



**Australian Government**  

---

**Immigration Assessment Authority**

**Decision and Reasons**

**Referred application**

---

IRAQ

IAA reference: IAA19/06663

Date and time of decision: 23 July 2019 11:09:00

A Wilson, 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 Sunni Arab from Iraq. He arrived in Australia [in] September 2012. On 13 January 2016 he lodged an application for a temporary protection visa (TPV). On 12 October 2016 a delegate of the Minister for Immigration refused to grant the visa. On 31 January 2017 the Immigration Assessment Authority (IAA) affirmed the decision. [In] August 2018 the Federal Circuit Court set aside the IAA decision and remitted the matter for determination according to law. [In] May 2019 the Federal Court of Australia, on appeal from a Federal Circuit Court, dismissed the Minister's appeal from the primary judgment.
2. The delegate accepted that the applicant was a Sunni from [Governorate 1] who had been employed as a police officer; that he had received threatening phone calls; and that his brother, [Mr A], was killed when a bomb fitted to the applicant's car exploded in [2011]. However the delegate was not satisfied there was a real chance or real risk that the applicant would suffer harm because he was a Sunni or because he had worked as a police officer.

### Information before the IAA

3. I have had regard to the material given by the Secretary under s.473CB of the *Migration Act 1958* (the Act).
4. On 11 June 2019 the applicant's representative provided a submission to the IAA on the applicant's behalf (the IAA submission), that replaced an earlier submission to the IAA dated November 2016. Apart from the issues discussed below, the IAA submission restates some of the applicant's claims that were before the delegate, addresses the delegate's decision and issues arising and to that extent I regard it as argument rather than information and have considered it.
5. A number of documents were attached to the IAA submission. They included the Federal Circuit Court and Federal Court judgments relating to the applicant which I have considered. Also attached to the IAA submission was an affidavit dated 12 July 2018, made by the applicant's representative to the Federal Circuit Court, stating he speaks fluent Arabic and English, and providing an English translation of the applicant's brother's death certificate. In relation to the translation the representative submitted it indicates the death certificate contains the doctor's name, location and signature, and the cause of death found by the doctor, in contrast to the first translation and the informal translation by the interpreter at the TPV interview that appeared to indicate that these fields were blank. I accept that the representative's partial translation of the death certificate is accurate. As the original death certificate was before the delegate, I do not regard the translation as new information.
6. The IAA submission refers to a 'DFAT report', without providing any other identifying information about its source, and cites a paragraph it states is from that report relating to the Popular Mobilisation Forces (PMF). The paragraph is not from the February 2015 DFAT Country Report on Iraq that was before the delegate, so it is new information. It appears the information is from the October 2018 DFAT Country Information Report Iraq<sup>1</sup>. As the 2018 DFAT report post-dates the delegate's decision by two years the applicant has satisfied me it

---

<sup>1</sup> The Australian Department of Foreign Affairs and Trade (DFAT), DFAT Country Information Report - Iraq, 9 October 2018, CIS7B839419766.

could not have been provided to the Minister before the Minister made the decision under s.65. It also supersedes the 2015 DFAT report which was before the delegate and which is now over four years old. The 2018 DFAT report was prepared specifically for the purpose of determination of protection obligations. I am satisfied that there are exceptional circumstances to justify considering this new information.

7. I have obtained new information from recent authoritative reports on Iraq by the United Nations High Commissioner for Refugees (UNHCR), the European Asylum Support Office (EASO), and the UK Home Office<sup>2</sup>. Over two and a half years have passed since the delegate made his decision. The reports contain information which is relevant to the applicant's claims to fear harm because he is a Sunni and was a police officer in Iraq. I am satisfied that there are exceptional circumstances to justify considering this new information.
8. On 28 June 2019 I wrote to the applicant inviting him to give new information and to comment on new country information that would be the reason, or a part of the reason, for affirming the s.65 decision. On 12 July 2019 his representative provided five pages of comments on the applicant's behalf in response to the IAA's invitation. Apart from the issue discussed below, the comments restate some of the applicant's claims that were before the delegate and address the country and other information that he was asked to comment on.
9. The comments also cite general country information, not personal information, drawn from a range of sources that discuss the capability, targets, and involvement of a Shia militia named the Asaib Ahl al-Haq (AAH) with the PMF; an attack by ISIL in [Governorate 1] in 2017; and June 2019 rocket attacks that authorities suspect were conducted by an Iranian backed militia in Basra governorate and elsewhere. Apart from information from the 2018 DFAT report and the March 2019 EASO report referred to above, the reports cited are new information. Some of the reports pre-date the delegate's decision while others post-date it. The new information was provided in response to the IAA's invitation and seeks to support his central claim that he is at risk of harm as a former police officer and Sunni Muslim from [Governorate 1], and as such I am satisfied it could not have been provided to the Minister before the Minister made the decision under s.65 and that there are exceptional circumstances to justify considering this new information.

