



Australian Government
Immigration Assessment Authority

Decision and Reasons

Referred application

IRAQ
IAA reference: IAA17/02830

IRAQ
IAA reference: IAA17/02831

Date and time of decision: 20 November 2017 15:37:00
Victoria Price, Reviewer

Decision

The IAA affirms the decision not to grant the referred applicants protection visas.

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 applicants (the applicants) are a father (the first applicant) and son (the second applicant) who claim to be Sunni Muslims from [City 1] in [District 1] in southern Iraq. The applicants lodged applications for temporary protection visas with the Department of Immigration and Border Protection (DIBP) [in] November 2016.
2. In separate decision records, the DIBP delegate (the delegate) refused to grant the visas to the applicants [in] May 2017 finding that they did not face a real chance or risk of harm.

Information before the IAA

3. I have had regard to the material given by the Secretary under s.473CB of the *Migration Act 1958* (the Act).
4. The applicants' representative provided new information to the IAA including: a secondary school certificate for [a range of years] for the second applicant (the Iraq school certificate); a letter from [a religious organisation] in [City 1] dated [in] May 2017 supporting that the first applicant is of the Sunni faith and is at risk of harm for this reason; an Authorisation Form from the Traffic Department in [District 1] dated [in] 2008 supporting that the first applicant owned a [commercial vehicle] (the Authorisation Form); a Memorandum from the Department of the United States (US) Army dated [in] August 2015 supporting the first applicant was a contractor on the US Army Base at [location] (the Memorandum); letters in support of the second applicant from his school in Australia dated [in] June 2017 attached to which were photographs of he and his school friends and a school report card for 2017.
5. The Iraq school certificate pre-dates the primary decision and the applicants have not satisfied me that it could not have been provided before the delegate made the decisions. While the information is credible personal information in relation to the applicant child, it was provided to evidence his school attendance in Iraq which is not in contention. The applicants have not satisfied me that this is information not previously known which may have affected the consideration of the referred applicants' claims. Nor am I satisfied that there are exceptional circumstances to justify considering this information.
6. The letter from the [religious organisation] post-dates the decision of the delegate and I accept that it could not have been provided before the making of the primary decision. The applicant provided documentary evidence of his Sunni faith, a letter of recommendation from a Mosque in [City 1], in the DIBP interview and the matter of his faith was discussed with the delegate during that interview. The delegate ultimately accepted that the applicant was a Sunni Muslim and considered his claims accordingly. Further, there is other information before the IAA relevant to determining the risk of harm to those of the Sunni faith in Iraq. In these circumstances, I am not satisfied that there are exceptional reasons to justify considering this information.
7. The Authorisation Form pre-dates the primary decision and relates to claims raised in the first applicant's protection visa claims. The first applicant claims that he faces harm from Shia Militias on return to Iraq, in part, due to his previous work as a [contractor] with the collation forces on the US Army base. While his ownership of the equipment is broadly relevant to establishing the credibility of his claims, the pertinent question is whether he undertook this

work as claimed and not whether he owned the particular equipment and I note that the delegate accepted he undertook this work. In any event, there is other evidence before me regarding his ownership of this piece of machinery. The applicants have not satisfied me either that this information could not have been provided to the delegate prior to the making of the primary decision, or that it is credible personal information which, if known, may have affected consideration of the applicants' claims. Nor am I satisfied that there are exceptional reasons to justify considering this information.

