

**DECISION RECORD**

**RRT CASE NUMBER:** 1304819

**DIAC REFERENCE(S):** CLF2012/109770

**COUNTRY OF REFERENCE:** Iraq

**TRIBUNAL MEMBER:** Christopher Smolicz

**DATE:** 23 August 2013

**PLACE OF DECISION:** Adelaide

**DECISION:** The Tribunal remits the matter for reconsideration with the following directions:

- (i) that the first named applicant satisfies s.36(2)(a) of the Migration Act; and
- (ii) that the other applicants satisfy s.36(2)(b)(i) of the Migration Act, on the basis of membership of the same family unit as the first named applicant.

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 dependent.

## 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 applicants Protection (Class XA) visas under s.65 of the *Migration Act 1958* (the Act).
2. The applicants who claim to be citizens of Iraq, applied to the Department of Immigration for the visas [in] June 2012 and the delegate refused to grant the visas [in] March 2013.
3. The applicants appeared before the Tribunal [in] August 2013 to give evidence and present arguments. The Tribunal also received oral evidence from [Mr A] by telephone from [Country 1]. The Tribunal hearing was conducted with the assistance of an interpreter in the Arabic and English languages. The applicants were represented in relation to the review by their registered migration agent.

### RELEVANT LAW

4. 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 '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.

### 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 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).
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. 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.
8. There are four key elements to the Convention definition. First, an applicant must be outside his or her country.

9. 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)). Examples of 'serious harm' are set out in 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.
10. 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.
11. 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.
12. 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 '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.
13. 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.
14. 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**

15. 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').

16. '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.
17. 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.

### **Section 499 Ministerial Direction**

18. 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 – to the extent that they are relevant to the decision under consideration.

### **Member of the same family unit**

19. Subsections 36(2)(b) and (c) provide as an alternative criterion that the applicant is a non-citizen in Australia who is a member of the same family unit as a non-citizen mentioned in s.36(2)(a) or (aa) who holds a protection visa. Section 5(1) of the Act provides that one person is a 'member of the same family unit' as another if either is a member of the family unit of the other or each is a member of the family unit of a third person. Section 5(1) also provides that 'member of the family unit' of a person has the meaning given by the Regulations for the purposes of the definition. The expression is defined in r.1.12 of the Regulations to include dependent children.

## **CONSIDERATION OF CLAIMS AND EVIDENCE**

### *Background*

20. The Department's records indicated that the primary visa applicant's husband accepted an offer for post graduate study in [Australia] and arrived in Australia [in] February 2009 as the holder of student visa. The primary visa applicant (the applicant) arrived [in] September 2009 with her [children] (the [related] applicants). The applicant has not departed Australia since her date of arrival.

21. [In] 2012 the applicant's husband returned to Iraq as a condition of his contractual study obligations and [in] June 2012 the applicant lodged her application for a protection visa subject of the review.

*The applicant's factual claims and the Tribunal's findings*

22. First, the Tribunal sets out the claims advanced by the applicant to engage Australia's protection obligations. The Tribunal takes these claims from the applicant's evidence at the hearing, her entry interview and statements of claim dated 23 May 2012 and her agent's submissions dated 3 June 2013. The Tribunal also took evidence by telephone from the applicant's father who resides in [Country 1].
23. The applicant presented in a manner the Tribunal perceived to be truthful and credible, and her evidence was consistent with the country information applicable to her particular circumstances which are detailed below. The Tribunal has decided to wholly accept the applicant's evidence.
24. The Tribunal finds that the applicant was born in [town and year]. On the basis of the Iraqi passports held on the Departmental file, the Tribunal finds that the applicants are nationals of Iraq. In the absence of any evidence suggesting that the applicants have a right of entry or residence to any other country, the Tribunal finds the country of reference in this review to be Iraq.
25. The applicant's mother is a Sunni Muslim while her father is a Shia Muslim. Her family were not strict practicing Muslims and her mother never wore a head scarf (hijab). It did not matter to them what denomination of Islam they were from. Coming from a family with two different denominations made it difficult for the applicant to fit into Islamic society and she was verbally abused and threatened by her peers.
26. She completed her high school education and commenced studying a [course] at [university] but was forced to withdraw from her studies because she was harassed by people who disapproved of her wearing makeup and not wearing a hijab.
27. The applicant was against wearing a hijab and only began to wear one in 1995. The family lived in [Town 2] which was one of Iraq's holiest cities and she felt she had no choice and would otherwise bring disgrace and shame to her family. Her mother was also forced to wear her hijab due to religious pressure.
28. The applicant views herself as a woman's activist. She supports women's education and women's rights and believes in equality amongst women and men. Her views and way of life were seen as odd by people in her area and she received threats from people and was treated unjustly. She kept a low profile and if she removed her hijab in public she was threatened with jail or death in [Town 2]. She commenced meeting with a number of like-minded women in the privacy of their own homes and discuss their views on life and women's rights. Despite the fact the group held informal and discreet meetings it came to the attention of the local Mayor and neighbours who questioned their motives. The meetings ceased in 2009 when she travelled to Australia and many of the women with whom she met have since left Iraq.
29. Her [children] (the [related] visa applicants) aged [ages deleted] have lived and attended school in Australia since 2009. The children have adjusted to the Australian

