

1212453 [2012] RRTA 977 (1 November 2012)

DECISION RECORD

RRT CASE NUMBER: 1212453
DIAC REFERENCE: CLF2012/127419
COUNTRY OF REFERENCE: Iraq
TRIBUNAL MEMBER: John Blount
DATE: 1 November 2012
PLACE OF DECISION: Sydney

DECISION: The Tribunal remits the matter for reconsideration with the direction that the applicant satisfies s.36(2)(aa) of the Migration Act.

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] June 2012.
3. The delegate refused to grant the visa [in] August 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.
20. The applicant was represented in relation to the review by his registered migration agent, [details deleted: s.431(2)].
21. The claimant is a [age deleted: s.431(2)] Iraqi man from Baghdad who arrived on Christmas Island as an unauthorised boat arrival [in] February 2012. He is of Arab ethnicity and is a Shia Muslim. Apart from a period of unemployment in about 2007-2008, the applicant has worked as a [details of employment deleted: s.431(2)]. The applicant is unmarried. His mother and a number of siblings (including several older brothers) remain in Baghdad.

Entry Interview, [in] May 2012

22. The applicant stated that he had a very normal life in Iraq before. He had been in [details of sporting events deleted: s.431(2)]. He had too many female friends.
23. On New Year's Eve 2011 a girl invited her to his home saying that the whole family was out that night. But a few minutes after his arrival there they heard the door open; it was her brother. They saw him from the window so the applicant went out to explain. Her brother was very angry because of their traditional culture and values where it is not acceptable to be seen with your girlfriend in front of her family. It is dishonourable. The brother became frustrated and assaulted the applicant. When he entered the house, the applicant thought he was going to get weapons to kill him so he got out.
24. The applicant stated that because the brother knew the applicant's house, in the same suburb, he did not go home but went and stayed with another female friend in her apartment. The applicant started receiving calls on his mobile from numbers he did not recognise and did not answer them but turned his phone off. Later that evening he called his older brother at the family's home. He was told that members of the girl's family had gone to their house looking for him, just a couple of hours after he had left the girl's house. They had assaulted people and broke his nephew's arm. The applicant's brother warned him not to return home.
25. The applicant went to Al Najaf to stay with another friend there. He rang his family again and they again told him it was dangerous and that he should not return. His brother warned him that they were looking for him. He had said that those people have relatives and family members who are related to the militia groups and would keep looking for him. The applicant said that it would have been dangerous to go to the police; he did not have time and the militia has infiltrated government bodies. The police station would not have followed it up. He therefore decided to leave Iraq; he did not want to risk his life.
26. The incident happened on New Year's Eve; the next day he booked a ticket and two days later he left Iraq, on 3 January 2012.
27. His brother had confirmed the other family was powerful and had Mahdi Army contacts.
28. If they caught him it was possible that they would kill him. He had an ordinary life, a comfortable life but because of this incident he was forced to leave the country.

Protection Visa Application and Statutory Declaration, [in] June 2012

29. The applicant stated that he had met a girl in Baghdad and had given her his mobile phone number. She would telephone him and they would meet discreetly, weekly at the markets. This continued for about 6 months.
30. The applicant stated that on New Year's Eve 2011 she rang him and informed him that her parents were going out that evening and invited the applicant to her home. He arrived there at about 9 pm. After several minutes the girl's brother arrived

unexpectedly, entering by the front door. The applicant left the room he was in with the girl to confront him to explain why he was there alone with his sister.

31. The brother did not let him explain but immediately punched the applicant in the face. The brother then entered another room and the applicant fearing for his life left the house. He went to his work place and not his home, staying there overnight before going to the home of a friend at Najaf. He spoke with his brother by phone and was informed that the girl's parents had come to their home screaming and threatening him and had pushed his nephew, breaking his arm. His brother told the applicant that they would kill him if they saw him.
32. The applicant remained at his friend's place until he left the country a few days later.
33. The applicant stated that the girl's brothers are active members of the Mahdi Army, a militia organisation, and that the issue of honour is paramount. Her family comes from a different tribe, [Tribe A] which is well renowned and known to be very conservative and strict. His own family comes from [Tribe B].
34. The applicant stated that since his arrival in Australia the [Tribe A] family/tribe have been seeking his whereabouts.
35. The applicant stated that the authorities in Iraq cannot provide safety and protection, due to the tribal laws which override any other law in Iraq. He fears death at the hands of the Mahdi militia given his past situation. He fears he will be killed by the [Tribe A] group.