8. The Memorandum of Understanding pre-dates the making of the primary decision and relates to matters that were raised in claims in the protection visa application. The applicants have not satisfied me that it could not have been provided prior to the making of the delegate's decision. The delegate accepted that the applicant undertook work with the US Army as contended, and I note there is other information in the material given to the IAA by the Secretary to support the first applicants claims to have worked with coalition forces. The applicants have not satisfied me it is credible personal information, which was not previously know, and which, had it been known may have affected consideration of the applicants claims. Nor am I satisfied that there are exceptional circumstances to justify considering this information.
9. The information from the second applicant's school post-dates the primary decision and I am satisfied that it could not have been provided prior to the making of the delegate's decision. The information broadly supports that the second applicant has settled in Australia, has made friends and is a valued member of his school community and I accept these matters. However, it is not apparent what bearing this has on whether the second applicant faces a real chance or risk of harm on return to Iraq. I am not satisfied that there are exceptional circumstances to justify considering this information.
10. I have obtained new information relating to the treatment of Sunni Muslims, those who worked with the international community, and returnees/failed asylum seekers from the west,¹ including from the most recent Australian Department of Foreign Affairs and Trade (DFAT) Country Information Report on Iraq and the United Kingdom (UK) Home Office Report on Sunni Muslims. These reports in particular update the versions of those reports relied upon by the delegate. Noting the fluid and changing nature of the security situation in Iraq, I am satisfied there are exceptional reasons to justify considering this information.

Applicants' claims for protection

First applicant

11. The first applicants' claims can be summarised as follows:
 - He is a Sunni Muslim married to a woman of the Shia faith. He resides in [City 1] in [District 1], which is a province dominated by Shiite militias.
 - He owned and drove his own [commercial vehicle] and between 2004 and 2011 he was a contractor for the coalition forces on [a US Army base], which included working with

¹ Australian Department of Foreign Affairs and Trade (DFAT), "Country Report on Iraq", 26 June 2017 CISED50AD4631; and United Kingdom (UK) Home Office, "Country Policy and Information Note - Iraq: Sunni (Arab) Muslims", UK Home Office, 28 June 2017, 0G6E7028831; and BA (Returns to Baghdad) Iraq CG", United Kingdom: Upper Tribunal (Immigration and Asylum Chamber), 23 January 2017, CISED50AD169.

the US, British and Australian forces. When this work ceased, he continued to drive his [commercial vehicle] as a contractor for the private sector.

- The applicant was fired upon by persons unknown on two occasions. The first incident occurred on or about [May] 2013 as he was walking near [a building] heading to his home. The second incident occurred [later in] May 2013 when he was shopping near [a location]. In both incidents he threw himself onto the ground and avoided the bullets. He is unsure why he was targeted but believes it was by Shia militias because he is a Sunni and/or because he undertook work with the coalition forces and in particular, the US forces. He heard about friends and relatives who had been ambushed, abducted and then killed because of sectarianism and fake accusations of dealing with the Americans.
 - After the second shooting it was decided that he and their son, the second applicant, should leave Iraq. The first applicant sold his [commercial vehicle] to finance the trip to Australia.
 - His brother escaped Iraq before him and obtained asylum in [another country]. He is now a [citizen of that country].
12. The first applicant fears he and his son will be harmed by the Shia militias due to his religion and/or because of his previous work for the coalition forces, particularly the US forces. He also fears that he and his son will be abducted and murdered by criminal or armed gangs. He heard that armed gangs in Iraq are abducting children and are harvesting and trading their organs.
13. In submissions to the DIBP, the representative indicated that the first applicant also feared harm as a moderate Sunni who is hostile to fundamentalist Sunnis and Shias and as he will be imputed to have been secularised in Australia and will be considered an apostate.

The second applicant's claims

14. In addition to the above matters raised by the first applicant, the second applicant claimed as follows:
- He is a Sunni Muslim from a majority Shia area in [City 1] in [District 1]. In March 2013 an explosion occurred close to his school. He was not injured but was fearful. In May 2013 his father was shot at. His mother stopped sending him to school because she was afraid he would be harmed and it was decided that he should leave Iraq with his father.

Other matters

15. The delegate considered that claims to fear harm as returnees/failed asylum seekers from a western country arose on the material for both the first and second applicants.

Factual Findings

Applicants' Background and Religion

16. On the documentary and oral evidence before me, I accept that both the first and second applicants are citizens of Iraq. The applicants have only ever resided in [City 1] in [District 1] province in Iraq and their family continues to reside in this area. I find that this is the area to which they would return and is their home area for the purpose of assessing their claims for protection.