culture and have trouble speaking Arabic and only understand a little. The applicant is fearful for her children's future in Iraq. In [year] when her husband returned from a study trip in [country] her [child] was kidnapped and the family had to pay a ransom to secure [the child's] release. The applicant suspects the kidnapping was carried out by the *Al Madhi Army* who are powerful in her area and have harassed and threatened her in the past due to her appearance.

30. Her parents are [vocations deleted]. Her [mother] was force to leave her job in [the 1990's] because did not wear her hijab and was classed as a "bad Muslim".
31. Her father ([Mr A]) was a Senior Member of the Ba'ath party under Sadam Hussein's regime. The applicant's parents left Iraq in 1999 to work in [Country 1]. The Tribunal was able to independently verify that the applicant's [father's occupation] in [Country 1] by accessing the [organisation's] website<sup>1</sup>.
32. The applicant stated that when the Ba'ath party lost power in 2003 her father was precluded from returning to Iraq. The applicant's mother did not want to return to Iraq because she was discriminated as a Sunni Muslim living in the holy [Town 2] with a Shia majority.
33. At the hearing the applicant provided a translated copy of her father's curriculum vitae confirming his [professional] achievements in Iraq and abroad. Importantly, the applicant told the Tribunal that her father was a prominent member of the Ba'ath party under Sadam Hussein. By way of example the applicant explained to the Tribunal that her father [details of achievements deleted].
34. The applicant was able to provide the Tribunal with photographs of [her father's achievements]<sup>2</sup>
35. The applicant provided the Tribunal with [further evidence of her father's achievements and recognition deleted].<sup>3</sup>
36. The Tribunal told the applicant it was surprised that she had not provided the photographs earlier and questioned the applicant about their authenticity. The applicant said her mother and sister sent the photos from [Country 1] only a few days before the hearing. The applicant was able to show the Tribunal photos on her mobile telephone of her father's house in [Country 1 and] a photograph of her father and Saddam Hussein. The Tribunal notes that this was the same photo that was submitted to the Tribunal in support of the claim. The Tribunal finds the applicant was able explain how she obtained the photographs in a natural and spontaneous manner. The Tribunal has no doubt the photographs are authentic.
37. The applicant claims that having lived in Australia with her children for almost four years they would be easily identified in Iraq and would face greater danger and even risk of death. The applicant wants to continue with her studies and this would not be possible if she returns to Iraq, not only because she is a Sunni liberated woman, but because of her father's association with the Ba'ath Party and his [prominent] profile.

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<sup>1</sup> [Citation deleted]

<sup>2</sup> [URL and details]

<sup>3</sup> [URL]

### *Evidence of [Mr A]*

38. The Tribunal advised the applicant that the information was directly relevant to her claims and invited the applicant to provide her father's contact details so that the Tribunal could take evidence from him by telephone and corroborated her claims.
39. The applicant agreed for the Tribunal to contact her father in [Country 1]. The Tribunal took evidence by telephone [Mr A] with the assistance of the Arabic interpreter. The Tribunal found the [Mr A] to be genuine and forthright witness who was able to independently corroborate all of the applicant's evidence. [Mr A] said that he is well known to the Iraqi authorities and his name is on a list held by the current government and if he was to return to Iraq he would be killed. He said that he is still politically active and working to bring down the current government in Iraq. [Details deleted] the role he played in the "public army" assisting the army during the war with Iran and Second Gulf War.
40. He said that he was sent to [Country 1] by Saddam Hussein in [year] and has never returned to Iraq after Saddam Hussein's government was overthrown. The Tribunal asked [Mr A] why his daughter was able to remain in Iraq if he held such a high profile in that country. [Mr A] said that his daughter left Iraq and travelled to Australia in 2009. He said the political situation had got much worse in Iraq and the new government after Saddam Hussein spent the first years solidifying its power base and it has only now changed his focus and started to review government files and seek out government opponents and people who were affiliated with the Ba'ath Party. He confirmed that his name was very well known in Iraq and it was only a matter of time before his daughter would be identified and killed. He said all his children have now fled Iraq and live abroad.

