



Australian Government
Immigration Assessment Authority

Decision and Reasons

Referred application

IRAQ
IAA reference: IAA19/06544

Date and time of decision: 27 May 2019 09:53:00
M Currie, 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 an Iraqi citizen of Bidoon ethnicity and an adherent of the Sunni faith. He arrived in Australia in November 2012 and lodged an application for a Temporary Protection Visa (TPV) in October 2016. In April 2019, a delegate of the Minister for Immigration and Border Protection found that Australia did not owe protection obligations to the Applicant. On 10 April 2019, the applicant's matter was referred to the Immigration Assessment Authority (IAA).

Information before the IAA

2. I have had regard to the material given by the Secretary under s.473CB of the *Migration Act 1958* (the Act).
3. I note that on 9 May 2019, a migration agent acting on behalf of the applicant sent a submission to the IAA on his behalf. The submission argued against the findings of the delegate. I have had regard to the arguments presented in the submission.
4. I note that the submission put forward a claim that the applicant feared to return to Iraq because of his religion which he had not advanced previously; he now says that as he is a Sunni, he would be prevented from practicing his faith because in his area (Southern Iraq) since the majority of people in Southern Iraq where he lived are Shia. This claim was not before the delegate. It is new information.
5. During his March 2019 Protection Visa Interview, the Delegate had questioned the Applicant about his religion. He did not voice any claims along these lines during the interview; rather he indicated that he was not particularly religious person and had not been a faithful practitioner of his religion in Australia or earlier, in Iraq or Kuwait. He did not voice any religious claims during the interview. He had not made any other claims about religion during the almost three years since he had submitted his Protection Visa application. Given that only two months had passed since the Protection Visa Interview, and the applicant indicated that he was a non-practising Muslim, I am not persuaded that this new claim has been advanced in good faith. I am not satisfied that the new information is credible personal information in the relevant sense. Furthermore, as he was explicitly asked about his religion in the interview, and failed to advance this new claim at that time, I am not persuaded that the claim could not have been provided prior to the date of the s.65 decision. As neither limb of s.473DD(b) is met, I must not consider the new information.

Applicant's claims for protection

6. The applicant's claims can be summarised as follows:
 - The applicant is an Iraqi citizen of Bidoon ethnicity. He was born in Kuwait and was 'stateless' for much of his early life. Around 1992 as a consequence of the first Gulf War, his family, and many other Bidoon were forced to return to Iraq from Kuwait. After his family's return to Iraq, the applicant's Iraqi Citizenship was recognised. Thereafter he and his family lived in Iraq.
 - As Bidoon's, they suffered routine harassment and discrimination in Iraq.

- The applicant was married in Iraq and he has a number of children. He resided in the Southern town of [City 1]. Around 2005, the applicant was employed by a [company] as a [Occupation 1]. As a consequence, he was granted a residency visa in Kuwait and moved to live in Kuwait. His wife and children continued to live in Iraq in his house in [City 1].
- The applicant's role was to [details deleted]. The applicant was employed in this role from 2005, until 2012, when he came to Australia. His wage was around [a certain amount] per month. He rented an apartment in Kuwait.
- Around April 2012, the applicant was approached by a man who offered him [a sum of money] to [undertake a certain task]. He successfully passed on the envelope to the intended recipient. About one week later, the man paid him [a sum of money] to [undertake a certain task] which he also did.
- After another week, the man confided to the applicant that he was a member of the Hezbollah organisation, and attempted to recruit the [applicant]. They offered to pay him [a certain amount of money] per month for the work and indicated that he would be able to continue in his current role and continue to receive his normal wages.
- The applicant indicated that he was not a political person and did not wish to engage in political activity. He declined to join Hezbollah. He was told that he would be given some time to reconsider, and was threatened that if he did not work for Hezbollah, he would be killed. The next day the man contacted him and again, he again declined to participate.
- Fearing for his life, the applicant immediately sought leave from his employer and went into hiding in his Kuwaiti apartment for 20 days, only going outside to shop for essentials and to book travel back to Iraq. [In] May 2012, he departed Kuwait by bus, and made his way back to his family in [City 1]. After his successful return home, his brother came to visit him, and they discussed these events. As his brother departed his house, he was shot. The applicant believes his brother was killed by accident, and that this was an attempt by Hezbollah to kill him.
- Fearing for his life the applicant again went into hiding. He stayed in the homes of his extended family. He made arrangements to depart Iraq. [In] July 2012 he flew from [an] airport to [Country 1], where he made his way to [Country 2] and then to Australia.
- The applicant fears that if he returns to Iraq, he would be targeted by Hezbollah and killed.
- He also fears that as a Bidoon, he would face routine harassment and discrimination in Iraq.

