

1401030 [2014] RRTA 768 (31 OCTOBER 2014)

1.

DECISION RECORD

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| RRT CASE NUMBER: | 1401030 |
| COUNTRY OF REFERENCE: | Iraq |
| TRIBUNAL MEMBER: | Frances Simmons |
| DATE: | 31 October 2014 |
| PLACE OF DECISION: | Sydney |
| DECISION: | The Tribunal remits the matter for reconsideration with the direction that the applicant satisfies s.36(2)(a) of the Migration Act. |

Statement made on 31 October 2014 at 5:35pm

Any references appearing in square brackets indicate that information has been omitted from this decision pursuant to section 431(2) of the *Migration Act 1958* and replaced with generic information which does not allow the identification of an applicant, or their relative or other dependant.

STATEMENT OF DECISION AND REASONS

APPLICATION FOR REVIEW

2. 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).
3. The applicant is a citizen of Iraq born in Baqubah in Diyala province. The applicant applied to the Department of Immigration for the visa [in] December 2012 and the delegate refused to grant the visa [in] December 2013.
4. The applicant appeared before the Tribunal on 4 August 2014 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.

RELEVANT LAW

5. The criteria for a protection visa are set out in s.36 of the Act and 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 'refugee' criterion, or on other 'complementary protection' grounds, or is a member of the same family unit as such a person and that person holds a protection visa.
6. 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 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).
7. 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').
8. In accordance with Ministerial Direction No.56, made under s.499 of the Act, the Tribunal is required to take account of policy guidelines prepared by the Department of Immigration –PAM3 Refugee and humanitarian - Complementary Protection Guidelines and PAM3 Refugee and humanitarian - Refugee Law Guidelines – and any country information assessment prepared by the Department of Foreign Affairs and Trade expressly for protection status determination purposes, to the extent that they are relevant to the decision under consideration.

CLAIMS AND EVIDENCE

Claims and evidence

9. In assessing the applicant's claims I have considered the evidence contained on the Department's file, including the applicant's application for protection and the oral testimony he provided at an interview with the delegate [in] September 2013, and the submissions that were made to the delegate on his behalf by his representative. I have also considered the applicant's evidence at the hearing on 4 August 2014, as well as submissions which were made to the Tribunal on his behalf by his representative on 29 July 2014 and 8 August 2014 and the documentation enclosed therein.
10. I have had regard to a range of country information about the situation in Iraq, including the reports supplied by the applicant's representative and the most recent report prepared by Australian Department of Foreign Affairs and Trade (DFAT), *Country Information: Iraq*, on 29 November 2013 as well as more recent country information concerning the situation in Diyala and Babil provinces after the Sunni insurgent group Islamic State in Iraq and al-Sham, now known as the Islamic State (IS)¹, began to take over several cities in the north and west of Iraq.²

Background

11. The applicant is a [age] year old national of Iraq and a Shia Muslim. He is married to an Australian citizen and [has] Australian citizen children. Before he travelled to Australia he was employed with the [a government department] in Iraq as an [occupation]. He arrived in Australia [in] February 2009 on a [visa]. He has returned to Iraq on three occasions since he first arrived in Australia in 2009, most recently in 2011. He lodged a protection visa application [in] December 2012.

Protection claims

12. The applicant's written claims appear on the Department of Immigration and Border Protection file CLF [number deleted] from folios 70-72 and he expanded upon these claims in an interview with the delegate, which I have listened to, and before the Tribunal. What follows is a brief summary of those claims.
 - a. The applicant was born in Baqubah Diyala province in Iraq. He lived in Baqubah until 2006. Following the fall Saddam Hussein, radical militants such as Al Qa'eda and Salafi Islamists began attacking the local Shi'a community in his area.

¹ On 29 June 2014, Abu Bakr al-Baghdadi (now known as Amir al-Mu'minin Caliph Ibrahim) was named as the Caliph and the group was renamed the Islamic State (IS).

² Department of Foreign Affairs and Trade 2014, *Safety and Security: Iraq*, 16 June <http://www.smarttraveller.gov.au/zw/cgi/view/Advice/Iraq#safety_and_security> Accessed 24 June 2014; 'Weekly Security Update, 10-16 June 2014', Iraq Business News (IBN), 17 June <<http://www.iraq-businessnews.com/2014/06/17/weekly-security-update-10-16-june-2014/>> Accessed 27 June 2014; Chulov, M 2014, 'Isis captures more Iraqi towns and border crossings', *The Guardian* online, 23 June <<http://www.theguardian.com/world/2014/jun/22/isis-take-border-crossings-iraq-syria-jordan>> Accessed 27 June 2014; United Nations High Commissioner for Refugees 2014, *UNHCR responds to massive displacement of Iraqis from Mosul*, 11 June <<http://www.unhcr.org/53989c766.html>> Accessed 20 June 2014

- b. The applicant worked for the Iraqi government as an [occupation] and his duties involved working in rural communities of Diyala province. He claims that as an Iraqi government employee and educated professional, he was specifically targeted by Sunni militants who attempted to kill him on several occasions during the course of his duties.
- c. The applicant said he encountered death threats from Sunni militants whilst working in the rural communities of Diyala province. He links these threats to the fact that, when inspecting a [location] that requested government assistance, he discovered weapons that he suspected belonged to Sunni militants. He reported these matters to the Iraqi authorities who then raided the [location] and discovered it was a terrorist base. He has said three of his work colleagues were killed in retaliation.
- d. The applicant's brother was killed by Sunni militants in November 2006. After the death of his brother, his family moved to Musayyib in Babylon province. The applicant was forced to obtain various documentary approvals from the Iraqi authorities before he could relocate to Babylon province. As a consequence, his new residential address became known to 'terrorist elements' and he continued to be targeted by Sunni militants in Musayyib.
- e. In 2009 the applicant obtained a visa to study [in] Australia. He returned to Iraq on three separate occasions to visit his family. On each visit, he remained in Baghdad and did not travel to Musayyib because he was afraid of being targeted by Sunni Militants. His mother and [siblings] remain living in Musayyib.
- f. The applicant claims that in August 2012 he received an email from a friend warning him he was named on a death list produced by Sunni militants in Diyala province. His wife and children are Australian citizens and will not return to Iraq because it is too dangerous, as evidenced by DFAT's travel warnings to Australia citizens.

