



**Australian Government**  

---

**Immigration Assessment Authority**

**Decision and Reasons**

**Referred application**

---

IRAQ

IAA reference: IAA22/10380

Date and time of decision: 20 December 2022 12:41:00

G Ma, 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 Arab from Basra in Southern Iraq. On 8 May 2017, he lodged an application for a Safe Haven Enterprise Visa (SHEV), claiming to fear harm from the militias due to his status as a former [Specialist occupation] who [did Job task 1 relating to] militias, and because he is a moderate Shia Muslim who drinks alcohol and fraternises with Christians.
2. On 28 February 2018, a delegate of the Minister for Immigration (the delegate) refused to grant the visa. On 9 October 2018, the IAA affirmed the delegate's decision. On 18 February 2022, by consent, that decision was quashed by the Federal Circuit and Family Court of Australia (FCFCOA) and remitted to the IAA for reconsideration. On 24 May 2022, a different IAA reviewer affirmed the delegate's decision. On 6 September 2022, by consent, the FCFCOA quashed that IAA decision and remitted to the IAA to determine the application for review in accordance with law.

### 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) (the review material).
4. The review material includes a document of an administrative nature that concerns an unrelated third party. On 6 December 2022, the IAA sought clarification from the Department of Home Affairs (the Department). On the next day, the Department confirmed that this document relates to another person, and it was referred to the IAA in error. This document is not relevant to this case, it is not new information, and I have not considered it further.
5. On 3 April 2018 and 4 April 2022, the IAA received submissions with attachments from the applicant's former representatives from RACS (the IAA submissions). To the extent that the submissions explain and argue why the applicant disagrees with the delegate's decision and the previous IAA decision by reference to Departmental policy and caselaw, or refer to materials before the delegate, or clarify the applicant's evidence about the type of vehicle that had followed him in a claimed past incident, these aspects are not new information and I have considered them.
6. The IAA submissions attach and refer to the Department of Foreign Affairs and Trade (DFAT) Country Information Report: Iraq, published on 17 August 2020 ("2020 DFAT report"). This was not before the delegate, and it is new information. This report post-dates the delegate's decision. It is general country information rather than personal information. I am satisfied that this new information could not have been provided to the delegate before the delegate's decision and meets s.473DD(b)(i), but it does not meet s.473DD(b)(ii). I note that the delegate had relied on an older version of DFAT report in the primary decision. This new report gives a more updated overview about the situation in Iraq. Considering all the relevant matters, I am satisfied that there are exceptional circumstances to justify consideration of it.
7. The IAA submissions also contain extracts from two 2021 AAT decisions. This information was not before the delegate. It is new information. These AAT decisions post-date the delegate's decision. I am satisfied that this new information could not have been provided to the delegate before the delegate's decision was made and meets s.473DD(b)(i). This information

is said to support the applicant's claimed risk of harm from Shia militias, where the AAT 'in similar circumstances' relied on the same 2020 DFAT report and found a real chance of harm to the applicants in those cases. From the limited contents of these extracts, the applicants' profile and the factual circumstances of those cases were far from clear. I am not persuaded that their circumstances are analogous to that of the applicant. In any event, AAT decisions are not binding on the IAA. Moreover, it is well established that in merits decisions, each case should be assessed on the individual facts, rather than by reference to other decisions. My role is to determine the applicant's personal circumstances. The 2020 DFAT report is now before me. The applicant has not satisfied me that this is credible personal information that was not previously known and, had it been known, may have affected the consideration of his claims. Section 473DD(b)(ii) is not met. Considering all the relevant matters, including my findings on s.473DD(b)(i) and (ii), I am not satisfied that there are exceptional circumstances to justify considering this information.

8. In the IAA submissions, the applicant also raised new claims relating to his health and associated consumption of alcohol ("new health information"). The applicant relevantly claims that since 2018, he has suffered from mental health issues. He believes he has depression and anxiety, because of the death of his mother and brother in Iraq, his fear of Shia militias and separation from his wife and children. His mental health has declined since his father told him several months ago (late 2021 or early 2022) that Shia militias have become more powerful, they are still looking for him and he is still on their blacklist. He used to go to a psychologist in 2018 but had not seen other health professionals since then as he felt sad and did not want to talk about his problems. He currently undertakes casual work at a [Workplace] but finds it difficult to work due to his health issues. He says that if returned to Iraq, his mental health would likely decline further. He claims that as his mental health has declined, he has difficulty sleeping, so he drinks alcohol before he sleeps. He claims he started drinking when his family were 'stuck' in [Country 1] in 2015, but his drinking increased after 2018. He drinks alcohol most nights, but he is trying to stop because it was Ramadan and his son called him and told him not to hurt himself. He claims that if he returns to Iraq and the Shia militias knew that he drank alcohol, they will target him. He would not be able to drink alcohol in Iraq. He also claims that in 2016 one of his friends was killed by the Shia militias for drinking alcohol. It is submitted that the applicant's health and associated alcoholism make him a target for, and more vulnerable to threats from Shia militias, and he would not be able to avoid or resist any attempt by the AAH (militia) to harm him. He is paranoid and would unlikely be able to work, subsist or provide for his family if returned to Iraq. It is likely that he would remain in his residence and become reclusive due to fear of being attacked by the AAH. It is also submitted that there is limited support for persons with mental health problems. These claims were not before the delegate, and they are new information.
9. Although it is submitted that the applicant's health conditions and associated alcoholism arose after the delegate's decision and the initial IAA decision in 2018, the new claims that in 2016 one of his friends was killed by the Shia militias for drinking alcohol, and that he started drinking when his family were in [Country 1] in 2015, relate to events back in 2015 and 2016, which pre-date the delegate's decision. I note that the applicant had claimed before the delegate (in the 2017 SHEV application, at the SHEV interview, and in the post-interview submission) that he had drunk alcohol in Iraq in 2013 and feared harm on this basis. Also, the delegate put to him at the SHEV interview that there was no country information that consumers of alcohol were being targeted by militias in Iraq. The applicant has not satisfied me that this aspect of the new information could not have been provided to the delegate before the delegate's decision, and s.473DD(b)(i) is not met. The new claim that he began drinking alcohol in 2015 because his family were in [Country 1] informs the background of his

claimed alcoholism. The new claim that his friend was killed by Shia militias for drinking alcohol in 2016 pertains to the applicant's claimed risk of harm based on alcohol consumption on return. These new claims, which relate to the applicant and his friend, are prima facie 'credible personal information' which was not previously known and may have affected the consideration of his claims had it been known. Having considered all the matters, I am also satisfied that there are exceptional circumstances to justify considering this information. All the other "new health information" (including as it relates to his claims of more recent alcohol consumption) arose after the delegate's decision. I am satisfied that it could not have been provided to the delegate before delegate's decision. I am also satisfied that it is credible personal information that was not previously known, and had it been known, may have affected the consideration of the applicant's claims. Section 473DD(b)(i) and (ii) are met. This new information about the applicant's health conditions and associated alcoholism pertains to his claimed fear of harm on return. I am satisfied there are exceptional circumstances justifying the consideration of it.

