



**Australian Government**  

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**Immigration Assessment Authority**

**Decision and Reasons**

**Referred application**

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IRAQ

IAA reference: IAA22/10292

Date and time of decision: 20 June 2022 15:58:00

M Currie, Reviewer

**Decision**

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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

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### Visa application

1. The referred applicant (the applicant) claims to be an Iraqi citizen of Arabic ethnicity. He arrived in Australia in April 2013 and lodged an application for a Safe Haven Enterprise Visa (SHEV) in August 2017. In April 2022, a delegate of the Minister for Immigration decided under s.65 of the *Migration Act 1958* (the Act) to refuse the visa, finding that Australia did not owe protection obligations to the Applicant. In that decision, the delegate did not accept the applicant's principal claims, including that he had been abducted by a Shia militia group, that his father had been murdered, or that he was a convert to Christianity. On 20 April 2022, the applicant's matter was referred to the Immigration Assessment Authority (IAA).
2. This is a *de novo* decision; my task is to consider the applicants claims for protection and the materials before me afresh. I am not bound by any earlier findings by the delegate.

### Information before the IAA

3. I have had regard to the material given by the Secretary under s.473CB of the *Migration Act 1958* (the Act).
4. On 11 May 2022, a migration agent sent an email to the IAA on behalf of the applicant. The email contained seven attachments. These were: (a) a cover letter, which indicated that the applicant wished to rely on submissions which were earlier provided to the Department, but was otherwise administrative in nature and is not of further relevance; (b) a document titled 'Attachment A' which was a five page submission regarding issues associated with the applicant's case, which argued against the delegates findings; (c) a document titled 'Attachment B' which was a one page submission regarding reasons why new information which was being presented to the IAA should be considered; (d) a document titled 'Attachment C' which is a letter from a Psychiatric Registrar dated 20 April 2022 that related the applicant's mental health; (e) a document titled 'Attachment D (Part 1)' which is a letter from a Doctor dated 3 March 2022 also relating to the applicants health; (f) a document titled 'Attachment D (Part 2)' which is a list of medications taken by this applicant dated 3 March 2022; and (g) a document titled 'Attachment E' which was a copy of written submissions dated 6 December 2021 which the applicant had earlier provided to the delegate (the Departmental Submission).
5. Attachment A is a submission which argues against the delegate's findings in the s.65 decision. Broadly, the submission relates argues that that the delegate did not consider the applicant's full profile; that the delegate misunderstood, and mischaracterised medical reports provided by the applicant; that the delegate made adverse inferences about the applicant that were unreasonable, and which led to the delegate drawing illogical conclusions about the evidence and to making unreasonable findings. I have considered the arguments advanced in this submission.
6. The three medical documents provided to the IAA in the email (*Attachment C*, *Attachment D (Part 1)* & *Attachment D (Part 2)*) were not before the delegate. They are all new information under s.473DD of the Act.
  - *Attachment C* is dated 20 April 2022, after the date of the delegate's decision. I am satisfied it could not have been provided to the delegate before that decision was made and so s.473DD(b)(i) is met for this letter. *Attachment C* is a letter relating to the

applicant's health by a qualified medical professional. I am satisfied that it is credible personal information which may have affected consideration of his claims for protection and so s.473DD(b)(ii) is also met. The letter relates directly to *this applicant and his present mental health*. Attachment B describes the letter as being "evidence of the Applicant's complex mental health and cognitive difficulties and how they make him uniquely vulnerable". I am satisfied that there are exceptional circumstances to justify considering this letter, and so s.473DD(a) is met and I have done so.

- Both of the Attachment D documents are dated 3 March 2022. This is over a month before the date of the delegate's decision, and so I am not satisfied that these documents could not have been provided before the s.65 decision was made, and therefore, s.473DD(b)(ii) is not met for these documents. However, as both documents are written by a qualified medical professional and relate directly to this applicant and his health, I am satisfied that both of these documents are credible personal information which may have affected the consideration of the applicant's claims for protection, and s.473DD(b)(ii) is met for both documents. Attachment B argues that these documents are relevant, since they directly challenge findings the delegate had made about the applicant's health. I am satisfied that there are exceptional circumstances to justify considering them, and so s.473DD(a) is met and I have done so.
7. The Departmental Submission (Attachment E) was provided to the delegate before the s.65 Decision was made. As such, it is not new information under the Act. I have considered the Departmental Submission.

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

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8. The applicant's claims can be summarised as follows:
- He is an Iraqi Citizen who was born in [year] in Kabala, Iraq. He lived in Kabala with his family. He and his family were adherents of the Shia faith. His father was a wealthy businessman, property owner and [occupation].
  - In late 2006 or early 2007, members of the 'Al-Mahdi' Shia militia group (the Mahdi Army) approached his father and tried to extort money from him. His father refused to pay the money, and the Mahdi Army boarded up his [business]. Several days later, when his father went to open the [business], he was shot and killed by the Mahdi Army.
  - After his father's death, the Mahdi Army began to target the applicant and his family. They still wanted the money they had tried to extort from his, now deceased, father. Several days after his father's death, the Mahdi Army fired shots at his home. Despite this warning, the family refused to pay.
  - Some weeks later, members of the Mahdi Army came to the applicant's home and forced their way inside. They abducted the applicant and took him to an unknown location. He was mistreated and abused, beaten and cut with knives as the Mahdi Army tried to coerce him into providing the money. The applicant refused. He does not know how long he was detained. He fears he suffered brain damage and says his beatings led to memory loss. While he was held, the Mahdi Army stole the fittings and furnishings from the family [business]. He believes that this led to his release.
  - After his release, the applicant was afraid. Nevertheless, he refused to pay money to the Mahdi Army. Instead, he fled to the city of Najaf, where he lived for the next five years. In Najaf, he tried to keep a low profile and not attract attention to himself. He did not tell anyone who he was or what had happened to his family. Only his mother knew

where he was living. He spent most of his time at work or in his room. He lived in fear that the Mahdi Army would find and kill him.

