



Australian Government

Immigration Assessment Authority

Decision and Reasons

Referred application

IRAQ

IAA reference: IAA21/10104

Date and time of decision: 23 February 2022 16:12:00

V Price, 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 national of Iraq of Arab ethnicity and a follower of the Shia Muslim faith. On 27 September 2017 he lodged an application for a protection visa with the Department.
2. On 22 October 2021 a delegate of the Minister for the Department (the delegate) refused to grant the visa to the applicant. The delegate did not accept that the applicant had a relationship with a girl with connections to Shia militia group, Asaib Ahl Al-Haq (AAH), he managed his uncle's [career] or a [business] in Baghdad, or that Shia militia groups attempted to recruit him and was not satisfied that he or his family members were harmed or threatened in the past for any of these reasons. The delegate determined that the applicant did not face a real chance or risk of harm as a Shia Muslim, due to his western behaviour and manner of dress or because he had done well in Australia
3. The applicant was represented by a migration agent before the Department. The representative assisted the applicant in the making of the visa application, attended the protection visa interview and provided submissions to the Department. The applicant was also represented before the Immigration Assessment Authority (IAA).

Information before the IAA

4. I have had regard to the material given to the IAA by the Secretary under s.473CB of the *Migration Act 1958* (the Act) (the referred material).
5. On 17 June 2013 the applicant participated in an Irregular Maritime Arrival and Induction Interview (arrival interview) with an officer of the Department. The written transcript of this interview was before the delegate at the time of making the decision, and was included in the referred material, but the audio recording was not forwarded as part of that material. On 24 December 2021 the IAA sought a copy of the audio recording for this interview from the Department and clarification on whether it was before the delegate at the time of making the decision. The Department provided a copy of the audio recording and stated that the delegate had not accessed this material prior to making the decision. Accordingly, it appears to be new information within the meaning of s.473DC(1).
6. The audio recording of the arrival interview contains information provided by the applicant regarding his familial composition, background, and reasons for leaving Iraq shortly after his arrival in Australia and close to the time of the claimed events. As noted, the written transcript was relied upon by the delegate and I also consider the audio recording is relevant to assessing the credibility of the applicant's claims of past harm in Iraq and whether he faces a real chance or risk of harm on return to that country. I am satisfied that there are exceptional reasons to justify considering this information and that it meets s.473DD(a).
7. On 27 January 2021 the IAA provided a copy of the audio recording to the applicant and invited him to comment on information in the recording. A submission was received on 17 February 2021, and to the extent this contains new information, I accept it was provided in direct response to the IAA's invitation, that it contains material pertinent to the applicant's claims of past harm in Iraq, and it is relevant to assessing the credibility of his claims and determining whether he faces a real chance or risk of harm on return to Iraq in the future. I

am satisfied, this information could not have been provided prior to the making of the decision and that there are exceptional circumstances to justify its consideration. The new information meets s.473DD(a) and (b)(i) of the Act.

Applicant's claims for protection

8. In the arrival interview the applicant provided details pertaining to his identity, familial composition, his background in Iraq, and the reasons he departed that country. He stated that his uncle was [an occupation] and that he had been threatened by Shia militia group, the AAH, in March 2013 due to his work as his uncle's manager.
9. The applicant's claims were set out in his protection visa application, in the protection visa interview with the delegate conducted in April 2021, and in the post-interview submission to the Department dated 27 April 2021. As noted, he also provided a submission to the IAA.
10. The applicant's claims can be summarised as follows:
 - He is a moderate Shia Muslim of Arabic ethnicity from Baghdad in Iraq.
 - The Shia militias took their family home for their headquarters and he and his family were forced to rent an apartment somewhere else.
 - Shia militia groups attempted to recruit him to fight against Sunnis, Christians, and other religious minorities, but he is opposed to the actions and ethos of these militia organisations and refused to be recruited. He was accused of being a spy and threatened because he refused to join them.
 - He was also threatened for expressing his political views at university. He considered the country was not progressing or developing forwards.
 - Shia militias accused his aunt and cousin of being spies for the Sunni community and they were both killed in 2007. The applicant feared he would also face this treatment.
 - He was threatened by members of Shia militia groups due to his work managing a [business] which promoted [occupations], including his uncle who was a well-known [occupation]. He was also threatened by Shia militias because of the way he dressed, had an earring, and wore gold jewellery which many conservative Muslims associate with homosexuality and was accused of being 'abnormal' (a term used for homosexuals).
 - The applicant was in a relationship with [Ms A], a girl that he met at University. Her family were connected to the AAH, and that they threatened him. He was accused of tarnishing her honour and acting against the Islamic faith. He took these threats seriously and departed Iraq in March 2013.
 - His family faced constant harassment from Shia militias after his departure from the country. They told his family that they would be harmed unless he returned to Iraq. His brother was kidnapped and assaulted one month after he left Iraq, and only released after his parents paid money to the militias. His family were forced to move homes many times to avoid threats of harm and his father was unable to open his business.
 - In 2017, a member of the AAH took his father to the police station in retaliation for the applicant's relationship with [Ms A].
11. The applicant claimed to fear harm from Shia militias on return to Iraq for the above reasons, as well as due to the general security situation in the country. In addition, it was submitted

that the applicant is a gentle, hardworking, and ambitious person who has done well in Australia and that these traits that will make him a target in Iraq.