10. In the IAA submissions, the applicant also raised new claims regarding church attendance in Australia ("new church attendance information"). He claimed that in 2021 he attended a church in [Suburb] around five times with his friend who is an Australian citizen and [Country 3] Christian. He claims that '[A]' was in [Country 1] and met his family in [Country 1]. His family told [A] to look after him and took him to church where he ate food and listened to the sermon. He attended church because he does not have any problem with Christians or people from other religion, and he thinks everyone should live in peace and harmony. The church in [Country 1] has assisted his wife and family, they have no work rights in [Country 1] and do not receive any government assistance. The [Country 1] church gives them food and shelter, and they have relied entirely from assistance from Christian churches in [Country 1] since 2015. He trusts and respects Christians because they treat his family as humans and are helping them regardless of their religion. He has strong sympathies for Christians, and he is now closely associated with them. Given the status of the Shia militias a local mafia, it is likely that they will be privy to such information in the community. He and his family will be vulnerable to harm from the Shia militias if he returns to Iraq. He claims that if returned to Iraq, he expects he would want to also have Christian friends, and go to their church, as he has done in Australia, and that the Shia militias would target him for this as they believe only in violence. It is submitted that his church attendance in Australia makes it more likely that he will be imputed with anti-militia, pro-west political opinion, and that it strengthens his claim that he would face a real chance of harm if returned. This information was not before the delegate, and it is new information.
11. The new claim that the applicant's family has relied on assistance from [Country 1] churches from 2015 to before the delegate's decision dated February 2018, relates to events that pre-dates the delegate's decision. The applicant has not satisfied me that this information could not have been provided to the delegate before the delegate's decision, and does not meet s.473DD(b)(i). The other new church attendance information concerns events that post-date the delegate's decision, and I am satisfied that it could not have been provided to the delegate before the delegate's decision, and meets s.473DD(b)(i). I am satisfied that on its face, this information, as well as the new church attendance information is credible personal information that was not previously known and may have affected the consideration of the applicant's claims had it been known. Section 473DD(b)(ii) is met. Although the new claim about his family's reliance on [Country 1] churches in the period from 2015 to before the delegate's decision does not meet s.473DD(b)(i), it provides a background for the applicant's claimed development of trust and association with Christians after he arrived in Australia. The new church attendance information goes to the applicant's claimed fear of harm from

Shia militias. Overall, I am satisfied that there are exceptional circumstances to justify considering this information.

12. I have obtained updated country information<sup>1</sup> about the situation in Iraq. A significant period has passed since the delegate's decision. The applicant made claims about the general security situation in Basra and Iraq. The delegate had relied on older versions of some of these reports in his decision. These recent, reliable and authoritative reports provide relevant and updated country information regarding the situation in Basra and across Iraq, and I am satisfied that there are exceptional circumstances to justify considering this information.
13. In the IAA submissions, it is submitted that in light of the exceptional nature of the decision under review, in the case that the IAA is not otherwise minded to remit the application, they request that the IAA exercise its power to interview the applicant. The applicant has not elaborated on how or why the decision is said to be of an 'exceptional nature', nor am I able to discern this. Part 7AA of the Act compels the IAA to provide a 'limited form of review'. Generally, the IAA must conduct a review on the papers by considering the review material provided by the Secretary without accepting or requesting new information and without interviewing the applicant (sections 473BA, 473CB, 473DB). This however is not an absolute, and the IAA may exercise its discretion to invite a person to give new information at an interview pursuant to s.473DC(3).<sup>2</sup> However, there is no obligation to do so. I have listened to the audio recording of the SHEV interview. The applicant was assisted by his former representative and an interpreter in the Arabic language at the SHEV interview. It was clear from the applicant's responses at the SHEV interview that he understood the questions posed and was able to put forward arguments and present his case effectively. I also note that in the SHEV application, the applicant indicated that he speaks, reads and writes 'English (intermediate)'. His responses at the SHEV interview also reflected that he has a reasonable command of the English language, where at times, he responded in English and assisted the interpreter in clarifying or repeating his evidence. All the relevant issues were ventilated during the SHEV interview. Although the delegate accepted aspects of the applicant's claims, for example, that he drank alcohol at a Christian friend's house after attending a church service in Iraq, for the reasons discussed below, I have reached a different conclusion, and this is based on the content and substance of the applicant's own evidence regarding his circumstances that was before the delegate. The applicant's former representative also provided a comprehensive post-interview submission with references to country information and attaching various supporting documents. I consider that the applicant was given a real and meaningful interview, and that he has had ample opportunities to provide evidence on pertinent issues, and to put forward arguments for his case. He has also taken up the opportunity to provide detailed submissions to the IAA (including addressing issues raised in previous IAA decision), with supporting document, that was prepared with the assistance of his former representatives in 2018 and 2022. On the whole, I am not satisfied that the circumstances of this case warrant the exercise of discretion under s.473DC(3).

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

---

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

---

<sup>1</sup> European Union Agency for Asylum (ECAA), "Country Guidance: Iraq – Common analysis and guidance note", 29 June 2022, 20220704134545; UK Home Office, "Country Policy and Information Note Iraq: Security situation", 25 November 2022, 20221129181904; and "Violence in Iraq At An All-Time Low", Joel Wing, Musings on Iraq, 5 December 2022, 20221206121941.

<sup>2</sup> While exceptional circumstances may be relevant to the exercise of s.473DC discretion, it is not a necessary factor: see *EMJ17 v MIBP* [2018] FCA 1462.

