



Australian Government

Immigration Assessment Authority

Decision and Reasons

Referred application

IRAQ

IAA reference: IAA22/10225

Date and time of decision: 21 April 2022 15:50:00

P Tyson, Reviewer

Decision

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

Any references appearing in square brackets indicate that information has been omitted from this decision pursuant to section 473EC(2) of the Migration Act 1958 and replaced with generic information which does not allow the identification of a referred applicant, or their relative or other dependant.

Background to the review

Visa application

1. The referred applicant (the applicant) claims to be a Shia Muslim and former [Occupation 1] from Iraq. On 18 January 2017 he lodged an application for a Safe Haven Enterprise Visa, a type of protection visa.
2. The visa was refused by a delegate of the Minister for Immigration in a decision dated 21 July 2017. The delegate did not accept that the applicant had been [an Occupation 1] or been threatened in the context of his work as he had claimed, and found there is not a real chance or risk of him otherwise being harmed in Iraq.
3. The decision of the delegate was affirmed by a different IAA reviewer on 25 October 2017. However, on 27 January 2022, by consent, the Federal Circuit and Family Court remitted the matter to the IAA for reconsideration.

Information before the IAA

4. I have had regard to the material given by the Secretary under s.473CB of the *Migration Act 1958* (the Act).

New information obtained by the IAA

5. Included in the review material is a written record and recording of interviews conducted with the applicant in July and August 2013 shortly after his arrival in Australia. It is not apparent whether or not those records were before the delegate. If they are new information, I am satisfied there are exceptional circumstances to justify considering them, on the basis that they include information given by the applicant on arrival about his circumstances in Iraq and reasons for leaving the country and, as discussed below, demonstrate he has been consistent in those claims since his arrival.
6. The previous IAA reviewer obtained new information about amnesties for persons who are absent from the Iraqi [Employer 1]¹ and I have obtained an additional report² on this issue. The new information about amnesties is relevant to determining the applicant's claim to have been convicted in absentia for absence from [Employer 1], which did not arise on the delegate's findings. I am satisfied there are exceptional circumstances to justify considering the new information.
7. I have obtained new country information about the situation in Iraq³. A significant period of time has passed since the delegate's decision and these are authoritative reports providing

¹ Landinfo, "Iraq: Rule of Law in the Security and Legal System", 8 May 2014, p. 17; Iraqi News, "Abadi pardons Iraqi military deserters and others", 17 May 2015.

² European Asylum Support Office (EASO), 'Country of Origin Information Report - Iraq Targeting of Individuals', 7 March 2019.

³ Department of Foreign Affairs and Trade (DFAT), 'Country Information Report Iraq', 17 August 2020, 20200817105936 (DFAT 2020); European Union Agency for Asylum, 'Iraq – Targeting of Individuals 2022', 20220201113613; European Union Agency for Asylum, 'Iraq Security Situation', 23 February 2022, 20220224130851; EASO, 'Country Guidance: Iraq - Guidance note and common analysis', January 2021, 20210210092507; United Nations High Commissioner for Refugees (UNHCR), 'International Protection Considerations with Regard to People Fleeing the Republic of Iraq', 3 May 2019, 20190506112913.

current and updated information. I am satisfied there are exceptional circumstances to justify considering them.

