



Australian Government
Immigration Assessment Authority

Decision and Reasons

Referred application

IRAQ
IAA reference: IAA17/02632

Date and time of decision: 10 August 2017 14:08:00
Ailsa Wilson, 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 Shia Arab from Iraq. [In] October 2016 he lodged an application for a temporary protection visa (TPV).
2. [In] May 2017 a delegate of the Minister for Immigration and Border Protection refused to grant the visa.
3. The delegate accepted the applicant was a member of the Ba'ath Party; that he was [office bearer of an Organisation 1]; and that he ran in the 2010 Iraqi parliamentary election as a candidate for the [Political Party 1]. The delegate did not accept however, that there was a real chance of the applicant being harmed in Baghdad by the Islamic State of Iraq and the Levant (ISIL) due to his Shia religion.

Information before the IAA

4. I have had regard to the material referred by the Secretary under s.473CB of the *Migration Act 1958* (the Act).
5. The applicant's representative provided a submission to the IAA on 22 May 2017. The submission restates the applicant's claims as set out in his TPV application and TPV interview which are already before me. The submission also addresses the delegate's decision and issues arising and to that extent may be referred to as argument rather than information which I have noted.
6. I have obtained new information regarding Ba'ath Party membership, civil society organisations, Shias, effective protection, relocation and the security situation in Iraq from the most recent Department of Foreign Affairs and Trade (DFAT) country report for Iraq which was published on 26 June 2017.¹ This report was published after the delegate's decision and was prepared specifically for protection status determination purposes. The delegate relied on the 13 February 2015 DFAT report for Iraq which has been superseded by the current report. I have also obtained new information on relocation from the "UNHCR Iraq: Relevant COI for Assessments on the Availability of an Internal Flight or Relocation Alternative (IFA/IRA)", dated 12 April 2017.² The delegate did not consider the issue of relocation. I am satisfied there are exceptional circumstances to justify considering the new information.

Applicant's claims for protection

7. The applicant's claims can be summarised as follows:
 - He is a Shia Arab who was born and lived in Baghdad during his life in Iraq.
 - He was employed in [various roles] in various Iraqi government facilities from 1985 until 1992. He was forced to join the Baath party to do this work.

¹ Department of Foreign Affairs and Trade (DFAT), "Country Information Report for Iraq 2017", 26 June 2017, CISEDB50AD4631.

² UN High Commissioner for Refugees, "Iraq: Relevant COI for Assessments on the Availability of an Internal Flight or Relocation Alternative (IFA/IRA)", 12 April 2017, UNAEAA5949.

- From 2008 until 2010 he was [office bearer of the Organisation 1]. Shia militias threatened the applicant and asked for money to fight the US forces present in the country. The applicant ignored these threats.
- In the 2010 Iraqi parliamentary election he ran as a candidate for [Political Party 1], also known as [name]. Although he lost the election Shia militias threatened him. He fled Iraq in mid-2013 and spent around three years in the [Country 1].
- He cannot return to Iraq because of his previous political involvement with a secular political party. Shia militias, such as Jaysh al Mahdi (JAM), will target him.

Factual findings

Nationality

8. The applicant provided copies of his Iraqi citizenship certificate, identity card and various other documents in support of his claimed identity. I accept that the applicant's name is as claimed and that he is a national of Iraq. Although the applicant spent the period mid-2010 to mid-2013 in the [Country 1], there is no evidence before me to suggest that he has a right to enter and reside in any other country apart from Iraq. I accept that the applicant is a Shia Muslim of Arab ethnicity as claimed.
9. On the basis of his documentary and oral evidence I accept the applicant is separated from his first wife, with whom he has [number] children, but remains married to his second wife, with whom he has [number of] children. I accept he was born and lived in Baghdad, apart from the three years he spent in [Country 1], and that Iraq is his receiving country for the purpose of this review.

Employment in hospitality

10. The applicant claimed [for a number of years] he worked in a number of [roles] across various Iraqi government facilities, including [prominent places]. It was compulsory for him to be a member of the Ba'ath party in this role. Because of his position in [government facilities] he was exempt from compulsory military service. After the Shia uprising in the South he was subjected to security checking because he was a Shia. Although he was cleared by the checking process he decided to resign from the position in about 1992.
11. He claimed his second wife, who he married in [year], is a [prominent figure]. [Details of work deleted]. Following Saddam's fall militia started threatening intellectuals and the educated elite. [Someone doing similar work to his wife] and lived near his second wife's family in Ghazalia, was killed.
12. DFAT reports that under the former Ba'ath Party regime, membership of the Ba'ath Party was a precondition for employment with the Government.³
13. In 2012 UNHCR indicated after years of reported persistent attacks against artists, actors and singers for their (perceived) engagement in "un-Islamic" or "Western" activities, Iraq's cultural