Refugee assessment

12. 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

13. 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.
14. The applicant provided a copies and translations of his Iraqi national identity card, citizenship certificate and an old passport and provided oral evidence regarding his background in Iraq. He also provided Iraqi identity documents for his family members. I accept on the evidence before me that the applicant is a national of Iraq and I find this is his receiving country. On the evidence before me, I also accept that he is an ethnic Arab and that he is a moderate Shia Muslim.
15. He was born in Baghdad and resided there with his family from birth until his departure from the country in March 2013. He completed primary and secondary education in Baghdad and began university education, though he did not complete those studies. He also worked in Baghdad prior to his departure from Iraq. His parents and siblings continue to reside in Baghdad. Noting his ongoing familial connection to Baghdad and his prior residence in that area, I consider that it is highly likely he would return to Baghdad in the future.
16. The applicant claimed that he was threatened and harmed by Shia militias groups in Iraq. He provided photographs of armed men and politically themed posters to support that Shia militias were and are operating in Baghdad. The presence of Shia militias in Baghdad is supported by independent information before me which confirms that militia groups

including the AAH and the Mahdi Army, were active at the time of the claimed events,¹ and I accept this is the case. I also accept on the evidence before me that Shia militias engaged in criminal activities including kidnapping, threats, and extortion and were known to target, political rivals, Sunni Muslims, certain individuals perceived to be transgressing Islamic norms (including actual or perceived members of the LGBTIQ community, and alcohol vendors), and other minority groups.² However, even taking this information into account, for the reasons discussed below I have concerns with aspects of the applicant's evidence which leads me to doubt he was threatened for all of the reasons he has claimed.

17. The applicant has consistently claimed since his arrival in Australia that Shia militias took their family home for their headquarters and he and his family were forced to rent elsewhere in Baghdad. However, even noting that he has maintained this claim over a period of time, the information before me does not support that militias evicted Shia Muslims from their homes, for any reason, including for the purpose of acquiring their properties for their headquarters.³ I am not satisfied this occurred or that the applicant or his family were of interest to any Shia militia for this reason.
18. The applicant participated in the arrival interview in June 2013. At that time, when asked why he left that country, he did not raise claims that were later made in the protection visa application. Specifically, did not indicate that: he was threatened by the AAH because of his relationship with a girl at university who's relative held a high-ranking position with the AAH; he was threatened for expressing his political opinions at university; that his aunt and son were killed for being spies; and that Shia militias threatened him because he refused their requirement attempts. This is notable because at that time he did raise other claimed threats from the AAH, specifically the claimed threats due to managing his uncle and the [business].
19. In addition, aspects of his evidence on arrival appear to contradict evidence he later gave in his protection visa application. When asked, he stated in the arrival interview that he had never participated in any political against the government, which is at odds with his subsequent evidence that he openly expressed anti-government political views during his time at university. Further, in his arrival interview he provided evidence that when he left Iraq, he was in a relationship with a girl named '[Ms B]'. This appears contrary to his later protection visa evidence that his girlfriend's name was '[Ms A]'. Finally, his evidence on arrival was that the primary reason he left Iraq was due to threats from the AAH due to managing his uncle and work in that industry. This is in direct contrast to his oral evidence in the protection visa interview that the primary reason he left was due to the threats from [Ms A]'s family who were connected to the AAH.

¹ Australian Department of Foreign Affairs and Trade (DFAT), 'Country Information Report Iraq', 17 August 2020', 20200817105936 (DFAT 2020 Report); DFAT, 'Country Information Report Iraq', 9 October 2018, CIS7B839419766 (DFAT 2018 Report); DFAT, 'Country Information Report Iraq', 26 June 2017, CISED50AD4631 (DFAT 2017 Report); European Asylum Support Office (EASO), 'Country of Origin Information Report - Iraq Targeting of Individuals', 7 March 2019, 20190308091632 (EASO 2019 Targeting of Individuals Report); EASO, 'Iraq: Security situation', 30 October 2020, 20201102085642 (EASO 2020 Security Situation Report); EASO, 'Country Guidance: Iraq - Guidance note and common analysis', January 2021, 20210210092507 (ESOS 2021 Guidance Note); Lifos, 'The Security Situation in Iraq: July 2016-November 2017', 18 December 2017, CISED50AD8556 (Lifos 2017 Report); and United Nations High Commissioner for Refugees (UNHCR), 'International Protection Considerations with Regard to People Fleeing the Republic of Iraq', 3 May 2019, 20190506112913 (UNHCR 2019 Report).

²DFAT 2020 Report; DFAT 2018 Report; DFAT 2017 Report; EASO 2019 Targeting of Individuals Report; EASO 2020 Security Situation Report; ESOS 2021 Guidance Note; Lifos 2017 Report; and UNHCR 2019 Report.

³ DFAT 2020 Report; DFAT 2018 Report; DFAT 2017 Report; EASO 2019 Targeting of Individuals Report; EASO 2020 Security Situation Report; ESOS 2021 Guidance Note; Lifos 2017 Report; and UNHCR 2019 Report.

