



Australian Government

Immigration Assessment Authority

Decision and Reasons

Referred application

IRAQ

IAA reference: IAA17/02737

Date and time of decision: 23 January 2018 15:22:00

Inge Sheck, Reviewer

Decision

The IAA affirms the decision not to grant the referred applicant a protection visa.

Any references appearing in square brackets indicate that information has been omitted from this decision pursuant to section 473EC(2) of the Migration Act 1958 and replaced with generic information which does not allow the identification of an referred applicant, or their relative or other dependant.

Background to the review

Visa application

1. The referred applicant (the applicant) is a Shia Muslim from Nasiriyah in Dhi Qar province, Iraq. He departed Iraq [in] October 2012 and arrived in Australia [in] November 2012. [In] July 2016 he lodged an application for a protection visa (PV).
2. [In] May 2017 a delegate of the Minister for Immigration and Border Protection (the delegate) refused to grant the visa. The delegate accepted that the applicant was a Shia Muslim and a Bidoon. The delegate also accepted that the applicant had been employed as [Occupation 1] and had been approached by the Mehdi Army and told to assist in their capture of his regular customer, who was an [Occupation 2]. The delegate accepted that the applicant was shot at by members of the Mehdi Army but concluded that this was a random, rather than a targeted, event. The delegate did not accept that the applicant was of any interest to any militia groups and concluded that he did not face a real chance of persecution or a real risk of significant harm due to his religion, ethnicity, sectarian violence or any other reason.

Information before the IAA

3. I have had regard to the material given by the Secretary under s.473CB of the *Migration Act 1958* (the Act). On 12 June 2017 the IAA received a submission on behalf of the applicant from his [representative]. Section 473DD of the Act provides that the IAA must not consider any new information from an applicant except in limited specified circumstances. The submission by the applicant's representative addresses the delegate's decision and findings. As such, it may be regarded as argument rather than new information and I have had regard to it.
4. I have obtained new information, including the Department of Foreign Affairs and Trade (DFAT), DFAT Country Report, Iraq, published on 26 June 2017. This report was published after the delegate's decision and was prepared specifically for protection status determination purposes. The delegate referred to the most recent report before him, this being the DFAT Iraq Country Information Report 2015, published on 13 February 2015. In light of the age of the previous DFAT report, the currency of the new report, and the potential for significant changes in conditions in Iraq since early 2015, particularly with reference to sectarian violence, I am satisfied that there are exceptional reasons to justify considering this new information.

Applicant's claims for protection

5. After his arrival at [a detention centre] the applicant was interviewed by an officer of the then Department of Immigration and Border Protection (now part of the Department of Home Affairs) ("the Department") [in] December 2012. Together with his PV application the applicant lodged a statutory declaration dated [in] July 2016. [In] March 2017 he attended an interview ("the PV interview") with the delegate, at which [the applicant's representative] was also present. The applicant claims:
 - He was born in [Country 1] and came to Iraq with his family around the age of [age]. From this time until his departure from Iraq he lived in Nasiriyah. Bidoons were picked up as the first suspects whenever there was an explosion or similar and were generally subjected to discrimination;

- From around 2006 he worked as [Occupation 1]. From 2010 he had a regular customer, [Mr A], who he would [provide services to] once or twice a week. [Mr A provided services to] high-ranking US officers. After the US Forces withdrawal in 2011 the applicant did not [provided service to] [Mr A] regularly but [did so] on two occasions. In [2012] the applicant was contacted by the Mehdi Army and told to come to their local office. He attended as required. They took his photo. He was informed that [Mr A] was at the top of their wanted list and that the applicant could deliver him to them or he would be considered to be collaborating with the Americans and would suffer the consequences. He was told that the next time [Mr A] called him, the applicant must call the Mehdi Army immediately and give them the details of the pickup, so that they could intercept [Mr A]. The applicant promised to do so but when he arrived home he called [Mr A] and told him of the Mehdi Army's plan. He did not see or contact [Mr A] again;
- Following this the Mehdi Army called the applicant every two or three days but each time he told them that he had not heard from [Mr A]. The caller became increasingly abusive over time and would swear at him. [A time] after he had been called in to the Mehdi Army office, the applicant was leaving his house with his cousin when he saw some men in the Mehdi Army's black "uniform" approaching his house. The applicant and his cousin ran. Their pursuers shouted at them to stop but they did not. Shots were fired and the applicant's cousin was wounded and fell to the ground. The applicant continued running and eluded the men down a narrow alley. He arrived at the home of a relative. His relative took him to [another location], where he remained in hiding for a month and organised his flight from Iraq. He contacted his wife and told her to leave the house. She and the children went to live with her parents.