Factual findings

7. As part of his TPV Application, the applicant has provided a number of documents in order to establish his identity. This includes copies of documents from Iraq, and Kuwait including his Certificate of Iraqi Citizenship his name and an accredited translation; his original Iraqi National Identity (ID) Card in his name and an accredited translation; a copy of the Biodata page from his expired Iraqi Passport and his original Kuwaiti Drivers Licence which was issued to him after he commenced his employment.
8. I note that there are some discrepancies between the names on his documents. The applicant has explained that this occurred due to the inclusion of his Tribal name on some documents,

and its omission from others. There are also some differences in other key information. For example, some documents list his date of birth as occurring in [year], and other's as occurring in [a different year]. Some documents suggest he was born in Kuwait, other documents that he was born in Iraq. The applicant has indicated that these discrepancies are due to his birth in Kuwait, for which he has no accurate records, and a decision by unspecified officials who assigned him a birthdate based upon his appearance when he first arrived in Iraq. I have some doubts about this final explanation, but on the whole I observe that the applicant has been consistent in the explanations for the identity information he has provided to Australian authorities and he has established his identity to my satisfaction. I accept that he is an Iraqi Citizen as claimed. I accept that he is of Bidoon ethnicity. For the purposes of this decision, I find that Iraq is his receiving country.

Early life and Employment

9. The applicant claims that he was born in Kuwait and that he lived there until around 1992 when he, his family, and many other Iraqi Bidoon's, were expelled from Kuwait as a result of the first Gulf War. With his family the applicant returned to Iraq and was formally recognised an Iraqi citizen. Thereafter he and his family lived in Southern Iraq.
10. The applicant is married and has [a number of] children. The eldest was born in [year], and the last born in [year].
11. Around 2003 the applicant found employment with a [company] as a [Occupation 1]. He was employed to [undertake a specific duty]. As part of this role, the applicant was granted a visa to live in Kuwait. He was paid approximately [an amount] per month in this role and he rented an apartment in Kuwait this purpose, thereafter he principally resided in Kuwait. While he was employed in Kuwait, his Wife and children continued to live in the family home in [City 1]. The applicant would visit his family in Iraq when he could. During his period of employment, the applicant would routinely make informal arrangements with other parties to [undertake a certain duty]. This allowed him to top up his income and was a routine feature of his life as a [Occupation 1].
12. Country information before me does indicate that the Bidoons are a large stateless population in southern Iraq and Kuwait and that, historically, they were not granted citizenship in either country¹. Furthermore, around the time of the first Gulf War a large number of Bidoon's were expelled from Kuwait; largely because they were seen as unreliable by the Kuwaiti Government². After the war, the Government of Iraq granted citizenship to thousands of Bidoon at this time³.
13. I accept that the applicant lived the early part of his live in Kuwait. I accept that he returned to Iraq around 1992 and claimed and was granted citizenship. I accept that the applicant is married and has children who continue to reside in Iraq. I accept that around 2005 he was employed by a Kuwaiti Company as a [Occupation 1] and that he lived in Kuwait legally between 2005 and 2012. I accept that he routinely topped up his income by [undertaking a certain duty].