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

---

10. The applicant's claims can be summarised as follows:
  - he is a practising Sunni Muslim from [Governorate 1] in southern Iraq who was employed as a police officer between 2004 and 2011.
  - he guarded trains, manned check points, and was involved in the arrest of members of Shia militias.
  - at an unspecified time the police directorate he worked in was attacked by Shia militias who freed some prisoners and killed some police, although he was not personally affected by this event.
  - two distant cousins of his were killed in sectarian violence in Iraq.

---

<sup>2</sup> UNHCR, International Protection Considerations with Regard to People Fleeing the Republic of Iraq, 3 May 2019, 20190506112913. EASO, EASO Country of Origin Information Report - Iraq Targeting of Individuals, 7 March 2019, 20190308091632. UK Home Office, 'Country Policy and Information Note - Iraq: Sunni (Arab) Muslims', June 2017, OG6E7028831.

- in December 2010 or January 2011 he began received threatening messages on his phone.
- in [2011] his brother, [Mr A], died when the applicant's car that he was driving exploded.
- he believed the bomb that killed [Mr A] was intended for him so he fled initially to another town in [Governorate 1] where his mother's family owned property. His family joined him there shortly thereafter.
- he then fled to a town in northern Iraq for a few weeks, before travelling to Syria in April 2011.
- civil war in Syria prompted him to travel to Australia in August 2012.
- if he returns to Iraq he fears he will be severely mistreated or killed by Shia militias because he is a Sunni Muslim and was a member of the Iraqi Police Force.

### **Refugee assessment**

---

11. 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**

12. 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.
13. The applicant provided the delegate with originals and English translations of an Iraqi identity card and an Iraqi citizenship certificate, in support of his claimed identity. On the basis of his oral and documentary evidence, I accept that the applicant's name is as claimed and that he is a national of Iraq. Although the applicant spent some months living and working in Syria, there is no evidence before me to suggest that he has a presently existing right to enter and reside in any country apart from Iraq. I find that Iraq is his receiving country for the purpose of this review.

14. On the basis of the applicant's documentary and oral evidence I also accept: that he is of Arab ethnicity; that he was born and lived most of his life in [Governorate 1]; that his parents and siblings live in [Governorate 1]; that he completed primary school and intermediate school; that he lived and worked in Syria between about April 2011 and August 2012; and that he is married with [number] children.
15. The applicant claimed in 2004 he was appointed as a police officer in the area where he lived. His main duties included guarding trains and patrolling check points on the road. He also used to participate in combat operations to arrest militia members or those who wanted by the central Iraqi government or the local provincial council in [a named province]; he even participated in arrests of leaders of Shiite militias. Another of his main tasks was to arrest people who smuggled oil. The smugglers were predominantly from the Shia militias, therefore his work in the police force in the south of Iraq posed a great risk to his life, especially because he lacked the tribal or religious protection that other police officers had. The majority of the police were Shias as the police force was infiltrated by Shia militia members. In one incident the local police directorate was attacked by militias, who released some prisoners and killed [some police officers]. He escaped the headquarters and after a few days the central government sent special forces to restore the headquarters.
16. He claimed in 2006 sectarian violence between Sunnis and Shias escalated and there were many killings throughout the country. Many of his relatives and friends were killed during this violence, including [two distant cousins]. Many others were injured and / or threatened by Shia militias, including the Madhi Army, the Bader militia and Al-Dawa Party. At the TPV interview he stated the two distant relatives who were killed died between 2010 and 2011, and were also police officers who were stationed in the same directorate as him, working at checkpoints and elsewhere.
17. He claimed that in about December 2010 or January 2011 he started receiving anonymous threatening phone calls from different numbers and voices. The callers made threats to the effect: 'Your day is closed now, we're going to slaughter you', 'You infidels, unbelievers, Sunnis. We want to cut your throats, we will rape your sisters, your sisters are whores', and 'You are a Sunni and you work for the police, we won't let you, we will kill you'. Sometimes the caller said nothing but played Mahdi Army military songs. Initially he did not take the threats seriously as he did not have any enemies. However, his father advised him to be careful, not to travel far or to visit dangerous places. He was cautious but continued to work as a police officer.
18. He claimed [in] 2011 his brother, [Mr A], borrowed his car to buy breakfast. He started the engine and drove a short distance when the car exploded and he died instantly. Somebody had placed explosives on the bottom of the car in an attempt to assassinate the applicant. Following the attack, the applicant and his whole family moved to [a location], [number] kilometres from the family's [home]. [A number of] houses there belonged to his mother's relatives and his family rented a home. However, his family advised him it was still unsafe for him to remain there because he could easily be located through the Shia militias' intelligence network. [In] March 2011 he went to Tikrit, Al Alam, because it was a distant place where he was unknown and it was a border town from which he could leave Iraq. In Tikrit he obtained a passport and temporary visa to enter Syria and [in] April 2011 he fled to Syria. After civil war broke out his father made arrangements for him to leave Syria and he departed around [August] 2012, arriving in Australia in September 2012.
19. The applicant fears if he returns to Iraq he will suffer severe physical mistreatment, torture and / or be killed by Shia militias, including the Madhi Army, the Bader Militia and the Al-

Dawa Party because he is a Sunni Muslim and was a member of the Iraqi Police Force. The Iraqi authorities are unable to protect him, the people, or themselves. There is no security whatsoever in Iraq.