The delegate's decision

13. The delegate refused to grant the applicant a protection visa [in] December 2013. The delegate observed the security situation in Iraq was deteriorating but he did not accept that Sunni militants would have any specific interest in targeting the applicant. The delegate had concerns about the credibility of the applicant's claims to have been targeted by Sunni militants in Diyala province or in Babylon province. The delegate accepted that the applicant's brother may have died in 2006, however, he did not accept that his brother was murdered by Sunni militants as a direct consequence of the information the applicant provided to Iraqi authorities.
14. The delegate considered that the applicant may have relocated to Babylon province in 2006 as part of his employment with the Iraqi [government department]. The delegate did not accept the applicant fled Diyala province or Babylon province as a result of persecution from Sunni militants. The delegate accepted that some Iraqi government employees might be specifically targeted by Sunni militants however he did not accept that the applicant had a profile which was likely to bring him to the attention of Sunni militants upon his return to Iraq. The delegate accepted the applicant was an educated

professional Shi'a Muslim who previously worked for the Iraqi government. However, the delegate did not accept that membership of Shi'a population and the Iraqi public service would put the applicant at particular risk of being targeted by Sunni militants.

Evidence before the Tribunal

15. Before the Tribunal hearing the applicant received a submission from the applicant's representative (Tribunal file, folios 58-62). The submission argued that, as a result of the actions of Islamic State militants (or *Daesh*), the applicant's fears have 'heightened sharply'. It was argued that the applicant had a well-founded fear of persecution by the Islamic State militants for reasons of his religion (Shia Muslim), his membership of a particular social group of 'secularised professionals' or 'government officers', and the political opinion that would be imputed to him by IS for reasons of his religion and his status as an educated, secularised government worker. The submission is accompanied by recent country reports concerning the activity of Islamic State militants in the provinces of Diyala and Babylon (Tribunal file, folios 52-57).
16. The applicant's claims were discussed in detail at the Tribunal hearing. In the course of the hearing the applicant was provided with an opportunity to comment on concerns about the credibility of aspects of his evidence. The Tribunal acknowledged that the applicant's home area of Baquabah has been the site of large scale fighting between IS and the Iraqi Security Forces. The Tribunal discussed with the applicant country information about Musayyib, and the issue of relocation to another area of Iraq was discussed. The applicant raised concerns about being separated from his wife and children or having to return to Iraq with his family and the Tribunal expressed surprise that, given his wife and children are Australian citizens and he is represented by a registered migration agent, he did not seem to have considered possibility of applying for a partner visa. Where relevant his evidence is considered further below in the Assessment of Claims and Evidence.
17. After the Tribunal hearing, the applicant's representative provided a further submission (Tribunal file, folios 71-81), including a translated copy of the death certificate of the applicant's [brother] which indicates that he died from [details deleted]. The applicant also provided a translated copy of the email that he claims was sent to him in August 2012 to warn him he was on a death list in Diyala province.

ASSESSMENT OF CLAIMS AND EVIDENCE

Nationality

18. I accept on the evidence before me that the applicant is a citizen of Iraq and does not have a right to reside in any other country.

Assessment of credibility of claims of past harm

19. In determining whether the applicant is entitled to protection in Australia, it is necessary to make findings of facts on relevant matters. This usually involves an assessment of the credibility of the applicant. When doing so, it is important to bear in mind the difficulties often faced by asylum seekers, including nervousness and anxiety in the hearing room. The tribunal must bear in mind that if it makes an adverse finding in relation to a material claim made by the applicant but is unable to make that finding

with confidence it must proceed to assess the claim on the basis that it might possibly be true.³ However, the tribunal is not required to accept uncritically any or all of the allegations made by an applicant. Further, the tribunal is not required to have rebutting evidence available to it before it can find that a particular factual assertion by an applicant has not been made out.⁴

20. The tribunal is mindful that the rejection of some of the evidence on account of a lack of credibility may not lead to a rejection of the applicant's claim for a protection visa. In particular, when assessing an applicant's claims against the Refugee Convention, if an applicant is disbelieved as to his or her claims, the tribunal must still consider whether, on any other basis asserted, a well-founded fear of persecution exists. The Tribunal is also mindful in this case of its obligation to consider the possibility that it might be wrong unless confident of its rejection of an applicants' claims under the 'What if I am wrong?' test arising from cases such as *MEIA v GUO* (1997) 191 CLR 559, *Abebe v The Commonwealth* (1999) 197 CLR 611; *MEIA v Wu Shan Liang* (1996) 185 CLR 259 and *MIMA v Rajalingam* (1999) 93 FCR 220.
21. I accept the applicant's claims that he is a Shia Muslim who was born in Babqubah, a strategically important city located to the Northeast of Baghdad. I accept that for most of his adult life he has worked as a government employee. I accept that the applicant and his family lived in Baqubah until 2006. A December 2006 report by the *Center for Strategic and International Studies* states that 'In Baquba bodies appeared on the street daily as Sunni insurgents and Shi'ite militias tried to force the other sect out of the city.'⁵ The same report states that 'Shi'a civilians had for the most part been driven out of Baquba' and that Sunni militia attacked the predominantly Shia police force in the city and engaged in large scale conflict with Iraqi security forces.⁶
22. A 2007 Institute for the Study of War report notes that Islamic State in Iraq and the Levant (now known as IS and, at the time, known erroneously as Al-Qaeda in Iraq or AQI⁷) were largely in control of Baquba. The report states that AQI utilised safe houses in Baqubah from where they launched numerous attacks and threatened to kill government employees who didn't report for work. The report states that when the militants were finally cleared from the city, US forces discovered a security/law enforcement apparatus designed to enforce Islamic law, including a court house (with documents), a torture house (with saws and bloodstained walls), a prison (with cell numbers), and a mass grave (with five bodies). The report contains residents' accounts of life in the city under AQI control:

Residents said the militants gradually began taking over last year, parading through the streets in trucks, brandishing Kalashnikov assault rifles and using bullhorns to inform residents that they were now part of the Islamic State of Iraq.

³ *MIMA v Rajalingam* (1999) 93 FCR 220

⁴ *Randhawa v MILGEA* (1994) 52 FCR 437 at 451 per Beaumont J; *Selvadurai v MIEA & Anor* (1994) 34 ALD 347 at 348 per Heerey J and *Kopalapillai v MIMA* (1998) 86 FCR 547.

⁵ Cordesman, A 2006, 'Iraq's Sectarian and Ethnic Violence and the Evolving Insurgency', *Center for Strategic and International Studies*, p.4 <<http://www.comw.org/warreport/fulltext/061214cordesman.pdf>>

⁶ Cordesman, A 2006, 'Iraq's Sectarian and Ethnic Violence and the Evolving Insurgency', *Center for Strategic and International Studies*, p.20.

⁷ The militia now known as ISIL/ISIS has undergone numerous name changes. Before becoming ISIL the group was known as the Islamic State of Iraq (ISI) but commonly referred to as Al-Qaeda in Iraq (AQI). See here for example <http://www.juancole.com/2006/06/zarqawi-killed-in-baquba-prime.html>

They banned smoking, closed down barbershops and coffeehouses, and required women to cover themselves in black robes with only a slit for their eyes. Iraqis working for the Baghdad government or for U.S. forces were hunted down and killed, residents said. Even a trip to Baghdad was grounds for suspicion....Scores of Shiite Muslim families were forced from their homes, which the insurgents used as temporary hide-outs or converted to house the institutions of their rule.⁸

23. Other reports note acts of violence and threatening behaviour reportedly linked to Sunni insurgents (not always identified) occurring around 2006. For example, a February 2006 article in *The Independent* contains a claim from a Shia woman stated that Sunni men told her to leave that day or she would be killed.⁹
24. At the time of writing, Baqubah was under Iraqi government control. A 18 June 2014 report in the UK *Daily Mail* describes Baqubah as the last town between the Islamic State in Iraq and the Levant (ISIL)¹⁰ and Baghdad.¹¹ Large scale fighting took place in the city of Baqubah in June 2014 as part of the ongoing conflict between Sunni militants and the Iraqi national government. A 17 June 2014 article by *Al Jazeera* states that ISIL forces briefly held parts of Baqubah before being repelled by government troops. According to the article, ISIL forces attempted to free Sunni prisoners being held in the city; these prisoners were allegedly shot at close range by Shia gunmen. An *Al Jazeera* reporter noted the conflicting claims being made on the shootings and the difficulty in verifying claims being made.¹²
25. I accept the applicant's home area is Baqubah and that, until 2006, he lived and worked in this area. I accept that the applicant worked as an [occupation] for [a government department] and that his duties involved inspecting [locations] and considering applications for [funding]. The applicant has consistently claimed that when he was living in Baqubah he was threatened by Sunni militants because of his Shia Muslim faith and his work with the Iraqi government. However, while such claims are plausible in the context of country information about the situation in Baqubah at that time, I consider that the applicant has embellished aspects of his evidence concerning that triggered his departure from Baqubah.
26. In particular, I was concerned that the applicant did not mention his claims that he was the target of an attempted assassination attempt by Sunni militants in his written claims. This attack was said to be in reprisal for the applicant's decision to report suspicious

⁸ Kagan, K 2007, 'Securing Diyala', *The Institute for the Study of War*, June-November 2007, p.6 <<http://www.understandingwar.org/sites/default/files/reports/Iraq%20Report%207.pdf>> Accessed 4 July 2014

⁹ Cockburn, P 2006, 'The Exodus: 1.6m Iraqis have fled their country since the war', *The Independent*, 23 October <<http://www.independent.co.uk/news/world/middle-east/the-exodus-16m-iraqis-have-fled-their-country-since-the-war-421273.html>> Accessed 3 July 2014 <CX>

¹⁰ The name of the group is also transliterated as Islamic State in Iraq and Syria/Greater Syria/al Sham (ISIS). The name of the group is also transliterated as Islamic State in Iraq and the Levant (ISIL). The Arabic name *al dawla al islamiyye fil iraq w'al sham*. Al Sham is an historic term for the area broadly between the Tigris/Euphrates delta and the Mediterranean Sea. It is roughly equivalent to the western term 'The Levant'. The group recently announced they would now be known as the Islamic State and claimed to represent all Muslims globally.

