



Australian Government

Immigration Assessment Authority

Decision and Reasons

Referred application

IRAQ

IAA reference: IAA17/02868

Date and time of decision: 30 November 2017 14:37:00

Ailsa Wilson, 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) claims to be a Shia Arab from Iraq. [In] July 2016 he lodged an application for a safe haven enterprise visa (SHEV).
2. [In] June 2017 a delegate of the Minister for Immigration and Border Protection refused to grant the visa.
3. The delegate accepted that the applicant worked as a [Occupation 1] for [Non-Governmental Organisation 1] in Najaf for almost four years; that in late 2012 / early 2013 the Mahdi Army threatened the applicant about four times. The delegate did not accept that the Mahdi Army attacked the applicant's wife and attempted to abduct his young son in 2015 in retaliation for the applicant's refusal to assist them in early 2013.

Information before the IAA

4. I have had regard to the material given 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 29 June 2017 (IAA submission). The IAA submission restates some of the applicant's claims that are already before me. The IAA 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. The IAA submission additionally refers to or attaches the following information:
 - The applicant's wife was a [Occupation 2] and well known in the area which made her easily recognisable within a crowd.
 - A Warrant issued by the Office of Al-Shahid Al Sadr Sayyid Muqtada Al-Sadr Al-Najaf Al-Ashraf dated [in] 2016 addressing all offices of Al Sadr the Martyr and requesting that they search for and locate the applicant in all the governorates of Iraq; that they surveil places he might visit frequently; that he must be brought before the Sharia Court; and that they be kept informed of any developments in this case.
 - An undated handwritten report from the applicant's wife to an unnamed [magistrate] claiming that at [a certain time] on [a date in] 2017 her young son was attacked by a group of men who raided their house and attempted to forcefully abduct her son; that she refused to let go of her son and screamed for help; that they bashed her and hit her son [inflicting] a [injury] (as shown in the photographs); that there were [a number of] men asking for her husband and when she told them she was unaware of his whereabouts they said they would kill him in front of her for what he had said about Moqtadha Al Saddar so she knew they were from Mahdi Army. The applicant's wife also states she hopes the magistrate will take legal action against the Mahdi Army.
 - A Forensic Medical Report from a treating doctor at [a hospital] dated [January] 2017 stating s/he had medically examined the applicant's son and diagnosed '[details of injuries]' and claiming the doctor had treated the applicant's [son].
 - An Arrest Warrant dated [in] 2017 from [a court in] Najaf addressed to all law enforcement officers and police personnel stating they are assigned to investigate the

office of Al Saddar the Martyr because of the accusation that individuals affiliated with that office have carried out an attack and that they are authorised to detain the perpetrators according to an unstated article of an unstated law.

- An Arrest Warrant dated [in] 2017 issued by the [police] of Najaf province referring to the order made by the [judicial officer] of Najaf [previously in] 2017 and enclosing the Warrant of Arrest and Investigation of the complaint against the Office of Al Saddar Martyr.
 - A statutory declaration dated [June] 2017 by an Australian based family friend of the applicant claiming she was present at the applicant's wife's home in Iraq [in] 2017 when they were woken by knocking on the door and the screaming of men looking for the applicant and threatening his wife; that one of the men knocked the applicant's crying [son] and the boy fell to the [floor]; that the men left the house stating they will find the applicant no matter what; and that she believes the men were from the Mahdi groups.
 - Three undated photographs of a young child – two showing [various injuries].
 - Extracts from UNHCR Eligibility Guidelines for assessing the international protection needs of asylum-seekers from Iraq dated 31 May 2012.
 - A hyperlink to an undated New York Times topic list on the Mahdi Army.
 - A hyperlink to a Reuters media article 'Iraq Shi'ite militia splinters into hit squads, gangs' dated 21 July 2011.
7. Paragraph 26 of the IAA Practice Direction for Applicants, Representatives and Authorised Recipients indicates that hyperlinks to publicly available documents are not acceptable and applicants must provide a copy or extract part(s) of the country information or media articles on which they seek to rely. The applicant is represented before the IAA by a registered migration agent, and a copy of the Practice Direction was sent to the applicant on receipt of the referral. I have not accepted the hyperlinks to either the New York Times topic list on the Mahdi Army or the Reuters media article.
8. While I am mindful that the applicant was not represented by a migration practitioner at the time of his SHEV interview, I note that during that interview the delegate went to some trouble to explain to the applicant the importance of raising all his claims for protection at that time because after that interview he may not have an opportunity to provide those claims again. I also note that the delegate stressed to the applicant the importance that he tell the truth and provide accurate protection claims as soon as possible. The delegate also invited the applicant to tell him in as much detail as he wished about the problems that caused him to leave Iraq and explicitly asked the applicant whether there was anything he would like to add or change in relation to his SHEV application, to which the applicant responded there was not. I further note the delegate gave the applicant seven working days after the SHEV interview if there was something else he wished to tell him, however the applicant did not take up that opportunity.
9. The applicant's representative claimed it was not mentioned in the 'original interview' that the applicant's wife was a [Occupation 2] and well known in the area and that this made her easily recognisable within a crowd. I have listened to the audio recording of the SHEV interview and it confirms that the applicant's wife's profession was not discussed during that interview. However in the entry interview conducted in 2013 the applicant stated that the militia also threatened his wife and she had to quit her [job]. I am satisfied that information that the applicant's wife had worked as a [Occupation 2] was before the delegate. However the claim that her role made her well known in the local area and identifiable is new information. No explanation has been offered as to why this information was not provided earlier. I note that the applicant was

