



Australian Government
Immigration Assessment Authority

Decision and Reasons

Referred application

IRAQ

IAA reference: IAA17/02422

Date and time of decision: 29 January 2018 14:26:00

Victoria Price, 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) claims to be a Sunni Muslim from [City 1] in the province of Basra in the south of Iraq. He arrived in Australia [in] June 2013 and lodged an application for a protection visa with the Department [in] October 2016.
2. A delegate of the Minister (the delegate) refused to grant the visa to the applicant [in] April 2017 finding that the applicant did not face a real chance or risk of harm on return to Iraq.

Information before the IAA

3. I have had regard to the material given by the Secretary under s.473CB of the *Migration Act 1958* (the Act).
4. The applicant's representative provided several submissions to the IAA. To the extent these submissions discuss the findings of the delegate, this is not new information for the purpose of s.473DC(1) of the Act and I have taken these matters into account in my decision. The submissions also included new information consisting of: a hyperlink to an article appearing on the UNESCO website (UNESCO article); a letter from the applicant's claimed former employer in Iraq, [which] the applicant claimed was also known as [Company 1] (the support letter); a news report entitled 'Baghdad After ISIS: Murder of Young Iraqi Actor Sparks Concerns About Freedom for All' (the news article); and eight videos (and [links] to each video) purportedly showing the applicant's [work] in Iraq and [Country 1] (the videos).
5. The UNESCO article purportedly provides a list of journalists killed in Iraq. The representative only provided the link to the article, he did not provide the article itself or include relevant extracts and I was unable to open the link, or locate the specific version referred to on the UNESCO website. On the information before me, it is not clear where, when or why these journalists were killed or by whom. Overall the relevance of this particular article to the applicant's claimed circumstances is not apparent on the material before me. Moreover, there is no reference to the date of this article and it is unclear whether it would have been available to the delegate prior to the making of the decision. I note that there is other information before me relating to the past and present treatment of media and news outlets, and their employees, in Iraq. The applicant has not satisfied me either that the UNESCO article was not and could not have been provided to the delegate before she made her decision, or that it is credible personal information, which was not previously known and had it been known, may have affected consideration of the applicant's claims. On all of the information and evidence before me, I am also not satisfied that there are exceptional circumstances to justify considering this information. I must not consider it.
6. The news article does not pertain to the applicant, and I am not satisfied that it is credible personal information which was not previously known and had, it been known, may have affected consideration of the applicant's claims. However, the article postdates the delegate's decision and I am satisfied that it could not have been provided to the Minister prior to the making of the decision. The article details the murder, apparently by Shiite militias, of a young male model, an aspiring actor and participant in male beauty pageants, who had posted videos on Facebook about anti-extremism. However, rather than suggesting that he was targeted for his anti-extremist views or his acting, the article suggests he had been receiving threats due to his appearance of long blonde hair and fashionable clothing, and there is nothing in the claims

before me to suggest that the applicant will be targeted for these reasons. I note that these events occurred in Baghdad, and as such this is of limited value in assessing the applicant's risk of harm in Basra, in the south of Iraq. I also note that I have other information pertaining to the security situation in Iraq and the activities of Shia militias. Having regard to all the information before me, I am not satisfied there are exceptional circumstances to justify considering this information. I must not consider it.

7. The delegate accepted that the applicant worked as [Occupation 1] in [Country 1], but did not accept that he was [in Occupation 1] in Iraq or that he had a profile as such and that he was at risk of harm for this reason as he claimed. The support letter is dated [in] May 2017, after the delegate's decision, and states that the applicant was employed as [Occupation 1] for the company and that he was [doing work] in [Country 1] and [Iraq]. This relates to claims made by the applicant in his protection visa application rather than any new issue. It is not clear why this document could not have been provided prior to the making of the delegate's decision, and the applicant has not satisfied me that it could not have been provided before the decision was made. However, the new information is personal information relating to the applicant, it is relevant to considering whether he has an adverse profile such that he will face harm for the reasons claimed, and there is nothing before me to suggest that this document is not genuine. I am satisfied that this document, if true, may have affected the consideration of the referred applicant's claims. I am also satisfied that there are exceptional reasons to justify considering this new information.
8. The representative submitted that the applicant had the videos with him at the protection visa interview (the PV interview), that he tried to provide them and that the delegate refused to watch them. A recording of the PV interview supports this contention demonstrating that the applicant made at least three attempts to provide these videos to the delegate who stated on each occasion that she did not want to see them. At the conclusion of the interview the applicant's representative again requested that the delegate view the videos. The delegate stated that she would not view them then, but that she would accept [links] provided by the agent after the interview. However, the agent did not provide these links to the delegate. Given this, and noting the decision was made almost two months after the interview, the applicant has not satisfied me that the videos could not have been provided prior to the making of the decision. However, this new information is personal information about the applicant, there is nothing before me to suggest that the videos are fraudulent, and I am satisfied that, if accepted, they may have affected the consideration of the referred applicant's claims to have an adverse profile on return to Iraq. Having regard to these matters, and placing particular weight on the applicant's numerous attempts to provide these videos during the PV interview, I am also satisfied there are exceptional circumstances to justify considering this information.
9. I have obtained new information on the current security situation in Iraq, the current treatment of Sunni Muslims in Iraq, activities of Shia militias groups, and information relating to the applicant's ability to relocate to other areas of the country.¹ This new information

