



**Australian Government**  
**Immigration Assessment Authority**

**Decision and Reasons**

**Referred application**

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IRAQ

IAA reference: IAA17/02064

Date and time of decision: 8 June 2017 16:29:00

Victoria Price, Reviewer

**Decision**

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The IAA remits the decision for reconsideration with the direction that:

- the referred applicant is a refugee within the meaning of s.5H(1) of the *Migration Act 1958*

*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

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### Visa application

1. The referred applicant (the applicant) claims to be a Shia Muslim of Arab ethnicity from Qadisiyah in the south of Iraq. He arrived in Australia [in] April 2013 and lodged an application for a Safe Haven Enterprise Visa, Subclass 790 (SHEV application), with the Department of Immigration and Border Protection (DIBP) [in] May 2016.
2. A DIBP delegate (the delegate) refused to the grant the visa [in] February 2017. The delegate did not accept that the applicant faced a real chance or real risk of harm from Shia or Sunni militias due to his former role [with] the Iraqi Army or on the basis that he criticised the militias on [social media]. The delegate also did not accept the applicant had a real chance or risk of harm due to his religion, the general security situation in Iraq or from the people smuggler who arranged this travel to Australia.

### 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. The IAA received a submission from the applicant's representative on 3 April 2017. This did not include any new claims for protection. To the extent that the submission addresses matters before the delegate, this is not 'new information' for the purpose s.473DC of the Act. In the submission the applicant's representative stated he gave 7 or 8 articles to the DIBP delegate relating to the activities of the Shia militia group, Asa'ib Ahl al-Haq (AAH). A copy of one of these articles was included with the IAA submission.<sup>1</sup> These articles were not included in the material referred to the IAA. Following clarification with the DIBP, the delegate informed the IAA that they were not before him at the time of making the decision.
5. The IAA contacted the applicant's representative to advise that this material was not provided to the IAA and that DIBP had indicated it was not before the delegate at the time of making the decision. The representative asserted in response that he provided this material during the SHEV interview. I have listened to the recording of the interview. It is clear from that recording that documentary material relating to the applicant's identity was handed to the delegate. It is also evident that the representative made oral submissions regarding the operation of Shia militias to the delegate towards the end of the interview. However, it is not apparent from the recording that any country information, including material pertaining to the AAH, was handed to the delegate. On the information before me I am not satisfied that these articles were before the delegate at the time of making the decision.
6. As noted the applicant's representative has provided one of these articles to the IAA, and I am satisfied that it is 'new information' for the purposes of s.473DC(1) of the Act. The representative has stated that the article is relevant to establishing that the AAH targeted Iraqi Security Forces (ISF) and those connected with the United States (US) forces and Western interests. The IAA has before it other material referred by the DIBP regarding the activities of the AAH which is consistent with this article. The article is dated 2012 and does not address

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<sup>1</sup> Sam Wyer, "The Resurgence of Asa'ib Ahl Al-Haq", The Institute for the Study of War (ISW), 1 December 2012, CIS27176.

current activities of the AAH or other Shia militias. I am not satisfied there are exceptional circumstances to justify considering this information. Nor am I satisfied that this material could not have been provided to the delegate before the decision was made or that it is credible personal information. I note that the remaining articles mentioned in the IAA submission are not before the IAA.

7. The delegate did not accept as plausible aspects of the applicant's claim to have been kidnapped in the past. However, I have obtained new information which is directly relevant to assessing the credibility of this claim.<sup>2</sup> I have reached a different view to that of the delegate regarding the applicant's claims to have been targeted by both Sunni and Shia militias in the past, and have therefore needed to obtain new information on the current activities of these organisations and on the security situation in other areas of the country.<sup>3</sup> The new information is directly relevant to determining the applicant's claims for protection. I am satisfied there are exceptional reasons to justify considering this information.

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

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8. The applicant's claims are contained in the information referred to the IAA. They can be summarised as follows:
  - The applicant enlisted and served in the Iraqi Army [from] 2005 [until] 2011 reaching [a certain rank]. He was attached to [a] Brigade and in the two years before he left the Army, he was assigned to [Unit 1].
  - He was stationed in various cities in central [Iraq]. He was most recently stationed in [Town 1] in the west of Iraq which is a hot spot for the insurgency and most of his work was conducted in this area. His primary role was [details deleted]. He and his colleagues were trained in this role by US forces.
  - In [Town 1] detainees were often suspected of being in Al Qaeda. In other areas they were more often either suspected of belonging to one of the Shia militia groups, or of being criminals. The applicant had a reputation for being fair in his treatment of those [in detention]. His senior officer was critical of his approach.
  - Militia groups were killing people who were in Iraqi [Army]. Senior officers would not drive alone in the streets, but always with guards. On one occasion a [sibling] of a senior officer was assaulted and was in a coma. [A number] of his colleagues, of various ranks, were killed.
  - At the end of 2010, the applicant was kidnapped while returning home from the base in [Town 1]. He was stopped by armed men who knew his name. They did not identify themselves, but the applicant believes they were with Al Qaeda. He was taken to a [property] where he was held for [a number of] hours. His captors knew he was with [the army]. They advised him that on this occasion they would not kill him, but they [injured him] and warned him to stop his work. He was able to drive his own car home.