20. In support of these claims the applicant provided an untranslated document he claims is an order of the Ministry of Interior; a Ministry of Interior identification card issued in [2009], in Arabic and English, in the applicant's name stating his rank was 'cop'; and several undated photographs of the applicant wearing a uniform and armed with a weapon that he claims depict him working as a police officer, including at a checkpoint and guarding a railway station. He also provided an English translation and what he claims is a death certificate indicating his brother [Mr A] died in [2011] as a result of an explosion. To the IAA he provided a second English translation of the death certificate.
21. When the delegate put to the applicant at the TPV interview that given that current country information before him indicated that Sunnis in the south of Iraq were not being targeted for harm he wondered why the applicant feared he would be harmed, the applicant stated "in recent days incidents have been happening all over Iraq. Everything is fake when they say they're not targeting anyone. Sunnis in the north are targeting Shias and Shias in the south are targeting Sunnis. People are 'eating' each other. You cannot live in Iraq anymore. Surely you are seeing how people are leaving and going to Europe. Leaving their families the sake of going out of the country. The situation in Iraq is very bad". When the delegate questioned why the Shia armed groups would still want to harm him given he hadn't been a police officer for over five years, the applicant stated 'these groups want to harm him because they are in the police and because of religious hatred. It's because he is Sunni. He can't go back to Iraq. What kind of life would he be living there? The feeling of security and safety is what's keeping him patient and enabling him to cope with the pressures and stresses of being apart from his children. Life there is extremely difficult and the major thing is there is no safety over there'.
22. In the TPV application form, and the statutory declaration included with it, the applicant also stated he was a practising Sunni Muslim. And at the TPV interview he indicated he attended several old Sunni mosques, dating from the Ottoman era, in the town he lived in in [Governorate 1]. He also stated when he did so he was fearful because he didn't know if a bomb was going to explode. Although, when asked by delegate whether he had experienced any problems attending these mosques, he stated no he had not. In addition, when he and the delegate were discussing the impact of sectarian fighting on his job as a police officer, the applicant stated that from around 2007 he hated doing his police work because he was unable to pray, and every now and then someone 'would throw a word' at him saying something along the lines of 'you are from that group, you are an infidel, you are a Sunni' and he was unable to tell who was his friend and who was his enemy. And because of what he heard a lot of other police officers say he was afraid and confused.
23. I accept that the applicant is a Sunni Muslim, that he was employed as a police officer in [Governorate 1] between around 2004 and early 2011, and his duties included guarding trains and manning check points. He has consistently made these claims. Country information before me indicates Sunnis comprise up to 37 per cent of Iraq's population and although the majority of them reside in central and northern Iraq, around 400, 000 Sunnis are said to live in southern Iraq<sup>3</sup>. In addition, the applicant provided some documentary evidence relating to his employment, and he was able to discuss in a spontaneous and reasonably detailed manner what some aspects of his job entailed.

---

<sup>3</sup> UK Home Office, Country Information and Guidance Iraq: Sunni (Arab) Muslims, 10 August 2016, OGD7C848D63. DFAT, Country Report Iraq, 13 February 2015, CISEC96CF1160.

24. I also accept that as a member of the Sunni religious minority in southern Iraq, he may have been reluctant to undertake religious rituals that would have identified him as Sunni at work, although the independent information before me does not support that he would have been prevented from doing so<sup>4</sup>. I further accept that from time to time he may have overheard derogatory comments about Sunnis or had verbal abuse directed at him because he was a Sunni. Country information before me indicates Sunnis may be subject to societal discrimination<sup>5</sup>. Although, I note that despite his minority status, and country information indicating that employment is often affected by nepotism<sup>6</sup> and him claiming the police were increasingly dominated by Shia militia, he continued to be employed as a police officer for over seven years.
25. Although I have some doubt given he provided scant detail about the incident, I am willing to accept that at some point there was a violent assault on the police directorate the applicant worked in. I note the applicant has not claimed this attack was connected with him personally, and his evidence was that he was not injured or otherwise affected by the incident despite continuing to work for the police until he departed Iraq.
26. While I have some reservation, I am willing to accept the applicant may have participated in a few police operations resulting in the arrest of Shia militia leaders and smugglers. However, unlike his other evidence about his policing duties, he lacked any detailed or specific knowledge about these events. As a consequence I conclude he was a marginal participant rather than having any notable involvement in the operations. I find that in any such raids the applicant participated in he was merely acting as part of the police force and following orders. I note the Ministry of Interior identity card he provided stated his rank was 'cop'. Having regard to the card, and the applicant's overall evidence about his limited weapons and other training and the nature of his role, I find that he was a low ranking officer during his service in the Iraqi police force. He has not claimed that he played any command or high profile role. As a consequence, I am not satisfied that as a result of having policed in this way he has any profile that would make him of ongoing interest to Shia militia, rogue members of Shia militia, or tribes associated with either militia or their rogue members. And while I accept that Shia form the majority in southern Iraq, I do not accept that the applicant does not have any tribal or religious ties in Iraq. His own evidence at the TPV interview indicated his family is well established in [Governorate 1]. He, his parents, and his siblings were born there, and continue to live in the governorate, as do his wife's family. They have other relatives in the governorate, including in the area most of his family now live in.
27. While I am willing to accept that two distant cousins of the applicant may have died in sectarian violence in Iraq, I do not accept that they were police officers employed in the same police directorate as the applicant, or that they were killed in the line of duty, as the applicant stated for the first time at the TPV interview; or that their deaths were in any way connected to the applicant's circumstances. If true, I consider it implausible that the applicant would not have mentioned their employment, which is a critical detail, in the statement of claims forming part of the TPV application, which he prepared with the assistance of a solicitor and register migration agent. The claim is further undermined by his changing evidence about when their deaths occurred. In the TPV application he indicated they were killed around the height of sectarian violence in 2006, whereas at the TPV interview he said their deaths occurred in the lead up to [Mr A's] death in 2011. And while I accept the applicant's elder brother, [Mr B], may have been traumatised by [Mr A's] death as

