

1212298 [2012] RRTA 1069 (19 December 2012)

DECISION RECORD

RRT CASE NUMBER: 1212298

DIAC REFERENCE(S): CLF2012/111106

COUNTRY OF REFERENCE: Iraq

TRIBUNAL MEMBER: R Mathlin

DATE: 19 December 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 (the Department) 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 CLF2012/111106 relating to the applicant, and the Tribunal file, and has had regard to the information on those files and to the material from other sources which is referred to below in considering this application.

Arrival interview

20. The applicant arrived undocumented on Christmas Island by boat [in] December 2011. He was interviewed on the day of his arrival and stated that he was seeking protection because he had been threatened by "a certain groups" because of a relationship with a married woman which led to a conflict, and the family wants to take revenge by killing him.
21. He stated that he was a Shia Muslim from [City 1], Thi Qar, in Iraq. He had no passport but produced a number of documents including his Iraqi citizenship certificate, residency ID card, and an Iraqi driver's licence.

Irregular maritime arrival interview

22. The applicant was interviewed again [in] February 2012.
23. He stated that he began the relationship with a girl five years ago, in about 2006; he had asked her to marry him but her family had not agreed. About two years ago she married

another man but the applicant continued to see her secretly at her house when her husband was at work.

24. He had left Iraq [in] November 2011. About one month before the applicant left Iraq the woman's husband caught them together at home. He chased the applicant and shot at him. The applicant hid with his brother for a couple of days, then went to [location deleted: s.431(2)], near the Iraqi border with Kuwait.
25. The husband went to his tribal council with two witnesses and it was decreed that if the applicant was killed his family could not claim his body. The husband divorced his wife and continued to look for the applicant.
26. The applicant claimed that if he returns he will be killed. He could be gaoled for ten years if the case was reported to police. No action would be taken against the husband's family if they killed the applicant.

Protection visa application

27. The applicant's protection visa was signed and lodged [in] May 2012.
28. In a statement detailing his claims, [dated] May 2012, the applicant claimed that he is a citizen of Iraq and of no other country. He claimed that he is a Shia Muslim of the [name deleted: s.431(2)] tribe, which is based in [City 1]. He stated that he moved to Kuwait with his parents when he was a child and lived there until the age of [age deleted: s.431(2)]. In March 1991 the family was deported to Iraq. At first life was difficult as they had nothing and experienced discrimination, but after the fall of Saddam Hussein the situation improved.
29. He stated that he fears returning to Iraq because the husband of a woman with whom he had an affair will kill him.
30. The applicant stated that he worked as a [occupation deleted: s.431(2)]. In 2006 he met a girl called [Ms A]. He wanted to marry her but her family refused as they felt the applicant was not suitable. In 2009 [Ms A] was forced to marry another man, [Mr B]. [Ms A] and the applicant continued their relationship until, in about October 2011, [Mr B] found out about it.
31. The applicant stated that because he and [Mr B] lived in the same neighbourhood, [Mr B] knew that the applicant had asked [Ms A] to marry him and he knew where the applicant lived. They saw each other from a distance from time to time but avoided each other. Because [Mr B] worked in the military and was away from home for two weeks at a time, the applicant and [Ms A] used to see each other when he was not at home, but on this occasion he came home unexpectedly. When he walked into the house the applicant fled. [Mr B] chased him, shooting at him but he managed to escape.
32. The applicant was very afraid for his safety. According to their tribal tradition, if a woman who commits adultery is her husband's cousin she will be killed; if she is not his cousin, she will be divorced and sent back to her family. The husband will kill the man who had the relationship with his wife. The applicant and [Ms A] are both from the same tribe; [Mr B] is from the [name deleted: s.431(2)] tribe.
33. After fleeing from his home, the applicant stayed at his brother's house overnight then travelled to [Town 2], near the border of Iraq and Kuwait. From there he spoke to his wife who said that an angry man was looking for him. The man left when the applicant's family

said that he was not at home. From their description the applicant knows that this was [Mr B]. After that the applicant's brother told him that news had spread about his affair. Two neighbours testified before the tribal leader that the applicant had stayed at [Ms A]'s house when her husband was not there. She was beaten by [Mr B] and confessed. The tribal leader announced that the applicant should be arrested and killed. Once he heard about the tribal leader's verdict the applicant decided to leave the country. The police and authorities do not intervene in tribal disputes.

34. The applicant already had a passport and bought a plane ticket to Malaysia. From there he travelled to Indonesia and caught a boat to Australia. He was brought to Darwin [in] December 2011.
35. If he returns the applicant will be killed by [Mr B] or his relatives. He has tarnished the honour of their tribe. He cannot relocate because people will know which tribe he comes from when he registers himself.

Protection interview

36. The applicant was interviewed about his claims by a delegate of the Minister [in] May 2012. A recording of the interview is on the Department's file. The following is a summary of relevant information provided by the applicant at the interview.
37. He stated that he applied for his passport in 2010; he had no plans to travel, but just seized the opportunity. He had never applied for a visa to visit brother in [country deleted: s.431(2)], but heard it was impossible to get a visa.
38. He said that he had six years education but had completed primary and secondary school because he did two years in one. He said that one of his brothers [occupation deleted: s.431(2)], and one works for the [workplace deleted: s.431(2)]. His father was a [dealer].
39. He was married [in] 1977 to his wife, who is a cousin on both sides; he was married at [age deleted: s.431(2)] years of age.
40. His girlfriend [Ms A] is from the same tribe and the same area. They met in the applicant's cab when she was going to market. He drove her a couple of times, they started to talk and get friendly. They exchanged phone numbers. They started talking on the phone and started a relationship. This was in about 2006. She was about [age deleted: s.431(2)] then. The delegate put to the applicant that it was implausible that she was not married. The applicant said that it is uncommon, but it happens.
41. When he asked [Ms A] to marry him he did not tell his wife first. He could not do so. He officially went to ask [Ms A]'s family for her hand in marriage; he asked her father and [brothers].
42. He said that they did not have sexual relationship until after she got married; he said that before "she was a virgin and I would not dare to do that. I was hoping we could marry".
43. The applicant has not been in touch with her since he's been in Australia; before he left he knew she was divorced and went back to her family's house.
44. Asked about the circumstances in which they were discovered, the applicant said that he was with her at her home; "the door was knocking" Usually he stayed there till 10 or 11pm, but