¹¹ Watson, L 2014, *Daily Mail*, 18 June <<http://www.dailymail.co.uk/news/article-2660455/Battle-Baquba-Isis-Sunnis-wrestle-Shiite-Iraqis-control-major-town-Baghdad-country-splits-sectarian-lines.html>> Accessed 30 June 2014 <CX>

¹² 'Iraq rebels battle for Baquba city' 2014, *Al Jazeera*, 17 June <<http://www.aljazeera.com/news/middleeast/2014/06/iraq-rebels-battle-baquba-city-2014617124856327794.html>> Accessed 30 June 2014 <CX>

activity at a [location] he inspected to the Iraqi authorities. Before the Tribunal he claimed that the car in which he was travelling was fired upon by Sunni militants and that the three other passengers, including the driver, were all killed. Improbably, although the applicant claims it was he, and not his colleagues, who was the target of the attack, the applicant was able to leave the scene unharmed. I do not consider the applicant has been able to adequately explain why he omitted such a significant event from his detailed written claims (which were prepared with the assistance of his authorised representative) and I also consider his account of escaping an attack from Sunni militants armed with machine guns to be highly improbable. While it may be that the applicant had colleagues that were killed, I consider the applicant has embellished this aspect of his evidence and I do not accept that Sunni militants with machine guns attacked the car in which he was travelling.

27. Nevertheless, I acknowledge that the applicant has consistently claimed he and his family fled Baqubah in 2006 after his brother was shot dead [and] that he and his family were the subject to threats because of their Shia Muslim faith and his work for the Iraqi government. After considering the country information about the risks facing Shia Muslims in Baqubah at this time and the applicant's evidence about the nature of his employment and the threats that were made against his family and the death of his brother, I am prepared to accept that in 2005 the applicant and his family fled Baqubah after his brother was killed. While I consider the applicant has embellished and exaggerated his claims that he was targeted because he was a Shi'a Muslim government employee, I am prepared to accept, based on the available country information, that the applicant fled Baqubah to avoid threats that were levelled against him and his family by Sunni Militants because of his Shia Muslim faith and his work as an Iraqi government official.
28. I did not find the applicant's claims that the Sunni militants who sought to harm him in Baqubah pursued him to Musayyib to be credible. Despite claiming the Sunni militants discovered his new address in Musayyib, the applicant was able to live and work in Musayyib from 2007 to 2009 years until he [was able] to travel to Australia and pursue further study. His evidence was that he remained resident at the same address and that he began work for [a department] in 2007, sometime after he relocated to Babylon in 2006. He gave evidence that Sunni militants visited his house in Musayyib looking for him but he was not home at the time. However, as I put to applicant, given that he lived at the same address from 2006 to 2009 and worked as a government official from 2007 to 2009, if the Sunni militants wanted to harm him it would appear that they had ample opportunity to do so. At this point the applicant's evidence shifted and he suggested that sometimes he hid at his [sibling]'s home and that he was often on trips to [Baghdad].
29. I do not accept that it is plausible that Sunni militants pursued to applicant from Diyala to Babylon province and visited the applicant's home address in Musayyib and yet took no action to harm him between 2006 and 2009. The applicant's initial evidence to the Tribunal was that he was able to live at the same address in Musayyib for three years and that he was employed as a government official. I prefer this evidence to his subsequent suggestion that he sometimes hid at his [sibling]'s home and was often on trips to [Baghdad]. I consider the applicant's own testimony indicates he was not afraid of being personally targeted by Sunni militia whilst living in Musayyib and I consider his attempts to suggest otherwise to be contrived and implausible.

30. In this context, I am not prepared to accept that, after he returned to Australia, in August 2012 he received an email from a friend warning him his name was on a 'death list' produced by Sunni militants. The applicant's claims that he was targeted by Sunni militants in Musayyib are also undermined by the fact that, after he left Iraq, he did not seek protection abroad and returned to Iraq on three occasions, most recently in 2011. While I have considered the applicant's evidence that he returned to Baghdad to visit his sick mother but that he did not travel to Musayyib on these occasions given my concerns about the credibility of the applicant's claims that he was the target of threats in Musayyib, I am not prepared to accept this is true. While I have considered the email record produced by the applicant, it does not overcome my concerns about the credibility of the applicant's claims that he was on a death list.
31. In summary, I find that the applicant is a Shia Muslim who was born in Baqubah in Diyala province. I accept that in 2006 the applicant fled Baqubah to avoid being persecuted because of his religion (Shia Muslim) and his imputed political opinion arising from his work as an Iraqi government official. I find that after relocating to Musayyib in Babylon province the applicant was able to resume working for the Iraqi government. I accept the applicant is an educated professional who has considerable experience working for the Iraqi government. I find that if the applicant were now to return to Iraq he would most likely find work as an Iraqi government official. While I note that the applicant has expressed a desire to work as an academic, given he has significant experience working as a government official, I find that if he were to return to Iraq he would continue to work as a government official.

Whether the applicant has a well-founded fear of persecution upon his return to Iraq

32. Simply making a finding about what occurred in the past is not enough to satisfy the real chance test; the essence of that test is the process of looking to the future.¹³ A fear of being persecuted is well-founded if there is a 'real chance' of being persecuted.¹⁴ A 'real chance' is a substantial chance, as distinct from a remote or far-fetched possibility; however, it may be well below a 50 per cent chance.¹⁵ Clearly, while past events will often provide a reliable means of predicting future persecution that will not always be the case. 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.
33. The security situation in Iraq has rapidly deteriorated in 2014 as the Islamic State commenced an orchestrated campaign to take control of large parts of Iraq and Syria in an attempt to create an Islamic State or Caliphate.¹⁶ According to the Australian government 'Australian National Security' website IS is 'one of the world's deadliest and most active terrorist organisations and conducts daily attacks on security forces and civilians':

¹³ *DZADC v MIAC (No.2)* [2012] FMCA 778 (Raphael FM, 3 September 2012) at [16] applying *Chan v MIEA* (1989) 169 CLR 379 and *MIEA v Wu Shan Liang* (1996) 185 CLR 259.

