



Australian Government
Immigration Assessment Authority

Decision and Reasons

Referred application

IRAQ

IAA reference: IAA17/02319

Date and time of decision: 2 January 2018 09:48:00

Inge Sheck, Reviewer

Decision

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

- there are substantial grounds for believing that, as a necessary and foreseeable consequence of the referred applicant being removed from Australia to a receiving country, there is a real risk that the referred applicant will suffer significant harm.

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) is a Sunni Muslim from Nasiriyah in Dhi Qar province, Iraq. He departed Iraq [in] August 2012 with his brother T and arrived in Australia [in] October 2012. [In] February 2016 he lodged an application for a protection visa (PV).
2. [In] March 2017 a delegate of the Minister for Immigration and Border Protection (the delegate) refused to grant the visa. The delegate accepted that the applicant was a Sunni Muslim and a Bidoon and that he had been subject to discrimination and harassment in Iraq due to his religion and his ethnic background. The delegate also accepted that his family had received an unsigned threat letter in August 2012 but did not accept that the applicant's parents and siblings had also left Iraq due to fear of harm. The delegate did not accept that the applicant was of any interest to any militia groups and concluded that he did not face a real chance of persecution or a real risk of significant harm due to his religion, ethnicity, sectarian violence or any other reason.

Information before the IAA

3. I have had regard to the material given by the Secretary under s.473CB of the *Migration Act 1958* (the Act). On 14 May 2017 the IAA received a submission on behalf of the applicant from his representative, [as] well as supporting documents.
4. Section 473DD of the Act provides that the IAA must not consider any new information from an applicant unless satisfied there are exceptional circumstances which justify considering the new information, and the new information was not and could not have been provided to the Minister or is credible personal information which was not previously known and had it been known may have affected the consideration of the applicant's claims. The submission by the applicant's representative addresses the delegate's decision and findings. As such, it may be regarded as argument rather than new information and I have had regard to it.
5. The additional documents provided by [the representative] on 14 May 2017 comprise eight scanned copies of [Country 1] Residence Permits, issued to the applicant's parents, his brothers (other than T, who is with him in Australia) and [Sister 1]. All of these documents were issued [in] April 2015 with the exception of that of [Brother 1], which was issued [in] October 2016. There is no permit in the name of [Sister 2]. The type of permit issued to the applicant's parents and his brothers [is] stated as "Refugee – Leave to Remain". The remainder of the permits are headed "Home Office Application Registration Card" and the dates of birth of the holders indicate that they are all aged under 18. In terms of whether these documents could have been provided to the delegate, [the representative] notes that the applicant was only able to obtain a copy "a few days ago". Given that the majority of the documents were issued some two years prior to the delegate's decision I do not accept that the applicant had been unable to contact his family or was unaware of the issue of these documents until after the delegate's decision had been made.
6. It is then necessary to determine whether the documents comprise credible personal information which was not previously known and had it been known may have affected the consideration of the applicant's claims. As identified by [the representative] in his submissions, a central reason for refusing the applicant's claim was the delegate's finding that the applicant's family remained in their home in Nasiriyah. The applicant had stated in his PV

application that they remained in Iraq. He also stated in his statutory declaration of 16 February 2016 that the family was not able to leave Iraq as his father was disabled so could not go elsewhere. At his PV interview the applicant stated that the family lived somewhere in [Country 1] but he did not know where. He stated at his PV interview that the rest of the family left Nasiriyah about a week after his and T's departure from Iraq and made their way to [Country 1] via [Country 2]. This contradicts his evidence given in the PV application and statutory declaration in 2016. The documents now provided indicate that the family were in [Country 1] from 2014 at the latest. Further to this, the applicant has at no point submitted that his parents and older siblings had been recognised as refugees by [Country 1] authorities, a point which could only assist his own claims. Despite my concerns as to these inconsistencies, I have no basis on which to conclude that the tendered documents are bogus. As the applicant's family has not remained in Nasiriyah as found by the delegate, this may affect consideration of the applicant's claims. I therefore conclude that s.473DD(b)(ii) is satisfied.

