



Australian Government

Immigration Assessment Authority

Decision and Reasons

Referred application

IRAQ

IAA reference: IAA20/08808

Date and time of decision: 22 January 2021 09:23:00

C 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 a referred applicant, or their relative or other dependant.

Background to the review

Visa application

1. The referred applicant (the applicant) claims to be Shia taxi driver from Najaf, Iraq. He arrived in Australia as an unauthorised maritime arrival [in] March 2013. He applied for a Safe Haven Enterprise Visa (SHEV) on 6 March 2016.
2. A delegate of the Minister for Immigration and Border Protection (the delegate) refused the application on 22 May 2017. The delegate accepted the applicant had been threatened after insulting the leader of the Asaib Ahl al-Haq (AAH) militia group when talking to passengers in his taxi. The delegate did not accept however that he was targeted for recruitment or was of ongoing adverse interest to the militia group, or that he faced a real chance or real risk of harm in Iraq for any other reason.
3. The delegate's decision was affirmed by the IAA in 2017 and 2019.¹ The applicant sought judicial review both times. The last IAA decision was quashed and remitted for redetermination by order of [a Judge] [in] 2020.

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 4 page submission on 20 June 2017. The submission restates the applicant's claims and provides comment on the delegate's decision. It does not contain any new information. I have taken the written submission into account.
6. In 2019 the applicant provided a statutory declaration dated 3 August 2019 containing new information that the AAH headquarters in Najaf was set on fire during protest action and that subsequently the AAH had been looking for him at his family home as someone on their target list. The applicant also provided two reports from Iraq (with translations) regarding the demonstrations in Al Najaf and attacks by AAH on demonstrators. I accept this information could not have been provided to the delegate as it concerns events that occurred after the delegate's decision was made. I accept the statutory declaration contains credible, in the sense of capable of being believed, personal information that may have affected the consideration of his claims. I accept the claim that the AAH looked for him is relevant to his core claim and that the two reports provide more updated country information regarding the AAH in Najaf. For these reasons, and having regard to the passage of time since the delegate's decision, I am satisfied there are exceptional circumstances to justify considering this new information.
7. Following the most recent court remittal the applicant has provided further information, including new information:
 - A statutory declaration dated 16 November 2020 containing new information that his family were targeted by AAH following protests in Najaf in 2019 because the applicant is on their target list.

¹ IAA17/02740 and IAA19/07044.

- A statutory declaration dated 23 November 2020 regarding the threat letters his family received from the AAH in 2013 and 2014.
 - Extracts with translations purportedly from the applicant's [social media] page.
 - An extract from the Department of Foreign Affairs and Trade (DFAT) Country Information Report Iraq dated 17 August 2020.
 - Three news articles from 2019 and 2020.
8. The statutory declaration dated 16 November 2020 contains new information that the applicant's family were allegedly targeted in November 2019 by the AAH in a raid on their home because of protests in Najaf and because the applicant is on their target list. I accept this information could not have been provided to the delegate as the event post-dates the delegate's decision. I accept it is credible, in the sense of capable of being believed, personal information that may have affected the consideration of his claims to be an ongoing target of the AAH. Taking these matters into account I am satisfied there are exceptional circumstances to justify considering the new information in this statutory declaration.
 9. The statutory declaration dated 23 November 2020 contains comment and clarification on why there was an inconsistency between his referring only to an August 2013 threat letter in his March 2016 written statement but providing instead two threat letters at his SHEV interview dated February 2013 and September 2014. Some of the information is more than just clarification, such as his recall of conversations with his mother regarding the threat letters she received and a claim that he fainted when she told him about the August 2013 letter. I do not accept this information could not have been provided to the delegate, as it all occurred prior to the SHEV interview. I accept however the information is personal credible information, in the sense it is capable of being believed, that may have affected the consideration of his claims regarding the AAH. I accept the threat letters are an important element of his core claim and the new information is provided in an attempt to address the inconsistencies and delay in providing the threat letters. For these reasons I am satisfied there are exceptional circumstances to justify considering the new information in this statutory declaration.
 10. On 23 November 2020 the applicant provided extracts with translations that are purported to be from his [social media] page. It is not clear on the face of the extracts that they are in fact from [social media]. No submissions or context has been provided with the information apart from an assertion that they 'show his interest in commenting on the protests in Iraq'. The applicant has not explained how it is relevant to the review, why it could not have been given to the delegate or how it is credible personal information that may have affected the consideration of his claims. The posts date from only a three day period from 3 to 5 October 2019. There was no claim in his SHEV application that the applicant had been involved in protests or was otherwise politically active in Iraq or Australia, or that he feared harm because of any political activity or opinion. He has not formulated a new claim to fear harm from political activity undertaken in Australia. He has not expressed any intention to comment on social media about protests in Iraq in the future. Given the lack of context provided with this information, the short period of time of this activity, the lack of evidence these posts are from the applicant's [social media] page, and the lack of explanation of the relevance of these posts to his claims, the applicant has not satisfied me they amount to credible personal information that may have affected the consideration of his claims. However I accept the information could not have been given to the delegate as they postdate the delegate's decision. I have taken this into account, but given the lack of context provided with this information, the short period of time of only a few days in 2019 that he put such posts on [social media] (if in fact he did), and