20. The delay in raising these claims and the apparent differences in his evidence were put to the applicant for comment. The applicant explained that he did not raise these matters during that arrival interview because he was asked to be brief, he was fearful and had no trust in the authorities following his onshore detention, and the smugglers had instructed him not to divulge too much information. I have listened to the audio recording and read the written transcript of the interview, and I am not satisfied as to these explanations.
21. During the arrival interview, the applicant was clearly advised that this was his opportunity to provide reasons why he should not be removed from Australia, that he was required to tell the truth, and that if he later gave different information during any future interview, this may raise doubts about the reliability of his evidence. The applicant stated that he understood this, agreed to provide truthful information, and confirmed he understood the interpreter. When asked the reasons for his departure from Iraq, contrary to his submission, the officer did not ask him to be brief, but rather gave him the chance to discuss those reasons in some detail. Moreover, the applicant was able to provide accurate information about his identity, family, background in Iraq, travel to Australia and discuss other purported threats from the AAH, which undermines his statements that he was fearful to provide this kind of information during that interview. On the evidence before me, I consider the applicant was aware of the importance of providing accurate information during the arrival interview and had the opportunity or provide relevant evidence on the reasons he left the country.
22. In respect of the name of his girlfriend, the applicant explained to the IAA that he was referring to a different girl in his arrival interview. However, I am not satisfied this adequately addresses my concern. During the protection visa interview the applicant stated that the breakdown of his relationship with [Ms A] and the threats against his life from her relative (in the AAH) immediately precipitated his 2013 departure from Iraq, and he did not claim to have another relationship after [Ms A]. I am not satisfied that there were two different women, rather given the context, I consider it is more likely that his evidence on arrival was accurate and that prior to his departure from the country, he was in a relationship with a girl named [Ms B], not [Ms A] as later claimed.
23. I am mindful of the need to be cautious in relying adversely on the arrival interview, including a failure to raise matters during that interview. I have also considered the passage of time since the claimed events, and that the applicant was not assisted by a representative at the arrival interview. However, in this case, I note the interview was conducted several weeks after his arrival in Australia and close to the time of the claimed events and, as noted he did raise matters pertaining to the activities of Shia militias. Moreover, in this case, it is not merely an omission of claims, but also that the information he provided in relation to the extent of his political participation, the primary reasons for leaving Iraq, and the name of his girlfriend in Iraq differed from the evidence he later provided as part of his protection visa information. In these circumstances and noting the significance of these later claims to his life as well as his protection claims, I would have expected him to have raised the relevant events when given the opportunity to do so on arrival, and that he would have been able to provide a broadly consistent account of these matters, had they occurred as claimed. In the circumstances, I consider that the statements made by the applicant during his entry interview are relevant to my assessment, and in this case his failure to raise certain claims along with the differences between the information he gave during his arrival interview and his later statements, contributes to my concerns regarding aspects of his claims.
24. I have also identified concerns with the applicant's oral evidence at the protection visa interview regarding his claimed relationship with [Ms A], and the threats from the AAH. In his protection visa application, the applicant stated that he was in a relationship with 'the

daughter of a high-ranking official' and when 'he found out about the relationship he sought the applicant to kill him'. During the protection visa interview, and consistently with his written application, the applicant initially stated that [Ms A]'s father was the member of the AAH. However, later in the interview when asked for further details about this claim, his evidence changed and it was her uncle, not her father, who was the high-ranking official, and who had threatened the applicant. When asked the uncle's name, the applicant stated that he did not know his name, but later said that the uncle called the applicant, introduced himself and then threatened him. When this apparent discrepancy was noted by the delegate, the applicant stated the uncle never said his name, but I consider highly unlikely that a person would introduce himself but not state his name. It appears that the applicant's evidence was changing throughout the interview.

25. The applicant also claimed that his family were targeted by the AAH due to his relationship with [Ms A] with his father being arrested in 2017. The purported dispute with the AAH over the relationship is said to have occurred in 2013, and the applicant was unable to adequately explain why [Ms A]'s uncle or the AAH would wait four years to arrest his father. If they were genuinely interested in harming the applicant and/or his family for the claimed relationship, I am not satisfied they would have waited four years to do so, particularly given the applicant's claims that the Shia militias have strong networks and can locate people anywhere in Iraq. Finally, the applicant's evidence on this matter is also at odds with independent information, that women are generally the targets of honour-based violence, rather than the men involved.⁴
26. The applicant provided a copy and translation of a death certificate for a [Mr C] who he claimed was his cousin. The applicant has not provided supporting evidence to establish that [Mr C] is in fact related to him, but I am prepared to accept that he is the applicant's cousin. The death certificate confirms that he was shot in a terrorist attack in August 2007. I accept that he was shot and killed in 2007. A death certificate has not been provided for his aunt, but I accept that she was also killed in 2007. There were heightened levels of sectarian violence during this period, in which many Shia and Sunni civilians were killed,⁵ and while I accept that his aunt and cousin were killed during that period, I am not persuaded by the applicant's evidence that that they were killed by Shia Militias because they were spies for the Sunni community and I am not satisfied that this was the case. Rather, given the country information, it is more likely that they were caught up in the general sectarian violence occurring at the time.
27. I also have concerns regarding the applicant's claims that Shia militias attempted to forcibly recruit him. He claimed that he was opposed to the government and militias and voiced these opinions at university. In these circumstances it is unclear why Shia militias (who he claimed were aware of his views), would approach him at the university campus and attempt to recruit him. I consider his evidence on this matter is unpersuasive. Moreover, it is also contrary to authoritative independent information that forced recruitment among Shia militias, including the AAH, remains very rare. The European Asylum Support Office (EASO) noted that these groups have had strong support from the Shia community and pay well, and there are significant economic and ideological incentives to join.⁶ These groups have had strong levels of voluntary recruitment, so much so that, in the past, there were more volunteers than were needed or could be funded.⁷ A report by the Netherlands Ministry of

⁴ UNHCR 2019 Report: EASO 2021 Guidance Note; EASO 2019 Targeting of Individuals Report; and DFAT 2020 Report.