³ DFAT, "Country Information Report for Iraq 2017", 26 June 2017, CISED50AD4631, paragraph 3.51.

scene is said to be flourishing again. Artists report restrictions resulting from intolerance and strict interpretations of Islamic values, rather than by direct attacks.⁴

14. On the basis of the applicant's constant evidence and supporting documentation I accept that he worked in [government agencies] between 1985 and 1992. As it is consistent with the above country information, I accept it was compulsory for him to be a member of the Ba'ath party. I note the applicant does not personally claim to have suffered any adverse treatment as a result of his Ba'ath Party membership.
15. On the basis of the applicant's consistent evidence I accept his second wife is [a prominent figure]. On the basis of the country information, I accept as plausible that a [person] who wrote about Saddam was killed after his regime fell. I note the applicant does not claim his second wife personally suffered any difficulties as a result of her [work] and his evidence is that he and his second wife continued to host successful [events] that important persons attended, without adverse consequences. His evidence was also that his second wife's family moved from the Sunni dominated Ghazalia neighbourhood in Baghdad to a safer Shia neighbourhood in Baghdad.

[Office bearer of Organisation 1]

16. The applicant claimed he and his second wife were introduced to [Mr A] who formed an association for human rights. [Mr A] introduced them to [Mr B] who was setting up a company in Iraq. [Mr B] asked the applicant to help him with some work for his company. [Mr B's] company received threats because it was providing [services] to [western] forces. [Mr A], and some others employed in [Mr A's] non-government organisation (NGO), were killed so the applicant resigned from [Mr A's] human rights organisation. The death of [Mr A] and other colleagues [made] the applicant think of doing [something].
17. The applicant claimed from 2008 until 2010 he was [Office bearer of the Organisation 1]. This organisation he established [details deleted]. [Details deleted]. This work drew the attention of a number of Shia militias, who threatened the applicant and asked for money to fight the US forces present in the country. The applicant ignored these threats.
18. In 2012 UNHCR reported that during the height of violence in 2006 and 2007, various armed groups targeted NGO employees for assassination, often on the basis of their (perceived) political or sectarian profile. With the improved security situation, such attacks have become less frequent. In 2010, attacks were reported to be "rare", but in 2011 media reports again noted the killing of several NGO workers and rights activists in what appeared to be targeted attacks. In addition, some NGO workers and activists reportedly keep their work hidden from neighbours, friends and even family due to fears of retaliation from armed groups, who suspect them to be affiliated with the Iraqi authorities or the international community, in particular the US. NGO workers and activists investigating, documenting or otherwise engaging in politically, religiously or socially sensitive issues - such as corruption, human rights abuses, or religious taboos - appear to be particularly at risk. According to reports, the Iraqi authorities have not taken sufficient action to protect NGOs from being targeted.⁵ UNHCR also assessed civilians (formerly) employed or otherwise affiliated with the former MNF-I/USF-I or foreign

⁴ UN High Commissioner for Refugees, "UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Asylum-Seekers from Iraq", 31 May 2012, 3577, p.32.

⁵ UN High Commissioner for Refugees, "UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Asylum-Seekers from Iraq", 31 May 2012, 3577, p.24.

governments, NGOs or international companies, as well as their families, are at risk of being targeted by non-state actors for their (imputed) political opinion.⁶

19. The applicant's claims relating to his involvement with [Mr A]'s association and with [Mr B]'s company lacked depth of detail compared to his claims concerning his involvement with [Organisation 1] for Human Rights and his candidacy for the 2010 Iraqi parliamentary election. However, given that these claims are broadly consistent with country information, I am prepared to accept the applicant may have been briefly involved with both [Mr A]'s human rights organisation and [Mr B]'s company providing [services] to [western] forces. On the basis of the country information, I am prepared to accept [Mr B]'s company received threats because it was providing [services] to [western] forces and that [Mr A] and a number of colleagues were killed in the course of their work for [Mr A]'s NGO. I note the applicant worked for [Mr A] and [Mr B] for only a short period and resigned after [Mr A]'s death. The applicant himself was not threatened, nor did he appear to suffer any adverse consequences as a result of his association with [Mr A]'s organisation or [Mr B]'s business.
20. On the basis of the applicant's comprehensive and consistent evidence and the above country information, I accept he established and operated between 2008 and 2010 an NGO [in] Baghdad. I also accept as plausible that during this period he was threatened by Shia militia and asked for money to fight the US forces. I note the applicant does not claim to have suffered any consequences as a result of ignoring the militias' threats and continuing in his mission to assist the needy, and in any case he ceased to run the organisation in 2010.