the lack of explanation of how they are relevant to his claims or whether they raise a new claim, I am not satisfied there are exceptional circumstances to justify considering this new information. Therefore I must not consider it.

11. The applicant provided a number of extracts from the DFAT Country Information Report Iraq dated 17 August 2020 as new information that he wished to rely on. The extracts are not credible personal information, but I accept the extracts from the 2020 DFAT report could not have been provided to the delegate before the decision was made. I am satisfied there are exceptional circumstances to justify considering the most recent country information from DFAT, taking into account it has been more than 3 years since the delegate's decision was made.
12. I note the reviewer for the previous review in 2019 obtained a copy of the 2018 DFAT Country Information Report Iraq, as the most updated country report from DFAT at that time. However, as referred to above, a more recent DFAT report was released in 2020 that superseded the 2018 report. In the circumstances I am not satisfied there are exceptional circumstances to justify considering the 2018 DFAT report. I have exercised my discretion however to obtain the full 2020 DFAT report on Iraq. In circumstances where more than 3 years have passed since the delegate's decision was made and the applicant relies on extracts from the report did not provide a full copy of it, I am satisfied there are exceptional circumstances to justify considering the most recent country information from DFAT in the form of the 2020 DFAT Country Information Report Iraq.
13. The three news articles provided by the applicant include the following: a Reuters report dated 6 February 2020 'Clashes in Iraq's Najaf kill 8 after cleric's followers storm protest camps: medics'; a Middle East Media Research Institute (MEMRI) report dated 14 January 2020 'Shi'ite Militias Crack Down on Reporters, Activists Covering Anti-Iran Protests in Iraq'; and a Euronews report dated 25 October 2019 'At least 40 killed as fresh protests engulf Iraq'. The reports are not credible personal information, but they all post-date the delegate's decision and could not have been provided to the delegate. Taking into account the long period of time since the delegate's decision and that the reports contain information on relatively recent events in his home area, I am satisfied there are exceptional circumstances to justify considering these news reports.

Applicant's claims for protection

14. The applicant's claims can be summarised as follows:
 - The applicant is a Shia Muslim from Al Najaf, Iraq. His wife, [children], mother, and [siblings] still live in Al Najaf.
 - He worked as a taxi driver prior to departing Iraq. In January 2013 he picked up [number of] men to drive them to the town centre. They started discussing the leader of the Mahdi Army, Muqtada al Sadr, and because of the sarcastic and joking way they were talking it encouraged him to insult and make fun of Sadr too. When they asked what he thought of Qais al Khazali, the leader of the AAH militia group, the applicant said he was even worse than Sadr. The men became angry and one of the men identified himself as a leader in the AAH. The applicant was forced at gunpoint to stop the car. They threatened to cut out his tongue. He apologised for what he said, but they said they would only accept his apology if he joined the AAH. They let him go after taking photographs of him, his taxi, and getting his phone number.