when they heard the door at about 9pm, they were concerned. They could see through peephole that it was her husband at the front fence. It was dark, the street was dark. The applicant prepared himself to escape. When she opened the door he jumped the fence and ran. Her husband saw him. From about 200 metres away he shot at the applicant but there were cars parked in the street so he missed and the applicant got away.

45. The husband knew who the applicant was because he lived in same area and he was aware of the previous proposal to her so he was jealous and tried to avoid the applicant.
46. The applicant ran away to his brother's house and it seems the husband went to his house; he was very angry, asking about him. His family told him that somebody very angry came asking about him; from the description he could tell it was him. He spent one night at his brother's without telling his family where he was. The next morning he went to [Town 2] in border area, 200 kilometres from [City 1]. He left his brother to follow up case. [Ms A]'s husband had beaten her and asked her what happened; she admitted the affair and the neighbours testified that they had seen the applicant coming to the house. The husband went to the tribe leader of the applicant's tribe who said that the applicant could be sentenced or killed any time.
47. It was put to the applicant that he had stayed safely in [Town 2] for 1 month before departing Iraq and he was asked why he could not relocate permanently. He said that the husband had not forgotten about him, he was taking his time and preparing. He added that he can't [occupation deleted: s.431(2)] anywhere else in Iraq, and said that he would have to obtain a residency card with his new address and then the husband could find me.
48. The officer discussed with the applicant country information stating that honour crimes apply to women, and there are no known cases of men. He replied that men are more mobile so they can escape.

Delegate's decision

49. The delegate found that any harm feared by the applicant from his girlfriend's husband would not be directed at him for a Convention reason and therefore did not give rise to protection obligations under the Refugees Convention. As to his eligibility for complementary protection, she found that there were not substantial grounds for believing that he was at real risk of significant harm because she relied on country information which she said indicated that honour killings are prohibited by law (Penal Code 111 of 1969); that mostly women and girls were victims of so-called honour killings; that tribal councils settle disputes between families and groups; and that there was no evidence of blood feuds in recent times.

Tribunal proceedings

50. [In] September 2012 the applicant's adviser submitted a statutory declaration made by the applicant [in] September 2012 and a submission.
51. Statutory declaration
52. The statutory declaration provided additional details about the applicant's relationship with [Ms A] (now referred to as [Ms A]) and the circumstances leading to his departure from Iraq. The applicant stated
 - [Ms A] was about thirty eight when they met.

- The applicant's marriage had been unhappy and his sex life unsatisfactory for some time when he met [Ms A].
- They met about five times before he asked her family for permission to marry her.
- When they refused his proposal he and [Ms A] had to be more careful about their meetings; they were not able to meet in person as often but maintained contact on the phone.
- Six months later [Ms A]'s family forced her to marry another man.
- He was a local man who the applicant had perhaps greeted occasionally but they had never spoken. The applicant knew nothing about him except that he worked for the government.
- After another six months [Ms A] contacted the applicant and said that her husband's work roster meant that he was away from home for one week at a time, then home for a week. She asked the applicant to visit her at her house while her husband was away.
- The applicant and [Ms A] started a physical relationship which continued for about eighteen months once or twice a week.
- One night at about 9pm someone knocked at the door. [Ms A] thought it might be her husband.
- The only exit was the wall at the front of the house right next to the front door. The applicant jumped over the wall just as she opened the front door. Her husband was suspicious that there was someone inside and he sprayed the front door with his machine gun. He saw the applicant jump and fired a few bullets at him. It was dark and he missed.
- The applicant ran to his brother's house.
- Later that night [Mr B] went to the applicant's house and spoke with his wife.
- The next day the applicant called his wife and told her he had been busy and could not come home. She told him that any angry man had been looking for him.
- The applicant's brother told him that [Ms A] had told her husband that the applicant was at his house. He took two witnesses who said that the applicant had been at his house many times and went to the head of the applicant's tribe. [Mr B] was determined not to accept a settlement because he wanted to kill the applicant so this was agreed. He divorced [Ms A] and she went back to her parents.
- The applicant stated that he made no financial settlement with [Ms A]'s husband, although the decision record mentioned that he had paid him 7000USD.

- The applicant's brother has told him that [Mr B] showed him the letter from the tribal leader authorising him to kill the applicant. His brother had done everything to reach a settlement but had not been able to. He advised the applicant to leave the country.
- He has been told that [Mr B] is still looking for him.

