



Australian Government

Immigration Assessment Authority

Decision and Reasons

Referred application

IRAQ

IAA reference: IAA19/06910

Date and time of decision: 18 September 2019 10:19:00

G Deal, 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 applicant (the applicant) claims to be a Shia Muslim of Bidoon ethnicity from the south of Iraq. [In] October 2012 he arrived by boat in Australia. On 22 June 2015 the applicant applied for a Temporary Protection visa (visa application) with the Department of Immigration, now part of the Department of Home Affairs.
2. On 27 May 2016 a delegate of the Minister for Immigration (the delegate) refused to grant the visa. Largely on the basis of inconsistencies, the delegate did not find the applicant to be credible. The delegate did not accept the applicant was detained on suspicion of involvement in bomb blasts in 2009 and 2012 or associated claims. While the delegate accepted the applicant was Shia and had a genuine fear of Sunni militia he did not accept the fear was well founded or that there was a real risk of significant harm in this regard, and concluded the applicant was not a person in respect of whom Australia had protection obligations.
3. The decision was affirmed by the IAA on 28 June 2016 (2016 IAA decision).
4. [In] June 2018 the Federal Circuit Court remitted the matter back to the IAA for re-consideration according to law.

Information before the IAA

5. I have had regard to the material given by the Secretary under s.473CB of the *Migration Act 1958* (the Act) (the review material).
6. There is a document in the review material which is the subject of a certificate issued under s.473GB of the Act. I am of the view that the certificate is not valid; but in any case the contents of the related document are of no assistance in my consideration of the visa application and I have not had regard to it.
7. In relation to the IAA 2016 decision, the IAA obtained country information on the bombing near the Ba-atha checkpoint on 5 January 2012, being satisfied there were exceptional circumstances to justify its consideration because the applicant claimed to have been detained on suspicion of involvement in a bomb blast on that date and there was no information about the blast before the delegate. For the same reasons I am also satisfied exceptional circumstances exist to justify its consideration.
8. After the 2016 IAA decision and the Federal Circuit Court remitted the matter back to the IAA in 2018, the IAA received a submission on behalf of the applicant from his migration agents on 15 September 2019.¹ It contains the new information detailed below. Broadly it is submitted that exceptional circumstances exist to justify considering the new information because it was published after the delegate's decision was made and so could not have been provided to the delegate prior to then. Further, a significant period of time has elapsed since the delegate's decision was made and a determination of future harm must be based on the most current information. It also notes that the information is highly relevant to the applicant's claims as it documents the increased risk to those associates with the Ba'ath Party, the current crackdown

¹ The IAA returned a submission received from the applicant's migration agents on 2 August 2019 because it did not comply with the 'Practice Direction for Applicants, Representatives and Authorised Recipients' dated 17 December 2018, and provided the migration agents another opportunity to provide a compliant submission.

against Islamic State of Iraq and the Levant (ISIL) and increased violence in the south and is relevant to a cumulative assessment of the risk the applicant faces.