17. There is some evidence to suggest that the applicants may be Shia rather than of the Sunni faith as claimed. In particular, the first applicant is married to a woman of the Shia faith, and his [social media] depicts images of Shia iconography and demonstrates that his friends have traditionally Shia names. At the DIBP interview the first applicant provided plausible explanations for these concerns, indicating that: he has many Shia friends and that marriages between Shia and Sunni were not uncommon. Independent information confirms that while marriages between Shia and Sunni have declined due to the recent sectarian tension, they were previously very common.² The applicant has consistently stated throughout his interactions with the DIBP including in his arrival interview, that he is of the Sunni faith and his oral evidence on this issue was presented in a manner suggestive of personal experience. A recording of the DIBP interview demonstrates that the applicant provided a letter of recommendation from a Mosque in [City 1] to the delegate. This document was not referred to the IAA, but it was discussed in some detail in the DIBP interview and I accept it was presented in evidence. On the totality of the evidence before me I accept that the first and second named applicants are Sunni Muslims as claimed. I accept the first applicant is married to a woman of the Shia faith and that the second applicant is a child of their mixed faith marriage.

Refugee assessment

18. Section 5H(1) of the Act provides that a person is a refugee if, in a case where the person has a nationality, he or she is outside the country of his or her nationality and, owing to a well-founded fear of persecution, is unable or unwilling to avail himself or herself of the protection of that country; or in a case where the person does not have a nationality—is outside the country of his or her former habitual residence and owing to a well-founded fear of persecution, is unable or unwilling to return to it.

Well-founded fear of persecution

19. Under s.5J of the Act ‘well-founded fear of persecution’ involves a number of components which include that:

- the person fears persecution and there is a real chance that the person would be persecuted
- the real chance of persecution relates to all areas of the receiving country
- the persecution involves serious harm and systematic and discriminatory conduct
- the essential and significant reason (or reasons) for the persecution is race, religion, nationality, membership of a particular social group or political opinion
- the person does not have a well-founded fear of persecution if effective protection measures are available to the person, and
- the person does not have a well-founded fear of persecution if they could take reasonable steps to modify their behaviour, other than certain types of modification.

² BBC News, "Sushi' children defy Sunni-Shia divide,, 18 June 2016, CX6A26A6E16256; and 2nd Secretary Migration, British Embassy in Baghdad, "Letter from the British Embassy Baghdad Sunni Shia marriage", 9 May 2011, CISD9559B12448.

First applicant's work with coalition forces

20. The first applicant claimed he worked as a contractor with the coalition forces on [a US Army Base] between 2004 and 2011. His oral evidence on this matter was detailed and presented in a spontaneous manner suggestive of personal experience. For example, he was able to explain how he funded the purchase of his [commercial vehicle], detail how he obtained work with the coalition forces, and describe the kind of work he undertook. His written statement also provided details regarding the facilities on the base and the identity and security requirements on the base. He also provided documentary evidence that he had undertaken training in the use of [commercial vehicles] and that he held a license to drive such vehicles, and provided a copy of a memorandum of understanding between the US Army and the company for which he was a contractor, which was signed by the first applicant in October 2008. His evidence is also consistent with independent information regarding subcontractors undertaking work for the Multi-National Forces in Iraq (MNF-I) and the United States Forces in Iraq (USF-I).³ On the evidence before me, I accept that the applicant owned his own [commercial vehicle] and that he worked with the coalition forces on the US Army base between 2004 and 2011. I also accept the first applicant's evidence that upon ceasing this work he continued to work as contractor driving a [commercial vehicle] in the private sector.

Past harm to the applicants

21. The second applicant claimed that a bomb exploded at his school in March 2013. This claim is broadly consistent with independent information that there were sporadic terror attacks in this area at the time.⁴ I accept that an explosion occurred at the second named applicant's school; that he was not injured but was scared; and that some months later his mother decided it was not safe for him to attend school.

