



Australian Government

Immigration Assessment Authority

Decision and Reasons

Referred application

IRAQ

IAA reference: IAA16/01412

Date and time of decision: 7 March 2017 13:34:00

Alison Nesbitt, 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 an 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 Iraq. In July 2016 he lodged an application for a Temporary Protection Visa (TPV).
2. [In] November 2016 a delegate of the Minister for Immigration and Border Protection refused to grant the visa.

Information before the IAA

3. I have had regard to the material referred by the Secretary under s.473CB of the *Migration Act 1958* (the Act).
4. [In] December 2016, the IAA received a submission from the applicant's representative. The submission contains argument addressing issues raised in the delegate's decision. I do not consider this element of the submission to be new information.
5. The submission seeks to clarify a number of aspects of the applicant's evidence, stating that there were 'a few factual issues' that were ignored or not considered in detail during the interview conducted by the delegate. In particular, the applicant's representative submits that during the TPV interview [in] October 2016, there was some confusion about the threats the applicant claimed to have received. He seeks to provide additional information to 'clear the record'.
6. The submission advises that the applicant received many threats, two of which were written threats. The first written threat was placed under the front gate of the applicant's family home in January or February 2012 and requested that the applicant come to a certain location so that the authors could discuss certain matters with him. The second written threat was passed to the applicant's [Relative A] by the individuals who were looking for the applicant when the [relative A] called on them to ask why they were seeking the applicant. They handed [Relative A] a piece of paper containing the threat to kill the applicant for his betrayal of the country and for helping the occupying forces including by providing them with information that led to the capture of many of their leaders and affiliates. The applicant's representative explains that both the applicant and [Relative A] reported the matter to police.
7. The submission also seeks to clarify the identity of the group claimed to have threatened the applicant. The applicant's representative states that the source of the threats was the 'Islamic Resistance', who he explains consisted of all Shia militias 'pre-army groups that were determined to fight the American troops, as they viewed them as occupying forces'. He also states that there had been some confusion regarding the nature of the threat and clarifies that the group said that they would give the applicant 'fair and just punishment for his betrayal of the country and providing the US troops with information'.
8. The submission includes the claim that the applicant's [sibling] is in [Country 1] on a 'special Immigrant Visa program' due to threats to his life related to the applicant's 'alleged activities'. No further information, including any detail of the claimed threats to the applicant's [sibling]'s life, has been provided.
9. The following elements of the submission are new information:

- the applicant received two written threats, the first of which was placed under the front gate of the applicant's family home in January or February 2012
 - the second written threat, which was passed to the applicant's [Relative A], contained a threat to kill the applicant, including for passing information to the United States (US) military that led to the capture of many of the group's leaders and affiliates
 - both the applicant and [Relative A] reported the threats to the police
 - the source of the threats to the applicant was (only) the 'Islamic Resistance' group
 - the 'Islamic Resistance' group consisted of all Shia militias
 - the 'Islamic Resistance' group threatened to give the applicant 'fair and just punishment'
 - the applicant's [sibling] is in [Country 1] as part of a 'special Immigrant Visa program' on the basis of threats to his life associated with the applicant's alleged activities.
10. Section 473DD of the Act requires that the IAA must not consider any new information unless it is satisfied that there are exceptional circumstances to justify considering the new information. In relation to information provided by the applicant, there is a further requirement that the applicant must satisfy the IAA that the new information was not, and could not have been, provided to the delegate before the delegate made his decision, or that the new information is credible personal information that was not previously known and, had it been known, may have affected the outcome of the applicant's claims.
11. The applicant's representative states generally that some factual issues were not considered in detail during the interview and the submission offers 'clarification'. The applicant provided evidence regarding the threats he claimed to have received in the entry interview [in] April 2013, his TPV application of July 2016 and in the TPV interview conducted [in] October 2016. The number, nature and circumstances of the threats were discussed in the TPV interview, as was the identity of the source. In view of the opportunities afforded to the applicant to provide evidence regarding the claimed threats, I am not satisfied that there are exceptional circumstances to justify the consideration of the new information relating to the threats to the applicant.
12. In terms of the new information regarding the applicant's [sibling], no information about the nature and dates of any claimed threats to his life, or the connection of the claimed threats to the applicant, has been included in the submission. In the absence of any such information, I am not satisfied that there are exceptional circumstances to justify the consideration of this new information.