9. The submission makes reference to two reports and an article published before the delegate's decision was made, in support of the assertion that even those with only tenuous or imputed links to the Ba'ath Party may be targeted.² This is new information. The applicant has not explained why this information was not provided earlier. Why the applicant would still be of interest to the authorities was squarely at issue in the SHEV interview but the applicant did not provide this information to the Department before the delegate's decision was made or to the IAA in 2016. The information is dated. It does not appear to contain personal information. As detailed below, I am satisfied there are exceptional circumstances to consider more up to date and detailed reports with information on these issues. I am not satisfied as to the matters in s.473DD. Nor am I satisfied exceptional circumstances exist to justify its consideration.
10. The remaining new country information reports and news articles referred to in the submission were published after the delegate's decision was made, and I am satisfied could not have been provided to the Department before the delegate's decision was made.
11. The submission refers to the comprehensive, detailed and up to date reports from the European Asylum Support Office (EASO), the Department of Foreign Affairs and Trade (DFAT) and the United States (US) Department of State³ which document the changing conditions in Iraq, such as the security situation in the south, the treatment of the Bidoon and those with real or perceived links to Ba'ath Party, which issues are relevant to the applicant's central claims for protection. The delegate relied on an earlier version of the DFAT and US Department of State reports. I am satisfied there are exceptional circumstances to justify considering these recently published reports.
12. A number of news articles were provided in support of the assertion that the incidence of violence has increased in the south. In particular they document bombings in the south and protests in 2018, in relation to public services and unemployment, among other things.⁴ The DFAT, EASO and US reports referred to above, also contain information on the security situation in Iraq, are more recent than a number of these articles and more detailed than all of them. The articles are mostly brief. The majority of the articles refer to violence in Basra which is some distance from where the applicant is from in Nasiriyah, Dhi- Qar Province. The applicant has not claimed to have been personally involved in any political activities or protests while in Iraq or Australia. I am not satisfied exceptional circumstances exist to justify consideration of the information.

² Australian Government Refugee Tribunal, Country Advice Iraq - IRQ38656 - Musicians - Former Ba'ath Party members - State Protection - Internal relocation (6 May 2011); Danish Immigration Service (DIS), 'Security and Human Rights in South/Central Iraq, Report from Danish Immigration Service's fact-finding mission to Amman, Jordan, and Baghdad, Iraq (10 September 2010); Dina al'Shibeeb, 'Where is Iraq's Baath party today?', Al Arabiya News, 21 August 2015.

³ EASO, Country of Origin Report- Iraq, Targeting Individuals, March 2019; DFAT, 'DFAT Country Information Report Iraq', Department of Foreign Affairs and Trade, 9 October 2018; US Department of State, '2018 Country Reports on Human Rights Practices: Iraq', 13 March 2019.

⁴ The Baghdad Post, Dhi Qar bombings death tolls rises to 59, 96 wounded: Interior Ministry, 14 September 2017; The New York Times, In Strategic Iraqi City, a Week of Deadly Turmoil, 9 September 2018; Kurdistan 24, LIVE updates: Protests start up in Iraq, security arrests organisers, 16 July 2018; Relief Web, Unrest in Basra signals growing crisis, 20 July 2018; The Independent, The major uprising in Basra and southern Iraq is what the world should be worrying about in the Middle East right now, 7 September 2018; Radio Free Europe/Radio Liberty, U.S. to close consulate in Iraq, citing 'threats' from Iran and allied militias, 29 September 2018; Iraqi News, 3 children killed, wounded in bomb blast near Basra oil firm, 16 December 2018; Iraqi News, 3 persons injured in armed clash in central Basra, June 22 2019; Enabling peace, Enhance Understanding ISHM 212: July 4 – July 11, 2019, Iraq Launches Major Anti-ISIS Operation; Iranian Shelling, Turkish Airstrikes Impact KRI; Militant Attacks Cause Casualties in Multiple Provinces, 11 July 2019; Mena FN, Roadside bombs explode in Iraq's Basra, 7 July 2019.