New information submitted by the applicant

8. The applicant, through his representative, made a submission and provided new information to the IAA on 16 August 2017.
9. The new information addresses some of the delegate's reasons for rejecting the applicant's claim to have worked in [Employer 1]. In my view, the delegate's finding that the applicant did not work in [Employer 1] as claimed would have come as a surprise. While he was questioned in detail around his work and asked for further evidence, he was not clearly put on notice that this central claim was in doubt.
10. The applicant provides new information about the location of his former place of work at the [Employer 1 building] in Basra, including a google map. Part of the delegate's reasoning for rejecting the applicant's claim was what she assessed as vague and inaccurate evidence about the location of the [Employer 1 building]. The information is not personal information and does not satisfy s.473DD(b)(ii) but as these concerns were not raised with the applicant at the interview, I accept that he could not have provided the information earlier. The map he attaches is of little assistance. It shows a satellite image with an area circled, said to be the [Employer 1 building], but there is nothing to verify that the area circled is in fact the [Employer 1 building]. A link to a google maps page shows there is indeed an area called [Area name] in Basra in a location consistent with the applicant's description to the delegate, but again the applicant has not identified the [Employer 1 building] where he worked on that map. Further, I do not share the delegate's concerns about the applicant's evidence and accept on the material already before me that he worked as [an Occupation 1] and as such, the new information is of little bearing. I am not satisfied there are exceptional circumstances to justify considering it.
11. The delegate had concerns about a document relating to the applicant's appointment as [an Occupation 1]. He submitted the letter shortly after the interview despite having said that he had no further employment documents, and the letter referred to him being appointed in 2007 whereas on his claims he commenced with [Employer 1] in 2005. The applicant now explains that he contacted Iraq and obtained the letter after the interview, and that he commenced work in 2005 under different [employers] including [Employer 2] and was formally appointed full time permanent in 2007 when leadership was handed over to [other organisations]. The applicant was represented before the Department and in my view the new information is the sort of basic explanatory detail that could and should have been provided when he submitted the document, regardless of whether he was aware of the delegate's specific concerns or that his claim to have worked in [Employer 1] was in doubt. However, I am satisfied that the information is personal information about the applicant that may have affected the delegate's consideration of the applicant's claims. The explanations are credible in that they are capable of being believed. The new information is relevant to the assessment and weight of a document that was suspected by the delegate to be fraudulent and while I consider that the applicant could have provided this information earlier, I take into account that he may not have comprehended the ramifications of failing to do so. I am satisfied that there are exceptional circumstances to justify considering the explanations he now gives.
12. The applicant also submitted photos to the delegate purporting to evidence that he was [an Occupation 1]. The delegate found it more plausible that these were from the applicant's

[earlier period of employment], but these concerns were not shared with the applicant. The applicant now provides a link to what he says is his work's Facebook page, showing that the logo in the applicant's photos is that of his [employer]. I have accessed the link, and the page provided is in Arabic, although it is identified in English as a 'government organisation'. It is not personal information in the relevant sense. I accept that the applicant could not have provided the new information to the delegate given he was unaware of her concerns over the photographs. However, I am unable to verify the content or ownership of the Facebook page. I also cannot view the logo in the photographs he submitted to the delegate clearly enough to confirm that it is the same as that on the Facebook page. In any event, I do not share the delegate's views about the photographs. I am not satisfied there are exceptional circumstances to justify considering the information.

13. The applicant provides links to two articles regarding corruption, militias and drug trade in Iraq, including information regarding a local governor who fled Iraq. The information is said to be relevant to the applicant's claims to have been threatened for refusing to leak information about [work practices]. One article from Al Monitor is no longer accessible through the link provided by the applicant, although he has provided an extract and description in the submission. From the URL, the article seems to date from October 2016, prior to the delegate's decision. The applicant was represented before the delegate and was questioned about why persons in Iraq would want [work practice] information. At that time, he referred to [Activity 1] rather than [Activity 2]. I consider that he could have provided this information prior to the delegate's decision. The extract does not contain credible personal information in the relevant sense. Section 473DD(b) is not satisfied.
14. The other article post-dates the decision and I accept it could not have been provided to the delegate. It concerns the governor of Basra having fled to Iran amid a corruption scandal. The link to the applicant's case is said to be that the governor would have required the [work practice] timetable, which the applicant was repeatedly asked to provide, to flee. I accept that the article contains credible personal information about the governor. However, the suggestion that the governor would have had leaked [work practice] information is speculative, and I do not understand the applicant to be suggesting that this is the reason he was asked for information in 2013, 4 years prior to the events described in the article. The link to the applicant's claims is tenuous. To the extent the article more generally confirms the presence of corrupt officials, that is supported by other country information before the delegate. I am not satisfied the information may have affected the consideration of the claims. Although I have taken into account that the applicant could not have provided this article to the delegate, it is of only tangential relevance to the claims and in any event I accept that the applicant was threatened to provide [work practice] information. Given all of these matters, I am not satisfied there are exceptional circumstances to justify its consideration.
15. The submission contains a new claim that the applicant fears harm on account of his perceived faith as his tribe is mainly Sunni. The applicant has consistently claimed to be Shia and gave evidence to the delegate that his ancestors had converted from Sunni to Shia and his tribe was a mix of Sunni and Shia. He made no claim that the tribe was mainly Sunni. He was directly questioned about his religion and whether he had faced any problems due to being a Shia from this tribe. I am not satisfied that the information could not have been provided to the delegate prior to the decision being made. The new information is no more than a bare assertion and he has provided no indication of whether he has previously been perceived to be a Sunni or why he thinks this would occur in the future. I am not satisfied that the information he now provides is credible personal information that may have affected consideration of the claims.

