

1215102 [2013] RRTA 52 (14 January 2013)

DECISION RECORD

RRT CASE NUMBER: 1215102

DIAC REFERENCE(S): CLF2012/148003

COUNTRY OF REFERENCE: Claims made against Iraq.

TRIBUNAL MEMBER: Marten Kennedy

DATE: 14 January 2013

PLACE OF DECISION: Adelaide

DECISION: The Tribunal affirms the decision not to grant the applicant a Protection (Class XA) visa.

STATEMENT OF DECISION AND REASONS

APPLICATION FOR REVIEW

1. This is an application for review of a decision made by a delegate of the Minister for Immigration to refuse to grant the applicant a Protection (Class XA) visa under s.65 of the *Migration Act 1958* (the Act).
2. The applicant, who claims to be a citizen of Iraq, applied to the Department of Immigration for the visa on [date deleted under s.431(2) of the *Migration Act 1958* as this information may identify the applicant] July 2012.
3. The delegate refused to grant the visa [in] September 2012, and the applicant applied to the Tribunal for review of that decision.

RELEVANT LAW

4. Under s.65(1) a visa may be granted only if the decision maker is satisfied that the prescribed criteria for the visa have been satisfied. The criteria for a protection visa are set out in s.36 of the Act and Part 866 of Schedule 2 to the Migration Regulations 1994 (the Regulations). An applicant for the visa must meet one of the alternative criteria in s.36(2)(a), (aa), (b), or (c). That is, the applicant is either a person in respect of whom Australia has protection obligations under the 1951 Convention relating to the Status of Refugees as amended by the 1967 Protocol relating to the Status of Refugees (together, the Refugees Convention, or the Convention), or on other 'complementary protection' grounds, or is a member of the same family unit as a person in respect of whom Australia has protection obligations under s.36(2) and that person holds a protection visa.

Refugee criterion

5. Section 36(2)(a) provides that a criterion for a protection visa is that the applicant for the visa is a non-citizen in Australia in respect of whom the Minister is satisfied Australia has protection obligations under the Refugees Convention.
6. Australia is a party to the Refugees Convention and generally speaking, has protection obligations in respect of people who are refugees as defined in Article 1 of the Convention. Article 1A(2) relevantly defines a refugee as any person who:

owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence, is unable or, owing to such fear, is unwilling to return to it.
7. The High Court has considered this definition in a number of cases, notably *Chan Yee Kin v MIEA* (1989) 169 CLR 379, *Applicant A v MIEA* (1997) 190 CLR 225, *MIEA v Guo* (1997) 191 CLR 559, *Chen Shi Hai v MIMA* (2000) 201 CLR 293, *MIMA v Haji Ibrahim* (2000) 204 CLR 1, *MIMA v Khawar* (2002) 210 CLR 1, *MIMA v Respondents S152/2003* (2004) 222 CLR 1, *Applicant S v MIMA* (2004) 217 CLR 387, *Appellant S395/2002 v MIMA* (2003) 216 CLR 473, *SZATV v MIAC* (2007) 233 CLR 18 and *SZFDV v MIAC* (2007) 233 CLR 51.

8. Sections 91R and 91S of the Act qualify some aspects of Article 1A(2) for the purposes of the application of the Act and the regulations to a particular person.
9. There are four key elements to the Convention definition. First, an applicant must be outside his or her country.
10. Second, an applicant must fear persecution. Under s.91R(1) of the Act persecution must involve 'serious harm' to the applicant (s.91R(1)(b)), and systematic and discriminatory conduct (s.91R(1)(c)). The expression 'serious harm' includes, for example, a threat to life or liberty, significant physical harassment or ill-treatment, or significant economic hardship or denial of access to basic services or denial of capacity to earn a livelihood, where such hardship or denial threatens the applicant's capacity to subsist: s.91R(2) of the Act. The High Court has explained that persecution may be directed against a person as an individual or as a member of a group. The persecution must have an official quality, in the sense that it is official, or officially tolerated or uncontrollable by the authorities of the country of nationality. However, the threat of harm need not be the product of government policy; it may be enough that the government has failed or is unable to protect the applicant from persecution.
11. Further, persecution implies an element of motivation on the part of those who persecute for the infliction of harm. People are persecuted for something perceived about them or attributed to them by their persecutors.
12. Third, the persecution which the applicant fears must be for one or more of the reasons enumerated in the Convention definition - race, religion, nationality, membership of a particular social group or political opinion. The phrase 'for reasons of' serves to identify the motivation for the infliction of the persecution. The persecution feared need not be *solely* attributable to a Convention reason. However, persecution for multiple motivations will not satisfy the relevant test unless a Convention reason or reasons constitute at least the essential and significant motivation for the persecution feared: s.91R(1)(a) of the Act.
13. Fourth, an applicant's fear of persecution for a Convention reason must be a 'well-founded' fear. This adds an objective requirement to the requirement that an applicant must in fact hold such a fear. A person has a 'well-founded fear' of persecution under the Convention if they have genuine fear founded upon a 'real chance' of being persecuted for a Convention stipulated reason. A fear is well-founded where there is a real substantial basis for it but not if it is merely assumed or based on mere speculation. A 'real chance' is one that is not remote or insubstantial or a far-fetched possibility. A person can have a well-founded fear of persecution even though the possibility of the persecution occurring is well below 50 per cent.
14. In addition, an applicant must be unable, or unwilling because of his or her fear, to avail himself or herself of the protection of his or her country or countries of nationality or, if stateless, unable, or unwilling because of his or her fear, to return to his or her country of former habitual residence. The expression 'the protection of that country' in the second limb of Article 1A(2) is concerned with external or diplomatic protection extended to citizens abroad. Internal protection is nevertheless relevant to the first limb of the definition, in particular to whether a fear is well-founded and whether the conduct giving rise to the fear is persecution.