13. A number of news articles and a 2017 report by the Special Rapporteur were provided in support of the assertions that the applicant's mother had to travel for medical treatment, that he will be harmed if detained by the authorities and that there is little information available about Bidoon.⁵ However, as detailed below, I accept the applicant accompanied his mother in the past for medical treatment. The EASO, DFAT and US reports referred to above, provide detailed information on the mistreatment of suspects by the authorities and the Bidoon (and were also published after 2017 report). The articles are brief and mostly concern authorities acting in former ISIL strongholds, such as in Mosul in the north; not the south where the applicant is from. The 2017 report is now somewhat dated. I am not satisfied exceptional circumstances exist to justify consideration of the information.
14. The migration agents state that they are instructed that "...although the applicant wanted to continue working in his shop, he did not do so following his return from [Country 1] as he had been subject to verbal threats from family members of victims of the bombing". The applicant only briefly stated in his SHEV interview that he feared being killed by the victims' families and so did not go into the street after he was released and then quickly fled Iraq bound for Australia. When the delegate asked the applicant if he worked in the shop after his return from [Country 1] he said that he did. When asked to confirm this response the applicant said it was only for a short period but he did not otherwise mention anything about the bombing victims' families. I consider the claim he received verbal threats from the bombing victims' families and that he did not work after his return from [Country 1], new information. His claim to fear the public and the bombing victims' families was squarely at issue in the SHEV interview with the delegate asking him open ended questions when he mentioned this, such as "can you tell me more about that?" and "anything else?". The information relates to events said to have occurred some time ago. The applicant has not explained why this information is only being provided now. I am not satisfied this information could not have been provided to the delegate before the delegate's decision was made. I also consider the claim he did not work on his return from [Country 1] in stark contrast to his claim in the SHEV interview that he did work after returning from [Country 1]. In light of the above, I do not consider this new information credible. The information is also as set out above, very brief and without contextual detail. I am not satisfied as to the matters in s.473DD. Nor am I satisfied exceptional circumstances exist to justify consideration of the information.
15. In the context of submissions regarding relocation, the applicant's migration agents state that they have been instructed that his family have now moved to Najaf where they live "in a difficult situation in which his children cannot attend school". He had told the Department that they had moved from the family home in Nasiriyah to Al Samwah after he left Iraq, that they feared what might happen to them, and that his children did not go to school because they feared being recognised. The information that they have since moved to Najaf is new information. Najaf is in the south.⁶ As detailed below I have not considered the issue of relocation. I also consider this information very brief and immaterial to the applicant's central claims for protection. I am not satisfied exceptional circumstances exist to justify its consideration.

⁵ France 24, Iraq doctors say vendettas threaten their lives as they save others, 28 February 2019; Human Rights Watch, Iraq: Torture Persists in Mosul Jail, 18 April 2018; The New Arab, The Iraq Report: Torture in Iraq prisons continues, 23 April 2019; Human Rights Watch, Iraq: Amputation Apparently Caused by Torture, Investigation, Police Accountability Needed, 26 June 2019; Human Rights Council, Report of the Special Rapporteur on minority issues on her mission to Iraq, 27 February-24 March 2017.

⁶ DFAT, DFAT Country Report Iraq, 13 February 2015, CISEC96CF1160.

Applicant's claims for protection

16. The applicant's claims can be summarised as follows:

- He was born in Kuwait and a Bidoon. His father was involved in an informal civilian army that supported Saddam Hussein when he invaded Kuwait in 1990. They were unable to safely remain after this and fled to Iraq. The family were subsequently awarded Iraqi citizenship by Saddam Hussein for their support.
- He has a wife and [a number of] children and worked in the family [store] in Nasiriyah, Dhi-Qar Province, Iraq. He could not drink alcohol in Iraq.
- He left Iraq because he was targeted by the authorities whenever there was an explosion or terrorist act in Dhi Qar, where they lived. In this regard, he was arrested and detained on suspicion of involvement in blasts in 2009 and 2012. On each occasion he was released as there was insufficient evidence against him.
- He believes he was targeted because of his "Khaliji" background, he was born in Kuwait and sounded like a person who originated from the Gulf countries, and his father's involvement with Saddam Hussein.
- After his release he suffered psychologically and felt that some people still viewed him with suspicion despite having been exonerated. He was ostracised and his children were teased. He feared retaliation from the families of the bombing victims.
- After he left Iraq, his brother was interrogated by the Iraqi authorities. His brother fled Iraq for Australia in 2012, in fear of his safety. His family has relocated to a more isolated area and his children do not go to school fearing someone might recognise them.
- He fears harm by the authorities and the militias in Iraq.