- The applicant is a Shia Arab from Al-Zubair, Basra, Iraq. He describes himself as a 'moderate' Shia Muslim. He came from a relatively large family, with [Number 1] siblings. He is married with [Number 2] children. After he left Iraq, his wife and children went to [Country 1], and they have been residing on temporary visas there. His mother died of natural causes in around August 2017, and one of his brothers is deceased. His father and his other siblings and their families are living in Basra.
- There is a powerful Shia militant group called Kata'ib Sayyid al-Shuhada ("KSS"), which loosely translates to something like 'Promotion of truth and prevention of vice'. They are militarised religious zealots. They are associated with another known group called Asa'ib Alh al-Haq ("AAH"). These militias have placed their representatives in places of power high in the Iraqi government. Those people will not allow the groups' crimes to be exposed and prosecuted by the authorities and courts in Iraq.
- From [Year 2] to 2013, he worked as a [Specialist occupation] in the [Employer] in Iraq, specialised in [Specialist job task], and he was part of a team that [did Job task 1 related to] militias, such as the KSS and AAH, and other criminal groups. Given the power of these militia groups, they could not name them in their reports although they knew who was responsible for the [Activities].
- Some of his colleagues and their family were attacked. They understood the attacks to be a warning to continue to withhold information in their reports that would incriminate the militias groups.
- In 2013, he and his [son] went to see two Christian friends, who were celebrating some event at a church. After church, he and his son went back with his friends to their home, and he continued to celebrate and drink alcohol with them in their home.
- On [Date 1] April 2013 while he was driving a car, he noticed a car was following him. He was worried as he knew that people from his department were often targeted by militias. He drove to a military checkpoint and stopped there. He showed his ID and told the officers at the checkpoint that the car behind him was following him. The officers looked at the car behind. It then drove away. He was escorted by some officers to his workplace. He did not know who had been following him. He assumed it was one of the groups that had targeted other officers in his department and who target moderate Muslims. After he arrived at work, he spoke to his director about it.
- On [Date 2] April 2013, "the shooting incident" occurred at his house. On the same night, he went to the countryside to the house of his maternal uncle. His wife and children stayed in at home with her brother. The applicant told his wife not to open the door to anyone.
- After two or three days, his wife called and told him that someone had come to the door of their house asking for him by name through the wall. She asked him who is it, through the wall, but he didn't say who it was. She also told him that she had rung the neighbours and asked them to look and see who was outside our house. By the time the neighbour came, the people outside were gone ("the home visit incident"). He told his wife to leave the family house.
- Four days later, his wife went to stay with her family outside of Basra.
- One month later (May 2013), he spoke to a friend who was working in investigations in the Ministry of the Interior. His friend told him that he has heard that there has been a 'red x' put on his name. This is a phrase used to describe when somebody has been made a target for a militia. It means the person is targeted to be killed. He thought it was the people who shot at his house who put his name on the 'blacklist', possibly the

AAH or KSS. His friend also told him to leave Iraq via Najaf airport, instead of Basra airport, as these groups were more powerful in Basra.

- [In] May 2013 he left Iraq.
- Three months after the shooting incident (July 2013), his wife told him that she had moved in with her relatives in [Location], into a house in a security complex. His children were able to start going to school again. His wife was paying a driver to take the children to and from school for safety.
- One year after he left Iraq (May 2014), his wife told him that the driver noticed a car following him in recent days, and he refused to continue to transport his children to school. She and the driver believed the children were being targeted for kidnapping.
- Towards the end of 2014 he lost contact with his wife.
- On 8 January 2015, his wife called him from an airport in [City] in [Country 1]. She told him that on 15 November 2014, she received a threat letter from AAH, and she reported to the police; he had not been able to contact her as she was worried that he would risk his life and try to return to Iraq to protect them; she made arrangements to leave Iraq as she feared for the children's lives; in early 2015 she left Iraq for [Country 2] with the children, they attempted to fly to Australia via [Country 1], but they were stopped while in transit at the airport in [Country 1], and she called him at that time.
- The [Country 1] government told his wife that [Country 1] does not accept refugees, but she was allowed to stay because of the children. They were given a one-year visa, followed by a visa for five years.
- He fears harm from the AAH, the KSS and other Shia militant groups and fanatics, and Sunni extremist groups, such as Daesh and Al-Qaeda, because he is a moderate Shia Muslim who drank alcohol after attending church, and fraternises with Christians, as a former Iraqi [Specialist occupation] trained by foreign forces who [did Job task 1 relating to] militias (and membership of particular social group(s) on these bases), and he will be imputed to be an infidel and pro-west, and as a failed asylum seeker returning from a Western country. He also fears that his family would report him, as they only knew that he fled Iraq due to his previous work, but do not know about his previous behaviour of drinking and having Christian friends, and they would not tolerate this.

## **Refugee assessment**

---

15. 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**

16. 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.
17. Based on his Iraqi identity documents, I accept that the applicant was born in [Year 1] in Basra, Iraq, and that he is a national of Iraq. Iraq is the relevant 'receiving country'.
18. I accept that the applicant is a Shia Arab from Basra. On his evidence, he has always lived in Al-Zubair, Basra Governorate when he was in Iraq. His wife and children were living in Basra before they left Iraq in 2015, and they have since been staying in [Country 1] on humanitarian status visas. His mother and one of his brothers are deceased. His father, [siblings] and their families are living in Basra. He has been in contact with his family once or twice per week. He does not have family anywhere else in Iraq apart from Basra. I consider that if he returns to Iraq, he is very likely to return to Basra, where he has family ties, network and support.
19. I accept that in 2015 the applicant's wife and children went to [Country 2] to come to Australia via [Country 1], but they were stopped while in transit in [Country 1], and they were granted humanitarian status visas. The applicant has provided his wife and children's 'Notice on non-recognition of Refugee Status' issued by the Chief, [City] Immigration Office in support. These notices indicate, and I accept that in 2015 the applicant's wife and children applied for recognition of refugee status in [Country], in 2016 they were notified that they were not recognised as refugees but were given humanitarian status that allow them to stay in [Country 1].
20. The applicant claimed that from around [Year 2] to 2013, he worked as a [Specialist occupation] in Basra in the [Employer] in Iraq, specialising in [Specialist job task]. He has provided various supporting documents, such as Basra [Occupation] ID cards, certificates, and photograph. At the SHEV interview, the applicant gave specific and convincing evidence about his work, such as the circumstances in which he joined the [Occupation], the training he received from foreign experts, his role and his typical day at work. He gave oral evidence that he worked with a team of five [Team members]. [Description of job tasks.] They would then compile [a report]. The report would be sent to their supervisor, who would then send it to the [Occupation 2]. He said they were not authorised to [do Job task 2]. They were just a [team] that [did Job task 1] [for a Job purpose]. There was another specialised [team] responsible for [doing Job task 2], which had nothing to do with them. When asked about his [Classification], he responded he was just [an Occupation], nothing special. He added that when there were no [Circumstances], [Specific people] would come to their office [for Specific purposes], and he would [do related Specialised job tasks] in the office. I accept these claims. In view of the applicant's role, duties and responsibilities, I consider that he worked as an ordinary [Specialist occupation].
21. In the SHEV application, the applicant stated that he would describe himself as a 'moderate' Muslim, and he had friends from many different beliefs and backgrounds. At the SHEV interview, when asked about his religion, the applicant said that he was a moderate Shia