15. Whether an applicant is a person in respect of whom Australia has protection obligations is to be assessed upon the facts as they exist when the decision is made and requires a consideration of the matter in relation to the reasonably foreseeable future.

Complementary protection criterion

16. If a person is found not to meet the refugee criterion in s.36(2)(a), he or she may nevertheless meet the criteria for the grant of a protection visa if he or she is a non-citizen in Australia 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 applicant being removed from Australia to a receiving country, there is a real risk that he or she will suffer significant harm: s.36(2)(aa) ('the complementary protection criterion').
17. 'Significant harm' for these purposes is exhaustively defined in s.36(2A): s.5(1). A person will suffer significant harm if he or she will be arbitrarily deprived of their life; or the death penalty will be carried out on the person; or the person will be subjected to torture; or to cruel or inhuman treatment or punishment; or to degrading treatment or punishment. 'Cruel or inhuman treatment or punishment', 'degrading treatment or punishment', and 'torture', are further defined in s.5(1) of the Act.
18. There are certain circumstances in which there is taken not to be a real risk that an applicant will suffer significant harm in a country. These arise where it would be reasonable for the applicant to relocate to an area of the country where there would not be a real risk that the applicant will suffer significant harm; where the applicant could obtain, from an authority of the country, protection such that there would not be a real risk that the applicant will suffer significant harm; or where the real risk is one faced by the population of the country generally and is not faced by the applicant personally: s.36(2B) of the Act.

CLAIMS AND EVIDENCE

19. The Tribunal has before it the Department's file relating to the applicant. The Tribunal also has had regard to the material referred to in the delegate's decision, and other material available to it from a range of sources.

Application for a Protection Visa

20. The applicant is an irregular maritime arrival to Australia. He has not presented any documents pertaining to his identity or nationality. [In] July 2012 he lodged an application for a protection visa, supported by a statutory declaration.
21. In his application, the applicant identified himself as an Iraqi citizen, born on [date deleted: s.431(2)]. The applicant identified his previous address as [Address 1], [Baghdad]. The applicant stated he did not have his passport as it was taken from him by the smuggler.
22. As to why he feared returning to Iraq, the applicant set out his claims in a statutory declaration:
 1. I am a citizen of Iraq and no other country.
 2. I was born in [Address 1], in Baghdad, Iraq. I have lived at that location my whole life. It is a predominately a middle class area with houses, restaurants and

shops. I went to the local primary and intermediate schools, which were a short distance from my house. My father was principal of the [school] I attended [school deleted: s.431(2)].

3, In 2004 my father left his job and fled to Syria. He did this because the Al Mah'di Army was making him feel threatened. He believed that he was at risk because of his job. People thought that professionals like school principals were associated with the Baath Party, Being a Sunni also exacerbated his risk of being targeted by Al Mah'di. I do not know if he received direct threats from them but he told us that if it was not for the Al Mah'di, he would not have left us.

4. In Syria, my father worked in a restaurant in Syria and sent money back to Iraq for my mother, my sister and I. We talked to him regularly on the phone and told him that it was not safe for him to return to Iraq because of the high level of sectarian violence in the city. People associated with the Ba'ath regime, as well as those with position or money are simply not safe in Iraq and my father was one of those people.

5. Unfortunately, my father did not heed our advice and he returned to Iraq in 2008. He came back to live with us in [Address 1].

6. Approximately 6 months after he returned, we were at home one night and he was sitting with us. We were chatting like a family and laughing. Suddenly, the house was raided by a group of people. They broke in the door and came into the house. We asked who they were and they said they were the Police, I did not believe them because they were wearing balaclava and military dress.

7. They had come to kidnap my father. They hit me, broke two of my teeth and injured my shoulder and head. I will never forget this incident. I kept asking them who they were and why they were taking my father. I did not see their vehicle because I was on the floor as a result of the bashing they gave me.

8. We have not seen my father since that night. My [uncle] started searching for him straight away and has continued looking for him from this time until now. We received no ransom letters. He just disappeared.