16. On 25 March 2022 the IAA invited the applicant to provide comments and new information in relation to new information obtained by the IAA. The applicant provided a response on 9 April 2022 which includes legal submissions and new information. Despite the response having been prepared by a solicitor, the new information submitted does not comply with the Practice Direction for Applicants, Representatives and Authorised Recipients as it is not properly sourced other than through a hyperlink and no attachments have been provided. The Practice Direction clearly states that if providing new information such as country information reports or media articles, the applicant must attach a copy of the document and identify the source and date of the document, and that hyperlinks are not acceptable. The Practice Direction indicates that the IAA may decide not to accept new information that does not comply with these requirements.
17. The submission includes an extract from an article titled 'UN Security Council condemns deadly Daesh terror attacks in Iraq' which refers to an attack in Basra. I have accessed the hyperlink and it relates to an attack, claimed by Daesh, that took place in early December 2021. I have decided to accept the article notwithstanding its non-compliance, given its obvious relevance. The article is not credible personal information but post-dates the decision and could not have been provided to the delegate. It is current and suggests ongoing Daesh activity in Basra, contrary to some of the country information obtained by the IAA. I am satisfied there are exceptional circumstances to justify its consideration.
18. The second extract 'Reviving the Spirit of Mosul and Basra' provides a date of 4 May 2020, but the text extracted relates to events in 2014-2017 in Mosul. It is not of any obvious relevance to the applicant's claims and I have determined not to accept this article.
19. The applicant has also provided an extract from Wikipedia which again does not comply with the Practice Direction. No date is provided, but the information in the extract relates to events in 2004-2008. I am not satisfied that the information could not have been provided to the delegate prior to the decision being made. The information is not credible personal information in the relevant sense. The article is said to respond to a finding of the earlier IAA. I have made a different finding on that particular issue on the information already before me. I am of the view that this article would not meet the requirements of s.473DD and have decided not to accept it.
20. The applicant has also provided a document titled 'Subject/Mechanism for Implementing the Amnesty Law No. (77) for the Year 2016', translation and accompanying submissions, by email dated 20 October 2017 in response to an invitation issued by the previous IAA reviewer. In the IAA's invitation of 25 March 2022 the applicant was invited to provide further information in relation to this document and in response he provided new information that the document was obtained from [Employer 1] by paying a bribe. I am satisfied that the document and this explanation could not have been provided to the delegate. The document itself is not personal information but the explanation about how it was obtained is. The applicant has not provided sufficient detail about how he obtained the document to satisfy me that the explanation is credible personal information that may have affected consideration of the claims. However, I am nonetheless satisfied that there are exceptional circumstances to justify considering the new information given that the new document and explanation about its source relates to an issue that arose for the first time from new information obtained by the IAA, has been provided in response to the IAA's invitation and goes directly to the applicant's claims to have been subject to a ruling in absentia.

21. The remainder of the 9 April response consists of submissions and argument. I have taken it in to consideration. The applicant has also invited the IAA to make inquiries with Iraqi authorities to confirm the Ruling Decision in Absentia, and has made a general request for an opportunity to respond at interview or in writing to any issues or concerns. The IAA has already provided the applicant with an opportunity to provide new information and respond to adverse information, including in relation to his claim to have had a ruling issued against him. I have determined not to make inquiries with the Iraqi authorities or to invite the applicant to provide further information.