- The applicant reported the taxi incident to the police, but they said they could do nothing to help him.
- A few days later he received threatening phone calls. In the first one they again told him he must join AAH and told him to go to a certain place. In the second call they said they would kill him for not doing what he was told to do in the first call. He fled Iraq shortly afterwards.
- After the applicant fled Iraq his family received threat letters in 2013 and 2014.
- The applicant's home has been raided by the AAH in July 2018 and November 2019, after protests in Najaf. On both occasions they were looking for the applicant as they were following up on persons on the AAH target lists who may have been involved in the protests.
- The applicant fears he will be killed by the AAH if he returns to Iraq. He cannot relocate to avoid harm as they have connections everywhere. They will kill him because he insulted their leader and insulted them by not joining the group as requested.

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
 - 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. I accept the applicant is a citizen of Iraq, on the basis of the identity documents he provided to the Department, including a copy of his Iraqi passport. I find Iraq is his receiving country. The applicant claims to have lived all his life in Iraq in Al Najaf, and says his family still live there. I find Najaf if the place he is likely to return to.

18. The applicant claims he left Iraq, and will face serious harm on return, because he insulted the leader of the AAH and then refused to join the AAH. He maintains that he continues to be on the target list of the AAH.
19. The AAH is a Shia militia organisation led by Qais al-Khazali. The group was founded in January 2006 when Khazali, a commander in the military brigade of Muqtada al-Sadr's Mahdi Army, split from the Mahdi Army. Khazali had been recruited by the Iranian Revolutionary Guard Corps to form the AAH, and the AAH received Iranian funding. The AAH's main targets have been the US coalition forces in Iraq, other US affiliated persons or bodies, and Sunni Muslims. Between 2006 and 2011 the AAH claimed responsibility for over 6,000 attacks on US forces. The group took on a more political focus after the withdrawal of US troops from Iraq in 2011, but has maintained a militant arm. From 2011 to 2014 the AAH were known to stoke sectarian violence, and were used as a militia group by the Iraqi government led by Prime Minister Maliki. There are reports the AAH jailed or executed anti-Maliki Sunnis in southern and central Iraq in 2013 and 2014, and assassinated several Sadrist candidates in 2012 leading up to the 2013 elections. The AAH was active fighting alongside Hezbollah in the Syrian Civil War and in fighting against the Islamic State. They even fought alongside US troops against Islamic State. The AAH has its headquarters in Baghdad, but also has offices in al-Khalis, Basra, Tal Afar, Hilah and Najaf. With the establishment of their political arm they have also tried to build relationships with the Shia community through providing social services, such as by establishing religious schools and sponsoring public events such as soccer games.²
20. The applicant's account of the taxi incident has been consistent between his written application and oral evidence, but was not mentioned in the arrival interview. The delegate questioned the applicant about this and the applicant said he did not mention it because he was told before and during the interview to be brief, and at times the interviewer put up his hand to stop him adding more information. The interviewer told the applicant to say in only one or two sentences why he left Iraq, but when the applicant gave his one sentence answer, that it was because he was threatened, the interviewer did ask follow up questions. The applicant was asked who threatened him and why and when and how many times and was there anything else he wanted to add. The applicant's responses to these questions were brief: [who] *militias...* [why] *Not sure what's the reason but I think it was because they wanted me to become a member of the militia...* [when] *at the beginning of February 2013...* [how many times] *Twice by phone, the first time they wanted me to join their group but I refused. The second time they threatened to kill me and finish me off...* [anything else] *Nothing else but apart from being threatened.* I accept the applicant was told by the interviewer to be brief and in listening to the recording I noted the interviewer did appear in a hurry to get through the interview. Having regard to the purpose of the arrival interview and accepting the applicant may have withheld information because he felt rushed or not ready to disclose the full incident, I give no further weight to the omission.
21. I note the applicant's account is consistent with a copy of a police report dated [in] January 2013 that he provided to the delegate after the SHEV interview. However, I have concerns about the genuineness of the police report for a number of reasons. Firstly, he did not provide it with his application (even untranslated) despite being assisted by a migration agent and the SHEV application form reminding the applicant to provide any supporting documentation at time of lodgement (at p.20) and asking him to list all documents associated with his application, including ones that could not be provided at that time (at p.23). Secondly, the applicant described the police report at his SHEV interview as his 'evidence and proof I was threatened