9. I was forced to leave school and begin working so that I could support my mother and sister, I continued living in the same house.

10, In approximately April 2012, a letter was pushed under the door. It was addressed to me and I opened it. It said that if my family and I did not leave Iraq, I would end like my father did.

11. When I read the letter, I did not know what to do. I was very afraid and confused about what I could do to keep safe. I thought that if I went outside, they would shoot me and that if I stayed in, they would come and kidnap me,

12. My [uncle] is a Jordanian citizen. I told him about the letter and he organised an invitation so that I could obtain a visa to go to Jordan.

13. I already had a passport because my father had obtained one for me when he was preparing to go to Syria. Originally he had intended that I would go with him, but then he changed his plans and left me in Iraq. I arranged for the passport to be extended so I could travel to Jordan.

14. It took about a month for me to make arrangements to leave Iraq. During that time, I was very confused. I slept upstairs. I didn't go to work and whenever people came to the house, I ran away.

15. I firmly believe that the people who kidnapped my father sent me the threat letter. I do not know why they targeted me so long after my father but I think it may be because I am now old enough to take responsibility for the family. This year, I suddenly grew a lot and started to look a lot older. At the same time, I started to socialise with my uncles and cousins like an adult. This may have led them to look on me as a man, standing in my father's shoes.

16. I left Iraq in April and flew to Jordan. I stayed with my uncle for approximately one week. I could not stay with him in the long term because I only had a Visitors Visa for Jordan. My uncle also did not invite me to stay with him longer, although he knew that I could not return to Iraq. He introduced me to a man called [Mr A], who arranged for me to travel to Australia.

17. After I left Iraq, my mother stayed in our house for 15 days. She was afraid for the safety of my sister so she did not stay there by choice. She had no stable and safe place to go to. After 15 days, her fear caused her to leave the house, in spite of having no permanent home to go to. Since then, she and my sister have been travelling around Iraq, staying with friends and relatives, and moving often. I know they have been in Arbil and Basra but right now I don't know where they are. That is no way for her to live,

18. I travelled from Jordan to Malaysia by air with my passport, accompanied by [Mr A], I also had with me my birth certificate, citizenship certificate, national ID and the letter that caused me to flee Iraq. When I was boarding the boat in Indonesia, I was carrying all those documents in a bag on my shoulder. The smuggler tried to take it from me and I resisted him. He then told me that if I did not give them to him, he would hand me over to the Police. I let him take the bag and got on the boat.

19. I do not have any other documents, besides those that the smuggler took. I cannot get more from Iraq because my mother has left our house, I do not know where she is and she is not in a position to apply for new documents for me because she is alone, has no permanent home and is in danger from the people who kidnapped my father.

20. The authorities in Iraq both cannot protect me because they are not strong enough to enforce the law. They do not provide protection against those who commit kidnappings and murders for political and sectarian reasons. They did not protect my father and many like him.

21. There is no other area of Iraq where I can safely and reasonably relocate to. Protection is inadequate throughout the whole of the country and sectarian, and political conflicts and discrimination are endemic. For example, I cannot get work from a Shiite employer and I cannot go to the north to Kurdish areas without a guarantor because I am Arab. I am also responsible for my mother and sister and would not be able to provide for them without employment and a safe place for them to live.

22. I believe I am a refugee and I ask the Australian Government to grant me protection.

23. I have also listened to the interview conducted by a DIAC officer with the applicant in relation to his claims. I noted the applicant told the officer that he was schooled to the eighth year and finished in [year deleted: s.431(2)]. He then went straight to work and worked in a [workshop] in an industrial area. He then changed his work to the furniture industry because he could earn better money.
24. The applicant told the DIAC officer that he had paid for his travel to Australia by selling a car.
25. The applicant was unable to describe precisely his father's role in the Ba'ath party, but his Uncle had told him his father had some political affiliations. When his father had returned from Syria he had worked trading in cars. The applicant also described the incident of his father's kidnapping, and said no threats were received prior to this event.
26. The applicant told the interviewer he received the threat about one month before he departed Iraq. He attributed the threat to starting to visit his father's friends. The threatening letter was left in the yard, and did not contain anything to identify who it was from. The note said he must leave in a short time or he would have the same destiny as his family.
27. As to his relatives living in Baghdad, he said his father had a brother but he did not have any relationship with him.
28. Prior to the hearing, the applicant lodged a further written statement stating that his documents had been taken by the smuggler in Indonesia and clarifying that he had received the threatening note in March and left Iraq in April. The applicant also stated that he had found out more information about why his father had been targeted from his mother, and it was because of his membership of the Ba'ath party. The applicant also stated that his mother and sister had abandoned their home and were moving around the north of Iraq.
29. The applicant appeared before the Tribunal [in] December 2012 to give evidence and present arguments. The Tribunal hearing was conducted with the assistance of an interpreter in the Arabic and English languages.
30. In response to my questions, the applicant confirmed that he had been born in the Al Mansour District in Baghdad. He confirmed that he had lived [at] [Address 1]. He said that he had attended school to the eighth year before commencing work as an assistant in the industrial sector, then worked in the furniture sector up to the point that he left Iraq.
31. The applicant said prior to leaving Iraq he had lived with his mother and sister. His sister is [age deleted: s.431(2)] years old. They now [live] in Mosul. His mother sometimes cleans houses and sometimes does tailoring work. His sister doesn't attend school and doesn't do anything in particular.
32. I asked for more information about his father's work. The applicant said his father had been the principal of a [school]. [School details deleted: s.431(2)].
33. I asked the applicant for further information about his claim relating to his father's connections with the Ba'ath party. The applicant said he was very young at the time of his father's work at the school. He said he had subsequently learned from his mother that his father had been a member of the Ba'ath party, as it was necessary for him to be a member to hold his job