- Several months after his release, members of the Mahdi Army had attacked his family home again. They had forced their way into the house and attempted to rape his younger sister. However, the presence of neighbours, who had gathered around the house investigate what was going on, scared the men away. His sister was unharmed.
- In 2009, while he was living in Najaf, his mother sent him to [Country 1] in order to determine whether the family could move to that country and live there safely. He returned to Iraq after a few weeks having decided [Country 1] was not safe.
- In 2010, the applicant travelled to [Country 2] for several weeks, as he needed a break from the stressful life he was forced to live in Najaf.
- In 2012, members of the Mahdi Army went to his workplace in Najaf while when he wasn't there, and asked questions. The applicant learned of their activities from the shop owner and presumed that he had been discovered. He decided to flee Iraq. He sought out a smuggler and departed via the Baghdad Airport. He came to Australia and sought protection
- In April 2017, he learned from a friend that his family home had been damaged in a missile or mortar attack. He heard his mother and brother had been seriously injured. His personal records were destroyed during the attack on his family home.
- In 2019, He was attacked in his home by several men, including his housemate. He was beaten badly and struggles to recall the nature of the attack. He remembers speaking to the police and being treated at [Hospital 1] for injuries sustained in the attack. Since that time, he has suffered from severe mental health challenges, memory loss and other health issues. He suffers from Depression and symptoms of Post-Traumatic Stress Disorder (PTSD). He is now unable to remember specific details from his life. He is extremely vulnerable and has been homeless for some time.
- In October 2021, the applicant was briefly employed. However, during this period, he was abused and exploited.
- In Australia he as converted to Catholicism under the influence of a girlfriend. He believes in Christian values and enjoys the Christian way of life.
- The applicant believes that the Mahdi Army would still be interested in him and in extorting money from him. He worries that if returned to Iraq he would be at a greater risk of being targeted by *Al-Mahdi* because they will know that he is the only member of his family still alive in Iraq and they may believe that he is the only one who can access my family's money and properties
- The applicant fears returning to Iraq because he believes he would be detained, interrogated, beaten, tortured and/or killed by either the Mahdi Army, the Islamic State movement and/or the Iraqi authorities.
- In Iraq, members of the community would notice that the applicant does not attend mosque, increasing the likelihood of him being scrutinised for having left the Islamic faith. He fears that his conversion to Christianity would lead to him being targeted in Iraq, since he would be considered an Apostate by the Mahdi Army, the Islamic State movement and other similar groups.
- He fears his status as a former Shia Muslim who converted to Christianity and as a failed asylum seeker will mean that he would be unable to find employment and/or access basic government services. He worries that he will not have financial security.

- If his is forced to return to Iraq as a failed asylum seeker, he is worried that he will be arrested, detained, beaten and/or tortured by the Iraqi authorities because they will know that he has sought asylum in Australia, and they may believe that he has told the Australian authorities' information that is negative and/or critical of them.
- The applicant contends that his mental health issues, compounded by his memory loss and homelessness make him especially vulnerable. His legal representatives have read him the statutory declaration made on 14 August 2017 which accompanied his Protection Visa Application. He cannot anything he mentioned in that Statutory Declaration. He believes the statutory declaration containing his claims was true and correct at the time he made it. He would face a higher chance of being subjected to ill-treatment and harassment by Iraqi authorities as he is more likely to act erratically or present in a way that will draw the attention of the authorities if he is not medicated or receives inconsistent medical treatment.
- He believes the Iraqi authorities would be unable to protect him in Iraq. He could not relocate to other parts of Iraq. Relocation impossible without support from family or friends.

### **Factual findings**

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9. In order to establish his identity, the applicant has provided copies of two identity documents as part of his SHEV Application. These were a copy of an Iraqi Citizenship Certificate and an Iraqi National Identity Card. Both documents were issued in his name. He has provided accredited translations for both of these documents. These documents provide consistent identity information about the applicant, which is also consistent with the applicant's verbal identity claims.
10. The applicant has established his identity to my satisfaction. I accept that he is an Iraqi citizen, of Arabic ethnicity as he claims. I accept that he was born in [year] in Karbala, Iraq. For the purposes of this decision, I find that Iraq is his receiving country.

### **Health & Mental Health, Protection Visa Interview, 'on the paper's' assessment**

11. The applicant claims to suffer from a range of health, and mental health issues. As evidence for these claims, he has provided various medical documents:
  - An Observation Medicine Discharge Summary from [Hospital 1] dated 13 December 2019.
  - A letter from a Doctor (GP), dated 23 July 2021.
  - A psychiatric report from Consultant Psychiatrist dated 19 November 2021.
  - Another letter from his GP dated 3 March 2022 (*Attachment D – Part 1*).
  - A list of said to have been prescribed to the Applicant (*Attachment D – Part 2*).
  - A Report from a Neurologist dated 20 February 2022.
  - A Report Psychiatric Registrar 20 April 2022(*Attachment C*).
12. I have reviewed each of these documents carefully. They outline a range of medical problems faced by this applicant. In the 2021 Departmental Submission (*Attachment E*) it is argued that the applicant is "*extremely vulnerable due to his mental illnesses and cognitive impairments*". He is said to suffer from epilepsy. In an August 2021 written statement, the applicant claimed

to be suffering from depression, sleeping poorly, and suffering from symptoms of Post-Traumatic Stress Disorder.