Applicant's claims for protection

13. The applicant's claims can be summarised as follows:
- He was born in [City 1], in Dhi Qar province, in Iraq. Other than approximately five or six months spent with [Relative B] in [City 2] just prior to his travel to Australia, he lived in [City 1] all of his life. His family members continue to live in [City 1], with the exception of one [sibling] who is currently in the [Country 1].
 - In January 2010 he was employed on a contract basis for a Company [1], which provided provisions to US troops stationed in the area. His work involved processing orders for

food and drink placed by different military units in [Company 1]'s computer systems. He worked on [an Iraqi] air base where many US soldiers were stationed.

- In November 2011 his contract, and that of the other [number] Iraqis employed in his section of [Company 1], ended. Sometime after the end of his contract, his [relative, C] received three or four verbal messages from the 'Islamic Resistance in Iraq' or the 'Fight for Just Punishment' group on his behalf. [Relative C] received the verbal messages on his behalf because she was the one in charge of the home and was always there. The group told [Relative C] to tell him to meet them at a certain address. He and [Relative C] did not know who the group was or what they wanted so they ignored the messages. Members of the group used to loiter in the vicinity of his home at night. They came in cars with tinted windows, harassed him and his family and threw things at his home.
- The aim of the 'Islamic Resistance in Iraq' is to punish Iraqis perceived to be sympathetic to foreign interests. The 'Fight for Just Punishment' group is one of a number of groups that forms the 'Islamic resistance in Iraq'. It is the part of the 'Islamic resistance in Iraq' that wishes to harm him.
- [Relative A] knew some people who knew the group and went to meet with these people. They told [Relative A] that they had a letter for the applicant that their superiors had asked them to pass on. They said the applicant had to come and see them. Some people had told them that the applicant worked with the Americans and they wanted to discuss this with the applicant. They also told [Relative A] that the applicant was suspected of passing information about the militias to the US military. The applicant received this letter [in] March 2012.
- [Relative A] reported the threat to the police but they didn't take any action. [Relative A] recommended that he leave [City 1] and go to live with [Relative B] in [City 2] for a while. He moved to [City 2] in around April or May 2012 and stayed with [Relative B] for approximately until his departure from Iraq in March 2013.
- He left Iraq because he was afraid that the 'Islamic resistance in Iraq' or the 'Fight for Just Punishment' group would find out where he was living and kill him.
- If he returns to Iraq the 'Islamic resistance in Iraq' or 'Fight for Just Punishment' group, or another group, will find him and kill him because he worked for a company associated with the US and because he escaped from Iraq and travelled to Australia. They will be able to find him and kill him wherever he is in Iraq.
- He cannot rely on the protection of the Iraqi state and cannot safely relocate anywhere else in Iraq.

Factual findings

Identity and nationality

14. The applicant provided original documents in support of his claimed identity. I accept that the applicant's name is as claimed, that he was born in [City 1] in Dhi Qar province in the south of Iraq and is a national of Iraq. There is no evidence before me to suggest that he has a right to enter any other country. I accept that the applicant is a Shia Muslim of Arab ethnicity as claimed.

Inconsistencies in evidence

15. The applicant and his representative acknowledge that there are inconsistencies in the evidence provided by the applicant in the entry interview conducted [in] April 2013, the TPV application submitted in July 2016 and the TPV interview conducted [in] October 2016.
16. In the TPV application the applicant claimed that the inconsistencies between the information he provided in the earlier entry interview and his TPV application reflect the limited time that was available to him in the entry interview in which to describe his claims. He explained that he was asked to give a brief description of his claims and therefore did not provide details of all of his claims. He said that the interviewing officer did not explain what was relevant or what he needed to tell the officer, and the officer primarily asked him only 'yes' or 'no' questions. He also claimed that the inconsistencies were due to issues with interpretation, although he provided no further detail of these issues. The applicant also warned that his TPV application had been completed with the assistance of a volunteer interpreter and might itself contain errors of translation which he claimed would be the result of the lack of resources available for adequate legal assistance for people seeking protection.
17. The recording of the entry interview is not before me, however I have before me the written record of the interview, which has been signed by the interviewing officer, the applicant and the interpreter. The record indicates that following the provision of some preliminary information, the entry interview took the form of a series of questions asked by an interviewing officer regarding the applicant and his travel to Australia. The record indicates that the applicant was asked whether he understood the interpreter and responded that he did. The record shows that the applicant provided appropriate and detailed responses to a wide range of questions during the interview. Having regard to these matters and the absence of any examples of the claimed issues of interpretation, I do not accept that any issues of interpretation prevented the applicant from participating effectively in the interview.
18. The applicant was not expected to prepare for the entry interview. The questions asked were not generally complex and did not assume any prior knowledge of any matter on the applicant's part, including an understanding of the process of applying for protection in Australia. I accept that the applicant may not have been told 'what was relevant' or 'what he needed to tell' the interviewing officer, but I do not accept that this was necessary in order for the applicant to participate effectively in the interview, or that he did not understand the questions asked of him.
19. The applicant indicated that one of the reasons he could not provide all the details of his claims was that he was mainly asked 'yes' and 'no' questions during the entry interview. It is true that many closed questions to which only a 'yes' or 'no' response was required were asked as part of the interview. However, open questions were also asked of the applicant, including, relevantly, 'Why did you leave Iraq?' and 'What do you think will happen to you if you return to Iraq?'. I accept that the applicant was asked to provide a brief response to the question regarding his reasons for leaving Iraq, and his initial response, which was 'There is no security in Iraq. I have no future in Iraq' may have reflected a hesitation to describe his claims in detail. However, the record of the interview shows that the interviewing officer proceeded to ask the applicant 11 further questions about reasons for his departure from Iraq, including open questions designed to encourage the applicant to provide more detail of his claims. For example, the interviewing officer asked the applicant to tell him more about his statement that there was no security in Iraq, to explain how the applicant's reference to people who worked for foreign companies being threatened related to the applicant, to explain how he was threatened, who threatened him, and what he thought might happen to him if he ignored the