Applicant's claims for protection

22. The applicant's claims can be summarised as follows:
- The applicant is from Basra, Iraq and is of Arab ethnicity and Shia Muslim faith.
 - The applicant served compulsory military service from 2000 to 2003, when Saddam Hussain's Baath regime ended.
 - [In] 2005 the applicant joined [Employer 1]. He worked as [position] in [Division 1].
 - The applicant was against corruption, human rights abuses and unfairness in [Employer 1]. He received threats on account of these views.
 - The applicant's work was top secret and he had information that only limited [Occupation 1] knew about. On many occasions he was asked by other [Occupation 1] for information about [work practice] timetables but did not disclose it, knowing it would be leaked.
 - Around [June] 2013 the applicant received a phone call threatening him that if he did not reveal the timetable [for a specific area], he would face consequences. He did not go to work and contacted his boss to ask for protection, but his boss said he had also been threatened and advised the applicant to seek legal process as [Employer 1] could not provide protection.
 - The applicant kept a low profile but [in] June 2013 his car was set on fire, which he believes was a message from the Mahdi Army militia. After this the applicant arranged to leave Iraq, departing [in] July 2013.
 - The applicant deserted [Employer 1] which is considered a crime. While in Australia, there was a legal decision to imprison him and confiscate his assets for escaping [Employer 1] without consent.
 - The Iraqi authorities are unable to provide effective protection and are the perpetrators who will harm him.

Refugee assessment

23. 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

24. 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.
25. I accept the applicant's identity and nationality as claimed on the basis of the documents he has provided, which include an Iraqi identity card and certificate of nationality, and his consistent evidence.
26. The delegate did not accept that the applicant was a member of [Employer 1] for various reasons, including what she perceived as undetailed descriptions about his work, inability to accurately describe the location of the [Employer 1 building] and lack of credible and relevant corroborative evidence.
27. I do not share these concerns. The applicant has consistently referred to his employment as [an Occupation 1] in [Division 1] since his arrival in Australia, including in two different arrival interviews conducted in July and August 2013. At the protection visa interview on 23 June 2017 he identified the [areas] his work related to, and was able to provide information about the setup of the workplace, division of responsibilities and some of the equipment used. Particularly taking into account the constraints of discussing [specialised equipment] through an interpreter, his responses contained a level of detail that would suggest he had performed the work as claimed.
28. While the location of the [Employer 1] building identified by the delegate does not seem to match the description given by the applicant, it is evident that there are a number of [Employer 1] buildings in Basra.⁴ At the protection visa interview the applicant submitted documentary evidence of his employment: [an employment] card issued to him in 2009 and a letter of appreciation issued to a number of [Occupation 1] in the [specified unit] including the applicant in 2007. He has also provided photographs of a number of men, one of whom resembles other photos of the applicant, in [work clothing]. One photograph shows them with various [equipment] which could be [consistent] with his claimed area of work.
29. A week following the protection visa interview the applicant submitted a further document which purports to show his appointment to [Employer 1]. Like the delegate, I have some concerns over this document. To the IAA, he has said that he contacted Iraq and obtained the letter after the interview. He has not explained how, for example whether he obtained it

⁴ See "Basra [Employer 1 building]- location on Google Maps", Google Maps, 19 July 2017, [reference].

from [Employer 1] or his family located it at home. The document appears to confirm the appointment of 15 [Occupation 1] listed in an attachment which has not been provided. The document itself refers only to the first and last of those names, and the last happens to be the applicant. The document seems to be some sort of internal order, rather than a letter addressed to the applicant himself, and it remains unclear how he has come to have it in his possession. It is dated 2007 and refers to his appointment being confirmed in 2007, whereas on his evidence he commenced with [Employer 1] in 2005. He has explained to the IAA that he commenced work in 2005 under different [employers] including [Employer 2] and was formally appointed full time permanent in 2007 when leadership was handed over to [other organisations]. Although I have some reservations about this document, on the other evidence before me I accept that the applicant served in [Employer 1] between 2005 and 2013 as claimed.