---

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

<sup>5</sup> DFAT, Country Report Iraq, 13 February 2015, CISEC96CF1160.

<sup>6</sup> DFAT, Country Report Iraq, 13 February 2015, CISEC96CF1160.

the applicant stated at the TPV interview, and may not be living in house with the rest of the family in the area they have relocated to in [Governorate 1], I do not accept that [Mr B] is in hiding. This is at odds with the applicant's other evidence that [Mr B] is running businesses [in various industries]. On the information before me, I also consider it implausible that [Mr B] would be in hiding but that his other brothers, who are also Sunnis, would not.

28. I am willing to accept the applicant was threatened by Shia militia via his phone in late 2010 / early 2011 in connection with his work as a police officer and his religion. He has repeatedly claimed this happened, and there is some country information that indicates that this type of intimidation sometimes occurred<sup>7</sup>. However, I have reservations about the related claim that his brother [Mr A] was killed in a vehicle explosion aimed at him. Although country information supports that at that time being a police officer in Iraq was dangerous, it also indicates attacks on police generally involved indiscriminate mass attacks on police at check points and in police stations, and that this was usually carried out by the Sunni armed group ISIL, rather than individual police, particularly those of a low rank, being targeted by either Sunni or Shia militias. Additionally, there is little evidence of either mass attacks or individual targeting of police in [Governorate 1] or southern Iraq more generally, with most violence directed towards police happening in central and northern Iraq<sup>8</sup>. As a consequence, it seems somewhat unlikely that the applicant, who I have found was a low level police officer, albeit a Sunni police officer, would have been targeted personally as he has claimed. I accept that the death certificate he has provided for his brother is largely complete, apart from the coroner's section, as per the second translation provided. However, I still have some concerns about its authenticity, having regard to country information concerning which copy of the certificate is provided to the family, and the availability of fraudulent documents in Iraq<sup>9</sup>. It is also somewhat perplexing that the first translation of the death certificate records [Mr A's] address as Basra, which is a different place and governorate to where the applicant claims the family lived at that time. The second translation is of no assistance in this regard as it does not translate this part of the death certificate. Nevertheless, given the consistency with which the applicant has made this claim, and having regard to his possible explanations at the TPV interview for at least some of the deficiencies in the death certificate, I am willing to accept that his brother [Mr A] died in the circumstances claimed in 2011.
29. However, for the following reasons I am not satisfied there is a real chance the applicant will suffer serious harm as a former police officer and Sunni Muslim from [Governorate 1]. Recent country information provides little support for the applicant's assertion that he will be at risk of harm because he worked as a police officer over eight years ago. In March 2019 EASO reported that an Iraqi expert identified five major profiles of individuals who are targeted by the Shia militia dominated PMF. They were: political opponents, Sunni communities who are arbitrarily attacked after major terrorism incidents, activists and journalists, individuals who deviate from Shia social norms, and business owners<sup>10</sup>. In May 2019 UNHCR assessed that in areas where ISIL maintains a presence, persons associated with, or perceived as supportive

---

<sup>7</sup> DFAT, Country Report Iraq, 13 February 2015, CISEC96CF1160.