prompted a number of times during the SHEV interview, both at the outset and at its conclusion, to explain whether there was any other reasons that he feared returning to Iraq. Despite this he did not mention that his wife was well known and identifiable locally and so at risk of further adverse attention. I consider it implausible that he would not have mentioned this during the interview if it were significant. The applicant has not satisfied me that this is credible personal information or that the information could not have been provided to the Minister before the decision was made. Nor has the applicant indicated any exceptional circumstances to justify considering the new information and it is not apparent to me what any exceptional circumstances might be. I am not satisfied that there are exceptional circumstances to justify considering this information.

10. In relation to the three arrest warrants, the applicant's wife's report, the medical report and the three photographs, all of this information that is dated pre-dates both the May SHEV interview and the delegate's decision of [June] 2017 by at least three months and also contradicts the evidence the applicant gave during the SHEV interview that his wife and child had not experienced any difficulties since the 2015 incident. Neither the applicant nor his representative has explained this apparent contradiction or why this information could not have been provided earlier, prior to the delegate's decision. I consider that that the information was in existence earlier but not provided casts doubt on the genuineness of this information. The applicant has not satisfied me that the information could not have been provided to the Minister before the decision was made or that it is credible personal information. Having regard to the entirety of the circumstances I am also not satisfied that there are exceptional circumstances to justify considering this information.
11. I am satisfied that the statutory declaration itself was made by the applicant's family friend after the delegate's decision, and to that extent could not have been given to the delegate. It concerns events said to have occurred in Iraq that relate to the applicant's claims. However I note the declaration recounts events that are said to have occurred [earlier in] 2017, months prior to both the SHEV interview and the delegate's decision. No explanation has been offered as to why this information could not have been sought earlier, prior to the delegate's decision. I further note that during the SHEV interview when the applicant was asked whether anything had happened to his wife and child after the 2015 attack he did not mention this event or the friend's presence. Rather he claimed that the men who threatened him did not threaten his wife after he left Iraq as they did not know her address and she hardly left the house, so they could not track her. I consider this casts doubt on the credibility of this information. Nor has the applicant indicated any exceptional circumstances to justify considering the new information and it is not apparent to me what any exceptional circumstances might be. Overall, I am not satisfied that there are exceptional circumstances to justify considering this information.
12. I am satisfied that the 2012 UNHCR Eligibility Guidelines for assessing the international protection needs of asylum-seekers from Iraq are not credible personal information that had it been known may have affected the delegate's consideration of the applicant's claims. The Guidelines also pre-date the delegate's decision and it is not apparent why this information could not have been provided earlier, prior to the delegate's decision. The applicant has not satisfied me that the information could not have been provided to the Minister before the decision was made. Nor is it apparent that there are any exceptional circumstances to justify considering the new information. I am not satisfied as to the matters in 473DD.