¹ Australian Department of Foreign Affairs and Trade (DFAT), 'DFAT Country Information Report – Iraq', 26 June 2017, CISED50AD4631; United Kingdom (UK) Home Office, 'Country Information and Guidance Iraq: Sunni (Arab) Muslims', 28 June 2017, OG6E7028831; US Department of State, 'Crime and Safety Report - Baghdad', 1 March 2017, CISED50AD3691; UNHCR, 'UNHCR Position on Returns to Iraq', 14 November 2016, CIS38A80122649; Musings on Iraq, '2017 Security In Iraq In Review Defeat Of The Islamic State On The Battlefield', 3 January 2018, CIS7B8394149; BBC, 'Baghdad suicide bombers kill dozens in attack on labourers', 15 January 2018, at <http://www.bbc.com/news/world-middle-east-42686677>; [UNHCR], 'Iraq: Relevant COI for Assessments on the Availability of an Internal Flight or Relocation Alternative (IFA/IRA)', 12 April 2017, UNAE5949; K Home Office, 'Country Policy and Information Note - Iraq: Return/Internal relocation', 1 September 2017, OG6E7028860; and UNHCR, 'UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Asylum-Seekers from Iraq', 31 May 2012, 3577.

includes 2017 reports from the Australian Department of Foreign Affairs and Trade (DFAT) and the United Kingdom (UK) Home Office which update the previous versions of these documents relied upon by the delegate. The delegate did not refer to information relating to individuals targeted by Shia militias in the past. This information is relevant to assessing the applicant's claims for past harm. The delegate found that the applicant did not face a real chance or risk of any harm in his home area and, as such, was not required to consider information relevant to relocation. I have reached a different view to that of the delegate and am required to consider information on this matter. I am satisfied there are exceptional circumstances to justify considering all of this new information.

Applicant's claims for protection

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

- The applicant and his family are from [City 1] in Basra, in the southern governorates of Iraq. He does not consider himself a committed Muslim and has not actively practiced his faith. However, he is from a known Sunni family, and his parents do actively practise their religion. He and his family suffered abuse from Shias in their community and from the Shia militias because they are Sunni. They faced daily discrimination and the applicant was called derogatory names. In 2007, his [brother] went to [Country 2] where he obtained protection and currently resides.
- Between 2003 and 2010 the applicant ran a [shop]. In the course of this work some customers asked him to [provide a particular item]. The applicant did so but conducted his business discreetly. Towards the end of 2009, some militia members came to his shop, screamed and swore at him and stated he was a 'filthy Sunni' and accused him of [providing inappropriate items] and contributing to the vice in the areas. The applicant moved his equipment to his home and hid. A few days later he received a threatening letter referring to his Sunni religion and his involvement in spreading immorality in the area. The applicant fled to [Country 1] in January 2010, where he registered with the United Nations High Commissioner for Refugees (UNHCR) and was granted temporary protection.
- In [Country 1] the applicant obtained employment with [Company 1] which has branches in [Country 1], Iraq and [Country 3]. Through his employment with this company he successfully [got jobs] with [another company] and worked for different [places]. In 2011 he [participated] in [a video] for [Company 2] which called for unity in Iraq and criticised the militia groups operating in that country. This [video] was not released at that time. In mid-2011 conflict arose in [Country 1] and Iraqis were being targeted based on sectarian affiliation. The applicant had limited funds and was unable to obtain a visa to enter another country, and so he returned to his family home in Iraq.
- The applicant maintained a low profile on return to Iraq for some time. In about December 2011 he was contacted by his former employer, [Company 1], who asked if he was interested in some [work] in Iraq. He agreed and began [working]. At the same time he obtained a part time job in [a] shop in Najaf and travelled between Najaf and his home in [City 1]. He initially had no issues until [2013], when the [video he participated in] in [Country 1] in 2011 [became known] in Iraq. [Sentence deleted].
- [Company 2] was hated by the Iraqi government and the Shia militias. [In] 2013, the applicant received a threatening letter for his role in the [video] which also referred to

his Sunni faith. He also received a call [a number of] days later in which he was threatened with physical harm. Fearing for his life, he went to [a town] on the border with [another country] where he lived with a friend. During this time, some neighbours told him that strange cars were going to his family home in [City 1], and people were asking about him.

- After his departure from Iraq, his family informed him that militia members came to the family home looking for him. His father told them that he was in Australia. The militias requested that his father attend the Shia mosque and that he disown the applicant and he did so in fear for his life.
 - The applicant's [other] brothers fled Iraq in 2014 and have obtained protection in [other countries]. His parents and [sisters] remain in the family home in [City 1]. They continue to be harassed due to their Sunni faith.
11. The applicant fears harm from the Shia militias due to his Sunni faith, his participation in the 2011 [video] and his association with [Company 2], which has been accused of having Ba'athist links. He also fears he will be harmed as an atheist or apostate as he is not a committed practising Muslim. The delegate considered that claims to fear harm due to the general security situation in Iraq arose on the material before her.