34. The applicant confirmed that his father had gone to Syria between 2004 and 2008. The applicant told me he did not know why his father had gone to Syria alone, as I had questioned why his father would have fled Iraq leaving his family behind in these circumstances. The applicant speculated that his father was attempting to establish a place for them in Syria. The applicant did not know why his father had gone to Syria instead of Jordan for example.
35. I asked about the circumstances of his father's abduction and disappearance. The applicant said that his father had not received any warning or threats. As to the aftermath, his mother and sister and he had remained in their home. Nothing was received in terms of a ransom demand, but his father has not been heard of since. The applicant said that his [uncle] searched for his father without success. The applicant confirmed that this was the same uncle who was Jordanian who had arranged his visa for Jordan en route to Australia.
36. As to the threat that the applicant received, the applicant confirmed that this was the first incident of its kind, and nothing had happened in the intervening four years. I asked the applicant who he thought had threatened him. The applicant said he thought it was the same people who had abducted his father, because they mentioned what had happened to his father. I asked the applicant if people in his neighbourhood knew that his father had been abducted, and the applicant confirmed it was common knowledge. I asked the applicant if perhaps the note had been left by people unconnected with his father's disappearance, but who nonetheless knew about it. The applicant said that he thought it was the same people. The applicant confirmed that he was not aware that any of his neighbours had received similar threats. The threatening note did not have any details as to who or what group had sent it. It was just a very simple note.
37. I asked the applicant why he thought the group had waited so long to threaten him. The applicant said that he thought perhaps he was too young to be threatened. The applicant also said that he thought perhaps it was because he had previously been too young to go out and visit his father's friends and relatives, but had commenced doing so. I asked the applicant what it was about the people he had started visiting that might attract the threat. I asked if these people were the applicant's father's work colleagues or similar. The applicants said that they were not his father's former colleagues, but just people from the neighbourhood. The applicant said he looked on these people as uncles.
38. I explained to the applicant that I was having difficulty accepting that the people who had threatened him had waited four years before doing so. The applicant said that maybe it was because up until that time he had not interacted with anyone. I asked the applicant what the threatening note had wanted him to do. The applicant said that the note required him to leave Iraq. I asked the applicant why then they had not threatened his mother in the preceding years to make her leave Iraq. The applicant said the groups do not threaten women. I told the applicant that I did not accept that, and emphasised that I was having difficulty understanding why his family had been allowed to live undisturbed for so long, and then he received a threat some four years later. The applicant said he did not know the way the people who had threatened him thought about things, and could not give a good reason, but before he started interacting with people there had been no threat.
39. After a short break, I asked further questions about the applicant's background. I asked the applicant if his area in Baghdad was a Sunni or Shi'a area. The applicant said it was mixed. I explained to the applicant that I understood that in Baghdad there were distinct Sunni and Shi'a areas. I explained that I understood that there once were many mixed areas but since Iraq's troubles people tended to live in particular districts depending on their religious

affiliation, and mixed districts were less common. The applicant confirmed that his area was a mixed area.