Protection interview, [in] June 2012

36. The applicant elaborated on his circumstances and claims at the protection interview, generally consistently with his previous statement.
37. He provided the name and other details of the girl, who was about [age deleted: s.431(2)] and whose home was about 5 minutes from his own and of their contacts through telephone calls and meetings at the market. The applicant again stressed that he feared harsh treatment under tribal laws between the two clans. He does not believe that he would be safe anywhere in Iraq because of insurgent groups and the tribal laws.
38. The applicant was questioned closely about claims that the [Tribe A] family was associated with the Mahdi Army. He repeated that the girl had told him that her brothers visited the mosque and had some association with the Mahdi army. He was unable to elaborate and stated that not all members of a family belong to the same group; some members might belong and others might not. The applicant stated that though that group is engaged in political activity, there is another group (CGFE – Commanding Good and Forbidding Evil) that is concerned with young people, people who grow their hair and gays. This group is also part of the Mahdi Army. Some of the group would have no problem killing people secretly. He asserted that information about the incident with the girl had been given to the CGFE.
39. Pressed about the profile of the [Tribe A] family or tribe, the applicant acknowledged that he did not know much about them.

Primary decision and review application

40. The delegate made an adverse decision [in] August 2012 and the applicant applied for review on [a further date in] August 2012.

Statement, (undated, by e-mail [in] October 2012)

41. The applicant stated that, previously “I was not entirely aware of the definition of refugee and the criteria that I must meet”, “therefore, I only provided reasoning behind my escape from Iraq which did not reaching the definition of refugee.”
42. The applicant stated that he is a moderate Muslim who drinks alcohol, dresses western style and attend many differing social events such as parties: “I was always subjected to serious harm due to my liberal views about Islam and its practice.”
43. The applicant stated that after the collapse of the Saddam regime in 2003, he was unsuccessful in applying for positions with the new government because he was not involved in any religious political party. In July 2008, he applied to work with the [Department deleted: s.431(2)]. At interview he was asked about Islamic ideology and his opinion about the Mahdi Army; he said that they were good people and practicing the right way of Islam. He was invited to join but when he asked for time to consider, his application was refused.
44. Because of his hair style and clothes he wore, in September 2009 he received a message threatening that if he did not change this he would be killed. To avoid the harm he changed his style and attended prayer to give the impression that he was a practicing Muslim, but he did not agree with this.
45. To help support his family he got a job in tailoring. As well as producing military uniforms, he made some designs for young people who wanted western style clothes. At the time, shop owners who used to sell this kind of garments either were threatened to stop selling or got killed. The Mahdi Army came to learn of this work and the leader in the area came to the shop and said "we know your family has no one to help them but you. You refused to join our party and now you are working against our principles by encouraging the youth to imitate the kafir infidels. You should be killed, but in sympathy your mother's situation we warn you for the last time".
46. The applicant promised to stop tailoring western style garments, although he did continue to do some discreetly.
47. The applicant stated that at the time he was a [sportsman] but for the last three years could not participate in any competition for fear of the Mahdi Army who considered this as against Islamic rules. Therefore, he could not participate in any competition in Baghdad and he only participated in the Kurdistan "north of Iraq", in Arbil "north of Iraq" in 2010 and in Dohuk in 2011.
48. In March 2012, some young people he knew were killed in what appeared to be a campaign by Shi'a militants; lists were circulated naming more youths targeted to be killed if they do not change the way they dress. He was fearful and stayed away from home for several days.

49. He later began going to clubs and bars. One night the forces of Ministry of Interior entered the place and started attacking everyone and breaking up the place. He had to hide to drink.
50. The applicant stated that he fears to go back to Iraq because of the serious harm he was subjected to due to his imputed and real political opinion, his membership of particular social groups, namely: young moderate Muslims, tailors who design western garments, western style young Iraqis and [sportsmen].