Factual findings

17. The applicant has variously claimed to suffer mental health and memory issues for various reasons, including past trauma and the passing of time. These claims have not been made in any real detail and are unsupported, for example, by a diagnosis or letter from a doctor or mental health practitioner. The applicant has not said he is being treated for this whether through medication or counselling. I am willing to accept the applicant may suffer some mental health issues given his past traumatic experiences, including his boat journey to Australia and experiences in Iraq and he has also mentioned being detained in [a certain country]. However, on the evidence I do not accept his condition is serious or debilitating. I accept that his condition and the passing of time may result in him confusing or forgetting minor details in relation to past events but I do not accept it affected his ability to meaningfully engage in the SHEV interview or visa application process, more broadly.
18. Based on the applicant's evidence, including his documentary evidence, and the consistency of the claims I accept he was born in Kuwait and is a Shia from the south of Iraq and an Iraqi national. The applicant has not said he had any problems in Iraq or that he fears any harm on account of his faith.
19. In his arrival interview the applicant very briefly mentioned that he could not drink alcohol in Iraq but did not otherwise elaborate. In contrast, in his visa interview when being questioned about his faith he said that he drank alcohol and lived his life in Iraq. I accept this later and

more detailed evidence and consider he was able to drink alcohol while in Iraq and do not accept he could not. This is also consistent with the country information before me which indicates that while there are restrictions, southern Iraqis are still allowed to consume and legally own alcohol.⁷

Father's activities

20. The applicant claims he was born in Kuwait a Bidoon⁸ and that his family was forced to relocate to Iraq in 1990 when Kuwait was invaded by Saddam Hussein. His father supported Saddam Hussein's army in an informal and civilian capacity and the family was subsequently granted Iraqi citizenship by Saddam Hussein, for their loyalty. This has been consistently claimed and is consistent with the country information before me which indicates some 47,000 Bidoon were granted citizenship under the Ba'ath Party at that time, as they were considered supportive of the Iraqi regime and I accept this claim.⁹
21. The country information before me confirms families like the applicants were effectively deported from Kuwait and refused re-entry and had to declare they were not born in Kuwait to get Iraqi citizenship.¹⁰ I accept he is not a national of Kuwait and does not have a right to re-enter the country.

Detentions

22. The applicant claims he was targeted by authorities whenever anything happened in the area. He claims he was detained and questioned for three months in 2009 and two months in 2012, each time on suspicion of involvement in a bombing in the area. In each instance the court dropped the charges because of a lack of evidence against him and he was released. I have found these claims consistent and mostly detailed. For example, his responses in relation to where the bomb blasted, where he was at that time, and when arrested, and the dates have been highly consistent. He said the 2009 bomb awoke him from his sleep as it was about [number] metres from his home and he could smell the smoke. He went down the street to see what had happened. People had been killed and injured and he started to help with the victims. He was detained four days later, on suspicion of involvement. He was questioned daily and shown photos of other people and asked if he knew their names. He was not physically mistreated. About 15- 20 other Bidoons were also arrested on suspicion of involvement. Based on this, I consider it plausible he may have been arrested along with many others in the vicinity of the site. I have found his evidence in relation to his detention at the time of the 2012 bombing less detailed than that in relation to his 2009 detention, which is surprising given the recency of 2012 incident however this may be because he said he wanted to forget the incident. The applicant said the 2012 bomb occurred further from his home in the south but still in the area and that there were a large amount of people who were also arrested on that day and he was one of the few to be released. The applicant has also provided copies of the court documents from the High Judicial Council, Dhi Qar Criminal Court dated [September] 2009 and [March] 2012, naming the applicant as an accused and dismissing the charges against him due to a lack of evidence. There is nothing to suggest the court documents are not

⁷ European Asylum Support Office, Country of Origin Report- Iraq, Targeting Individuals, March 2019.

⁸ Arabic word applied to those without nationality and living in the desert area between Iraq, Kuwait and Saudi Arabia, see DFAT, 'DFAT Country Information Report Iraq', 9 October 2018.

⁹ DFAT, 'DFAT Country Information Report Iraq', 9 October 2018; UNHCR Advice, Iraq-IRQ37184-Bidoons, 9 September 2010.