claimed threat. I note that the applicant was also asked what he feared might happen to him if he returned to Iraq and that he provided detailed responses to a range of other questions during the interview.

20. In view of the opportunities afforded to the applicant to provide details of his reasons for leaving Iraq, and the efforts of the interviewing officer to encourage the applicant to provide additional information, I do not accept that the limited time available in the entry interview, or the use of closed 'yes' or 'no' questions during parts of the interview, prevented the applicant from accurately summarising his reasons for leaving Iraq, or that these matters otherwise offer an adequate explanation for the inconsistencies between the applicant's evidence in his entry interview and as provided at later points.
21. I accept that entry interviews are brief and are not designed to explore an applicant's claims for protection in full. It is to be expected that the applicant might provide further detail of his claims in the TPV application and in the TPV interview. A degree of imprecision or inconsistency regarding matters such as dates and locations of events might also be reasonably expected in view of the passage of time since the claimed events. However, there are significant inconsistencies in relation to key aspects of the applicant's claims as presented in the entry interview and in his TPV application and interview. I do not accept that these matters, which are explored further below, can be adequately explained by the passage of time, or that they can be characterised as no more than the addition of detail in relation to essentially the same claims.
22. The recording of the TPV interview conducted [in] October 2016 shows that the applicant indicated at the beginning of the interview that he understood the interpreter and had no objection to the use of the interpreter, but would prefer that 'common language' was used rather than 'standard' language. It is not evident what the delegate or the interpreter understood these words to mean. They appear to have agreed to use common language and may have understood 'common' to mean less complex or less formal language.
23. Despite generally responding appropriately and without hesitation to the delegate's questions, the applicant raised concerns with the interpreter's use of 'standard' Arabic three times during the first half of the interview. When asked by the delegate how much he did not understand on the second occasion, the applicant replied that he understood only about 50 per cent of the interpreter's words. The interpreter advised the delegate that he understood the applicant without any difficulty at all and appeared puzzled by the applicant's concerns. At this point the delegate read her detailed record of the applicant's evidence up to that point to him in full, and confirmed with the applicant that there were no errors in her record to that point. This suggests that the applicant's claim to have understood only 50 per cent of the interpreter's words may have been exaggerated. The delegate emphasised to the applicant that if at any point he did not understand something, he should let her know. The interview appears to have proceeded with little apparent difficulty on the applicant's part in understanding the interpreter.
24. The applicant claims that there were, or might be, errors in the interpretation and translation provided in the entry interview, the preparation of his TPV application and in the TPV interview. The applicant claims that issues with interpretation account for some of the inconsistencies in his evidence but has provided no specific examples of any such errors. I find it hard to accept that the applicant's evidence has been affected at each stage by problems with interpretation and translation, particularly in the absence of specific examples of the claimed issues and the limited evidence of any impact of these issues on the applicant's evidence during the TPV interview.

25. In a covering email accompanying his submission to the IAA, the applicant's representative appears to claim that some confusion during the interview resulted in the applicant misunderstanding some questions and providing some short responses or no response to some essential points relating to his claims. The applicant's representative does not indicate whether he is referring to the TPV interview conducted [in] October 2016 or the entry interview conducted [in] April 2013 but I take his comments to refer to the TPV interview. Neither the email nor the submission explains how the claimed misunderstandings arose but issues with interpretation are not referred to.
26. While I accept that there are differences between common or colloquial Iraqi Arabic and the standard Arabic spoken by the interpreter in the TPV interview, having listened to the recording of the interview, I do not accept that these differences resulted in any misunderstanding of the applicant's evidence.