Muslim. He said that he practises Islam, he has no problem with any other sects, and he mixed with all the sects and has friends from different religion from school days when they were little, and they treated each other like friends as they were all human. He said there was a mix of Sunnis and Shias in his tribe, but most of them were Shias, and that he was known to be a Shia in his home area in Al-Zubair. In the post-interview submission and IAA submissions, he also claimed to be a moderate Shia Muslim. I accept that the applicant identifies as a moderate Shia Muslim, and he has friends from different backgrounds and beliefs.

22. In the SHEV application, in the context of describing himself as a moderate Muslim with friends from different beliefs and backgrounds, the applicant stated that for many years he has occasionally drunk alcohol. More specifically, he claimed that on one occasion in 2013, he and his son went to see two Christian friends who were celebrating some sort of event at a church. After church, he went to his friends' home and continued to celebrate and drank alcohol with them inside their house. He also stated that while he believed it is his freedom, his right to be able to drink some alcohol with his Christian friends, he was always aware that he could be monitored due to the nature of his work, and he kept his drinking a secret and he did not think anybody else had seen him that day.
23. At the SHEV interview, the delegate referred to his statement in the SHEV application that he was aware that he could be monitored due to his work and asked what gave him the impression that he could be monitored; the applicant responded that the truth was that he did not think he was monitored as he did not do any crime. He also said that he did not have any feeling that he was monitored before the incident where he was followed by a car. He said what happened was that one day in 2013, there was some celebration at a church, so he and his son (who would have been about [Age] years old at the time) went to church with some old friends from school who were Christians. After that, they invited him and his son to go to their house, and that it was his right, and he was allowed to have a drink there. When asked what he meant when he said it was his right to have a drink, the applicant responded that it's his personal right, he is a Shia Muslim, he was sitting with his friends, and if he wanted to have a glass of alcohol, that's his personal right and there was nothing wrong with it. When asked whether alcohol consumption was illegal at the time, he replied that it's not like it was not allowed, it was the Shia militias called the AAH and KSS who gave themselves the authority to order you to do the right and stop from doing the wrong.
24. When asked at the SHEV interview why he went to church with Christian friends in 2013, he replied that they were his friends, he did not have any problem with that, he mixed with them, and he also has other friends, who were Sabeen Mandeans, and they were all human. When asked whether he had been to church before 2013, he replied "not really", but they had invited him. He added that he liked to see different things and liked the hymns and the songs they sang in the church, and he did whatever they did. When asked how he was identified by the militias as attending church and drinking alcohol in a private space, the applicant responded that the militias were powerful, authoritative, had "unbelievable intelligence", and especially they would see that he was a Shia, working as [an Occupation] and drinking, which was like committing "the worse thing". When asked if that was the case, why he would risk drinking alcohol at Christian's house, he responded that he did not expect this to happen, they were drinking in a house with doors closed, and he was "astonished" that the shooting incident happened. When asked, what changed in 2013 that led to him being targeted, given that he worked as [an Occupation] for a decade, the applicant responded that it was because in 2013 the Iraqi [Employer] upgraded its [Specialist] technology and therefore its ability to [do Job task 1 relating to] militias, so it increased their hatred towards them.

25. The applicant's evidence in the SHEV application that he was always aware that he could be monitored, differs somewhat from his evidence at the SHEV interview that in truth he did not think he was monitored as he did not do any crime.
26. At a later stage of the interview, when asked whether or not his statement in the SHEV application that he thought he could be monitored because of his work was true, the applicant said "yes for sure". Later again he said that the militias had "unbelievable intelligence" so they could see everything including in private behind closed doors and his astonishment about the subsequent shooting incident.
27. The applicant claimed in the SHEV application that people from their department were constantly under threat because of the information they held [about] militia groups, and that the attacks on their colleagues were warnings to continue to withhold information in their reports that would incriminate groups such as the KSS. He also gave several examples that: in 2011 one of his colleagues was targeted by a bomb planted near his house but he was not seriously injured, on another occasion, a colleague's father was kidnapped, and in 2015 he found out that another colleague was shot in front of his family. They believed that the AAH or KSS were responsible. In these circumstances, it is difficult to believe that the applicant would not be particularly cautious about his activities, if he and his colleagues were in fact targeted and under constant threat from the militias.
28. Country information<sup>3</sup> indicates that the general decline in tolerance towards ethnic and religious minorities from majority communities in Iraq since 2004 has significantly affected Christians, and there has been increased harassment and violence in areas where Christians are a minority, including Shia areas of Basra. Since 2003, armed groups have targeted Christians, their places of worship and specifically targeted their homes. It was reported that hundreds of Christians were killed between 2003 and 2010, and 5,000 Christians were kidnapped and tortured while 51 churches saw attacks in Iraq. In 2011, churches were repeatedly subjected to (attempted) bombings, and extremist groups also targeted Christians for being associated with the sale of alcohol. The Christian population in Iraq has declined considerably since 2003, from a pre-2002 population estimate of some 800,000 – 1.4 million persons, to fewer than 250,000 Christians in 2020. Moreover, there were attacks by terrorist groups on Iraqi security personnel and US military since the withdrawal of US military forces began in 2009, including in Baghdad and southern Iraq.
29. The applicant is a Shia Muslim (albeit 'moderate'), with some 10 years of experience as [an Occupation] in the [Specialist] department who [did Job task 1 relating to] Shia militias and other criminal groups. According to him, he became very good at identifying which group was responsible for [an Activity], for example, [Examples]. Given his background and experience, he would have been well aware of the violence carried out by the militias against Christians and other religious minorities, and the militias' attitudes towards alcohol and Christians. Further, his own evidence was that he believed the Shia militias had "unbelievable intelligence" and could watch everyone even in private space. In these circumstances, I do not consider it credible that the applicant would have taken the risks to not only attend church himself, but also took his [son] with him, and to socialise and drink alcohol at his Christian friend's home with his son.