¹⁰ DFAT, 'DFAT Country Information Report Iraq', 9 October 2018; UNHCR Advice, Iraq-IRQ37184-Bidoons, 9 September 2010.

genuine. Country information before me indicates there was a car bombing around 11 June [2009], and that a suicide bomber detonated a bomb killing some 45 people on 5 January 2012 near the Baghdad-Nasiriyah highway.¹¹ I accept the applicant was detained and questioned on suspicion of involvement in bomb blasts in 2009 and 2012, each time along with many other suspects, and released when the court found there was no evidence against him.

23. In the SHEV interview the delegate asked the applicant if anything happened between his second release ([March] 2012) and his departure from Iraq (May 2012). The applicant said "I didn't leave the house at all in that period of time". The delegate clarified the applicant's response, asking him to confirm he had said that after he was released from prison the second time he returned to his house and did not leave his house until he departed Iraq and the applicant said "yes". However, the applicant's evidence, including a copy of a visa in his passport indicates he travelled to [Country 1] [in] April 2012 and returned to Iraq on [two days later in] April 2012. In his arrival interview he said this travel was so that he could find a people smuggler. Yet in the SHEV interview he said he travelled to accompany his mother for medical treatment and provided more detail in this regard and I accept this. In the SHEV interview the delegate noted he had previously said he did not leave the house and now he was saying he travelled overseas with his mother. In response the applicant said that he could not recall when he travelled given the passing of time and he has variously indicated he kept a low profile after his release, including travelling at night which given its late mention and lack of detail I do not accept. When asked if he had any difficulties when he exited or returned to Iraq (his passport was stamped) the applicant said "no". The delegate asked the applicant if he went back to work (in the family shop) after he returned from [Country 1] and he said "yes". The delegate asked him if he were sure and the applicant indicated it was just for a short period. Based on the documentary evidence detailed above, I accept the applicant accompanied his mother to [Country 1] where she sought medical treatment for a few days in April 2012 (he had also accompanied her to [another country] for the same reason previously). On the evidence, I do not accept his claim to have hid or kept a low profile after his release in March 2012.
24. In his arrival interview the applicant said that he used a fake passport when he left Iraq by plane in 2012. In his SHEV interview he explained that he had paid someone for the passport and believed it was false but that he later checked it and now realised it was a genuine passport. I accept he left Iraq legally on his genuine passport in 2012. I am highly surprised the applicant would not check his passport before he left Iraq, particularly if he believed it were a fake, and I consider his claim in the arrival interview was a fabrication intended to strengthen his claims for protection, which he has since resiled from.

"Khaliji"

25. The applicant claims he was targeted by authorities because he was a Bidoon born in Kuwait, he is a "Khaliji" or from the Gulf countries, and because of a perceived link to Saddam Hussein given his and his family's past experiences in relation to their resettlement in Iraq.
26. I do not accept the applicant was targeted for the reasons claimed. In his visa interview the applicant said "The only reason I get arrested is because I am a Bidoon and they used to classify us with the Gulf people, and then Saddam, and there is a kind of hatred". In his visa interview he said they saw them as betrayers dealing with Saddam Hussein. I accept his father

¹¹ The Washington Post, 'Bombing kills 53 Shiite pilgrims near Basra, Iraq', 14 January 2012, CX280576; Iraq Business News (IBN), 'Weekly Security Update for 13th January 2012', 13 January 2012, CX280064; Trend News Agency, '60 killed in series of bombings in Iraq', 5 January 2012, CX294107; The New York Times, 'Iraqis Attack Police After Bombing', 10 June 2009, CX5E56FED19279.