2010 Iraqi parliamentary election candidacy

21. The applicant claimed in the 2010 Iraqi parliamentary election he ran as a candidate for [Mr C]'s [Political Party 1], also known as [name]. Although he lost the election, Shia militias threatened him. He claims he cannot return to Iraq because of his previous political involvement with a secular political party. Shia militias, such as Jaysh al Mahdi (JAM), will target him.
22. He claimed the Shia militias fraudulently manipulated the election results in their favour. As a result, [Mr C] raised objections about electoral irregularities. [Mr C] was followed to his house and attacked.
23. He claimed a neighbour who admired his NGO work and intentions, and who had previously worked in Saddam's military intelligence, and now held a high profile position in a Shia militia, told him to leave Iraq as his life was in danger as some militia were searching for him. The applicant and his second wife left the house at once and fled Iraq, after his first wife refused to join them. He said Government supported militias, such as Hizb al Dawa, JAM/Al Sadr movement and Badr Brigade forces, threatened him because he is Shia and the head of the political party he was standing for was Sunni. He felt he was being pursued not only by the Sunnis but also by the Shia.
24. In 2012 UNHCR reported members of political parties across the political spectrum continued to be targeted by armed groups opposed to the Iraqi Government or the political process, or as a result of political rivalries. Targeted attacks on party officials and party offices intensified in the run-up to the March 2010 Council of Representatives (CoR) elections, when a number of candidates were killed, and continued throughout 2010 and 2011, and into 2012. The

⁶ UN High Commissioner for Refugees, "UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Asylum-Seekers from Iraq", 31 May 2012, 3577, p.16.

perpetrators' motives appeared to be multidimensional. Armed Shi'ite and Sunni groups are both thought to be responsible for targeted attacks on Shi'ite party representatives and offices. Competing Shi'ite armed groups, which in the past were involved in violent clashes against each other, are thought to be responsible for the targeting of rivals. Conversely, armed Sunni groups targeted Shi'ite party representatives on sectarian and political grounds, considering them as "infidels" or "Iranian agents". Armed Sunni groups have repeatedly pledged to kill those Sunnis that take part in the political process, labelling them as "traitors" and "collaborators". They are therefore blamed for the assassination of a number of Sunni and secular politicians, including those belonging to the Iraqi Islamic Party and the cross-sectarian Iraqiyya coalition, which garnered wide Sunni support.⁷

25. The applicant has given consistent and detailed evidence and supporting documentation in relation to this matter, I accept that in 2010 he unsuccessfully ran for election as a candidate for [Political Party 1]. On the basis of the country information, I also accept as plausible that Shia militias may have disapproved of him (a Shia) participating in a political list headed by a secular Sunni and have issued threats to harm him in the months after the 2010 election.

[Country 1]

26. The applicant said after spending three months in [Country 2], he and his family travelled to [Country 1] and sought asylum there. As his asylum application was nearing what he thought was a successful conclusion, his wife's father became ill and her mother died. His wife became depressed and wished to attend the funeral. The applicant believed the [Country 1] authorities gave his wife permission to leave and return to [Country 1]. However the [Country 1] immigration authorities subsequently told him his wife could not return. As his wife and children were no longer with him he withdrew his asylum application. He travelled via [Country 3] to Erbil in Kurdistan in late April 2013. He was sponsored by his wife's [relative] and remained in Erbil a few weeks until mid-June 2013. His wife and children have since moved to [Country 4]. It was difficult for his wife to continue to stay in Erbil, she was unable to work and had no income.
27. The delegate asked the applicant whether he could have stayed longer in Erbil in 2013. The applicant said the situation in Kurdistan is different. Most of the inhabitants are Sunni so for him as a Shia to remain there and work there is difficult. He tried his best to but it is close to impossible.
28. On the basis of his evidence and supporting documentation, I accept the applicant, together with his second wife and two children, fled to and sought asylum in [Country 1]. I also accept as plausible his wife and children were unable to return to [Country 1] after travelling to Erbil for a family funeral and rather than be separated from his family the applicant withdrew his asylum application and returned to his wife's [relative]'s place in Erbil for a few weeks before departing for Australia in 2013.
29. I accept the applicant's evidence that it was difficult for to remain in Kurdistan for more than a short period in 2013.

⁷ UN High Commissioner for Refugees, "UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Asylum-Seekers from Iraq", 31 May 2012, 3577, p.16.