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<sup>2</sup> Phil Williams, "Criminals, Militias, and Insurgents: Organized Crime in Iraq", Strategic Studies Institute, 1 June 2009, CIS17753.

<sup>3</sup> Overseas Security Advisory Council (OSAC), "Iraq 2017 Crime & Safety Report: Basrah", 7 March 2017, CISED50AD509; OSAC, "Iraq 2016 Crime & Safety Report: Baghdad", 12 February 2016, CIS38A80122264; United Kingdom (UK) Home Office, "Country Information and Guidance Iraq: Sunni (Arab) Muslims", 10 August 2016, OGD7C848D63; United Nations High Commissioner for Refugees (UNHCR), "Position on Returns to Iraq", 14 November 2016, CIS38A80122649; Office of the Commissioner General for Refugees and Stateless Persons (CGVS/CGRA), "Policy Paper Iraq", 3 September 2015, CISEC96CF13643; and UK Home Office, "Country Information and Guidance Iraq: Return/Internal relocation", 18 August 2016, OGD7C848D68 at pp 7 and 41-53.

He reported the incident to the high ranking officer. At the time of the assault he did not realise [he was injured] and initially had minimal treatment at a hospital located between his home and the army base. However, the same day he went to a private hospital in Qadisiyah where he had [surgery]. He has a visible scar from this injury.

- He resigned from the army after this incident but it took some time for his resignation to be approved and take effect. He reduced his work days and only worked for 2-3 days per month. During this time, he finished his cases and provided training for others. He did not experience any further problems and his resignation came into effect in August 2011.
  - From January 2011, in addition to his army duties, the applicant worked one day per week as a driver for [someone]. He drove her to various places including Baghdad and also [did other work for her], for which he was paid a small percentage.
  - He felt safe from Al-Qaeda at his home because they were unable to enter the area. However, at that time the Madhi Army and the AAH controlled Qadisiyah and were in conflict with the government. Before 2007, the Madhi Army had been very strong but had been weakened between then and 2011. The leader, Moqtadr al Sadar had become powerful again after the US withdrawal from Iraq in 2011. There were continuing reports of people being killed and the applicant remained very fearful.
  - In November 2012 the applicant's home was attacked. Men shot at the house. The applicant and his father had guns and exchanged fire with the attackers. One man was shot and the others carried him off, put him in the car and left. He believes it was either the Madhi Army or the AAH, though according to his friends in the police, it was more likely to be the AAH.
  - The applicant believes that his home was attacked due to his previous role with the ISF and as he expressed views critical of Shia militias on [social media]. The applicant's wife and [child] moved out of their home and stayed with her family members. The applicant moved to Baghdad. He returned to Diwaniyah for a few hours in January 2013 to get a passport for his wife and [child]. His friends in the police force organised the passports for him. The applicant left Iraq in January 2013. His wife and [child] remain with her family in Diwaniyah. His parents and some siblings remain in the family home. The applicant's family publically disowned him to ensure they were not targeted and his wife tells people that they are divorced.
  - In August 2013 his father found a letter with a bullet in it. His father has informed him that members of the AAH have recently come to his family home and questioned them about his whereabouts and indicating that he will be punished.
  - The AAH and the Madhi Army have gained power since he left Iraq. The Iraqi Government plans to release all prisoners who have been imprisoned, including militia members, under the new amnesty laws. He fears harm from the Shia militias, the 'Popular Crowd' and from Sunni militias, either because of his history working with [the military] or because of his liberal and pro-US views or both.
  - The applicant has given information to the Australian Federal Police about the smuggler who bought him to Australia. He is the main source of information about this man. He is from [the] south of Iraq, is very rich and powerful and has contacts in the Iraqi government. The applicant fears he will be harmed by this man on return to Iraq.
9. The delegate considered that claims to fear harm as a Shia and due to the general security situation in Iraq arose on the material.

## Refugee assessment

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10. 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

11. 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.
12. On the documentary and oral evidence provided by the applicant, I accept that he is a Shia Muslim of Arab ethnicity who was born [in] Qadisiyah province in the south of Iraq. The applicant’s evidence is that he was stationed in various locations with the Iraqi Army between 2005 and 2011 and that he resided in Baghdad for one month prior to his departure to Australia. However, between January 1999 and December 2012, his residential addresses were stated to be in Diwanayah, in Qadisiyah province. His family continue to reside in this area and I find this is the area to which he would return and is his home area for the purpose of assessing his application for protection.