showed loyalty to Saddam Hussein when he invaded Kuwait and that they were subsequently granted Iraqi citizenship by Saddam Hussein's Ba'ath Party as they were seen as supportive of the Iraqi regime at the time. The country information before me indicates that after the removal of Saddam Hussein and his government in 2003, the US-led transitional administration implemented a de-Ba'athification process.¹² While there is a broad consensus that former individual Ba'ath Party members should not be punished, local sources report that imputation with the Party has been used as a threat against Sunnis in the past.¹³ The evidence before me does not indicate the applicant or his father or anyone else in the family was a member of the Ba'ath Party. They are also Shia. Moreover, while his father died in 2003 from natural causes, the applicant has not specified any instances of harassment or harm of his family by authorities following Saddam Hussein's removal in 2003 and during the subsequent de-Ba'athification process. The country information before me also indicates Bidoons living in the south of Iraq and granted Iraqi citizenship, faced no discrimination from the government or community.¹⁴ The only other evidence supportive of this aspect of his claim is a statement in his visa application that when the police detained him in 2009 the police said "...all those people who come from Kuwait are behind all these explosions" and that when he was released the second time in 2012 the judge "...was surprised and shocked that the reason for my arrest was because my Kuwaiti accent, and because I was not born in Iraq [sic]". He did not subsequently refer to these brief statements or specify any other similarly discriminatory comments by authorities during his time in Iraq. While I am willing to accept one officer may have said this, the judge's comments and handling of the applicant's matter indicate such sentiments are not widely or officially held in Iraq.

27. The country information before me¹⁵ indicates that each of the bombings in 2009 and 2012 were significant and marked for the south, with many casualties. They were reportedly believed to have been perpetrated by Sunni extremists targeting Shia pilgrims, in an effort to stoke sectarian violence. In response to strong and widespread criticism that they had not done enough, the security forces reacted strongly, including by dispatching very large numbers of personal and conducting heavy surveillance in the area. The evidence before me indicates that each time the applicant was detained in these circumstances due process was largely followed; the applicant was not physically harmed, he was provided with some legal representation and released by the court when it was found there was insufficient evidence against him. On the evidence I consider it more plausible the applicant was detained as a suspect in each instance, because he was in the vicinity of each of the blasts when they occurred, and the authorities had reacted strongly each time with sweeping arrests and heavy surveillance of the area and he, along with many others, were caught up in this net. I also note the applicant's arrests were some three years apart. The applicant has not specified any instances of harassment by authorities in the intervening years. On the evidence and in the absence of any further detail in this regard, I do not accept his detentions were related. I do not accept the applicant was wanted by the authorities in connection with an adverse security profile or otherwise when he left Iraq bound for Australia in 2012.

¹² DFAT, DFAT Country Information Report - Iraq - 9 October 2018, 9 October 2018.

¹³ Ibid.

¹⁴ UNHCR Advice, Iraq-IRQ37184-Bidoons, 9 September 2010; DFAT, DFAT Country Report Iraq, 13 February 2015, CISEC96CF1160.

¹⁵ 'Bombing kills 53 Shiite pilgrims near Basra, Iraq', Washington Post, The, 14 January 2012, CX280576; 'Weekly Security Update for 13th January 2012', Iraq Business News (IBN), 13 January 2012, CX280064; 'Iraqis Attack Police After Bombing', New York Times, The, 10 June 2009, CX5E56FED19279.