13. Submissions to the IAA argue that the delegate did not give enough weight to the medical reports which had been presented to the Department, and that the applicant's profile was not adequately considered in the s.65 decision. I have considered this line of argument.
14. While I am not a medical professional, I have some concerns about the applicant's claims in relation to his memory and mental health, since, in my view, he has provided shifting evidence about his health while in Australia. In this context I note that in an interview conducted with him in 2013 soon after his arrival in this country, he stated that he did not suffer from any physical or psychological issues. However, in the Statement of Claims which accompanied the applicant's 2017 Protection Visa Application he stated that since he had been detained, beaten and attacked by the Mahdi Army in 2007 he had "*suffered from memory loss*" and "*brain damage*" that he often had "*trouble remembering specific details, such as dates and times*". However, for reasons outlined below I have not accepted that this applicant was ever abducted or mistreated by the Mahdi Army, or anybody else. Neither did the delegate. It follows that I do not accept that he suffered mistreatment or a beating at the hands of the Mahdi Army in 2007 or that such events led to any memory loss or brain damage.
15. I find it to be particularly concerning that the applicant was claiming to suffer from memory problems at the time he lodged his Protection Visa Application based on events which I and the delegate have found did not occur. I have further concerns because the applicant had informed Department officials in 2013 that he did not suffer from any physical or psychological ailments. Given that this 2013 interview occurred soon after his arrival from Iraq, I would have expected him to mention such problems, especially if they related to the events which he says occurred to him in that country and led him leaving Iraq. He did not mention any such problems at that time. Since 2021, the applicant has provided medical reports from a GP, a Consultant Psychiatrist, a Neurologist, and a report from a Psychiatric Registrar. Each of these reports refers to the applicant suffering from memory problems. However, submissions to the Department and the IAA point to a beating that this applicant suffered in 2019 in Australia, as the principal factor his development of memory problems. That is to say, the applicant's memory problems were unrelated to events which may have occurred during the period he lived Iraq and are derived from events which occurred in Australia in 2019, some two years after his submitted his Protection Visa Application. In the circumstances, the applicant's claim that he was suffering from memory problems in 2017, when he submitted his Protection Visa Application, seems extremely doubtful.
16. Nevertheless, since November 2021, the applicant has provided three medical documents related directly to his mental health which were written by the Consultant Psychiatrist, a Neurologist and the Psychiatric Registrar. In summary, these reports indicate the following:
  - Consultant Psychiatrist Report (dated 19 November 2021): Applicant was interviewed for one hour. At time of interview, he was homeless and was being supported by the [Charity 1]. He couldn't remember things, since he had been assaulted in 2019 and woken up in the hospital. There was an earlier assault in 2017. He suffers from epilepsy. He could not recall his life. He suffers "*defects in his memory and lacks capacity*" and has "*great difficulty presenting his story and answering questions*". Further evaluation of the applicant is recommended.
  - Neurologist report (dated 20 February 2022): Applicant was interviewed for 45 minutes. At the time of the interview he was living in a hotel and receiving financial support from

the [Charity 1]. Applicant was unable to answer questions about his recent past or provide biographical details. He *“demonstrated significant difficulties in multiple aspects of his memory, which would impair his ability and capacity to participate in an interview in a meaningful way, including providing an account of his past and present history”*. Further assessment of the applicant was recommended.

- Psychiatric Registrar report 20 April 2022(Attachment C): Applicant attended a single initial Psychiatry assessment for one hour. At the time of the interview he was living in a hotel. He sustained a head injury during an assault in 2019. He suffered a workplace injury in later 2019 leading to further medical complications including seizures and back pain. Suffers insomnia, and nightmares and anxiety about his situation. Applicant presents with significant *“defects in memory”* and was initially cooperative, but later became agitated and left the interview. The author states that assessment of the applicant is limited and no *“psychiatric diagnosis or clear treatment”* recommendations were identified. Further neurology review of the applicant is recommended.
17. While I have identified some concerns above, I accept that this applicant does suffer from a range of medical conditions, including defects in his memory. I also accept he suffers from epilepsy and back pain. The two letters from his GP also suggest he suffers from PTSD like symptoms, depression and anxiety and I accept that this is the case. I have considered all of these medical reports, and the applicant’s health problems throughout this decision.
  18. During the primary visa assessment process conducted by the Department, this applicant did not attend a Protection Visa Interview. Between July 2021 and February 2022, the Department offered multiple invitations to the applicant to attend a Protection Visa Interview, however several of these had to be postponed due to administrative issues, including COVID-19 lockdowns. Other invitations to attend a Protection Visa Interview were declined by the applicant as he did not wish to attend phone interviews or and was unable to attend an interview conducted via video conference. In early November 2021, a migration agent contacted the Department on behalf of the applicant, to request that his Protection Visa Interview be conducted in-person. On 22 November 2021, the medical report written by the Consultant Psychiatrist dated 19 November 2021 was provided to the Department which stated, among other things, that the applicant suffers from defects in his *“autobiographical memory and long-term memory”* and *“has great difficulty in presenting his story and answering questions required of him”*. On the basis of this medical report, and two earlier medical documents dated 23 July 2021 and 13 December 2019 which had already been provided to the Department, a migration agent notified the Department that the applicant did not have the capacity to participate in a protection interview on medical grounds. Submissions dated 6 December 2021, which were subsequently provided to the Department argued that the applicant should not be interviewed, and that the applicant’s case should be made *“on the papers”*.
  19. Following this, the Department wrote to the applicant to obtain further medical evidence relating to the applicant’s claims that he was incapable of attending and participating in a protection visa interview. This request resulted in the applicant providing the Neurologist’s report dated 20 February 2022. The Neurologist’s report stated, among other things that the applicant *“demonstrated significant difficulties in multiple aspects of his memory, which would impair his ability and capacity to participate in an interview in a meaningful way, including providing an account of his past and present history”*.
  20. Following the submission of this report to the Department and acceding to the applicant’s request that no Protection Visa Interview be conducted, the delegate made the s.65 Decision on the papers. In the decision, the delegate relied principally on the Statement of Claims which

accompanied the applicant's 2017 Protection Visa Application, an August 2021 written statement by the applicant, and on the Departmental Submission of December 2021 to outline the applicant's claims for protection. Other documents that had been submitted, including the medical documents, were also considered.

21. Given the factors I have summarised above I have given thought to whether I should seek to interview this applicant and obtain verbal evidence from him. However, as noted above, the applicant has provided further medical documents and submissions to the IAA and continues to rely on submissions which were earlier provided to the Department. The medical report provided from the Psychiatric Registrar (*Attachment C*) is dated 20 April 2022 and is the most recent medical information before me. This report supports a review of the applicant's case "on the papers". Moreover, submissions to the IAA (*Attachment A*) continue to describe the applicant as lacking the capacity to participate in an interview. Despite this line of argument, I note that the medical reports before me indicate that this applicant was able to conduct interviews in English with the Consultant Psychiatrist, the Neurologist and the Psychiatric Registrar in the last seven months. Nevertheless, given the submissions, and all of other factors I have mentioned, I have decided not to interview this applicant and I will proceed to a decision on the material which is before me.