⁵ DFAT 2020 Report; DFAT 2018 Report; and DFAT 2017 Report.

⁶ EASO 2019 Targeting of Individuals Report.

⁷ Ibid.

Foreign Affairs found that, while men may face social pressures to join a militia, forced recruitment does not occur.⁸

28. I have considered whether the passage of time has contributed to the noted concerns with the applicant's evidence on the above matters, however, even taking that into account, given the significance of these events to his life and his claims, I consider he would have been able to provide a broadly consistent and plausible account of the claimed events. I also note that during the protection visa interview, the applicant indicated he understood the interpreter, and appeared able to respond to the questions put to him and engage with the delegate during the interview. I consider he was able to meaningfully participate in the interview and there are no suggestions that there were errors in the interpretation such that his evidence given at that time was misunderstood, and I am not satisfied that this accounts for any of the concerns I have identified above. Nor can either of these factors overcome the fact that aspects of his evidence are not supported by the independent information before me.
29. On the totality of the evidence before me, I am not satisfied that the applicant was forcibly recruited by Shia militias, that he was accused of being a spy for any other reason, that his aunt and cousin were killed because they were spies, that his family home was acquired by Shia militias, or that he was ever openly political in Iraq. Nor am I satisfied that he was ever in a relationship with a girl whose relative was a high-ranking member of the AAH, that his father was arrested in 2017 or his family harassed any of these reasons. I am not satisfied that the applicant was of interest to Shia militias, the authorities or anyone else for these reasons, or that he faces a real chance of harm for these reasons on return to Iraq now or in the reasonably foreseeable future.
30. However, the applicant has stated since his entry in Australia that his uncle was a well-known [occupation], and that he promoted his uncle's career including during his work as a manager at [business], which also promoted [occupations]. His evidence lacked detail regarding the process of day-to-day operations of the business, but I also note he was not expressly asked about this during the interview, rather he was only asked to generally describe his role and responded that he managed the business side of things. The applicant was concurrently undertaking university studies in accounting, but I accept it is possible his studies did not preclude him from undertaking this work at night as he claimed. I accept that he did manage his uncle's career and managed a [business] which included the promotion of [occupations].
31. The applicant has provided a generally consistent account of the claimed threats from the Shia militias threatening regarding the [business] and management of his uncle. Overall, his claims were presented spontaneously and in a manner indicative of lived experience. I consider it is plausible that the [business] may have been considered to breach strict Islamic beliefs and that members of a Shia militia group threatened the applicant on several occasions because of this work. Specifically, on his evidence I accept that members of a Shia militia slapped him in the face twice and demanded he cease managing his uncle and close the business. I accept that the applicant did as instructed, that he stopped managing his uncle and the [business] was closed.
32. The applicant described his manner of dress at that time as 'modern' befitting a person in the [business] industry, stating that he wore an earring and gold jewellery. While information supports that Shia militias, including the AAH, harmed actual or perceived members of the LGBTIQI community, it also states that those targeted were individuals caught engaging in homosexual acts, people in the modelling profession, members of the emo subculture (who

⁸ Ibid.

wore tight jeans and had long hair), those displaying ‘non-masculine behaviour,’ and those who looked different on their identification cards, for example because they were transgender or undertaking hormonal treatment.⁹ On his evidence and description of his attire, I am not satisfied he would have been perceived to have fallen into these categories. The applicant has not claimed that he is homosexual or a member of the LGBTQI community and I am not satisfied that he is, and nor does the evidence before me indicate that those working in the [promotion]/[business] industry and/or those who wore earrings/gold jewellery were perceived to be homosexual. Moreover, while there is pressure to conform to conservative standards of dress and that Shia militias enforce strict dress codes, information indicates that women are primarily the targets of such attacks, not men.¹⁰ On the totality of the evidence, I am not satisfied that he was accused of being a homosexual as he claimed or that he or his family members were threatened by Shia militias for this reason.

33. The applicant claims that his name was flagged by the Shia militias and as a result he was subject to increased scrutiny at the airport when leaving Iraq. I am not satisfied this is the case. The applicant’s evidence was that his identity and travel documents were checked, and he was questioned about where he was going and why. Noting advice from the Australian Department of Foreign Affairs and Trade (DFAT) that a valid passport and visa/other entry permit is required to exit Iraq,¹¹ these questions appear consistent with standard exit procedures upon departing the country. Moreover, the fact that he was permitted to exit Iraq is indicative that he was not flagged as being of adverse interest to the authorities or anyone else.
34. The applicant claimed that he remained of interest to Shia militias due his work managing his uncle and the [business], even after closure of the business, and that his family were subject to ongoing threats and harassment from the Shia militias for this reason. He stated that they had to move constantly, his father was unable to work for fear of being asked to pay bribes, and that his brother was kidnapped and only returned on payment of ransom. I am not satisfied as to any of these claims. The applicant’s evidence that his family had to move continuously due to adverse attention from the militias is at odds with his evidence that once such move was just down the road from Shia militia headquarters: it is implausible they would reside nearby to known Shia headquarters in circumstances where they were being targeted by them. Moreover, from the applicant’s own evidence the aim of the militias was to get him to close the business and cease representing his uncle: the applicant did so, and his uncle was not harmed and later moved out of the area. In these circumstances, it is not clear why the applicant would remain of interest. Nor does the country information support that Shia militias continued to harass individuals or their families where a business seen to contravene Islamic mores was no longer operational.¹²
35. While I accept that Shia militias do engage in criminal activities of the nature described by the applicant, his evidence was that his family were targeted for such harm because of him. I am not satisfied that the applicant would have remained of interest to Shia militias once he ceased his work, and I have already found I am not satisfied that he was of interest to the Shia militias for the other reasons claimed. On the totality of the evidence before me, I am not satisfied that the applicant remained of ongoing interest to the Shia militias, or that they

⁹ UNHCR 2019 Report; EASO 2019 Targeting of Individuals Report; ESOS 2021 Guidance Note; DFAT 2020 Report; DFAT 2018 Report; and DFAT 2017 Report.