Employment with KBR

27. In the entry interview conducted [in] April 2013, the applicant claimed that he worked for [Company 1] from around 2010 to 2013. In his TPV application, the applicant claimed that he was employed by [Company 1] from approximately 2010 to 2012. In the SHEV interview the applicant claimed he was employed by [Company 1] from approximately January 2010 to November 2011. He claimed that the contracts for all of his Iraqi colleagues employed by [Company 1] ended at this time.
28. Information before me suggests that the vast majority of US troops had withdrawn from Iraq by 2011¹ and I therefore think it is highly likely that the applicant's later evidence indicating that his contract with [Company 1] ended in November 2011 is correct. The difference between the claimed end dates for his employment with [Company 1] of 2011, 2012 and 2013 is too large, in my view, to be adequately explained by a difficulty recalling events due to the passage of time. I think it is likely that his earlier evidence was exaggerated to increase the proximity and level of his association with [Company 1] and US forces, in order to strengthen his claims for protection.
29. I am willing to accept that the applicant held a junior position in the provisioning area of [Company 1], a company contracted to the US military, from approximately January 2010 to November 2011, and that the applicant carried out his duties on [an] air base in [City 1].

'Islamic Resistance in Iraq' / 'Fight for Just Punishment'

30. The applicant has consistently claimed that he has been threatened by the 'Fight for Just Punishment' group. In the entry interview conducted [in] April 2013, he referred to the group that had threatened him only by this name. When asked whether there were any armed groups, political groups, or religious groups operating in the area where he lived, the applicant identified only the 'Fight for Just Punishment' group. In his subsequent TPV application, the applicant refers to the 'Fight for Just Punishment' group on eight occasions in his statement of claims. He claims that the 'Fight for Just Punishment' group signed the threatening letters he received. A copy of what purports to be a translation, completed in Iraq, of a threat letter (a copy of the claimed threat letter itself was not provided) was attached to the applicant's TPV application. The translation contains no reference to the 'Fight for Just Punishment' group, but indicates that the threat letter was signed by 'the Islamic Resistance in Iraq Brigades' and is

¹ United Nations High Commissioner for Refugees (UNHCR), "UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Asylum-Seekers from Iraq", 31 May 2012, 3577.

headed by the words 'Islamic Resistance in Iraq'. As a photocopy of a translation undertaken in Iraq of the claimed threat letter, I place no weight on this document. In the TPV application, the applicant claimed that the 'Fight for Just Punishment' group was also known as 'Islamic Resistance in Iraq'. In the TPV interview, the applicant explained that the 'Fight for Just Punishment' group was a sub-group of the 'Islamic Resistance in Iraq'.

31. I have reviewed the information before me, which includes several documents listing Shia militia groups in Iraq. There is no reference to the 'Fight for Just Punishment' group or any group with a similar name.² The applicant claims that the 'Fight for Just Punishment' group was also known as the 'Islamic Resistance in Iraq'. According to ORSAM - Center for Middle Eastern Strategic Studies, the 'Islamic Resistance in Iraq' is a term used to refer to the four main armed Shia groups who make up the bulk of the 'popular mobilisation forces' (PMF), or 'Al Hashdi al Shaab'³, a group of volunteer forces established in response to a fatwa for Jihad issued by Ayatollah Ali Sistani, Iraq's highest Shia religious authority in 2014. The PMF was primarily established to support the Iraqi government's fight against Daesh (or ISIS), who made significant territorial gains in Iraq following a successful campaign in June 2014.⁴ The four Shia militia groups making up the 'Islamic Resistance in Iraq' are reported to be the Badr Organization, Kata'ib Hezbollah, Asa'ib Ahl al-Haq and Saraya al-Salam.⁵
32. As the term the 'Islamic Resistance in Iraq' is reported to have been adopted to create an identity for these four groups within the PMF, which was itself established in 2014, I hold some doubts that this group threatened the applicant in 2012 as claimed. I accept that there are numerous Shia militia groups, that such groups may emerge, dissolve and be subsumed by other groups over time, and that there may be variations in names resulting from translations of Arabic names into English. These factors may account for the difficulty in identifying the group that threatened the applicant and I therefore place limited weight on the inability to identify the relevant group. Nevertheless, the applicant's inconsistency in the references to the group from which he claims to fear harm, and the lack of any evidence that a group of either claimed name existed in 2012 is of some concern to me.