---

<sup>3</sup> Department of Foreign Affairs and Trade (DFAT), "DFAT Country Information Report: Iraq", 17 August 2020; UNHCR, "UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Asylum-Seekers from Iraq", 31 May 2012; Jamestown Foundation, "Insurgents Intensify Attacks in Iraq as U.S. Prepares Military Withdrawal", 17 June 2011, CX270504; and Overseas Security Advisory Council (OSAC), "Iraq 2017 Crime & Safety Report: Basrah", 7 March 2017, CISED50AD509. See also other country information in the review material.

30. The applicant claimed that sometime after he drank alcohol with Christian friends, on [Date 1] April 2013 while he was driving to work, he was followed by a car - 'a very fast' car without number plates. A few masked men were in it. He believed they were following him as they did not slow down when he sped up, nor overtake when he slowed down, they just kept on his tail. He was worried as he knew that people from his department were often targeted by militia. He drove to a military checkpoint and stopped there. He showed his [Occupation] ID and told the officers at the checkpoint that he was followed by the car behind him. The officers looked at the car behind, and it then drove away. He stayed at the checkpoint for some time. Later, some personnel from the checkpoint accompanied him to his workplace. He did not know who followed him. He assumed it was one of the groups that had targeted other officers in his department and who targeted moderate Muslims. He also claimed that after he arrived at work, he told his boss about being followed.
31. In the SHEV application, the applicant claimed that when he arrived at work, he spoke to his director, and told him about being followed. He asked the applicant what he had done. The applicant told him that he had not done anything serious, just attended a church with friends and had a couple of drinks. He then said to him something like 'now they think you're an infidel', referring to the AAH.
32. This differs from the applicant's initial evidence at the SHEV interview. At the interview, the applicant said that when he arrived at the office, his director called him and asked him what have you done? The applicant said what did I do? His director then said what have you done, you went with Christians, and on top of that, you had a drink, and you know what you have done, you are now marked, they put a "red x" on you, and according to the militias, you've committed a crime. His director also told him that the militias were pursuing him during the day, he could not help him, and advised him to stay at home. He also told him that these people were influential, supported by Iran and people in the Parliament, and now they've marked him with an "x", so he needed to take care of himself and be watchful.
33. I note that in the SHEV application, the applicant claimed that it was a month later (around late May 2013), when his friend who worked in investigations in the Ministry of Interior told him that he has heard that a "red x" has been put on his name. And the applicant thought it was the people who shot at his house (on [Date 2] April 2013) that put his name on the blacklist, possibly the AAH or the KSS. There was no mention in the SHEV application that his boss told him on [Date 1] April 2013 that the militias put a "red x" on his name, or that he heard about the "red x" from two different people.
34. The applicant's initial evidence at the SHEV interview that his boss told him (on [Date 1] April 2013) that the militias put a "red x" on him, also differs from the applicant's later evidence at the SHEV interview. At a later stage of the interview, when reminded about his evidence about the claimed blacklist in the SHEV application, the applicant said that his friend told him that his name was on the blacklist, and the militias have this type of list where they would write names and put a "red x" on it, which means that's it, their life is gone, and they will get rid of them. When asked whether this was the friend who worked in Internal Affairs, he replied yes.
35. The applicant claimed that on [Date 2] April 2013, at night, he was inside his house with his wife and children. He heard shots, and he ran outside into his courtyard to look. There was a high wall around his house, it was hot and as there was no electricity, his neighbour was sitting on his roof in the cool air. His neighbour screamed and yelled out his name, told him to stay inside as there was a group of men with their face covered in front of his house. He claimed that he shot a couple of shots in the air in his courtyard. The attackers then ran away.

He stated that he did not see the attackers as he never went outside the wall. He contacted the police and some of his relatives to tell them what had happened. He stated that the police came that same night, photographed the event and interviewed the neighbours. He claimed that on the same night, he fled to the countryside to his maternal uncle's house. His wife and children stayed at home and her brother came and stayed with them. He told his wife not to open the door to anyone.

36. The applicant also claimed in the SHEV application that two to three days after the shooting incident, his wife called and told him that someone had come to the door of their house asking for him by name through the wall. She asked him who it was, through the wall, but he did not say who it was. His wife told him that she had rung the neighbours and asked them to look and see who was outside their house, and by the time the neighbour came, the people outside were gone. He claimed that he then told his wife to leave the house and go to her family's house. Around four days later, she went to stay with her family outside of Basra. He claimed that he realised he had to leave Iraq. He stated that a month later, his friend who worked in investigations in the Ministry of Interior told him he has heard that a "red x" had been put on his name, and it meant the person was targeted to be killed. He stated that he thought it was the people who shot at his house that put his name on the "blacklist", possibly the AAH or KSS. He also stated that his friend told him to leave Iraq via the Najaf airport, not the Basra airport, as the AAH and related groups were more powerful in Basra than in Najaf. He left Iraq for Beirut in late May 2013.
37. I consider it highly implausible that if the applicant was targeted to be killed as claimed, these powerful militias would have only fired shots outside his house, not have entered his house or asked for him, and have simply left after the applicant fired some shots in the air. I am not persuaded by his explanations that the militias did not "storm" and enter his home just because his home was surrounded by a high concrete fence, his front door was solid, or that the militias were nothing but cowards, and not able to come face to face with you.
38. Like the delegate, I also do not consider it plausible that when the powerful militias were shooting at the applicant's house, his neighbour would risk drawing attention by screaming from his rooftop, or put the militias on notice that the applicant was inside the house by yelling out his name and telling him to stay inside the house.
39. The applicant stated in the SHEV application that he has the police photos and reports which he can provide. In the post-interview submission, it was submitted that the applicant instructed that he has attempted to obtain a copy of the police report from the incident but was advised by associates in Iraq who retain links to police that such a copy could not be obtained. No police documents or reports have been provided to substantiate the claimed shooting incident.
40. The applicant has provided copies of photos showing a building with bullet holes on the walls and on some whitegoods such as a fridge and a washing machine, purporting to show damage done to his home during the claimed shooting incident. It is not clear from the photos themselves as to when or where these photos were taken. The photos do not indicate that they were taken by the police. These photocopied photos are of very limited evidential value. They do not substantiate the claimed shooting incident. Nor do they overcome my concerns with the applicant's evidence.
41. In the circumstances where the applicant claimed that the militias opened fire at their house, I do not consider it believable that the applicant would have left home for his uncle's place by himself after this incident, leaving his wife and young children in the house with her brother.