² Stanford University, Mapping Militant Organizations: Asai'b Ahl Al-Haq, 24 March 2017; the Institute for the Study of War, The Resurgence of Asai'b Ahl Al-Haq, 1 December 2012.

to be killed'. Given the high evidentiary value such a document would have, it ought to have been provided with his application or mentioned as a document he would provide later. The applicant didn't even have it translated until after the SHEV interview. Thirdly, the details in the police report do not read like a report of an incident as recorded by a police officer. The report is very similar to the applicant's recount of the incident at the SHEV interview and I consider it more likely he wrote this account later, rather than it being a contemporaneous report by the police. For all these reasons I find the police report may not be a genuine document, but may have been written by or under instruction of the applicant to support his claims. I also note DFAT's advice that counterfeit documents or fraudulently obtained documents are commonly and cheaply available in Iraq.³ I have therefore given it no weight.

22. The applicant told his narrative of the taxi incident to the delegate in a persuasive manner, detailing the incident from the time he picked up the men until the point they let him go and he reported to the police. The delegate noted *the applicant appeared to recall the details of these event from experience, such that I accept they genuinely occurred*. I have listened to the applicant's oral evidence at the SHEV interview. I agree the applicant spoke persuasively and in detail about what happened during the taxi incident.
23. The applicant claims he was lulled into saying something negative about Khazali because of the sarcastic and joking manner in which the men had talked about Sadr. Whilst the applicant should have known to be careful in expressing negative views about militia leaders to people he did not know, I accept it is plausible he got carried away in the flow of the conversation and expressed a negative view about Khazali. Based on his oral evidence at the SHEV interview regarding the incident, I accept the claim that the applicant was joking with [the] men in his taxi and making derogatory comments about Sadr, and that when the conversation turned to Khazali the applicant insulted the leader of the AAH.
24. The applicant claims the [men] threatened to cut his tongue out and also threatened him with a gun after he insulted Khazali. The applicant's insults were that Khazali was worse than Sadr, after already having said Sadr was a failure who could not even manage sheep. The AAH are a militia group, and they are known to have committed violence against Iraqis, particularly Sunnis and opponents of Khazali. Based on what the applicant said, in a situation where he was almost goaded into saying it, I am not persuaded his insults were of such magnitude that it made him an ongoing target of the AAH. It did not make him an opponent or threat to Khazali or the AAH; just an ordinary Shia man who privately said something derogatory about the leader. I accept it may have been enough in the moment for the AAH militia men to threaten him, possibly even physically harm him given the violence the AAH have been known to commit, but they did not in fact do so.
25. The applicant did not know the [number] men he picked up in his taxi on the day of the incident. The applicant says that once he had insulted Khazali by saying he was worse than Sadr, one of [these] men identified himself as a leader in the AAH. The applicant has no knowledge of this person's name, rank, or in what capacity he was a leader. On the basis the men were offended and aggressive after his comments about Khazali, I accept some or all of [these] men were members of the AAH. However on the limited information the applicant has about them I am not satisfied one or any of them had positions of leadership in the AAH.
26. The applicant says he was told he would have to join the AAH, where they could keep an eye on him and humiliate him. He says the men took his name, phone number, and photographed him and his taxi. He says one of them phoned him two days later, and then again two more