### **Life in Iraq**

22. The applicant's principal claims for protection are the result of events he claims occurred in Iraq. As I have summarised above, he says that his family was wealthy, and that his father was a businessman, property owner and [occupation]. In late 2006 or early 2007, members of the Mahdi Army approached his father and tried to extort money from him. His father refused to pay the money, and the Mahdi Army boarded up his [business] in retaliation. Several days later, when his father went to open the [business] in defiance of the Mahdi Army, he was shot and killed on the street outside the [business].
23. After his father's death, the applicant says that the Mahdi Army began to target the applicant and his family. The group still wanted the money they had tried to extort from his father. Several days after his father's death, he asserts that the Mahdi Army fired shots at his home, however, despite this warning, the family refused to pay the money. According to the applicant, some weeks later, members of the Mahdi Army came to the applicant's home and forced their way inside. They abducted the applicant and took him to an unknown location. During this time, he was mistreated and abused, beaten and cut with knives as the Mahdi Army tried to coerce him into providing the money. Despite his mistreatment, the applicant refused to pay any money. He says he does not know how long he was detained. In the Statement of Claims which accompanied the applicant's Protection Visa Application, he stated that he believes the beatings he suffered led to memory loss and brain damage. During the period he was abducted, the Mahdi Army stole fittings and furnishings from the family [business]. He believes that this led them to release him.
24. After his release, the applicant was afraid. Nevertheless, he and his family continued to refuse to pay any money to the Mahdi Army. Instead, on the advice of family, the applicant fled to the city of Najaf, where he lived for the next five years.
25. Several months after his release, members of the Mahdi Army had attacked his family home again. They had forced their way into the house and attempted to rape his younger sister. However, the presence of neighbours, who had gathered around the house investigate what was going on, scared the men away. His sister was unharmed.



26. During the period when he lived in Najaf, the applicant tried to keep a low profile and not attract attention to himself. He did not tell anyone who he was or what had happened to his family. Only his mother knew where he was living. He spent most of his time at work or in his room. He lived in fear that the Mahdi Army would find and kill him. In 2009, while he was living in Najaf, his mother sent him to [Country 1] in order to determine whether the family could move to that country and live there safely. He returned to Iraq after a few weeks having decided [Country 1] was not safe. In 2010, the applicant travelled to [Country 2] for several weeks, as he needed a break from the stressful life he was forced to live in Najaf.
27. In 2012, members of the Mahdi Army went to his workplace in Najaf while he wasn't there, and asked questions. The applicant learned of their activities from the shop owner and presumed that he had been discovered. He decided to flee Iraq. He sought out a smuggler and departed via the Baghdad Airport. He came to Australia and sought protection
28. Country information before me indicates that the Mahdi Army was formed in June 2003 at the behest of radical Iraqi cleric Moqtada Sadr who called for volunteers to defend the Shia faith during sermons<sup>1</sup>. Initially the movement began as a group seminary student connected with Muqtada al-Sadr in the Sadr City district of Baghdad, the group expanded and by 2006, was considered a significant military force in Iraq. In some parts of Iraq, the group exerted *de-facto* control, reportedly as a security guarantor for persons of Shia ethnicity<sup>2</sup>. The group had a strong presence in Shia areas, in particular in Baghdad, Najaf, and the southern parts of the country<sup>3</sup>. The Mahdi Army became Iraq's principal Shia militia group. Its politics are nationalist, and populist<sup>4</sup>. It received funding from Iran<sup>5</sup>. Over time, the Mahdi Army was drawn into the sectarian violence that plagued Iraq<sup>6</sup>. Eventually, this included fighting other militias, including other Shia groups<sup>7</sup>. The Mahdi Army became known for its corruption and criminal behaviour<sup>8</sup>.
29. In my view, there are a number of reasons to doubt the applicant's claims about his time in Iraq. According to the applicant, his father was a wealthy businessman and [occupation] who owned many businesses and properties in Iraq. He says that his father's very success is what led to problems for him and the family, since his father's wealth drew interest from the Mahdi Army. His submission cites a news article about Shia militia's targeting the wealthy in Baghdad.
30. While it is possible that wealth, as the applicant describes, may bring a person to the attention of militia groups in Iraq, I observe that despite his claims about his father's wealth and prosperity, the applicant has not provided any supporting evidence for this claim, such as

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<sup>1</sup> British Broadcasting Corporation (BBC), 'Who are Iraq's Mehdi Army?', 30 May 2007, CX320101; United States of America (USA): Department of the Army, 'Jaysh al-Mahdi', 17 September 2008, CX317883; Mahdi Army', Stanford University, 17 January 2017, CISED50AD3957

<sup>2</sup> British Broadcasting Corporation (BBC), 'Who are Iraq's Mehdi Army?', 30 May 2007, CX320101; United States of America (USA): Department of the Army, 'Jaysh al-Mahdi', 17 September 2008, CX317883; Mahdi Army', Stanford University, 17 January 2017, CISED50AD3957

<sup>3</sup> British Broadcasting Corporation (BBC), 'Who are Iraq's Mehdi Army?', 30 May 2007, CX320101; United States of America (USA): Department of the Army, 'Jaysh al-Mahdi', 17 September 2008, CX317883; Mahdi Army', Stanford University, 17 January 2017, CISED50AD3957

<sup>4</sup> Mahdi Army', Stanford University, 17 January 2017, CISED50AD3957

<sup>5</sup> British Broadcasting Corporation (BBC), 'Who are Iraq's Mehdi Army?', 30 May 2007, CX320101; United States of America (USA): Department of the Army, 'Jaysh al-Mahdi', 17 September 2008, CX317883; Mahdi Army', Stanford University, 17 January 2017, CISED50AD3957

<sup>6</sup> British Broadcasting Corporation (BBC), 'Who are Iraq's Mehdi Army?', 30 May 2007, CX320101; United States of America (USA): Department of the Army, 'Jaysh al-Mahdi', 17 September 2008, CX317883; Mahdi Army', Stanford University, 17 January 2017, CISED50AD3957

<sup>7</sup> 'Sadr and the Mahdi Army', Center for Strategic and International Studies, Anthony H. Cordesman and Jose Ramos, 01 August 2008, CIS28725

<sup>8</sup> United States of America (USA): Department of the Army, 'Jaysh al-Mahdi', 17 September 2008, CX317883

documents or photographs or anything else. When he first arrived in Australia, records before me indicate that he told Australian authorities that he could provide a copy of his father's death certificate. To date, despite the passage of almost a decade, he has failed to produce this document or any other records relating to his father, or his murder.