Refugee assessment

30. 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

31. 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.

Membership Ba’ath Party

32. I have accepted the applicant became a member of the Ba’ath Party in order to work [for] Saddam’s regime.
33. In June 2017 DFAT assessed that individuals with high-level links to the Ba’ath Party face high levels of official and societal discrimination, particularly when trying to secure employment. Individuals with lower-level links to the Ba’ath Party face lower levels of official and societal discrimination.⁸
34. The applicant’s evidence is that he joined the Ba’ath Party because he had to in order to retain his job, rather than because he had any great belief in or felt loyalty to the party. Nor does he claim to have personally suffered any adverse treatment as a result of his years of Ba’ath Party membership. I therefore find the applicant had lower level links to the Ba’ath Party. I am not satisfied there is a real chance the applicant will suffer serious harm now or in the foreseeable future as a result of having been a member of the Ba’ath Party.

[Office bearer of Organisation 1]

35. I have accepted the applicant worked briefly for [Mr A]’s human rights NGO and [Mr B]’s company. I have also accepted he operated the [Organisation 1] between 2008 and 2010 and was threatened by Shia militias before fleeing to [Country 1].

⁸ DFAT, "Country Information Report for Iraq 2017", 26 June 2017, CISED50AD4631, paragraph 3.55.

36. In June 2017 DFAT reported some civil society organisations continue to face direct and indirect harassment and violence. In-country contacts state that they are careful about whether they display their logos and that locally engaged staff of civil society organisations (particularly those with international connections, such as the UN) often do not identify where they work within their local communities. In-country contacts report that individuals employed by organisations working on issues such as human rights and providing assistance to IDPs face a higher risk than others.⁹
37. In March 2017, commenting on events in 2016, the US Department of State indicated domestic and international NGOs in Iraq operated in most cases with little government interference. In some instances these local NGOs worked in coordination with central government and Kurdistan regional government authorities. A number of NGOs also investigated and published findings on human rights cases. When NGOs alleged human rights abuses that concerned government actions or actions of ethnic or religious groups allied with the government, there were some reports of government interference.¹⁰
38. The applicant has not claimed his NGO had international links and he ceased to operate the organisation in 2010. There is nothing in the referred information to suggest he has been involved with this, or any other, NGO in the seven years that have elapsed since then. Nor has the applicant indicated he is likely to become re-establish such an organisation if he were to return to Iraq. Nor is there anything in the referred information to suggest his group was critical of the Government. His evidence was his group had good relations with local officials and received a small amount of Government funding.
39. I am not satisfied there is a real chance that he will suffer significant harm now or in the foreseeable future as a result of his former [position] of [Organisation 1].

2010 Iraqi parliamentary election candidacy

40. I have accepted the applicant unsuccessfully ran for election as a candidate for [Political Party 1] and as a result Shia militias threatened to harm him in the months after the 2010 election.
41. During his TPV interview the delegate asked the applicant why Shia militias would continue to target him given it's been seven years since the election and he hasn't been politically active in Iraq or anywhere else since. The applicant said the militias have members operating all around Iraq. He would say his name has even been publicised in the airports. It's very difficult for him to return. "Maybe you have no idea how these militias operate but when they've decided it is impossible for them to withdraw or refrain from implementing their threats. Despite [Mr C] being a member of Parliament he is not living in Iraq because of all of these threats. It's easy to say for a person sitting in an office but if you had an insight to the living and spiritual situation in Iraq you would believe that when these people have an intention to harm someone they can pursue someone". He said he won't be able to travel to the South because it's predominantly Shia and he's threatened by Shia and in the North he's not welcome as a Shia in these Sunni areas because of the Sunni militias.
42. DFAT reported that assassinations and intimidation of high-profile members of parties in the lead-up to the provincial elections in 2013 and national elections in April 2014 are credible and some Sunni candidates were excluded from participating. A small number of candidates were

⁹ DFAT, "Country Information Report for Iraq 2017", 26 June 2017, CISED50AD4631, paragraph 3.60.