40. I told the applicant that I was aware that the Mansour district in Baghdad had a number of significant landmarks. I asked the applicant to identify some. The applicant mentioned a tower named 'Saddam Tower' I asked the applicant what sort of building it was. I asked if it was a shopping centre or theatre for example. The applicant said it was a tower where you could go up and look around Baghdad.
41. The applicant did not mention the Al-Rahman Mosque site.
42. I told the applicant that I had noted there were a number of embassies in the district and asked him to name some. The applicant was unable to do so.
43. I confirmed with the applicant that he had lived on [Address 1] Street. I asked the applicant what I would see if I travelled up [Address 1] Street and [details deleted: s.431(2)]. The applicant did not identify the [landmark deleted: s.431(2)] which is in in this location.
44. I asked the applicant if he knew Al Mansour Street. He said that he did. I asked the applicant where I would be if I travelled along Al Mansour Street towards the river. The applicant said that the street names had changed, but did not identify that one would enter the Green Zone if travelling in this direction.
45. I noted that [Address 1] intersected with a [big] road, and asked the applicant to identify what that road might be. The applicant did not identify the [road deleted: s.431(2)]. The applicant said many of the street names had changed.
46. I told the applicant that I was becoming suspicious that he was not from the district in Baghdad where he claimed to have been raised. I told the applicant that I was particularly concerned that he had not identified the Al Rahman Mosque as my understanding was that the Al-Rahman Mosque was one of the largest in the world. I explained I found it implausible that if asked to identify a landmark in Mansour he would not immediately identify it. The applicant said that I had asked him to identify buildings and not a mosque. The applicant said that some street names had changed.
47. I asked the applicant to tell me about the circumstances in which his [uncle] had become a citizen of Jordan. The applicant said he had lived there a long time, but confirmed he had been born in Iraq.
48. I asked the applicant if he was a citizen of Jordan. The applicant denied this and said he was Iraqi. The applicant asked me where I thought he was from. I indicated to the applicant that I did not know, but on the evidence he had given me I doubted he was from the Mansour District in Baghdad.
49. I explained to the applicant that from my perspective I was very concerned as to his identity and nationality I noted that he had arrived in Australia with no documentation, and nothing had been provided to the Department at any stage to establish his identity or nationality. Nothing corroborated his claims to be Iraqi. I explained I was very concerned that he had been unable to identify any landmarks of the area in Baghdad where he claims to have been [raised], and in particular the Al Rahman Mosque site. I explained that on the evidence now before me I would be unlikely to accept that he was Iraqi as claimed, and may conclude that

if he had not provided me truthful information about this issue, then I would not accept any other aspect of his claim.

50. I noted that the applicant had told the Department that he had provided documents to his uncle in Jordan to arrange a Jordanian visa. I told the applicant that I would give him further time to make a better attempt at providing some documentary evidence of his claimed Iraqi nationality. The applicant expressed concern that he would not be able to provide me with documentation. I explained to the applicant that in light of the evidence he had given me, it was very important for him to establish his Iraqi nationality, as I was now suspicious of his evidence in this regard. The applicant recounted that his original documents had been taken by the smuggler. I told the applicant that I would not accept this in circumstances where he had not been able to satisfy me he had any familiarity with the district he claimed to come from, but invited him in conjunction with his representative to find alternative evidence to satisfy me that he was Iraqi as he claimed, in case I was wrong in this regard.
51. I emphasised to the applicant and his representative that a critical issue for me was whether the applicant was an Iraqi national as he claimed.
52. I explained that in the event that I was satisfied he was Iraqi as he claimed, I was further concerned about his claim to have received a threatening note (which he had attributed to the same people who kidnapped his father) four years after his father's kidnapping, with nothing occurring in the meantime. I explained I found this difficult to accept but would consider carefully the submissions already advanced on this topic.
53. I also indicated that I would carefully consider the country information available to me addressing sectarian violence in Iraq and Baghdad, and consider whether in light of this information the applicant had a well-founded fear of persecution for reason of his religion.
54. The applicant's representative requested an opportunity to provide written submissions addressing the Tribunal's concerns. I agreed to this request, but indicated that my concerns about the plausibility of the applicant receiving the threats had been addressed in the written submissions already filed. I also indicated that I did not require anything further regarding the risk of being caught in sectarian violence in Baghdad or Iraq, as information relevant to that issue had been provided in the written submissions already lodged, and I had access to ample sources of country information addressing this issue. I asked the representative to focus primarily on my concerns as to the applicant's identity and nationality.
55. In relation to the timeframe for providing further evidence, I emphasised that I was conscious that if further documentation was to be sourced from Iraq, then a significant period of time may be required. I indicated that given the gravity of my concerns regarding the applicant's identity and nationality, I would consider any reasonable request for further time to provide this documentation. I asked that [by] December 2012 I be advised what was proposed to address my concerns and to receive an indication of the anticipated timeframe.