### **Country Information**

41. In assessing the applicant's claims the Tribunal has regard to the *UK Border Agency Iraq country of origin report* dated 30 August 2011, the *UK Border Agency Operation Guidance Note on Iraq* (OGN) and the *UNHCR Eligibility Guidelines for Assessing International Protection Needs for Asylum Seeker for Iraq* dated 24 May 2012.
42. The OGN, although not binding on the Tribunal, provide the following information which is directly relevant to the current application:

#### **Individuals associated (or perceived to be associated) with the Iraqi government or former multi-national forces, and journalists.**

**3.7.1** Some claimants will make an asylum or human rights claim due to a fear of persecution/ill treatment or kidnapping at the hands of armed groups or militants on account of their association (or perceived association) with the Iraqi government or because of their "un-Islamic" behaviour.

**3.7.2 Treatment.** Although the overall magnitude of sectarian violence has declined, many individuals from various religious groups are targeted because of their religious identity or secular leanings. Acts committed against them included harassment, intimidation, kidnapping, and murder. The general lawlessness that permits criminal gangs, terrorists, and insurgents to victimise people with impunity affects persons of all ethnicities and religious groups.

**3.7.3** The UNHCR Eligibility Guidelines of May 2012 record that according to the UN Secretary General's 28 November 2011 report, there was a marked increase in assassinations of government officials, professionals and security personnel. Attacks include instances of intimidation, abductions and assassinations, including by the use of improvised explosive devices (IEDs), (suicide) car bombs and targeted killings with firearms equipped with silencers or "sticky bombs" attached to vehicles. Many reports of intimidations and threats are made. Incidents of targeted attacks have been reported in almost all of central and southern Iraq, but particularly in Al-Anbar, Baghdad, Babel, Diyala, Kirkuk, Ninewa and Salah Al-Din Governorates.

**3.7.4** UNHCR considers that individuals associated with, or perceived to be supporting the Iraqi authorities, the ISF or the (former) MNF-I/USF-I are, depending on the circumstances of their claim, likely to be in need of international refugee protection on account of their (imputed) political opinion. UNHCR sets out that the specific groups that may be associated with or perceived to be supporting the Iraqi authorities include the following:

- (a) Government Officials and Employees
- (b) Former Members of the Iraqi Security Forces (ISF)
- (c) Sahwa Members, Traditional Tribal, Religious and Community Leaders
- (d) Members of Political Parties
- (e) Individuals Affiliated with the USF-I, Foreign Governments, NGOs or International Companies

UNHCR also reports that professionals such as judges or academics, have reportedly also been targeted for their (perceived) support of the Iraqi authorities, the political process or the USF-I.

**3.7.6** According to the October 2012 Quarterly Report to Congress by the Special Inspector General for Iraq Reconstruction (SIGI), "Lethal attacks on Iraqi Police (IP) and Iraqi Army (IA) soldiers rose this quarter—and most sharply in September, when more than 180 IP and IA personnel were killed and 230 wounded. Assassinations of government officials and tribal leaders in Iraq continued unabated this quarter. More than 100 senior government officials were targeted for assassination, with 58 killed. These attacks also killed or wounded more than 120 family members, bodyguards, or other citizens who were in the vicinity of the apparently targeted individuals. Ministry officials, judges, members of parliament, tribal sheiks, and senior ISF officials were targeted by bombs and armed attacks (including home invasion). The largest number of attacks on officials and other leaders occurred in Baghdad, with the second-largest number of attacks around Kirkuk."

**3.7.7** The Danish Immigration Service's February and April 2010 Fact Finding Mission to Iraq report noted that "that individuals who had cooperated with the Iraqi security force or US/multi-national forces; or those persons working for foreign companies... including relatives to all the above-mentioned categories of persons could also be at risk of being targeted."