13. I have obtained new information 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 just after the delegate's decision and was prepared specifically for protection status determination purposes. The 13 February 2015 DFAT report for Iraq which has been superseded by the current report was before the delegate. I am satisfied there are exceptional circumstances to justify considering the new information.

Applicant's claims for protection

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

- He worked as a [Occupation 1] for [Non-Governmental Organisation 1] [from] 2009 to early 2013.
- In late 2012 / early 2013 he was verbally threatened by the Mahdi Army who wanted him to leave his job with that Western organisation and provide them with intelligence on the movements of [Non-Governmental Organisation 1] staff.
- On an unspecified date in 2015 his wife and son were attacked by the Mahdi Army.
- One of his brothers, who worked for the US Armed Forces and [Non-Governmental Organisation 1], has since resettled in the USA.
- He fears harm from powerful Sunni militia groups such as Daesh and Al Qaeda.
- He fears the Mahdi Army may discover he has returned from Australia and be angry with him.

Refugee assessment

15. 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

16. 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

¹ Department of Foreign Affairs and Trade (DFAT), "Country Information Report for Iraq 2017", 26 June 2017, CISED50AD4631.

- 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.

17. The applicant provided the delegate with originals of an Iraqi citizenship certificate and an Iraqi identity card in support of his claimed identity. I accept that the applicant's name is as claimed and that he is a national of Iraq. There is no other evidence before me to suggest that the applicant has a right to enter and reside in any other country apart from Iraq, and I find that Iraq is his receiving country for the purpose of this review.

18. On the basis of the applicant's documentary and oral evidence I accept that: he is a Shia Muslim of Arab ethnicity; he was born in [a village] and lived the majority of his life in [Town 1], both of which are in Najaf governorate; and that he is married with one child.

His and his brother's employment with international organisations

19. The applicant's claims are one of his brothers worked for the US Armed Forces until approximately 2009 or 2010. His brother left for the US shortly after the applicant left Iraq in February 2013, and now lives in the USA with his family doing other work. The men who threatened the applicant knew his brother worked with the US Army as he believes the Mahdi Army were keeping track of him for a couple of years. They began tracking his brother in 2007 after the US Army withdrew from Iraq. At the time the applicant was threatened his brother was working in [Non-Governmental Organisation 1], after leaving his job with the US Army. The men who threatened the applicant were angry with him because of his job in [Non-Governmental Organisation 1] which they considered to be working for a foreign power. In response to the delegate asking him whether it was true that the Mahdi Army member(s) who threatened him also knew his brother had worked for the US Army, the applicant claimed 'I don't know if they knew. Yes ... no, I don't think so'.

20. I accept that one of the applicant's brothers may have worked for the US Armed Forces and [Non-Governmental Organisation 1] in Iraq and subsequently obtained a visa that enabled him to settle in the USA. The applicant was consistent in relation to this claim across his entry interview, SHEV application and SHEV interview and DFAT confirms that individuals who have worked with the international community (and, in particular, with the US Government) have faced recriminations since 2003 and that many of those at risk of being targeted (for example, those most closely involved with the US military) have moved abroad.² However I do not accept that the Mahdi Army members who threatened the applicant in late 2012 were familiar with his brother's employment history and had been monitoring his brother for years. I consider the applicant's claim in this regard to be speculative and implausible. I also find that his response when the delegate explored this point during the SHEV interview was vague and ambiguous. I am satisfied the chance is remote now or in the foreseeable future that the applicant will suffer harm as a result of his brother's employment with the US Armed Forces or [Non-Governmental Organisation 1] some years ago.

21. The applicant's claims are if he was forced to return to Iraq he would be seriously harmed because of his imputed political connections through his own work with [Non-Governmental Organisation 1]. He worked as a [Occupation 1] at [Non-Governmental Organisation 1] based in Al Najaf, a Shia dominated area. He started working there [in] April 2009 and continued to work

² DFAT, "Country Information Report for Iraq 2017", 26 June 2017, CISED50AD4631, paragraph 3.56.

with [Non-Governmental Organisation 1] as a [Occupation 1] until he left for Australia in February 2013. Because of his employment members of the Mahdi Army believed he was supporting foreign intervention in Iraq. The Mahdi Army are very powerful in the area where he lived. He still keeps in contact with his former [Non-Governmental Organisation 1] colleagues in Iraq, but he does not talk to them regularly - approximately once every six months.