¹⁰ US Department of State, "Country Report on Human Rights Practices 2016 – Iraq", 3 March 2017, OGD95BE926886, Section 5.

targeted for assassination by armed groups including ISIL. Despite this, in June 2017 DFAT assesses that being a low-profile member of a legitimate political party does not place that individual at risk on the basis of political opinion.¹¹

43. I note the applicant's evidence indicates he did not actively seek to become a political candidate. He said he was initially reluctant to join [Mr C's] candidates' list and only did so after being reassured and convinced by the [official] of [Political Party 1]. This suggests to me that the applicant's level of political commitment is limited. Also there is nothing in the referred information to confirm that since leaving Iraq for [Country 1] in 2010 the applicant has continued to be politically active either with the [Political Party 1] or any other political party or group. Nor has the applicant indicated he is likely to seek to stand again as a political candidate if he were to return to Iraq.
44. As the applicant appears to have discontinued his political activism, and there is nothing in the referred information to suggest Shia militias remain interested in unsuccessful former political candidates years after they last were politically active, I am satisfied the chance he will suffer harm now or in the foreseeable future as a result of his former political candidacy is remote. I am not satisfied he faces a real chance of harm on this basis.

Shia in Baghdad

45. I have accepted the applicant is a Shia who has lived all his life in Iraq in Baghdad, except for a short period in [Country 1].
46. As the delegate noted in his decision record, in April 2017, reporting on events in March 2017, the 'Musings on Iraq' blog stated security in Baghdad has steadily improved as a direct result of the operation in Mosul. Some of the lowest violence figures have been recorded as a result. There was an average of 4.0 incidents per day, down from around 10 just a few months ago. There are even few major bombings, although a car and truck bomb did go off in March. That means casualties, at 117 dead and 306 wounded, were also way down from previous levels.¹²
47. However, in contrast to this cautiously optimistic assessment, in June 2017 DFAT reported the Iraqi Government and the KRG have liberated significant amounts of territory formerly under ISIL control. However, ISIL still holds some areas in Iraq and retains an ability to carry out attacks, including in Baghdad. They assessed that Shia communities are subject to both indiscriminate and targeted violence at the hands of ISIL. Violence targeted at Shias is particularly prominent in Baghdad. ISIL has targeted Shias in Baghdad in areas where people congregate such as markets, parks and cafes. Overall they found that Shias in Baghdad face a moderate risk of violence.¹³
48. The fragility of the security and political situation in Iraq makes it difficult to determine whether the recent downward trend in violence in Baghdad identified in media reports is likely to be sustained in the foreseeable future or whether it will be reversed as remnants of ISIL regroup and launch isolated attacks on Shias and Shia militias that assisted in recapturing territory from ISIL return to their home territories and seek a more prominent role and jockey for power. I therefore place greater weight on the more recent and authoritative assessment made by DFAT for protection status determination purposes than on the media reports. I find

¹¹ DFAT, "Country Information Report for Iraq 2017", 26 June 2017, CISED50AD4631, paragraph 3.46.

¹² "6,723 Dead and Wounded in Iraq in March 2017", Musings on Iraq, 9 April 2017, CXC9040665694.

¹³ DFAT, "Country Information Report for Iraq 2017", 26 June 2017, CISED50AD4631, paragraphs 2.6, 3.32 and 3.34.

there is a small but more than remote chance the applicant will suffer harm in the form of a threat to his life or significant physical ill-treatment in Baghdad as a result of his Shia religion.

49. Pursuant to s.5J(1)(c), in order for the applicant to be found to have a well-founded fear of persecution, the real chance of harm must relate to all areas of Iraq.
50. In June 2017 DFAT assessed that Southern Iraq (including Basra, Karbala, Wasit, Qadisiyah, Maisan, Dhi War, Muthanna and Najaf provinces) has been and remains more secure than other parts of the country, although recent reports suggest a deterioration of law and order in Basra. Generalised criminality occurs, but at a lower level than in Baghdad. Intra-Shia violence between different Shia armed groups occurs in southern Iraq and is influenced by political and / or criminal factors. Credible in-country contacts suggest that the risk of being caught up in intra-Shia violence is predominantly borne by those who are actively involved in a militia or tribal group. Overall, DFAT assesses that official and societal discrimination against Shias is low, particularly in Shia areas. Shias in Baghdad face a moderate risk of violence, whereas Shias in other Shia areas (such as the south) face a lower risk of violence. Any Shias remaining in ISIL-controlled areas face a high risk of discrimination and violence.¹⁴
51. On the basis of this country information, I am not satisfied that the real chance of harm to the applicant on the basis of his Shia religion relates to the Southern governorates of Basra, Karbala, Wasit, Qadisiyah, Maisan, Dhi War, Muthanna and Najaf.
52. I am satisfied that the applicant does not have a well-founded fear of persecution within the meaning of s.5J.

Refugee: conclusion

53. 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

54. 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

55. 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.

¹⁴ DFAT, "Country Information Report for Iraq 2017", 26 June 2017, CISED50AD4631, paragraphs 5.17 and 3.34.