30. The applicant has claimed to have been the subject of threats, culminating in a threatening phone call and his car being burnt in June 2013, as a result of his political views and failure to disclose confidential information about [work practices]. In his statement he said that he was unable to express his views against corruption, human rights abuses and unfairness within [Employer 1] for fear of losing his life, and when he spoke about wrongdoings he received warnings from radicals. He claimed he was against radical groups infiltrated with [Employer 1] and would be made fun of by extremists.
31. He said at the protection visa interview that he was targeted because he worked in [Employer 1] and had a different political opinion. He described his opinion as being against the corruption of the government and against radical parties who had power in government. He was asked a number of questions about how he expressed his opinions and the threats he had received while at work. He repeatedly said that if you express yourself there is a possibility of getting killed. He claimed that 'they' would always provoke him and say if he talked his tongue would be cut off. Asked where he expressed himself, he said at the work area or where he lived. He was asked to explain how he would do it at work, and began by describing seeing corruption and bribery and criticising performance of the state, but then said that even if you criticised the leader you would be at risk of being killed, that there were followers everywhere who would listen and you would be threatened that you might get killed or your tongue cut off. Asked again whether he gave speeches at work or in his area, he said that when he saw something wrong, he would speak to the people beside him, at work and around where he used to live. He also claimed later in his evidence that he had received direct verbal threats from people with him at work who 'belong to them' and have different political opinions from himself. He claimed that if any of his colleagues heard him speak or talk about his political opinion it would be spread all over his unit. He said he had received direct threats on more than one occasion that if he did not stop he would have his tongue cut out and been killed. He claimed these threats began in early 2013 when they knew about his political opinion and that he was not devoutly religious or radicalised. It was not apparent from his evidence how or why this occurred only in 2013 given that he had worked in [Employer 1] since 2005. Despite attempts by the delegate to elicit more concrete responses, I found the applicant's evidence about how he expressed his views, and the threats he received, vague and shifting.
32. On my understanding of the evidence, it seems that the applicant is claiming that in addition to or alongside these threats, he was also being pressured to provide confidential [work practices] timetable information. He said the militia took an interest in him in 2013 because they were [involved in Activity 1]. Country information confirms that a corrupt [cartel] that funnels billions of dollars to armed groups, political parties and Shia paramilitaries aligned

with Iran is reported to operate [near] Basra⁵ and I accept that it is plausible that the type of information the applicant had access to would be desirable to such groups. The applicant claims to have received an anonymous phone call to his mobile phone [in] June 2013 in which the caller identified himself as being from Jaish al-Mahdi and said if he did not cooperate he would be killed. The applicant said that the group now has a different name, Asaib al-Haq, and country information confirms that AAH is an offshoot of the Mahdi Army.⁶ A few days later, [in] June 2013, his car was set on fire. After this he took his wife and children to stay with his wife's family. He has made these claims about the phone call and fire consistently since his arrival in Australia. At his initial interview in July 2013 he said that he was threatened by the Mahdi Army militia over the phone [in] June, that they wanted information about [Employer 1 activities]. He stated that a few days after this they burnt his car and he took his family away to his wife's family's house. At his further arrival interview in August 2013 he spontaneously mentioned having been in hiding at his father in law's house when he arranged his travel to Australia. At the commencement of the protection visa interview he referred spontaneously to the car fire when discussing his documents, saying he did not have his Iraqi drivers licence because it had been burnt in this fire.

33. On the basis of the applicant's consistent evidence, I accept that he was pressured to provide information about [work practices], that he received a phone threat from the Mahdi Army and that several days later his car was set on fire and he left his home with his wife and children. However, I find that these threats were directed at the applicant because of his particular access to [work] information. I am willing to accept that the applicant may hold political views against corruption and abuses as claimed but I found his evidence about expression of those opinions and receiving threats at work unconvincing. I do not accept that these threats were connected in some way with the applicant's political views or that he was otherwise threatened at work in connection with those views.
34. The applicant has claimed that he left [Employer 1] without resigning and that he later received a judgment against him in absentia. He has provided a document dated November 2015 which appears to be a ruling [made] in absentia against him, making orders against him which include 6 months confinement, seizure of his property and discharge from [his employment]. The ruling refers to his absence from his workplace from [date] July 2013 whereas I note on the applicant's evidence he was absent from around [date] June 2013. Considering that there was over a week between the car fire, after which he decided to leave Iraq, and his actual departure, it is entirely possible that he could have resigned in this time. Further, country information⁷ obtained by the IAA and put to the applicant suggests that the Iraqi government has issued amnesties to persons deserting the Internal Security Forces (ISF) which would have applied to the applicant. In August 2013, then Prime Minister Maliki issued a general amnesty for members of the ISF who had been absent or deserted from their units. The amnesty was initially to apply for only 30 days, however it was then changed to apply indefinitely. Later, in May 2015, Prime Minister al-Abadi announced the halt of any legal action against members of the internal security forces definitively, including for absenteeism. Even if the applicant did leave Iraq without resigning, the information suggests that the 2013 amnesty, issued shortly after his departure, would have applied to him and even if it did not, any ongoing legal action would have been halted in light of the May 2015 amnesty. This casts real doubt over his claim to have had a ruling issued in November 2015.