³ DFAT, Country Information Report Iraq, 13 February 2015.

days after that. He says the first time they called it was to remind him he had to join the AAH and told him where to go to meet them, and the second time it was a threat to his life because he hadn't done what he was told to do in the first call. If one of the men in his taxi had followed up to make threatening phone calls, they took no action even after the applicant did not turn up where he was told to or was told his life was threatened. The delegate did not accept the applicant was being forcibly recruited by the AAH and referred to country information that indicated the AAH recruited members through religious networks and activism, not by threatening ordinary Shia civilians into joining.⁴ The applicant says this misses the point. He says the men in his taxi were not trying to recruit him for the sake of having him as a member, but wanted to recruit him so that they could control and humiliate him. I do not accept this submission. As members a militia group they could have threatened or harmed him in other ways, without needing to force him to join the militia. I consider it unlikely the men in his taxi in fact wanted or threatened him to join AAH, given his negative view that he had already expressed to them about the leader of the group and the lack of country information before me to indicate the AAH were forcibly recruiting ordinary Shia men in 2013. But if I am wrong, and the men did threaten him in January 2013 that he must join and even followed this up with a telephone call 2 days later to arrange it, there were no consequences at that time for his refusal to do so. I consider it farfetched any of the [number] men remember threatening the applicant, a stranger to them, in 2013 to join the AAH and having an interest in following him up 8 years later for not having done so.

27. The applicant claims the AAH took photographs of him and the taxi. I consider it unlikely the photographs would have been retained by the men or the AAH as evidence of him being a person of interest. There is no claim the taxi owner (a relative) was ever approached or threatened even though they took photos of the vehicle. I consider the fact that the applicant was let go on the day of the incident and never approached in person in the weeks that followed, supports a conclusion that whilst the men threatened and harassed him in the heat of the moment, and by telephone a few days later, as an ordinary Shia man he was not someone the AAH would have an ongoing interest in targeting. Although I have accepted a conversation occurred in his taxi which offended or angered the [passengers], I do not accept the applicant became a person of ongoing interest to [these] men personally or to the AAH as a group.
28. The applicant's representative submits the [number] men from the taxi cannot let this matter go because even if one of them was willing to do so the others would report them to AAH leadership. He also submits it is a loss of face for the one among the [men] identified as a leader in the AAH if he doesn't do something about the applicant. I consider this is mere speculation and elevates the applicant's comments to the men about Khazali to a much greater incident than it was. The applicant knows nothing about [these] men. He does not know their names, their rank in the AAH, whether one was in fact a leader in the AAH, whether they were from Najaf and if so still live there, or whether they are even still members of the AAH. All that is known is that these [men] caught the taxi together that day, but it is speculation to say they are still members of the AAH, or that they still know each other in the militia group, or that they have any memory or ongoing interest in the careless words of a taxi driver from 8 years ago.
29. The applicant has provided inconsistent information about the threat letters he claims his family received in his absence. In the written statement with his SHEV application dated 2 March 2016 he said his family found a threat letter in August 2013 that said 'death is coming even after a while', but did not provide a copy of the letter. However for the SHEV interview

⁴ The Institute for the Study of War, The Resurgence of Asai'ib Ahl Al-Haq, 1 December 2012.

in March 2017 he brought copies of two other threat letters dated [in] February 2013 and [September] 2014. When asked about the letter referred to in his written application he said his family didn't have a copy of the August 2013 letter anymore. The February 2013 letter states the AAH decided he would be killed for his refusal to join them. The September 2014 letter states they had investigated him and knew he had fled abroad, and he would be killed as a traitor. I note neither letter referred to him insulting the leader of the AAH. The applicant did not refer to either of these letters in his written SHEV application.