7. In considering whether exceptional circumstances justify consideration of these documents, I note that the applicant was not put on notice by the delegate that the whereabouts of his family was a central issue in determining his application, or that his oral evidence at the PV interview, that his family was now residing in [Country 1], would not be accepted. Given this, as well as the significance of the new information, I am satisfied that exceptional circumstances warrant consideration of the documents.
8. I have also obtained new information, including the Department of Foreign Affairs and Trade (DFAT), DFAT Country Report, Iraq, published on 26 June 2017. This report was published after the delegate's decision and was prepared specifically for protection status determination purposes. The delegate referred to the most recent report before him, this being the DFAT Iraq Country Information Report 2015, published on 13 February 2015. In light of the age of the previous DFAT report, the currency of the new report, and the potential for significant changes in conditions in Iraq since early 2015, particularly with reference to sectarian violence, I am satisfied that there are exceptional reasons to justify considering this new information.
9. I have also obtained a recent report from the UK Home Office, "Country Policy and Information Note - Iraq: Sunni (Arab) Muslims", published on 28 June 2017. The applicant has claimed protection on the basis of his Sunni faith, however the review material contains no reports specific to this class of persons. I am satisfied that there are exceptional reasons to justify considering this new information.

Applicant's claims for protection

10. After his arrival [in Australia] the applicant was interviewed by an officer of the Department of Immigration and Border Protection ("the Department") [in] October 2012. Together with his PV application the applicant lodged a statutory declaration dated 16 February 2016. [In] December 2016 he attended an interview ("the PV interview") with the delegate, at which his representative was also present. The applicant claims:
 - He was born in Kuwait and came to Iraq with his family when he was an infant. He was stateless at birth but was subsequently granted Iraqi citizenship. Until his departure from Iraq he lived in Nasiriyah. The area was predominantly Shia. He and his family are Sunni. After the fall of the Saddam regime they were increasingly subjected to discrimination;

- His brother T was beaten on his way to or from mosque by militia men in 2006 and again in 2008. This made the applicant fearful of attending mosque;
- The applicant commenced work as a [Occupation 1] in 2010. His employer was also Sunni. The garage where he worked was regularly daubed with insulting anti-Sunni slogans. After finishing his daily work at the garage he worked as [Occupation 2]. On one occasion he was abused and beaten by Shia [clients] for displaying a Sunni symbol. The event was seen by police officers but they did not assist him in any way;
- The family were verbally abused and sworn at because they spoke the Kuwaiti language
- A week before they left the applicant's mother found a threat letter under their door. It said that they were infidels and they would be killed if they stayed. A Sunni family they knew in the next street had previously received such a letter and had ignored it: shortly afterwards the eldest son in the family had been killed. The applicant's father considered that the applicant and his brother T, the eldest boys in the family, were in great danger and insisted that they leave the country immediately;
- All of the Sunnis have fled from his area due to violence. If he returned there he would be killed. He could not relocate to any other part of Iraq. All of the southern provinces are Shia dominated. If he did find another Sunni area he would not be known and the people would not trust him. Because they are Bidoon they are not welcome anywhere. There is no protection from the authorities.