31. He has also not provided any further details about the many businesses his father owned, or the [business] at the centre of his account. Given the scope of his claim about his father's wealth, and business profile I find this lack of supporting documentation to be concerning. I note that in his SHEV Application the applicant asserted that in April 2017, he learned from a friend that his home had been destroyed, and he cites the destruction of his home as a reason for not providing any original identity documents to the Department. However, the applicant has not cited this as a reason not to provide other documents, such as documents about his father's many businesses. Overall, I am concerned about the lack of any independent supporting evidence for his claims about his family and their wealth.
32. In fact, the applicant has not provided any independent supporting evidence for any of his principal claims about this period of his life, including his father's wealth, his father's death, the attack on his home, his abduction, the second attack on his home and attempted rape of his sister, his decision to flee to Najaf, or the Mahdi Army's tracking him there. In my view, the complete lack of any independent supporting evidence for any of these claims is concerning.
33. According to his account, the applicant says that he was the family member kidnapped, because after his father's death he was in control of the family finances. But this applicant has a brother who is some [number] years his senior, and his mother was still alive in 2007. He has not explained how or why he, a [age]-year-old in 2007, was ceded control of the family finances instead of his older brother or his mother or some other more senior family member. It seems doubtful that the family finances and wealth would have been placed in his control in these circumstances, and in the absence of any independent corroborative evidence, I do not find his explanation about this issue to be convincing.
34. The applicant claims that after he was abducted, he fled from Karbala, to the city of Najaf. But according to country information, Najaf was Mahdi Army stronghold, and the was one of the centres of the groups power. It would seem very doubtful that a person, seeking to flee from the group, would go and live in Najaf. The applicant's account is not persuasive. The applicant says he lived in fear in Najaf for around five years. But, on his own evidence, he travelled overseas twice during this period. The first time in 2009, when he went to [Country 1], and the second time in 2010, when he went to [Country 2]. He asserts his mother sent him to [Country 1] in order to see if it was safe for the family to migrate there, he has provided no evidence for this claim. He says his trip to [Country 2] was to escape and hide from the Mahdi Army, but he returned to Iraq after a few weeks. Given the scope of his claims about fearing the Mahdi Army, it seems doubtful that he would return to Iraq twice, if he genuinely feared for his life at that time.
35. Overall, I am not persuaded that this applicant has been entirely forthcoming about his life in Iraq. Like the delegate, in the absence of any supporting evidence for any of his claims, he has not satisfied me that his account is reliable. Overall, I am not satisfied that this applicant, or his family were ever of interest to the Mahdi Army, or any other militia group in Iraq. I am not satisfied that the family faced any extortion, or that his father was murdered, or that the applicant was kidnapped, or that there were raids on his house or an attempt to assault his sister, or that he fled to Najaf. I am not satisfied about any of these claims.

## **2017 Attack on home, mother, brother injured**

36. In his SHEV Application the applicant has asserted that in April 2017, he learned from a family friend in Europe that his family home had been damaged in a missile or mortar attack. He said that his friend had told him that his mother, his brother had been seriously injured or killed and his family home was destroyed. He said he did not know any more about this incident and has claimed that he no longer has family in Iraq who he could rely upon for assistance if was returned to that country.
37. Overall, I found the applicant's account of this event to lack detail, and his explanation for this event to be very unconvincing. The applicant asserts he has no first-hand knowledge of this event, and has no further information about it, or about his family in Iraq. The applicant has not provided any independent evidence in support of this claim about his family or the attack. He has not explained how the family friend had knowledge of the attack, or why he has been unable to contact other family members, who live separately. Like the delegate, I am not satisfied that this attack ever happened or that his family home was destroyed, or that his mother or his brother were seriously injured or killed or are missing.

## **Catholic Conversion**

38. According to the Statement of Claims which accompanied the applicant's Protection Visa Application, in Australia, he has become a convert to Catholicism. In his 2017 Statement of Claims the applicant stated he converted because he had been in a relationship for around two years with a Catholic woman, and that he regularly attended church with her. In his SHEV Application, he had stated he was an agnostic (*Answer to Question 30 – Your Religion?*). In his December 2021 Submission to the Department, the applicant is described as a non-observant Muslim. This is the only information that has been provided about this applicant's Christian conversion. When he arrived in Australia in 2013 the applicant had described himself as Shia Muslim.
39. The applicant first made his religious conversion claim in 2017, and on his own account, his Christian religious activity was principally driven by the religion of his then partner. On the information before me, it seems that the applicant is not involved in a relationship with this person any longer.
40. Some five years have passed since the applicant submitted his SHEV Application and in that time the applicant has not provided any further information about this issue, or evidence in support of this claim. He has not indicated whether he still attends Catholic services, or where he attends, or when exactly he converted, or whether he was baptised. He has not explained what aspects of the attracted him to the Catholic religion, or what, if anything led to his decision not to practice the Shia religion of his birth. He has not provided any independent documentary evidence about his Catholic conversion, such as a baptism Certificate, or some attestation from a third party about his attendance or participation in catholic religious activities.
41. I have carefully considered the applicant's claims about his religious conversion. I accept that religious faith is inherently a private matter and so I do not wish to impose an artificial or arbitrary standard on the applicant about the practice of Catholicism, such as a requirement about the level of knowledge required of an adherent, or of the length of time an adherent must worship in order to be regarded as a genuine convert to a new faith, or how long such a conversion should take, or what factors might lead to such a conversion. I acknowledge that religious conversions can be sudden and that persons of other faiths are known to make mid-

life conversions. Nevertheless, in this case I simply did not find the applicant's particular circumstances, or his explanations to be convincing or credible. The very brief explanation for his conversion which he has provided implies that he was motivated to attend Christian services because he was in a relationship with a Christian woman, not from any genuine conviction about the truth or theology of the Christian faith.

42. I accept that this applicant has had some limited exposure to Catholic Christianity, including some attending church services around the time of his SHEV Application. However, he has not satisfied me he has continued to attend Church services since then and, in the absence of any further evidence about his practice of religion, and after carefully considering the information before me, I am not satisfied that this applicant is now, or ever was, a Christian convert or that he practices the Catholic religion. I am willing to accept that the applicant is a non-observant Muslim.