<sup>8</sup> DFAT, Country Report Iraq, 13 February 2015, CISEC96CF1160. Michael E. O'Hanlon & Ian Livingston, 'Iraq Index. Tracking Variables of Reconstruction & Security in Post-Saddam Iraq', The Brookings Institution, 1 November 2011, CIS22060. Anthony H. Cordesman, 'Iraq's Evolving Insurgency - Update, Centre for Strategic and International Studies', 1 May 2005, CIS14415. Anthony H. Cordesman, 'Stability and Instability in the Gulf Region in 2016', Center for Strategic and International Studies, 15 June 2016, CIS38A80121140. DFAT Country Information Report - Iraq, 9 October 2018, CIS7B839419766. EASO, EASO Country of Origin Information Report - Iraq Targeting of Individuals, 7 March 2019, 20190308091632. UNHCR, International Protection Considerations with Regard to People Fleeing the Republic of Iraq, 3 May 2019, 20190506112913.

<sup>9</sup> Sulaiman Bah, "The Iraqi civil registration system and the test of political upheaval", University of Alberta Libraries, 41, 1 January 2014, CISEFCB23F7183. DFAT, Country Report Iraq, 13 February 2015, CISEC96CF1160.

<sup>10</sup> EASO, EASO Country of Origin Information Report - Iraq Targeting of Individuals, 7 March 2019, 20190308091632.



of, the Iraqi Government, are likely to be in need of international refugee protection. They also expressed the view that in parts of Iraq where ISIL does not maintain a presence, which includes [Governorate 1] where the applicant is from and all the other southern governorates, persons associated with, or perceived as supportive of, the Iraqi Government, such as police, may be in need of international refugee protection depending on the individual circumstances of the case<sup>11</sup>. Although I note the report cites very few incidents occurring in the south to support that assessment.

30. The applicant worked as an ordinary police officer, without any leadership role and without any special profile, more than eight years ago. While I have been willing to accept that his brother may have been killed in an explosion aimed at intimidating him as a police officer, I have not accepted that the applicant was of ongoing interest to Shia militias, rogue militia members, tribes associated with either militia or their rogue members, or anyone else, when he ceased to undertake the role of police officer. Nor has he indicated an intention, desire, or capacity to return to the profession.
31. In addition, and consistently with information referred to by the delegate, more recent country information provides little support for the proposition that Sunnis, including Sunnis with the applicant's profile, from southern Iraq are subject to adverse treatment or that the level of insecurity in southern Iraq is such that he would be at risk of indiscriminate violence. In June 2017 the UK Home Office concluded that while Sunnis are more likely to be targeted as actual or perceived ISIL sympathisers than other Iraqis, Sunni identity alone was not, in their opinion, sufficient to give rise to a real risk of serious harm. In general, it considered a Sunni will not face a real risk of serious harm or persecution from the state. It considered Sunni Internally Displaced Persons (IDPs) are, in general, more vulnerable to suspicion and abuse than Sunnis resident in particular area. It also considered Sunnis may face a real risk of persecution or serious harm from Shia militia in areas where there is a militia presence, namely in Baghdad and the central governorates. However, a person's circumstances, including their tribal, family or political links, may mean that they are not at such risk. In general, they felt Sunnis will not face a real risk of persecution or serious harm in the southern governorates<sup>12</sup>. In October 2018 DFAT assessed that that Sunnis who lived outside areas recently controlled by ISIL faced a low risk of societal violence on the basis of their religion, and a moderate risk of official and societal discrimination in areas where they were a minority, although this was said to vary according to an individual's local influence and connections<sup>13</sup>. EASO and Amnesty International also cited examples of the mistreatment of Sunnis by the PMF and ISF during the battle against ISIL. These incidents overwhelmingly occurred in central and northern Iraq, apart from several incidents in Basra governorate in southern Iraq in 2014<sup>14</sup>. UNHCR also considered that Sunni Arab men and boys of fighting age, who lived in an area under ISIL control and/or where ISIL maintains a presence, or who share a tribal or familial affiliation with an area formerly under ISIL control and/or with a continued ISIL presence may be in need of international refugee protection, depending on the individual circumstances of the case.<sup>15</sup> Country information also indicated that southern Iraq, which includes the applicant's home area, has remained significantly more secure than

---

<sup>11</sup> UNHCR, International Protection Considerations with Regard to People Fleeing the Republic of Iraq, 3 May 2019, 20190506112913.

<sup>12</sup> UK Home Office, 'Country Policy and Information Note - Iraq: Sunni (Arab) Muslims', June 2017, OG6E7028831.

<sup>13</sup> DFAT, DFAT Country Information Report - Iraq, 9 October 2018, CIS7B839419766.

<sup>14</sup> EASO, EASO Country of Origin Information Report - Iraq Targeting of Individuals, 7 March 2019, 20190308091632. DFAT, Country Report Iraq, 13 February 2015, CISEC96CF1160. Amnesty International, 'Turning a Blind Eye - The Arming of the Popular Mobilization Units', 5 January 2017.

<sup>15</sup> UNHCR, International Protection Considerations with Regard to People Fleeing the Republic of Iraq, 3 May 2019, 20190506112913.

central Iraq in recent years, and that a wide range of ethnic and religious minorities reside in southern Iraq<sup>16</sup>.