### *Employment with the Iraqi Army and past harm*

13. The applicant presented as a credible witness and provided detailed oral evidence in a manner suggestive of personal experience regarding his enlistment and his work with the Iraqi Army. In particular, he provided detailed evidence regarding his duties with [Unit 1] and displayed knowledge regarding the operation of various Sunni and Shia militia organisations in the areas in which he claimed to have been stationed which is broadly consistent with country information.<sup>4</sup> He also provided a number of military identity cards and photographs taken over a period of time depicting himself and his colleagues in Iraqi Army uniforms. I accept on the applicant’s documentary and oral evidence that he voluntarily joined the Iraqi Army in 2005,

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<sup>4</sup> UNHCR, "UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Asylum-Seekers from Iraq", 31 May 2012, CIS27173 pp 7-12; Adan, S and Reese, A, "Beyond the Islamic State: Iraq's Sunni Insurgency", ISW, October 2014, CIS2F827D91292; Duman, B, A New Controversial Actor in Post-ISIS Iraq: Al-Hashd Al-Shaabi (The Popular Mobilization Forces), Center for Middle Eastern Strategic Studies, May 2015, CISEC96CF13198; Bill Roggio, "New Special Groups splinter emerges on Iraqi scene", The Long War Journal, 20 August 2008, CX317605, and "A Short Profile of Iraq's Shi'a Militias", Jamestown Foundation, 17 April 2015, CXBD6A0DE4944.

that he attained [a certain rank], and that in two years immediately before he resigned in 2011, he worked with [Unit 1]. I accept that his main role was [details deleted]. I accept that in this context he would have had face to face contact with militia members and that it is plausible they could identify the applicant.

14. I accept that he was stationed in various cities in central Iraq [and] was most recently stationed near [Town 1]. The applicant's evidence that he and his colleagues were trained by US forces is consistent with country information on the role of the US and Multi-National Force following the occupation in 2003.<sup>5</sup> I accept the applicant was trained by, and worked alongside US soldiers, until the US withdrawal from Iraq in 2011.
15. The applicant claims that in 2010 he was kidnapped by Al-Qaeda. Information is that Sunni militias including Al-Qaeda (now operating under the umbrella of Daesh) were active in the areas in which the applicant was stationed, including in [Town 1] where the applicant claimed he was kidnapped.<sup>6</sup> Al-Qaeda targeted the ISF, people considered to have collaborated with the US and individuals involved in fighting them and kidnapped people for political and financial gain.<sup>7</sup> Kidnapping victims were often killed however, there were cases in which victims were released, usually on payment of a ransom.<sup>8</sup> The applicant has not claimed a ransom was paid for his release, rather he stated he was released because he had a reputation for treating the Sunni detainees fairly. I have some reservations about this aspect of his claims. Nevertheless, I note that he provided a detailed and internally consistent account of his kidnapping and of how he sustained the [injury]. In light of his overall credibility and noting that country information confirms that Al-Qaeda kidnapped individuals to further their political agenda, I am prepared to accept as plausible the applicant's claims that: he was kidnapped by Al-Qaeda, he was held for several hours, [he was injured], he was warned to leave the ISF, and he was subsequently released. I accept as plausible that the applicant reported the incident to his commander, that as a result of the threats and the [injury], he resigned from the army, that he reduced his work days to 2 or 3 days a month and that his resignation took effect from August 2012. I also accept his evidence that he was not further harmed in any way by Al-Qaeda, or any other Sunni militia organisation following this incident.
16. The applicant claimed his home was attacked by the Shia militias, mostly likely the AAH, in November 2012 due to his work with the ISF and as he posted comments critical to militias on [social media]. The applicant's claims are consistent with information that AAH and the Madhi Army, were dominant Shia militia groups in his home area at that time.<sup>9</sup> Information is that the names of ISF members were leaked to armed groups, with the Iraqi Ministry of Defence confirming Shi'ite militias published "hit lists" naming ISF members on websites.<sup>10</sup> The AAH and the Madhi Army targeted current and former members of the ISF, individuals perceived to have collaborated with the US and religious and political rivals.<sup>11</sup> Militias were known to make

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<sup>5</sup> UK Home Office, "Iraq Bulletin: Security situation update 2013", 1 August 2013, CIS28544, pp 4-5; and UNHCR, "UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Asylum-Seekers from Iraq", 31 May 2012, CIS27173 pp 14-17.

<sup>6</sup> UNHCR, "UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Asylum-Seekers from Iraq", 31 May 2012, 3577 p 15; Al-Akhbar English, "Iraqis prove that ISIS is a paper tiger", 14 November 2014, CX1B9ECAB10700; and ISW, "Beyond the Islamic State: Iraq's Sunni Insurgency", October 2014, CIS2F827D91292.

<sup>7</sup> UNHCR, "UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Asylum-Seekers from Iraq", 31 May 2012, 3577, pp 8 – 12; and Phil Williams, "Criminals, Militias, and Insurgents: Organized Crime in Iraq", Strategic Studies Institute, 1 June 2009, CIS17753 pp 105–141.

<sup>8</sup> Phil Williams, "Criminals, Militias, and Insurgents: Organized Crime in Iraq", Strategic Studies Institute, 1 June 2009, CIS17753 pp 105–141.

<sup>9</sup> UNHCR, "UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Asylum-Seekers from Iraq", 31 May 2012, 3577 p 11.

<sup>10</sup> Ibid p 15.