¹ Department of Foreign Affairs and Trade (DFAT), 'Country Information Report Iraq', 9 October 2018, CIS7B839419766

² Human Rights Watch (HRW), 'The Bedoons of Kuwait - Citizens without citizenship', 01 August 1995, CX81D00503804

³ DFAT, 'Country Information Report Iraq', 9 October 2018, CIS7B839419766

Hezbollah & the death of his Brother

14. The applicant claims that around April 2012, while the applicant was at a Iraqi Customs checkpoint, he was approached by a man who asked him to [undertake a certain task]. [Details deleted]. The applicant was advised to call the number once he returned to Kuwait and a man would [come]. He was paid [a certain amount of money] for this service. The applicant successfully [completed the task].
15. Around a week later, the same man asked him to perform a similar [task]. This time the applicant was paid [an amount of money] for his work. Again, the applicant successfully [completed the task].
16. Around six after he [completed the task] the applicant was approached by the man a third time, while he was present at an Iraqi Customs checkpoint. This time the man was accompanied by a second man. They took the applicant to a quiet area and disclosed to him that they were in fact, members of Hezbollah and that they were happy with his [performance]. The applicant was offered [a sum of money] a month to join Hezbollah and advised that he could also keep his normal wage ([amount]). Though no specifics were discussed, the applicant inferred the men wanted him to [carry out a certain task]. He was nervous and indicated to the Hezbollah men that he was not involved in politics and did not wish to become involved. The men told him that he should reconsider and said that they would give him some time to think about his decision. The next day a man phoned the applicant at his apartment in Kuwait and asked him if he had decided to work for Hezbollah. The applicant again expressed his objections and declined, whereupon the man threatened to kill him.
17. The applicant became fearful. He contacted his employer and took a leave of absence from work. He went into hiding at the apartment and only came out to shop for essentials. He stayed in hiding in the apartment for 20 days. [In] May 2012, the applicant travelled back to Iraq [leaving] his car and other possessions behind in Kuwait. He says he never returned.
18. After arriving at his family home in [City 1] the applicant was visited by one of his brothers (B1). The applicant explained what had occurred to B1 and they discussed the issues at length. B1 advised the applicant that he should leave Iraq. That evening, as B1 was leaving the applicants house, he was shot and killed. The applicant believes that B1 was shot by Hezbollah, in error, since he and B1 looked similar and it was dark. He thinks that Hezbollah had intended to kill him. After the shooting of B1, the applicant and another brother reported the matter to Police.
19. At this time, the applicant went into hiding. He felt he was under threat and stayed in the homes of various relatives. Whilst in hiding he made travel arrangements to depart Iraq. [In] July 2012, he flew from [the] Airport to [Country 1], from where he made his way to Australia. After his departure, his wife and children moved to the Iraqi city of [City 2], where her extended family resides and came under the protection of her uncles. His wife and the children are still in [City 2]. He says that his wife maintains regular contact with neighbours in [City 1], and that they continue to report strange cars in the area of his house. The applicant claims that this indicates that Hezbollah is still looking for him.
20. As evidence of his claims, the applicant has provided several documents (and translations) from the Iraqi Police which are said to relate to the death of B1 (the Police Documents). He has also provided a death certificate for B1 (and translation). These documents suggest that the applicant's brother was killed [in] May 2012, and that the applicant, and another brother (B2) reported the matter to police. The death certificate indicates that B1 had been shot.