**3.7.8** As regards kidnapping and disappearances, the 2011 U.S. State Department report notes that the majority of reported cases appeared to be financially motivated. Kidnappers who did not receive a ransom often killed their victims. Police believe that the majority of these cases went unreported. The ICRC noted in February 2010 that professionals remain at risk of being targeted in Iraq, with persons perceived to be wealthy, and their children, at risk of being kidnapped and held for ransom.



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### **Former members of the Ba'ath Party**

**3.8.1** Some claimants will make an asylum or human rights claim due to their fear of ill-treatment amounting to persecution at the hands of state and non state agents on account of their past membership of the Ba'ath party.

**3.8.2 Treatment.** De-ba'athification is the name given to a number of processes initiated by the Coalition Provisional Authority (CPA) shortly after the fall of Iraq's Ba'athist regime. One was the complete dissolution of the Iraqi army as well as certain organisations (mostly security-related) that were either notorious for their role in enforcing Ba'ath party rule, or whose resources might offer the party a means to return to power. These organisations included the Iraqi army, the intelligence services, the Olympic committee and others, dissolved by CPA order in May 2003. The other process was the dismissal of many thousands of civil service employees from their positions. This process was initiated by the Coalition Provisional Authority, but later continued and was controlled by Iraq's Higher National De-ba'athification Commission (HNDBC). The assumption underpinning De-ba'athification procedures was that the elite of the Ba'ath party could not have achieved their level without committing acts that seriously violated human rights standards or were deeply corrupt.

**3.8.3** A report of a Danish Immigration Service fact finding mission published in September 2010 noted that previous affiliation to the Ba'ath party could add to a person's insecurity. However, being targeted solely with reference to former Ba'athist association is not likely as everyone employed by the previous regime had to be a member of the Ba'ath party. Senior members who were genuinely at risk have either fled abroad, for example to Syria, or have already been dealt with harshly by the government. However, as of today former membership of the Ba'ath party is not a determining factor when it comes to the question of whether or not a person would be targeted.

**3.8.4** The same report also recorded that other sources stated that senior Ba'ath party members are targeted especially in south Iraq and some central parts. However, such a person would need to be well-known to others and other factors such as having occupied a particular exposed position are likely to have influence the risks as well. It was added that most senior Baath members left Iraq. On the other hand, accusing a person of being a former Baath member remains a favourite accusation. This can be problematic as a person wrongly accused may not be able to rectify such claims before action is taken against him.

**3.8.5** The 2011 US State Department Report recorded that the constitution broadly provides for the right of free expression, provided it does not violate public order and morality or express support for the banned Ba'ath Party or for altering the borders by violent means.

Intimidation and political influence were factors in some allegations of corruption, and officials sometimes used the "de-Ba'athification" process to pursue political and personal agendas. The same source reported that on 24 October 2011, the army began arresting alleged former members of the Ba'ath Party said to be involved in a coup plot. More than 900 people were arrested in the following weeks. Formal charges were often made only after the arrests and many were held without access to family members or legal representation. Media reported that at least one detainee, Kadhim Munshed Rashed, died from torture, but the MOI claimed that he committed suicide. The government did not present evidence to support the existence of a plot at year's end. Many Sunnis contended that the arrests were intended to weaken the government's political opponents.

**3.8.6** In its May 2012 Eligibility Guidelines, UNHCR said that after the fall of the former regime, the Coalition Provisional Authority and, subsequently, the Iraqi Government

introduced a number of measures to “de-Ba’athify” the Iraqi administration and security forces. From the outset, it was reported that the implementation of relevant regulations was arbitrary, sectarian and politicized. There have been continuous claims that the Iraqi Government has used accusations of “Ba’athism” to sideline political opponents and to settle political scores. “De-Ba’athification” has reportedly been used to fire government and security officials and replace them with loyalists, and to ban political rivals from running in elections. Reported arrests of alleged Ba’ath Party members have raised concerns, given that neither the De-Ba’athification Law, nor any other law, provides for legal prosecution for Ba’ath Party membership. During an “arrest campaign” in October/November 2011, when more than 600 individuals were arrested on charges of terrorism and alleged Ba’ath Party ties, Deputy Minister of Interior Adnan Al-Asadi stated that all arrests were undertaken on the basis of the Counterterrorism Law of 2005. However, Iraqi Government officials repeatedly referred to a person’s Ba’ath Party affiliation and rank to justify the arrest. The timing and circumstances, the questionable legal basis and the lack of transparency of these arrests raised serious doubts among some observers over their real motivation. Most of those arrested reportedly remain in detention without charge.