#### **Australia - Homelessness, abuse, exploitation & vulnerability**

43. In submissions, it has been argued that this applicant has faced a range of problems in Australia, and that these problems, in combination with his mental health problems, makes him especially vulnerable. These were an assault in 2017, another in 2019, workplace exploitation in 2021 and a period of homelessness. I have already discussed the applicant's health problems above (and considered them throughout this decision).
44. Various documents before me assert that the applicant had been the victim of an assault in 2017. However, no further information about this event has been provided. The material before me does not make clear what happened during this incident, or what were the consequences. It is not clear how severe the event was. The applicant was also the victim of an assault in 2019. He has provided several original documents which relate to this event, including a hospital discharge certificate. I accept that the applicant was assaulted in 2019 as claimed and that this resulted in a brief hospitalisation. Though the applicant has not provided any evidence in relation to the 2017 assault, I am willing to accept that such an event occurred.
45. Submissions describe the applicant as homeless. I do accept that the applicant went through a period of homelessness in 2021, when according to documents he has provided, he lived in a car belonging to a friend. Submissions assert that the applicant's period of homelessness led to difficulties for him accessing mental health services. Nevertheless, the two recent medical reports from the Neurologist and the Psychiatric Registrar (both written in 2022) indicate that the applicant is no longer living in those circumstances. Rather, these indicate that the applicant has been receiving financial assistance for some months and has been living in hotel accommodation. Thus, it appears that his circumstances have improved since 2021, when the 'homelessness' line of argument was initially made. While I accept that any period of homelessness would have a profound effect of a person, and I have taken these factors into account in this decision, there is no evidence before me to suggest that this applicant is homeless now, or that he will fall back into homelessness in the future.
46. The applicant's submissions assert that he has been exploited by an employer in Australia in October 2021. According to the Submission, an employer only paid him \$50 for a week's worth of work and who took money from the applicant. The during this week, the applicant was forced to sleep on the floor of a factory. This incident is described as an example of the applicant's unique vulnerability. The applicant has not provided any independent corroborative evidence in relation to this incident. In the absence of any independent evidence for this event, I have some concerns. No explanation has been provided for who was involved in this incident,

where it occurred, or what led to it. Overall, in the absence of such corroborative evidence, I am not satisfied that any such event occurred

## **Refugee assessment**

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47. 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**

48. 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.

49. I have found that Iraq is this applicant’s receiving country. The applicant was born and lived in Karbala. He spent five years living in Najaf between 2007 and his departure for Australia. Though he most recently lived in Najaf, Karbala is his home, and where he spent most of his time in Iraq. I have not accepted that this family home in Karbala was destroyed in 2017, or that his mother and his brother were injured or killed at that time. I conclude that if returned to Iraq, the applicant would return and reside in Karbala with his family in his family home.

### *Arab ethnicity in Karbala, security, non-practising Muslim*

50. This applicant says that his profile would lead him to face harm in Iraq. He is of Arab ethnicity, and I have found he would live in Karbala. He says that he would be at risk in Iraq from the Mahdi Army and Islamic State. I have found he is a non-practising Muslim.

51. Country information before me indicates that Iraq has not held a full national census since 1987, but that the population is estimated to be between 38 and 40 million<sup>9</sup>. Approximately 70 per cent of Iraqis live in urban areas, and Baghdad is the capital and largest city, with a population of between 6 and 7 million persons<sup>10</sup>. It is estimated that 75-80 % of the inhabitants

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<sup>9</sup> Department of Foreign Affairs and Trade (DFAT), ‘Country Information Report Iraq’, 17 August 2020, 20200817105936

<sup>10</sup> Department of Foreign Affairs and Trade (DFAT), ‘Country Information Report Iraq’, 17 August 2020, 20200817105936

of Iraq are Arab<sup>11</sup>. Around 97% of Iraqis are said to be adherents of the Muslim faith<sup>12</sup>. Shia Muslims, who are predominantly of Arab ethnicity, constitute 55 to 60 per cent of the overall population<sup>13</sup>. Karbala is located south of Baghdad, in the centre of Iraq, a region dominated by persons of the Shia faith<sup>14</sup>.

52. According to DFAT, the security situation in Iraq, while varying according to location, is highly unstable and fluid. Security incidents occur often and without warning. Targets include 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. Though largely defeated, the Islamic State movement still has a presence in the West of Iraq and is still considered a threat. A large number of militia groups operate in Iraq under the auspices of the Popular Mobilisation Forces, an umbrella term for militia groups which were endorsed by the Government in the fight against the Islamic State movement, and which continue to exist, often with little or no Government oversight. The Mahdi Army, is one such group.
53. The applicant continues to assert that he would be of interest to, and at risk from, the Mahdi Army. However, as noted earlier, I have not accepted any of this applicant's claims about the Mahdi Army. I do not accept that he or his family was ever of interest to this militia, or that he ever came into conflict with them. I do not accept that he or his family would be of any interest to this group now.
54. Returnees to Iraq will usually enter by airport, in Baghdad or Basra. Access to Karbala can be achieved by road. Security in Iraq is frequently conducted by the use of security checkpoints. These checkpoints themselves, can, at times lead to security concerns since they can be operated by various groups, including the security services, and various armed militia groups<sup>15</sup>. However, other information before me indicates that Karbala has tight security compared to other parts of Iraq and is one of the safest places in the country<sup>16</sup>. Country information indicates that civil and human rights activist, persons associated with the Government or the military, religious persons or those who are politically involved are most at risk in Iraq. The applicant does not have any of these profiles. I have found he was never of interest to the Mahdi Army. He has not claimed to have been interest of any other militia, or the Government while he lived in Iraq. I am not satisfied that he would be of any interest to any group, or the Government in Iraq. I am satisfied he would be able to return to Karbala without incident, and, even considering the remaining aspects of his profile, I am not satisfied that the applicant would face a real chance of harm in Karbala.
55. This applicant is not associated with the Iraqi Government or security services, he does not have the profile of an activist or demonstrator. He does not claim to be involved in any political issues. He would return to Iraq, a country where Arabs like him constitute around 75-80% of the population. He has not indicated that he, or any other person he knew, ever faced any problems in Iraq merely for being of Arab ethnicity. After careful consideration, I am not