Factual findings

6. It is not disputed and I accept that the applicant's background is as follows: he was born [birth date] in [Country 1] and relocated to Iraq with his family in 1992. He lived in Nasiriyah with his parents [and siblings]. His father passed away following a [medical condition] in 2006. His mother and siblings remain in Iraq. He identifies as a Bidoon. He is of Arab ethnicity, Muslim (Shia) faith and an Iraqi national. He departed the country legally. He attended school for [a number of] years and withdrew without completing intermediate school. He was employed in his father's [business] from 2003 then as [Occupation 1] from 2006 until his departure from Iraq in 2012. He married in 2005. His wife and [children] reside with his wife's parents in Nasiriyah.
7. The applicant's central claim is that he will be assassinated by the Mehdi Army if he returns to Iraq. The applicant has been entirely consistent in his evidence regarding his regular customer, [Mr A], who [provided services to officers of the US Military] until the US troop withdrawal in late 2011, and his (the applicant's) dealings with the Mehdi Army. I accept his evidence as set out in the dot points above. In relation to the event in which the applicant's cousin was shot, the delegate accepted that this occurred but concluded that this was a random rather than a targeted event. I have not come to the same conclusion. The applicant's evidence was that the men were from the Mehdi Army and were approaching his house as he and his cousin were coming out; I consider that they were there to threaten him further or to do him harm and this was related to their previous demand that the applicant assist in their capture of [Mr A]. The delegate further noted that the Mehdi Army did not approach his wife or siblings at any point after the attack. The applicant noted that the Mehdi Army was aware of his number plates therefore I conclude that his own home could be easily identified by the proximity of his [vehicle]. There is however no indication that they knew where his wife moved to or where his siblings lived. I accept that this was a targeted attack aimed at the applicant.

8. The applicant stated at the PV interview that he is Bidoon, and this is consistent with his background and his family being deported from [Country 1] in the 1990s.¹ He has been granted Iraqi citizenship. The applicant noted that there is some societal discrimination against Bidoons but he had not encountered this himself. Other than “some problems” when he was at school, the applicant does not claim to have suffered any harm due to his ethnicity and I find that he has not.

Refugee assessment

9. 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

10. 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.
11. The applicant is an Iraqi national and Iraq is his receiving country. He claims to fear assassination at the hands of the Mehdi Army should he return to Iraq. This is because he did not assist in the capture of [Mr A] and would be considered by the Mehdi Army to be a collaborator with the US Forces.
12. Although I have accepted the applicant’s evidence, it has now been more than five years since these events occurred. I accept that the applicant was told in [2012] that he would be considered a collaborator, should he not assist in [Mr A’s] capture, however I am not of the view that he was of sufficient interest to the Mehdi Army to be on any current list of targets, particularly given that the Mehdi Army and other militias are now part of the Popular Mobilisation Forces, an umbrella group of mostly Shia militias over which the government claims control, fighting with the ISF.² The focus of these groups is the fight against ISIS/Daesh,

¹ [Source deleted.]