21. I have reviewed the Police documents the applicant has provided, and there are some discrepancies between the account he provided at interview in 2019, and the account provided to the Police in 2012. Notably, in 2019 the applicant asserted that B1 had been killed after he had departed the applicant's home, and that the applicant did not witness the shooting, and that B2 had not been present, but lived nearby and came to the scene afterwards. However, the Police documents indicate that B1, B2 and the applicant had been sitting together outside the applicant's house when B1 was shot and that B2 and the applicant reported seeing two men run away. These discrepancies are significant, and lead me to doubt that the applicant has been entirely truthful about the death of his brother. I note that neither the Police documents nor the Death Certificate offer any support that Hezbollah was involved in the death of B1. Furthermore, I note that the name the applicant claims is his in the Police documents is not the name he provided to Australian authorities.
22. There is a larger problem with the applicant's account. As noted above, in the applicant's timeline he had spent 20 days in hiding before he returned to Iraq [in] May 2012, the day his brother was shot. He also indicates that the first, second and third meetings with the Hezbollah man occurred over a period of around two weeks immediately prior to his going into hiding. This would date his first interaction with Hezbollah (when he was paid [an amount of money]) to around mid-April 2012. In the applicant's Protection Visa Interview, the delegate confirmed the applicant's account of these events in some detail. The delegate also confirmed with the applicant that he had spoken to the UNHCR whilst he was in [Country 2] and the applicant confirmed that this was the case.
23. The delegate pointed out that when he first arrived in Australia, the applicant had provided Australian officials with a copy of a UNHCR document which recorded that the applicant had met with the UNHCR. The UNHCR document was issued [in] August 2012 and recorded the applicant's name, and contained a photograph of him. Crucially, the UNHCR document recorded that the applicant had entered [Country 2] [in] April 2012, casting doubt on the applicant's entire account of his interaction with Hezbollah. When presented with this information during his Protection Visa Interview and asked to comment by the delegate, the applicant was unable to provide any response. His migration agent, who was also present, did not explain the discrepancy and appeared unaware of it.
24. Later, in a post interview submission, the applicant's migration agent indicated that during the Protection Visa Interview, the applicant had forgotten about key elements of what had happened in 2012, due to his poor memory. Now he wished to explain that in fact, he had made two trips to [Country 2]. On the first trip, he had met with the UNHCR but upon finding that it would take years for him to be recognised as a refugee, he had returned to Iraq in early May 2012. Whereupon the events leading to the death of his brother had occurred. I found this revised account of the events of 2012 to be entirely unconvincing.
25. I note that no medical evidence has been provided to support any claims about the deficiency applicant's memory. I observe that during the more than two hours of Protection Visa Interview, the applicant did not appear to have any particular memory problems and his account of events in 2012 appeared unhindered. It was only after the delegate indicated that the UNHCR documents cast some doubt on his account that the applicant seemed to develop problems. More importantly, I also observe that if, as the applicant now claims, he returned to Iraq in early May, he could not have been present for the three interactions with Hezbollah which are central to his protection claims and which he has indicated lead to his own fears, and ultimately to the death of his brother. I conclude that the applicant has not been forthcoming about events in Iraq which led to his departure.

26. I have considered all of the information before me. I do not accept the applicant's revised claims. I do not accept that he made two trips to [Country 2]; rather I conclude he was in [Country 2] from [April] 2012. I do not accept that he ever had any interaction with Hezbollah. In light of his revised claims, I have many doubts about the applicant's account of his brother's death and I do not accept that he was present at the time; nevertheless, I am prepared to accept that the applicant's brother was shot in May 2012. However, having found that the applicant did not have any interactions with Hezbollah, I do not accept that Hezbollah was responsible for shooting his brother, or that the applicant was the actual target of the shooting and his brother was killed by mistake. I do not accept that Hezbollah is still looking for him, or that his neighbours continue to report interest in him. I conclude that the applicant has invented his entire 'Hezbollah' account in order to enhance his claims for protection. I do not accept that the applicant was ever known to, or of interest to Hezbollah. The applicant has not indicated that he was ever of interest to the Iraqi Government or any other agent of harm in Iraq. I conclude that he was never of interest to the Government or any other party. More broadly, I conclude that the applicant has demonstrated a clear willingness to distort or manufacture evidence in order to improve his chances of obtaining a protection visa.

Refugee assessment

27. 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

28. Under s.5J of the Act 'well-founded fear of persecution' involves a number of components which include that:

- the person fears persecution and there is a real chance that the person would be persecuted
- the real chance of persecution relates to all areas of the receiving country
- the persecution involves serious harm and systematic and discriminatory conduct
- the essential and significant reason (or reasons) for the persecution is race, religion, nationality, membership of a particular social group or political opinion
- the person does not have a well-founded fear of persecution if effective protection measures are available to the person, and
- the person does not have a well-founded fear of persecution if they could take reasonable steps to modify their behaviour, other than certain types of modification.

29. Prior to coming to Australia, the applicant lived in [City 1] in Southern Iraq. In his Protection Visa Interview, he indicated that he still owned his house in [City 1] and that though his wife and children currently reside with her extended family in [City 2], this was due to his absence in Australia. I conclude that if returned to Iraq, the applicant would return and reside in his own home in [City 1], in Southern Iraq.