22. The applicant provided documentation in support of his claim to have been employed by [Non-Governmental Organisation 1], including certificates attesting to his having completed [training] courses in [Najaf] on [subjects relevant to his employment with Non-Governmental Organisation 1].
23. I accept that the applicant worked as a [Occupation 1] for [Non-Governmental Organisation 1] in Najaf between 2009 and January 2013. He provided documentary evidence of his employment and consistently stated he had worked in this role in his entry interview, SHEV application and SHEV interview. During the SHEV interview he spoke spontaneously, persuasively and in detail about what his work entailed and was able to describe his workplace, its role and his colleagues, consistent with actual lived experience.
24. The applicant's claims are he was threatened by the Mahdi Army more than once, due to his employment with [Non-Governmental Organisation 1]. They came to his work to threaten him. There were [a number of] men. The first threat occurred in approximately 2012-2013, in the period before he left work. The Mahdi Army told him that [Non-Governmental Organisation 1] worked with the Americans so he was serving a foreign country against his own country. He told the men that he understood he was working in a humanitarian role and did not intend to work against his own country. The men didn't understand this and told him he had to quit his job or he would be killed. He knew they were from the Mahdi Army as they were the dominant militia group in Najaf at the time.
25. During the SHEV interview the applicant elaborated that the Mahdi Army said to him that he had [details of Occupation 1]. He told them he was just following [orders]. One of the men screamed at the [applicant]. The applicant then contacted whoever was in charge of security and he came and talked to the militia men and the applicant went inside. The head of security only said a few words to them and then closed the door on them.
26. The applicant's claims are he did not take this threat too seriously at first, as many other people in [Non-Governmental Organisation 1] were also being threatened and nothing was happening to them. However, he was still scared that he was in danger of being killed. During [training] they heard people talking about an explosion that happened in 2004 in Baghdad where some guards from the Red Cross were killed. They heard that the UN and other humanitarian organisations were being targeted during this attack and realised that the threats were extremely serious. As a result he became even more scared.
27. The applicant's claims are he continued to receive threats from the Mahdi Army. Some of the men were different each time but he did recognise a couple of them. The threats were never physical, only verbal. In total he received about three or four threats. The threats occurred over a period of time because the men didn't want others to notice them continuously coming to their work. It might have been a month or more where these threats occurred. Even if he wasn't working with [Non-Governmental Organisation 1], he thinks he would have received threats from militia groups such as the Mahdi Army as they are dominant in the area he was living and people either had to join them or fight them.