Submission, [in] October 2012

51. The submission re-stated the new claims set out in the applicant's statement [of] October 2012.
52. The submission then set out excerpts from country information in relation to the general security situation in Iraq; "a targeted campaign of intimidation and violence against Iraqi youth seen as belonging to the non-conformist 'emo' sub-culture"; targeting of people drinking in public places; and fear of harm from the tribe of the girl with whom he had an affair.
53. It was further stated that as "a moderate young man" the applicant is subject to harm from Shia radicals. He would be persecuted for reason of "his belief" and "his membership of the particular social groups namely: young people who do not adhere to fundamentalism".
54. It was submitted that there is no possibility for the applicant to escape persecution by relocating as the whole country is in turmoil and there is a real chance he would be persecuted throughout the country. It would also be unreasonable for him to relocate to an area where he would be unknown and lack family support.

Review Hearing, [in] October 2012

55. The applicant appeared before the Tribunal [in] October 2012 to give evidence and present arguments. The Tribunal hearing was conducted with the assistance of an [interpreter] in the Arabic and English languages. His [representative] was present.
56. The applicant submitted photographs of himself as a [sportsman] from a [championship] in the north of Iraq in July 2012 and three others from January 2011. There were also two photographs of himself tailoring.
57. Asked why he left Iraq in January 2012, the applicant stated it was because he was certain to be killed by the parents of the girl with whom he had a relationship. There were also other reasons for leaving Iraq. The Tribunal questioned the applicant in relation to the incident with the girl.
58. The applicant said that the girl invited him to her home and her brother came home and got angry when he saw the applicant and hit him. When the brother went inside (the applicant assumed to get a weapon) he was afraid for his life and left the house straight away. The applicant stated that he did not go straight home as they might know where he lives so he went to his work place and stayed there until about 2 am, and then went to Al Najaf. He telephoned his brother who told him that they had come to their house and broken the door and broke his nephew's arm. His brother told him to be cautious

and not to return home as they would kill him. He could not remain at Al Najaf because he feared that they might find him there so he decided to leave the country in fear of his life.

59. The Tribunal asked the applicant what contact there had been (and by whom) with his family in relation to this. The applicant replied that they had contacted his home, his mother and brother, and had gone to the house many times and said that if they see the applicant they will kill him. Her brothers were extremely fundamentalist and had connection with the Mahdi Army. Asked whether it was just the girl's brothers who came, the applicant said that so far as his parents had told him it was her brothers who came to their house. The applicant stated that they came now and then; the last time was the previous month. Asked how often, the applicant said every month but not every single month exactly.
60. Asked whether (so far as he knew) it was the girl's brothers each time, the applicant replied that on some occasions it was her brothers and on other occasions there were also some other people with them who his parents did not know. Given their appearance (bearded) they were probably from the Mahdi Army, that is how they appear. The Tribunal put to the applicant that not everybody in Iraq with a beard is a member of the Mahdi Army. He agreed.
61. The Tribunal asked the applicant if he had any actual knowledge of the brothers' connection with the Mahdi Army. The applicant replied that in the area where they lived there were some people from the Mahdi Army who harassed people and he had seen the brothers (who he knew by sight only) with those persons.
62. The applicant said that it was not only the threat in relation to the girl that he feared. The Tribunal then asked the applicant about the new claims advanced in his statement received [in] October 2012.
63. The applicant stated that he had applied unsuccessfully for a job at the [Department deleted: s.431(2)]. This was a job delivering goods, he thought from warehouses to offices, but he was not sure. The Tribunal put to the applicant that this was at a time of high unemployment in Iraq when many people would apply for any government job. He replied that he did not know about other applicants but he knew the reason he was refused. The manager had asked what group he belonged to and when he replied no group, had asked him what he thought of the Mahdi Army. The applicant had been cautious and said that they were good people. The manager had then suggested he join the Mahdi Army. The applicant had said he needed to think about it. At that point the manager had said his application was refused. The manager had become angry and the applicant was afraid after he left. The applicant later got a job in a factory making [clothing].
64. The Tribunal asked the claimant about the threatening message he had said he received in September 2009. The applicant said that at the time his hair and clothes were Western style and he had some friends for whom he also made some clothes in the Western style, and it was for that reason they warned him. It was a written warning received at home from the Mahdi Army. It said that he was not abiding by Islamic law and they would not accept that. Asked if it was specific, the applicant then said that it referred to his hair style and clothing and making Western clothes for his friends. Asked who the paper was from the applicant said that it was signed by a particular

named person who he thought belonged to a group. Asked how he knew he belonged to a group, the applicant said that these people were harassing them and they had seen this person and he has asked about him and was told that he was with the Mahdi Army. The Tribunal commented that in its experience it was unusual for such a letter to be signed by a particular person rather than in the name of a group. The applicant then said that it had contained both the person's name and the letterhead of the group which was translated Association for what is Good and Banning what is Denied (he commented that each interpreter interpreted this differently). The Tribunal noted that he had previously just said the letter was from that person and now he said it was from the group. He replied that he had only been asked who signed it.