Factual findings

11. I accept that the applicant's background is as follows: he was born on [date] in [Kuwait] and relocated to Iraq with his family in 1991 or 1992. He lived in Nasiriyah with his parents and [brothers] and [sisters] from this time. He identifies as a Bidoon. He is of Arab ethnicity and an Iraqi national. Iraq is his receiving country. He departed the country legally. He did not attend school at all and is not literate in Arabic. He was employed as a [Occupation 1] and a [Occupation 2] from 2010 until his departure from Iraq in 2012.
12. The applicant's central claim is that he was discriminated against, harassed and threatened due to his Sunni faith. At the PV interview he advised that he does on occasion attend mosque in [his suburb] but mainly prays at home. [In] March 2017 the delegate wrote to the applicant, stating that "there is information before the Department that you are not a Sunni Muslim as stated in your Protection Visa application and interview. The information indicates that you are a practicing Shia Muslim" and inviting his comments. [The representative] responded to this [in] March 2017, stating that the applicant and his brother "are both Sunni Muslims and that they will bring certificate [sic] from the Sunni mosques in Australia to prove that they are practicing Sunni Muslims. My clients maintain that describe the information which suggest that they are Shia Muslims as 'incorrect'". The applicant has not provided any certification from his mosque, however the delegate accepted that he was Sunni as claimed. The applicant has consistently claimed to be Sunni. Country information indicates that the majority of Bidoons are Sunni.¹ I accept that he is Sunni as claimed.
13. The applicant has stated that he was subjected to various incidents of violence or harassment due to his Sunni faith, in particular when he was assaulted by [clients]. At the PV interview the applicant stated that on one occasion [the clients] noticed a symbol he had in [Workplace 1], which said "the prophet of God is Mohammed". The [clients] said this should say "the prophet

¹ Department of Foreign Affairs and Trade (DFAT), "DFAT Country Report, Iraq", 26 June 2017, CISED50AD463132; 3.57

of God is Ali” and started smashing up [Workplace 1] and beating the applicant about the head. There were police officers outside and he appealed to them saying look what they are doing but the police just told him to leave or they would bash him too. The applicant has also consistently stated that people would paint insulting names and anti-Sunni slogans [at his other workplace] and I accept that this is the case. The central incident identified by the applicant is that he and his brother fled Iraq due to the receipt of an anonymous death threat delivered to their home. This claim is supported by country information, which notes that in February 2014, Dhi Qar police arrested four individuals suspected of distributing sectarian flyers demanding that Sunnis leave the area within a month or be killed.² I accept that the applicant’s family received such a flyer in August 2012 and the applicant fled Iraq as he feared that he would be killed.

14. At the PV interview the applicant was asked whether he could seek state protection from harm and he replied that he could not; the police also discriminated against Sunnis. Complaints by Sunnis to the police, for instance that they had been harassed or beaten, rarely received any action. These claims are also supported by the country information and I accept them.³
15. The applicant was also asked at the PV interview whether he could relocate to another part of Iraq. He stated that he would not be able to. He had some uncles about an hour’s drive away from Nasiriyah. His family stayed with them when they departed Nasiriyah and went to [Country 2]. He thinks one of the uncles may be deceased now. People in Iraq are very suspicious of newcomers, they ask where are you from and who is your family. He would not be safe in any Shia dominant area, which is most of Southern Iraq. In terms of any Sunni majority areas, no-one trusts anyone any more, no-one would take him in and he would have nowhere to live. Because they are Bidoon they are not welcome in any area.
16. [The representative] submitted at the PV interview that the applicant’s situation is complicated by the fact that he is Bidoon. His family (tribal) name is not an Iraqi tribal name, it is “pure Sunni from Kuwait”. This means that he would also be at risk of discrimination from Sunni Iraqis. The applicant did not give any examples of violence or harm due to having a Bidoon or gulf name, however noted that he and the members of his family were treated differently because of their language and accents.
17. In relation to whether the applicant is at risk of harm due to being a Bidoon or due to his name, country information does not indicate that Bidoon communities are subject to any targeted violence,⁴ however societal discrimination against ethnic and religious minorities including Bidoon is widespread, resulting in difficulty in accessing employment, housing, and services, including education.⁵ I accept that the applicant would have difficulty in accessing employment, housing or services on return to Iraq, even in Sunni areas, due to having a recognisably Bidoon name.

Refugee assessment

18. 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

² US State Department, International Religious Freedom Report for 2014 – Iraq, OGD95BE926027; p.14

³ DFAT, “DFAT Country Report, Iraq”, 13 February 2015, CISEC96CF1160; 3.52

⁴ Ibid; 3.87

⁵ Ibid; 3.3

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

19. 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.