⁵ [Source deleted].

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

⁷ EASO, 'Country of Origin Information Report - Iraq Targeting of Individuals', 7 March 2019; see also Landinfo, "Iraq: Rule of Law in the Security and Legal System", 8 May 2014, p. 17, Iraqi News, "Abadi pardons Iraqi military deserters and others", 17 May 2015.

35. In response, the applicant submitted a document, 'Subject/Mechanism for Implementing the Amnesty Law No. (77) for the Year 2016'. This is a photo of an Arabic language document, along with a translation, that appears to be purporting to be some kind of legal document or directive and the applicant's submissions claim that it was issued by 'the legal department'. It appears to provide for the application of the amnesty law, including relevantly that those who return (presumably to [Employer 1]) prior to 25 August 2016 shall be permitted to join their department, and those who return after 25 August 2016 shall be permitted to join their department, but will still be subject to action. It also seems to indicate that cases referred to the Internal Security Courts are still being heard and that those courts bear responsibility for determining the application of the amnesty law, including for rulings issued in absentia. It is argued that the applicant would not be covered by the amnesty as he has not returned to his job nor would he, and that the earlier 2013 amnesty no longer applies.
36. In the March 2022 invitation, the IAA asked the applicant to provide further detail about the 'Subject/Mechanism for Implementing the Amnesty Law No. (77) for the Year 2016' document he had submitted, including its author, source, where he obtained it and any country information reports that refer to or otherwise corroborate this law. In response, the applicant has said that he 'obtained this document from [an Employer 1] member by paying money (possibly bribe)'. The claimed means of obtaining it and the lack of supporting information are highly questionable and I have serious doubts that this is an official policy or legal document about the implementation of the amnesty law. Considering that both the 2013 and later 2015 amnesty would appear to have applied to the applicant at various times, it seems most unlikely that legal action would have been initiated following his absence. Taking these concerns as a whole, I am not satisfied that the applicant's claims about having left Iraq without resigning from [Employer 1] and being subject to legal action are credible.
37. While I accept the applicant was the subject of threats and intimidation in the period prior to his departure from Iraq, including the burning of his car, on my findings the applicant was targeted due to his access to and refusal to provide information about [work practices]. Although he moved his wife and children from the home where he had been living, his evidence at the protection visa interview was that his mother and a brother remained living in the family home (noting the applicant indicated he had lived at the same address all his life), and he has not suggested that there were any further attacks or any inquiries about him following the incident with the car. The applicant has indicated that he has no intention to return to [Employer 1] where he might once again have access to information sought by militias. These events occurred close to nine years ago now, and I consider the chance of the persons or groups who threatened the applicant in the past continuing to pursue him or redeveloping an interest in him in the reasonably foreseeable future to be no more than remote.
38. The applicant spent a number of years working in [Employer 1]. He has said that during that time he kept a low profile, such as [example], and his statement says that as he was in [Employer 1] he was subject to serious harm. He has also said that his work involved some collaboration with the allied forces.
39. According to country information, those who work with the international community face societal hostility that may include threats of violence, particularly in Shia areas.⁸ Iraqis who had worked for the British or US military or US-led Coalition as interpreters or contractors feared targeting by non-government armed groups and some had received threatening

⁸ DFAT 2020.

messages.⁹ There have been reports of attacks on Iraqi-operated logistics convoys contracted by the US-led coalition in areas including Basra and those who work with coalition forces have faced threats of death from Shia militias.¹⁰ Members of the security forces including Iraqi [Occupation 1]s also continue to be targets of ISIL, although the threat is said to have decreased compared to previous years and attacks tend to occur particularly in areas retaken from ISIS where the group maintains a presence (which does not include Basra).¹¹ There were reportedly at least nine IED attacks targeting convoys and shipping stations aligned with the International Coalition against ISIL in Basra between August 2020 and July 2021, and another two reported targeting an ISF officer and a law office in Basra city.¹²