65. The Tribunal asked if anything further had happened in relation to this threat. The applicant stated that he was compelled to give up the clothing he liked wearing and change his hair style. He was afraid and did not have peace of mind.
66. The applicant confirmed that he had been an active [sportsman]. The Tribunal put to the applicant that an initial internet search of references to [this sport] in Iraq did not suggest that in Iraq [competitions] were banned or disrupted or that contestants were threatened with harm. The applicant said that apart from the north where he used to compete, he was afraid to do so in Baghdad. He then said that there were no competitions in Baghdad at this time. The applicant then stated that once people wanted to organise a competition in Baghdad but they received threats. Questioned further about this, the applicant then said that he had about this from other [sportsmen] in early 2010 but did not know anything else about this.
67. The Tribunal asked the applicant about the reference in his statement to a campaign in March 2012 against young people which resulted in him being fearful and staying home for several days. The applicant stated that people who had the same way of dress and hair style as himself were targeted and some killed, one who was a friend of his and who adopted the same way of dressing and hairstyle as himself. This was in March 2012, after he left Iraq. The Tribunal noted that information in his representative's recent submission referred to targeting of the "emo" sub-culture, which hardly seemed to fit in with the [sporting] image. The applicant replied that they were not like "emo"s but liked to imitate them in their style and hair-cuts.
68. When the Tribunal pointed out that an incident in March 2012 could not have led him to stay home for fear, the applicant's representative suggested that there had been a mistranslation and the applicant was talking about an earlier campaign. The Tribunal therefore sought the applicant's confirmation of what he had said and a few minutes later again asked if there was anything else he would like to say in relation to this matter. The applicant three times confirmed that the incident where his friend was killed was in March 2012 after he left Iraq.
69. The Tribunal asked the applicant what serious harm he had actually experienced, when he had said in his statement "I was always subjected to serious harm". The applicant said that he always had difficulties with the strict conformist group and was even taunted face to face. He was not able to do what he wanted and he was always in constant fear.
70. The Tribunal then put to the applicant that it had serious concerns about the new claims advanced for the first time in his most recent statement a fortnight ago. They

had not been mentioned at all in his entry interview in May 2012, at which he had specifically said he had a very normal, very ordinary life and was comfortable in Iraq and it was only the incident involving the girl that led him to leave. His statutory declaration of June 2012, prepared with the aid of a lawyer, again made no mention of any difficulties or concerns other than in relation to the girl. Nor were any other concerns mentioned at the lengthy interview with the delegate also in June 2012. It was therefore hard to see that he been always living in constant fear or that these further issues had caused his decision to leave Iraq. The Tribunal would have to consider whether it accepted that anything significant had happened at all.

71. The applicant stated that at first the definition of refugee had not been clear to him, everything was new to him. He did not know he had to tell the story of his life. The Tribunal noted that at both interviews he had been asked directly about matters of concern. The applicant said that he had been asked, and answered, the reasons why he left the country. When the Tribunal then referred to the statutory declaration prepared with the assistance of his lawyer in June 2012, the applicant stated that the lawyer had been nervous and the applicant did not feel comfortable to respond to him in detail, he thought he only had to point out the reason he left Iraq. There was also a problem with language as for that discussion there was a Lebanese with a different accent.
72. The applicant stated that he is certain he would be killed if he returned to Iraq, by the parents of the girl or by the Mahdi Army if he does anything he wants. He wanted to be able to enjoy the freedom in Australia where he can dress and look how he wants without being under pressure from strict conformist groups.
73. At the conclusion of the hearing, the Tribunal handed to the applicant's authorised recipient a written *Invitation to Comment on or Respond to Information* letter dated [in] October 2012 inviting the applicant to comment on or respond to certain information which the Tribunal considers would, subject to his comments or response, be the reason, or a part of the reason, for affirming the decision under review.
74. The information was page 13 of the written record of his entry interview [of] May 2012 (a copy was attached to the letter). This information was relevant to the review because at that interview the applicant made no mention at all of matters on which he now seeks to rely. If the Tribunal relied on this information in making its decision, it may conclude that the incidents set out in his written statement provided to the Tribunal [in] October 2012 did not occur or that they did not give rise to a fear of persecution such that he is unable, or, owing to such fear, unwilling to avail himself of the protection of Iraq.
75. This may contribute to a conclusion that he is not a person to whom Australia has protection obligations and to a decision not to grant him a protection visa
76. The applicant was invited to make any comments or response by [a date in] October 2012.
77. The adviser was also invited to provide any other written submissions not later than [a date in] October 2012, after which the decision would be finalised.