Refugee assessment

12. 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

13. 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.
14. I accept on the documentary and oral evidence that the applicant is a Sunni Muslim who was born in Basra in the southern governorates of Iraq. He has consistently stated, and I accept, that he resided with his family in [City 1] until 2010 when he moved to [Country 1]. I also accept on the documentary and oral evidence that he was registered as a refugee with the

UNHCR in [Country 1] and was granted protection on a temporary basis, with no right to return after leaving the country. I accept he returned to the family home in [City 1] Iraq in mid-2011. While spent some time residing in Najaf, he continued to maintain his primary residence with his family in [City 1]. He has siblings in [other countries] but there is nothing before me to suggest that the applicant has any right to join his siblings in these countries. The applicant's parents and sisters continue to reside in the family home in [City 1] in Basra, and I find this is the area to which he would return and is his home area for the purpose of assessing his protection claims.

15. The applicant has provided consistent and credible evidence regarding his religious beliefs. I accept that although he is a Sunni Muslim, he does not consider himself to be a committed to Islam. The applicant's evidence was that he and not been harmed for this reason in Iraq in the past, and I am not satisfied that he faces a real chance of harm if he returns to Basra now or in the reasonably foreseeable future for this reason. He has claimed, and I accept, that while he has not actively practiced his faith either in Iraq or here in Australia, his parents are practising Sunni Muslims, he is from a known Sunni family, he was known as a Sunni in the past and that he will be considered to be a Sunni Muslim on return to Iraq.
16. The applicant's evidence regarding his and his family's past experiences as Sunnis in Basra is broadly consistent with independent information that increasing sectarian tension in 2006 and 2007 resulted in incidents of harassment against Sunnis in majority Shia areas, including his home area of Basra.² I accept that the applicant and his family were subject to some harassment by members of their community and that the applicant was insulted and called names, including in the course of his employment as claimed.
17. The applicant gave a consistent and detailed account of his business [including] the reasons he established the business and the training he undertook to enable him to [operate the business]. I accept he [provided goods] as claimed and that he was occasionally asked to [provide a particular item] which allowed his customers to access [certain services]. Independent information is that there was a conservative political and social atmosphere in Basra and that Shi'ite militias targeted individuals and businesses engaged in, or who were perceived to be engaged in, immoral or anti-Islamic practices.³ I accept the applicant's claims that he was threatened by Shi'ite militias for purportedly contributing to immoral behaviour and that this was exacerbated by his Sunni faith. I accept he fled to [Country 1] to avoid harm. However, the applicant's own evidence was that he closed the business as instructed, that he did not continue to [provide] these [items], and when he returned to his family home in Iraq in 2011 he faced no harm from anyone, including Shia militias. I consider this strongly suggests that, at that time, Shi'ite militias had no further interest in harming that applicant and i am not satisfied that he faces a real chance of harm from Shia militias or anyone else on return to Iraq now or in the reasonably foreseeable future due to his previous work [or] for promoting immoral behaviour.
18. The applicant claims Shia militias will harm him due to his appearance in [a video] in [Country 1] in 2011 which opposed the activities of militias in Iraq. The applicant has provided consistent evidence to the Department, including on arrival in Australia, regarding this matter and on his work as [Occupation 1] in both [Country 1] and Iraq. At the PV interview, he provided a detailed and credible account, in a manner suggestive of lived experience, of how he obtained employment with [Company 1] in [Country 1] and on his work with [Company 2] in both

² UNHCR, "UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Asylum-Seekers from Iraq", 31 May 2012, 3577.

³ Ibid.

[Country 1] and in Iraq. He was able to explain: the process of [the work]; the location of the companies, including their head offices; how and on what basis he was paid; the nature of the work; and the types of [tasks] he was given and why he was chosen for those [tasks]. I also consider he was able to credibly explain how and why the company contacted him for further work when he moved from [Country 1] back to Iraq in 2011. Noting the passage of time since he left Iraq, and the overall credible nature of his evidence, I place no adverse weight on the fact he was unable to precisely recall the last time he actually [worked] for [Company 1]. I note that he plausibly stated that he was due to [work] with the company in February 2013 but that this did not occur due to security concerns.