22. The first applicant claimed he was targeted in two shooting incidents in May 2013. His evidence on this has been consistent and detailed and I note that he has not sought to exaggerate these claims. He stated that while he could not be certain, he believed he was targeted by Shia militias either due to his Sunni faith or his previous work on the US Army base, or both. There is independent information that Shia militias were operational in [District 1] at that time, they targeted Sunni Muslims for harm, as well as people who worked for the MSF-I and the USF-I and international companies.⁵ I accept that Shia militias shot at the first applicant on two occasions as claimed due to his Sunni faith and/or his previous work with coalition forces and that this prompted the first applicant to decide to leave Iraq with the second applicant several weeks later.

23. I note that after the second shooting incident there were no further attempts to harm or threaten the first or second applicants prior to their departure from Iraq. Moreover, there is no suggestion that Shia militias, or anyone else, approached the applicants' family searching for them or made further threats against them or their family members since their departure from Iraq. This strongly suggests that neither Shia militias, or anyone else, had an ongoing interest in harming the first or second applicant after their departure from Iraq either due to the first applicant's work with coalition forces and/or their Sunni faith or for any other reason.

Future harm in [City 1], [District 1]

³ United Nations High Commissioner for Refugees (UNHCR), "UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Asylum-Seekers from Iraq", 31 May 2012, 3577 .

⁴ [Source deleted].

⁵ Ibid; UNHCR, "UNHCR Position on Returns to Iraq, 27 October 2014 UN4E592C09; and DFAT, "DFAT Country Information Report Iraq", 29 November 2013, CIS26782 .

24. Current information is that in areas under ISIL control people who have worked with western or international companies, or people who would be perceived as having collaborated with foreign coalition forces may be targeted by Sunni insurgent groups, including ISIL.⁶ However, information is that the southern governorates remain under the control of the Iraqi government and ISIL is not in control of these areas⁷ and I am not satisfied the applicants face a real chance of harm from ISIL or other Sunni armed groups in the southern governorates including [City 1], [District 1] on this basis.
25. DFAT has assessed that there is a high risk in Iraq of societal discrimination and a moderate risk of societal violence from the community against individuals associated with the international community.⁸ The report does not indicate whether this risk extends throughout all of Iraq or whether it is confined to particular areas of the country. While the DFAT report does not identify particular occupations at risk, it does cite the example of those closely associated with the US Military, which would include the first applicant.
26. Shia militias remain active in the southern governorates of Iraq, including in [District 1], operating as part of the Popular Mobilisation Forces or Units (PMF).⁹ As noted above, information supports they used to systematically target people who worked for the MSF-I and the USF-I, particularly in and around 2011.¹⁰ However, current information Shia militias are not presently targeting current or former workers of international companies as they were in the past.¹¹ Rather, they are focused on assisting the Iraqi Security Forces (ISF) in their fight against Sunni insurgent groups including ISIL.¹²
27. There is some evidence to suggest that Shia Militias have targeted Sunni Muslims for harm. In November 2016, the United Nations High Commissioner for Refugees (UNHCR) reported resurgence in targeted violence against Sunni Arabs and stated that Sunnis have faced harassment, threats, extortion, kidnappings, arbitrary arrests, evictions and killings at the hands of the PMF and ISF, particularly, in areas currently or formerly under ISIS control and central Iraq.¹³ DFAT notes that the actual or perceived failure of the Government to respond to such incidents has exacerbated the already heightened tensions between the Sunni and Shia communities.¹⁴
28. More broadly, and consistently with the UNHCR, DFAT stated in June 2017, that discrimination and violence against Sunnis in Iraq is increasing.¹⁵ DFAT does not specifically identify provinces in which Sunnis may face such treatment; rather its risk assessment appears to be based more

⁶ "BA (Returns to Baghdad) Iraq CG ", United Kingdom: Upper Tribunal (Immigration and Asylum Chamber), 23 January 2017, CISED50AD169.

⁷ UNHCR "UNHCR Position on Returns to Iraq", 14 November 2016, OGD7C848D67: and UK Home Office, "Country Information and Guidance Iraq: Security situation in Baghdad, the south and the Kurdistan Region of Iraq (KRI)", 12 August 2016.