Submissions

56. In written submissions lodged before the hearing ([in] November 2012), it was submitted that the applicant feared persecution comprising of abduction and/or arbitrary arrest and detention, extortion, physical assault, torture and possible death at the hands of Shi'a militia or the Iraqi security forces on account of an imputed political opinion in favour of the former Ba'ath regime due to his Sunni religion and his father's position. It was submitted that the applicant also faced persecution on the grounds of his membership of his father's family (being a particular social group), his Sunni religion and his membership of a particular social group of fatherless children. It was submitted his fears were well founded because of what had happened to his father and the country information confirming Shi'a militias remain active in Iraq and have integrated into the state security apparatus.
57. It was also submitted that internal flight was not an option.
58. Submissions were made to the effect that I should be mindful of the applicant's young age and vulnerability, and were critical of the delegate's approach which placed weight on inconsistencies in the applicant's evidence.
59. Reference was made to the UNHCR Note on the Burden and Standard of Proof in Refugee Claims to the effect that a failure to produce documentary evidence to substantiate oral statements should not prevent the claim from being accepted if such statements are consistent with known facts and the general credibility of the applicant is good. It was submitted that the applicant's claims have been consistent.
60. My attention was drawn to extracts of country information set out in the written submission regarding the situation in Iraq. I have had regard to them, and noted the references in the UNHCR guidelines regarding the targeting of teachers since 2003.
61. I have also noted the references from the UNHCR guidelines regarding the particular vulnerability of children in Iraq and the particular concerns around the abduction of children for ransom to finance sectarian activities.
62. I have also had regard to the submissions advanced regarding complementary protection, noting that it is submitted that even if I am not satisfied of a convention nexus, I should find that there is a real risk of significant harm associated with the threats the applicant has received, and the likelihood of harm inherent in the term 'real risk' is analogous to the 'real chance' test under the Refugees Convention, and does not mean that it must be more likely than not.
63. [In] December 2012 I received a request for an extension of time [to] January 2013 to enable the applicant to provide a copy of his mother's Iraqi ID card. I agreed to this request.
64. [In] January 2013 I received further written submissions on behalf of the applicant and a copy and translation of a document purporting to be a Certificate of Iraqi Citizenship of [name deleted: s.431(20)].
65. The further written submissions stated that notwithstanding the applicant's inability to name a particular Baghdad landmark at hearing, there is no evidence before me that he is a citizen of any other country or any other part of Iraq. It was submitted that the applicant's claims have been consistent and are plausible. My attention was again drawn to the UNHCR Note on the burden and standard of proof in refugee claims to the effect that *'credibility is established where the applicant has presented a claim which is coherent and plausible, not contradicting*

generally known facts, and therefore is, on balance, capable of being believed' It was submitted that there was nothing in the applicant's claims to be an Iraqi citizen from Baghdad that should be considered to be incapable of being believed, particularly in light of the documentary evidence now provided.

66. Reference was also made to the previous submissions regarding the standard of scrutiny to which evidence of children ought to be held.

FINDINGS AND REASONS

Summary of Claims

67. The applicant claims to be a citizen of Iraq, previously resident in the Al Mansour district of Baghdad.
68. He claims to fear harm at the hands of Shi'a militants on account of his father's links to the former Ba'ath regime and former occupation as a school principal. The applicant also fears harm due to his religion as a Sunni, and his membership of particular social groups described as a member of his family, and as a person without a father.
69. I also note the submissions advanced regarding the particular vulnerability of children in Iraq, and while I primarily understand these submissions to relate to the nature of the harm the applicant fears, I will also consider a claim as against the applicant being a member of a particular social group of children.

Credibility and country of reference

70. I am positively satisfied that the applicant has not provided truthful information about critical aspects of his background, including his identity and nationality. I do not accept the applicant's evidence that he grew up in the Al Mansour district of Baghdad. I am not satisfied he is an Iraqi citizen as he claims. My finding in this regard fundamentally undermines the credibility of the applicant to the extent that I do not accept any material particular of the claims he has advanced.
71. I have had regard to the applicant's claims to have [lived] on [Address 1] Street in the Al Mansour district of Baghdad and to have attended primary and intermediate school a short distance from his house. I have had regard to the applicant's evidence that he did not leave this area until beginning his journey to Australia.
72. A brief examination of a map of the Al Mansour district of Baghdad¹ reveals a number of significant features of this area. It is in central Baghdad. It is the proximate location of the Russian, Omani and Saudi Embassies. The US Embassy is also very close to the district. A large intersection of the [road deleted: s.431(2)] and [Address 1] Street is nearby. [Address and geographic details deleted: s.431(2)]. Al Mansour Street runs east-west through the district towards the Central Railway Station and the Green Zone (to the East).
73. The most striking landmark in the district is the Al Rahman Mosque. The building (under construction) occupies a 100 acre site, is 20 stories high with 64 domes.² A Christian Science

¹ Sourced from Google maps

² <http://www.globalsecurity.org/military/world/iraq/baghdad-mosques.htm>

Monitor article dated shortly after the US invasion describes the size and symbolism of the Mosque site³:

Not far from the Tigris River, the skeleton of Al Rahman mosque punctures the Baghdad skyline, towering over nearby luxury homes and serving as a potent symbol of Saddam Hussein's rule. Twenty stories high, with 64 domes, and set on some 100 acres, the mosque is at once awe-inspiring and grotesque.

Yet for a handful of Iraqi political parties whose offices encircle the mosque, the half-built structure is a daily reminder of the continuing influence of Saddam's legacy in Iraqi politics.

Four years ago, Mr. Hussein set out to create the largest mosque ever built - as big as two football fields. The Saddam Mosque, recently renamed, was to be the crowning achievement in his campaign to bolster his Islamic credentials.