**3.8.7** The May 2012 UNHCR Eligibility Guidelines also went on to note that after the fall of the previous regime in 2003, persons affiliated or associated with the former regime, through membership in the Ba’ath Party or as a result of their functions or profession, were subjected to systematic attacks mainly by armed Shi’ite groups. Today, members of the former Ba’ath Party or the former regime’s armed forces or security and intelligence services are reportedly no longer systematically singled out for attack by armed groups. They may still be targeted in individual cases, although the exact motivation behind an attack may not always be known. Many former Ba’athists have found new identities as politicians, academics, tribal leaders, or members of the current ISF. It is difficult to determine if attacks against them are motivated by their role under the former regime or by the person’s present profile. Palestinian refugees, who are widely considered to have received preferential treatment under the former regime and were suspected of supporting the Sunni insurgency, have also been singled out for attacks and arrests since 2003.

**3.8.8** In August 2012 IRIN News published a report which identified a number of drivers of conflict in Iraq including “local power brokering/score-settling” IRIN also reported that according to UNHCR in July 2012, Iraqis with old vendettas have taken advantage of the chaos and instability in Syria to pursue Iraqi refugees there, with a string of kidnappings in recent months. UNHCR further reported that most cases are resolved, but the worst case involved the father of one refugee family who had worked for former Iraqi ruler Saddam Hussein’s intelligence service. The family had already lost a family member in Iraq before fleeing to Syria. In recent months, their son was kidnapped, tortured and killed - despite a ransom paid.<sup>4</sup>

#### *Increase in sectarian violence*

43. The Tribunal also notes that since the publication of the USDOS International Freedom Report of 2010 (referred to above) there has been a significant increase in sectarian violence in Iraq. The United Nations recently reported that July 2013 was Iraq’s deadliest month in over five years describing series of bombings and shootings as epidemic of sectarian-tinged violence that has killed over 1000 Iraqis. The UN News Centre, reported that in his final briefing to the Security Council the outgoing UN envoy to Iraq, Mr Kobler noted that an “alarming” scale of renewed violence in the country during the latest four months, with nearly 3000 people killed and over 7000

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<sup>4</sup> UK Border Agency Operation Guidance Note on Iraq December 2012

more wounded.<sup>5</sup> Reports have noted that the sectarian tension in Iraq and wider regions have been inflamed by the civil war in Syria, where many Sunni Muslim rebels are fighting to overthrow a leader backed by Shi'ite Iran.<sup>6</sup>

44. The UNCHR Guidelines also provides the following relevant summary regarding the religions based claims:

While open sectarian violence between Arab Sunnis and Arab Shi'ites ended in 2008, armed Sunni groups continue to target Shi'ite civilians with the apparent aim of reigniting sectarian tension. Sectarian-motivated violence includes: mass-casualty attacks targeting Shi'ite civilians and pilgrims; threats against Sunnis in Shi'ite majority areas and Shi'ites in Sunni majority areas; as well as targeted killings of both Sunni and Shi'ite clerics and scholars. Baathist ties and/or purported engagement in terrorism are often equated to sectarianism by the Iraqi Government and the ISF. Many individuals accused of Ba'athist ties and/or terrorism and thus perceived to be engaged in sectarianism are of Sunni background.

*Does the applicant have a well-founded fear of persecution for a convention reason?*

45. The issue for the Tribunal to determine is whether the applicant has a well-founded fear of persecution for a convention reason in light of the Tribunal's factual findings above.
46. The Tribunal notes the conclusion of the UNHCR Guidelines for the assessment of refugees in Iraq. The Guidelines referred to above, list a series of profiles which, whilst not intended to be exhaustive, indicate those categories of persons who the UNHCR considers may need international refugee protection, depending on the individual circumstances of the case. The Tribunal accepts and relies on the Guidelines and finds that the applicant falls within the identified profile individuals (perceived as) opposing the Iraqi authorities due the professional status of her [parents] and because of her father's senior role in the Ba'ath Party (perceived political opinion).<sup>7</sup>
47. The country information referred to above states that while persons affiliated or associated with the former Ba'ath Party and regime are no longer systematically targeted, individuals who were senior and well-known Ba'ath party members are targeted and most were forced to depart Iraq. The UNCR Guidelines stated that persons (considered to be) in opposition to the Iraqi Government reportedly face politically motivated arrests on vague terrorism-related charges, often coupled with accusations of Ba'ath Party ties or corruption.
48. As stated above, the Tribunal accepts that the applicant's father is a high profile member of the Ba'ath Party who was [rewarded for his service] and his family occupied a privileged position under the former regime.
49. The UNCHR Guidelines also note that after the fall of the previous regime in 2003 persons affiliated or associated with the former regime, through membership in the Ba'ath party or as a result to their profession were subjected to systematic attack mainly by armed Shi'ite groups.