First Tribunal hearing

53. The applicant first appeared before the Tribunal at a hearing held by video link [in] September 2012 to give evidence and present arguments. The Tribunal hearing was conducted with the assistance of an interpreter in the Arabic and English languages. The applicant was represented in relation to the review by his registered migration agent, who was present with the applicant in Perth.
54. The applicant said that his Iraqi passport was issued in 2010 but he had no plans to travel at the time.
55. He said that he arrived in Australia [in] December 2012. The journey took 28 or 30 days. He said that he went from Iraq to Malaysia. He went to Malaysia because he asked the travel agent which countries he could get a visa for quickly. He said that he had no travel plans after Malaysia, but when he was there he was asking people and he met someone who suggested that he go to Indonesia and then on to Australia.
56. I asked the applicant about his relationship with [Ms A]. He said that he met her twice in his [location deleted: s.431(2)]; then she took his phone number and they talked on the phone. Over a three year period they met regularly; sometimes once or twice a week.
57. I put to the applicant that it was surprising that her family would reject his offer of marriage, given her age, thirty eight. He said that a lot of ladies did not marry because of the war. Her family thought he could not support two households.
58. The applicant said that he did not have sex with [Ms A] until after she married her husband. After their marriage he did not see her for six months; then he started seeing her. I asked why they only started a sexual relationship after she married. He said that she was a "girl"; he said "we don't do those things" He said that he was hoping to marry her. I asked the applicant if he meant that he respected the fact that she was a virgin and did not have a sexual relationship with her because it would have caused problems for her or for him. He said that in Iraq they could kill the person. I asked was it not also the case that having an adulterous relationship with a married person could cause problems. He said "She was a girl, a virgin, I could not do that. After she got married we loved each other, that's why" I said I still found it hard to understand why he was worried about the consequences of having sex with a virgin but not a married woman. He said that a married woman is different; no one knew and he thought no one would find out.
59. I asked how long after his proposal of marriage was rejected she got married; he said that it was less than three months, almost three months. During this time he saw her, but less than before. He does not know anything about the circumstances in which her marriage to [Mr B] was arranged.

60. I asked the applicant to describe the house where [Ms A] and her husband lived. This proved difficult. At first the applicant asked “how can I describe it”, so I asked him a series of questions which resulted in the applicant becoming very frustrated. As the hearing progressed it became evident that there were problems with the quality of the interpreting. For example, at one point I asked the applicant “Was it the street or the garden?” He responded in Arabic “yes”, and the interpreter translated his response as “The garden”. There appeared to be much confusion on the part of the applicant about the questions he was being asked and his responses were frequently not clear. There were occasions when the applicant denied having said certain things shortly afterwards. In view of the potential importance of inconsistencies in this case, given that it was likely to hinge on the applicant’s credibility, I decided that the hearing should be adjourned and reconvened with a different interpreter.
61. I had the recording of the first hearing checked by another interpreter. I am satisfied that there were no major misinterpretations, but the evidence given was extremely confused and there were minor inaccuracies.

Second Tribunal hearing

62. The hearing resumed [in] November 2012. The applicant and his adviser attended in Perth by video link. An Arabic interpreter was present.
63. Prior to the hearing the applicant submitted a drawing of the floor plan of [Ms A]’s house, which is on the Tribunal’s file. This time the applicant was able to satisfactorily describe the layout of the house, including the position of the doors to the house and the street, the front garden, and the location of the various events of the evening when he was discovered by [Ms A]’s husband.
64. The applicant said that when he visited [Ms A] at her home he went on foot; it was about fifteen minutes from his house to hers. He only visited her at night. He would go there one or two hours after darkness fell. He said that her husband was away for one week at a time; he was a government official, in the army. Sometimes he wore uniform, sometimes not.
65. On the night they were discovered, they were sitting in the living room. There was a knock at the street door; this had a sliding bolt which could not be unlocked from the outside. [Ms A] was worried because nobody usually came that late; she was worried it was her husband. She looked through the peephole in the street door and saw that it was her husband. The applicant and [Ms A] panicked. She told him to jump over the wall when she opened the door to her husband. I noted that, according to the plan he had given me, there appeared to be hiding places within the garden and I asked why he had not simply hidden until the husband went inside. He said that they were so confused or panicked that he did not think of that. I asked at what point the husband realised that the applicant was there. He said that when he landed on the ground the husband heard him and went back outside. He was about ten metres away. The applicant ran. It took the husband some time to get his weapon ready but then he fired at the applicant; he fired two shots as the applicant ran away. The applicant said that he does not know what kind of weapon the husband had, but it was a gun that fired single bullets. I noted that in the statutory declaration submitted before the first hearing he had stated that the husband had a machine gun with which he opened fire on the front door. The applicant was adamant that he had said no such thing. The applicant’s adviser subsequently made submission about the circumstances in which the statutory declaration was prepared and indicated that this mistake was probably a translation error or a misunderstanding.