¹⁴ *Chan v MIEA* (1989) 169 CLR 379 per Mason CJ at 389, Toohey J at 406-7, Dawson J at 396-8, McHugh J at 428-9.

¹⁵ (1989) 169 CLR 379 at 389.

¹⁶ See 'Safety and Security: Iraq', *Department of Foreign Affairs and Trade*, 16 June 2014, <http://www.smarttraveller.gov.au/zv-cgi/view/Advice/Iraq#safety_and_security>; 'Isis captures more Iraqi towns and border crossings', *The Guardian*, 23 June 2014, <<http://www.theguardian.com/world/2014/jun/22/isis-take-border-crossings-iraq-syria-jordan>>

The Islamic State's operations in Iraq consist of military operations and daily attacks, mostly in central Iraq and the provinces to the north and west of Baghdad. Attacks in the Kurdish-majority northern provinces and the Shia-majority provinces in the south are less common. The Islamic State's primary targets in Iraq are security forces; Shia civilians in public areas, including cafes, mosques and markets; political figures; community and tribal leaders who publicly condemn the Islamic State; and anti-Islamic State militias. By attacking these targets, it hopes to undermine security force efforts to contain the group, destroy public confidence in the security forces and provoke a widespread revolt against the government.¹⁷

34. On 16 June 2014 the Australian Department of Foreign Affairs and Trade (DFAT) updated its travel advice for Iraq, noting that the security situation across the country 'has deteriorated significantly' and militants are active between the northern city of Mosul and Baghdad.¹⁸ Although this advice is intended as a guide for foreign nationals in Iraq, with respect to the security situation it notes that 'insurgents continue to conduct large-scale coordinated attacks against the Government of Iraq and civilians, killing and injuring thousands of people in Baghdad and elsewhere in the country' and identifies a number of cities, including Baqubah, as being 'particularly hazardous'.¹⁹ A further update issued by DFAT on 16 October 2014 reports that the '[t]security situation has deteriorated significantly. Armed opposition groups are now active in many parts of Iraq, particularly in the north, west, and south of the country ... the situation could deteriorate further with little warning'.²⁰
35. As noted above, Baqubah has been described as the last town between the Islamic State and Baghdad.²¹ On 17 June 2014 the *Washington Post* reported that dozens of prisoners were killed during battles between government troops and ISIL forces in Baqubah. The article noted conflicting reports on the number of deaths (between 44 and 52), or how they were killed.²² Baqubah remains under Iraqi government control, however the security situation remains volatile and violent.
36. Reports note that government officials and civil servants are among those targeted by armed groups in Iraq. Although I acknowledge that the information contained in the *DFAT Country Information Report: Iraq*, which was published in November 2013 has been largely superseded by more recent events in Iraq, I note that DFAT advised that security officials and those in the law and justice sectors face a medium to high threat of violence, while 'other government officials' face a low threat of violence:

3.52 DFAT assesses that working for the Government can increase vulnerability to deliberate killing by (mainly Sunni) insurgents as part of their campaign to undermine and destabilise the Government. Government officials in the law and justice sector, and members of the Iraqi police or security forces, are subject to a medium to high threat of violence, with regular assassinations. Other Government officials are subject to a low threat of violence.

¹⁷ 'Islamic State', *Australian National Security*, <

<http://www.nationalsecurity.gov.au/Listedterroristorganisations/Pages/IslamicState.aspx> >

¹⁸ Department of Foreign Affairs and Trade 2014, *Safety and Security: Iraq*, 16 June 2014

<http://www.smarttraveller.gov.au/zw-cgi/view/Advice/Iraq#safety_and_security> Accessed 24 June 2014

¹⁹ Department of Foreign Affairs and Trade 2014, *Safety and Security: Iraq*, 16 June 2014

<http://www.smarttraveller.gov.au/zw-cgi/view/Advice/Iraq#safety_and_security> Accessed 24 June 2014

²⁰ Department of Foreign Affairs and Trade 2014, *Safety and Security: Iraq*, 30 October 2014

<http://www.smarttraveller.gov.au/zw-cgi/view/Advice/Iraq#safety_and_security> Accessed 30 October 2014

²¹ Watson, L 2014, *Daily Mail*, 18 June 2014 <<http://www.dailymail.co.uk/news/article-2660455/Battle-Baquba-Isis-Sunnis-wrestle-Shiite-Iraqis-control-major-town-Baghdad-country-splits-sectarian-lines.html>>

²² Morris, L & Sly, L 2014, 'Fears of sectarian violence rise in Baghdad after killing of Sunni imam and prison inmates', *Washington Post*, 17 June <http://www.washingtonpost.com/world/iraqi-forces-battle-swiftly-moving-militants/2014/06/17/f472df6e-00a6-4815-acfa-0f23506ef0e8_story.html> Accessed 30 June 2014 <CX>

3.53 While most officials would be the victim of sporadic or random attacks, violence against security forces can sometimes be more targeted. Given the widespread nature of violence in Iraq, the state does not have the capacity to provide adequate protection for all Government officials. However, senior Shia in Government and the bureaucracy are afforded protective security details by the Government.²³