² DFAT, “DFAT Country Report, Iraq”, 26 June 2017, CISED50AD463132; 2.29

which remains the most acute issue influencing the current security situation throughout Iraq.³ I am not satisfied that in the future there is a real chance that any threats made against the applicant in 2012 would be realised or manifest into actions causing harm.

13. I accept that the applicant is a Shia Muslim. He has not claimed a fear of harm on this basis although the delegate considered whether this, and the security situation in southern Iraq more generally, would give rise to protection obligations. Considering whether the applicant faces harm from Shia militias or Shia armed groups due simply to being a Shia, I am not satisfied on the material before me that this is the case. Country information indicates that in Daesh/ISIS controlled areas, Sunni civilians who do not support that organisation or its ideals/religious views face a high risk of violence including death,⁴ however there is no indication that this occurs to Shias in areas where Shia militias are prevalent. In relation to whether there is a real chance that the applicant would suffer serious harm from the security situation more generally, including from Sunni armed groups, the DFAT Country Report notes that the security situation in Iraq is fragile and susceptible to rapid and serious deterioration with large scale conflict in some areas⁵. ISIS and associated Sunni extremist groups are currently in control of large parts of northern, western and central Iraq, however the southern provinces including Dhi Qar remain under the control of the ISF.⁶ Violence between opposing Shia militias occurs and is more pronounced in Shia areas such as Nasiriyah. This is sometimes linked to other criminal activities, including robberies and kidnappings. However, the DFAT report suggests that the risk of being caught up in this is predominantly borne by those who are actively involved in the militia or tribal group, rather than ordinary civilians.⁷ There is no suggestion the applicant is involved in such groups. I am not satisfied that the applicant faces a real chance of harm from Shia militias, Sunni groups or otherwise arising from sectarian violence. Although violent crime, including kidnappings and killings, does occur in Nasiriyah, on the basis of the information before me I conclude that it is not so widespread as to give rise to a real chance that the applicant would face harm, should he return.
14. Although not raised by the applicant, the delegate considered whether he would be harmed, should he return to Iraq, on the basis that he sought asylum in a western country. The DFAT country report indicates that the practice of seeking asylum and then returning to Iraq once conditions permit is well accepted amongst Iraqis, as evidenced by the large numbers of dual nationals from the US, Western Europe and Australia who return to Iraq. DFAT has limited evidence to suggest that voluntary returnees from the West face difficulties in assimilating back into their communities.⁸ I am not satisfied that the applicant faces a real chance of harm on the basis that he has spent time in Australia or that he unsuccessfully sought asylum in Australia.
15. In relation to whether the applicant is at risk of harm due to being a Bidoon, country information does not indicate that Bidoon communities are subjected to any targeted violence,⁹ however societal discrimination against ethnic and religious minorities including Bidoon is widespread, resulting in difficulty in accessing employment, housing, and services, including education.¹⁰ The applicant has not claimed to have ever encountered any difficulty in

³ Ibid; 2.30

⁴ Ibid; 3.39, 4.2

⁵ Ibid; 2.33

⁶ UK Home Office, "Security situation in Baghdad, southern governorates and the Kurdistan Region of Iraq (KRI)", 1 April 2015, OGSF59D8D14; p.12

⁷ DFAT, "DFAT Country Report, Iraq", 26 June 2017, CISED50AD463132; 3.33

⁸ Ibid; 5.25

⁹ Ibid; 3.87

¹⁰ DFAT, "DFAT Country Report, Iraq", 26 June 2017, CISED50AD463132; 3.3

accessing employment, housing or services in Iraq, due to being Bidoon. I am not satisfied that he faces a real chance of harm on this basis.

Refugee: conclusion

16. 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

17. 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

18. 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.

19. I have concluded above that the applicant does not face a real chance of harm on the basis that he was threatened by the Mehdi Army and shot at in 2012, that he is a Bidoon, that he is a Shia Muslim, from sectarian or from general violence or because he sought asylum in Australia. As 'real risk' and 'real chance' involve the application of the same standard,¹¹ I am also not satisfied that the applicant would face a real risk of significant harm for the purposes of s.36(2)(aa) for these reasons, including when considered cumulatively.