¹⁰ EASO 2019 Targeting of Individuals Report; UNHCR 2019 Report; and EASO 2021 Guidance Note.

¹¹ DFAT 2020 Report; DFAT 2018 Report; and DFAT 2017 Report.

¹² UNHCR 2019 Report; EASO 2019 Targeting of Individuals Report; ESOS 2021 Guidance Note; DFAT 2020 Report; DFAT 2018 Report; and DFAT 2017 Report.

visited his family, or harassed and harmed his family as claimed. I am not satisfied his brother was kidnapped, or that his father was unable to work or bribed because they were associated with the applicant.

36. Information before me is that situation in Iraq has changed since the applicant left the country. In 2017 the government and its associated forces declared victory over Sunni insurgent group, the Islamic State of Iraq and the Levant (ISIL or Daesh) and the Iraqi Security Forces (ISF) have retaken ISL held territory.¹³ The Iraqi government forces are in control of Baghdad and the southern governorates of Iraq.¹⁴ DFAT advise that ISIL remains a security threat to the country, and their targets include electricity and water infrastructure, civilians, and government and security forces.¹⁵ The information also indicates that their activities are generally focused in the western, and northern areas of the country, specifically the KRI, Anbar, Diyala, Kirkuk, Ninewa and Salah al-Din and in the Baghdad belts, which are the outlying areas on the border of Diyala, Anbar, Salah al-Din, and Babil.¹⁶ Moreover, information is that general levels of violence perpetrated by ISIL in Iraq have continued to decline since 2020 and into late 2021, including in Baghdad.¹⁷
37. Shia Muslims are the majority religious sect in the central governorates, including in Baghdad.¹⁸ DFAT advises that sectarian violence occurs occasionally, but overall, it assesses that there has been a significant reduction in sectarian violence since the mid to late 2000's.¹⁹ While attacks do occur, information supports a reduction in the number of general security incidents, including in Baghdad.²⁰ DFAT notes that there has been a conscious effort by political leaders to remove sectarian slogans from public discourse after the military defeat of ISIL and noted that it was common during the lead-up to the May 2018 election to hear politicians and commentators emphasising the need to rise above sectarianism and revenge to stabilise the country.²¹ DFAT states that commentators have suggested that the reduction

¹³ UNHCR 2019 Report; EASO 2019 Targeting of Individuals Report; ESOS 2021 Guidance Note; DFAT 2020 Report; DFAT 2018 Report; DFAT 2017 Report; Lifos 2017 Report; Office of the Commission General for Refugees and Stateless Persons (Belgium) (Cgvsra) 'COI Focus - Iraq: Security Situation in Central and Southern Iraq', 20 March 2020, 20200619134831(Cgvsra 2020 Report); United States of America (USA Office of Inspector General, 'Operation Inherent Resolve - Lead Inspector General Report to the United States Congress - October 1, 2019-December 31, 2019', 3 February 2020, 20200213114105 (Operation Inherent Resolve Report); and Overseas Security Advisory Council (OSAC), 'OSAC Country Security Report Iraq', 2 September 2021, 20210903092017 (OSAC Report).

¹⁴ UNHCR 2019 Report; EASO 2019 Targeting of Individuals Report; ESOS 2021 Guidance Note; DFAT 2020 Report; DFAT 2018 Report; DFAT 2017 Report; Lifos 2017 Report; Cgvsra 2020 Report; and OSAC Report.

¹⁵ DFAT 2020 Report.

¹⁶ UNHCR 2019 Report; EASO 2019 Targeting of Individuals Report; ESOS 2021 Guidance Note; DFAT 2020 Report; DFAT 2018 Report; DFAT 2017 Report; Lifos 2017 Report; Cgvsra 2020 Report; Wing, J, Musings on Iraq, 'Islamic State Attacks Decline In December 2020', , 4 January 2021, 20210105080839; Wing, J, Musings on Iraq, 'Violence Continues To Decline In Iraq Winter 2020-21', 4 February 2021, 20210209100327; Wing, J, Musings on Iraq, 'IS Winter Break Continues In Feb While Pro-Iran Groups Picking Up Attacks', 8 March 2021, 20210309103820; Wing, J, Musings on Iraq, 'Violence In Iraq, March 2021', 5 April 2021, 20210406084304; Wing, J, Musings on Iraq, 'Islamic State Ramadan Offensive Begins, Pro-Iran Groups Increase Attacks In April 2021', 3 May 2021, 20210504092209; Wing, J, Musings on Iraq, 'Islamic State's Offensive Appears Over While Pro-Iran Groups Maintain Campaign In May 2021', 7 June 2021, 20210608090833; Wing, J, Security In Iraq June 2021', Musings on Iraq, 6 July 2021, 20210707090125; Wing, J, Musings on Iraq, 'Violence Picks Up Again In Iraq In July 2021', 2 August 2021, 20210803112407; and Wing, J, Musings on Iraq 'Islamic State's Summer Offensive In Iraq Ends In August', 6 September 2021, 20210913085228 (collectively the 2021 Musings on Iraq Reports).