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<sup>5</sup> See <http://www.un.org/apps/news/story.asp?NewsID=45465&Cr=Iraq&Cr1=#> and The New York Times, Thursday, August 8, 2013

<sup>6</sup> CX312290 Iraq Al Qaeda affiliated claims responsibility for Iraq bombings, Reuters, 30 July 2013.

<sup>7</sup> UNHCR Guidelines p.17

50. The Tribunal finds that the applicant's father has remained politically active in [Country 1] and has continued to speak out against the current Iraqi government and is inextricably associated with the Ba'ath Party through his length of service and would be well known to the Iraqi authorities.
51. Whilst the applicant has been fortunate not to have been targeted or detained in the past due to her father's political profile, the Tribunal finds that there is a real chance the applicant could be detained in Iraq in the future. The Tribunal finds that the persecution directed at senior members of the Ba'ath Party would extend to family members such as the applicant and her children especially, given her father's profile in Iraq and abroad. The Tribunal finds that the current Iraqi regime would seek to silence its political opponents who are based abroad and the authorities actions would extend to causing serious harm to family members who have remained in Iraq. The Tribunal finds that the given the applicant is a daughter of senior and outspoken member of the Ba'ath Party there is a real chance she and her children will be subjected to serious harm due to her perceived political opinion should she return to Iraq now or in the reasonably foreseeable future.
52. Having regard to the above matters, the Tribunal is satisfied that the applicant has a well-founded fear of persecution for reason of her perceived political opinion as the daughter of a senior Ba'ath Party member and [vocation deleted], if she were to return to her home area of [Town 2] or elsewhere in Iraq. On the basis of the evidence, the Tribunal accepts the applicant's perceived political opinion (an opinion that is anti-government) is the essential and significant reason for the harm she fears. Therefore her fear of persecution is for a Convention reason. Accordingly, the requirements of s.91R(1)(a) are met.
53. Having regard to the non-exhaustive list in s 91R(2) of the type and level of harm that will constitute 'serious harm' for the purposes of s 91R(1)(b), the Tribunal accepts that the persecution feared by the applicant involves serious harm, including significant physical harassment or ill-treatment and a threat to her life or liberty. It follows that the requirements of s 91R(1)(b) are also met.
54. In relation to the requirements of s 91R(1)(c), the Tribunal is satisfied from country information set out earlier that the feared persecution by the current Iraqi authorities would involve conduct which is systematic in the sense of being deliberate and premeditated (see *VSAI v MIMIA* [2004] FCA 1602) and discriminatory in the sense that it would be directed at the applicant for the Convention reason of her perceived political opinion. It follows that the requirements of s 91R(1)(c) are met in this case.
55. As the Tribunal has accepted that the applicant has a well-founded fear of persecution from the Iraqi authorities, it accepts that the feared persecution is not localised and that it is not therefore necessary for the Tribunal to go on and make findings as to whether it would be reasonable for the applicant to relocate.
56. In all the circumstances, the Tribunal accepts that there is a real chance that the applicant will face serious harm now or in the reasonably foreseeable future if she returns to Iraq on the basis of her perceived political opinion.

57. For the reasons given above the Tribunal is satisfied that the first named applicant is a person in respect of whom Australia has protection obligations. Therefore the first named applicant satisfies the criterion set out in s.36(2)(a).
58. The Tribunal is satisfied that the first named applicant's [children] are members of the same family unit as the first named applicant for the purposes of s.36(2)(b)(i). As such, the fate of their application depends on the outcome of the first named applicant's application. As the first named applicant satisfies the criterion set out in s.36(2)(a), it follows that the other applicants will be entitled to a protection visa provided they meet the criterion in s.36(2)(b)(ii) and the remaining criteria for the visa.

## **DECISION**

59. The Tribunal remits the matter for reconsideration with the following directions:
- (i) that the first named applicant satisfies s.36(2)(a) of the Migration Act; and
  - (ii) that the other applicants satisfies s.36(2)(b)(i) of the Migration Act, on the basis of membership of the same family unit as the first named applicant.