1218580 [2013] RRTA 279 (2 April 2013)

DECISION RECORD

RRT CASE NUMBER:	1218580
DIAC REFERENCE(S):	CLF2012/183054
COUNTRY OF REFERENCE:	Stateless
TRIBUNAL MEMBER:	Patricia Leehy
DATE:	2 April 2013
PLACE OF DECISION:	Sydney
DECISION:	The Tribunal affirms the decision not to grant the applicant a Protection (Class XA) visa.

STATEMENT OF DECISION AND REASONS

INTRODUCTION

1. The applicant is a married man, born in Kuwait in [year deleted under s.431(2) of the *Migration Act 1958* as this information may identify the applicant]. He says that he is a stateless Bidoon, and a Sunni Muslim. He has lived in Nasiriya, Iraq, since 1991 or 1993. He paid a people smuggler and arrived in Australia by boat [in] May 2012, having fled Iraq because he claims he was persecuted by the Iraqi government for being Sunni, and a stateless Bidoon. The applicant says that he is afraid of returning to Kuwait or Iraq because he will face serious or significant harm for reasons of his ethnicity, his religion, his political opinion (as a returnee from a Western country he will be imputed with an anti-regime political opinion), and his membership of particular social groups, "returnees from a Western country" and "Bidoons of Kuwaiti origin who do not have Iraqi citizenship". The applicant's brother travelled with him to Australia and has also applied for protection. The applicant says that his brother fled Iraq after two of his children had disappeared, presumed kidnapped by Shi'a militia, following a letter demanding that his brother leave the area because of his religion as a Sunni.

APPLICATION FOR REVIEW

2. The applicant applied to the Tribunal for review of the decision made by a delegate of the Minister for Immigration to refuse to grant him a Protection (Class XA) visa under s.65 of the *Migration Act 1958* (the Act).

3. The applicant applied to the Department of Immigration for the visa [in] August 2012 and the delegate refused to grant the visa [in] November 2012.

4. The applicant appeared before the Tribunal [in] February 2013 to give evidence and present arguments. The Tribunal hearing was conducted with the assistance of an interpreter in the Arabic and English languages.

5. The applicant was represented in relation to the review by his registered migration agent.

RELEVANT LAW

6. 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

7. 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 Refugee as

amended by the 1967 Protocol relating to the Status of Refugees (together, the Refugees Convention, or the Convention).

8. 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.

9. 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.

10. 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.

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

12. 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.

13. 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.

14. 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.

15. 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.

16. 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.

17. 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

18. 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').

19. '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.

20. 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.

CONSIDERATION OF CLAIMS AND EVIDENCE

21. For the following reasons, the Tribunal has concluded that the decision under review should be affirmed.

22. The applicant's claimed statelessness

23. The applicant has claimed to be stateless. The Tribunal rejects this claim.

24. The applicant submitted a number of documents to the Department when he arrived in Australia. The most critical of these documents in determining his nationality is the Iraqi Civil Status Identity Card. The applicant's Iraqi Civil Status Identity Card was issued to the applicant [in] July 2009 and gives his place of birth as Nasiriya, Thiqar, Iraq.

25. Copies of all the country information referred to below were given to the applicant's adviser, as well as being raised with the applicant at his Tribunal hearing in the discussion about his claimed statelessness.

26. According to both the United Nations High Commissioner for Refugees (UNHCR) and the Australian Department of Foreign Affairs and Trade (DFAT), the Saddam Hussein government offered citizenship to Bidoons living in Iraq and approximately half of the Bidoon population (47,417 individuals) took up this offer.[1] To obtain citizenship, Bidoons had to declare that Kuwait was not their place of birth (i.e., had to renounce association with Kuwait) and often needed sponsorship by a local tribe.[2] The rest of the Bidoon population (approximately 54,500 individuals) remained stateless, and since the fall of the Saddam Hussein government in 2003 it has not been possible for Bidoons to gain Iraqi citizenship.[3] The Bidoons who were granted citizenship, however, were not allowed to own property inside the cities.[4]