66. The applicant said that he ran to his brother's house. I noted that he had claimed that on the same night [Ms A]'s husband had been to the applicant's house and asked about him; I asked how the husband would know that it was the applicant with his wife, and how he knew where he lived. The applicant said that he later found out that the husband made [Ms A] tell him where he lived, but also, he knew the applicant's face, he knew that the applicant had previously asked [Ms A] to marry him and he had made inquiries about him. The applicant said that in their area of [location deleted: s.431(2)], most residents know where people live, especially people who are of interest to them.
67. The applicant told his brother what had happened. Later that night he telephoned his wife and she said that an angry man had been to their home asking about him. This was about one and a half to two hours later. In the morning he went to [Town 2]. The applicant said that he did not tell his wife what had happened, but he told her that he was going away on business. Within the next two or three days everyone knew what had happened. The applicant spoke to his wife again after that – three or four days after the incident - because he heard that she was upset.
68. I put to the applicant that he had provided inconsistent information about the timing of his first phone call to his wife. At the hearing he said that he called her the same night; in the statutory declaration given to the Tribunal he said that it was the next day; in the statutory declaration lodged with the protection visa application he said that he called his wife from [Town 2]; at the protection interview he said that he stayed at his brother's house without telling his family. The applicant said that he was sure he called his wife on the same night because it was that conversation that made him decide to go to [Town 2].
69. I asked whether there was a particular piece of information that made the applicant decide to leave the country. He said that he was continuously in touch with his brother who was following up the case. His brother had tried, along with the sheikh from their tribe, to negotiate reconciliation with the husband, but he was adamant that he did not want a reconciliation, he wanted the applicant's blood. Twenty days after the incident the applicant's brother informed him of this and he decided that his only option was to leave. The applicant organised to travel to Malaysia because this was the only country for which it was possible to obtain a visa.
70. I asked the applicant about his claim that the husband had brought two neighbours to the sheikh, and that they had stated that they had seen the applicant at his home. The applicant said that he was not aware of having been seen by neighbours when visiting [Ms A], but he said it is normal for neighbours to know who is coming and going.
71. I put to the applicant that the country information indicated that it was much more common for women to be killed in these situations, rather than the man. He said that both happen; a very strict person would insist that the man be killed, although in some cases they would accept gifts as compensation. I asked whether the woman would be sent back to her family on the basis that they would kill her. He said that it depends how radical they are; generally you have to see the event taking place in order to be permitted to kill a person. Also, men are more able to flee and escape being killed.
72. I asked the applicant whether he would agree to me contacting his brother by telephone. I suggested that for convenience, and given time zone differences and potential difficulties in actually making contact with the brother, I do so in the absence of the applicant and his adviser. I said that the conversation would be recorded, and made available to the applicant

for comment if it contained any adverse information. The applicant consented to this, and subsequently provided the Tribunal with his brother's telephone number.

Evidence of applicant's brother

73. I reconvened the hearing [in] December 2012 and spoke to the applicant's brother, [name deleted: s.431(2)], by telephone with an interpreter. The applicant's brother said that he last spoke to the applicant a long time ago. He said that there was a "family issue", and then no communication for a long time. The family issue was a tribal issue to do with a love relationship; he said that it "ended badly for all of us". The applicant's brother said that he and another person, the sheikh, tried to resolve the matter peacefully but the other person was very strict and radical. He said that this person would kill his brother if he found him. He said that "of course", this was why the applicant had left. He said that the matter had impacted on all of them; he is a public officer and it has caused him a lot of anxiety.
74. Asked to provide more details, he said that the applicant had a relationship with a woman. Her husband saw them so the applicant fled. The brother and the sheikh tried to find a solution but the husband insists on killing him. The husband lives on the same street as the applicant. He said that he does not know whether anything has happened to the woman involved. He said that the applicant left the area and later contacted him asking for his passport and some money, telling his brother "I'll manage".

Country information

75. According to the UK Home Office Operational Guidance Note on Iraq, November 2011¹, which summarises information from different sources about the treatment of Iraqis claiming to fear being killed in circumstances where they are considered to have brought the honour of the family into disrepute:

UNHCR's Eligibility Guidelines of May 2012 noted that so-called 'honour crimes' - that is, violence committed by family members to protect the family's honour - reportedly remain of particular concern. Most frequently, women and girls and, to a lesser extent, men and boys, are killed or subjected to other types of violence such as mutilations, because they are judged to have transgressed cultural, social or religious norms bringing shame to their family. 'Honour crimes' are said to occur for a variety of reasons, including adultery, loss of virginity (even by rape), refusal of an arranged marriage, attempt to marry someone against the wishes of the family or making a demand for a divorce. Even the suspicion or rumour that any of these acts have been committed can reportedly result in 'honour crimes' With the emergence of mobile phones and internet, allowing young couples to communicate in secret, cases have been reported in which girls, or boys, were killed on the basis of suspicious or incriminating messages or phone calls.

3.9.3 Human Rights Watch reported that Violence at home against girls and women happens mainly at the hands of their husbands, fathers, brothers, sons, and male extended family members. The men sometimes act on the orders of tribal elders who decide on punishments for women deemed to have infringed traditional codes of honour. Such infringements can include a woman or girl dating, marrying against her

¹ UK Home Office 2012, *Operational Guidance Note Iraq*, December, Section 3.9.2, p.18
<http://www.bia.homeoffice.gov.uk/sitecontent/documents/policyandlaw/countryspecificasylumpolicyandlaw/iraq-ogn?view=Binary> accessed 18 December 2012

family's wishes, being the victim of sexual violence, losing virginity before marriage, seeking a divorce against her family's wishes, engaging in an extramarital affair, and refusing an arranged marriage.

3.9.4 The US State Department Report 2011 supplied some statistical evidence on the issue and stated that 'honour killings' remained a serious problem throughout all parts of the country. Statistics published by the KRG Ministry of Interior in 2010 stated that there were 102 incidents of women burned in and around Erbil Province alone. Sixty-five percent of these cases were still under investigation during 2011. Women who committed self-immolation had been previously victimised, but police investigated only a small number of women's burn cases. The KRG reported that during 2011 76 women were killed or committed suicide, while 330 were burned or self-immolated, but a number of NGOs, including the Organisation for Women's Freedom in Iraq, stated that such estimates were low.

...

Honour Crimes in Central and Southern Iraq

3.9.6 The Iraqi Penal Code (Law No. 111 of 1969) contains provisions that allow lenient punishments for 'honour killings' on the grounds of provocation or if the accused had 'honourable motives' The punishment is between 6 to 12 months imprisonment. Article 409 further provides that if a person surprises his wife or a female relative committing adultery and kills/injures one or both immediately, the punishment will not exceed three years. The law does not provide any guidance as to what 'honourable motives' are and therefore leaves the door open for wide interpretation and abuse.