⁸ DFAT, "Country Information Report on Iraq", 26 June 2017," CISED50AD4631.

⁹ UK Home Office, "Country Information and Guidance Iraq: Security situation in Baghdad, the south and the Kurdistan Region of Iraq (KRI)", 12 August 2016, OGD7C848D67.

¹⁰ UNHCR, "UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Asylum-Seekers from Iraq", 31 May 2012, 3577

¹¹ DFAT, "Country Information Report on Iraq", 26 June 2017, CISED50AD4631; BA (Returns to Baghdad) Iraq CG", United Kingdom: Upper Tribunal (Immigration and Asylum Chamber), 23 January 2017, CISED50AD169; and UNHCR "UNHCR Position on Returns to Iraq", 14 November 2016; OGD7C848D67.

¹² BA (Returns to Baghdad) Iraq CG", United Kingdom: Upper Tribunal (Immigration and Asylum Chamber), 23 January 2017, CISED50AD169; and UNHCR "UNHCR Position on Returns to Iraq", 14 November 2016; OGD7C848D67.

¹³ UNHCR, "UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Asylum-Seekers from Iraq", 31 May 2012, 3577; and DFAT, "DFAT Country Information Report-Iraq", 26 June 2017, CISED50AD4631.

¹⁴ DFAT, "DFAT Country Information Report-Iraq", 26 June 2017, CISED50AD4631.

¹⁵ Ibid.

generally on whether an individual is in a Sunni or a non-Sunni area. DFAT states that tolerance for Sunnis in non-Sunni areas has declined, and overall assess that Sunnis located in non-Sunni areas face a high level of discrimination and violence. Relevantly, while there are Sunni communities in the south of Iraq, [District 1] is considered to be a Shia area, or in DFAT terms, it is a non-Sunni area.¹⁶ The DFAT report does not provide specific examples of recent incidents of harm to Sunnis in the southern governorates, citing only examples from central Iraq.

29. In its June 2017 report on Sunni Muslims in Iraq, the UK Home Office notes that while Sunnis can be marginalised by the Shia majority, the government has attempted reconciliation with the Sunni population and Sunnis are represented in society and in government.¹⁷ They assess that the treatment of Sunnis by the state is not sufficiently serious by its nature or repetition that it reaches persecutory treatment. In terms of non-state actors, the UK Home Office has observed that there are a few reports that Sunnis have experienced human rights abuses at the hands of Shia militias or unknown perpetrators, mostly in areas under ISIS control, but also in some southern governorates, including [District 1].¹⁸ [Example of actions taken against Sunnis].¹⁹ However, there is no information to suggest that anyone was harmed in these incidents and no other incidents of harm against Sunnis in [District 1] were cited in this report. The UK Home Office has assessed that overall incidents of harm against Sunnis do not form part of a consistent or systematic risk to Sunnis in the south. They assess that in general Sunnis do not face a real risk of persecution or serious harm in the southern governorates. However, it is noted that an individual may be able to demonstrate a risk of harm in areas where there is a Shia militia presence, most notably Baghdad and the central governorates, depending on their particular profile and circumstances.²⁰ Relevant factors include an individual's family connections, profession and origin.²¹ I note there is nothing in the information before me to suggest that Shia militias, members of the community, or anyone else, are targeting people in mixed Shia-Sunni marriages, or children of such marriages.²²
30. DFAT and the UK Home office are authoritative sources of information and are the most recent reports before me regarding the situation for Sunni Muslims in Iraq. I also consider that it is possible to reconcile the apparently different assessments of DFAT and the UK Home Office on the risk of harm to Sunnis. DFAT offers an overall assessment of the level of violence faced by Sunnis in Shia areas of the county, while the UK Home Office offers a more specific assessment on the risk from Shia militias in the southern governorates, expressly including [District 1]. As noted, the UK Home Office recognises there may be a risk to Sunnis from Shia militias depending on the circumstances of the individual. On the information before me, I find that some Sunnis, depending on their profile, including their family connections, profession and origin, may face a real chance of harm from Shia militias in the south of Iraq, including in [District 1].
31. In this case, neither of the applicants have experienced harm, violence or discrimination from members of the community in the past including due to their Sunni faith, being in or being the child of, a mixed faith marriage, and/or due to the first applicant's past contract work

¹⁶ [Source deleted].