32. In terms of the applicant's personal circumstances, I note he has never lived in or been displaced from an area that ISIL formerly held or where ISIL has maintained a presence. Nor is he from Baghdad or the central governorates where some Shia militias and ISIL have committed human rights abuses against Sunnis. And I do not consider that he fits any of the at risk profiles identified by the country information. The official and societal discrimination that DFAT considers that Sunnis may face, depending on their influence, is said to relate to more intrusive inspections at checkpoints and the provision of poorer quality services to Sunni neighbourhoods. While not determinative of itself, the applicant has not claimed that he, or his family, have suffered from these particular issues. Despite being a Sunni, and despite employment in Iraq often being affected by nepotism, and despite him claiming Shia militia increasingly dominated the police, he obtained and held a government job for years. He, his siblings, and his parents were all born in [Governorate 1] in southern Iraq and appear to be well established there. His family, and his wife's family, have continued to live in that southern governorate in the eight years he has been absent from Iraq, although most of his family now lives around [number]km from where he worked as a police officer. In his evidence at the TPV interview the applicant stated that his wife and children spend time with both his family, and his wife's family who live in the town where he worked as a police officer; that his children attend school; and that his wife and children have not suffered any problems, apart from difficulties arising from their separation from him. His married sisters continue to live where he worked as a police officer, and his parents and other siblings live [number]kms from that location, where his mother's family owns [a number of] houses, and his father and brothers operate self-employed businesses. At the TPV interview he also confirmed that they have not been threatened or otherwise harmed since he left Iraq. The applicant has not claimed that he personally, or that any members of his family, have in the past suffered adverse treatment from the Sunni armed group ISIL. In addition, that he would be at a real risk of harm from them is not supported by the independent country information before me. That information indicates that ISIL lacks operational space and support in the south or Iraq, while acknowledging that in past years this armed Sunni group has occasionally launched, or attempted to launch, mass casualty attacks, particularly during Shia religious celebrations<sup>17</sup>. Given that the applicant is Sunni, I consider it highly unlikely that he would be caught up in one of these infrequent events. Furthermore, having regard to the nature and frequency of security incidents in [Governorate 1], I am not satisfied that the level of risk of him suffering generalised violence is such that it rises to a real chance. Furthermore, the applicant's own evidence was that since the threats and death of his brother in 2011, apart from verbal abuse in his former workplace, his family have not suffered any other adverse treatment in the eight years he has lived in countries outside of Iraq. His children have attended school, male adults within his family have been employed, and his family have continued to own property. There is nothing in the information before me to suggest that this will change in the reasonably foreseeable future.
33. I have accepted that the applicant suffered some low level discrimination while working as a police officer, in the form of negative remarks. I am satisfied that if he were to return to [Governorate 1] there is a real chance he may again, from time to time, experience discrimination, in the form of verbal abuse or poorer quality services or more intrusive

---

<sup>16</sup> DFAT, DFAT Country Information Report - Iraq, 9 October 2018, CIS7B839419766. Associated Press, 'Isis suicide attack: more than 80 killed in southern Iraq', 15 September 2017. UNHCR, International Protection Considerations with Regard to People Fleeing the Republic of Iraq, 3 May 2019, 20190506112913.

<sup>17</sup> UNHCR, International Protection Considerations with Regard to People Fleeing the Republic of Iraq, 3 May 2019, 20190506112913. DFAT, DFAT Country Information Report - Iraq, 9 October 2018, CIS7B839419766.

inspections at checkpoints, because he is a Sunni Muslim. However, having regard to the nature and frequency of such ill-treatment, I am not satisfied that any such discrimination would rise to the level of serious harm. Nor am I satisfied there is a real chance he will face other harm from Shia or Sunni armed groups or anyone else as a result of his religion or his former occupation as a or a combination of these factors. I am also not satisfied there is a real chance he will be the victim of incidental violence in southern Iraq. Overall, I am not satisfied the applicant has a well-founded fear of persecution.

34. Although the applicant did not claim to fear harm for this reason, the delegate considered whether he was at risk of harm as a returnee from a Western country.
35. Country information before me indicates DFAT is aware of considerable evidence that Iraqis who are granted protection return to Iraq, sometimes only months after securing residency in Australia, to reunite with families, establish and manage businesses or take up or resume employment. The practice of seeking asylum and then returning to Iraq once conditions permit is well accepted amongst Iraqis, as evidenced by the large numbers of dual nationals from the US, Western Europe and Australia who return to Iraq. In addition, the Iraqi government provides a range of incentives to encourage Iraqis who have not been able to gain asylum overseas to return to Iraq voluntarily. DFAT has limited evidence to suggest that voluntary returnees face difficulties in assimilating back into their communities. However, local sources have said that returning to Iraq can be difficult, particularly if the individual does not return to their original community<sup>18</sup>.
36. I consider the applicant will return to [Governorate 1] where he was born and worked prior to his departure from Iraq and where his immediate and extended family have continued to live. The country information before me does not support that returnees are targeted by Shia or Sunni armed groups, the Iraqi government, or anyone else. I am not satisfied there is a real chance he will suffer any harm because he is a returnee from a western country.