¹⁷ UNHCR 2019 Report; EASO 2019 Targeting of Individuals Report; ESOS 2021 Guidance Note; EASO 2020 Security Situation Report; DFAT 2020 Report; DFAT 2018 Report; DFAT 2017 Report; Lifos 2017 Report; Cgvsra 2020 Report; 2021 Musings on Iraq Reports; and Wing, J, Musings on Iraq, 'Security In Iraq November 2020', 3 December 2020, 20201204082523; and J Wing, Musings on Iraq 'Security In Iraq November 2020', 3 December 2020, 20201204082523.

¹⁸ DFAT 2020 Report; DFAT 2018 Report; and DFAT 2017 Report.

¹⁹ DFAT 2020 Report.

²⁰ DFAT 2020 Report; DFAT 2018 Report; DFAT 2017 Report; 2021 Musings on Iraq Reports; UNHCR 2019 Report; EASO 2019 Targeting of Individuals Report; ESOS 2021 Guidance Note; and EASO 2020 Security Situation Report.

²¹ DFAT 2020 Report.

in sectarianism more broadly reflects the Shia majority's increased confidence and sense of security in the wake of victory over ISIL.²²

38. In 2014 Shia militia groups, including the AAH, unified to form the Popular Mobilisation Forces (the PMF).²³ The PMF was formally brought under centralised control as an independent military organisation in 2018 and they now work alongside the ISF, fighting against the Sunni insurgency, including Islamic State of Iraq and the Levant (ISIL, or Da'esh). Individual PMF elements exercise close control over many neighbourhoods, particularly in Shi'a areas and effectively run these areas, providing a range of services that would normally be fulfilled by the state (particularly welfare and security).²⁴ Many of the groups in the PMF have strong ties to Iran, and concerns have been raised that the government's attempt to assert control over the PMF have been unsuccessful and there is evidence that PMF groups continue to commit human rights abuses and engage in other criminal activity.²⁵
39. The United Nations High Commissioner for Refugees (UNHCR) stated in 2019 that atheists and secular-minded individuals may face abduction, harassment and physical attack by various extremist armed groups depending on their circumstances.²⁶ In 2021 EASO also stated that atheists may be targeted by militias.²⁷ However, neither the UNHCR nor EASO reports cite recent cases of harm against secular Iraqis in Baghdad. Moreover, EASO also states that secularism is on the rise among the youth in Iraq and information supports that bookstores, cafés and Facebook groups, some with thousands of members, are forums where secular ideas can be discussed.²⁸ I am not satisfied that the information indicates that there is the systematic targeting of secularised Muslims in Baghdad by either the government or Shia militias or that information indicates that all secular Muslims face a real chance of harm or prosecution. Moreover, the information does not support that moderate Shia Muslims are targeted.²⁹
40. As the majority community in Iraq, including Baghdad, Shias have a dominant role in the government.³⁰ The reports before me do not support that Shias face official or other forms of discrimination including in relation to access to housing, employment or basic services in areas where they form the majority which includes Baghdad.³¹ Violence between different Shia armed groups occurs and is mostly related to control of land and oil revenues, but local sources advised that this kind of intra-Shia violence predominately affects those who are actively involved in a militia or tribal group rather than ordinary citizens.³² Shia armed groups also engage in organised crime, but the information indicates that other Shia's are not generally the targets for such crime, rather the targets are Sunnis and other ethnic minorities.³³ Shias and Shia places of worship were targeted by ISIL, but as noted above their

²² Ibid.

²³ UNHCR 2019 Report; EASO 2019 Targeting of Individuals Report; ESOS 2021 Guidance Note; DFAT 2020 Report; DFAT 2018 Report; DFAT 2017 Report; and ESOS 2020 Security Situation Report.

²⁴ DFAT 2020 Report.

²⁵ UNHCR 2019 Report; EASO 2019 Targeting of Individuals Report; ESOS 2021 Guidance Note; DFAT 2020 Report; DFAT 2018 Report; DFAT 2017 Report; and ESOS 2020 Security Situation Report.

²⁶ UNHCR 2019 Report.

²⁷ EASO 2021 Guidance Note.

²⁸ EASO 2021 Guidance Note; EASO Targeting of Individuals 2019 Report; UNHCR 2019 Report; DFAT 2020 Report; DFAT 2018 Report; and DFAT 2017 Report.

²⁹ EASO Targeting of Individuals 2019 Report; and UNHCR 2019 Report

³⁰ DFAT 2020 Report.

³¹ DFAT 2020 Report; DFAT 2018 Report; DFAT 2017 Report; EASO 2019 Targeting of Individuals Report; EASO 2021 Guidance Note; and UNHCR 2019 Report.

³² DFAT 2018 Report; and DFAT 2017 Report.