Non-practising Muslim Bidoon from the South

30. I have accepted above that the applicant is a Bidoon. I note he has expressed fears of facing harassment and persecution as a Bidoon, if returned to Iraq. In his post interview submission to the Department, he indicates that he faced *“humiliation, discrimination and always being itemised as a foreigner because he is a Kuwaiti born and originally come from the Bidoons (Nomads)”*. In his submission to the IAA he says his *“ethnicity can be distinguished from factors such as his place of birth, his accent and even his background”* and that *“as a Bidoon he will face discrimination should he be forced to return to his home country”*. As a Bidoon he will also be *“forced to hide his ethnicity”*.
31. According to DFAT, Bidoon are a group of mostly stateless people who live in Iraq and Kuwait. The transliteration from Arabic ‘Bidoun’ is sometimes used but is not the same as ‘Bedouin’, who are a larger ethnic group of desert nomads found throughout the broader region. Bidoon is an Arabic word meaning ‘without’ and is a shortened form of ‘*Bidoon jinsiya*’, meaning ‘without nationality’⁴. In Iraq, most Bidoons live in the south, like the applicant. DFAT reporting indicates that after the first Gulf war large numbers of Bidoon travelled to Iraq from Kuwait like the applicant’s family. Approximately 47,000 of these Bidoons were granted citizenship and most continue to reside in the south of Iraq⁵. On the applicant’s own account, he and his family were granted citizenship at this time.
32. In the past DFAT reported that Bidoons do face some difficulties in accessing employment housing and services⁶. However, more recently DFAT has indicated that while some Bidoons do face problems in Iraq, but these problems are said to relate to Stateless Bidoons (who did not receive citizenship after the war), rather than those who did (like the applicant). According to the UNHCR, Bidoons who were granted citizenship are well integrated into to Iraqi society, and do not face discrimination⁷. I observe that, despite putting forward this claim, the applicant has only cited one specific example of the harassment he faced as Bidoon in Iraq, which was to indicate that a racial slur had been used against him in the past. I note that he made this claim, in passing, during the final minutes of his Protection Visa Interview after his principle claim had been cast into doubt by the issues outlined above, and did not elaborate further. He has not indicated any other specific instances of when his Bidoon ethnicity was a factor in any problems he in Iraq. Nor has he provided any examples of how Bidoon ethnicity has affected others including his wife, children, siblings or extended family. The has never indicated that he faced any discrimination in accessing employment housing and services and I note on his own evidence he was employed throughout his life in Iraq, and owns his own home in [City 2].
33. Iraq has been a location of conflict over the last two decades, since the American led invasion in 2003. Around 2006 what has been described as a ‘Sunni insurgency’ commenced in the years following the invasion and more recently the control of large sections of Iraq by Islamic State. However, the Islamic State was principally active in Western and Northern Iraq, not in the South where I have found the applicant would return⁸. Islamic State has since been defeated militarily and no longer holds any territory in Iraq⁹. While the group has demonstrated that it

⁴ DFAT, ‘Country Information Report Iraq’, 9 October 2018, CIS7B839419766

⁵ DFAT, ‘Country Information Report Iraq’, 9 October 2018, CIS7B839419766

⁶ DFAT, “DFAT Country Report – Iraq”, 13 February 2015, CISEC96CF1160

⁷ United Nations High Commission for Refugees (UNHCR), ‘Bidouns in Iraq’, Refugee Review Tribunal (RRT), 01 September 2010

⁸ Refugee Documentation Centre (Ireland), ‘Information on Thi/Dhi Qar region including: Militia groups operating in the area since 2014; The number of Shia~Sunni; & The number of terrorist incidents in recent years’, 08 March 2017, CISED50AD3662

⁹ DFAT, ‘Country Information Report Iraq’, 9 October 2018, CIS7B839419766

has the capacity to strike in other areas of the country, this is less common¹⁰. Overall, the security situation in Iraq has improved¹¹ and Iraq is now safer than at any previous time since 2003¹². Southern Iraq, including [City 1], is amongst the safest¹³ and most peaceful parts of the country¹⁴.