30. The applicant has tried to explain the inconsistencies and timing of provision of the threat letters in a statutory declaration dated 23 November 2020. He says he mentioned only the August 2013 letter in his statement of claims because that is the only letter he was aware of at that time. He claims he was so distressed when his mother told him about the letter in August 2013 that he fainted. He asked her again about the letter when he was preparing his application but she told him she had lost it. He says he spoke to his mother in early 2017 to explain to her that it was important she send him the August 2013 letter as evidence for his claims. She again said it was lost, but for the first time told him she had two other threat letters, that is, from February 2013 and September 2014. She had not told him about those because she didn't want to panic him, especially after he fainted in August 2013. He asked her to send the letters to him, and says he received the two letters from a friend via 'WhatsApp', but has not provided any evidence of this. Nor has he provided any evidence from his family.
31. The applicant's explanation that his mother did not tell him about the September 2014 letter because of his bad reaction to the August 2013 one may be plausible. However it does not explain why she did not mention the letter from February 2013 prior to August 2013, or why if she was trying to protect him from panicking and fainting because of threat letters that she even mentioned them at all in early 2017. There is no explanation why the family kept those 2 letters, but not the August 2013 one. I am not satisfied by the applicant's explanation for why he did not mention the threat letters in his written SHEV application or why he did not provide them until his interview in 2017. For reasons already given, I do not accept the AAH had an interest in pursuing the applicant for allegedly not joining them. The contents and timing of the letters also seem unlikely. They make no mention of him insulting Khazali. If they were threatening to kill him as in the February 2013 letter it seems unlikely it took them until September 2014 to investigate him to carry out the threat. I note DFAT's advice that counterfeit documents or fraudulently obtained documents are commonly and cheaply available in Iraq.⁵ I am not satisfied these letters are genuine threat letters from the AAH and I do not accept he or his family received threat letters following the taxi incident or for any other reason. I find the threat letters from February 2013 and September 2014 are not genuine and were fabricated to support his SHEV application.
32. The applicant claims he knows he is on the AAH target list and is still of adverse interest to them because after protests in 2018 and 2019 the AAH raided his family home looking for him. In a statutory declaration dated 3 August 2019 he declared the AAH told his mother his name was on their target list because he had opposed the AAH in the past and insulted the leader. The family were told the AAH would constantly monitor them. His mother told the AAH the applicant had left Iraq for Australia in 2013. In another statutory declaration dated 16 November 2020 the applicant declares the AAH again raided his family home after protests erupted in Najaf and again told his family the applicant is on their target list and they will continue surveillance of the family. The applicant declares these events confirm the AAH have not forgotten about him and that 'there is constant persecution to my family'. He does not however provide any information regarding what 'constant persecution' his family have

⁵ DFAT, Country Information Report Iraq, 13 February 2015.

experienced apart from the two alleged raids on their homes in 2018 and 2019. He raised no issues at the SHEV interview or in his SHEV application of any harm or harassment his family have experienced in his absence. I consider also that if his family were under any type of surveillance, the AAH would already have known the applicant was not present in Najaf since 2013.