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<sup>11</sup> European Asylum Support Office (EASO), 'EASO Country of Origin Information Report - Iraq Key socio-economic indicators', 4 February 2019, 20190205091157

<sup>12</sup> Department of Foreign Affairs and Trade (DFAT), 'Country Information Report Iraq', 17 August 2020, 20200817105936

<sup>13</sup> Department of Foreign Affairs and Trade (DFAT), 'Country Information Report Iraq', 17 August 2020, 20200817105936

<sup>14</sup> Department of Foreign Affairs and Trade (DFAT), 'Country Information Report Iraq', 17 August 2020, 20200817105936

<sup>15</sup> European Asylum Support Office 'EASO Country of Origin Information Report - Iraq Internal mobility', (EASO), 04 February 2019, 20190205084903

<sup>16</sup> Country of Origin Information Services Section (COISS), 'Situational Update: Iraq: Security incidents', 8 January 2018, CR239EC815

satisfied his Arab ethnicity would lead to any problems in Iraq. I do not accept that he would face a real chance of any harm for this reason.

56. While I have not accepted that the applicant is a Catholic convert, I do accept that in Australia, the applicant has not practiced the Shia religion and that, for a time, he attended some Christian church services. As noted earlier, Country information indicates that Iraq is a Muslim country with almost all of the population adhering to one of the two major sects of Islam. Islam is the official religion of the State. Iraqi law prohibits the enactment of any law that contradicts the established provisions of Islam<sup>17</sup>. However, the constitution also guarantees the rights to freedom of religious belief and the religious practices of all individuals<sup>18</sup>. There are numerous other religious protections in the Iraqi constitution, including guaranteeing that Iraqis are equal before the law without discrimination based on religion, sect or belief; guaranteeing that Iraqis are free in their commitment to their personal status according to their religions; sects, beliefs or choices; guaranteeing that the followers of all religions and sects are free in the practice of religious rites; the management of religious endowments and other religious affairs and institutions; promising that the state shall guarantee freedom of worship and the protection of places of worship<sup>19</sup>. While regulations prohibit the conversion of Muslims to other religions, it is common for people who are disillusioned with their faith to simply become nonreligious<sup>20</sup>. There is no evidence before me that simply not practising the Muslim faith would lead to harm in Iraq.
57. The applicant's submission argues that he has the profile of a non-observant Muslim; that he *"lives his life openly without following Islamic norms and beliefs and is not confined by the rigid Islamic practices adopted by Shia Muslims in Iraq"*; and, that he would face a risk of harm from Islamic State and other religious groups in Iraq for this reason. Overall, I am not persuaded by these arguments. While the Islamic State has a well-known anti-Shia agenda, the movement has largely been defeated and mostly expelled from Iraq; the groups presence in Iraq is now minimal. The group never controlled Karbala. There is no suggestion that the group would return to power or influence in Iraq as it did previously. I have found that this applicant has never been of interest to the Mahdi Army and would not be of interest to that group upon return. I am not satisfied his failure to practice the Shia religion in Iraq would lead to him becoming of interest since country information indicates that there are many non-practising Muslims in Iraq, and so the applicant's circumstances would not be particularly unique and would not distinguish him. I am not satisfied that Islamic State, or any other group would take an interest in this applicant or his religious practice. I am not satisfied that he would face a real chance of any harm as a non-practising Muslim.

#### *Health, Mental health, vulnerability*

58. I have accepted that this applicant suffers from a range of health problems, including epilepsy, PTSD like symptoms, insomnia, anxiety and defects of memory. Submissions describe the applicant as *"uniquely vulnerable"* and it has been argued that the applicant's *"unique vulnerabilities and presentation"* mean that he would be more likely to come to attention, if returned to Iraq. I do not find this argument to be compelling, rather, I find it speculative, and overstated. I do not accept that the applicant's difficulties in Australia, would mean he was more likely to come to the attention of authorities or anybody else in Iraq. I have found that this applicant would return and reside in Iraq with his family. In my view, residing with his family would offer him some protection in regards to any persisting vulnerabilities that he

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<sup>17</sup> Department of Foreign Affairs and Trade (DFAT), 'Country Information Report Iraq', 17 August 2020, 20200817105936

<sup>18</sup> Department of Foreign Affairs and Trade (DFAT), 'Country Information Report Iraq', 17 August 2020, 20200817105936

<sup>19</sup> Department of Foreign Affairs and Trade (DFAT), 'Country Information Report Iraq', 17 August 2020, 20200817105936

<sup>20</sup> Department of Foreign Affairs and Trade (DFAT), 'Country Information Report Iraq', 17 August 2020, 20200817105936

might face (similar to those claimed in relation to his time in Australia). His family home would provide him with shelter and refuge, and the presence of family would minimise any risks he would face.

59. Country information indicates that in Iraq, healthcare is available. The Iraqi Constitution guarantees citizens the right to health care and commits the State to maintaining public health and providing the means of prevention and treatment by building different types of hospitals and health institutions. The Ministry of Health is the primary health care provider in Iraq and there are 229 hospitals nationwide, along with over 2200 primary health centres<sup>21</sup>.
60. Iraq's health indicators are said to be generally poor, and the health of Iraq's population has suffered from decades of conflict and economic sanctions, combined with chronic underinvestment in the health sector. Health services have deteriorated, and the sector faces shortages in drugs and other supplies<sup>22</sup>. DFAT reporting indicates that there are very few mental health services available to the general public and a January 2017 study found there were only around 80 clinical psychologists working in the entire country<sup>23</sup>. Much of the burden for treating mental health issues falls on international non-government organisations (NGOs). The absence of community-based mental health care means often the only care available is family-based or in psychiatric institutions, which have been linked to inhumane treatment and degrading living conditions. There is significant societal stigma against those suffering from mental health issues, which results in under-reporting of problems and underutilisation of the services that are available.
61. This applicant requires ongoing medical support for his epilepsy. He also suffers from ongoing back pain associated with a workplace injury. He also suffers from a range of other problems associated with his mental health. As noted above, there are serious limitations associated with healthcare delivery in Iraq. However, none of the information before me indicates that any of these limitations are the result of any deliberate policy, or of persecution, or discrimination or any similar factor. There is no evidence to indicate that a person's race, religion, nationality, membership of a particular social group or political opinion is a factor in whether they can access healthcare services in Iraq. While I do accept that in Iraq, the applicant would probably not be able to access the same level of healthcare which he could expect in Australia, this is not the test and I am not satisfied that the applicant's race, religion, nationality, political opinion or membership of a particular social group would lead to him being prevented, denied, or otherwise unable to access to healthcare services in Iraq. In light of this, I am not satisfied that any difficulties this applicant would face in accessing such services in Iraq amounts to persecution or discrimination. I am not satisfied that he would be prevented from accessing the healthcare services he requires. I am not satisfied he has a well-founded fear of persecution based on these factors.