<sup>11</sup> Ibid pp 11- 16.

threatening phone calls, send threatening letters and they assassinated ISF members at their homes.<sup>12</sup> Information also supports that Shia militias have an active presence on social media, including [social media].<sup>13</sup>

17. The applicant gave a detailed account of the claimed attack during the SHEV interview and was able to spontaneously articulate the views he claimed to have expressed on [social media] and indicate his reasons for holding these views. He also stated that he expressed these views to members of his family and that he has family members [and] neighbours, who were members of the AAH. These individuals would know who he is and of his previous work within the Iraqi Army. I accept these aspects of his claims as plausible. On the totality of the evidence before me, including the country information and the applicant's detailed claims and evidence, I accept as credible that he published comments critical of Shia militias on [social media], that this became known to local members of the AAH in this home area, as did his former employment with [Unit 1] of the ISF and collaboration with the US military. I accept he was considered an infidel and traitor to the AAH in his home area for these reasons. I accept as plausible that: the applicant's home was attacked as claimed; a militia member was injured; and that he and his wife and [child] moved away from his family home following this incident. I am also prepared to accept as plausible that the applicant's father received a threatening letter addressed to the applicant in August 2013. I accept his family publically disowned him to avoid harm as claimed. I accept he was of interest to a Shia militia group in the past.

#### *Future harm to the applicant*

18. Current information is that Shia militias remain active in the contested areas (Anbar, Diyala, Kirkuk, Ninewah and Salah al-Din),<sup>14</sup> in central Iraq and in government controlled territory in the southern governorates of Iraq including the applicant's home area in Qadisiyah.<sup>15</sup> Now mobilised under the banner of the Popular Mobilisation Forces (the PMF, also known as the 'Popular Crowd'),<sup>16</sup> Shia militias work with the ISF against Sunni militias, including Daesh, but operate largely independently.<sup>17</sup> They engage in criminal activities, including murder, kidnapping and extortion and while information suggests they predominately target Sunni Muslims for such harm, they are known to target political rivals and people who have crossed them.<sup>18</sup> The United Nations High Commissioner for Refugees (UNHCR) assessed in 2012 that

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<sup>12</sup> Ibid, pp 11-16; and UK Home Office, "Country Information and Guidance Iraq: Sunni (Arab) Muslims", 10 August 2016, OGD7C848D63, p 22..

<sup>13</sup> "A Short Profile of Iraq's Shi'a Militias", Jamestown Foundation, 17 April 2015, CXBD6A0DE4944; "Iraq Is Losing Control of the Nearly 100,000 Militiamen Enlisted To Fight ISIS", Defense One, 21 May 2015, CXBD6A0DE17660; Duman, B, A New Controversial Actor in Post-ISIS Iraq: Al-Hashd Al-Shaabi (The Popular Mobilization Forces), Center for Middle Eastern Strategic Studies, May 2015, CISEC96CF13198, p.15; "The fighters of Iraq who answer to Iran", Reuters, 12 November 2014, CX1B9ECAB7111; and Combat Films, "Media Environment Guide Iraq Oct 09", 1 October 2009, CIS22649.

<sup>14</sup> UK Home Office, "Country Information and Guidance Iraq: Security situation in Baghdad, the south and the Kurdistan Region of Iraq (KRI)", 12 August 2016, OGD7C848D67; and DFAT, "DFAT Country Report Iraq", 13 February 2015, CISEC96CF1160.

<sup>15</sup> DFAT, "DFAT Country Report Iraq", 13 February 2015, CISEC96CF1160, at [2.28]; and [2.38]; UK Home Office, "Country Information and Guidance Iraq: Security situation in Baghdad, the south and the Kurdistan Region of Iraq (KRI)", 12 August 2016, OGD7C848D67; and UNHCR, "Position on Returns to Iraq", 14 November 2016, CIS38A80122649.

<sup>16</sup> "Iraq Is Losing Control of the Nearly 100,000 Militiamen Enlisted To Fight ISIS", Defense One, 21 May 2015, CXBD6A0DE17660; Amnesty International, "Punished for Daesh's Crimes": Displaced Iraqis abused by militias and government forces", 18 October 2016, CIS38A80122357, p. 20; and Duman, B, "A New Controversial Actor in Post-ISIS Iraq: Al-Hashd Al-Shaabi (The Popular Mobilization Forces), Center for Middle Eastern Strategic Studies, May 2015, CISEC96CF13198, p 10.

<sup>17</sup> UNHCR, "Position on Returns to Iraq", 14 November 2016, CIS38A80122649; DFAT, "DFAT Country Report Iraq", 13 February 2015, CISEC96CF1160; and UK Home Office, "Country Information and Guidance Iraq: Security situation in Baghdad, the south and the Kurdistan Region of Iraq (KRI)", 12 August 2016, OGD7C848D67 at [4.1.1].