34. The applicant is a Sunni. Country information before me indicates that religious affiliate has been a source of tension in Iraq. Most of southern Iraq adheres to the Shia faith, rather than the Sunni branch of Islam¹⁵. However, I have noted above that the applicant indicated that while he lived in Iraq and Kuwait, he was not particularly faithful or devout adherent of the Sunni faith and did not attend Mosque regularly. He indicated that this did not cause him any particular problems in Iraq or Kuwait. He does not attend Mosque in Australia. I conclude he was a non-practicing Muslim. He has not put forward any religious claims (beyond the new claim I did not accept above). I conclude that if returned to Iraq, he would return as a non-practising Muslim and live as a non-practising Muslim as he had done previously. I am not satisfied that the applicant would face a real chance of harm arising from his status as a non-practicing Muslim in Iraq.
35. I have carefully considered the applicants claims, and profile. While I am prepared to accept that he suffered from racial slurs in the past, I am not satisfied that he would face a real chance of serious harm arising from his Bidoon ethnicity if returned to Iraq. Furthermore, while I acknowledge that there has been a high level of violence in Iraq in the past, I do not accept that that a person with his profile would be of interest to any particular agent of harm. The area to which I have found he would return is amongst the safest areas in Iraq and I am not satisfied that a person of his profile would face a real chance of harm arising from the general conditions in the country.

2014 Data Breach

36. The applicant claims that in 2014 he was subjected to the Departmental data breach. He fears that his data has been released and that he would face harm. The Department has advised all affected parties, including the applicant, that the information released during the 2014 data breach was not easily accessible, was only available for a short time and included the applicant's name, date of birth, gender, nationality and some details about their period of immigration detention in Australia. Affected applicants have also been advised that no information about any specific claims made by them was available during the breach. The data released during the breach is information that would be immediately apparent to Iranian authorities should the applicant be returned to Iraq (that is, information about his identity and that that he had sought asylum in Australia) and does not contain any information from which anti-Government activity by the applicant could be inferred. In these circumstances I am not satisfied that the applicant would face a real chance of any harm arising from the 2014 data breach or from his attempt to claim asylum in Australia if returned to Iraq. In the circumstances, I am also not persuaded that the Departments Data Breach would contribute to his political profile in Iraq.

¹⁰ 'Never Ending Story Of Extremism In Iraq', Niqash, 16 November 2017, CXC90406617713

¹¹ DFAT, 'Country Information Report Iraq', 9 October 2018, CIS7B839419766

¹² Musings on Iraq, 'Incidents and Casualties All Down In Iraq Dec 2017', 02 January 2018, CXBB8A1DA61

¹³ Musings on Iraq, 'Incidents and Casualties All Down In Iraq Dec 2017', 02 January 2018, CXBB8A1DA61

¹⁴ Refugee Documentation Centre (Ireland), 'Information on Thi/Dhi Qar region including: Militia groups operating in the area since 2014; The number of Shia~Sunni; & The number of terrorist incidents in recent years ', 08 March 2017, CISED50AD3662.

¹⁵ DFAT, 'Country Information Report Iraq', 9 October 2018, CIS7B839419766

Failed Asylum Seeker

37. According to DFAT, it is common for Iraqi's to seek asylum in foreign countries, and then to return to Iraq, and this is said to be an accepted practice in the Iraqi community¹⁶. Iraq has instituted a number of policies to make it more attractive for Iraqi's to return to their home country, including reinstatement of previous employment¹⁷. Returnees to Iraq are required to have valid documentation, or to obtain a *laissez-passer* from an Iraqi embassy or consulate. As the applicant's Passport has expired he would be required to obtain a *laissez-passer*, but this is not unduly burdensome. I note the applicant has a range of Iraqi identity documentation in his possession to facilitate obtaining a *laissez-passer*. There is no information before me that suggests that persons returning from overseas, after seeking asylum would face any specific risk in Iraq and DFAT reporting indicates that returnee's integrate smoothly¹⁸.

38. I have found above that the applicant was not of any interest to the authorities in Iraq, or any other group at the time of his departure. I have not accepted his principal claims. In my view, he would return to Iraq in similar circumstances to those when he departed. I am not satisfied that the applicant would face a real chance of harm for having attempted to claim asylum in Australia.

Refugee: conclusion

39. 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

40. 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

41. Under s.36(2A), a person will suffer 'significant harm' if:

- the person will be arbitrarily deprived of his or her life
- the death penalty will be carried out on the person
- the person will be subjected to torture
- the person will be subjected to cruel or inhuman treatment or punishment, or
- the person will be subjected to degrading treatment or punishment.