#### *Failed Asylum Seeker*

62. According to the European Asylum Support Office, thousands of Iraqis who had sought asylum in western countries returned to Iraq in recent years<sup>24</sup>. Under Article 44 of the Iraqi

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<sup>21</sup> Department of Foreign Affairs and Trade (DFAT), 'Country Information Report Iraq', 17 August 2020, 20200817105936; United Nations High Commissioner for Refugees (UNHCR), International Protection Considerations with Regard to People Fleeing the Republic of Iraq', 3 May 2019, p.54, 20190506112913; Finnish Immigration Service, 'Iraq: Fact-Finding Mission to Baghdad in February 2019 - Mental Health Issues and Their Treatment in Iraq', 17 June 2019, p.4, 20191204132624

<sup>22</sup> Department of Foreign Affairs and Trade (DFAT), 'Country Information Report Iraq', 17 August 2020, 20200817105936

<sup>23</sup> Department of Foreign Affairs and Trade (DFAT), 'Country Information Report Iraq', 17 August 2020, 20200817105936

<sup>24</sup> European Asylum Support Office 'EASO Country of Origin Information Report - Iraq Internal mobility', (EASO), 04 February 2019, 20190205084903



Constitution, Iraqis have 'freedom of movement, travel and residence inside and outside Iraq'<sup>25</sup>. The Constitution also provides that no Iraqi may be exiled, displaced, or deprived from returning to the homeland<sup>26</sup>.

63. The Iraqi Ministry of Foreign Affairs says that Iraqis can be issued with a 'single trip' *laissez passer* document at consular missions abroad for entry into Iraq. Such documents can be issued abroad in the following cases: If an Iraqi national wants to return to Iraq, but has lost his/her passport; if an Iraqi national has had his/her passport confiscated and wants to return to Iraq; if an Iraqi national is deported to Iraq. To issue the *laissez passer*, the Iraqi office will verify identity/nationality of the returnee against source documents in Iraq<sup>27</sup>.
64. According to DFAT, the practice of seeking asylum and then returning to Iraq once conditions permit is well accepted among Iraqis, as evidenced by the large numbers of dual nationals from the US, Western Europe and Australia who return to Iraq<sup>28</sup>. Nevertheless, returning to Iraq can be difficult, if a person does not return to their community of origin<sup>29</sup>. Iraq is also said to have a large population of internally displaced persons which can lead to administrative problems upon return<sup>30</sup>.
65. I have considered this issue carefully, and conclude that if returned to Iraq, this applicant would return as just one failed asylum seeker among many and his circumstances would not be particularly unusual. I have found he would return to Kabala, where he has previously lived, and where his family remain. In my view, the presence of family will go some way to alleviating the many practical problems he would face upon returning to his home country and mitigate against other difficulties. Though he asserts he has lost his Iraqi Passport, the applicant has copies of other documents to prove his Iraqi identity and citizenship. He could apply for and obtain a 'single trip' *laissez passer* document before returning in order to facilitate his return to that country. In the circumstances, I am not satisfied that this applicant would face any harm as a failed asylum seeker.

### Refugee: conclusion

66. Above I have considered the relevant aspects of the applicant's profile. For the avoidance of doubt, I have considered these parts of his profile, individually, and cumulatively. In my view, 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

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67. 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

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<sup>25</sup> European Asylum Support Office 'EASO Country of Origin Information Report - Iraq Internal mobility', (EASO), 04 February 2019, 2019020508490

<sup>26</sup> European Asylum Support Office 'EASO Country of Origin Information Report - Iraq Internal mobility', (EASO), 04 February 2019, 20190205084903

<sup>27</sup> Department of Foreign Affairs and Trade (DFAT), 'Country Information Report Iraq', 17 August 2020, 20200817105936; European Asylum Support Office 'EASO Country of Origin Information Report - Iraq Internal mobility', (EASO), 04 February 2019, 20190205084903

<sup>28</sup> Department of Foreign Affairs and Trade (DFAT), 'Country Information Report Iraq', 17 August 2020, 20200817105936

<sup>29</sup> Department of Foreign Affairs and Trade (DFAT), 'Country Information Report Iraq', 17 August 2020, 20200817105936

<sup>30</sup> Department of Foreign Affairs and Trade (DFAT), 'Country Information Report Iraq', 17 August 2020, 20200817105936

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**

68. 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.

69. 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.

70. While I have found that this applicant would not face persecution related to his access to healthcare in Iraq, country information does indicate that there is a significant societal stigma in Iraq associated with mental health problems which means some persons are reluctant to apply for services or assistance<sup>31</sup>. This applicant does suffer from a range of such problems, including insomnia, PTSD like symptoms, anxiety, and most notably defects of memory. However, even taking these factors into account, there is no evidence, and I am not satisfied that the applicant would face the death penalty, torture, or the arbitrary deprivation of his life by reason of any mental health concerns. Even taking into account any stigma the applicant may face in Iraq associated with his mental health challenges I am not satisfied that this would amount to cruel or inhuman treatment or punishment or degrading treatment or suffering as defined.

71. I have otherwise found that this applicant would not face a real chance of harm arising from any of his claims for protection. As 'real chance' and 'real risk' have been found to meet the same standard, it follows that he would not face a real risk of significant harm for these reasons. I am not satisfied he would face a real risk of significant harm for any other reason.

### **Complementary protection: conclusion**

72. 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**

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

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<sup>31</sup> Department of Foreign Affairs and Trade (DFAT), 'Country Information Report Iraq', 17 August 2020, 20200817105936

## Applicable law

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### **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.