37. In its March 2013 report *Iraq: A Decade of Abuses*, Amnesty International states that ‘Armed groups also continue to attack the institutions of the state and those who maintain them, particularly the police and security forces and members of the judiciary and other officials’.²⁴ The United States Department of State also stated in its *Country Reports on Human Rights Practices for 2013 – Iraq* that ‘[m]ilitants and terrorists targeted fellow citizens – Shia, Sunni, as well as members of other religious groups or ethnicities – security forces, places of worship, religious pilgrims, schools, public spaces, economic infrastructure, and government officials’.²⁵
38. Additionally, news articles from 2013 state that government officials are among those groups targeted for violence. *Associated Press* reported in August 2013 that ‘Most of the attacks in Iraq target government officials, security forces and Shiite pilgrims and neighborhoods’.²⁶ A second *Associated Press* news article from July 2013 also noted that ‘Sunni extremists, including the insurgent group Al Qaeda in Mesopotamia, frequently target Shiites, security forces and civil servants in an effort to undermine the Shiite-led government in Baghdad’.²⁷ Similarly, the *BBC* stated in March 2013 that in Iraq, ‘Sunni Muslim militants – including some with links to al-Qaeda – often target government officials and offices’.²⁸ In December 2013 *Agence France Presse* stated that ‘More than 6,200 people have been killed this year’ and the targets for the attacks ranged ‘from cafes and football grounds to soldiers at checkpoints and government officials in their cars’.²⁹ Reports from 2013 were found of public officials being attacked in Iraq;³⁰ however most reports do not specify whether the targets were low-

²³ Department of Foreign Affairs and Trade 2013, *DFAT Country Information Report: Iraq*, 29 November, paragraphs 3.52 & 3.53 <CIS26782>

²⁴ Amnesty International 2013, *Iraq: A Decade of Abuses*, 11 March, p.9 <<http://www.amnesty.org/es/library/asset/MDE14/001/2013/es/bbd876ee-aa83-4a63-bff3-7e7c6ee130eb/mde140012013en.pdf>> Accessed 16 December 2013 <CIS25151>

²⁵ United States Department of State 2014, *Country Reports on Human Rights Practices for 2013 – Iraq*, 27 February 2014, <http://www.state.gov/j/drl/rls/hrrpt/2013/nea/220355.htm>

²⁶ ‘Iraq seeks assistance from US amid resurgence of violence and a renewed threat from al-Qaida’ 2013, *Associated Press*, 16 August, Fox News <<http://www.foxnews.com/us/2013/08/16/iraq-seeks-assistance-from-us-amid-resurgence-violence-and-renewed-threat-from/>>

²⁷ ‘16 More Killed in Wave of Bombings in Iraq’ 2013, *Associated Press*, 13 July, The New York Times <http://www.nytimes.com/2013/07/14/world/middleeast/cafes-are-shut-down-in-iraqi-city-where-bomb-killed-39.html?_r=0>

²⁸ ‘Iraq bombers target Baghdad ministries’ 2013, *BBC*, 14 March <<http://www.bbc.co.uk/news/world-middle-east-21783804>>

²⁹ ‘23 killed in Iraq attacks as year’s toll tops 6,200’ 2013, *Agence France Presse*, 4 December, Gulf Times <<http://www.gulf-times.com/qatar/178/details/373644/23-killed-in-iraq-attacks-as-year%E2%80%99s-toll-tops-6,200>> Accessed 13 December 2013.

³⁰ ‘23 killed in Iraq attacks as year’s toll tops 6,200’ 2013, *Agence France Presse*, 4 December 2013, Gulf Times; ‘Iraq attacks including bomb at Tarmiya leave 20 dead’ 2013, *BBC*, 3 December 2013 <<http://www.bbc.co.uk/news/world-middle-east-25204314>>; ‘13 dead in north Iraq violence’ 2013, *Agence France Presse*, 4 November, Ahrum Online <<http://english.ahram.org.eg/NewsContent/2/8/85638/World/Region/-dead-in-north-Iraq-violence.aspx>> Accessed 13 December 2013; Schreck, A 2013, ‘Attackers kill 24 in coordinated Baghdad assault’, *Associated Press*, 14 March, USA Today <<http://www.usatoday.com/story/news/world/2013/03/14/iraq-baghdad-bomb-attack/1986949/>> Accessed 16 December 2013 ‘Iraq bombers target Baghdad ministries’ 2013, *BBC*, 14 March 2013; Blair, D 2013, ‘Dispatch: Ten years on, death still stalks Baghdad’, *The Telegraph*, 14 March <<http://www.telegraph.co.uk/news/worldnews/middleeast/iraq/9930933/Dispatch-Ten-years-on-death-still->

ranking public officials or whether they had a public profile. Although no reports were located that compare the risk of violence faced by low-ranking public officials to that of the wider population,³¹ recent reports note that civil servants and government officials are among those targeted by armed groups.³²

39. I accept that there is a real chance that if the applicant were now to return to Baqubah there is a real chance that he would be targeted by Sunni militants for reasons of his Shi'a Muslim faith and his imputed political opinion resulting from his work in that area as an Iraqi government official. For these reasons, having carefully considered the evidence before me, I accept there is a real chance the applicant would suffer serious harm from the Islamic State militants if he returned to his home area in Iraq now or in the reasonably foreseeable future. I find that the applicant faces a real chance of harm, which could entail credible threats to his life or liberty, or significant harassment and physical ill-treatment. The feared harm therefore involves serious harm to his person, as required by s. 91R(1)(b) of the Act. I am satisfied that the persecution which the applicant fears involves systematic and discriminatory conduct, as required by paragraph 91R(1)(c), in that it is deliberate or intentional and involves selective harassment for Convention reasons.
40. Before he left Iraq the applicant lived and worked in Musayyib, a city in Babylon (also known as Babil) province located approximately 60km south of Baghdad (the nearest airport is Baghdad International airport). His mother and surviving [siblings] remain resident in Musayyib. The applicant claims that unlike his [siblings] he worked for Iraqi government and, as a result of events that occurred in Baqubah, he was targeted by Sunni militants in Musayyib. While I am prepared to give the applicant the benefit of the doubt and accept that, unlike his [siblings], he worked for the Iraqi government, for the reasons I have set out above I do not accept that his claims that he was targeted by Sunni militants in Musayyib are credible. On the evidence before me, I am not satisfied that the applicant was subjected to past mistreatment in Musayyib that would amount to persecution. However, the courts have made it clear that "proving persecution in the past is not an essential step in an applicant demonstrating that he or she has a well-founded fear of persecution."³³
41. I am mindful of the deteriorating and rapidly evolving security situation in Iraq and I have been cautious in assessing the risks that would face the applicant upon his return. I