28. At the SHEV interview the applicant elaborated that the Mahdi Army told him they wanted him to leave his work. He told them he could not leave as he has a family and this was his only income. When the Mahdi Army asked him what [Non-Governmental Organisation 1] was doing the applicant explained they were [undertaking various humanitarian tasks]. However the Mahdi Army were not convinced and they told him not to stay working there, that instead he had to work with them. They asked him to tell them where [Non-Governmental Organisation 1] employees were going and what they would be doing but he could not because when the [employees] went to any provinces to help, it was all secret. No one would know their movements or where they were going. [Details of Non-Governmental Organisation 1 removed]. The second threat happened maybe about [a number of] days after the first, may be a bit more. He was trying to keep a low profile because they had so many places and used to move from one place to another.
29. At the SHEV interview the applicant elaborated that he didn't leave work after the second threat. The Mahdi Army came a third time and threatened him again and that's when he left as he was scared for his life. He was at work and they said 'if you don't join us or work with us we will kill you'. They were controlling everything and they have no fear of the government, no fear of the police. He used to hear people talking about how the deputy in charge of the police belongs to the Mahdi Army and that other people in high positions belong to them. So they used to say people were unlikely to be employed in high position unless they are appointed by the Mahdi Army and up to now they're still in control. They wanted him to give them news of what is happening and the movements of employees because to their mind any Westerner working in Iraq is against the government. The applicant took the last threat more seriously because he felt from their tone of voice and the words they said it was much more serious than before. He left [Town 1] a month or so later in February 2013. He was not working during this period as he took his [annual] leave. He stayed at home and did not go out at all.
30. The applicant's claims are if he is returned to Iraq, he is afraid he will be subjected to serious harm including being killed by militia groups such as the Mahdi Army. They have no mercy. They might know that he worked with [Non-Governmental Organisation 1] and would continue to threaten him and possibly kill him because of this. The applicant's claims are even if he relocated to another area of Iraq, he would be in fear of militia groups such as the Mahdi Army, Daesh and Al Qaeda. He knows that the Mahdi Army in particular are powerful in many areas of Iraq, including areas such as Baghdad and Basra. He has never travelled through anywhere in Kurdistan and could not relocate to Kurdistan as you need to be sponsored to live in that region. He would not be able to receive sponsorship as neither he nor his wife know anyone who lives in that area. He cannot legally live or stay in any other country.
31. In response to the delegate asking him whether anything else happened to him in the month he was on leave after he left [Non-Governmental Organisation 1], the applicant claimed it did not because they didn't know where he lived exactly. In that period he used to sometimes go and spend the time with his friend or spend the night at his [other sibling's] place. In response to the delegate asking him whether he received any threats outside his workplace, the applicant claimed he did not go out. He used to go from work to home and stay home. It was very rare that he would go out. He was cautious and used to make sure one hundred per cent that there was no one around when he used to leave work to go home.
32. In response to the delegate asking him why he believed the Mahdi Army would continue to target or threaten him after he stopped working for [Non-Governmental Organisation 1], the applicant claimed they don't need any more reasons to keep on threatening him. 'Because I did not follow their orders that's why'. Even in 2015 they were interested in him as when his wife was taking their child [to an appointment] they approached her and wanted to kidnap the child

but because she was screaming and yelling people came to her assistance. He doesn't know how they knew she was his wife. His wife was going to inform the authorities about the incident but the applicant told her not to do it. She had to withdraw the complaint because they were scared they might know. He would be in danger if he were to return to Iraq because 'that's their thinking. Thousands of men have left. If you cooperate with them you can live in peace, if you don't cooperate with them they'll hate you'. The proof that he would be harmed by the Mahdi Army is what happened to his wife.

33. UNHCR has indicated that civilians (formerly) employed or otherwise affiliated with the former MNF-I/USF-I or foreign governments, NGOs or international companies, as well as their families, were at risk of being targeted by non-state actors for their (imputed) political opinion. Since 2003, both Sunni and Shi'ite armed groups were known to have threatened, kidnapped and killed interpreters, embassy workers, drivers, subcontractors and others affiliated with the MNF-I/USF-I, foreign governments, international companies or organizations, reportedly to deter others from working for them.³ DFAT has reported that in-country contacts from the international community told them that their local employees do not openly discuss their employment or association with the international community within their local communities. Overall, DFAT, in general terms, assesses that the risk of societal discrimination against individuals associated with the international community is high and the risk of societal violence is moderate.⁴
34. I accept as plausible that the applicant may have been verbally threatened on about three occasions in late 2012 / early 2013 by the Mahdi Army in the course of his work as a [Occupation 1] at [Non-Governmental Organisation 1] in Najaf. This claim is consistent with country information and the applicant referred to having been threatened in his entry interview, SHEV application and SHEV interview in a generally constant manner.
35. I am not satisfied however that there is a real chance now or in the reasonably foreseeable future that the applicant will suffer harm on return to Najaf as a result of having previously been employed as [Occupation 1 with Non-Governmental Organisation 1] between 2009 and early 2013. The applicant is no longer employed by [Non-Governmental Organisation 1] and he has not indicated that he would have the opportunity to work for [Non-Governmental Organisation 1] on his return to Najaf. As he no longer works for [Non-Governmental Organisation 1] he is no longer in a position to provide the Mahdi Army with the intelligence they sought on [Non-Governmental Organisation 1] staff. I am satisfied that having left that role the applicant is no longer of adverse interest to the Mahdi Army. I note the applicant's own evidence that he received no threats outside his workplace in the month that he remained in Najaf and that some others who worked as [Occupation 1] received similar threats, confirming that the Mahdi Army were interested in him only in the context of his job and the information he could provide. I also note that more than four years have passed since the applicant left Iraq; and there is nothing in the evidence before to suggest that the Mahdi Army pursue former low level employees of international non-government organisations years after they have left such organisations. Although the UNHCR Guidelines referred to above include mention of people '(formerly) employed' the examples they cite relate to persons currently employed by such organisations, and particularly the US Forces. I have additionally considered the possible combined effect of the applicant's and his brother's former employment with international organisations. I previously concluded that it was implausible that the Mahdi Army were monitoring the applicant's brother's employment over a number of years, and I am satisfied that the applicant's