<sup>18</sup> UNHCR, "Position on Returns to Iraq", 14 November 2016, CIS38A80122649; DFAT, "DFAT Country Report Iraq", 13 February 2015, CISEC96CF1160; UNHCR, "UNHCR Eligibility Guidelines for Assessing the International Protection Needs of

former members of the ISF were at risk of persecution from Shia militias.<sup>19</sup> There is more recent information that ex-military personnel in the central areas of Iraq remain at risk, though notably this report does not identify the perpetrators of any such harm and, with the exception of Babil, it suggests that the risk does not extend to the southern provinces.<sup>20</sup> Information supports that Shia militias continue to maintain an active presence on social media.<sup>21</sup>

19. The Australian Department of Foreign Affairs and Trade (DFAT) has stated that opposition to the US and those aligned with them has diminished in government-controlled areas.<sup>22</sup> More recent information is that anti-US sentiment continues throughout Iraq, including in the southern governorates, as many believe that US involvement in Iraq has contributed to sectarian and ethnic division in the country.<sup>23</sup> Anti-US views have been expressed in the media and have been furthered by militia groups, including on social media, the placement of anti-US posters outside the main gate to the airport in November 2016 and several demonstrations against the US by supporters of Muqtada al-Sadr in Maysan province in December 2016.<sup>24</sup> However, there are no recent examples cited of attacks against individuals who have collaborated with the US. Overall, DFAT has assessed that people who have previously worked with the international community remain at a 'moderate risk' of harm.<sup>25</sup> I note this report does not state whether the risk extends only to particular areas of the country.
20. The applicant has stated that members of militias have recently visited his father and made threats against the applicant. It has been over four years since the applicant left his role with the Iraqi Army and since he published his comments on [social media]. Shia militias are now working jointly with the ISF.<sup>26</sup> However, the applicant is no longer with the Iraqi Army and is not likely to resume work with them in the future and would not be considered to be aligned with the interests of the PMF. Information is that Shia militias currently predominately target Sunni Muslims for harm. It also states they have historically targeted former members of the ISF on the basis of their collaboration with the US, and that they continue to hold anti-US views. Militias continue to engage in criminal activities and are believed to target those who have crossed them.<sup>27</sup>
21. I note that the applicant's oral evidence regarding the recent threats did not appear to be embellished. I have previously accepted his claims to have been targeted by the AAH as credible and have accepted as plausible that he has family members and neighbours in the AAH. I accept these individuals remain in the militias. Noting the above information, I also

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Asylum-Seekers from Iraq", 31 May 2012, 3577, p.12; and UK Home Office, "Country Information and Guidance Iraq: Sunni (Arab) Muslims", 10 August 2016, OGD7C848D63 at [7.1.2].

<sup>19</sup> UNHCR, "UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Asylum-Seekers from Iraq", 31 May 2012, 3577 p 14-16.

<sup>20</sup> CGVS/CGRA, "Policy Paper Iraq", 3 September 2015, CISEC96CF13643.

<sup>21</sup> OSAC, "Iraq 2016 Crime & Safety Report: Baghdad", 12 February 2016, CIS38A80122264; "A Short Profile of Iraq's Shi'a Militias", Jamestown Foundation, 17 April 2015, CXBD6A0DE4944; "Iraq Is Losing Control of the Nearly 100,000 Militiamen Enlisted To Fight ISIS", Defense One, 21 May 2015, CXBD6A0DE17660; Duman, B, A New Controversial Actor in Post-ISIS Iraq: Al-Hashd Al-Shaabi (The Popular Mobilization Forces), Center for Middle Eastern Strategic Studies, May 2015, CISEC96CF13198, p.15; "The fighters of Iraq who answer to Iran", Reuters, 12 November 2014, CX1B9ECAB7111; and Combat Films, "Media Environment Guide Iraq Oct 09", 1 October 2009, CIS22649.

<sup>22</sup> DFAT, "DFAT Country Report Iraq", 13 February 2015, CISEC96CF1160, at [3.27].

<sup>23</sup> OSAC, "Iraq 2017 Crime & Safety Report: Basrah", 7 March 2017, CISED50AD509; and OSAC, "Iraq 2016 Crime & Safety Report: Baghdad", 12 February 2016, CIS38A80122264.

<sup>24</sup> OSAC, "Iraq 2017 Crime & Safety Report: Basrah", 7 March 2017, CISED50AD509.

<sup>25</sup> DFAT, "DFAT Country Report Iraq", 13 February 2015, CISEC96CF1160, at [3.27].

<sup>26</sup> Ibid; and UNHCR, "Position on Returns to Iraq", 14 November 2016, CIS38A801222649.

<sup>27</sup> UNHCR, "UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Asylum-Seekers from Iraq", UN High Commissioner for Refugees, 31 May 2012, 3577, p 12; UK Home Office, "Country Information and Guidance Iraq: Sunni (Arab) Muslims", 10 August 2016, OGD7C848D63 at [7.1.2]; DFAT, "DFAT Country Report Iraq", 13 February 2015, CISEC96CF1160, at [2.70]; and UNHCR, "Position on Returns to Iraq", 14 November 2016, CIS38A801222649.

accept as plausible the applicant's oral evidence that many of his former colleagues in the ISF who know of his background, including his work and home area, now work alongside the PMF. The applicant's evidence has been internally consistent and, when considered against relevant country information, his claims relating to his employment and past harm are plausible. Overall, I consider the applicant to be credible in his claims. As noted above Shia militias have a continued presence in Qadisiyah. On the totality of the evidence before me, I accept as plausible that Shia militias recently made threats against the applicant.