¹⁷ UK Home Office, "Country Policy and Information Note - Iraq: Sunni (Arab) Muslims", 28 June 2017, OGD7C848D67.

¹⁸ Ibid.

¹⁹ [Source deleted].

²⁰ Ibid.

²¹ Ibid.

²² Home Office, "Country Policy and Information Note - Iraq: Sunni (Arab) Muslims", 28 June 2017, OGD7C848D67; UNHCR "UNHCR Position on Returns to Iraq", 14 November 2016; OGD7C848D67; BBC News, "Sushi' children defy Sunni-Shia divide", 18 June 2016, CX6A26A6E16256; 2nd Secretary Migration, British Embassy in Baghdad, "Letter from the British Embassy Baghdad Sunni Shia marriage", 9 May 2011, CISD9559B12448; and "BA (Returns to Baghdad) Iraq CG ", United Kingdom: Upper Tribunal (Immigration and Asylum Chamber), 23 January 2017, CISED50AD169.

with the coalition forces on the US Army base. The first applicant ceased work with the MSF-I and the USF-I in 2011 and continued to work in [a certain industry] without harm from the community. He has skills working as a [commercial driver] and there is nothing to suggest he will be unable to gain employment on return to [District 1]. The second named applicant attended school in Iraq and has continued his education in Australia and there is nothing to suggest he will not be able to continue his education in Iraq. I note that his family remain in their home in [City 1]. There is nothing before me to suggest that applicants would face violence or discrimination or any other harm from the community due to their Sunni faith, as young Sunni males, first applicant's past work with the MSF-I and the USF-I, or being in a mixed Shia-Sunni marriage or being a child of such a marriage.

32. I have accepted that the first applicant was shot at on two occasions in the past by Shia militias. However, independent information above demonstrates that Shia militias are no longer targeting current or former workers for the international community as they did in the past, and it also suggests there have been few incidents of harm against Sunnis in [District 1]. I have found above that the applicants were not of ongoing interest to the Shia Militias, or anyone else, after May 2013, and there is nothing in the evidence before me to suggest that they have a profile such that they would face a real chance of harm from Shia militias on return to [City 1] in [District 1] for any reason, including as young Sunni males, due to their family connections, the first applicant's former work with the MSF-I and the USF-I, being in a mixed Shia-Sunni marriage or being a child of such a marriage.
33. The first applicant has not claimed that he would undertake further work with the international community on return to Iraq. However, I have accepted that he has [qualifications] and that he has worked with the international community as a contractor in the past. I accept that he may undertake similar work with the international community on return to Iraq. However, having regard to the applicants' circumstances and the independent information, I am not satisfied that there is a real chance they would face any harm from members of the community, Sunni armed militias, including ISIL, Shia militias or anyone else on this basis on return to [City 1], [District 1].
34. DFAT has assessed that Sunnis opposed to the Sunni insurgency are at risk of harm from ISIL and associated Sunni armed groups.²³ In this case, neither the first or second applicant have opposed the Sunni insurgency or fundamentalist Sunnis in Iraq in the past. They have also not done so in Australia despite having the opportunity to do so and I consider they have no interest in doing so and that they would not engage in this activity on return to Iraq in the future. Further, in the context of assessing the risk of harm to Sunnis, DFAT asserts that the risk of harm is higher in the ISIL controlled areas in northern and western Iraq rather than in the government controlled southern provinces, which includes [District 1].²⁴
35. Having regard to all of the information before me, including the applicants particular circumstances and to independent information, I am not satisfied that they face a real chance of any harm from Shia militias, Sunni insurgent groups, including ISIL, the Government, the community or anyone else, if they return to [City 1], [District 1] now or in the reasonably foreseeable future, including due to the first applicant's past work with MSF-I and the USF-I, any future association with international community, for their Sunni faith, as young Sunni males, due to the first applicants mixed faith marriage, or due to the second applicant being the child of such a marriage.