19. The support letter provided to the IAA confirms that the applicant was employed by the company as claimed and that he worked in [the claimed line of work] in both [Country 1] and Iraq. As noted above, I have no reason to doubt the authenticity of this letter. I have also viewed the videos provided to the IAA. They appear to be professional productions and there is nothing before me to suggest they are fraudulent. Nor do I have any reason to doubt they were filmed in [Country 1] and Iraq as claimed. In respect of the 'anti-militia' [video], it visually appeared as described in detail by the applicant in his written and oral evidence. The applicant provided a credible account of why this video was not [known] in Iraq until 2013. Moreover, independent information confirms that the [Company 2] is known for its criticism of the Iraqi government and for highlighting aspects of the sectarian conflict in Iraq.⁴ The [company] has been accused of being a Ba'athist organisation and it was shut down by the Shia government for its alleged bias towards Sunnis in 2013.⁵
20. On the totality of the evidence before me, I accept that the applicant worked as [Occupation 1] in [Country 1] and Iraq and that he undertook work for [Company 2], which has been considered as a Sunni and Ba'athist organisation. I accept that he [did some work] and that had a profile as [Occupation 1] in his community and in Iraq. I accept that the applicant appeared in an 'anti-militia' [video] promoting unity in Iraq which [became known] in Iraq in 2013. I accept as plausible that this came to the attention of Shia militias.
21. The applicant claimed that [in] 2013 he received threats from Shia militias after the [video became known] in Iraq. The applicant has been consistent in his evidence on this matter since his arrival in Australia and his presentation at the PV interview appeared genuine. He has a police report to support his claims. I have some concerns with this document given that it states that the unnamed militia group fired shots in the direction of the applicant's house. The applicant did not state that the house was shot at on arrival in Australia, in his written statement accompanying the PV application or during the PV interview. I therefore give this document little weight in my assessment. However, independent information supports that Shia militias targeted person's political and religious rivals and specifically killed persons associated with [Company 2].⁶ Having regard to this information, and to the fact that the applicant has otherwise been consistent and credible in his evidence, I accept that Shia militias sent him a threatening letter and made a threatening phone call to the applicant as he claimed, and that this was due to his Sunni religion and his political opinion, based on his appearance in the 'anti-militia' [video] and his association with [Company 2], which as noted was considered to have Sunni or Ba'athist leanings. The applicant had employment with [a] company in Najaf, however, as independent information supports that the Shia militias had

⁴ [Source deleted].

⁵ [Source deleted].

⁶ UNHCR, "UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Asylum-Seekers from Iraq", 31 May 2012, 3577; Human Rights Watch, 'Iraq: Possible War Crimes by Shia Militia', 31 January 2016, CX6A26A6E16207; Washington Post, 'Sectarian violence besets key province in Iraq after an Islamic State attack', 18 January 2016, CX6A26A6E16208; [Sentence deleted].

significant networks and training camps in Najaf,⁷ I consider it plausible that he opted to travel to [another town], rather than Najaf after he received the threats. Having regard to independent information on the nature of Shia militia activity, I also consider plausible, and accept, his claims that unknown cars continued to drive by his home and militia members continued to search for him in the period immediately following his departure from [City 1].

22. The applicant contended that Shia militias continued to visit his family home in [City 1] after his departure from Iraq. He provided a police report dated [in] 2014 stating that his father reported threats by unknown militias. I also have some concerns with this document given that it refers to the family home being raided by [a number of] men, which was not mentioned at any stage by the applicant in his evidence to the Department. I therefore give this document little weight in my assessment of the applicant's claims. Nonetheless, I have noted above that the applicant has otherwise been consistent and that his oral evidence was presented in a manner suggestive of lived experience. I therefore accept as plausible that militia members did continue to seek the applicant at his family home for some time after he left [City 1]. However, on the applicant's own evidence his father advised them that he had moved to Australia and in these circumstances I am not satisfied that they continued to approach the family home after discovering the applicant was in Australia. The applicant's evidence was that he remains in touch with his family, and for this reason, I do not accept that his father attended a Shia Mosque and publically disowned the applicant. I have accepted that the applicant was targeted in the past by Shia militias due to his religion and political opinion and I must consider whether there is a real chance he would be harmed on return to Iraq in the future. Information is that Shia militias continue to operate throughout Iraq, including in the southern governorates, where they have extensive networks and training facilities.⁸ The Asaib Ahl al-Haq (AAH) is the most powerful militia in Najaf, Kerbala, Muthanna and Basra⁹ and the Shia militias, including the AAH, have formed the Popular Mobilisation Forces (PMF) and have been fighting the Sunni insurgency alongside the Iraqi Security Forces (ISF).¹⁰ The PMF has an estimated 100,000 to 120,000 members, with a significant number in Baghdad.¹¹ Although these groups work alongside the ISF, many are backed by Iran, sharing the ideology of the Ayatollah Khamenei and retaining an anti-Sunni outlook and are known to operate somewhat independently of ISF command.¹²
23. In November 2016, the UNHCR reported that there has been a resurgence in targeted violence against Sunni Arabs and that Sunnis have faced harassment, threats, extortion, kidnappings, arbitrary arrests, evictions and killings at the hands of the PMF and ISF.¹³ Many Sunni IDPs and returnees have been abused by the ISF and associated forces due to their actual or perceived support or collaboration with ISIS, though this is largely in central Iraq and areas formerly

⁷ UNHCR, "UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Asylum-Seekers from Iraq", 31 May 2012, 3577; and ORSAM, "A New Controversial Actor in Post-ISIS Iraq: Al-Hashd Al-Shaabi (The Popular Mobilization Forces)", 1 May 2015, CISEC96CF13198.