42. I also have difficulty accepting as believable that the powerful militias would have shot at the applicant's house, and then just came and knocked on the door asking for him through the wall two to three days later. I am not convinced by the applicant's explanations that it was because the militias already knew that he had left the house as his car was not parked outside his home, or that they were kind of spying to check if he was there or not, or that they were watching the family and their aim was for the family to move out and to get rid of them, or that there was no law and these militias did not care about anyone. His explanation that the militias were spying to check whether or not he was home seems discordant with the explanation that the militias already knew he had left home.
43. In the SHEV application, the applicant claimed that three months after the claimed shooting incident (around July 2013), his wife told him that she had moved in with her relatives in [Location], into a house in a security complex, and his children had begun to attend school again. His wife told him that she was paying a driver to take the children to school and bring them home each school day for safety. He also claimed that one year after he left Iraq (in May 2014), one day, his wife told him that the driver told her that he had noticed a car following him recently, and the driver refused to continue to transport his children to school. He stated that he lost contact with his wife in late 2014. He claimed that in January 2015, his wife called him from [Country 1] and told him that she received a threat letter from AAH on 15 November 2014. It was thrown into the yard of her family's home, where she and the children were living. She went with her family to the police and showed them the threat letter. The police did their investigations and referred the matter to the court.
44. The applicant also claimed in the SHEV application that his house has been shot at, his wife had received death threats and his children were the potential targets of kidnapping, and that his family experienced what they experienced because of him.
45. However, at the SHEV interview, when asked why his family was threatened after he left Iraq and no longer worked with the [Employer], the applicant responded by advancing the claims that it was because his wife was an outspoken person and a secular. He also said that the militias were following his children because they wanted to get rid of his family, as his family is made up of him and his sons, and they wanted to use the children to get to the father. He added that the same thing happened to his wife's brother as he worked in [a Foreign] company. Country information is that Iraqis who contravene religious or social norms, including secular-minded persons, have been targeted by various extremist groups even back in 2010/2011.<sup>4</sup> Had the applicant's wife come to the attention of the militias because she was outspoken and secular, I do not consider it credible or plausible that the militias would have waited until after the applicant left Iraq, to threaten her and the children in late 2014, and not have taken action against her earlier. The applicant did not suggest that this was only because his wife was outspoken and secular at this later time. I also note that this was the first time the applicant mentioned that his wife was outspoken and secular, and his family were targeted because of (or at least in part because of) this, and that her brother faced the same issue due to his work. There was no mention of this in his earlier evidence. These are not insignificant omissions. I consider that if the applicant's family was targeted by the militias because of his wife's beliefs or actions, he would have at the very least, briefly mentioned it in the SHEV application. His response at the SHEV interview gave the impression that he was making up a story in an attempt to address the delegate's concerns.
46. In the post-interview submission, a copy of a purported threat letter from the AAH and police report with English translations were attached. These documents were described as a copy of

---

<sup>4</sup> Ibid.

letter from AAH to the applicant's wife threatening death and kidnapping of their children, and a copy of the police report relating to the threat letter.

47. The purported threat letter is undated. It relevantly states that *"We have previously notified you to stop speaking against the Shia sect. It is a sect that honours you and this is the last warning to you... You have shaken hands with the devil and worked with the occupier... This is the last warning to you... You have 48 hours to leave Zubeir District; otherwise there will be retribution and death for you and your children. We will kidnap your children and kill them for you..."*. It states "Asayib Ahl alHaq", and it contains stamps from the "Criminal Investigation Department in alBasra" and the "Supreme Judicial Council" and signed by "Police Captain" and "Judge...Deputy Prosecutor".
48. The purported police report is dated "[Date 2]/11/2014" and refers to "Documents received of [Date 1]/11/2014". The top of the letter states *"Ministry of Interior, AlBasra Police Department, Criminal Investigation Department in alBasra"*, with a "Case No.". It relevantly states: *"Incoming Documents for investigation: Death threat letter starting with the phrase..."* and it set out the same contents as the above threat letter. The bottom of the document states *"Required information from examination: Is the writing in the above threat letter suitable for matching technically or not?"*; *"Examination Result: We cannot match the writing in the death threat letter mentioned above which starts with the phrase... because the writing the threat message has been typed on the computer"*. It is purportedly signed by "Expert police".
49. The purported threat letter and police report make no mention of the applicant's work with the [Employer] or that he drank alcohol with Christians after attending church. In fact, the contents of these documents are silent about the applicant. Instead, the contents indicate that the intended recipient was previously warned to "stop speaking against the Shia sect". The applicant did not claim that he or his wife were previously warned by the AAH to stop speaking against the Shia sect. Also, apart from his assertions at the SHEV interview that his wife was secular and outspoken, and which, for reasons given above, I do not consider credible, the applicant's case has always been that he was targeted because of his work, his faith and his consumption of alcohol and association with Christians. Further, the applicant has clearly put forward that this letter was directed to his wife (rather than himself). The contents of these documents do not in my view establish or support the applicant's case that he himself was targeted by the AAH, or that his family were pursued because of him.
50. I observe that the purported threat letter is typed or printed on a single piece of paper with what appears to be various wet stamps, two of which are identified as CID and Supreme Judicial Council (although no other documents relating to the claimed referral to Court were provided). The purported police report is similarly typed or printed on a single page. It bears several signatures but does not appear to have any other letterhead.
51. I have concerns about the provenance and contents of these documents, and they do not overcome my concerns with the applicant's evidence.
52. There were reports of Iraqi security personnel being targeted and attacked by militias in Iraq at the relevant time, but this does not necessarily mean that the applicant was himself targeted. The applicant was an ordinary low-profile [Specialist occupation] who worked as a part of a [team] to [do Job task 1] and helped people [with a related Job task] and had nothing to do with [doing Job task 2]. I am not convinced that the 2013 upgrade of Iraqi security forces' [Specialist] technology, explains why the applicant became a specific target for the militias. Considering the applicant's story as a whole, I also do not consider it

believable that the powerful and influential militias, who the applicant says viewed him as an 'infidel', blacklisted him and targeted to kill him, did not, or were unable to do so on the multiple opportunities they had to target him and his family.