Complementary protection: conclusion

20. There are not substantial grounds for believing that, as a necessary and foreseeable consequence of being returned from Australia to a receiving country, there is a real risk that the applicant will suffer significant harm. The applicant does not meet s.36(2)(aa).

Decision

The IAA affirms the decision not to grant the referred applicant a protection visa.

¹¹ *MIAC v SZQRB* (2013) 210 FCR 505

Applicable law

Migration Act 1958

5 (1) Interpretation

...

bogus document, in relation to a person, means a document that the Minister reasonably suspects is a document that:

- (a) purports to have been, but was not, issued in respect of the person; or
- (b) is counterfeit or has been altered by a person who does not have authority to do so; or
- (c) was obtained because of a false or misleading statement, whether or not made knowingly

...

cruel or inhuman treatment or punishment means an act or omission by which:

- (a) severe pain or suffering, whether physical or mental, is intentionally inflicted on a person; or
- (b) pain or suffering, whether physical or mental, is intentionally inflicted on a person so long as, in all the circumstances, the act or omission could reasonably be regarded as cruel or inhuman in nature;

but does not include an act or omission:

- (c) that is not inconsistent with Article 7 of the Covenant; or
- (d) arising only from, inherent in or incidental to, lawful sanctions that are not inconsistent with the Articles of the Covenant.

...

degrading treatment or punishment means an act or omission that causes, and is intended to cause, extreme humiliation which is unreasonable, but does not include an act or omission:

- (a) that is not inconsistent with Article 7 of the Covenant; or
- (b) that causes, and is intended to cause, extreme humiliation arising only from, inherent in or incidental to, lawful sanctions that are not inconsistent with the Articles of the Covenant.

...

receiving country, in relation to a non-citizen, means:

- (a) a country of which the non-citizen is a national, to be determined solely by reference to the law of the relevant country; or
- (b) if the non-citizen has no country of nationality—a country of his or her former habitual residence, regardless of whether it would be possible to return the non-citizen to the country.

...

torture means an act or omission by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person:

- (a) for the purpose of obtaining from the person or from a third person information or a confession; or
- (b) for the purpose of punishing the person for an act which that person or a third person has committed or is suspected of having committed; or
- (c) for the purpose of intimidating or coercing the person or a third person; or
- (d) for a purpose related to a purpose mentioned in paragraph (a), (b) or (c); or
- (e) for any reason based on discrimination that is inconsistent with the Articles of the Covenant;

but does not include an act or omission arising only from, inherent in or incidental to, lawful sanctions that are not inconsistent with the Articles of the Covenant.

...

5H Meaning of refugee

(1) For the purposes of the application of this Act and the regulations to a particular person in Australia, the person is a refugee if the person:

- (a) in a case where the person has a nationality—is outside the country of his or her nationality and, owing to a well-founded fear of persecution, is unable or unwilling to avail himself or herself of the protection of that country; or
- (b) in a case where the person does not have a nationality—is outside the country of his or her former habitual residence and owing to a well-founded fear of persecution, is unable or unwilling to return to it.

Note: For the meaning of ***well-founded fear of persecution***, see section 5J.

...

5J Meaning of well-founded fear of persecution

- (1) For the purposes of the application of this Act and the regulations to a particular person, the person has a well-founded fear of persecution if:
 - (a) the person fears being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion; and
 - (b) there is a real chance that, if the person returned to the receiving country, the person would be persecuted for one or more of the reasons mentioned in paragraph (a); and
 - (c) the real chance of persecution relates to all areas of a receiving country.

Note: For membership of a particular social group, see sections 5K and 5L.
- (2) A person does not have a well-founded fear of persecution if effective protection measures are available to the person in a receiving country.