40. A large number of Iraqis worked with the international community in the years following the US-led military invasion in 2003¹³. While attacks continue to occur on members of the security forces and those who have worked with the allied forces, the information appears to suggest a risk related to current rather than historical contact. I do not accept that the applicant is a person of any particular interest and I am not satisfied that the chance of harm to the applicant because of his past work is any more than remote.
41. The applicant has said that he is of Shia faith. Basra is majority Shia but with a significant Sunni minority.¹⁴ As the majority community in Iraq with a dominant role in the Government, Shias face little to no official discrimination in government-controlled areas.¹⁵ Sectarian violence between Shia and Sunnis has reduced substantially since the mid to late-2000s but still occurs occasionally. The reduction has been attributed to an increase in self-segregation by communities and conscious efforts by political leaders to remove sectarian slogans from public discourse after the military defeat of ISIS. Some also suggest it reflects the Shia majority's increased confidence and sense of security in the wake of that victory.¹⁶
42. While Da'esh remains a major perpetrator of abuses and atrocities despite its territorial defeat in December 2017, DFAT does not indicate that these abuses are evident in Basra.¹⁷ I note however that an article submitted by the applicant refers to an attack carried out by Daesh/ISIS in Basra in December 2021 that killed four and injured 20¹⁸ and on this basis accept that occasional ISIS attacks nevertheless occur.
43. There are reportedly tight-knit relationships between Iraqi security forces, local tribes and militias forming a cohesive apparatus of repression in Basra.¹⁹ Since 2003, Iraq has seen a proliferation of actors challenging the state's monopoly on legitimate violence and the conflict against ISIS has further empowered the Popular Mobilisation Forces (PMF), state-sponsored umbrella military organisations composed of a large number of militia groups including the Mahdi Army which previously targeted the applicant. PMF groups are said to exercise close control over many neighbourhoods, particularly in Shia areas, providing a

⁹ European Union Agency for Asylum, 'Iraq – Targeting of Individuals 2022', 20220201113613.

¹⁰ Ibid.

¹¹ EASO, 'Country Guidance: Iraq - Guidance note and common analysis', January 2021, 20210210092507; UNHCR, 'International Protection Considerations with Regard to People Fleeing the Republic of Iraq', 3 May 2019, 20190506112913.

¹² European Union Agency for Asylum, 'Iraq Security Situation', 23 February 2022, 20220224130851.

¹³ DFAT 2020.

¹⁴ European Union Agency for Asylum, 'Iraq Security Situation', 23 February 2022, 20220224130851.

¹⁵ DFAT, 'Country Information Report Iraq, 26 June 2017, CISED50AD4631 (DFAT 2017).

¹⁶ DFAT 2020.

¹⁷ DFAT 2020.

¹⁸ Arab News, 'UN Security Council condemns deadly Daesh terror attacks in Iraq', <https://www.arabnews.com/node/1983556/middle-east>, 9 December 2021.

¹⁹ European Union Agency for Asylum, 'Iraq Security Situation', 23 February 2022, 20220224130851.

range of services such as welfare and security that would normally be fulfilled by the state. Many groups have reportedly taken advantage of their freedom of action to establish crime rings and protection rackets, and engage in killing, kidnapping and extortion throughout the country, particularly in ethnically and religiously mixed governorates.²⁰ While there are reports of the PMF systematically carrying out enforced disappearances, the victims are overwhelmingly Sunni. Intra-Shia violence is said to predominantly affect those involved in a militia or tribal group.²¹

44. The applicant has said that he is from a mixed Sunni-Shia tribe, his grandparents having converted from Sunni to Shia. Tribal groups in Iraq vary in size and while tribalism is ubiquitous throughout Iraq, it is more prominent in certain areas including Basra.²² Other than saying that they are a small tribe and so viewed as inferior, the applicant has not identified any treatment he has experienced because of his tribe and I find the prospect of him becoming caught up in tribal violence is no more than speculative. I am not satisfied on the evidence that the applicant has or would be imputed to be Sunni because of his tribal background, or that there is any prospect of him being harmed for that reason. I accept Sunni militias such as ISIS may carry out occasional attacks in Basra targeting Shias, but the country information does not suggest this to be a frequent occurrence. Nor does it indicate that there is otherwise a risk of harm to Shias in Basra who are not involved with militias or tribal conflicts. I am not satisfied that the applicant faces a real chance of harm in Basra because of his religion or his tribal background.
45. The applicant has claimed to have a political opinion against corruption, human rights abuses and unfairness in [Employer 1], says he is not a religious extremist and does not share the views of the militias. Country information suggests that many Iraqis hold similar views. An opinion poll carried out across Iraq in 2019 found corruption was the major concern for ordinary Iraqis and there have been mass demonstrations across Iraq against high-level corruption in recent years, including in Basra. The protests were subject to regular violence by parts of the security forces, including persons assumed to be from militias.²³ It has been reported that activists, anti-government protesters and persons openly criticising non-state armed groups are targeted for violence, harassment and intimidation, which in turn led to an escalation of protests, including in Basra, against such treatment.²⁴ DFAT describes an 'assassination campaign' by militia groups against their critics, although the example it cites is the killing of a prominent political campaigner.²⁵ There is reportedly continued suppression of dissent in Iraq, and an increase in attacks across southern Iraq against activists and journalist which appear to be perpetrated by Iraq's militia network. However, the information suggests that those targeted include prominent figures in the protest movement, journalists, activists

