his business was in direct competition with [Mr A]'s [business]. The applicant stated they were 'greedy', wanted the income from his [business], and to remove him as a business competitor to [Mr A]. On the applicant's evidence, I do not accept that [Mr A] and the militia organisation sought to harm the applicant because he was perceived to be a collaborator with coalition forces or because he was perceived to be opposed to Islam as a result of his work for [company]. I also note that he has not worked for this organisation for over 11 years, on his own evidence, the [Coalition] have withdrawn from Iraq, and the applicant has made no claims he would attempt to seek work with coalition forces in the future.

34. Over three years have now passed since the applicant transferred ownership of his [business] to [Mr A]. I note that the applicant has not claimed that he or his family, who remain in Al-Muthanna province, have received threats, for any reason, from [Mr A] or the Shia militia group after July 2012. This indicates that having transferred the business to [Mr A], the applicant is of no further interest to [Mr A] or the Shia militia group for any reason, including for his previous work with [company]. At the TPV interview the applicant contended that if he returned to [City 1], [Mr A] and the militia might be concerned that he would attempt to take the [business] back. Case law confirms that a real chance of harm must be something more than remote or speculative.²⁷ The applicant has not claimed that he would attempt to get his [business] back and I find that any harm to the applicant on this particular basis, including a perception he would take his [business] back, is speculative.
35. The applicant has not indicated that he will open up another business on return to [City 1]. However, even if he were to do so, recent country information set out above indicates that Sunni Muslims and other minorities are now predominately the targets for extortion and harm, including in the south of Iraq. The applicant, a Shia Muslim, does not fall within this profile. The representative has submitted that as a previous victim of the Madhi Army, the applicant is more likely to be targeted again in the future; however, this contention is not supported by this country information and I do not accept this is the case in the applicant's circumstances.
36. Considering the evidence as a whole, including that: the applicant was targeted because his business was in direct competition with [Mr A] who was a member of a Shia militia; he has since transferred that business to [Mr A]; he has not claimed he would attempt to take back his business or open another similar store; he ceased work with [company] over 11 years ago; he has not claimed that he would seek further work with coalition forces; country information indicates Shia militias predominately target Sunni Muslims and other minority groups for extortion and harm; and that Shia's in Shia dominated areas of the south are at a low risk of generalised violence, I consider that any chance of further harm to the applicant from [Mr A] or Shia militias, including the Madhi Army, in [City 1] for any reason, including his previous work with [company] or due to perceived wealth, is remote. I am not satisfied that the applicant faces a real chance of harm from [Mr A], Shia militias or anyone else, if he returns to [City 1], Al-Muthanna province in Iraq, now or in the reasonably foreseeable future.

Failed asylum seeker/returnee from a western country

37. I have accepted above that the applicant would return to Iraq as a failed asylum seeker/returnee from a western country.

²⁷ *Chan v MIEA* (1989) 169 CLR 379; and *MIEA v Guo* (1997) 191 CLR 559.

38. Authoritative information from DFAT states that many Iraqis who had sought asylum overseas, have returned to southern Iraq and been able to obtain employment in the Government and public sector at senior and middle level jobs.²⁸ The Iraqi Government provides financial incentives for asylum seekers to return and returnees are said to have good prospects.²⁹ There are reports of approximately 100 failed asylum seekers having returned from Australia to southern Iraq, with no evidence they have experienced any problems.³⁰ Further, the information indicates that a number of people have voluntarily returning to Iraq from the US, Europe and Australia with no suggestion that they face problems or are unable to assimilate back into their communities.³¹ Rather, the practice of seeking asylum then returned home appears accepted among Iraqis.³² Having regard to this information, I am not satisfied that the applicant faces a real chance of harm for any reason as failed asylum seeker/returnee from a western country, including on the basis of an imputed political opinion, if he returns to Iraq now or in the reasonably foreseeable future.
39. I have had regard to the applicant's cumulative profile and circumstances, including that: he was born in Kuwait as a stateless Bidoon; he was detained for approximately 8 months in Kuwait by the Iraqi army; he is a Shia Muslim Arab from [City 1]; he has previously worked for a [overseas company]; he has previously been threatened by members of a Shia militia; and is a failed asylum seeker/returnee from a western country. Even on the applicant's cumulative circumstances I am not satisfied that he faces a real chance of harm if he returns to [City 1], Al-Muthanna province in Iraq now or in the reasonably foreseeable future. He does not have a well-founded fear of persecution and information indicates that the south of Iraq remains comparatively secure; and that Shia Muslims face a low risk of generalised violence in the south of Iraq, including Basra, from which he can return to his home area.³³

Refugee: conclusion

40. I note that at the TPV interview, the applicant was provided with several opportunities to put forward his protection claims. He confirmed that he had no other basis for fearing harm on return to Iraq. He relied on the claims in the written statement and those put forward in the TPV interview. No new claims were included in the submission to the IAA.
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.