⁸ DFAT, "DFAT Country Information Report-Iraq", 26 June 2017, CISED50AD4631; UK Home Office, "Country Policy and Information Note - Iraq: Sunni (Arab) Muslims", 28 June 2017, OG6E7028831; UNHCR, "UNHCR Position on Returns to Iraq", 14 November, 2016, CIS38A80122649; and ORSAM, "A New Controversial Actor in Post-ISIS Iraq: Al-Hashd Al-Shaabi (The Popular Mobilization Forces)", 1 May 2015, CISEC96CF13198.

⁹ ORSAM, "A New Controversial Actor in Post-ISIS Iraq: Al-Hashd Al-Shaabi (The Popular Mobilization Forces)", 1 May 2015, CISEC96CF13198.

¹⁰ DFAT, "DFAT Country Information Report-Iraq", 26 June 2017, CISED50AD4631; UK Home Office, "Country Policy and Information Note - Iraq: Sunni (Arab) Muslims", 28 June 2017, OG6E7028831; and UNHCR, "UNHCR Position on Returns to Iraq", 14 November, 2016, CIS38A80122649.

¹¹ DFAT, "DFAT Country Information Report-Iraq", 26 June 2017, CISED50AD4631.

¹² Ibid; and UK Home Office, "Country Policy and Information Note - Iraq: Sunni (Arab) Muslims", 28 June 2017, OG6E7028831.

¹³ UNHCR, "UNHCR Position on Returns to Iraq", UN High Commissioner for Refugees (UNHCR), 14 November 2016, CIS38A80122649; and DFAT, "DFAT Country Information Report-Iraq", 26 June 2017, CISED50AD4631.

under control of ISIL.¹⁴ DFAT notes that the actual or perceived failure of the Government to respond to such incidents has exacerbated the already heightened tensions between the Sunni and Shia communities.¹⁵ More broadly, and consistently with the UNHCR, DFAT stated in June 2017 that discrimination and violence against Sunnis in Iraq is increasing.¹⁶ DFAT does not specifically identify provinces in which Sunnis may face such treatment; rather its risk assessment appears to be based more generally on whether an individual is in a Sunni or a non-Sunni area. Information is that although there are Sunni communities in Basra, it remains a majority Shia area and in DFAT terms, is a non-Sunni area.¹⁷ Overall DFAT states that tolerance for Sunnis in non-Sunni areas has declined, and they assess that Sunnis in non-Sunni areas, including in Shia areas of Baghdad and in the south of Iraq, face high levels of discrimination and violence.

24. In its June 2017 report on Sunni Muslims in Iraq, the UK Home Office notes that while Sunnis have been marginalised by the Shia majority, the government has attempted reconciliation with the Sunni population and Sunnis are represented in society and in government.¹⁸ They assess that the treatment of Sunnis by the state is not sufficiently serious by its nature or repetition that it reaches persecutory treatment. In terms of non-state actors, the UK Home Office has observed that there are reports that Sunnis have experienced human rights abuses at the hands of Shia militias or unknown perpetrators including in the southern governorates of Babil, Kerbala, Najaf, Missan, Muthanna, Qaddisiya, Thi-Qar, Wassit and the applicant's home area of Basra.¹⁹ The UK Home Office cites several incidents of harm against Sunnis in Basra in 2014 and 2015, though information suggests that these later attacks were against leaders within the Sunni community, including Sunni religious leaders, academics and physicians.²⁰ The UK Home Office assesses that these incidents do not represent a consistent or systematic risk to Sunnis in the south. Overall they assess that Sunnis do not face a real risk of persecution or serious harm in the southern governorates. I note that the report does not cite recent incidents of harm against Sunnis in Basra. However, overall the UK Home Office still advises that a Sunni may be able to demonstrate a real risk of persecution or serious harm in areas where there is a Shia militia presence, especially in Baghdad and the central governorates, depending on their profile including their tribe, family, origins or political links.²¹
25. The DFAT and the UK Home office are authoritative sources of information and these reports are the most recent reports before me regarding the situation for Sunni Muslims in Iraq. I consider that it is possible to reconcile the apparently different assessments of DFAT and the UK Home Office on the risk of harm to Sunnis. DFAT offers an overall assessment of the level of violence faced by Sunnis in Shia areas of the county, while the UK Home Office offers a more specific assessment on the risk from Shia militias including in the central and southern governorates. As noted, the UK Home Office recognises there may be a risk to Sunnis from Shia militias depending on the circumstances of the individual. On the information before me, I find that some Sunnis, depending on their profile, including their political links, family connections, profession or origin, may face a real chance of harm from Shia militias in the southern governorates of Iraq, including the applicant's home area of Basra.

¹⁴ UNHCR, "UNHCR Position on Returns to Iraq", UN High Commissioner for Refugees (UNHCR), 14 November 2016, CIS38A80122649.

¹⁵ DFAT, "DFAT Country Information Report-Iraq", 26 June 2017, CISED50AD4631.

¹⁶ Ibid.