[stalks-Baghdad.html](#)> Accessed 16 December 2013 'Baghdad hit by deadly blasts on invasion anniversary' 2013, *BBC*, 19 March <<http://www.bbc.co.uk/news/world-middle-east-21840718>> Accessed 16 December 2013; 'Bombs hit Baghdad on anniversary of US invasion' 2013, *Associated Press*, 19 March, France24 <<http://www.france24.com/en/20130319-wave-deadly-car-bombs-blasts-iraq-baghdad/>>

³¹ Searches were conducted of Iraqi and international news media, major human rights reports, major foreign government reports, strategic security and intelligence groups, think tanks, peer-reviewed journals, tribunal resources, DIBP resources and general internet searches.

³² Department of Foreign Affairs and Trade 2013, *DFAT Country Information Report: Iraq*, 29 November, paragraphs 3.52 & 3.53 <[CIS26782](#)>; Amnesty International 2013, *Iraq: A Decade of Abuses*, 11 March, p.9 <<http://www.amnesty.org/es/library/asset/MDE14/001/2013/es/bbd876ee-aa83-4a63-bff3-7e7c6ee130eb/mde140012013en.pdf>> Accessed 16 December 2013 <[CIS25151](#)>; '23 killed in Iraq attacks as year's toll tops 6,200' 2013, *Agence France Presse*, 4 December, *Gulf Times* <<http://www.gulf-times.com/qatar/178/details/373644/23-killed-in-iraq-attacks-as-year%E2%80%99s-toll-tops-6,200>> ; 'Iraq seeks assistance from US amid resurgence of violence and a renewed threat from al-Qaida' 2013, *Associated Press*, 16 August, *Fox News* <<http://www.foxnews.com/us/2013/08/16/iraq-seeks-assistance-from-us-amid-resurgence-violence-and-renewed-threat-from/>> .

³³ See *Abebe v The Commonwealth* (1999) 197 CLR 510 at [192] per Gummow and Hayne JJ.

accept the applicant's evidence that he is concerned about the activities of the *Daesh* in Babil province and that he is afraid that, if he returns to Musayyib he will be targeted by Sunni militants. Although Musayyib is located in the predominantly Shia area of southern Iraq approximately sixty kilometres from Baghdad, a February 2014 *Associated Press* article states that 'Musayyib ... is in an area that holds a volatile mix of Sunnis and Shiites.'³⁴ While a February 2014 *New York Times* article describes Musayyib as a 'Shiite town',³⁵ the nearby Sunni-dominated town of Jurf al-Sakr has been the site of fighting between Iraqi Security Forces and the Islamic State. Several bombings and militia attacks have occurred in the city in 2013 and 2014.

42. In February 2014 the *Associated Press* reported that a mortar attack struck a busy area in Musayyib resulting in 22 deaths.³⁶ The article quotes local police as stating that the mortars were fired from the nearby Sunni-dominated town of Jurf al-Sakr, though it wasn't immediately clear who fired them. A *New York Times* article noted the suspected presence of ISIL militants in Jurf al-Sakr at the time of the attack.³⁷ More recently, on 27 October 2014, the *New York Times* reported:

A suicide bomber driving a Humvee packed with explosives drove into a security checkpoint for Iraqi troops and Shiite militiamen south of Baghdad on Monday, killing at least 38, officials said. The bombing occurred in the mostly Sunni town of Jurf al-Skhar, a day after Islamic State jihadists had been forced out by the security forces. The Islamic State, or ISIS, had held the town since July, and the group is suspected in the attack, though no one took responsibility.³⁸

43. I have considered whether the applicant would be at risk of targeting because of his religion as a Shia Muslim and his imputed political opinion arising from his work, which I have found he would wish to continue, as an Iraqi government official, if he were to return to Musayyib now or in the reasonably foreseeable future. Having regard to the country information about the deteriorating security situation in Iraq and the activities of IS in the Musayyib district, the targeting of Shia Muslim civilians and government facilities and officials by Sunni militants, I cannot dismiss the possibility that the applicant will be targeted by IS militants because of his religion and his imputed political opinion (arising from his work as an Iraqi government official) as remote. I therefore accept that there is a real chance that he will face serious harm for these reasons.
44. While independent sources currently suggest that the Islamic State is unlikely to take over Baghdad, a predominantly Shia city with a larger percentage of armed Shiites than the cities which have fallen to IS so far, sectarian tensions are likely to increase in Sunni and mixed sect neighbourhoods and throughout the remaining central and

³⁴ Salaheddin, S 2014, 'Mortar attack hits mainly Shiite town in Iraq, killing at least 22 people', *Associated Press*, 20 February, CTV News <<http://www.ctvnews.ca/world/mortar-attack-hits-mainly-shiite-town-in-iraq-killing-at-least-22-people-1.1695989>> Accessed 2 July 2014 <CX>