22. At the SHEV interview the applicant displayed knowledge about the PMF which is consistent with country information<sup>28</sup> and gave credible evidence regarding his opposition to their current activities. I accept he holds views opposed to the PMF and, noting he has publically expressed such views in the past, I accept he would do so in the future, including to his family members.
23. On the applicant's cumulative profile, as a former member of the [army] who has been involved in [work] against militia members, has worked with the US forces, is known to members of Shia militias in his home area, and who would express views opposed to the current activities of the PMF, I accept as credible he would continue to be perceived to be opposed to the agenda of the Shia militias. I have accepted that the applicant was personally targeted at home in the past and that his family have recently received threats against him at the family home. I also accept the applicant has family members and former colleagues aligned with Shia militia groups who would be able to identify him and locate him if he returns to his home area. On the totality of evidence before me and the cumulative profile of the applicant, I am satisfied that there is more than a remote chance, and therefore a real chance, the applicant will be killed or seriously injured by members of Shia militias, including the AAH, due to his actual or imputed political opinion if he returns to his home area of Diwaniyah, in Qadisiyah province now or in the reasonably foreseeable future.
24. Information is that PMF and Shia militias are active throughout the southern governorates.<sup>29</sup> The AAH is the most influential Shia militia group in Basra, Najaf, Karbarla and Muthanna.<sup>30</sup> The applicant has contended that militia members he [encountered] in the past have already been released, have re-joined militia groups, and they will be able to identify him throughout the south of Iraq. At the SHEV interview, he spontaneously named a particular individual [who] has been released and indicated he was able to name more. Information states that since 2006, over 4,000 militants and terrorists have been released from detention as a result of political connections, bribery and corruption.<sup>31</sup>
25. Noting the overall credibility as of the applicant, and having regard to information before the IAA, I accept it is plausible that people whom he [encountered] have been released and re-joined militia groups. I have accepted he has family members, neighbours and former colleagues who are associated with the AAH and the PMF. I have accepted that the applicant will continue to make his anti-militia views known publically, including to his family. Having regard to these matters cumulatively, I find there is a small, but nevertheless real chance, that

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<sup>28</sup> "A Short Profile of Iraq's Shi'a Militias", Jamestown Foundation, 17 April 2015, CXBD6A0DE4944; Iraq Is Losing Control of the Nearly 100,000 Militiamen Enlisted To Fight ISIS", Defense One, 21 May 2015, CXBD6A0DE17660; and Duman, B, A New Controversial Actor in Post-ISIS Iraq: Al-Hashd Al-Shaabi (The Popular Mobilization Forces), Center for Middle Eastern Strategic Studies, May 2015, CISEC96CF13198.

<sup>29</sup> Duman, B, A New Controversial Actor in Post-ISIS Iraq: Al-Hashd Al-Shaabi (The Popular Mobilization Forces), Center for Middle Eastern Strategic Studies, May 2015, CISEC96CF13198, p.15; DFAT, "DFAT Country Report Iraq", 13 February 2015, CISEC96CF1160 UNHCR, "Position on Returns to Iraq", 14 November 2016, CIS38A80122649

<sup>30</sup> Duman, B, A New Controversial Actor in Post-ISIS Iraq: Al-Hashd Al-Shaabi (The Popular Mobilization Forces), Center for Middle Eastern Strategic Studies, May 2015, CISEC96CF13198, p.15.

<sup>31</sup> UNHCR, "UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Asylum-Seekers from Iraq", 31 May 2012, 3577, p 80.

his identity, location and profile would become known throughout the PMF/Shia militia networks in the southern governorates of Iraq. I accept the applicant has a real chance of serious harm from Shia militias in the southern governorates of Iraq.

26. However, there is a real question as to whether his profile and former work with the Iraqi Army and US forces would become known beyond the PMF stronghold outside southern governorates. Nevertheless, I have accepted that the applicant is a Shia Muslim and information before the IAA is that Shias outside the south of Iraq face a greater chance of harm than those in the southern governorates.
27. The UNHCR and DFAT have reported that Shia Muslims are subject to general and targeted violence by Sunni-linked insurgent groups, including Daesh, in northern, western and central Iraq, including Baghdad, Ninewa, Diyala, Salah al-Din and Anbar.<sup>32</sup> Shia Muslims are being targeted as part of a policy to suppress, expel or destroy the Shia communities and to destabilise the government and its associated forces.<sup>33</sup> The UNHCR and Amnesty International recently reported that religious minorities, including Shias, experienced serious ill-treatment at the hands of Daesh including execution and kidnapping in northern and central Iraq.<sup>34</sup>
28. In particular, DFAT has described Baghdad as one of 'the most violent areas in Iraq'.<sup>35</sup> It remains a central target for Daesh's campaign and for sectarian violence between Sunni and Shia militias and associated ISF forces.<sup>36</sup> The UNHCR reported in November 2016 that Daesh claimed responsibility for attacks against military and civilian targets in Baghdad, and other areas under government control.<sup>37</sup> The United Kingdom (UK) Home Office states that Sunni insurgents remain tactically agile, continue to adapt to the changing situation on the ground, and retain the capability to conduct large scale mass attacks.<sup>38</sup> At the time of reporting, Daesh were conducting a two-track campaign, propagating sectarian discord through attacks targeting the Shia community in Baghdad and attempting to undermine the Shia led government.<sup>39</sup> There have been recent attacks in Shia-majority neighbourhoods, including parks, cafes, markets and Shia mosques.<sup>40</sup> Attacks against Shia civilians occur in spite of security measures taken by government forces to prevent Daesh infiltration.<sup>41</sup> DFAT has assessed that Shia in Baghdad are at a moderate risk of generalised violence.<sup>42</sup> On the information before me, I am satisfied that there is more than a remote chance, and therefore a