Threats from 'Islamic Resistance in Iraq' / 'Fight for Just Punishment'

33. The applicant's evidence regarding the number, content, and form of his response to, the threats he claims to have received from the 'Fight for Just Punishment' group / 'Islamic Resistance in Iraq' has varied over time. In the entry interview [in] April 2013 the applicant claimed to have received a threatening piece of paper from an unknown sender [in] either June or March 2012. The letter said that applicant was an ally of the Americans or words to that effect. I note that although the applicant said he did not know who sent the letter, at two other points during the entry interview the applicant referred to receiving threats from the 'Fight for Just Punishment' group and fearing that members of this group would kill him. It is possible that when the applicant indicated that he did not know who sent him the threatening

² ORSAM - Center for Middle Eastern Strategic Studies, "A New Controversial Actor in Post-ISIS Iraq: Al-Hashd Al-Shaabi (The Popular Mobilization Forces)", 1 May 2015, CISEC96CF13198; UK Home Office, "Country Information and Guidance Iraq: Sunni (Arab) Muslims", 10 August 2016, OGD7C848D63; UNHCR, "UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Asylum-Seekers from Iraq", 31 May 2012, 3577; Department of Foreign Affairs and Trade (DFAT), "DFAT Country Report Iraq", 13 February 2015, CISEC96CF1160.

³ ORSAM - Center for Middle Eastern Strategic Studies, "A New Controversial Actor in Post-ISIS Iraq: Al-Hashd Al-Shaabi (The Popular Mobilization Forces)", 1 May 2015, CISEC96CF13198

⁴ DFAT, "DFAT Country Report Iraq", 13 February 2015, CISEC96CF1160; UK Home Office, "Country Information and Guidance Iraq: Sunni (Arab) Muslims", 10 August 2016, OGD7C848D63.

⁵ ORSAM - Center for Middle Eastern Strategic Studies, "A New Controversial Actor in Post-ISIS Iraq: Al-Hashd Al-Shaabi (The Popular Mobilization Forces)", 1 May 2015, CISEC96CF13198.

letter, he may have meant that he did not know which individual sent the letter, rather than he did not know which organisation sent him the letter.

34. In his TPV application, the applicant claimed that shortly after finishing his contract with [Company 1] in 2012, he 'started receiving threatening letters at his home which were signed by the 'Fight for Just Punishment' group. He said members of the group hung around outside his home, although they were not recognisable because their car windows were tinted and it was dark. He said that the letters continued for about three to four months until he left [City 1]. He explained that these letters asked how he could work for [Country 1] and act against his own country. They threatened to kill him and others like him. Friends of his who also worked for foreign companies received similar letters.
35. In the TPV interview, the applicant claimed he had received a single written threat which was passed to [Relative A] when he called on members of the group (or intermediaries connected with the group – this aspect of the applicant's evidence is difficult to follow) that had been threatening the applicant to find out why they were interested in the applicant. Other than this, he claimed that three or four verbal threats had been made via [Relative C] as she was the one who ran the home and was always there when members of the group called on their home.
36. The applicant claimed that when [Relative A] visited the group (or intermediaries representing the group) he was given the threat letter addressed to the applicant. The people [Relative A] met told him the letter was a threat letter for the applicant from their superiors. I note that the applicant has provided what purports to be a copy of a translation, prepared in Iraq, of this threat letter. As discussed, I place no weight on this document. I find it difficult to accept that [Relative A] visited when a letter to [another relative] from the superiors of the people he was visiting happened to be there, presumably awaiting delivery to the applicant. During the TPV interview, the applicant added that the people [Relative A] met told [Relative A] that they had heard that the applicant had shared information about their group with the US troops and they wanted to meet the applicant and investigate this. The applicant claimed that the group wished to kill him for this reason.
37. The applicant claims he did not know who the group who threatened him was, or what they wanted when they started to threaten him. He stated that he had no connection with any armed, political or religious groups in Iraq. He has not provided any explanation for the 'Islamic Resistance' / 'Fight for Just Punishment' group's claimed belief that he had information about their operations, or their claimed belief that he had shared this information with US forces, other than the claim that people told them the applicant had done so. I find it implausible that the 'Islamic Resistance' / 'Fight for Just Punishment' group would believe the applicant knew anything about their operations, or that they would wish to kill the applicant on this basis.
38. During the TPV interview, the delegate asked the applicant about his claim that he began to be threatened approximately two months after he stopped working for [Company 1] but was not threatened or harmed at any point during his employment with [Company 1] or in the period immediately following the end of his contract. The applicant claimed that no one knew that he was employed by [Company 1] while he was working there as he used to go to work in his friend's clothing shop after finishing work on the military base and people assumed the clothing shop was the only place in which he worked. The applicant appeared to claim during in the TPV interview that after ceasing work for [Country 1], the topic of his past employment had come up in discussion with friends and in this way his former employment became known to the 'Islamic Resistance' / 'Fight for Just Punishment' group.