³³ DFAT 2020 Report; DFAT 2018 Report; DFAT 2017 Report; EASO 2019 Targeting of Individuals Report; EASO 2021 Guidance Note; and UNHCR 2019 Report.

activities and reach have been significantly limited in recent years, and there has been a decline in the levels of sectarian violence and tensions.³⁴

41. There have been widespread protests over corruption, government neglect, unemployment, and poor services in Baghdad, beginning in 2018 and which have continued in recent years.³⁵ Some of the protests became violent leading to deaths and injuries among protesters and security forces. Several protest leaders and activists have been threatened and assassinated by members of the PMF, including the Shia militias, and the ISF. However, reports indicate that the primary targets for the ISF and PMF are well-known activists, organisers, people who play a central role in the protests and journalists who are critical of the authorities/the PMF.³⁶
42. Tensions have escalated between the United States (US) and Iran, which culminated in an attack against the US Embassy in Baghdad by Iranian backed members of the PMF in December 2019.³⁷ The US retaliated in January 2020, killing the commander of the Iranian Islamic Revolution Guard Corps (and deputy commander of the Iraqi PMF) in a drone attack near Baghdad International Airport.³⁸ Iran responded with a ground-to-ground missile attack on Iraqi military bases hosting US troops.³⁹ However, on the evidence before me, these attacks do not appear to have translated into a real chance of harm against civilians in Iraq, as those targeted were US military the Iranian backed militias.⁴⁰ EASO recently advised that indiscriminate violence in Bagdad was not at a sufficiently high level to demonstrate a real risk of serious harm.⁴¹
43. Persons who are seen as not conforming with the local social and cultural norms by displaying 'westernised' behaviour have been subject to threats and attacks by individuals in society, as well as by militia groups.⁴² As noted above, men and women face pressure to conform to conservative standards on personal appearance and Shia militias in Baghdad do seek to enforce strict dress codes.⁴³ However, the information indicates that women are usually the targets of violence for this reason, and men are subjected to less scrutiny.⁴⁴ Shia PMF groups continue to target individuals involved in the alcohol trade, though there are reports that some groups run private [businesses] in which alcohol is available.⁴⁵ A December 2018 report indicates that drinking was commonplace across Iraq despite the consumption of alcohol being forbidden.⁴⁶ Moreover, on the evidence, the targets for such violence are generally the sellers of alcohol, rather than the consumers.⁴⁷

³⁴ DFAT 2020 Report; DFAT 2018 Report; DFAT 2017 Report; EASO 2019 Targeting of Individuals Report; EASO 2021 Guidance Note; EASO 2020 Security Situation Report; Musings on Iraq 2021 Reports; and UNHCR 2019 Report

³⁵ DFAT 2020 Report; Operation Inherent Resolve Report; UNHCR 2019 Report; EASO 2020 Security Situation Report; EASO 2021 Guidance Note; and Munqith Dagher and Karl Kaltenthaler, 'Poling Insights on Iraq's Shia Revolt', 8 November 2019.

³⁶ DFAT 2020 Report; Operation Inherent Resolve Report; UNHCR 2019 Report; EASO 2020 Security Situation Report; and EASO 2021 Guidance Note.

³⁷ DFAT 2020 Report; Operation Inherent Resolve Report; and EASO 2021 Guidance Note.

³⁸ DFAT 2020 Report and Operation Inherent Resolve Report.

³⁹ DFAT 2020 Report and Operation Inherent Resolve Report.

⁴⁰ DFAT 2020 Report; Operation Inherent Resolve Report; and EASO 2020 Security Situation Report.

⁴¹ EASO 2021 Guidance Note.

⁴² UNHCR 2019 Report; and EASO 2021 Guidance Note.

⁴³ EASO 2021 Guidance Note.

⁴⁴ Ibid; UNHCR 2019 Report; DFAT 2020 Report; DFAT 2018 Report; DFAT 2017 Report; and EASO 2019 Targeting of Individuals Report.

⁴⁵ DFAT 2020 Report; EASO 2019 Targeting of Individuals Report; UNHCR 2019 Report; and EASO 2021 Guidance Note.

⁴⁶ Agence France-Presse (AFP), 'With the jihadists gone, booze is back in Iraq's Mosul', 2 December 2018, CXBB8A1DA39740.

⁴⁷ DFAT 2020 Report; EASO 2019 Targeting of Individuals Report; UNHCR 2019 Report; and EASO 2021 Guidance Note

44. DFAT states that there is 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.⁴⁸ 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. DFAT states it can be difficult if an individual is not returning to their original area, but otherwise assesses there is limited evidence to suggest that returnees face difficulties in assimilating back into their communities. DFAT advises overall that Iraqis who have sought asylum overseas and returned have done so without significant difficulty. The information before me does not support that returnees or failed asylum seekers are being targeted, including for because they have western style dress.⁴⁹
45. I have found above that I am not satisfied that the applicant was of ongoing interest to Shia militias, or anyone else, following his departure from Iraq. It has now been eight years since the claimed threats from the Shia militias and the applicant's departure from the country and I am not satisfied that he would be of interest to Shia militias after that time for his part employment in Iraq. The applicant has not claimed that he wishes to undertake future work in the [promotion] or [business] industry in Iraq and has not undertaken this kind of work here in Australia, despite having the opportunity to do so, which I consider indicates he is no longer interested in such employment. I am not satisfied that he will undertake further work in the [promotion] or [business] management business on return to Iraq. I am not satisfied that the applicant faces a real chance of harm on for this reason on return now or in the reasonably foreseeable future.
46. The applicant provided a photograph of himself with another person, in which he appeared to be drinking alcohol. I accept that he may drink alcohol on return to Iraq. However, having regard to the information above that Shia militias largely target alcohol sellers, rather than the consumers, I am not satisfied that he faces a real chance of harm for this reason. I am not satisfied that the applicant was perceived to be homosexual in the past, and nor does the information above support that he will be considered to be so because of his residence in the west and/or because he will wear more 'western style' attire on return to Iraq. Even if he wears jewellery as he did in the past, I am not satisfied that he will be considered to be homosexual or a member of the LGBTQI community. Nor does the information support that as a Shia male, he faces a real chance of harm for adopting a more western style of clothing or western behaviours. I am not satisfied that he faces a real chance of harm for these reasons on return to Iraq now or in the reasonably foreseeable future.
47. I have accepted that the applicant is a moderate Shia Muslim. The applicant was not targeted for his religious beliefs or practice in the past, and nor does the independent information above support that moderate Shia's are now being targeted by Shia militias or anyone else. There is nothing in the applicant's accepted profile to indicate he is interested in openly engaging in any political or protest activity against the government or the Shia militias/PMF on return to Iraq in the reasonably foreseeable future and I am not satisfied that he will do so. I am not satisfied that he will be unable to practise his faith, or that he faces harm as a moderate Shia and/or because he holds political views against the government or the Shia militias.
48. The applicant was not in the past an active member of a militia, and he has not claimed he will be so in the future. I am not satisfied that he will be, or that he faces a real chance of