3.9.7 Amnesty International reports that there remains a culture of impunity, with regard to honour crimes, based on the de facto legal mandate for such crimes provided under the Penal Code; women continue to be killed with impunity by their relatives because their behaviour is perceived to have infringed traditional codes. In 2008 the Iraqi authorities recorded 56 so-called honour killings of women in the nine southern governorates. Most men get away with these murders because the authorities are unwilling to carry out proper investigations and punish the perpetrators. Iraqi legislators have failed to amend laws that effectively condone, even facilitate, such violence against women and girls.

...

3.9.15 Conclusion: Women fearing 'honour killing' or 'honour crimes' in either central or southern Iraq or in the Kurdistan Region of Iraq are unlikely to be able to access effective protection. ...

3.9.16 There might be cases where men are at risk of honour crimes for committing certain acts which have brought shame on their family. Effective protection is unlikely to be available ...

76. A recent media report noted an increase in the number of so-called "honour killings" in Basra, a southern predominantly Shia city, with authorities admitting they were powerless to prevent these murders²:

² "Hitmen charge \$100 a victim as Basra honour killings rise", Afif Sarhan, *The Observer*, 30 November 2008, <http://www.guardian.co.uk/world/2008/nov/30/iraq-honor-killings-women/print>
Accessed 18 December 2012.

Authorities in the southern Iraqi city of Basra have admitted they are powerless to prevent 'honour killings' in the city following a 70 per cent increase in religious murders during the past year.

There has been no improvement in conviction rates for these killings. So far this year, 81 women in the city have been murdered for allegedly bringing shame on their families. Only five people have been convicted.

During 2007 the Basra security committee recorded 47 'honour killings' and three convictions. One lawyer in the city described how police were actively protecting perpetrators and said that a woman in Basra could now be murdered by hired hitmen for as little as \$100 (£65).

...

Ali Azize Raja'a, an Iraqi prosecutor who has represented the victims of 32 'honour killings' since 2004, said that, despite accumulating sufficient evidence to prove who was responsible in each murder, he had won only one case.

77. Another report describes the failure of the national parliament to reform laws that sanction lenient punishments for so-called "honour killings"³:

The country's powerful Islamic parties and leaders are resisting reform of a law that sanctions lenient punishments for those found guilty of so-called honour killings.

Article 111 of the Iraqi penal code - passed in 1969 - allows a lesser punishment for the killing of women if the male defendants are found to have had "honourable motives".

Under the law, a man can receive a maximum of three years in prison if he immediately kills or disables his wife or girlfriend after witnessing her engaging in a sexual act with another man. This sentencing also applies if the defendant immediately kills or disables the other man.

In most cases, the sentence is commuted if the defendant has no criminal background

Acting minister of state for women's affairs Narmin Othman is leading a campaign to change the Ba'ath-era law.

She is pushing for parliament to ditch the honour killings statute, so that men accused of such crimes are prosecuted for murder, the punishment for which is life imprisonment or the death penalty.

Othman's initiative is primarily backed by secularists and has received the support of about 60 members of parliament from the secular Iraqi List and the Kurdish Alliance, according to Iraqi List MP Maysoun al-Damalogy.

However, representatives from the Shia United Iraqi Alliance - the most powerful bloc in parliament, led by Prime Minister Nuri al-Maliki - and the Sunni-led Iraqi Accord Front both oppose the legislation.

³ "Iraq: Politicians reject 'honour' crime reforms, Law Efforts to toughen sentences meet opposition from Islamists", reproduced at <http://www.stophonourkillings.com/?name=News&file=article&sid=2502>

United Iraqi Alliance MP Qais al-Ameri argued that honour crimes are permitted under sharia, or Islamic law, “Illicit sex is the most dangerous thing in a society, and there should be severe punishments against those who practice it.”

Many have argued that honour crimes are cultural and not religious. Last year, members of the minority Yezidi religious community in northern Iraq stoned a 17-year-old Yezidi girl to death after she fell in love with a Muslim.

Iraqi Accord Front MP Hashim al-Taei said that he also supported the current honour crimes law because it is based on sharia. ...

78. The legal basis for “honour killings” is explained in a recent report by an NGO dealing with women’s rights, which also notes that men are criminally liable for adulterous acts committed in the marital home⁴:

Adultery is a crime in Iraq as it is in most Islamic countries. In some Muslim countries there is a growing perception of adultery as a moral crime that is a matter better dealt with privately between spouses rather than within the criminal justice system. In Iraq it continues to be a criminal act and a grave social offense against family/community/tribal honor, leading women to face serious threats of honor killing by their husband’s and natal families. The mere suspicion or allegation of adultery places all parties at risk, but especially women and girls who carry the heavy burden of maintaining honor.

Men are also criminally liable under the IPC Article 377, however Iraqi law discriminates against women by holding them responsible for adultery committed anywhere, whereas men are only liable for acts of adultery committed in the marital home. ... The crime of adultery is a misdemeanor offense which is punishable with a jail sentence from three months to five years under the IPC Article 26.