39. The applicant claims that he worked with [number] other Iraqi employees in his section of [Company 1] on the US base. He claims that [Company 1] had around [number] sections, suggesting that there may have been many other Iraqis employed by [Company 1] or otherwise employed on the base. Other than the claim regarding his work in his friend's clothing shop, the applicant did not indicate that he took any steps to conceal his employment. He described arriving at work to the delegate in some detail, without reference to any need for secrecy. I do not accept that the applicant's employment on the base only became more widely known after it ceased.
40. There is also some inconsistency in the applicant's description of his actions following the receipt of the threats. In the entry interview, the applicant said he could not contact the police as there was no specific name or address on the letter and it was not known where the senders were. During the TPV interview he said that [Relative A] reported the matter to the police.
41. Despite expressing some concerns in relation to the applicant's evidence concerning the claimed threats, the delegate was prepared to accept that the applicant received some threats, relying largely on UNHCR information indicating that civilians associated with the former multinational and US forces were at risk of being targeted by non-state actors for their imputed political opinion.⁶ Having considered the applicant's evidence and the information before the delegate, I have formed a different view.
42. The variation in the applicant's evidence regarding the threats, in particular his evidence regarding the number and form of threats and the actions taken in response to the threat, and the implausibility of aspects of his evidence discussed, leads me to doubt that the applicant was threatened as claimed. While I accept that employees of companies associated with the US forces such as [Company 1] may have been of adverse interest to Shia militia and other armed groups, I do not accept that the applicant was threatened as claimed, or that he was perceived by any group or person to have shared information of any type with the US military. I do not accept that the applicant was of any adverse interest to the 'Islamic Resistance' / 'Fight for Just Punishment' group, any Shia militia group, or any other armed group, for any reason associated with his employment with [Company 1]. It follows that I do not accept that the applicant left Iraq because of any threats associated with his past employment received from the 'Islamic Resistance' / 'Fight for Just Punishment' group, any Shia militia group, or any other armed group.
43. DFAT reported in 2015 that in government-controlled areas, the opposition to the US and other Western nations had diminished somewhat in recent years such that overall, DFAT assessed the risk of violence to those who had worked with the international community to be moderate.⁷ DFAT noted that those most at risk were those most closely involved with the US military. I do not accept that as a junior contract employee who worked for [Company 1], a company closely associated with the US military, on a US base for a period of less than two years over five years ago, the applicant is of any current adverse interest to the 'Islamic Resistance' / 'Fight for Just Punishment' group, any Shia militia group or any other armed group.
44. The applicant has claimed that the 'Islamic Resistance' / 'Fight for Just Punishment' group or a similar group would also wish to harm him because he escaped Iraq and travelled to Australia. In a discussion of the treatment of people returning to Iraq from Australia, the Department of Foreign Affairs and Trade (DFAT) reports that the practice of Iraqis seeking asylum then

⁶ UNHCR, "UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Asylum-Seekers from Iraq", 31 May 2012, 3577.

⁷ DFAT, "DFAT Country Report Iraq", 13 February 2015, CISEC96CF1160.

returning home once conditions permit is well accepted among Iraqis.⁸ DFAT has seen no evidence to suggest voluntary returnees from the west are not assimilated back into their communities. Other than the applicant's claim, there is no evidence before me to suggest that Shia militia, or any other armed groups target people returning to Iraq from other countries. I do not accept that the applicant would be of any adverse interest to the 'Islamic Resistance' / 'Fight for Just Punishment' group, any Shia militia group, or any other armed group on the basis that he left Iraq and would be returning after living in Australia for approximately [number] years.

Refugee assessment

45. 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

46. 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.

Shia militia

47. I have not accepted that the applicant is of any current adverse interest to the 'Islamic Resistance', the 'Fight for Just Punishment' group, or any other Shia militia group for any reason associated with his past employment for [Company 1]. I have not accepted that he would be of any adverse interest to any Shia militia group on the basis that he left Iraq and would be returning to Iraq having lived in Australia for approximately [number] years. The applicant has not claimed to be of adverse interest to any Shia militia group for any other reason.