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

²⁴ DFAT, "Country Information Report on Iraq", 26 June 2017, CISED50AD4631.

36. I have accepted above that the second named applicant's school was involved in an explosion in 2013. Current information is that the southern governorates, including [District 1], have remained more secure and that there have been few or no direct confrontations between ISIL and the ISF in these areas.²⁵ The UK Home Office has recently assessed that indiscriminate violence in the south is not at such a level that mere presence in the area leads to a real risk of harm,²⁶ and there is nothing before me to suggest that this assessment has changed. While the UNHCR has noted that criminality is on the rise in the southern governorates, DFAT notes that criminal activities in the south of Iraq are often linked to violence between opposing Shia militias or tribal groups.²⁷ There is nothing in the applicant's profile to suggest he will be caught up in any such activity in that he is not actively involved in Shia militias or tribal groups. I note information that Shia militias are engaged in criminal activities and that they do target Sunnis for such harm, however as noted above, the information before me reports few incidents of harm against Sunnis in [District 1].²⁸ Moreover, in 2015 the Finnish Immigration Service assessed that overall the southern governorates, including [District 1], were safe for their residents.²⁹
37. There is some information to suggest that children are vulnerable to harm from Sunni insurgents including ISIL as well as from the PMF and ISF.³⁰ However, the information suggests this occurs in areas currently or formerly under control of ISIL or the contested areas, rather than the applicants home area in the southern governorates.³¹ I note that there is nothing in the information before me to suggest that criminal or armed groups are kidnapping children or anyone else for the purpose of stealing their organs.
38. I accept that the applicants will be identified as returnees from a western country/failed asylum seekers on return to Iraq. I note that the second named applicant has attended approximately four years of school in Australia, has settled in well here and has a number of Australian friends. At the DIBP interview he indicated his Arabic was not strong and he undertook the interview in English. However, he will be returning to Iraq to reside with his parents and his siblings and will have their support. He has attended school in Iraq in the past and there is nothing to suggest he will not be able to continue his education in Iraq in the future. The applicants continued to identify as a Muslim and there is nothing in the evidence before me to suggest that they will be considered by anyone to have been secularised or considered to be apostates on return to Iraq. Moreover, independent information is that the practice of seeking asylum from western countries and then returning to Iraq once conditions permit is well accepted amongst Iraqis.³² DFAT has noted that Iraqis who have sought asylum overseas, including in western countries, have returned to southern Iraq without significant difficulty.
39. On the totality of the evidence before me, including the independent information and the particular circumstances of each of the applicants, I am not satisfied that they face a real chance of any harm if they return to [City 1] in [District 1] now or in the reasonably foreseeable

²⁵ UK Home Office, "Country Information and Guidance Iraq: Security situation in Baghdad, the south and the Kurdistan Region of Iraq (KRI)", 12 August 2016, OGD7C848D67; CIS38A80121841; Musings On Iraq, "Violence In Iraq, August 2016", 5 September 2016; and Musings On Iraq, "5198 Dead and Wounded in Iraq in October 2016", 2 November 2016, CIS38A80122683.

²⁶ Ibid.

²⁷ DFAT, "DFAT Country Information Report on Iraq", 26 June 2017, CISED50AD4631.

²⁸ [Source deleted].

²⁹ Juha Similä, Head of Section, Finnish Immigration Service, "Administrative Court confirmed - Asylum seekers from southern Iraq and Kurdistan are not granted protection", 15 September 2015, CISEC96CF14912.

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

³¹ Ibid; DFAT, "DFAT Country Information Report on Iraq", 26 June 2017, CISED50AD4631.

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

future, either due to the general security situation, including being abducted, murdered, or the second applicant being harmed as a child or kidnapped for his organs, or because they are returnees from a western country and/or failed asylum seekers.