Note: For effective protection measures, see section 5LA.
- (3) A person does not have a well-founded fear of persecution if the person could take reasonable steps to modify his or her behaviour so as to avoid a real chance of persecution in a receiving country, other than a modification that would:
 - (a) conflict with a characteristic that is fundamental to the person's identity or conscience; or
 - (b) conceal an innate or immutable characteristic of the person; or
 - (c) without limiting paragraph (a) or (b), require the person to do any of the following:
 - (i) alter his or her religious beliefs, including by renouncing a religious conversion, or conceal his or her true religious beliefs, or cease to be involved in the practice of his or her faith;
 - (ii) conceal his or her true race, ethnicity, nationality or country of origin;
 - (iii) alter his or her political beliefs or conceal his or her true political beliefs;
 - (iv) conceal a physical, psychological or intellectual disability;
 - (v) enter into or remain in a marriage to which that person is opposed, or accept the forced marriage of a child;
 - (vi) alter his or her sexual orientation or gender identity or conceal his or her true sexual orientation, gender identity or intersex status.
- (4) If a person fears persecution for one or more of the reasons mentioned in paragraph (1)(a):
 - (a) that reason must be the essential and significant reason, or those reasons must be the essential and significant reasons, for the persecution; and
 - (b) the persecution must involve serious harm to the person; and
 - (c) the persecution must involve systematic and discriminatory conduct.
- (5) Without limiting what is serious harm for the purposes of paragraph (4)(b), the following are instances of **serious harm** for the purposes of that paragraph:
 - (a) a threat to the person's life or liberty;
 - (b) significant physical harassment of the person;
 - (c) significant physical ill-treatment of the person;
 - (d) significant economic hardship that threatens the person's capacity to subsist;
 - (e) denial of access to basic services, where the denial threatens the person's capacity to subsist;
 - (f) denial of capacity to earn a livelihood of any kind, where the denial threatens the person's capacity to subsist.
- (6) In determining whether the person has a **well-founded fear of persecution** for one or more of the reasons mentioned in paragraph (1)(a), any conduct engaged in by the person in Australia is to be disregarded unless the person satisfies the Minister that the person engaged in the conduct otherwise than for the purpose of strengthening the person's claim to be a refugee.

5K Membership of a particular social group consisting of family

For the purposes of the application of this Act and the regulations to a particular person (the **first person**), in determining whether the first person has a well-founded fear of persecution for the reason of membership of a particular social group that consists of the first person's family:

- (a) disregard any fear of persecution, or any persecution, that any other member or former member (whether alive or dead) of the family has ever experienced, where the reason for the fear or persecution is not a reason mentioned in paragraph 5J(1)(a); and
- (b) disregard any fear of persecution, or any persecution, that:
 - (i) the first person has ever experienced; or

- (ii) any other member or former member (whether alive or dead) of the family has ever experienced;

where it is reasonable to conclude that the fear or persecution would not exist if it were assumed that the fear or persecution mentioned in paragraph (a) had never existed.

Note: Section 5G may be relevant for determining family relationships for the purposes of this section.

5L Membership of a particular social group other than family

For the purposes of the application of this Act and the regulations to a particular person, the person is to be treated as a member of a particular social group (other than the person's family) if:

- (a) a characteristic is shared by each member of the group; and
- (b) the person shares, or is perceived as sharing, the characteristic; and
- (c) any of the following apply:
 - (i) the characteristic is an innate or immutable characteristic;
 - (ii) the characteristic is so fundamental to a member's identity or conscience, the member should not be forced to renounce it;
 - (iii) the characteristic distinguishes the group from society; and
- (d) the characteristic is not a fear of persecution.