Societal discrimination

28. The applicant claims that because of his detentions he and his family were harassed and ostracised. He also claims to fear being harmed by the bombing victims' families.
29. In his visa application the applicant said that after his second release he was "...so scared that some people will misinterpret me arrests and my attack me at any time thinking I have something to do with these incidents, I was so worried that I could not sleep at night and was very hysterical, my family was scared as well [sic]". In his visa interview when asked to provide more detail about the problems he experienced in Iraq the applicant said that after the bombings whenever he went to a wedding when people realised that had sat next to him, they would jump away frightened. When he went shopping people would look at him, like he was going to bomb himself or something and they would start to run away. People stopped shopping at his [business]. When asked if there were any other examples the applicant said "...it was also my children, wherever they go kids start telling them names about me same with my family [sic]". When asked if there were any more examples he said that was it. When asked what he feared on return the applicant said "death". When asked to expand on this the applicant relevantly said he feared being killed by the family of those killed in the bombings.
30. I note the applicant remained in Iraq for some three years after the 2009 bombings and detention. He has not detailed any incidents of harassment or mistreatment by the bombing victims' families while in Iraq. The applicant's evidence and the country information before me indicate the applicant lived in the south of Iraq where thousands of other Bidoons had also settled in similar circumstances.¹⁶ I find the claimed incidents of the applicant's alienation first detailed in his visa interview, for example, that they ran away from him in shops fearing he had a bomb or jumped away from him at weddings when they realised they had sat next to him, somewhat far-fetched. I am willing to accept he may have believed others in the community still suspected him, but I do not find the claim otherwise supported and I do not accept the examples provided in his visa interview, that he was ostracised as claimed or that he is targeted or wanted by the victims' families.

Family's harassment

31. The applicant claims that when he left his brother was interrogated and he has since fled to Australia for his safety. He claims his family keep a low profile and are afraid of what may happen to them because of him.
32. I do not accept the applicant was wanted by the authorities when he legally left Iraq in 2012. It follows that I do not accept his family have been harassed or interrogated by authorities in relation to this whereabouts. I also note that the claim "the police came to my house interrogating my brother as well" in his visa application lacks detail. When asked about this aspect of his claim in the visa interview, the applicant did not elaborate. I note at the time of the applicant's incarceration in 2009 all his children were under 10 years of age and some were not born. In the absence of further detail I find it implausible that the applicant's children are targeted and in hiding unable to attend school because of the applicant's incarceration some 10 and seven years ago, respectively. In the visa interview the applicant indicated his mother still held the title to the family property and shop near the market in the south. I do not accept his brother was interrogated or that his family have left the family home, or are in hiding because they are being targeted by the authorities or the public, in connection with the applicant.

¹⁶ UNHCR Advice, Iraq-IRQ37184-Bidoons, 9 September 2010, CR829A2B4632.

Refugee assessment1

33. 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

34. 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.

35. I accept the applicant was born in Kuwait a Bidoon and relocated with his family to the south of Iraq in about 1990 and that he is a national of Iraq and Iraq is the receiving country. I also accept that the applicant was wrongly detained on two isolated occasions by Iraqi authorities on suspicion of involvement in significant bomb blasts in 2009 and 2012, along with many others following sweeping arrests in the area at those times. I do not accept the applicant could not drink alcohol, was ostracised or harassed by the public or wanted by the authorities in connection with an adverse security profile when he left Iraq bound for Australia in 2012.

36. The applicant fears harm at the hands of the militia. He also fears being arbitrary detained by authorities whenever there is a nearby bomb blast. The applicant was born in Kuwait a Bidoon and relocated with his family to the south of Iraq in 1990, where his family lives, and he has not said he would not return there.

37. The country information before me indicates that most Bidoon in Iraq do not have Iraqi citizenship and suffer moderate levels of official discrimination including an inability to own property in their own name.¹⁷ It also indicates that those who do have Iraqi citizenship largely enjoy the same rights as all Iraqis although they are noted to live in bad conditions, like their host community, and to be in need of assistance in terms of shelter.¹⁸

¹⁷ EASO, Country of Origin Report- Iraq, Targeting Individuals, March 2019; DFAT, DFAT Country Information Report - Iraq - 9 October 2018.

¹⁸ Iraq-IRQ37184-Bidoons-UNHCR Advice, 09 September 2010.