53. Having considered all the claims and evidence, and for the above reasons, and given my concerns with the applicant's evidence, I do not accept that he and his son went to church or drank alcohol with Christian friends, or that he ever consumed alcohol in Iraq. I do not accept that he was followed by a car, or he told his director that he attended church or drank alcohol with Christians, or that the militias viewed him as an infidel or put a "red x" on his name. I note that although not expressly raised by the applicant, the delegate found that the applicant had a political opinion in support of alcohol consumption. However, I am not satisfied on the evidence that the applicant genuinely holds such an opinion, or was or would be perceived as such. I reject the claimed shooting incident, the claimed home visit incident, or that his wife was outspoken or viewed as a secular, or that the militias wished to harm him or his family, or that the same thing happened to his wife's brother as he worked in an American company, or that the applicant and his family left Iraq for the reasons claimed. I do not accept that he or his wife received any warning or threats, or that his children were followed or targeted for kidnapping, or that his father told him that the militias were still looking for him. I am not satisfied that the applicant has been truthful in these key aspects of his claims. I consider that the applicant and his family has never come to the adverse attention of the AAH, KSS or other militias or anyone for any reason.
54. Given my concerns about the reliability and credibility of a number of the applicant's core claims, I am not prepared to accept his assertions at face value. I am not prepared to accept that his previous work colleagues or their family were killed or attacked. I do not accept that his family would report him as he claims. I am also not prepared to accept that he attended church in Australia several times, or that his wife and children have relied entirely on assistance from Christian churches in [Country 1], or that he developed strong sympathies for Christians, or he is now closely associated with them, or perceived as such. He has not provided any supporting independent evidence of his claimed attendance or association with Christian churches in Australia or his family's reliance entirely on Christian churches in [Country 1]. I do not accept that he attended church in Iraq or Australia, and I am not satisfied that he would want to go to church. I am prepared to accept that upon return, he may wish to have Christian friends, as he did in the past. However, I do not accept that he attended church with Christian friends in the past and am not satisfied that he would, or would genuinely wish to, attend church with Christian friends upon return. The applicant has not provided any medical evidence to support his claim that he has suffered from depression and anxiety since 2018. Absent medical diagnosis, I do not accept that he has mental health issues claimed, or that his health issues declined (in 2021/2022) or will do in the reasonably foreseeable future. I also do not accept the claimed associated alcoholism. I am not prepared to accept that he started drinking alcohol in 2015 when his family was in [Country 1], or that his drinking increased after 2018, or that his friend was killed for drinking alcohol in 2016. I am not satisfied that he would wish to drink alcohol in the reasonably foreseeable future, not due to a fear of harm or behavioural modification, but because he lacks a real interest in doing so. In addition, the information<sup>5</sup> indicates that the law that bans alcohol sales, importation and production, which was passed in 2016, has not taken effect. Further, although alcohol sellers have been targeted by Shia militias, there is no credible evidence to

---

<sup>55</sup> US Department of State, "International Religious Freedom Report for 2016 – Iraq", 15 August 2017, OGD95BE927104; Associated Press (AP), "Iraq's parliament passes law banning alcohol", 24 October 2016, CX6A26A6E11532. See also other relevant country information in the review material.

indicate that people are being attacked in Southern Iraq by Shia militias because they consume alcohol in private.

55. The situation in Iraq has changed significantly since the applicant left in 2013. The information<sup>6</sup> is that the Shia militias, such as the AAH, operated in the southern governates unifying in 2014 to form the Popular Mobilisation Forces (PMF), which is a state-sponsored umbrella military organisation comprised of around 60 militia groups operating nationwide. Most PMF units are Shia Arab and operate across Iraq, while other minority PMF units, such as those involving Christians and Sunni Arabs, operate near their home regions. In 2016, the PMF was recognised by the Iraqi parliament as an official force, and they have been working alongside the Iraqi security forces to fight Sunni insurgency including Daesh. Sectarian violence between Sunnis and Shias has reduce substantially, though it still occurs occasionally. Although there were incidents of attacks by Sunni extremists against Shias (such as the attacks by Daesh in 2015 to September 2017 as noted in the post-interview submissions), in December 2017, the Iraqi government declared final victory over Daesh after recapturing the last areas under Daesh control. The number of violent and security incidents in Southern Iraq, and across Iraq more generally, continued to drop in 2019 to date. No security incidents were reported in Basra in November 2022.<sup>7</sup>
56. There is no credible evidence that the Shia militias are now targeting current or former members of the Iraqi security personnel (including [Occupation] and [Specialist occupation] personnel) in Southern Iraq. Nor is there credible evidence to suggest that [Occupation]s are being targeted because they received training from foreign experts. The 2022 European Union Agency for Asylum (EUAA) Country Guidance report notes that during 2018, there were reports<sup>8</sup> of Iraqi security personnel and the PMF being targeted by Daesh, but mainly in northern and central Iraq (Diyala, Anbar, Ninewa, Salah al-Din, Kirkuk and Baghdad). It also reports an IED explosion in 2020 in Basra targeting the property in the residence of an Iraqi security officer, but the reason for the attack and the identity of the perpetrators were not clear. The evidence does not indicate that former Iraqi [Occupation] or [Specialist] personnel have been systematically targeted in Southern Iraq in recent years. Country information<sup>9</sup> indicates that around 97 per cent of the population in Iraq is Muslim. Shia Muslims, who are predominantly Arab, constitute 55 to 60 per cent of the population. Shias are predominantly located in eastern and southern Iraq, such as Basra governorate. Despite the history of violence in Iraq, recent information is that the security situation in Southern Iraq has substantially improved. As the majority community in Iraq with a dominant role in the government, Shias face little to no official discrimination in government-controlled areas.
57. I accept that the applicant worked as an ordinary low-profile [Specialist occupation] in Basra from [Year 2] to 2013 and received training from foreign experts. I also accept that he considers himself a 'moderate' Shia Muslim, and that he has had friends from different backgrounds and beliefs since childhood, such as Christians and Sabeen Mandeans. However, I do not accept that he or his family attended church, or drank alcohol, or that his wife was an outspoken person or perceived as secular, or that they have ever been of adverse interest to the militias or anyone for any reasons. I do not accept that he was or will be imputed with