56. I have found there is a real chance the applicant will suffer harm in the form of a threat to his life or significant physical ill-treatment in Baghdad on the basis of his Shia religion. As 'real chance' and 'real risk' involve the same standard,¹⁵ for the same reasons I am satisfied there is a real risk that the applicant will suffer a threat to his life or significant physical ill-treatment in Baghdad. I find that this harm is either arbitrary deprivation of life or, in the case of injury, consists of an act which intentionally inflicts severe pain or suffering, amounting to cruel or inhuman treatment or punishment. The harm is therefore significant harm.
57. When asked at the interview whether he could live elsewhere in Iraq, the applicant responded in the north he's not welcome as a Shia in Sunni areas because of Sunni militias. In June 2017 DFAT assessed the sharp increase in sectarian violence since 2003 has seen most Shias leave Sunni areas. In areas where Shia are not the dominant ethnic or religious group, societal discrimination is likely to be more pronounced, but still closely linked to patronage and nepotism. Shia communities are subject to both indiscriminate and targeted violence at the hands of ISIL. Any Shias remaining in ISIL-controlled areas face a high risk of discrimination and violence.¹⁶ In January 2016 the United Nations Assistance Mission for Iraq & Office of the United Nations High Commissioner for Human Rights concluded individuals associated with the Government of Iraq, including former candidates for public office, employees and former employees of IHEC and other institutions, and those suspected of passing information to Government and associated forces, were frequently targeted by ISIL.¹⁷
58. I find that the applicant faces a real risk of significant harm from Sunni militias in the Sunni dominated central and northern provinces of Iraq both because of his Shia religion and his imputed political opinion as a result of his former political candidacy.
59. 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

60. The qualification in s.36(2B)(b) requires that the level of protection offered by an authority of the country must reduce the risk of significant harm to something less than a real one.
61. According to DFAT as a result of the broader security situation, several areas in Iraq are not under the effective control of the Iraqi Government or the KRG. The ability of the Iraqi Government and the KRG to provide effective state protection has been severely tested by ongoing efforts to defeat ISIL. This ability has been further strained by the broader political and

¹⁵ *MIAC v SZQRB* (2013) 210 FCR 505.

¹⁶ DFAT, "Country Information Report for Iraq 2017", 26 June 2017, CISED50AD4631, paragraphs, 3.31-3,32 and 3.34.

¹⁷ United Nations Assistance Mission for Iraq & Office of the United Nations High Commissioner for Human Rights, "Report on the Protection of Civilians in the Armed Conflict in Iraq: 1 May - 31 October 2015", 19 January 2016, CIS38A801294, p.32.

sectarian allegiances of different elements of the Iraqi Government and KRG and associated security forces. Credible sources report that the ISF has committed a number of human rights abuses or has failed to act on human rights abuses by other actors, such as the PMF. DFAT assesses that while the Iraqi Government is taking steps in an effort to curb human rights abuses by the ISF (which disproportionately affect Sunnis), its ability to assert centralised control over the actions of the ISF is at times limited. The PMF was formally brought within the ISF in November 2016. Certain PMF groups have been accused of carrying out human rights abuses including killing, torturing, kidnapping and extorting civilians, mainly Sunnis. Open-source reporting of human rights abuses by some PMF groups has been corroborated by in-country contacts, particularly in relation to Sunnis attempting to flee ISIL at screening points. Although the frequency of such reports has declined over the last year, concerns continue to be raised. The Iraqi Police Service and the Federal Police face capacity constraints and are often unable to prevent attacks against civilians by ISIL and other armed groups. Members often lack training and basic equipment. Elements of the Federal Police and some of the Shia militia groups in the PMF reportedly have close links.¹⁸

62. 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 in Baghdad or the Sunni dominated central and northern provinces of Iraq. Section 36(2B)(b) does not apply.

Harm faced by the population generally and not the applicant personally

63. The risk of harm to the applicant arises from the Sunni armed group, ISIL, and is targeted at Shias because of their religion, a religious group of which the applicant is a member. I am satisfied that this is a risk faced by the applicant personally, on the basis of his religion, and not by the population generally. The qualification in s.36(2B)(c) does not apply.