27. In 2010, the UNHCR stated that those Bidoons who became citizens under the above arrangement 'possess the Iraqi ID and nationality certificates', whereas those who do not hold Iraqi citizenship 'do not hold Iraqi ID cards, nationality certificates or PDS cards'[5] Similarly, DFAT noted in 2010 that stateless Bidoons 'do not hold Iraqi nationality certificates, Iraqi ID cards or Public Distribution System (PDS) cards (which often double as identity cards)'.[6] Advice from DFAT dated 2011, however, indicates that Kuwaitis living in Thi Qar province (in which Nasiriya is located) had been granted citizenship:

> The Directorate-General of Immigration Affairs (DG Immigration) advised it had headed a committee to determine the status of deportees from Kuwait who lived in Thi Qar and Wasit provinces. The committee had concluded all such people had been granted 'Iraqi citizenship B series'. DG Immigration further advised Bidoon could obtain Iraqi citizenship upon proof of 'Iraqi origin', and that any individual could obtain Iraqi citizenship upon meeting certain requirements, namely: the conduct of

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[1] United Nations High Commission for Refugees (UNHCR), 2010, Email 'Bidoon in Iraq', 8 September; Department of Foreign Affairs and Trade (DFAT), 2010, *RRT Information Request: IRQ37183*, Report No. 1197, 14 September

[2] Department of Foreign Affairs and Trade 2010, *RRT Information Request: IRQ37183*, 14 September

[3] United Nations High Commission for Refugees (UNHCR), 2010, Email 'Bidoon in Iraq', 8 September; Department of Foreign Affairs and Trade (DFAT), 2010, *RRT Information Request: IRQ37183*, Report No. 1197, 14 September

[4] United Nations High Commission for Refugees (UNHCR), 2010, Email 'Bidoon in Iraq', 8 September

[5] United Nations High Commission for Refugees (UNHCR), 2010, Email 'Bidoon in Iraq', 8 September

[6] Department of Foreign Affairs and Trade (DFAT), 2010, *RRT Information Request: IRQ37183*, Report No. 1197, 14 September

> the oath of loyalty to Iraq; not being a member of any political or partisan group; and having an income.[7]

28. The UNHCR in a Thi-Qar Governorate Assessment Report in October 2006 stated categorically that Iraqi Civil Status identification cards are only issued to Iraqi nationals[8].

29. The applicant in his evidence said that he was not a member of any political group, and he was a taxi driver earning an income at the time the card was issued, and for several years before this, thus fulfilling two of the conditions reported by DFAT as being required for citizenship in the paragraph quoted above (para 26). The place of birth given on the ID Card is Iraq, which presumably fulfils the condition that the applicant renounce his association with Kuwait (para 25). While proof of Iraqi origin was formally required, the UNHCR advised in a response to a request by the Tribunals in 2010, that "the relevant Iraqi authorities are reported to have maintained a certain degree of flexibility regarding the group of Bidouns" [9].

30. The UNHCR response to the Tribunals in 2010 indicates that those Bidouns who were *not* granted Iraqi citizenship "constitute the majority and live out of the city as "nomads", scattered mainly in the desert at the border of Basra with Samawa and Thi-Qar Governorates. These Bidouns do not hold Iraqi ID cards, nationality certificates or PDS cards."[10] The applicant lived in the city of Nasiriya, not in the desert at the border of governorates, on land which he bought, and in a house which he built, and has done so for several years, according to his evidence at the Tribunal hearing.

31. The adviser in a submission to the Tribunal [in] February 2013 refers to the applicant's family having recently been stripped of their ration cards, which the Tribunal considers are likely to be the PDS cards referred to above in para 26.

32. The applicant and his adviser have argued consistently that the applicant is stateless. They have argued that three documents are required for citizenship, the Civil Status Identity Card, a "nationality certificate" and a PDS or Public Distribution System or ration card, and that the applicant has only one of these, the Civil Status ID.