20. The applicant claims to fear harm due to his Sunni faith. I have accepted that he has suffered verbal and physical abuse due to his religion, discrimination from police officers and his life was threatened. He is from Dhi Qar province in the south of Iraq. Internal relocations occurring since around 2005 have resulted in most Sunnis now living in Sunni-majority provinces and neighbourhoods in Baghdad and central Iraq.⁶ The overwhelming majority of the population of southern Iraq is Shia, although a wide range of ethnic and religious minorities is reported to reside in southern Iraq, including Sunni Muslims.

21. DFAT reports that contacts in Iraq have said that tolerance of religious minorities remains higher in southern Iraq than in central Iraq.⁷ In June 2017, the UK Home Office assessed that while there are some reports that Sunnis have experienced human rights abuses at the hands of Shia militia or unknown perpetrators in the southern provinces, it does not appear to form part of a consistent or systematic risk to Sunnis in the southern provinces. The same report notes that various non-state actors, primarily the powerful Shia militia (who number, in some estimates, in the tens of thousands), have violated the human rights of Sunnis in a number of governorates.⁸ In June 2016, a joint written statement to the UN by the International Youth and Student Movement for the United Nations, and other organisations, noted that the militia are in the process of carrying out indiscriminate attacks on the population on sectarian and ethnic basis, while always hiding behind the pretext of fighting terrorism. Recent campaigns have seen Sunni Arabs as the major target of the militias' fury.⁹

22. In the view of the UK Home Office, in general a Sunni will not face a real risk of persecution or serious harm in the southern provinces, although the Home Office encourages decision makers to consider whether there are particular factors specific to the individual applicant which

⁶ DFAT, "DFAT Country Report, Iraq", 13 February 2015, CISEC96CF1160; 3.48

⁷ DFAT, "DFAT Country Report, Iraq", 26 June 2017, CISEDB50AD463132; 5.18

⁸ UK Home Office, "Country Policy and Information Note - Iraq: Sunni (Arab) Muslims", 28 June 2017, OG6E7028831; 2.2.6

⁹ Ibid; 7.1.1

would place them at real risk.¹⁰ I note that the UK report draws on a UK Upper Tribunal ‘country guidance case’ that was heard in late August 2016 and promulgated in January 2017.

23. The recent DFAT country report on Iraq appears to offer a less favourable assessment of the situation faced by Sunnis in the south of Iraq. DFAT assesses that Sunnis in Shia-dominated areas, including Shia areas of Baghdad and the southern provinces of Iraq, face a high level of societal discrimination and violence.¹¹ DFAT does not elaborate on the nature of the risks, or the incidents of violence faced by Sunnis in these areas, but reports generally that official and societal discrimination and violence towards Sunnis in Iraq is increasing and tolerance for Sunnis in non-Sunni areas has declined.¹² I consider that it is possible to reconcile the apparently differing assessments offered by the DFAT and UK Home Office reports, both of which are very recent and authoritative sources of information about Iraq. DFAT offers an overall assessment of the level of violence faced by all Sunni Iraqis in all Shia areas, while the UK Home Office report recognises that Sunnis in the south of Iraq may face a real chance of harm depending on their individual circumstances. I conclude that some Sunnis, depending on their profile, may face a real chance of harm in the south of Iraq.
24. In the applicant’s case, his parents and siblings have also fled from their home area of Nasiriyah and are resident in the UK. They have been accepted by the UK authorities as refugees, although the applicant has given no information as to their claims for protection. The applicant has no family contacts or support networks in his home area, from which he has been absent for more than five years. He has stated that no Sunni families remain in his former neighbourhood and I accept that this may be the case. I have also accepted that his family received a death threat due to their religion and that this led to them leaving Nasiriyah. Country information confirms that the scale of relocation from the Southern governorates appears to have been significant: a community leader told DFAT in early 2014 that up to 300,000 of 700,000 Sunnis had relocated from Basra in recent years.¹³ Although he had resided in Nasiriyah since childhood and is an Iraqi citizen, the applicant is identifiable by his name and accent as a Bidoon. I consider that taking into account his personal circumstances, these being that he is a Sunni Bidoon with no family contacts who has been absent from Iraq for some five years, the applicant would face a real chance of serious harm by way of violence, from Shia militia or other armed groups, should he return to his home area of Nasiriyah.
25. It is then necessary to consider whether there is a real chance that the applicant will be harmed due to being a Sunni in all areas of Iraq. DFAT reported a number of areas remain under ISIS control in the west, north and central areas.¹⁴ Sunni armed opposition groups, including ISIS/Daesh, have frequently targeted moderate Sunnis, including those who they believe have collaborated with the government, or who they wish to coerce into supporting Daesh.¹⁵ More recently, DFAT has assessed that in ISIL-controlled areas, Sunnis who refuse to support Daesh/ISIS face a high risk of discrimination and violence.¹⁶ There is nothing before me to indicate that the applicant is an extremist Sunni or holds pro-ISIS views, and I find he is not. There is therefore a real chance that he would face serious harm in areas held by ISIS/Daesh. While DFAT does not specify that all areas of the west, north and central provinces in Iraq is under the control of ISIS, it does note that the overall the security situation in Iraq is fragile and