38. The country information¹⁹ also notes ISIL are likely to wage a protracted and small scale insurgency indiscriminately targeting Iraqi civilians, predominately in areas outside the south, with ongoing clashes between the security forces and the ISIL insurgency predominately in the eastern desert region. Shia militia have been accused of committing serious human rights abuses against Sunni men throughout the country, often in the course of fighting against ISIL although there have been fewer reports of this since the battle against ISIL wound down. It is also reported that those from former ISIL controlled territory (Sunni mostly in the east and north) may be viewed with suspicion and if detained by authorities they may be severely mistreated. The south is described as more secure than other parts of Iraq. However violence between armed groups, predominately affecting those actively involved in militia or tribal groups, and criminality and drug abuse occurs in the south. There were also reports of violent protests in 2018 in the south.
39. I accept the applicant was originally from Kuwait and a Bidoon and was granted Iraqi citizenship by the then Ba'ath party but not that he or his father or any other family members were members of the Ba'ath Party. I note his father passed away some 16 years ago. I also note his mother continues to own the family home and shop in the south in her own name. I accept the applicant was wrongly detained in 2009 and 2012 on suspicion of involvement in bombings in the vicinity of his home in the south. I do not accept he was detained for the reasons claimed, including because he was born in Kuwait, a Bidoon or because of a perceived loyalty to Saddam Hussein and his Ba'ath Party. I consider the blasts were marked for the south, suspected to have been perpetrated by Sunni terrorists, and that it is more plausible he was detained, along with many others at the time, following sweeping arrests in the area. On each occasion due process was followed in the handling of his detention and he was released by the courts and the charges dropped. He was not harassed or harmed by the bombing victims' families while in Iraq. While I accept he may have felt the public still suspected him of involvement I do not accept he was harassed or treated differently by them, as claimed. The applicant has not said he is a member of any militia or tribal group or a drug user. He has not indicated any involvement in protest activities whether in Iraq or Australia. He is not from former ISIL controlled territory in Iraq or Sunni. In the visa interview the applicant also confirmed he had not previously had any adverse contact with Shia militia. He has said he is peaceful. I do not accept he was wanted by the authorities when he left Iraq or that they have harassed his family in relation to this whereabouts since being in Australia. I also note it has now been some seven years since he was in Iraq. Based on the country information detailed above and the applicant's profile, I am not satisfied there is a real chance the applicant will be arbitrarily detained by authorities in connection with a nearby bomb blast or harmed by militia. I am not satisfied the applicant faces a real chance of harm on account of his origin, ethnicity or his or his family's past experiences in Iraq.
40. The applicant did not claim to fear harm on account of being a returning asylum seeker from Australia. The delegate broadly considered this. DFAT's 2018 report states that Iraqis who do not have an Iraqi passport must apply for a *laissez passer* at an Iraqi embassy or consulate abroad. All returnees have their identity information checked and recorded on return by officials. Returnees will only come to the adverse interest of Iraqi authorities if they have committed a criminal offence and they have an outstanding warrant for their arrest. *Laissez passers* are reportedly common and can be used to facilitate a returnee's movement to their place of origin, and they are not questioned about how they exited Iraq or why they do not have other forms of documentation. There is considerable evidence to suggest Iraqis granted protection return only months after securing residency in Australia to reunite with family,

¹⁹ DFAT, DFAT Country Information Report - Iraq - 9 October 2018; EASO, Country of Origin Report- Iraq, Targeting Individuals, March 2019; US Department of State, '2018 Country Reports on Human Rights Practices: Iraq', 13 March 2019.

among other things. I also note the applicant left Iraq legally on his own passport which has since expired and he would have to re-enter Iraq on a *laissez passer*. On the evidence including the applicant's profile and the country information detailed above I am not satisfied the applicant faces a real chance of harm on account of being a returning asylum seeker on a *laissez passer* from Australia.

41. I do not accept the applicant has a well-founded fear of persecution.

Refugee: conclusion

42. 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

43. 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

44. 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.

45. In considering the applicant's refugee status, I have concluded that there was no 'real chance' the applicant would suffer harm on his return to Iraq for the reasons claimed. 'Real chance' and 'real risk' involve the same standard.²⁰ For the same reasons, I am also not satisfied the applicant would face a 'real risk' of significant harm.

Complementary protection: conclusion

46. 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.

²⁰ *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.