33. The applicant provided 2 news reports from 2018 which provided information that 2 protestors attempting to storm the AAH building in Najaf had been killed, and the AAH had used weapons and tear gas to disperse protestors.⁶ The applicant did not however provide any reports to suggest the AAH went further by raiding houses in search of people like the applicant. Similarly for the 2019 protests the applicant provided country information of deadly clashes between anti-government protestors and supporters of Sadr⁷, but there are no reports of the AAH raiding homes looking for people. He has not even provided any evidence from his family members regarding the alleged two raids. I do not accept his insulting comments in the taxi in January 2013 would have raised such a profile for him that years later his house would be raided when protests unrelated to him or the taxi incident broke out in Iraq. I do not accept the claim the AAH raided his family home in Najaf in 2018 and 2019 looking for him. I consider the applicant has tried to link his claims to fear harm from the AAH to recent protest activity in Iraq and the clashes between protestors and AAH, but I find the claims that his family home was raided in 2018 and 2019 did not happen and are embellishments.
34. I have had regard to country information that critics of militia groups such as AAH have been targeted for serious harm. For example, a prominent political commentator was fatally shot outside his home in Baghdad in July 2020 after speaking out about the impunity with which militia groups operated in Iraq,⁸ and two Iraqi journalists giving supportive coverage of anti-government protests were killed by militias in Basra in January 2020.⁹ There are also reports that anti-militia Iraqi activists are said to be on target lists held by the AAH.¹⁰ However, the applicant is not an activist or journalist or public critic of AAH. I do not accept the applicant's insults of the AAH leader said in the privacy of his taxi amount to him being on par with journalists and activists. I accept it is plausible members of a militia group could act in a violent and threatening manner to someone who insulted their leader in a conversation with them. I do not accept however such a conversation would be sufficient to elevate the applicant to being a known critic who would be an ongoing target of the AAH.
35. For these reasons, whilst I accept the applicant had a conversation with [number] men in his taxi in which he described the leader of the AAH in an insulting manner, and for which he was threatened by them on the day and in two telephone calls a few days later, I do not accept the incident was of such significance to [these] men or the AAH that the applicant was targeted by them on an ongoing basis or would be known or of interest all these years later. I am not satisfied the applicant faces a real chance of harm from the AAH or [these] men from his taxi if he returns to Najaf, Iraq in the reasonably foreseeable future.
36. Although the applicant did not claim to fear harm for any other reasons, the delegate also considered whether the applicant faced harm for reason of returning to Iraq from a western country as a failed asylum seeker or from sectarian violence as a Shia.

⁶ Voices of Iraq: our correspondence said two demonstrators were killed in Al Najaf, undated; Iraq – Activists: Doubts about the Suppressive Asaeb ahl Alhaq for Demonstrations/Alnajaf, undated.

⁷ Reuters, Clashes in Iraq's Najaf kill 8 after cleric's followers storm protest camps: medics, 6 February 2020.

⁸ DFAT, Country Information Report Iraq, 17 August 2020.

⁹ MEMRI, Shi'ite Militias Crack Down on Reporters, Activists Covering Anti-Iran Protests in Iraq, January 14 2020.

¹⁰ MEMRI, Shi'ite Militias Crack Down on Reporters, Activists Covering Anti-Iran Protests in Iraq, January 14 2020.