#### **Refugee: conclusion**

37. 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**

---

38. 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**

39. 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

---

<sup>18</sup> DFAT, Country Report Iraq, 13 February 2015, CISEC96CF1160. DFAT, DFAT Country Information Report - Iraq, 9 October 2018, CIS7B839419766.

- 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.

40. I have found the applicant may, from time to time, experience discrimination in the form of verbal abuse or poorer quality services or more intrusive inspections at checkpoints on the basis of his Sunni religion. I do not accept that such discrimination would involve being arbitrarily deprived of life; subjected to the death penalty or torture; or cruel or inhuman or degrading treatment or punishment. I am not satisfied that the applicant faces a real risk of significant harm from societal discrimination in Iraq.

41. I have otherwise concluded that the applicant does not face a real chance of harm for any of the reasons claimed. As 'real risk' and 'real chance' involve the application of the same standard<sup>19</sup>, I am also not satisfied that the applicant would face a real risk of significant harm for the purposes of s.36(2)(aa) on these grounds.

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

42. 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.

---

<sup>19</sup> *MIAC v SZQRB* (2013) 210 FCR 505.

## Applicable law

---

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

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

In this Act, unless the contrary intention appears:

...

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

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

...

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

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

but does not include an act or omission:

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

...

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

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

...

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

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

...

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

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

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

...

#### **5H Meaning of refugee**

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

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

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

...

### 5J Meaning of well-founded fear of persecution

- (1) For the purposes of the application of this Act and the regulations to a particular person, the person has a well-founded fear of persecution if:
  - (a) the person fears being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion; and
  - (b) there is a real chance that, if the person returned to the receiving country, the person would be persecuted for one or more of the reasons mentioned in paragraph (a); and
  - (c) the real chance of persecution relates to all areas of a receiving country.  
Note: For membership of a particular social group, see sections 5K and 5L.
- (2) A person does not have a well-founded fear of persecution if effective protection measures are available to the person in a receiving country.  
Note: For effective protection measures, see section 5LA.
- (3) A person does not have a well-founded fear of persecution if the person could take reasonable steps to modify his or her behaviour so as to avoid a real chance of persecution in a receiving country, other than a modification that would:
  - (a) conflict with a characteristic that is fundamental to the person's identity or conscience; or
  - (b) conceal an innate or immutable characteristic of the person; or
  - (c) without limiting paragraph (a) or (b), require the person to do any of the following:
    - (i) alter his or her religious beliefs, including by renouncing a religious conversion, or conceal his or her true religious beliefs, or cease to be involved in the practice of his or her faith;
    - (ii) conceal his or her true race, ethnicity, nationality or country of origin;
    - (iii) alter his or her political beliefs or conceal his or her true political beliefs;
    - (iv) conceal a physical, psychological or intellectual disability;
    - (v) enter into or remain in a marriage to which that person is opposed, or accept the forced marriage of a child;
    - (vi) alter his or her sexual orientation or gender identity or conceal his or her true sexual orientation, gender identity or intersex status.
- (4) If a person fears persecution for one or more of the reasons mentioned in paragraph (1)(a):
  - (a) that reason must be the essential and significant reason, or those reasons must be the essential and significant reasons, for the persecution; and
  - (b) the persecution must involve serious harm to the person; and
  - (c) the persecution must involve systematic and discriminatory conduct.
- (5) Without limiting what is serious harm for the purposes of paragraph (4)(b), the following are instances of **serious harm** for the purposes of that paragraph:
  - (a) a threat to the person's life or liberty;
  - (b) significant physical harassment of the person;
  - (c) significant physical ill-treatment of the person;
  - (d) significant economic hardship that threatens the person's capacity to subsist;
  - (e) denial of access to basic services, where the denial threatens the person's capacity to subsist;
  - (f) denial of capacity to earn a livelihood of any kind, where the denial threatens the person's capacity to subsist.
- (6) In determining whether the person has a **well-founded fear of persecution** for one or more of the reasons mentioned in paragraph (1)(a), any conduct engaged in by the person in Australia is to be disregarded unless the person satisfies the Minister that the person engaged in the conduct otherwise than for the purpose of strengthening the person's claim to be a refugee.

### 5K Membership of a particular social group consisting of family

For the purposes of the application of this Act and the regulations to a particular person (the **first person**), in determining whether the first person has a well-founded fear of persecution for the reason of membership of a particular social group that consists of the first person's family:

- (a) disregard any fear of persecution, or any persecution, that any other member or former member (whether alive or dead) of the family has ever experienced, where the reason for the fear or persecution is not a reason mentioned in paragraph 5J(1)(a); and
- (b) disregard any fear of persecution, or any persecution, that:
  - (i) the first person has ever experienced; or

- (ii) any other member or former member (whether alive or dead) of the family has ever experienced;

where it is reasonable to conclude that the fear or persecution would not exist if it were assumed that the fear or persecution mentioned in paragraph (a) had never existed.