³⁵ Adnan, D 2014, 'Iraq: Mortar Fire Kills at Least 21 People', *New York Times*, 21 February <http://www.nytimes.com/2014/02/21/world/middleeast/iraq-mortar-fire-kills-at-least-21-people.html?_r=0>

³⁶ Salaheddin, S 2014, 'Mortar attack hits mainly Shiite town in Iraq, killing at least 22 people', *Associated Press*, 20 February, CTV News <<http://www.ctvnews.ca/world/mortar-attack-hits-mainly-shiite-town-in-iraq-killing-at-least-22-people-1.1695989>>

³⁷ Adnan, D 2014, 'Iraq: Mortar Fire Kills at Least 21 People', *New York Times*, 21 February <http://www.nytimes.com/2014/02/21/world/middleeast/iraq-mortar-fire-kills-at-least-21-people.html?_r=0>

³⁸ Associated Press, 2014, 'Iraq: Suicide bomb kills scores in town seized from ISIS', *New York Times*, 27 October 2014, <<http://www.nytimes.com/2014/10/28/world/middleeast/iraq-suicide-bomb-kills-scores-in-a-town-seized-from-isis.html>>

southern areas of the country.³⁹ As noted above reports indicate that government officials or civil servants have been attacked or targeted in Iraq and that IS targets governments facilities. Even if the applicant were able to avoid the harm he fears by relocating elsewhere in Central or Southern Iraq, based on the country information about the deteriorating security situation in Iraq, and independent evidence about the difficulties of relocating to areas without traditional support mechanisms, such as family, friends and relatives, I am satisfied that it would be neither safe nor reasonable for the applicant to relocate within Iraq.⁴⁰

45. With respect to internal relocation to the Kurdistan region of Iraq (KRI), I accept the guidance of the United Nations High Commissioner for Refugees (UNHCR) that this is not an option for many Iraqis due to accessibility issues: many Iraqis face difficulties accessing livelihood options and Arabs, Turkmen and certain profiles of Kurds will likely face extensive questioning and may be denied entry at the border.⁴¹ The recent increase in violence in Iraq, coupled with a large movement of internally displaced persons (IDPs) into Kurdistan and around the country, has also resulted in the KRI tightening its border security.⁴² I am satisfied that it would be neither safe nor reasonable for the applicant to relocate within Iraq.

Conclusions

46. For the above reasons, I am satisfied that the applicant has a well-founded fear of being persecuted by non-state actors, from which the state would not be able to protect him, if he returned to Iraq now or in the foreseeable future, and that, in the circumstances, it would not be safe or reasonable for him to relocate to another part of the country. I am satisfied that the harm that would befall the applicant if he returns to his home area would involve 'serious harm' as required by paragraph 91R(1)(b) in that it involves a threat to his life or liberty or significant physical harassment or ill-treatment. I am satisfied that such conduct by non-state actors would be systematic in the sense of being deliberate and pre-meditated and discriminatory, in the sense that it would be directed at the applicant for reasons of his religion and imputed political opinion as required by s 91R(1)(c). I am satisfied that his religion and imputed political opinion are the essential and significant reasons for the persecution, as required by s 91(R)(1)(a).
47. I have considered whether the applicant will obtain adequate protection against non-state actors. Advice from the UNHCR and DFAT confirms that state protection from the Iraqi government is not available. The UNHCR notes that '[g]enerally, protection by national authorities will not be available given that the national authorities have as

³⁹ 'Militant group ISIL's advances threatening Baghdad will accelerate re-emergence of Shia militias, increasing Iraqi civil war risks', *IHS Jane's Intelligence Weekly*, 13 June 2014; 'Shiite Violence Traps Sunnis in Baghdad', *The New York Times*, 25 June 2014.

⁴⁰ United Nations High Commissioner for Refugees 2012, *UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Asylum-Seekers from Iraq*, 31 May, pp.55 <[CIS27173](#)>.

⁴¹ United Nations High Commissioner for Refugees 2012, *UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Asylum-Seekers from Iraq*, 31 May, pp.52 <[CIS27173](#)>.

⁴² 'Selective treatment for IDPs in Kurdistan' 2014, *Integrated Regional Information Network*, 16 July 2014 <<http://www.irinnews.org/report/100357/selective-treatment-for-idps-in-kurdistan>> Damon, A, Carter, CJ & Smith-Spark, L 2014, 'Iraq crisis: Kurdish authorities place tight restrictions on border crossings', *CNN*, 28 June <<http://edition.cnn.com/2014/06/28/world/meast/iraq-crisis/>> ; 'Escaping extremist-controlled Mosul: an Iraqi journalist's story' 2014, *Niqash*, 10 July <<http://www.niqash.org/articles/?id=3488>> .

yet limited capacity to enforce law and order⁴³ and DFAT reports ‘the police are unable to prevent violent attacks on individuals’.⁴⁴ I am not satisfied that the Iraqi State is able to provide adequate protection from the harm which the applicant fears.

48. The applicant raised other claims. However, in light of the positive findings I have made I consider it is unnecessary to assess those claims further.

CONCLUSION

49. For the reasons given above, the Tribunal is satisfied that the applicant is a person in respect of whom Australia has protection obligations under the Refugees Convention. Therefore the applicant satisfies the criterion set out in s.36(2)(a).

DECISION

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

Frances Simmons
Member

⁴³ United Nations High Commissioner for Refugees 2012, UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Asylum Seekers from Iraq, 31 May 2012 p.53.

⁴⁴ Department of Foreign Affairs and Trade 2013, *Country Information Report – Iraq*, 29 November, p.12 <<http://www.immi.gov.au/media/publications/doc/dfat-cir-iraq.docx>> Accessed 11/03/2015 <CX> noting particularly para [5.5]; see also [5.11].