¹⁷ UK Home Office, "Country Information and Guidance Iraq: Security situation in Baghdad, the south and the Kurdistan Region of Iraq (KRI)", 12 August 2016, OGD7C848D6; and "Basrah Governorate Profile", NGO Coordination Committee for Iraq, 1 December 2015, CISEC96CF14913,

¹⁸ UK Home Office, "Country Information and Guidance Iraq: Sunni (Arab) Muslims", 28 June 2017, OG6E7028831.

¹⁹ Ibid.

²⁰ Ibid.

²¹ Ibid.

26. In this case I have accepted that the applicant was threatened by Shia militias in the past on the basis of his Sunni religion and a political opinion derived from his appearance in an 'anti-militia' [video] and association with [Company 2] which [became known] in Iraq in 2013. The applicant has claimed, and I accept on the evidence before me, that this [video] remains publically [available]. I note that there is nothing in the evidence before me to suggest that the applicant posted this video for the purpose of strengthening his claims for protection. I accept that the continued presence of this [video] exacerbates his pre-existing profile. However, I consider that he would have an adverse profile with the Shia militias on return to Iraq irrespective of the availability of this [video]. Information cited above is that the same Shia militias who were operating in Basra in 2013 continue to maintain a presence throughout the southern and central governorates of Iraq including as part of the PMF. Information also supports that while [Company 2] appears to have had its operating licence reinstated, [others] who work for this network continue to be targeted by Shia militias.²² While this is largely occurring in central Iraq, noting the continued presence and the network of the militias in the southern governorates, I cannot discount as remote the possibility that they would target those associated with this network in the south of Iraq. This is particularly so in the applicant's circumstances. The applicant is a Sunni Muslim from a known Sunni family, returning to the area. He is known in the community for his [work] and has a pre-existing adverse profile with the Shia militias due to his appearance in the 'anti-militia' [video] and his association with [Company 2]. In these circumstances I accept that his return to Iraq would become known to the Shia militias and that he would continue to have an adverse profile with them on return to Basra.
27. Having regard to current country information above, including the information regarding the current activities of Shia militia, and considering his profile cumulatively, I am satisfied the applicant faces a real chance of serious harm, in that he will be killed or otherwise seriously injured by Shia militias due to his Sunni faith and political opinion, if he returns to his home area of [City 1] in Basra, now or in the reasonably foreseeable future. Noting that the anti-militia [video] [is known] throughout Iraq and that independent information is that the Shia militias have extensive networks throughout the southern governorates, I also find that he faces a real chance of harm for the same reasons throughout the southern governorates if he returns to these areas now or in the reasonably foreseeable future.
28. However, I must consider whether there is a real chance that the applicant will be harmed in all areas of Iraq including central, northern and western Iraq. In terms of central Iraq, information is that both Shia and Sunni armed insurgents continue to operate in through central Iraq.²³ Relevantly, information cited above is that that Shia militias have targeted reporters and others associated with [Company 2] in central Iraq. Moreover, information is that sectarian violence remains an issue in central Iraq, particularly in Baghdad. Baghdad Governorate was consistently the worst affected governorate in terms of casualty figures every month in 2014, 2015 and 2016.²⁴ In 2016 the UK Home Office noted that Sunni armed insurgents conducted attacks against the ISF and government officials and employed indiscriminate car bombs or improvised explosive devices (IEDs) in crowded areas in order

²² Journal of Middle Eastern Politics and Policy (United States), 'Inside the propaganda war for Mosul', 5 February 2017 CXC9040662296; Human Rights Watch, 'Iraq: Possible War Crimes by Shia Militia', 31 January 2016, CX6A26A6E16207; Washington Post, 'Sectarian violence besets key province in Iraq after an Islamic State attack', 18 January 2016, CX6A26A6E16208; [Sentence deleted].

²³ DFAT, "DFAT Country Information Report-Iraq", 26 June 2017, CISED50AD4631; UNHCR, "UNHCR Position on Returns to Iraq", 14 November 2016, CIS38A80122649.

²⁴ UNHCR, "UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Asylum-Seekers from Iraq", 31 May 2012, 3577.

to cause civilian casualties.²⁵ It also notes attacks on Sunni neighbourhoods in Baghdad by the ISF and associated forces. A recent report on the security situation in Baghdad notes a decline in violent incidents between January and December 2017 with an apparent reduction in ISIL activity.²⁶ However, it is unclear whether this is indicative of a long term change in the security situation in Baghdad. There were two suicide bomb attacks in central Baghdad in January 2018 in which at least 38 people were killed and hundreds more were injured²⁷ and DFAT has advised that the security situation in Iraq is fragile and susceptible to rapid and serious deterioration.²⁸ As noted above, the UNHCR and DFAT have noted resurgence in violence and intolerance towards Sunnis, including in particular Sunni IDPs and returnees. DFAT currently assesses that Sunnis in Shia areas, including Baghdad, face a high risk of discrimination and violence. The UK Home Office considers that a Sunni may be able to demonstrate a real risk of persecution or serious harm in Baghdad and areas in which the Shia militias are operating, depending on their profile.