⁴⁸ DFAT 2020 Report.

⁴⁹ DFAT 2020 Report; DFAT 2018 Report; and DFAT 2017 Report.

harm for that reason. I am not satisfied on his profile that he will be caught up in tribal activities or intra-shia violence. The information does not support that returned failed asylum seekers are targeted for harm, and I am not satisfied he faces harm, including being extorted, as a returned failed asylum seeker from Australia. Nor am I satisfied that the applicant otherwise has, or will have on return, the profile of individuals currently being targeted for harm by Shia militias as he has claimed.

49. The applicant is a Shia Muslim, a member of the majority religious community, and he will be returning to an area where he used to reside and where he still has family. He completed high school and was employed in Iraq and has attained skills working in Australia. His family continue to reside in Baghdad, and I am not satisfied on his evidence that they will be unable to provide him with assistance or support if this is required. I am not satisfied that he will be unable to find accommodation, employment, that he will not be able to access basic services, or that he will otherwise face discrimination or harm. Nor am I satisfied that he faces a real chance of harm because he a gentle, hardworking, and ambitious person who has done well in Australia as has been claimed.
50. On the totality of the information before me, including the applicant's particular profile and circumstances, and the information regarding the reduction in ISIL activity in Baghdad, the decrease in sectarian violence throughout the country, and the current levels of indiscriminate violence in Baghdad: I am not satisfied that the level of violence in Baghdad rises to a level amounting to a real chance or risk of harm. Nor am I satisfied he faces a real chance of harm from ISIL for any reason. I am not satisfied that the applicant faces a real chance of any harm on return because he is a moderate Shia, due to sectarian violence, and/or due to the general security situation now or in the reasonably foreseeable future.
51. The applicant departed Iraq through Baghdad airport. In 2020 there was a drone strike near Baghdad International Airport, though DFAT advises that the airport continues to operate regular commercial services and DFAT does not report more recent attacks.⁵⁰ EASO recently advised that there is safe access to Baghdad from the airport.⁵¹ Further, having regard to the independent information cited above regarding the security situation in Baghdad, I am satisfied that he can safely access Baghdad and that he does not face a real chance of harm in doing so.
52. On the totality of the evidence before me, including the independent information and the applicant's particular circumstances and profile, I am not satisfied that he faces a real chance of harm on return to Baghdad in Iraq, now or in the foreseeable future for any of the reasons he has claimed. He does not have a well-founded fear of persecution.

Refugee: conclusion

53. 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

54. 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

⁵⁰ DFAT 2020 Report.

⁵¹ EASO 2021 Guidance Note.

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

55. 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.
56. The expressions 'torture', 'cruel or inhuman treatment or punishment' and 'degrading treatment or punishment' are in turn defined in s.5(1) of the Act.
57. I have found above that I am not satisfied that the applicant's claims, detailed above, give rise to a real chance of harm on return to Baghdad, Iraq. As 'real chance' and 'real risk' involve the same standard,⁵² I similarly find that those matters do not give rise to a real risk of significant harm for the purpose of s.36(2)(aa) of the Act.
58. The applicant departed Iraq through Baghdad airport. In 2020 there was a drone strike near Baghdad International Airport, though DFAT advises that the airport continues to operate regular commercial services and DFAT does not report more recent attacks.⁵³ EASO recently advised that there is safe access to Baghdad from the airport.⁵⁴ Further having regard to the independent information cited above regarding the security situation in Baghdad, I am satisfied that he can safely access Baghdad and that he does not face a real risk of significant harm in doing so.
59. On the totality of the evidence before me, including the independent information and the applicant's particular circumstances and profile, I am not satisfied he faces a real risk of significant harm for any reason on return to Baghdad Iraq, for the purpose of s.36(2)(aa) of the Act.

Complementary protection: conclusion

60. 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).

⁵² *MIAC v SZQRB* (2013) 210 FCR 505.

⁵³ DFAT 2020 Report.

⁵⁴ EASO 2021 Guidance Note.

Decision

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

Applicable law

Migration Act 1958

5 (1) Interpretation

In this Act, unless the contrary intention appears:

...

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

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

...

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

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

but does not include an act or omission:

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

...

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

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

...

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

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

...

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

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

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

...

5H Meaning of refugee

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

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

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

...

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.