42. I have not accepted the applicant's principal claims for protection. However, I have accepted that in the past, the applicant experienced occasional racial slurs while living in Iraq. I accept he

¹⁶ DFAT, 'Country Information Report Iraq', 9 October 2018, CIS7B839419766 & DFAT, "DFAT Country Report – Iraq", 13 February 2015, CISEC96CF1160

¹⁷ DFAT, "DFAT Country Report – Iraq", 13 February 2015, CISEC96CF1160

¹⁸ DFAT, "DFAT Country Report – Iraq", 13 February 2015, CISEC96CF1160

would likely face such slurs again, if returned to Iraq. While I accept that any such slurs may be uncomfortable for the applicant I do not accept that they amount to torture, cruel or inhuman treatment or punishment, or degrading treatment or punishment as defined. I am not satisfied that such slurs would lead to him facing the death penalty or otherwise being arbitrarily deprived of his life.

43. I have otherwise found that the applicant would not face any real chance of harm arising from his attempt to claim asylum in Australia, the 2014 departmental data breach, his status as a non-practicing Muslim, his Bidoon ethnicity or residence in the south of Iraq. As 'real chance' and 'real risk' have been found to meet the same standard, it follows that I do not accept that the applicant would face a real risk of significant harm for any of these issues.

Complementary protection: conclusion

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

Decision

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

Applicable law

Migration Act 1958

5 (1) Interpretation

In this Act, unless the contrary intention appears:

...

bogus document, in relation to a person, means a document that the Minister reasonably suspects is a document that:

- (a) purports to have been, but was not, issued in respect of the person; or
- (b) is counterfeit or has been altered by a person who does not have authority to do so; or
- (c) was obtained because of a false or misleading statement, whether or not made knowingly

...

cruel or inhuman treatment or punishment means an act or omission by which:

- (a) severe pain or suffering, whether physical or mental, is intentionally inflicted on a person; or
- (b) pain or suffering, whether physical or mental, is intentionally inflicted on a person so long as, in all the circumstances, the act or omission could reasonably be regarded as cruel or inhuman in nature;

but does not include an act or omission:

- (c) that is not inconsistent with Article 7 of the Covenant; or
- (d) arising only from, inherent in or incidental to, lawful sanctions that are not inconsistent with the Articles of the Covenant.

...

degrading treatment or punishment means an act or omission that causes, and is intended to cause, extreme humiliation which is unreasonable, but does not include an act or omission:

- (a) that is not inconsistent with Article 7 of the Covenant; or
- (b) that causes, and is intended to cause, extreme humiliation arising only from, inherent in or incidental to, lawful sanctions that are not inconsistent with the Articles of the Covenant.

...

receiving country, in relation to a non-citizen, means:

- (a) a country of which the non-citizen is a national, to be determined solely by reference to the law of the relevant country; or
- (b) if the non-citizen has no country of nationality—a country of his or her former habitual residence, regardless of whether it would be possible to return the non-citizen to the country.

...

torture means an act or omission by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person:

- (a) for the purpose of obtaining from the person or from a third person information or a confession; or
- (b) for the purpose of punishing the person for an act which that person or a third person has committed or is suspected of having committed; or
- (c) for the purpose of intimidating or coercing the person or a third person; or
- (d) for a purpose related to a purpose mentioned in paragraph (a), (b) or (c); or
- (e) for any reason based on discrimination that is inconsistent with the Articles of the Covenant;

but does not include an act or omission arising only from, inherent in or incidental to, lawful sanctions that are not inconsistent with the Articles of the Covenant.

...

5H Meaning of refugee

(1) For the purposes of the application of this Act and the regulations to a particular person in Australia, the person is a refugee if the person:

- (a) in a case where the person has a nationality—is outside the country of his or her nationality and, owing to a well-founded fear of persecution, is unable or unwilling to avail himself or herself of the protection of that country; or
- (b) in a case where the person does not have a nationality—is outside the country of his or her former habitual residence and owing to a well-founded fear of persecution, is unable or unwilling to return to it.

Note: For the meaning of ***well-founded fear of persecution***, see section 5J.

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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.

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36 Protection visas – criteria provided for by this Act

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- (2) A criterion for a protection visa is that the applicant for the visa is:
 - (a) a non-citizen in Australia in respect of whom the Minister is satisfied Australia has protection obligations 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.

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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.