29. In this case, the applicant has a past profile with the Shia militias as a result of appearing in the 'anti-militia' [video], which [was known] throughout Iraq. He is a Sunni male returning to the country, and has no familial connections in Baghdad or central Iraq. Having regard to these matters cumulatively, and to the independent information on the security situation in Baghdad and central Iraq, the treatment of Sunni IDPs and returnees, and noting that Shia militias continue to target those associated with [Company 2] in central Iraq, I consider there is a small but nonetheless real chance that the applicant will face serious harm, in that he will be killed or seriously injured, in these areas if he returns to Iraq now or in the reasonably foreseeable future due to his Sunni faith and political opinion.
30. In relation to northern (with the exception of the Kurdish Region of Iraq) and western Iraq, DFAT reported that ISIS remains active and in control in some areas of the west and north of the country²⁹ and the reports before me suggest that ISIL commits grave and widespread human rights abuses against the population in these areas.³⁰ Significant numbers of civilians have fled from these areas due to the level of violence and Sunni extremist groups have attacked Sunni civilians who oppose them.³¹ DFAT has assessed that in the areas in which ISIL are in control or remain active, Sunnis who refuse to support ISIL face a high risk of discrimination and violence. DFAT does not expressly state that all areas of the west and north of the country is under the control of ISIS, however, as stated above it does note that the overall the security situation in Iraq is fragile and susceptible to rapid and serious deterioration with large scale conflict in some areas. It is possible that some areas may be safe for Sunnis such as the applicant, but given the present volatility, and noting that he has stated he is a non-practising Sunni, 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 due to his Sunni faith and imputed political opinion.
31. However, in terms of the three provinces which constitute Iraqi Kurdistan in the north of Iraq, information is that these areas have experienced lower levels of insecurity compared to other

²⁵ UK Home Office, "Country Information and Guidance Iraq: Sunni (Arab) Muslims", 28 June 2017, OG6E7028831.

²⁶ Musings on Iraq, "2017 Security In Iraq In Review Defeat Of The Islamic State On The Battlefield", 3 January 2018, CIS7B8394149.

²⁷ BBC, 'Baghdad suicide bombers kill dozens in attack on labourers', 15, January 2018, at <http://www.bbc.com/news/world-middle-east-42686677>.

²⁸ DFAT, "DFAT Country Information Report-Iraq", 26 June 2017, CISED50AD4631.

²⁹ Ibid.

³⁰ UNHCR, "UNHCR Position on Returns to Iraq", 14 November 2016, CIS38A80122649.

³¹ DFAT, "DFAT Country Information Report-Iraq", 26 June 2017, CISED50AD4631; and UNHCR, "UNHCR Position on Returns to Iraq", 14 November 2016, CIS38A80122649.

areas of Iraq.³² The referred information does not indicate that there is a Shia or Sunni militia presence in the Kurdistan region and nor does it suggest that Sunnis are at risk of harm due to their religion in this area, indeed the majority of Kurds are Sunni.³³ On the information before me, including the applicant's particular claims and circumstances, I am not satisfied that he has a real chance of serious harm for reasons of the general security situation, his religion and/or his imputed political opinion, including for his appearance in the 'anti-militia' [video] and his association with [Company 2] if he returns to the Kurdistan region of Iraq now or in the reasonably foreseeable future.

32. I am not satisfied on the evidence before me that the applicant faces a real chance of serious harm throughout Iraq. The applicant therefore does not have a 'well-founded fear of persecution' within the meaning of s.5J of the Act.

Refugee: conclusion

33. 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

34. 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

35. 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.

36. I have found above that the applicant does not face a real chance of harm in the Kurdistan region of Iraq due. As 'real chance' and 'real risk' involve the same standard,³⁴ I similarly find that he does not have a real risk of significant harm in this area for the purpose of s.36(2)(aa) of the Act.

37. However, having regard to independent country information and to the applicant's particular profile and circumstances considered cumulatively, I have found that he faces a real chance of serious harm in his home area of [City 1] in Basra, throughout the southern governorates of Iraq, and in the north (except in the Kurdistan Region of Iraq), west and central Iraq, in that he

³² DFAT, "DFAT Country Information Report-Iraq", 26 June 2017, CISED50AD4631.

³³ Ibid.

³⁴ *MIAC v SZQRB* (2013) 210 FCR 505.

will be killed or seriously harmed, due to his Sunni religion and his imputed political opinion. As 'real chance' and real risk' involve the same standard, for the reasons set out above, I find that there is a real risk the applicant will suffer such harm due to his Sunni faith and political opinion derived from his appearance in an 'anti-militia' [video] and on his association with [Company 2], on return to these areas of Iraq for the purpose of s.36(2)(aa) of the Act. I also find that the harm he faces amounts to significant harm for the purpose of s.36(2A) of the Act.

Qualifications to the real risk threshold

38. 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.