Post hearing s.424A response and submission, [in] October 2012

78. In responding to the s.424A information, the applicant commented:

- At the entry interview he had provided the "main reason" he had left Iraq but had not asserted that it was the "only reason"
- He had mentioned in his entry interview that he had been doing [sport] and working (as a tailor), as he had in his October 2012 statement to the Tribunal, but had previously not mentioned the fear caused by this because:
 - Earlier arrivals advised him not to add or alter his first statement as this would lead to his application being refused
 - His October 2012 statement was entirely credible and included facts previously mentioned
 - When he stated at his entry interview that his life was normal, he meant normal in his relationships with girls without having had any previous troubles for that reason
 - He was stuck to his first statement until released from detention when he had better access to legal advice and information and could explain all his concerns and fears
 - He then believed that the Tribunal would deal fairly with his "new claims".

79. The adviser in an accompanying submission referred to an April 2009 UNHCR comment including athletes as targets for extremist groups as well as a media reference to the murder of three athletes in May 2006. An Iraqi government spokesman was also quoted referring to past targeting of athletes.

80. It was submitted that the applicant has a well-founded fear of persecution "for reason of his memberships the particular social groups namely; Iraqi Athletes and Moderate Young people".

COUNTRY INFORMATION

81. The Tribunal has had regard to country information cited and specifically referred to in the delegate's decision as well as material submitted by the applicant and his adviser or cited in the adviser's submission

FINDINGS AND REASONS

Country of Reference.

82. The Tribunal accepts that the applicant is a national of Iraq and is not a national or citizen of any other country. The country of reference is therefore Iraq..

Credibility

83. In considering an applicant's account, undue weight should not be placed on some degree of confusion or omission to conclude that a person is not telling the truth, especially in the context of entry interviews constrained by time and the inherent limitations of interpretation and often before an applicant fully appreciates what is relevant and the degree of detail required. But nor can significant inconsistencies or embellishments be lightly dismissed. The Tribunal is not required to accept uncritically any and all claims made by an applicant.
84. As will be seen from the subsequent discussion, the Tribunal had significant difficulties with the applicant's credibility in relation to his later claims about matters preceding his affair with the girl.

Claims:

85. The claims, set out in full above, include the fear of harm:
- at the hands of the [Tribe A] family and/or militant groups as a result of his discovery with an unmarried girl on New Year's Eve, 2011;
 - due to his imputed and real political opinion, as a moderate young man with liberal views about Islam and its practice
 - his membership of particular social groups, variously:
 - young moderate Muslims
 - Moderate Young people
 - young people who do not adhere to fundamentalism
 - western style young Iraqis
 - tailors who design western garments
 - [sportsmen]
 - Iraqi Athletes

Past threats

86. It is appropriate to first consider the belated claims about matters other than, and preceding, the difficulty which arose over being found alone with an unmarried girl in contravention of strict social mores.
87. It is very difficult to reconcile two specific death threats (one in writing and one delivered directly), giving rise to a genuine well-founded fear of persecution, with the applicant's failure to mention these matters at all until after the delegate's adverse decision – notwithstanding opportunities (and specific questions as to his concerns) at a lengthy entry interview [in] May 2012, in a 5-page statutory declaration prepared with legal assistance in June 2012, and at an interview with the delegate [in] June 2012.