²⁰ UNHCR 'International Protection Considerations with Regard to People Fleeing the Republic of Iraq', 3 May 2019, 20190506112913; EASO, 'Country Guidance: Iraq - Guidance note and common analysis', January 2021, 20210210092507; DFAT 2020.

²⁰ DFAT 2017.

²¹ UNHCR, 'International Protection Considerations with Regard to People Fleeing the Republic of Iraq', 3 May 2019, 20190506112913; DFAT 2020; EASO, 'Country Guidance: Iraq - Guidance note and common analysis', January 2021, 20210210092507; ²¹ DFAT 2017.

²² European Union Agency for Asylum, 'Iraq – Targeting of Individuals 2022', 20220201113613.

²³ DFAT 2020.

²⁴ European Union Agency for Asylum, 'Iraq – Targeting of Individuals 2022', 20220201113613.

²⁵ DFAT 2020.

and high-profile anti-government activists, human rights defenders, as well as some protesters whose particular profile is not identified.²⁶

46. There is no credible evidence that the applicant has ever engaged in any protest activity or public expression of his views in either Iraq or Australia, nor that he intends to in the future. I accept that he holds the views he claims, but I do not accept that he has any intention or desire to share these views more widely or engage in activism such as attending a protest. The chance of the applicant being harmed for his views is no more than remote.
47. More generally, the security situation in Iraq, while varying according to location, is highly unstable and fluid. Security incidents occur often and without warning on targets including government security forces, government offices, diplomatic missions, coalition and Iraqi military facilities, checkpoints, police stations, recruiting centres, airports and public transport centres, places of worship and religious gatherings, markets, non-government organisations, schools and universities, and civilian infrastructure.²⁷ There were reportedly 167 security incidents in Basra governorate between August 2020 and October 2021. However illustrative examples include targeting of a prominent female activists, tribal conflict shootings, armed clan conflict and detonation of a war remnant.²⁸ None of these, nor the number of incidents over a period of close to a year, suggest a level of violence in Basra such that the applicant would face a real chance of harm.
48. I have considered the applicant's profile as a whole, including as a former [Occupation 1] who worked with the international community and was targeted by the militia, a Shia from a mixed Sunni-Shia tribe living in Basra, who holds views against corruption, abuses, militias and religious extremism. However, even taking these things together, I am not satisfied that the applicant faces a real chance of harm in the reasonably foreseeable future as a result of any combination of these factors or because of the situation in Basra more generally. The applicant does not have a well-founded fear of persecution.

Refugee: conclusion

49. 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

50. 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

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

²⁶ European Union Agency for Asylum, 'Iraq – Targeting of Individuals 2022', 20220201113613; EASO, 'Country Guidance: Iraq - Guidance note and common analysis', January 2021, 20210210092507; UNHCR, 'International Protection Considerations with Regard to People Fleeing the Republic of Iraq', 3 May 2019, 20190506112913.

²⁷ DFAT 2020.

²⁸ European Union Agency for Asylum, 'Iraq Security Situation', 23 February 2022, 20220224130851.

- 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.

52. 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.

53. I have above found there is not a real chance of the applicant suffering harm in the reasonably foreseeable future in Iraq. The Federal Court has held that 'real risk' imposes the same standard as the 'real chance' test in the refugee criterion.²⁹ Having regard to the country information and reasoning set out above, I am not satisfied that there is a real risk of the applicant suffering significant harm in Iraq.

Complementary protection: conclusion

54. 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.

²⁹ *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.