Protection from an authority of the country

39. DFAT has recently reported that the ability of the Iraqi government to provide protection has been severely tested by ongoing efforts to defeat ISIL.³⁵ In disputed areas and government controlled areas, including the southern governorates, the ISF has faced significant capacity constraints, badly maintained equipment, poor logistical support, corruption and fragmented command which is influenced by political and sectarian allegiances. DFAT assesses that the Iraqi Police Service and the Federal Police also face capacity constraints and are often unable to prevent attacks against civilians by ISIL and other armed groups.³⁶ As noted above, Shia militias in the PMF are now working with the ISF and DFAT has noted that there is a belief that the Iraq government has failed to hold these groups to account for human rights abuses they have committed. Information also supports that there are significant capacity constraints on the institutional and legal mechanisms for the protection of human rights in Iraq.³⁷ Having regard to this information, I am not satisfied that the applicant could obtain protection from Iraqi authorities such that there would not be a real risk that he will suffer significant harm on return to Iraq.

Risk faced by the population generally

40. As the risk faced by the applicant relates to his Sunni religion and his particular political profile, I am not satisfied that the risk is one faced by the population generally, but rather I find it is one faced by the applicant personally.

Relocation

41. I have found above that the applicant does not have a real risk of significant harm in the Kurdistan region of Iraq.

³⁵ DFAT, "Country Information Report on Iraq", 26 June 2017, CISED50AD4631.

³⁶ Ibid.

³⁷ Ibid.

42. DFAT and the UK Home Office have advised that the security situation in the Kurdistan Region of Iraq is more stable than other areas of Iraq.³⁸ However, DFAT notes that a lack of Kurdish language skills is a barrier to relocation to the area and overall they assess that internal relocation to the Kurdish Region is particularly difficult for Arab Iraqis due to official and societal discrimination. The UNHCR has advised that since the launch of the Mosul offensive on 17 October 2016, residency requirements into the Kurdish Region have been tightened for Arabs from all areas of origin. Relevantly information from DFAT, the UNHCR and the UK Home Office is that entry and residence into this area is at the discretion of the Kurdish Regional Government and requires local sponsorship.³⁹ Moreover, information is that any IDPs who are able to access the Kurdish Region have difficulty obtaining accommodation and employment due to the current financial crisis in that region, as well as due to patronage and nepotism which significantly influences employment opportunities making it difficult to internally relocate to the Kurdish region without existing networks.⁴⁰ The UNHCR has also advised that local authorities throughout Iraq are reportedly increasingly encouraging, pressuring or forcing IDPs to return to their places of origin due to the strain placed on local communities supporting IDP populations.⁴¹
43. On the evidence before me I am not satisfied that the applicant will be able to access the Kurdish region of Iraq. I have placed weight on information that an absence of Kurdish language skills are a barrier to relocation, that pre-existing networks are needed to settle in the region and on information that access and residency requires local sponsorship. In this case, there is nothing before me to suggest that the applicant speaks Kurdish, or that he has any pre-existing networks in this region, and I am not satisfied that the applicant has or could obtain the required sponsorship to enter and reside in this area. I have also placed weight on information from DFAT and the UNHCR that relocation to the Kurdish Region of Iraq is particularly difficult for Arab Iraqis, with access being tightened for Arabs from all areas of origin. Having regard to the evidence before me, I am not satisfied that in the applicant's particular circumstances, it is reasonable for him to relocate to the Kurdish Region of Iraq.
44. I note that I am also not satisfied that it is reasonable for the applicant to relocate to any other area of Iraq. The UNHCR and DFAT have both advised that the security situation remains volatile and unpredictable due to the ongoing military conflict in central, northern and western Iraq and the UNHCR urges States not to return Iraqis to these areas⁴² and, in any event, I have found that he faces a real risk of significant harm in these areas as well as his home area of Basra and throughout the southern governorates of Iraq.
45. On the evidence before me I am not satisfied that it would be reasonable for the applicant to relocate to an area of Iraq where there would not be a real risk that he will suffer significant harm.

³⁸ DFAT, "Country Information Report on Iraq", 26 June 2017, CISED50AD4631; and UK Home Office, "Country Policy and Information Note - Iraq: Return/Internal relocation", 1 September 2017, OG6E7028860.

³⁹ DFAT, "Country Information Report on Iraq", 26 June 2017, CISED50AD4631; UK Home Office, "Country Policy and Information Note - Iraq: Return/Internal relocation", 01 September 2017, OG6E7028860; and UNHCR, "Iraq: Relevant COI for Assessments on the Availability of an Internal Flight or Relocation Alternative (IFA/IRA)", 12 April 2017, UNAE5949.

⁴⁰ UK Home Office, "Country Policy and Information Note - Iraq: Return/Internal relocation", 1 September 2017, OG6E7028860; and DFAT, "Country Information Report on Iraq", 26 June 2017, CISED50AD4631.

⁴¹ UNHCR, "UNHCR Position on Returns to Iraq", 14 November 2016, CIS38A80122649.

⁴² UK Home Office, "Country Policy and Information Note - Iraq: Return/Internal relocation", 1 September 2017, OG6E7028860; DFAT, "Country Information Report on Iraq", 26 June 2017, CISED50AD4631; and UNHCR, "UNHCR Position on Returns to Iraq", 14 November 2016, CIS38A80122649.

Complementary protection: conclusion

46. 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.

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.