79. The Tribunal sought expert advice to assess the plausibility of the applicant’s claim that the woman with whom he had the sexual relationship had not been killed, but had been returned to her family under tribal custom which also authorised her husband to kill the applicant. This claim seemed inconsistent with general information suggesting that women and girls are predominantly the victims of honour killings. The Tribunal contacted numerous academic experts and received only one reply which stated that, while possibly unusual, “the assertion he [the male adulterer] is likely to be harmed by her [the woman’s] husband or his relatives can not be rejected” It was noted that among Bedouin tribes it is “relatively common for a man to kill his wife’s lover—and oddly enough, the women in the case were never killed and often not even divorced. There wasn’t an obligation under Bedouin customary law to kill the lover, and blood-money would have to be paid for the killing; but the amount of the blood-money would be reduced because of the circumstances, and there seems to have been some feeling that the killer did the right thing”⁵. I note that none of the parties in this case are Bedouin.

⁴ “Institutionalised violence against women and girls in Iraq”, Heartland Alliance for Human Needs & Human Rights 2011 http://www.heartlandalliance.org/international/research/institutionalized-violence-against-women-and-girls-in-iraq-laws-and-practices_english.pdf page 21, accessed 18 December 2012

⁵ Efrati, N 2012, Email to RRT, *Re: RRT request for information on tribal practices related to honour killings*, 18 November.

80. A 2010 fact-finding mission by the Danish Immigration Service, *Honour crimes against men in the Kurdistan Region of Iraq (KRI)*, provides information on honour killings in northern Iraq where males are the victim. (I note that the ethnic and tribal makeup of Kurdistan is different to that in southern Iraq, from where the applicant comes). The report quotes Hassan Berwari⁶, a US-based academic, as stating that men are ‘equally at risk’ of becoming victims of honour crimes as women. The report also quotes Edrees Salih⁷ as stating that (in the KRI) men involved in “‘offences” such as adultery are under threat of murder until a reconciliation is reached.⁸ This report claims that males fearing being killed in this context in KRI are less likely to find assistance from state authorities and non-state groups. Khanim R. Latif⁹ states that males under threat of honour killings are ‘much less likely than women to find assistance and protection from the police and/or from other authorities as well as NGOs’¹⁰, adding that threatened males have little option but to flee the country.
81. Two specific reports in which men were the victims of “honour killings” have been located¹¹.
82. As to the possibility of relocation to another part of Iraq where the applicant might be able to avoid the harm he faces from an individual in his home town, the UNHCR Guidelines on the Assessment of Eligibility of Iraqi Asylum Seekers discuss the difficulties of relocation or internal flight in Iraq:

Common ethnic or religious backgrounds and existing tribal and family ties in the area of relocation are crucial when assessing the availability of an IFA/IRA, as these generally ensure a certain level of community protection and access to services. This is true for both towns and rural areas, where newcomers, particularly when they do not belong to the sect, tribes or families present there, may be discriminated against. Even those originating from the area may be perceived as newcomers, if they have lost all links with their community. Further, an IFA/IRA to an area with a predominantly different ethnic or religious demography may also not be possible due to latent or overt tensions between groups. This can be particularly the case for

⁶ Hassan Berwari is an assistant professor in political science at the University of Omaha and the author of books and articles on the Middle East. He also served as a Senior Fellow at the United States Institute of Peace (USIP) based in Washington, D.C. for the year 2006-07. See <http://www.unomaha.edu/psci/barari.php>

⁷ Deputy country director of QANDIL, a Swedish-based NGO focusing on human rights and the Kurdish community. <http://www.qandil.org/about-qandil/>

⁸ Danish Immigration Service 2010, *Honour Crimes against Men in Kurdistan Region of Iraq (KRI) and the Availability of Protection*, March, Section 1, p.3 <<http://www.nyidanmark.dk/NR/rdonlyres/3E22AAC6-C28F-420B-9EDB-B8D2274D3E2D/0/KRGrapport%C3%86resdrabjan2010SLUTRAPPORT.pdf>> Accessed 21 November 2012 <Attachment>

⁹ Khanim R Latif is the director of ASUDA, a NGO based in Kurdish-controlled Iraq advocating against violence against women. ASUDA was founded in 2000.

¹⁰ Danish Immigration Service 2010, *Honour Crimes against Men in Kurdistan Region of Iraq (KRI) and the Availability of Protection*, March, Section 3, p.9 <http://www.nyidanmark.dk/NR/rdonlyres/3E22AAC6-C28F-420B-9EDB-B8D2274D3E2D/0/KRGrapport%C3%86resdrabjan2010SLUTRAPPORT.pdf> Accessed 21 November 2012 .

¹¹ Cockburn, P 2008, ‘How picture phones have fuelled frenzy of honour killing in Iraq’, *The Independent*, 17 May <http://www.independent.co.uk/news/world/middle-east/how-picture-phones-have-fuelled-frenzy-of-honour-killing-in-iraq-829934.html> Accessed 21 November 2012; Danish Immigration Service 2010, *Honour Crimes against Men in Kurdistan Region of Iraq (KRI) and the Availability of Protection*, March, Section 1, p.3 <http://www.nyidanmark.dk/NR/rdonlyres/3E22AAC6-C28F-420B-9EDB-B8D2274D3E2D/0/KRGrapport%C3%86resdrabjan2010SLUTRAPPORT.pdf> Accessed 21 November 2012

Sunnis in predominantly Shi'ite areas, and vice versa, especially if the demographic make-up of the areas has changed as a result of previous sectarian violence.¹²

83. The Guidelines note that relocation is difficult for a number of reasons, including a lack of access to housing, employment and other essential resources in a many areas, especially for internally displaced persons, and for those with no family, tribal or religious ties in the new area. Moreover, the Guidelines note that many areas of Iraq are not secure (the Shia south, from where the applicant comes is, in fact, one of the more secure regions in Iraq; as is the Kurdistan region, which is not accessible on a long term basis for anyone not originally from that area) and road travel throughout most of the country is dangerous¹³.