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<sup>32</sup> UNHCR, "Position on Returns to Iraq", 14 November 2016, CIS38A80122649, pp 1-4; DFAT, "DFAT Country Report Iraq", 13 February 2015, CISEC96CF1160, at [2.34], [2.27] and [3.45].

<sup>33</sup> UNHCR, "Position on Returns to Iraq", 14 November 2016, CIS38A80122649, pp 1-4; and DFAT, "DFAT Country Report Iraq", 13 February 2015, CISEC96CF1160 at [3.45].

<sup>34</sup> UNHCR, "Position on Returns to Iraq", 14 November 2016, CIS38A80122649, p.2 and 5; and Amnesty International, "Punished for Daesh's Crimes": Displaced Iraqis abused by militias and government forces", 18 October 2016, CIS38A80122357, p.15.

<sup>35</sup> DFAT, "DFAT Country Report Iraq", 13 February 2015, CISEC96CF1160, at [3.60].

<sup>36</sup> The UK Home Office "Country Information and Guidance Iraq: Security situation in Baghdad, the south and the Kurdistan Region of Iraq (KRI)", 12 August 2016, OGD7C848D67; UNHCR, "Position on Returns to Iraq", 14 November 2016, CIS38A80122649, pp 17; and Amnesty International, "Punished for Daesh's Crimes": Displaced Iraqis abused by militias and government forces", 18 October 2016, CIS38A80122357, p.15.

<sup>37</sup> UNHCR, "Position on Returns to Iraq", 14 November 2016, CIS38A80122649.

<sup>38</sup> UK Home Office "Country Information and Guidance Iraq: Security situation in Baghdad, the south and the Kurdistan Region of Iraq (KRI)", 12 August 2016, OGD7C848D67, pp 29-30.

<sup>39</sup> Ibid.

<sup>40</sup> DFAT, "DFAT Country Report Iraq", 13 February 2015, CISEC96CF1160, at [3.46]; UK Home Office "Country Information and Guidance Iraq: Security situation in Baghdad, the south and the Kurdistan Region of Iraq (KRI)", 12 August 2016, OGD7C848D67; UNHCR, "Position on Returns to Iraq", 14 November 2016, CIS38A80122649; and Amnesty International, "Punished for Daesh's Crimes": Displaced Iraqis abused by militias and government forces", 18 October 2016, CIS38A80122357, p.15.

<sup>41</sup> UNHCR, "UNHCR Position on Returns to Iraq", 14 November 2016, CIS38A80122649.

<sup>42</sup> DFAT, "DFAT Country Report Iraq", 13 February 2015, CISEC96CF1160, at [3.47]

real chance, that the applicant will be killed, kidnapped, injured or otherwise seriously harmed if he returns to Baghdad now or in the reasonably foreseeable future on the basis of his Shia religion.

29. As noted above, Daesh and associated Sunni armed groups continue to be active in the north, west and central Iraq,<sup>43</sup> and they are known to target Shia Muslims in these areas. I am also satisfied that the applicant faces a real chance of serious harm on the basis of his Shia religion if he returns to these areas of Iraq, now or in the reasonably foreseeable future.
30. The Kurdish Region of Iraq (KRI) is under the control of the Kurdistan Regional Government.<sup>44</sup> Entry into the KRI was restricted in February 2015 with internally displaced persons (IDPs) not permitted entry except in particular circumstances.<sup>45</sup> This includes certain humanitarian cases, previous registration with the Ministry of Migration, or having local sponsorship.<sup>46</sup> It is also difficult for IDP's to obtain residency unless they are of a particular religious or ethnic background (generally Kurdish, Christians or Yazidi), have political, government or security connections, or are otherwise sponsored.<sup>47</sup> DFAT has stated that it is particularly difficult for Arab Iraqis, such as the applicant, to enter the region.<sup>48</sup> DFAT has also reported security concerns in the KRI with Daesh contesting control of some areas in the region.<sup>49</sup> There is nothing before me to suggest that the applicant has connections which would enable him to be sponsored for entry into the KRI. Further, there is nothing in his profile to suggest he would otherwise be able to access the region. I find that he will not be able to access the KRI.
31. For the reasons set out above, I find that the applicant faces a real chance of persecution in all areas of Iraq for the purpose of s.5(J) of the Act.
32. DFAT has stated that Iraqi government has no ability to provide protection in areas controlled by Daesh and other opposition groups.<sup>50</sup> In government controlled areas, including central and southern Iraq, the capacity for the ISF and police to provide protection has been severely tested by violence across Iraq.<sup>51</sup> This is exacerbated by widespread nepotism and corruption in the ISF, the police forces and the judiciary, and by the fact that perpetrators of violence, including Shia militias, are currently working in co-operation with the ISF.<sup>52</sup> DFAT assesses that the ISF have little willingness and only limited capacity to protect the community or to punish perpetrators of crimes, and that overall, Iraqis are generally unable to rely on institutional human rights mechanisms for state protection.<sup>53</sup> On this information, I find that effective protection measures are not available to the applicant in Iraq.
33. I have found that the applicant faces a real chance of serious harm on the basis of his actual and imputed political opinion. His actual political opinion relates to his opposition to the activities of the Shia militias and the PMF. His imputed political opinion is derived from his past employment with [Unit 1] of the ISF and his past association with US forces, and as these