88. Not only did the applicant not mention these serious matters, but at his entry interview he specifically stated that he had a very normal life in Iraq before the incident with the girl; and that in Iraq he had an ordinary life, a comfortable life but because of this incident he was forced to leave the country. It is also significant that the applicant did not mention these alleged concerns during a discussion of the activities of the Mahdi Army and targeting of non-conformist young people at the interview with the delegate, a context where such claims could hardly have failed to arise.
89. The Tribunal had further concerns with the applicant's evidence at hearing. His shifting evidence about the written threat was unpersuasive. For example, he first stated that he knew the signatory was from a group because he had enquired and been told the particular person was associated with a group, but he subsequently stated that the letter contained the name of a group as well as the signature of the person.
90. It was also clear that the applicant was not intimidated into staying away from home as a result of a March 2012 campaign against non-conformist youth (as claimed in his written review statement), as he had already left Iraq by that time, as acknowledged at hearing.
91. The Tribunal has also considered carefully the explanations offered by the applicant in his post-hearing response to the s.424 information about his entry interview remarks. His failure to mention these matters at the later interview with the delegate – which was undisputed – was raised with the applicant at hearing but not put to him formally under s.424A or s.424AA as the delegate's written report which contains a good account of that interview was provided to the Tribunal by the applicant with his RRT review application.
92. The Tribunal does not accept that, prior to the New Year's Eve incident, the applicant received one or more specific death threats as a result of his membership of any of the suggested particular social groups or for any other reason. The Tribunal is satisfied that the applicant, prior to that incident, did not experience any serious harm and did not have a genuine subjective fear which precludes his return to Iraq.
93. The Tribunal does accept that the applicant failed to secure particular employment in 2008 because he failed to agree to join the Mahdi Army. No other harassment or consequences are claimed to have flowed from that incident and he subsequently found gainful employment.
94. It is plausible that the applicant may have encountered verbal abuse and some harassment as a result of his dress or hair-style or [sport], but the Tribunal is satisfied that if this had been more serious and occasioned a genuine fear of persecution the applicant would not have described his life in Iraq as comfortable, ordinary or normal.
95. The Tribunal accepts that in the past harassment of [athletes] may in some instances led to serious harm and even death. But the reference to this in the April 2009 *UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Iraqi Asylum-Seekers* (cited by the applicant's adviser) was not repeated in the current May 2012 *UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Asylum-Seekers from Iraq*, to which the Tribunal gives weight. The other references relied upon by the adviser also refer to the situation some years ago. On the evidence before it, the Tribunal is not satisfied that the applicant would be at risk of serious harm

amounting to persecution as a result of targeting of [athletes] in Iraq in the reasonably foreseeable future.

96. The Tribunal is satisfied that none of these matters gives rise to a well-founded fear of persecution on return to Iraq for any Convention reason (including those specifically advanced by the applicant and his adviser).

Complementary protection

97. The Tribunal is satisfied that the incident where the applicant was caught along with a girl by her brother occurred substantially as claimed. The applicant's evidence about this has been consistent and plausible. The visits to the family home and attempts to locate the applicant have been persistent and sustained. The seriousness of this matter is attested by country information, as discussed in the delegate's report (for example, *Iraq: Tribal Structure, Social and Political Activities*, Hussein D. Hassan, Congressional Research Service, Library of Congress, 7 April 2008).
98. The applicant's suggestion that the Mahdi Army or one of its off-shoots have become involved and may now target the applicant because of this incident is speculative; but in any event the Tribunal is satisfied that any harm arising because of this liaison would be for a personal reason or matter of honour and not for any Convention reason.
99. Nonetheless, the Tribunal is satisfied that the extended family of the girl would persist in seeking to harm or even kill the applicant to satisfy the perceived slight to the family honour.
100. There are clearly substantial grounds for concluding that there is a real risk that the applicant would face significant harm within the terms of the complementary protection provisions discussed at paras 16-18 above. None of the exceptions in para 18 apply. This is an issue affecting the applicant and not the population generally. For a matter with tribal ramifications, relocation might be expected to be even more problematic than as generally indicated by UNHCR in its *Guidelines*. Nor does the country information provide any real assurance that effective state protection might be available in relation to this matter (see for example *UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Asylum-Seekers from Iraq*, May 2012, at p.13).
101. The Tribunal is therefore satisfied that the applicant meets the complementary protection criteria.

CONCLUSIONS

102. The Tribunal 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).
103. 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 satisfied that the applicant is a person in respect of whom Australia has protection obligations under s.36(2)(aa).

DECISION

104. The Tribunal remits the matter for reconsideration with the direction that the applicant satisfies s.36(2)(aa) of the Migration Act.