FINDINGS AND REASONS

84. The applicant claims that he is a national of Iraq. He has presented identity documents, including a citizenship certificate, which appear to have been issued by the relevant Iraqi authorities. Although these documents have not been officially translated, a Departmental officer accepted them on the basis of a sight translation, a notation of which is on the relevant documents in the Department's file at folios 18-21. In the absence of any evidence to suggest that the applicant is not telling the truth about his identity and nationality, I accept that he is [name deleted: s.431(2)], a national of Iraq. There is no information before me to suggest that he has the right to enter and reside in any other country. His claims to refugee status will therefore be assessed against Iraq, as his country of nationality.

Claims under Refugees Convention

85. The applicant claims that he will be killed if he returns to Iraq because he committed adultery with a married woman whose husband discovered the applicant with the woman in the matrimonial home. He claims that under tribal custom the man is entitled to kill the applicant if no mediated solution can be reached. The applicant claims that his brother was unsuccessful in his efforts to negotiate another solution and the man is determined to kill him. He claims that relocation to a safe area is not possible because he could be traced anywhere and relocation in Iraq is difficult.
86. The applicant has presented his account of events in Iraq with notable consistency throughout all stages of the processing of his application. While a number of relatively minor inconsistencies appeared to have emerged in the most recent statutory declaration setting out his claims, after exploring these at the hearing I am satisfied that they were the result of innocent errors or misunderstandings, and not a lack of truthfulness in the applicant's account. Over two hearings I questioned the applicant in considerable detail about his claims, and he was not only consistent in his account, but was able to provide additional credible detail when requested to do so, and to clarify various matters about which I had doubts. He appeared to be frank and spontaneous in giving his testimony. While elements of his account could be viewed as somewhat implausible, there is absolutely no reasonable basis for the entire story to be dismissed as not credible for this reason; it is certainly not possible to find with certainty that the events described by the applicant did not take place. The applicant's account was confirmed in its broad detail by the applicant's brother, from whom I took telephone evidence, and is broadly consistent with independent information. Overall, I am

¹² United Nations High Commissioner for Refugees 2012, UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Asylum-Seekers from Iraq, 31 May, <http://www.unhcr.org/refworld/docid/4fc77d522.html>, page 55, accessed 18 December 2012.

¹³ Supra, pages 52-55.

satisfied that the applicant is telling the truth about the events which he claims caused him to leave Iraq.

87. The independent information tends to corroborate the applicant's claims about tribal custom and the prevalence of such so-called "honour killings" in Iraq. Although there is little or no information which specifically refers to the killing of male adulterers by Shia tribes in southern Iraq, it is possible in my view to infer from the information which is available about practices in Kurdistan and among the Bedouin tribes, which indicate that males are subject to the death penalty in cases of adultery or sexual transgression; from the many documented cases of honour killings of women in Basra, a Shia city in southern Iraq; and from the existence of legislation both criminalising adultery and providing lenient penalties for "honour killings", that the applicant's account is generally credible and plausible, and his fear is well-founded. Based on this information, I accept that the act of adultery is a criminal offence in Iraq, in the case of a male, if it is committed in the marital home, as it was here. I accept that generally, punishment for adultery is considered a matter for family and tribe, rather than the state. I accept that parties "guilty" of committing adultery (among other perceived sexual and moral transgressions) may be subject to so-called "honour killings"; while the victims are usually women, there are documented cases in which men have been killed, and the human rights reports and academic experts cited above acknowledge the possibility that males may be killed in these circumstances as well as women. I accept, on the basis of the country information set out above, that the Iraqi law prescribes a lesser penalty for so-called "honour killings" than it does for murder in other circumstances, and that recent attempts by law makers to amend these provisions failed largely because of Shia members of parliament who considered that the existing law accurately and appropriately reflected religious and social mores. Moreover, the country information indicates that the police are generally sympathetic to the perpetrators of "honour killings" and not interested in securing prosecutions or convictions, which are rare. The information set out above indicates that both the national legislature and the local authorities view such killings as a matter for the family, and not the state.
88. Based on the applicant's credible evidence and the country information, I accept that the man with whose wife the applicant had a sexual relationship has been deemed under tribal custom to be entitled to kill the applicant. I accept the evidence of the applicant and his brother that he intends to do so, and that there is no possibility of a negotiated non-violent settlement of the matter. As the events in question occurred only twelve months ago, and there is no reason to suppose that this intention has changed, or would in the reasonably foreseeable future, I find that there is a real chance that the applicant would in fact be killed if he returns to Iraq.
89. I do not accept, however, that the harm faced by the applicant would be directed against him for a Convention reason. There is no suggestion that the harm would be directed at the applicant because of his race, his nationality or his political opinion. While the killing of the applicant may be, or be perceived to be sanctioned or required under religious rules, it is not *for reason of* his religion that he would be killed, it is because of a particular act that he did. Similarly, I do not consider that the applicant faces harm as a member of any identifiable particular social group, including the one suggested in his submissions to the Department – "people targeted because of a blood feud" – or any similar characterisation such as "people who have breached tribal or social sexual mores" In my view, the facts of this case indicate that the motivation for the murder of the applicant would be revenge, sanctioned by tribal and possibly religious and cultural custom, but not linked to any Convention reason; rather the essential and significant reason for the harm done to the applicant is his conduct in having a

sexual relationship with a married women. While in some circumstances there may exist an identifiable particular social group comprised of people who have breached social/religious/tribal mores, or dishonoured their family, in my view that is not the case here. The country information suggests that in Iraqi society, which is itself comprised of disparate religious and ethnic groups, most if not all of which apparently carry out “honour crimes” to a greater or lesser extent, there are many possible ways in which a person may be considered to have infringed mores, or to have invited dishonour. In my view, this lack of commonality means that there is no group which is “identifiable by a characteristic or attribute common to all members”, and certainly no common characteristic or attribute that distinguishes the group from society at large¹⁴: while people who have breached the customs or mores of their tribe members may thereby be distinguished and set apart from other members of their own tribal or ethnic group, I do not consider that they thereby distinguishable from society at large.