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<sup>43</sup> Ibid, at [2.27].

<sup>44</sup> DFAT, "DFAT Country Report Iraq", 13 February 2015, CISEC96CF1160, at [5.15].

<sup>45</sup> UK Home Office, "Country Information and Guidance Iraq: Return/Internal relocation", 18 August 2016, OGD7C848D68 at [8.3.2].

<sup>46</sup> Ibid.

<sup>47</sup> UK Home Office, "Country Information and Guidance Iraq: Return/Internal relocation", 18 August 2016, OGD7C848D68 at pp 7 and 41-53.

<sup>48</sup> DFAT, "DFAT Country Report Iraq", 13 February 2015, CISEC96CF1160, at [5.16].

<sup>49</sup> Ibid, at [2.29] and [5.1].

<sup>50</sup> Ibid, at [5.1].

<sup>51</sup> Ibid at [5.1] and [5.6].

<sup>52</sup> Ibid at [2.37], [5.1], [5.5], [5.8] and [5.10].

<sup>53</sup> Ibid at [2.44] and [5.5]

events occurred in the past, they are characteristics attributable to him which cannot be changed. I have also found that he faces a real chance of serious harm on the basis of his religion. Accordingly, s.5J(3) does not apply such that the applicant can be required to take reasonable steps to modify his behaviour to avoid the real chance of persecution he faces in Iraq.

34. I am satisfied that the persecution the applicant faces is for the essential and significant reason of his actual or imputed political opinion and his religion, that it involves serious harm and systematic and discriminatory conduct. I am satisfied that the applicant has a well-founded fear of persecution if he returns to Iraq now or in the reasonably foreseeable future.

### **Refugee: conclusion**

35. The applicant meets the requirements of the definition of refugee in s.5H(1).

### **Decision**

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The IAA remits the decision for reconsideration with the direction that:

- the referred applicant is a refugee within the meaning of s.5H(1) of the *Migration Act 1958*

## Applicable law

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### ***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.

#### **91W Evidence of identity and bogus documents**

- (1) The Minister or an officer may, either orally or in writing, request an applicant for a protection visa to produce, for inspection by the Minister or the officer, documentary evidence of the applicant's identity, nationality or citizenship.
- (2) The Minister must refuse to grant the protection visa to the applicant if:
- (a) the applicant has been given a request under subsection (1); and
  - (b) the applicant refuses or fails to comply with the request, or produces a bogus document in response to the request; and
  - (c) the applicant does not have a reasonable explanation for refusing or failing to comply with the request, or for producing the bogus document; and
  - (d) when the request was made, the applicant was given a warning, either orally or in writing, that the Minister cannot grant the protection visa to the applicant if the applicant:
    - (i) refuses or fails to comply with the request; or
    - (ii) produces a bogus document in response to the request.
- (3) Subsection (2) does not apply if the Minister is satisfied that the applicant:
- (a) has a reasonable explanation for refusing or failing to comply with the request or producing the bogus document; and
  - (b) either:
    - (i) produces documentary evidence of his or her identity, nationality or citizenship; or

- (ii) has taken reasonable steps to produce such evidence.
- (4) For the purposes of this section, a person produces a document if the person produces, gives, presents or provides the document or causes the document to be produced, given, presented or provided.

...

**91WA Providing bogus documents or destroying identity documents**

- (1) The Minister must refuse to grant a protection visa to an applicant for a protection visa if:
  - (a) the applicant provides a bogus document as evidence of the applicant's identity, nationality or citizenship; or
  - (b) the Minister is satisfied that the applicant:
    - (i) has destroyed or disposed of documentary evidence of the applicant's identity, nationality or citizenship; or
    - (ii) has caused such documentary evidence to be destroyed or disposed of.
- (2) Subsection (1) does not apply if the Minister is satisfied that the applicant:
  - (a) has a reasonable explanation for providing the bogus document or for the destruction or disposal of the documentary evidence; and
  - (b) either:
    - (i) provides documentary evidence of his or her identity, nationality or citizenship; or
    - (ii) has taken reasonable steps to provide such evidence.
- (3) For the purposes of this section, a person provides a document if the person provides, gives or presents the document or causes the document to be provided, given or presented.

...