¹⁰ Ibid; 2.2.9

¹¹ DFAT, “DFAT Country Report, Iraq”, 26 June 2017, CISED50AD463132; 3.39

¹² Ibid; 3.39

¹³ DFAT, “DFAT Country Report, Iraq”, 13 February 2015, CISEC96CF1160; 3.59

¹⁴ Ibid; 2.33

¹⁵ Ibid; 3.56

¹⁶ DFAT, “DFAT Country Report, Iraq”, 26 June 2017, CISED50AD463132; 3.39

susceptible to rapid and serious deterioration with large scale conflict in some areas.¹⁷ It is possible that some areas (aside from Kurdistan discussed below) may be safe for Sunnis such as the applicant, but given the present volatility, I am satisfied the applicant has a real chance of serious harm in the areas of north (with the exception of Iraqi Kurdistan), west and central Iraq, now or in the reasonably foreseeable future.

26. In terms of the remainder of the Southern governorates (including Basra, Karbala, Wasit, Qadisiyah, Maysan, Muthanna and Najaf provinces) country information also indicates that Sunnis located in non-Sunni areas (such as Shia areas of Baghdad and the south) face a high level of societal discrimination and violence.¹⁸ Although the overwhelming majority of residents in the Southern governorates are Shia, there are approximately 400,000 Sunnis.¹⁹ Sources indicate that there are Sunni communities in Hillah (Babil province) and Basra although the size of these communities is not stated.²⁰ Another 2015 country report notes that in the south, the Sunni minority is less exposed however it also states that in 2013, members of the Sunni community in Basra were killed in a series of murders. Sunnis also received threats and were called upon to leave the region, as happened to the applicant's own family in Dhi Qar. Elsewhere in the south, the Sunni minority has been under increased pressure. Between 23 June and 20 August 2014, at least 19 Sunni civilians were killed and 19 other abducted in Basra province, according to UNAMI.²¹ Overall I consider that due to the presence of Shia militias and armed groups in many of the southern cities including Hillah and Basra the applicant would still face a real chance of serious harm in the remainder of the southern governorates on the basis of his religion.
27. Considering whether the applicant faces a real chance of harm due to his religion in Baghdad, since 2003 Baghdad has become more segregated between Sunni and Shia. Reliable data is lacking, but sources indicate that there are still Sunni-dominated districts in Baghdad City – notably in Adhamiya, Dora and Mansour. Sunnis are the minority, but in a city of over 7 million people it is reasonable to judge that Sunnis number at least in the hundreds of thousands there. Baghdad hosts over half a million IDPs, who have been displaced from Sunni-majority governorates.²² The country information therefore does not support a claim that the applicant would have a real chance of serious harm in Baghdad due only to being Sunni.
28. In terms of the three provinces which constitute Iraqi Kurdistan in the north of Iraq, country information relating to this area is that it has experienced lower levels of insecurity compared to other areas of Iraq.²³ The referred information does not indicate that Sunnis are at risk of harm due to their religion in the Kurdish region, indeed the majority of Kurds are Sunni.²⁴ I am not therefore satisfied that the applicant has a real chance of serious harm in this area.
29. I am not satisfied that the applicant faces a real chance of serious harm solely on the basis that he is a Sunni Muslim, in the whole of Iraq. The applicant therefore does not have a 'well-founded fear of persecution' within the meaning of s.5J of the Act.