48. There is no credible evidence before me to suggest that the applicant would be of any future adverse interest to Shia militia groups for these or any other reasons. I am not satisfied that there is a real chance that the applicant will be harmed on this basis.

⁸ Ibid.

Sectarian violence and security situation

49. In the entry interview, the applicant claimed that he left Iraq because of the poor security situation. While open sectarian violence between Arab Sunnis and Arab Shias ended in 2008, armed Sunni groups, including Daesh, are reported to continue to target Shia civilians, with the apparent aim of reigniting sectarian tension.⁹ In 2015, DFAT reported an escalation in sectarian violence since 2013 in the central, northern and western provinces of Iraq.¹⁰
50. Attacks are reported to have included mass-casualty attacks targeting Shia civilians and pilgrims.¹¹ UNHCR and DFAT have reported that Shia Iraqis with particular profiles may be individually targeted by armed Sunni groups.¹² These include professionals such as doctors, journalists, academics, judges, lawyers, doctors or NGO worker or activists, and members of government security services, detainees or members of ethnic minorities.¹³ Sunni armed groups are also reported to have targeted people associated with the US forces. As discussed, while I accept this is the case, I do not accept that the applicant was targeted by any group on the basis of his past employment with [Company 1]. Neither have I accepted that as a former low level employee of a company closely associated with the US forces, or as a person who left Iraq and has lived in Australia for approximately [number] years, the applicant is of any current adverse interest to any armed group.
51. Shias are reported to be most vulnerable to attacks by armed Sunni groups in Sunni-dominated governorates.¹⁴ DFAT reported in 2015 that Shia-dominated governorates such as Dhi Qar had experienced fewer violent attacks against Shia Iraqis.¹⁵ UNHCR reported in 2012 that the Shia-dominated southern governorates remained relatively calm and stable, while cautioning that armed groups remained active in the south.¹⁶ Sunni armed groups were reported to mainly target areas close to Baghdad, although UNHCR cautioned that they were capable of launching occasional attacks further south.¹⁷
52. The Belgian Office of the Commissioner General for Refugees and Stateless Persons reported in 2015 that the number of large scale bombings perpetrated by Daesh had decreased as a result of a change of strategy to prioritise territorial conquest and control, and a result of the concentration of Iraqi government forces in Baghdad.¹⁸ During the first months of 2015, no coordinated large-scale terror attacks were reported in the south of Iraq, although the Belgian Office of the Commissioner General for Refugees and Stateless Persons noted that terrorist bombings remained part of Daesh's strategy. Dhi Qar was among the provinces reported to have been spared, for a large part, the ethno-sectarian conflict, due to their mainly Shia

⁹ UNHCR, "UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Asylum Seekers from Iraq", 31 May 2012, 3577; Belgian Office of the Commissioner General for Refugees and Stateless Persons (CGVS/CGRA), "Iraq: Security Situation in South Iraq", 29 May 2015, CISEC96CF13695.

¹⁰ DFAT, "DFAT Country Information Report: Iraq", 13 February 2015, CISEC96CF1160.

¹¹ UNHCR, "UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Asylum Seekers from Iraq", 31 May 2012, 3577.

¹² Ibid and DFAT, "DFAT Country Information Report: Iraq", 13 February 2015, CISEC96CF1160.

¹³ Ibid.

¹⁴ UNHCR, "UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Asylum Seekers from Iraq", 31 May 2012, 3577; DFAT, "DFAT Country Information Report: Iraq", 13 February 2015, CISEC96CF1160.

¹⁵ DFAT, [information deleted].

¹⁶ UNHCR, "UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Asylum Seekers from Iraq", 31 May 2012, 3577.

¹⁷ Ibid.

¹⁸ Belgian Office of the Commissioner General for Refugees and Stateless Persons (CGVS/CGRA), "Iraq: Security Situation in South Iraq", 29 May 2015, CISEC96CF13695.

religious composition. Nevertheless, sporadic terror attacks, usually small in scale, were reported to have occurred in [City 1].¹⁹