37. I accept the applicant will be returning to Iraq from a western country as a failed asylum seeker. The applicant has not identified any groups or persons he fears harm from for this reason and on the information before me none are apparent to me. DFAT reports the practice of seeking asylum and then returning to Iraq when conditions permit is well accepted among Iraqis. Even Iraqis who are granted protection in western countries often return to Iraq to see family, establish and manage businesses, or to take up or resume employment. DFAT says there are large numbers of dual nationals from the US, western Europe and Australia who return to Iraq.¹¹ There is nothing before me to indicate the applicant faces a real chance of harm for reason of returning to Najaf as a failed asylum seeker from a western country, and I find that he does not.
38. The applicant made no express claims to fear harm in Iraq for reasons of his Shia religion. He has not claimed he would become involved in any Shia militia groups, nor has he expressed a fear of harm from any Sunni militia groups or Islamic State. At the SHEV interview the applicant confirmed he had no issues in Iraq before the taxi incident and said he had a very normal life. He was a Shia living in a Shia majority city. There is no information before me that he suffered harm in any sectarian violence when he lived in Iraq, nor that any of his family members have suffered such harm since he left. DFAT advises the security situation is unstable and fluid in Iraq, but varies according to location. The security situation is comparatively more secure in the southern Iraqi governorates, including Najaf, where Shias are the majority. The fundamentalist Sunni group Islamic State fuelled sectarian violence in Iraq, and at its height held approximately 40% of Iraq. They never held Najaf however, and Islamic State in Iraq were largely defeated in December 2017 after a 3 year conflict. Overall, sectarian violence between Sunnis and Shias has reduced substantially in Iraq, but still occurs occasionally.¹² On the country information before me I do not accept the applicant faces a real chance of harm for reason of his Shia religion if he returns to Najaf in Iraq. I find the chance of the applicant being targeted or caught up in sectarian or militia violence in Najaf is too remote to amount to a real chance.
39. The applicant provided translated news reports regarding violent protests in Najaf in 2018 to 2020. The 2018 information indicated 2 demonstrators were killed in July 2018 when they tried to enter the AAH centre in Najaf.¹³ A more recent report described 8 people being killed in Najaf in February 2020 when supporters of Muqtada al-Sadr attacked an anti-government protest camp.¹⁴ There were reportedly 40 protestors killed across Iraq in October 2019 when security forces and state-backed militias opened fire on those demonstrating against corruption and economic hardship, although the report does not mention any deaths in Najaf.¹⁵ DFAT reports large-scale protests have occurred regularly in towns and cities in Iraq since 2018. Protests were held in Basra and other parts of southern Iraq between July and September 2018 over corruption and poor public services related to water and electricity. Protests erupted in October 2019 with demonstrators expressing discontent at perceived corruption and influence of Iran on the Iraqi government. Scores of protestors were injured or killed across Iraq in October 2019 after security forces attempted to disperse protestors with the use of live ammunition, tear gas, and running over protestors with vehicles. The United Nations Assistance Mission to Iraq recorded 490 deaths of protestors since the start of protests in 2019. On 27 November 2019 at least 12 protestors were killed in Najaf in clashes with security forces after they stormed the Iranian consulate in that city. In late 2020 the authorities launched campaigns to end the occupation by protestors of city squares in Baghdad, Basra, Najaf and Nasiriya. Militia groups abducted and arbitrarily detained high profile demonstrators

¹¹ DFAT, Country Information Report Iraq, 17 August 2020.

¹² DFAT, Country Information Report Iraq, 17 August 2020.

¹³ Voices of Iraq: our correspondence said two demonstrators were killed in Al Najaf, undated.

¹⁴ Reuters, Clashes in Iraq's Najaf kill 8 after cleric's followers storm protest camps: medics, 6 February 2020.

¹⁵ Reuters, At least 40 killed as fresh protests engulf Iraq, 9 December 2019.

and activists.¹⁶ The applicant has not claimed to have attended protests in the past in Iraq, nor has he expressed an intention to do so in the future. He has not indicated he would have taken part in the protest actions had he been in Iraq at that time. There is nothing in his past to indicate he would be a high profile demonstrator or activist. The country information before me does not indicate any ordinary residents of Najaf, who were not involved in the protests, have been harmed. I consider it mere speculation that the applicant will choose to take part in protest action, should such protests occur in the future in Najaf. I find the applicant does not face a real chance of harm from speculative future violent protests in his home area in Iraq.

Refugee: conclusion

40. 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

41. 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

42. 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.
43. The expressions 'torture', 'cruel or inhuman treatment or punishment' and 'degrading treatment or punishment' are in turn defined in s.5(1) of the Act.
44. I have found the applicant does not face a real chance harm for reason of the incident in his taxi in January 2013 or from the AAH for any other reason, his Shia religion, for returning from a western country as a failed asylum seeker, or for reason of protests in Iraq. 'Real chance' and 'real risk' has been found to equate to the same threshold. For the same reasons given above I find the applicant will not face a real risk of significant harm for any of the reasons claimed or arising from the information he provided. I also rely on country information referred to above regarding the security situation in Najaf and the broader southern governorates of Iraq to find the applicant does not face a real risk of significant harm from generalised or sectarian violence or violence associated with protests.

¹⁶ DFAT, Country Information Report Iraq, 17 August 2020.

Complementary protection: conclusion

45. 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.

Applicable law

Migration Act 1958

5 (1) Interpretation

In this Act, unless the contrary intention appears:

...

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.