---

<sup>66</sup> DFAT, "DFAT Country Information Report: Iraq", 17 August 2020; DFAT, "DFAT Country Information Report for Iraq 2017", 26 June 2017, CISED50AD4631; EUAA, "Country Guidance: Iraq – Common analysis and guidance note", 29 June 2022, 20220704134545; UK Home Office, "Country Policy and Information Note Iraq: Security situation", 25 November 2022, 20221129181904; "Violence in Iraq At An All-Time Low", Joel Wing, Musings on Iraq, 5 December 2022, 20221206121941; and other country information in the review material.

<sup>7</sup> Ibid.

<sup>8</sup> Ibid.

<sup>9</sup> Ibid.



anti-militia political opinion or perceived as an infidel or against the PMF group because of his past work or for any other reason. Although I accept that he has had Christian friends and may do so in the future, I do not accept he has strong sympathies for, or close association with Christians, or that he has a genuine desire or interest in attending church or consuming alcohol, in the reasonably foreseeable future. It has been over nine years since the applicant left Iraq in 2013. Considering the totality of the evidence, and the applicant's specific circumstances, I consider the chance of him facing harm from anyone for reasons relating to his past work (including but not limited to his status, past activities, and training as [an Occupation]) almost a decade ago to be remote. The applicant described himself as a moderate Shia, and his own evidence was that he practises his Shia faith. I am satisfied on the evidence that he could continue to practise his religion freely and without a real chance of harm, if he returns to Basra - a Shia Arab majority area. There is no credible evidence, and I am not satisfied that the applicant will face a real chance of harm by reason of having or mixing with friends from different background and beliefs, such as Christians and Sabeen Mandean friends. Although as noted in the IAA submissions, some PMF groups have reportedly taken advantage of their freedom of action to establish local crime rings and mafia-like protection rackets and engage in criminal activities, I do not accept that the applicant or his family would be viewed as against them, and I also consider the chance of them being caught up in general violence upon return to be remote. There is no credible evidence, and I am not satisfied, there is a real chance of the applicant facing any harm for reasons relating to his wife's and children's status and circumstances in [Country 1]. Based on the above country information, I am also not satisfied that the applicant, with his employment history, faces a real chance of harm for being a moderate Shia Arab with friends from different backgrounds and beliefs, or because of the general situation or security situation if he returns to southern Iraq now or in the reasonably foreseeable future.

58. Country information<sup>10</sup> indicates that the practice of seeking asylum and then returning to Iraq is well accepted among Iraqis. There are large numbers of dual nationals from the US, Western Europe and Australia who return to Iraq. There is considerable evidence that Iraqis who are granted protection by western countries often return to Iraq to reunite with families, establish and manage businesses or take up or resume employment. There is limited evidence to suggest that voluntary returnees face difficulties in assimilating back into their communities, though returning to Iraq can be difficult, particularly if the individual does not return to their original community. Most entry and exit into and out of Iraq are by air through one of the four international airports, including the international airport in Basra. Upon arrival at the airport, all passengers, irrespective of their nationality, would have their identity information recorded. The authorities would only arrest an Iraqi if they had committed a criminal offence and a warrant had been issued for their arrest. Other passengers, including those who had left Iraq illegally, would not be subject to arrest on arrival. Returnees who are not in possession of an Iraqi passport must apply for a *laissez passer*. Upon arrival in Iraq, details of the *laissez passer* would be checked and recoded. *Laissez passers* are common, and those who enter on *Laissez passers* are not questioned about how they exited Iraq, nor asked to explain why they do not have other forms of documentation. There is no credible evidence to indicate that returning failed asylum seekers who lived abroad in Australia or [Country 1] are perceived as having pro-West, or sympathising with the West, the US and its Allies, or anti-militia political opinion, or otherwise harmed for these reasons.
59. The applicant left Iraq by air legally using his own Iraqi passport. There is no evidence, and I am not satisfied that accessing Iraq via the Basra international airport is unsafe. In view of the above country information, the substantial improvement in the general security situation,

---

<sup>10</sup> DFAT, "DFAT Country Information Report: Iraq", 17 August 2020.

and the applicant's individual circumstances, I consider that he will be able to safely and lawfully access Iraq by air via the Basra airport, and to his home area in Basra by road from the Basra airport upon return. I am not satisfied there is a real chance of him facing any harm during the processing at the airport. Nor am I satisfied that upon return to Iraq, he will face a real chance of harm for reasons of his profile, identity, behaviour, status, his past work as a police, for being a moderate Shia Arab failed asylum seeker returnee who lived in Australia, with family members in [Country 1] on humanitarian visas, his friendship with Christians and Sabaeen Mandeans, for reasons of real or imputed religion, political opinion or membership of any particular social group(s), and/or for any other reason or reasons. He has lived in Basra, he received education in Basra, and he worked as [an Occupation], and has been doing casual work at a [Workplace] in Australia. He also has family ties and network in Basra. I am not satisfied that he will be prevented from re-integrating into the community, establishing himself, and find work and shelter to support himself and his family if he returns to Iraq now or in the reasonably foreseeable future.

60. I am not satisfied that there is a real chance of the applicant facing harm for any reasons now or in the reasonably foreseeable future if he returns to Iraq.
61. The applicant does not have a well-founded fear of persecution.

#### **Refugee: conclusion**

62. 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**

---

63. 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**

64. 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.
65. 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.
66. Given that the 'real risk' test imposes the same standard as the 'real chance' test, for the same reasons discussed above, I find that the applicant does not face real risk of suffering

harm if he were to return to Iraq for the purposes of s.36(2)(aa). I conclude that there are not substantial grounds for believing that, as a necessary and foreseeable consequence of being returned from Australia to Iraq, there is a real risk that the applicant will suffer significant harm for any reasons.

**Complementary protection: conclusion**

67. 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.

## 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.