²⁸ DFAT, "DFAT Country Report Iraq", 13 February 2015, CISEC96CF1160, at [5.25].

²⁹ Ibid.

³⁰ Ibid.

³¹ Ibid at [5.27].

³² Ibid.

³³ UK Home Office, "Security situation in Baghdad, southern governorates and the Kurdistan Region of Iraq (KRI)", 1 April 2015, OG8F59D8D14 at [1.3.29] and [2.6.43]-[2.6.53]. and DFAT, "DFAT Country Information Report Iraq", 15 February 2015, CISEC96CF1160 at [5.21].

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; or
 - 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.
44. I have accepted the applicant was born in Kuwait and that he resided there until 1993 as a stateless Bidoon. The applicant has not claimed to have been harmed in the past for this reason, and nor has he claimed he would be so harmed in the future. The evidence is that is now an Iraqi citizen. For these reasons, I am not satisfied that he faces a real risk of harm for this reason on return to Iraq for the purpose of s.36(2)(aa) of the Act.
45. I have accepted above that the applicant was detained in by the Iraqi Army in Kuwait between 1990 and 1991. The applicant's evidence was that, at that time, the Iraqi Army detained anyone they considered suspicious. However, the applicant returned to Iraq in 1993, obtained Iraqi citizenship, and resided there until 2012. He made no claims to have been harmed in Iraq by the Iraqi Army or anyone else on the basis of his detention in Kuwait. Over 25 years has now passed since he was detained and he has not claimed to fear harm on this basis in the future. Having regard to these matters cumulatively, I am not satisfied the applicant faces a real risk of any harm for this reason if he returns to Iraq in the future.
46. I found above that I am not satisfied the applicant faces a real chance of harm on the basis of his ethnicity or religion if he returns to [City 1], Al-Muthanna province in Iraq now or in the reasonably foreseeable future. Nor am I satisfied that he faces a real chance of any harm from the Tribes due to his previous work with [overseas] [company]. The Federal Court has confirmed that 'real chance' and 'real risk' involve the same standard.³⁴ For the same reasons set out above, I am not satisfied that the applicant's Arab ethnicity and Shia Muslim religion give rise to a real risk of harm for the purpose of s.36(2)(aa). Nor am I satisfied, for the same reasons set out above, that the applicant faces a real risk of harm from the Tribes due to his past employment with [company].
47. I have accepted that the applicant was threatened in the past by [Mr A] and members of a Shia militia, whom the applicant considered to be the Madhi Army. However, on the applicant's evidence and accepted circumstances and having regard to relevant country information I found above that he does not face a real chance of harm from [Mr A], Shia militias, including the Madhi Army, or anyone else, for any reason, including for his past employment with [overseas] [company] or on the basis of perceived wealth. I have found this to be the case, even if he were to return to [City 1] and open up another business. I similarly find, for the same reasons, that he does not face a real risk of harm from [Mr A], Shia militias or anyone else for the purpose of s.36(2)(aa) of the Act.
48. The applicant will return to Iraq as a failed asylum seeker/returnee from a western country. Having regard to authoritative information from DFAT, I have found that the applicant does not

³⁴ *MIAC v SZQRB* (2013) 210 FCR 505.

face a real chance of harm for this reason, including on the basis of an imputed political opinion, if he returns to Iraq. For the same reasons set out above, I also find that he does not have a real risk of harm for reasons of being a failed asylum seeker/returnee from a western country for the purpose of s.36(2)(aa) of the Act.

49. I have had regard to the applicant's cumulative circumstances and profile and am not satisfied that he faces a real risk of harm if he returns to [City 1], Al-Muthanna in Iraq, for the purpose of s.36(2)(aa) of the Act. Information indicates that the south of Iraq remains comparatively secure; and that Shia Muslims face a low risk of generalised violence in the south of Iraq, including Basra, from which he can return to his home area.³⁵

Complementary protection: conclusion

50. The applicant has not claimed to fear harm for any other reason on return to Iraq.
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

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

³⁵ UK Home Office, "Security situation in Baghdad, southern governorates and the Kurdistan Region of Iraq (KRI)", 1 April 2015, OG8F59D8D14 at [1.3.29] and [2.6.43]-[2.6.53] and DFAT, "DFAT Country Information Report Iraq", 15 February 2015, CISEC96CF1160 at [5.21].

Applicable law

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.

...