Note: Section 5G may be relevant for determining family relationships for the purposes of this section.

#### 5L Membership of a particular social group other than family

For the purposes of the application of this Act and the regulations to a particular person, the person is to be treated as a member of a particular social group (other than the person's family) if:

- (a) a characteristic is shared by each member of the group; and
- (b) the person shares, or is perceived as sharing, the characteristic; and
- (c) any of the following apply:
  - (i) the characteristic is an innate or immutable characteristic;
  - (ii) the characteristic is so fundamental to a member's identity or conscience, the member should not be forced to renounce it;
  - (iii) the characteristic distinguishes the group from society; and
- (d) the characteristic is not a fear of persecution.

#### 5LA Effective protection measures

- (1) For the purposes of the application of this Act and the regulations to a particular person, effective protection measures are available to the person in a receiving country if:
  - (a) protection against persecution could be provided to the person by:
    - (i) the relevant State; or
    - (ii) a party or organisation, including an international organisation, that controls the relevant State or a substantial part of the territory of the relevant State; and
  - (b) the relevant State, party or organisation mentioned in paragraph (a) is willing and able to offer such protection.
- (2) A relevant State, party or organisation mentioned in paragraph (1)(a) is taken to be able to offer protection against persecution to a person if:
  - (a) the person can access the protection; and
  - (b) the protection is durable; and
  - (c) in the case of protection provided by the relevant State—the protection consists of an appropriate criminal law, a reasonably effective police force and an impartial judicial system.

...

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

...

- (2) A criterion for a protection visa is that the applicant for the visa is:
  - (a) a non-citizen in Australia in respect of whom the Minister is satisfied Australia has protection obligations because the person is a refugee; or
  - (aa) a non-citizen in Australia (other than a non-citizen mentioned in paragraph (a)) in respect of whom the Minister is satisfied Australia has protection obligations because the Minister has substantial grounds for believing that, as a necessary and foreseeable consequence of the non-citizen being removed from Australia to a receiving country, there is a real risk that the non-citizen will suffer significant harm; or
  - (b) a non-citizen in Australia who is a member of the same family unit as a non-citizen who:
    - (i) is mentioned in paragraph (a); and
    - (ii) holds a protection visa of the same class as that applied for by the applicant; or
  - (c) a non-citizen in Australia who is a member of the same family unit as a non-citizen who:
    - (i) is mentioned in paragraph (aa); and
    - (ii) holds a protection visa of the same class as that applied for by the applicant.
- (2A) A non-citizen will suffer **significant harm** if:
  - (a) the non-citizen will be arbitrarily deprived of his or her life; or
  - (b) the death penalty will be carried out on the non-citizen; or
  - (c) the non-citizen will be subjected to torture; or
  - (d) the non-citizen will be subjected to cruel or inhuman treatment or punishment; or
  - (e) the non-citizen will be subjected to degrading treatment or punishment.

- (2B) However, there is taken not to be a real risk that a non-citizen will suffer significant harm in a country if the Minister is satisfied that:
- (a) it would be reasonable for the non-citizen to relocate to an area of the country where there would not be a real risk that the non-citizen will suffer significant harm; or
  - (b) the non-citizen could obtain, from an authority of the country, protection such that there would not be a real risk that the non-citizen will suffer significant harm; or
  - (c) the real risk is one faced by the population of the country generally and is not faced by the non-citizen personally.

...

*Protection obligations*

- (3) Australia is taken not to have protection obligations in respect of a non-citizen who has not taken all possible steps to avail himself or herself of a right to enter and reside in, whether temporarily or permanently and however that right arose or is expressed, any country apart from Australia, including countries of which the non-citizen is a national.
- (4) However, subsection (3) does not apply in relation to a country in respect of which:
- (a) the non-citizen has a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion; or
  - (b) the Minister has substantial grounds for believing that, as a necessary and foreseeable consequence of the non-citizen availing himself or herself of a right mentioned in subsection (3), there would be a real risk that the non-citizen will suffer significant harm in relation to the country.
- (5) Subsection (3) does not apply in relation to a country if the non-citizen has a well-founded fear that:
- (a) the country will return the non-citizen to another country; and
  - (b) the non-citizen will be persecuted in that other country for reasons of race, religion, nationality, membership of a particular social group or political opinion.
- (5A) Also, subsection (3) does not apply in relation to a country if:
- (a) the non-citizen has a well-founded fear that the country will return the non-citizen to another country; and
  - (b) the Minister has substantial grounds for believing that, as a necessary and foreseeable consequence of the non-citizen availing himself or herself of a right mentioned in subsection (3), there would be a real risk that the non-citizen will suffer significant harm in relation to the other country.

*Determining nationality*

- (6) For the purposes of subsection (3), the question of whether a non-citizen is a national of a particular country must be determined solely by reference to the law of that country.
- (7) Subsection (6) does not, by implication, affect the interpretation of any other provision of this Act.