5LA Effective protection measures

- (1) For the purposes of the application of this Act and the regulations to a particular person, effective protection measures are available to the person in a receiving country if:
 - (a) protection against persecution could be provided to the person by:
 - (i) the relevant State; or
 - (ii) a party or organisation, including an international organisation, that controls the relevant State or a substantial part of the territory of the relevant State; and
 - (b) the relevant State, party or organisation mentioned in paragraph (a) is willing and able to offer such protection.
- (2) A relevant State, party or organisation mentioned in paragraph (1)(a) is taken to be able to offer protection against persecution to a person if:
 - (a) the person can access the protection; and
 - (b) the protection is durable; and
 - (c) in the case of protection provided by the relevant State—the protection consists of an appropriate criminal law, a reasonably effective police force and an impartial judicial system.

...

36 Protection visas – criteria provided for by this Act

...

- (2) A criterion for a protection visa is that the applicant for the visa is:
 - (a) a non-citizen in Australia in respect of whom the Minister is satisfied Australia has protection obligations because the person is a refugee; or
 - (aa) a non-citizen in Australia (other than a non-citizen mentioned in paragraph (a)) in respect of whom the Minister is satisfied Australia has protection obligations because the Minister has substantial grounds for believing that, as a necessary and foreseeable consequence of the non-citizen being removed from Australia to a receiving country, there is a real risk that the non-citizen will suffer significant harm; or
 - (b) a non-citizen in Australia who is a member of the same family unit as a non-citizen who:
 - (i) is mentioned in paragraph (a); and
 - (ii) holds a protection visa of the same class as that applied for by the applicant; or
 - (c) a non-citizen in Australia who is a member of the same family unit as a non-citizen who:
 - (i) is mentioned in paragraph (aa); and
 - (ii) holds a protection visa of the same class as that applied for by the applicant.
- (2A) A non-citizen will suffer **significant harm** if:
 - (a) the non-citizen will be arbitrarily deprived of his or her life; or
 - (b) the death penalty will be carried out on the non-citizen; or
 - (c) the non-citizen will be subjected to torture; or
 - (d) the non-citizen will be subjected to cruel or inhuman treatment or punishment; or
 - (e) the non-citizen will be subjected to degrading treatment or punishment.

- (2B) However, there is taken not to be a real risk that a non-citizen will suffer significant harm in a country if the Minister is satisfied that:
- (a) it would be reasonable for the non-citizen to relocate to an area of the country where there would not be a real risk that the non-citizen will suffer significant harm; or
 - (b) the non-citizen could obtain, from an authority of the country, protection such that there would not be a real risk that the non-citizen will suffer significant harm; or
 - (c) the real risk is one faced by the population of the country generally and is not faced by the non-citizen personally.

...

Protection obligations

- (3) Australia is taken not to have protection obligations in respect of a non-citizen who has not taken all possible steps to avail himself or herself of a right to enter and reside in, whether temporarily or permanently and however that right arose or is expressed, any country apart from Australia, including countries of which the non-citizen is a national.
- (4) However, subsection (3) does not apply in relation to a country in respect of which:
- (a) the non-citizen has a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion; or
 - (b) the Minister has substantial grounds for believing that, as a necessary and foreseeable consequence of the non-citizen availing himself or herself of a right mentioned in subsection (3), there would be a real risk that the non-citizen will suffer significant harm in relation to the country.
- (5) Subsection (3) does not apply in relation to a country if the non-citizen has a well-founded fear that:
- (a) the country will return the non-citizen to another country; and
 - (b) the non-citizen will be persecuted in that other country for reasons of race, religion, nationality, membership of a particular social group or political opinion.
- (5A) Also, subsection (3) does not apply in relation to a country if:
- (a) the non-citizen has a well-founded fear that the country will return the non-citizen to another country; and
 - (b) the Minister has substantial grounds for believing that, as a necessary and foreseeable consequence of the non-citizen availing himself or herself of a right mentioned in subsection (3), there would be a real risk that the non-citizen will suffer significant harm in relation to the other country.

Determining nationality

- (6) For the purposes of subsection (3), the question of whether a non-citizen is a national of a particular country must be determined solely by reference to the law of that country.
- (7) Subsection (6) does not, by implication, affect the interpretation of any other provision of this Act.