Relocation

64. I have found that there is not a real chance of harm to the applicant in the Southern governorates of Iraq of Basra, Karbala, Wasit, Qadisiyah, Maisan, Dhi War, Muthanna and Najaf, and for the same reasons, I find that there is not a real risk of significant harm in those areas.
65. During the TPV interview the delegate suggested Basra as somewhere the applicant may be able to relocate and asked how the Shia militias in Basra would know of his previous history. The applicant said when any person moves to another city the first thing they need is personal information. These militias need this information before a person is able to remain in the city. They can justify collection of personal data for their own ends. The Government sanctions this. In general Iraq is unliveable and the security situation is miserable. He said in his life he's only been once to Basra. He is concerned as the people living in Basra are tribal people. He doesn't have people there who can support him financially and emotionally and their life (in Basra) is really different there to the life he lived in Baghdad. He won't be able to travel to the south because it's predominantly Shia and he's threatened by Shia because of his association with a secular Sunni politician. The applicant's representative said there is exchange of information between government officials and militia, as some officials are loyal to militias or are insiders. City councils consist mainly of militia people. Militias are out of control in the entire south of Iraq and there have been bomb blasts in the South.

¹⁸ DFAT, "Country Information Report for Iraq 2017", 26 June 2017, CISED50AD4631, paragraphs 5.1, 5.4 -5.6 and 5.8.

66. In June 2017 DFAT assessed that Southern Iraq (including Basra, Karbala, Wasit, Qadisiyah, Maisan, Dhi Qar, Muthanna and Najaf provinces) has been and remains more secure than other parts of the country, although recent reports suggest a deterioration of law and order in Basra. However, credible in-country contacts emphasise that internal relocation to the south for any minority group is difficult and that Shias internally relocating or voluntarily returning to southern Iraq without familial, tribal or political networks would face difficulty assimilating into the community. Further, relocation to an area with a predominantly different ethnic or religious demographic can contribute to tensions, particularly for Sunnis relocating to Shia areas and vice versa. Lack of employment remains a significant issue in southern Iraq, and people from southern Iraq are internally relocating to other areas of Iraq, such as Baghdad, in search of jobs. Lack of services (such as electricity and water) is an increasing issue in the south.¹⁹
67. In April 2017 UNHCR assessed that with more than three million Iraqis from conflict areas having been displaced into relatively safer areas of the country since 2014, and the corresponding high levels of humanitarian needs in many of these areas, local authorities have increasingly introduced stringent entry and residency measures, including sponsorship requirements, registration with local authorities and security clearance from various security agencies.²⁰ Sponsorship requirements in Iraq are generally not grounded in law nor are they officially announced. They are reportedly subject to frequent changes. The implementation of the sponsorship requirements is reported to vary from checkpoint to checkpoint, and from officer to officer. Even if an individual satisfies all the stated sponsorship requirements, access is not guaranteed. In particular, ethnic and sectarian considerations may determine whether access is granted or denied. The lack of sponsorship, where required, is reported to frequently result in arrest and/or pressure to return to the area of original persecution.²¹
68. UNHCR goes on to state that Shi'ites do generally not face specific access or residency requirements in any part of the country (with the exception of Erbil Governorate).²² However, as noted above UNHCR also advises that the imposition of entry requirements is increasing, that entry requirements are fluid and may vary even within provinces, and that such requirements may be imposed arbitrarily and without any basis in law. In these circumstances, it is not possible to identify with any confidence any province in the south of Iraq to which the applicant could gain access. Furthermore, even if the applicant were able to gain access to a southern province, given that he is [age] and has no relatives or other connections outside Baghdad, I find it highly unlikely he will be able to find employment.
69. On the evidence before me I am not satisfied that the applicant will be able to access Basra, Karbala, Wasit, Qadisiyah, Maisan, Dhi Qar, Muthanna or Najaf provinces. I have placed weight in particular on the recent information from the UNHCR that states that access to these areas is likely dependent upon local sponsorship and/or familial or tribal connections, which I am not satisfied that the applicant has or could obtain. 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 any of the southern provinces in Iraq.

¹⁹ DFAT, "Country Information Report for Iraq 2017", 26 June 2017, CISED50AD4631, paragraphs 5.17-5.20.

²⁰ UN High Commissioner for Refugees, "Iraq: Relevant COI for Assessments on the Availability of an Internal Flight or Relocation Alternative (IFA/IRA)", 12 April 2017, UNAE5949, p.2.

²¹ UN High Commissioner for Refugees, "Iraq: Relevant COI for Assessments on the Availability of an Internal Flight or Relocation Alternative (IFA/IRA)", 12 April 2017, UNAE5949, footnote 6.

²² UN High Commissioner for Refugees, "Iraq: Relevant COI for Assessments on the Availability of an Internal Flight or Relocation Alternative (IFA/IRA)", 12 April 2017, UNAE5949, p.3.