Billions of dollars in the making, the mosque now rests half built, cranes still looming above the scaffolding, presenting its neighbors with a conundrum: You can destroy pictures and statues of Hussein, but you can never destroy a mosque.

...

Long the focus of Saddam's subjugation, many of Iraq's Shiites saw the mosque as the ultimate insult, providing Sunnis with yet another place of worship even as Shiites were being denied a place of their own.

"Before, all our places of worship were small and cramped and we had to pray in the streets," Kawbi says. "We think it is the right of the Shiites in Iraq to have a full mosque [to pray in]. We will ask whatever government that is formed to finish this mosque [for us]."

The mosque cannot be demolished, most of its neighbors agree. Yet completing it would come at a price Iraq can ill afford. And turning the mosque over to Al Hawza threatens to ignite growing animosities among ethnic groups.

Those issues only highlight the challenges to come, Fathil says. "It is a reminder that nothing yet has [really] changed; we still have a long way to go in this country."

Basil al-Naqib, a strategist with Mr. Pachachi's party, is of like mind. When he looks onto the mosque, he remembers the conundrums Iraq will confront. "It is as if [he] tried to build the pyramids," notes Mr. Naqib. "He built huge mosques on the idea that they wouldn't be hit [by the Americans], that it would remain a symbol of him even if he were killed."

As time passes, hopes one of Al Rahman's neighbors, the mosque will cease to be a symbol of the former dictator and will simply represent Iraq. Until then, say many who face the structure, Saddam may continue to tower over Iraqi politics.

³ Hassan Fattah 'In the shadow of Hussein's mosque, parties blossom' Christian Science Monitor 20 May 2003 accessed at <http://www.csmonitor.com/2003/0520/p10s01-woiq.html> 8 January 2013.

74. I consider that the only plausible explanation to account for the applicant's failure to mention either the Al Rahman Mosque site, or any feature of the Al Mansour area of Baghdad is that he is unfamiliar with this area. I do not accept that the applicant would be unable to describe these significant features of the area in which he claimed to have lived his entire life because road names have changed, or that he thought I was asking about buildings and not mosques. I do not rely on the applicant's failure to identify one landmark in Baghdad as is suggested by the written submissions, rather I have noted that the applicant was unable to identify any of the various landmarks or features of his claimed home which I approached in the course of the hearing a number of different ways. The applicant's failure to identify the Al Rahman Mosque site is the most striking given the country information describing the nature of the site.
75. Furthermore, having raised the gravity of my concerns with the applicant at hearing, I do not accept that it is plausible that the applicant, with the assistance of his representatives, is unable to obtain any form of documentary evidence, in respect of himself, to corroborate any aspect of his life in Baghdad. While it may be possible that the people smuggler took the applicant's belongings, I do not accept that the applicant would be unable to obtain any documentary record of his life in Baghdad given the concern I expressed at the hearing as to his identity and citizenship and my willingness to afford him sufficient time to do so. In this regard, I note the applicant has claimed to have been born in central Baghdad and to have been educated and to have worked there. It is not plausible in my view that the applicant would be unable to produce any form of corroborative documentation relating to these different facets of his life given the gravity of the finding I had clearly foreshadowed I may make. I explained at hearing that I would be prepared to afford time to the applicant to obtain information from Iraq in light of my concerns.
76. I have taken into account the identity document submitted relating to the applicant's mother. The existence of this document has only weak inferential and limited bearing on the applicant's own citizenship. It is not inconsistent with the applicant being a national of another state and nor does it corroborate the applicant's claims to have grown up, attended school and worked in Baghdad. While I have taken the document into account, it does not outweigh my concerns as to the implausibility of the applicant being unable to identify any of the features of the Al Mansour district that I invited him to identify, and the implausibility I find in relation to the applicant not producing any corroborative documentary evidence relating to his own life in Baghdad after I raised the gravity of my concerns relating to his identity and citizenship.
77. While I am conscious of the submissions advanced on the applicant's behalf to the effect that the failure to produce documentary evidence to substantiate oral statements should not prevent his claim from being accepted⁴, and am conscious that there may be circumstances in which it is unreasonable to expect corroborating documentation to establish matters such as identity and citizenship, in my view this particular case falls outside that general principle. My concerns as to the applicant's identity and claimed nationality are the product of positive inferences I have drawn from his inability to identify any of the features of the area of Baghdad where he claims to have lived his entire life.