³ UN High Commissioner for Refugees, "UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Asylum-Seekers from Iraq", 31 May 2012, 3577, pp.16-17.

⁴ DFAT, "Country Information Report for Iraq 2017", 26 June 2017, CISED50AD4631, paragraph 3.56.

brother's former employment has not in any way created a profile for the applicant with the Mahdi Army. I am satisfied there is not a real chance now or in the foreseeable future that the applicant will be imputed with a political opinion or suffer harm as a result of his, or his and his brother's, former employment with international organisations in Najaf over four years ago.

36. I do not accept the applicant's claim that even if he wasn't working with the [Non-Governmental Organisation 1] he thinks he would have received threats from militia groups as they are dominant in the area he was living and men either had to join them or fight them. I find this claim speculative and inconsistent with country information that the risk of being caught up in intra-Shia violence is predominantly borne by those who are actively involved in the militia or tribal group, rather than ordinary civilians who may be perceived to be part of a militia or tribal group's constituency⁵ and that Shia militia comprise volunteers, particularly from lower socio-economic classes.⁶

2015 attack against his wife and child

37. The applicant's claims are in 2015 his wife was attacked when she was taking their baby to [an appointment]. Men tried to take their baby from his wife's arms, but she started to scream and people began to gather around so the men moved away. During this attack, their baby was hurt and had to be taken to hospital. His wife went to the police about this, but they believe the police are corrupt and working with the Mahdi Army. They asked her for her address and she did not feel comfortable giving this to the police. The applicant told his wife to withdraw the complaint as he did not want the police to obtain her address. After this incident the applicant told his wife not to leave the house unless it was for something necessary and important, so fortunately she has not been attacked again. The men who used to threaten him did not threaten his wife after he left Iraq as they did not know her address and she hardly left the house, so they could not track her. The Mahdi Army are still very powerful in Iraq today, and particularly in Najaf. He believes they have many connections with the police and the Government. He knows this because his wife tells him what is happening there. He talks to his wife almost every day and also hears updates on the news.
38. In response to the delegate asking him why the Mahdi Army would wait two years to target his wife, the applicant claimed he didn't know why this was the case. 'Maybe because they wanted to act this way to push her or force her for to force me to go back. I don't know. She's the one that told me whatever happens do not put yourself in danger, do not come'. In response to the delegate asking him how he knew it was the Mahdi Army who attacked his wife and child in 2015, the applicant claimed he 'believed it was them even though he was here, who else could attack? They have so many influences and they are integrated into the government'. In response to the delegate suggesting his wife and child may have been attacked by criminals seeking ransom, the applicant claimed 'no, I don't think so. No one would be bold enough or daring enough to act the way they did during the daytime'. In response to the delegate asking him how the Mahdi Army identified his wife and if they had identified his wife presumably they also knew where she lived, the applicant claimed 'yes I think via [certain personal] records because they contain the name and the address and that's how I believe they acquired this information'. In response to the delegate asking him why the Mahdi Army didn't then go directly to his wife's home, the applicant claimed 'I don't imagine that they would do it because they don't want to give out to people that they're criminals or bad people. They want to portray themselves as peaceful people'.

⁵ DFAT, "Country Information Report for Iraq 2017", 26 June 2017, CISED50AD4631, paragraph 3.33.