40. The first applicant's brother has been granted asylum in [another country] and is now a citizen. The basis upon which he was granted asylum is not clear on the information before me. There is nothing else in the evidence before me to suggest the applicants will be targeted by anyone due to their association with the first applicant's brother on return to Iraq, and I am not satisfied the applicants face a real chance of harm for this reason on return to [City 1] in [District 1] now or in the reasonably foreseeable future.
41. Independent information is that there is a functioning international airport in Basra, in the south of Iraq³³ and I note that the applicants departed Iraq from this airport. Having regard to the information above regarding the general security situation, I am satisfied that the applicants can safely access their home area.

Refugee: conclusion

42. The applicants do not meet the requirements of the definition of refugee in s.5H(1). The applicants do not meet s.36(2)(a).

Complementary protection assessment

43. 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

44. 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.
45. I have accepted that the applicants are Sunni Muslims from [City 1] in [District 1]; that the first applicant is married to a woman of the Shia faith and that the second applicant is a child of a mixed faith marriage. I have accepted that the first applicant worked as a contractor with the MSF-I and USF-I on the US Army base between approximately 2004 and 2011. I have also accepted that the second applicant's [school] was involved in a bomb explosion in March 2013, and that the first applicant was shot at in the street in two separate incidents in May 2013.

³³ UK Home Office, "Country Information and Guidance Iraq: Return/Internal relocation", 18 August 2016, OGD7C848D68.

46. I have found above that the applicants do not face a real chance of any harm from members of the community, Shia militias, including ISIL, the Government, the community or anyone else, if they return to [City 1], [District 1] now or in the reasonably foreseeable future, including due to the first applicant's past work with MSF-I and the USF-I, any future association with international community, for their Sunni faith, as young Sunni males, due to the first applicants mixed faith marriage, or due to the second applicant being the child of such a marriage. As real chance and real risk involve the same standard,³⁴ I similarly find for the reasons set out above, that these claims do not give rise to a real risk of any harm for the purpose of s.36(2)(aa) of the Act.
47. On the totality of the evidence before me, including the independent information and the particular circumstances of each of the applicants, I found above that the applicants do not face a real chance of any harm if they return to [City 1] in [District 1] now or in the reasonably foreseeable future, either due to the general security situation, including being abducted, murdered, or the second applicant being harmed as a child or kidnapped for his organs, or because they are returnees from a western country and/or failed asylum seekers. I similarly find that these claims do not give rise to a real risk of any harm for the purpose of s.36(2)(aa) of the Act.
48. The first applicant's brother has been granted asylum in [another country] and is now a citizen of that country. I have found above that the applicants do not face a real chance of harm due to an association with him on return to [City 1] in [District 1] now or in the reasonably foreseeable future, and for the reasons set out above, I also find that they do not face a real risk of any harm for the purpose of s.36(2)(aa) of the Act, for this reason.
49. Independent information is that there is a functioning international airport in Basra, in the south of Iraq, and I note that the applicants departed Iraq from this airport. Having regard to the information above regarding the general security situation, I am satisfied that the applicants can safely access their home area.

Complementary protection: conclusion

50. 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 applicants will suffer significant harm. The applicants do not meet s.36(2)(aa).

Member of same family unit

51. Under s.36(2)(b)(i) or s.36(2)(c)(i) of the Act, an applicant may meet the criteria for a protection visa if they are a member of the same family unit as a person mentioned in s.36(2)(a) or (aa) who holds a protection visa of the same class as that applied for by the applicant. A person is a 'member of the same family unit' as another if either is a member of the family unit of the other or each is a member of the family unit of a third person: s.5(1). For the purpose of s.5(1), the expression 'member of the family unit' is defined in r.1.12 of the Migration Regulations 1994 to include a dependent child of the family head.
52. As the first and second applicants do not meet the definition of refugee or the complementary protection criterion, it follows that they also do not meet the family unit criteria in either s.36(2)(b)(i) or s.36(2)(c)(i).

³⁴ *MIAC v SZQRB* (2013) 210 FCR 505

Decision

The IAA affirms the decision not to grant the referred applicants protection visas.

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.