⁴ Referring to the UNHCR note on the burden and standard of proof in Refugee claims at page 5 of the submissions of 28 November 2012

78. I am positively satisfied that the applicant's claim to have been born and grown up in the Al Mansoor district of Baghdad is not true. I find that the applicant is not an Iraqi national as he claims. I have considered whether it is possible that the applicant lived elsewhere in Iraq, but because I can think of no reason why the applicant would falsely claim to have resided in Baghdad when he resided elsewhere in Iraq, I find instead that he is not an Iraqi national. I do not consider it is an appropriate exercise for me to consider the applicant's claims on the hypothetical basis that he is Iraqi given the strength of my concerns that he is not. I have considered whether to make findings against the applicant's claims with respect to Iraq in the alternative, in case I am wrong about this finding. However, I decline to do this because I have no doubt that the applicant is not an Iraqi citizen as he claims.
79. On the evidence before me, I am unable to make any positive finding as to the applicant's citizenship or nationality. Noting that the applicant has said he has [an] Uncle in Jordan and said he departed for Australia from Jordan, I suspect he may have been formerly resident in that country. My suspicions in that regard are not sufficiently grounded in evidence however for me to elevate my suspicions to a finding.
80. I have also considered whether the applicant is stateless. The applicant does not claim to be stateless, and I have no evidence before me to suggest he is stateless. My rejection of the applicant's claim to be Iraqi, and my inability to be positively satisfied that he is a national of another state on the evidence before me does not serve to satisfy me that he is stateless.
81. I have a further basis to conclude that the applicant is not a credible witness and has not given the Tribunal a truthful account of his circumstances. I find elements of his claims to be implausible. I emphasise however that my assessment in this regard is not in the alternative to my conclusion that he is not Iraqi as claimed, but rather provides a further basis for me to reject all of the applicant's evidence.
82. I do not accept it to be plausible that the applicant and his family would live undisturbed for four years before receiving a threatening note. I do not accept the applicant's explanation that those who threatened him had waited for him to come into adulthood before proceeding to threaten him, in the meantime declining to threaten his mother. I also do not accept that the applicant and his mother and sister would have continued to reside in their home for four years after their husband and father was violently abducted and disappeared from that home, yet would flee upon receiving one unattributed threatening note. The concerns I have about these elements of the applicant's claim are sufficient of themselves to lead me to reject each and every material particular of his claim to hold a well-founded fear of persecution in Iraq, or to have substantial grounds for believing that there is a real risk that he would suffer serious harm if returned to Iraq.

Consideration

83. For the reasons expressed above I do not accept the applicant's evidence regarding his background and citizenship, and I find him not to be a credible witness. I reject his evidence regarding each and every material particular of his claim to fear harm.
84. I do not accept that the applicant's father was a [position deleted: s.431(2)] and Ba'ath party member. I do not accept that the applicant's father was abducted and the applicant was beaten. I do not accept that the applicant received a threatening note urging him to leave Iraq four years later. I do not accept that the applicant's mother and sister have abandoned their home and are now living in northern Iraq.

85. I do not accept that the applicant is a member of a particular social group of fatherless children in Iraq, and nor do I accept that he is a member of a particular social group of children in Iraq. It is not necessary for me to further consider whether these groups are particular social groups for the purposes of the refugees convention, and nor is it necessary for me to consider whether by reason of membership of such a group the applicant would have a well-founded fear of persecution.
86. While it is possible that the applicant is of the Sunni faith, I do not accept that he has a well-founded fear of persecution if returned to Iraq for that reason, because I do not accept that the applicant is Iraqi and would return to Iraq.
87. As I do not accept any material particular put forward by the applicant going to his fear of persecution, I am not satisfied that the applicant faces a real chance of persecution if he returns to Iraq now or in the reasonably foreseeable future because I do not accept that the applicant is Iraqi and would return to Iraq. I am not satisfied that the applicant's fear of persecution for any of the convention grounds put forward on his behalf is well-founded.
88. Turning to Australia's complementary protection obligations as provided for in section 36(2)(aa) of the Act, as I do not accept that the applicant is Iraqi or that Iraq is the 'receiving country' in respect of him, I have no substantial grounds for believing that he will face a real risk of significant harm as a necessary and foreseeable consequence of being removed from Australia to Iraq.
89. The applicant has not made any claims that he will suffer harm if removed to any other country. He denies that he is a national of any country other than Iraq, but I do not accept his evidence in this regard. As the applicant has advanced no claims or particulars to suggest that he will face harm if removed to any other receiving country, I have no substantial grounds for believing that he will face a real risk of significant harm as a necessary and foreseeable consequence of being removed from Australia to any receiving country.

CONCLUSIONS

90. The Tribunal is not satisfied that the applicant is a person in respect of whom Australia has protection obligations under the Refugees Convention. Therefore the applicant does not satisfy the criterion set out in s.36(2)(a).
91. Having concluded that the applicant does not meet the refugee criterion in s.36(2)(a), the Tribunal has considered the alternative criterion in s.36(2)(aa). The Tribunal is not satisfied that the applicant is a person in respect of whom Australia has protection obligations under s.36(2)(aa).
92. There is no suggestion that the applicant satisfies s.36(2) on the basis of being a member of the same family unit as a person who satisfies s.36(2)(a) or (aa) and who holds a protection visa. Accordingly, the applicant does not satisfy the criterion in s.36(2) for a protection visa.

DECISION

93. The Tribunal affirms the decision not to grant the applicant a Protection (Class XA) visa.