⁶ "Your Country Needs You: Iraq's Faltering Military Recruitment Campaign", Carnegie Middle East Center, 22 July 2015, CXBD6A0DE19085; 12 "Fight or Flight: The Desperate Plight of Iraq's "Generation 2000"", International Crisis Group, 8 August 2016, CIS38A80121504, pp.15-17.

39. Multiple country information sources, including the UNHCR and DFAT, indicate that abduction and kidnapping for ransom is prevalent in Iraq and that some Shi'ite groups have been reported to engage in such criminal activities.⁷
40. I am prepared to accept that in 2015 the applicant's wife and son may have been accosted in public, and that a criminal attempt may have been made to abduct the applicant's son while he was being taken to [an appointment]. I am not satisfied however that this attack was perpetrated by the Mahdi Army because the applicant refused to join them or provide them with information two years prior to this incident. I have not accepted that the applicant was of adverse interest to the Mahdi Army once he had left his [Non-Governmental Organisation 1] role in January 2013 and I do not consider it plausible that the Mahdi Army would be interested in, or able to locate, the applicant's wife and son some two years later. I am satisfied the chance is remote now or in the foreseeable future that the applicant will suffer harm because of the assault on his wife and the attempted kidnapping of his son in 2015.

Harm feared from Daesh and Al Qaeda

41. The applicant's claims are he also fears harm from other powerful militia groups such as Daesh and Al Qaeda. He knows that they are very powerful in many areas of Iraq, although he is not sure what sort of presence they have in Najaf. He has heard on the news that many members of these groups are threatening nearby Karbala, a city north of Najaf.
42. In August 2016 the UK Home Office reported that in the mainly Shi'a southern provinces, which include Najaf and Karbala, there were no direct confrontations between Islamic State in Iraq and the Levant and the Iraqi armed forces. The violence in these provinces was limited to sporadic terrorist attacks of decreasing frequency and intensity. The number of civilian casualties is significantly lower than in Babil province, and far below the levels reached in central Iraq, including Baghdad.⁸ More recently, media and monthly reports on security incidents in Iraq between July 2016 and March 2017 revealed a low level of violence in Najaf and Karbala governorates.⁹ I also note the applicant doesn't claim that either he, or his family, had any contact with or previously suffered any harm at the hands of groups like Daesh or Al Qaeda. I further note that while the applicant refers to neighbouring Karbala governorate, he does not claim to have visited or have any other connection with Karbala.
43. I am satisfied the chance is remote now or in the foreseeable future that the applicant will suffer harm from Sunni militia groups, such as Daesh or Al Qaeda, on return to Najaf governorate.

Shia Muslim from Najaf

44. Although the applicant made no claims in this regard, the delegate considered whether the applicant will suffer harm as a Shia Muslim from Najaf.

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.11; DFAT, "Country Information Report for Iraq 2017", 26 June 2017, CISED50AD4631, paragraph 5.6.

⁸ 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, paragraph 8.2.6.

⁹ "6,732 Dead and Wounded In Iraq In March 2017 ", Musings on Iraq, 09 April 2017, CXC9040665694; "4,290 Dead And Wounded In Iraq In February 2017", Musings on Iraq, 02 March 2017, CXC9040663013; "5198 Dead and Wounded in Iraq in October 2016", Musings On Iraq, 02 November 2016, CIS38A80122683; "Violence in Iraq, September 2016", 05 October 2016, CIS38A80122164; "Violence In Iraq, August 2016 ", Musings On Iraq, 05 September 2016, CIS38A80121841; "Violence In Iraq July 2016", Musings on Iraq, 03 August 2016, CX6A26A6E10208; "Will massive trench keep Iraqi holy cities safe from terror?", Al Monitor, 06 March 2017, CXC9040663144.