Complementary protection

90. In these circumstances, I find that while the applicant has a well-founded fear of persecution in Iraq, this is not for a Convention reason, Accordingly, he does not meet the definition of a refugee. As the applicant does not meet the criteria for the grant of a protection visa under s36(2)(a) I have to consider whether he meets the requirements of s.36(2)(aa) for complementary protection, that is, whether there are 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.
91. I find that Iraq is the receiving country for the purposes of these provisions, as it is the applicant’s country of nationality.
92. For the reasons set out above, I have accepted that there is a real chance that the applicant will be killed if he returns to Iraq. Arbitrary deprivation of life constitutes significant harm for the purposes of s.36(2)(aa): s.36(2A), and s.5(1).
93. As to the applicable test to ascertain whether there are substantial grounds for believing that, as a necessary and foreseeable consequence of the applicant being removed to a receiving country, there is a real risk that he will suffer significant harm, there is little guidance as to whether parliament intended to impose the same standard as the “real chance” test for the purpose of the Refugees Convention, or a different standard as suggested by the use of different wording. The Explanatory Memorandum states that:

[a] real risk of significant harm is one where the harm is a necessary and foreseeable consequence of removal. The risk must be assessed on grounds that go beyond mere theory and suspicion but does not have to meet the test of being highly probable. The danger of harm must be personal and present.¹⁵
94. The Second Reading Speech on the introduction of the Bill stated ‘[a] real risk of significant harm has been found in instances where there is a personal or direct risk to the specific person’¹⁶.

¹⁴ *Applicant S v MIMA* (2004) 217 CLR 387, per Gummow and Kirby JJ at [36].

¹⁵ Explanatory Memorandum to the Migration Amendment (Complementary Protection) Bill 2011 at [67].

¹⁶ Commonwealth of Australia, *Parliamentary Debates*, House of Representatives, 24 February 2011, 1357 (Chris Bowen, Minister for Immigration and Citizenship).

95. I consider that the likelihood of the applicant being subjected to significant harm is clear, present and substantial; I consider it highly probable that if the applicant returns to Iraq he will be killed by the husband of his lover. In these circumstances I consider that there are substantial grounds for believing that, as a necessary and foreseeable consequence of the applicant being removed to Iraq, there is a real risk that he will suffer significant harm.
96. S.36(2B) of the *Act* specifies 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 he 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 he 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. In relation to this last issue, it is evident that the harm in this case is faced by the applicant personally.
97. As to relocation, I accept, based on the discussion in the UNHCR Guidelines above at [82-3] that relocation within Iraq is problematic. The applicant is a Shia who fears harm in the Shia south of Iraq. I find that it would not be reasonable for him to relocate to any Sunni dominated area of Iraq because of the tribal and sectarian demography of the country. I find that without tribal and family connections it would not be reasonable for the applicant to relocate to a Shia area of Baghdad. I find that without such connections he would face discrimination in relation to housing, employment and basic services, and that he may even face physical danger. I find, moreover, that given the level of insecurity in much of Iraq (apart from the Shia south), including a high level of danger on most roads, it would not be reasonable for the applicant to relocate outside his usual place of residence. I find that the religious and ethnic demography of Iraq, coupled with the scarcity of resources and deprivation caused by years of war, together with the poor security situation in many regions, mean that it is not reasonable to expect a person to relocate to an area outside their usual residence without the existence of strong support networks. I find that the applicant does not have such networks, and that there is nowhere within Iraq to which it would be reasonable for him to relocate. In any case, as the person from whom he fears harm works for the government in some capacity, and as it is necessary for residents to register any change of place of residence, I accept the applicant's claim that it may be possible for the man who intends to kill him to locate him elsewhere in Iraq.
98. As to whether the applicant could obtain protection from the risk of harm from a state authority, I accept, on the basis of the information set out above, that Iraqi law prescribes a lesser penalty for so-called "honour killings" than it does for unlawful killings committed in different circumstances. The country information states that recent attempts by law makers to amend these provisions failed largely because of Shia members of parliament who considered that the existing law accurately and appropriately reflected religious and social mores. In my view, this legislation in effect provides state sanction for the extra-judicial killing of a person who has committed adultery. This, together with the information set out above about the attitude of the authorities to such killings – that they are a matter for the family not the state – with the consequence that prosecutions, let alone convictions for so-called "honour killings" are rare, satisfies me that the applicant would not be able to obtain protection from any state authority in relation to the significant harm he faces.
99. Based on the applicant's credible evidence and the country information, I accept that the man with whose wife the applicant had a sexual relationship has been deemed under tribal custom to be entitled to kill the applicant. I find that there are substantial grounds for believing that

there is a real risk that this would happen if the applicant returns to Iraq. I find that this is significant harm. I find that the applicant would be unable to obtain protection against the harm he faces, and that it would not be reasonable for him to relocate in order to avoid that harm, which he faces personally. I find that the applicant therefore meets the complementary protection criterion in s.36(2)(aa).

CONCLUSION

100. 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).
101. 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
102. The Tribunal remits the matter for reconsideration with the direction that the applicant satisfies s.36(2)(aa) of the Migration Act.