53. The UK Home Office's [month] 2015 report on the security situation in Iraq included an assessment of the situation in the southern provinces of Basra, Najaf, Muthanna, Dhi Qar, Missan, Quadissiya and Wassit.²⁰ The UK Home Office report included information about the number of security incidents and deaths in Iraq in 2014 by province, noting that the figures were based on news reports and were not comprehensive. According to this information, Dhi Qar province experienced [number] security incidents and [number] civilian and non-civilian deaths in 2014.²¹ Based on this information, Dhi Qar experienced the lowest number of deaths of the [number] provinces for which data was provided.²² Data reported by the Belgian Office of the Commissioner General for Refugees and Stateless Persons recorded the number of civilian deaths in Dhi Qar in 2014 as [number].²³
54. Other than a brief period of six to nine months in prior to his departure from Iraq, the applicant claims to have lived in [City 1], in Dhi Qar province, all his life. His mother and [number] of his siblings, continue to live in [City 1]. I am satisfied the applicant will return to [City 1] on his return to Iraq. He departed from Basra airport, reported to be among the busiest airports in Iraq.²⁴ UNHCR reported in 2012 that there had been infrequent indirect fire attacks on or near Baghdad and Basrah airports, causing no casualties.²⁵ There is no more recent evidence before me of risk associated with travel by air to Basra airport. Information before me indicates that it is possible to travel safely from Basra to [City 1].²⁶ I am satisfied the applicant will be able to safely return to Dhi Qar province travelling by air to Basra international airport and by [transport] to [City 1].
55. In considering the chance of harm to the applicant, I place weight on DFAT's 2015 assessment that [regional] provinces of Iraq have remained significantly more secure than central Iraq in recent years, and that Shias in [regional] Iraq face a low risk of generalised violence.²⁷ Having regard to the totality of the information before me, while I accept that violent incidents may occur in Dhi Qar province, I find the chance that the applicant may be harmed as a result of sectarian or other violence in Dhi Qar province to be less than the real chance of persecution required to meet s.5J(1)(b).

Unsuccessful asylum seeker

56. The applicant will be returning to Iraq as an unsuccessful asylum seeker who has been living in Australia, a western country, for approximately [number] years. As discussed, DFAT advises that the practice of Iraqis seeking asylum and later returning to Iraq is well-accepted amongst Iraqis and DFAT has seen no evidence to suggest that voluntary returnees from the west are not assimilated back into their communities.²⁸ As I have found that the applicant will return to [City 1], it is relevant to note that DFAT indicates that many returnees who have sought asylum

¹⁹ Ibid.

²⁰ UK Home Office, [information deleted].

²¹ Ibid.

²² Ibid.

²³ Belgian Office of the Commissioner General for Refugees and Stateless Persons (CGVS/CGRA), [information deleted].

²⁴ Centre for Aviation, "Basrah International Airport", 3 August 2016, CIS38A80121429.

²⁵ UNHCR, "UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Asylum Seekers from Iraq", 31 May 2012, 3577.

²⁶ [information deleted].

²⁷ DFAT, [information deleted].

²⁸ Ibid.

overseas have returned to [regional] Iraq.²⁹ A credible international organisation has advised DFAT that it is aware of over 100 Iraqis who have returned to [regional] Iraq having failed to obtain asylum in Australia.³⁰ According to DFAT, the Iraqi Government provides a range of incentives to encourage Iraqis who have not been able to gain asylum overseas to return to Iraq voluntarily.³¹

57. I have not accepted that if he returned to Iraq the applicant would be of any adverse interest to any armed group on the basis that he left Iraq and has lived in Australia for several years. There is no credible evidence before me to suggest that the applicant would be harmed by the Iraqi government or any other group or person if he returned to Iraq having unsuccessfully sought protection and lived in Australia for approximately [number] years. I am not satisfied that there is a real chance now, or in the foreseeable future, that the applicant would be harmed on this basis.

58. I have considered whether the applicant, as a Shia, as a person who held a junior position in a company closely associated with the US military from approximately 2010 to 2011, as a person who left Iraq and will be returning as an unsuccessful asylum seeker after living in Australia for approximately [number] years, or as a result of the security situation in Dhi Qar, faces a real chance of harm. I am not satisfied that any combination of the applicant's circumstances would combine to expose the applicant to a real chance of harm in Dhi Qar province.

Refugee: conclusion

59. 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

60. 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

61. 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.

²⁹ Ibid.

³⁰ Ibid.

³¹ Ibid.

62. I have concluded that the applicant does not face a real chance of harm as a Shia, as a person who held a junior position in a company closely associated with the US military from approximately 2010 to 2011, as a person who left Iraq and will be returning as an unsuccessful asylum seeker after living in Australia for approximately [number] years, as a result of the security situation in Dhi Qar, or as a result of any combination of these factors. As 'real risk' and 'real chance' involve the application of the same standard,³² I am also not satisfied that the applicant would face a real risk of significant harm for the purposes of s.36(2)(aa) on these grounds.

Complementary protection: conclusion

63. 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.

³⁰ *MIAC v SZQRB* (2013) 210 FCR 505.

Applicable law

Migration Act 1958

5 (1) Interpretation

...

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.