45. In June 2017 DFAT reported as the majority community in Iraq with a dominant role in the Government, Shias face little to no official discrimination in government-controlled areas. In these areas, DFAT assesses that reported instances of societal discrimination are likely to be associated with patronage and nepotism, such as not having the right contacts to secure access to jobs or housing. Violence between opposing Shia militias (including those that fall under the umbrella of the PMF) does occur and is more pronounced in Shia areas (such as Baghdad and the south). This is sometimes linked to other criminal activities, including robberies and kidnappings. 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 the militia or tribal group, rather than ordinary civilians who may be perceived to be part of a militia or tribal group's constituency. 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. Southern Iraq, which includes Najaf, has been and remains more secure than other parts of the country.¹⁰ While a suicide bombing occurred in the governorate in early 2017, a March 2017 media article described Najaf as relatively safe compared with other provinces.¹¹
46. I accept that Shias have been subject to isolated attacks in Najaf governorate. I also accept that a lower risk of harm in an area does not necessarily preclude there being a real chance of harm in that area. However in this case, not only is there a lower risk of harm in the Najaf governorate but having regard to the nature and frequency of incidents in that governorate, I am also not satisfied that there is a real chance of harm. I am satisfied that while there is some violence in the south of Iraq, the level of harm is such that the chance of harm does not rise to a real chance and I consider the chance remote that now or in the reasonably foreseeable future the applicant will suffer harm as a result of his Shia religion or the security situation in Najaf governorate.
47. Although the applicant made no claims in this regard, the delegate considered whether he could safely and lawfully return to Najaf governorate. According to the UK Home Office there is not a real risk of an ordinary civilian travelling from Baghdad airport to the southern governorates suffering serious harm en route to such governorates.¹² I am satisfied the chance is remote now or in the foreseeable future that the applicant will suffer harm returning to Najaf governorate.

Returnee from the west

48. The applicant's claims are the Mahdi Army might find out that he has been in Australia. He knows they will be very angry about this as they consider all foreign organisations to be representing foreign country enemies, even countries that were initially friendly to Iraq. He has already been threatened a number of times by members of the Mahdi Army. His wife and child were attacked in 2015 by members of the Mahdi Army and their child was injured during this attack. He is afraid that he would not be protected by anyone, including the authorities, because most members of the police force are part of the Mahdi Army. They would not be interested in helping him as he is not supportive of the Mahdi Army.
49. I accept that people in the applicant's local area may become aware that he has returned to Iraq from a western country. However I am not satisfied that there is a real chance that he will suffer harm as a result. DFAT indicates there is evidence that shows a number of Iraqis return to Iraq, sometimes only months after securing residency in Australia to reunite with families, establish and manage businesses or take up or resume employment. The practice of seeking asylum and

¹⁰ DFAT, "Country Information Report for Iraq 2017", 26 June 2017, CISED50AD4631, paragraphs 3.31-3.34 and 5.17.

¹¹ "Will massive trench keep Iraqi holy cities safe from terror?", Al Monitor, 06 March 2017, CXC9040663144.

¹² UK Home Office, "Country Information and Guidance Iraq: Return/Internal relocation", 18 August 2016, OGD7C848D68, paragraph 2.2.18.

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.¹³ Furthermore there is nothing in the information before me to suggest that the Mahdi Army is interested in, targets or ill-treats returnees from the west. I also note the applicant will be returning to family in [Town 1] in Najaf governorate, including his wife, his son, his wife's mother and some adult siblings. I further note that prior to working at [Non-Governmental Organisation 1], the applicant was employed as a [former occupation] for more than four years.

50. I am not satisfied there is a real chance now or in the reasonably foreseeable future that the applicant will suffer harm as a failed asylum seeker and returnee from a western country.

Refugee: conclusion

51. 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

52. 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

53. 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.

54. I have concluded that the applicant does not face a real chance of harm from the Mahdi Army because he was formerly employed by [Non-Governmental Organisation 1] or because his brother formerly worked for the US Armed Forces and [Non-Governmental Organisation 1]; because his wife and child were attacked in 2015; from Sunni militant groups like Daesh or Al Qaeda; because he is a Shia Muslim from Najaf; because of the security situation in Najaf; as a returnee from a western country; or in returning to Najaf.

¹³ DFAT, "Country Information Report for Iraq 2017", 26 June 2017, CISED50AD4631, paragraph 5.25.

55. As 'real risk' and 'real chance' involve the application of the same standard,¹⁴ I am also not satisfied that the applicant would face a real risk of significant harm for the purposes of s.36(2)(aa) on these grounds.

Complementary protection: conclusion

56. 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.

¹⁴ *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.