¹⁷ Ibid; 2.33

¹⁸ DFAT, "DFAT Country Report, Iraq", 26 June 2017, CISED50AD463132; 3.39

¹⁹ Ibid; 5.18

²⁰ UK Home Office, "Country Policy and Information Note - Iraq: Sunni (Arab) Muslims", 28 June 2017, OG6E7028831; 4.1.1

²¹ Office of the Commissioner General for Refugees and Stateless Persons, COI Focus: Iraq – Security Situation in South Iraq, 29 May 2015; p.10

²² UK Home Office, "Country Policy and Information Note - Iraq: Sunni (Arab) Muslims", 28 June 2017, OG6E7028831; 2.4.2

²³ DFAT, "DFAT Country Report, Iraq", 26 June 2017, CISED50AD463132; 2.32

²⁴ Ibid; 3.6

Refugee: conclusion

30. 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

31. 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

32. 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.

33. I have concluded above that the applicant faces a real chance of being killed or seriously harmed in the Southern governorates as a Sunni Bidoon with no family contacts who has been absent from Iraq for over five years. DFAT reports that Daesh/ISIS and associated Sunni extremist groups are currently in control of large parts of northern, western and central Iraq and I accept that there is also a real chance of serious harm to the applicant, as a non-extreme Sunni, in the areas of north (with the exception of Iraqi Kurdistan), west and central Iraq, now and in the reasonably foreseeable future. I also find he is at real risk of significant harm in these areas.

Qualifications to the real risk threshold

34. Section 36(2B) provides that there is taken not to be a real risk that a person will suffer significant harm in a country if:

- it would be reasonable for the person to relocate to an area of the country where there would not be a real risk that the person will suffer significant harm
- the person could obtain, from an authority of the country, protection such that there would not be a real risk that the person will suffer significant harm, or
- the real risk is one faced by the population of the country generally and is not faced by the person personally.

35. In considering first whether the applicant could obtain protection from harm from the state against the real risk of significant harm in his home area of Nasiriyah I note that the recent DFAT report states that the capacity of the Iraqi police force is limited. The police are unable to

prevent violent attacks on individuals, groups and on infrastructure and commercial premises, and members often lack training and basic equipment.²⁵ Elements of the Federal Police and some of the Shia militia or other armed groups in the Popular Mobilisation Forces (PMF) reportedly have close links.²⁶ The applicant's evidence, which I have accepted, is that he was the victim of harassment and discrimination by the Iraqi Police while residing in Nasiriyah. I am not satisfied that the applicant can obtain protection from the Iraqi State, such that there will not be a real risk of significant harm to him in Nasiriyah.