70. The delegate asked if the applicant could return to his wife's [relative]'s family in Erbil in Iraqi Kurdistan from Australia. He said his family won't be allowed to stay permanently in Kurdistan. He also responded his wife is no longer in Erbil and said he could not really return there as most of the people living in that area are Sunnis. Last time he was there he was almost in danger of losing his life because of troubles. If the security situation in his country stabilised he would return.
71. Although the applicant has claimed that Shia militias remain interested in him seven years after he was politically active, and he thinks his name has been publicised in the airports, I note that in 2013 the applicant returned to Erbil in the Kurdish region without incident, albeit for a relatively short period of time. On the information before me I am not satisfied the applicant faces a real risk of significant harm now or in the foreseeable future in Kurdistan. However, for the following reasons I am not satisfied that it is reasonable for the applicant to relocate there.
72. In June 2017 DFAT reported admission into the Kurdish region remains at the discretion of the Kurdish Regional Government (KRG) which has exercised increasing levels of restrictions, including requiring individuals wishing to enter to have a sponsor (although the UK Home Office and in-country contacts note that the implementation of this requirement is often inconsistent in practice). Individuals who were previously from the Kurdish region or who are ethnically Kurdish should be able to enter the Kurdish region with relative administrative ease. Some in-country contacts have told DFAT that Christians, Yazidis and Shabak have been able to enter the Kurdish region with relative ease, although Arab Sunnis and other non-ethnic Kurds have faced difficulties. Officially, non-ethnic Kurds are unable to purchase property. A lack of Kurdish language skills is an additional barrier. Patronage and nepotism significantly influence employment opportunities, making it difficult to internally relocate to the Kurdish region without existing networks. Overall, 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.²³
73. In its April 2017 paper UNHCR cited its previous "Position on Returns to Iraq", dated 14 November 2016, as follows:
- "In the current circumstances, with large-scale internal displacement, a serious humanitarian crisis, mounting inter-communal tensions, access/residency restrictions in virtually all parts of the country and increasing pressure exercised on IDPs [internally displaced persons] to prematurely return to their areas of origin following the retaking of these areas from ISIS, UNHCR does not consider it appropriate for States to deny persons from Iraq international protection on the basis of the applicability of an internal flight or relocation alternative. An internal flight or relocation alternative would only be available in the exceptional circumstances where an individual can legally access and remain in the proposed area of relocation, would not be exposed to a new risk of serious harm there, and has close family links in the proposed area, with the family willing and able to support the individual".²⁴*
74. In relation to Arabs and the Erbil Governorate specifically, UNHCR went on to state since the launch of the Mosul offensive on 17 October 2016, residency requirements have been tightened for Arabs (from all areas of origin, not only Ninewa). At the time of writing, the initial entry pass allows them to remain in Erbil Governorate for only 72 hours, following which they need to replace it with a renewable short-term residency document valid for one month only, issued by the local Asayish office in the neighbourhood where they wish to reside. Following a

²³ DFAT, "Country Information Report for Iraq 2017", 26 June 2017, CISED50AD4631, paragraphs 5.14-5.16

²⁴ UN High Commissioner for Refugees, "Iraq: Relevant COI for Assessments on the Availability of an Internal Flight or Relocation Alternative (IFA/IRA)", 12 April 2017, UNAEAA5949, p.2.

security check, families can obtain a renewable short-term residency document without further requirements. Single persons who already have family in Erbil Governorate can be added to their family's file in the local Asayish office. Single men and women who do not have family in Erbil governorate require a valid work contract (usually proven through a support letter issued by the employer) in order to obtain a short-term residency document. Those without a valid work contract and without family in Erbil will not be issued a short-term residency document and are subject to expulsion from Erbil Governorate.²⁵

75. I note the applicant has some connection to Erbil via his second wife's [relative] and that in 2013 the applicant was able to enter Erbil for around a month when his wife was residing there with her [relative]. However, I also note that the applicant's wife is no longer in Erbil. The information before me does not indicate whether the applicant's [relative] would now be willing to sponsor the applicant. More significantly, recent country information indicates access to Erbil has been further tightened since October 2016. Even if the applicant was able to access Erbil again the information indicates that this would be on a short term basis. Having regard to the applicant circumstances, and the country information, I am not satisfied relocation to the Kurdish Region of Iraq is reasonable.

76. I am not satisfied that it is reasonable for the applicant to relocate to an area of the country where there is not a real risk of significant harm. Section 36(2B)(a) does not apply.

Complementary protection: conclusion

77. 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.

²⁵ UN High Commissioner for Refugees, "Iraq: Relevant COI for Assessments on the Availability of an Internal Flight or Relocation Alternative (IFA/IRA)", 12 April 2017, UNAEAA5949, p.8.

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.

...