36. Based on the evidence before me, I find the applicant would be at risk of harm from Shia militia or other armed groups in Nasiriyah, including members of the PMF, as a result of him being a Sunni Muslim of particular background and family circumstances. The real risk of harm is faced by him personally, not the population of Iraq generally.
37. Section 36(2B) provides that there is taken not to be a real risk that a person will suffer significant harm in a country if it would be reasonable for the person to relocate to an area of the country where there would not be a real risk that the person will suffer significant harm. I have found that there is not a real chance of harm due to being Sunni in Iraqi Kurdistan or in Baghdad. As 'real risk' and 'real chance' involve the application of the same standard²⁷, I am also not satisfied that the applicant would face a real risk of significant harm for the purposes of s.36(2)(aa) in these parts of Iraq.
38. Considering whether it would be reasonable for the applicant to relocate to Baghdad, the UK Home Office notes that a Sunni will generally be able to relocate to Baghdad, as long as it is not unreasonable based on their specific circumstances.²⁸ Within Baghdad, internally displaced persons (IDPs) could, in principle, freely choose the area in which they wish to settle. However, as a result of the sectarian segregation within Baghdad, which followed the large-scale sectarian violence of 2006/07, many areas where one sect is in the majority are reportedly not accessible for members of the other sect, or only at the risk of serious security incidents.²⁹ The UK Home Office report also notes that IDPs may be required to find a sponsor to enter the city, although this requirement is subject to change based on the changing security situation.³⁰ There is no evidence that the applicant has any family or sponsor in Baghdad; he did not state where his uncles lived or whether they still remain in Iraq. Should the applicant be able to access Baghdad without having to provide a sponsor, as it appears that this requirement mainly applies to IDPs from Anbar and other conflict areas, country information indicates that at checkpoints within the city, the ISF/Shia militias reportedly ask people for their national ID card, which often gives an indication of the individual's religious (Sunni/Shi'ite) affiliation based on the person's first name, family or tribal name and area of origin.
39. As pointed out by [the representative], the applicant has a tribal name which is not only Sunni but also Kuwaiti, rather than Iraqi. He also claims that he speaks with an accent that differs from the local people in Nasiriyah, however it is not clear whether this would be discernible in Baghdad. The high number of largely Sunni Arab IDPs in Baghdad has reportedly led to growing resentment, fear and suspicion vis-à-vis these IDPs, who are regularly suspected of being affiliated or sympathizing with ISIS.³¹ I conclude that the cumulative effect of the applicant's Sunni religion, his Bidoon and gulf name and his lack of any contacts or support networks in

²⁵ DFAT, "DFAT Country Report, Iraq", 26 June 2017, CISED50AD463132; 5.7.

²⁶ DFAT, "DFAT Country Report, Iraq", 26 June 2017, CISED50AD463132; 5.8

²⁷ *MIAC v SZQRB* (2013) 210 FCR 505

²⁸ UK Home Office, "Country Policy and Information Note - Iraq: Sunni (Arab) Muslims", 28 June 2017, OG6E7028831; 2.4.6

²⁹ *Ibid*; 9.2.5

³⁰ *Ibid*; 2.4.5

³¹ *Ibid*; 9.2.5

Baghdad would increase his profile such that it would be unreasonable for him to relocate to a Sunni area of that city, even if he were allowed entry into Baghdad without a sponsor.

40. In relation to Iraqi Kurdistan (KRI), recent country information indicates that it is unlikely that non-Kurds from outside of that area will be able to relocate there. DFAT assesses that internal relocation to the Kurdish region is difficult for most minority groups and particularly for Arab Iraqis due to official and societal discrimination.³² Admission into the Kurdish region remains at the discretion of the KRG, which has exercised increasing levels of restrictions, including requiring individuals wishing to enter to have a sponsor.³³ The applicant is a Bidoon of Arab ethnicity and has never lived in these provinces. There is nothing to indicate that he has any family or other connections there. I am not satisfied the applicant would be allowed entry into the KRI and therefore am not satisfied that it would be reasonable for him to relocate there.

41. It would not be reasonable for him to relocate to any other areas of Iraq as I have found that he would face a real risk of significant harm in all other areas. As none of the qualifications to the real risk threshold apply, I conclude that there is a real risk that the applicant will suffer significant harm if returned to Iraq.

Complementary protection: conclusion

42. There are 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.

Decision

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

- there are substantial grounds for believing that, as a necessary and foreseeable consequence of the referred applicant being removed from Australia to a receiving country, there is a real risk that the referred applicant will suffer significant harm.

³² DFAT, "DFAT Country Report, Iraq", 26 June 2017, CISED50AD463132; 5.16

³³ Ibid; 5.14

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.