33. At his Tribunal hearing, the applicant said that the first Civil Status ID cards issued by the Iraqi government showed his place of birth to be Kuwait, but that Saddam subsequently decided that all these documents should state that people were born where the ID card was issued. He maintained that the Civil Status ID card gives you no rights at all. The applicant also said that to gain Iraqi citizenship some ancestor needed to have been registered at the Iraqi census in 1957, and that unless this were the case, you could not obtain citizenship.

34. The applicant at his hearing said that he had no formal or legal title to his family home, as Iraqi citizens would. He said that his children could not be registered to go to school, as Iraqi citizens would. He said that he could not access free medical or hospital care, as Iraqi citizens would. His children who were born in Iraq were not given birth certificates,

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[7] Department of Foreign Affairs and Trade, 2011, *RRT Country Information Request KWT38633 – Bidoons in Iraq*, 23 May
[8] CX294968, DFAT, 11 September 2012
[9] United Nations High Commission for Refugees (UNHCR), 2010, Email 'Bidoon in Iraq', 8 September
[10] As above

unlike Iraqi citizens. The applicant claimed that he could not obtain a passport, because you could not obtain a passport unless you were an Iraqi citizen. The applicant said that to obtain Iraqi citizenship you had to change your name, and he was unwilling to do so.

35. The Tribunal has considered the evidence in relation to the applicant's statelessness. He holds an Iraqi Civil Status Identity Card, which at least one authoritative source says is issued only to Iraqi nationals (para 28). Even if three separate documents were required, the Tribunal considers that the fact that the applicant has not submitted the registration certificate or the PDS or ration card does not necessarily mean that he was never issued with these documents.

36. The information from DFAT indicates that Bidoons resident in Thiqar governorate, the applicant's governorate, were granted citizenship. Proof of Iraqi origin is said by UNHCR to have been dealt with "flexibly", so the applicant's statement that registration in the 1957 census was essential is at least questionable.

37. The applicant did not live in the desert, as the Bidoon not granted citizenship are reported to have done. The applicant said that he did not own his home, as Iraqi citizens were able to do. The Tribunal accept that this was the case. However, according to the country information above, while the Bidoon were given citizenship, they were restricted from owning property in cities. While the applicant claimed that his children did not attend school in Iraq, the Tribunal does not accept that he was unable to send his children to school because he was not an Iraqi citizen.

38. The Tribunal has given more weight to the country information cited above than to the applicant's assertions about his statelessness. It gives additional weight to the fact that the applicant has submitted an Iraqi Civil Status Identity Card, which indicates that his country of birth is Iraq. The Tribunal does not accept the applicant's explanation that such ID Cards originally showed the holder's true country of birth, and for some unexplained reason Saddam Hussein then decided that they should show the city in which the ID Card was issued. The Tribunal considers that the ID Card submitted by the applicant indicates that he renounced his country of birth, Kuwait, as a condition of receiving Iraqi nationality. It finds on the evidence before it that the applicant is an Iraqi citizen. In making this finding, the Tribunal has noted the UNHCR information in its 2010 response to the Tribunals that the Bidoons "have the same status as all Iraqis and their poor living conditions are similar to those of the host community".[11]

39. The Tribunal finds that the applicant's Country of Reference, as well as his country of nationality, is Iraq.

The applicant's Bidoon ethnicity

40. The Tribunal accepts that the applicant is a Bidoon. It also accepts the applicant's evidence that he experienced discrimination as a Bidoon in Iraq.

41. According to the applicant's evidence, he was the target of regular verbal abuse because he was recognised as "a person from the Gulf" because of his Kuwaiti accent, despite the fact that he made every effort to conform to Iraqi dress, especially in the matter of headcovering. Had he worn the headcovering he was accustomed to wearing in Kuwait, he

[11] As above

would have been targeted for abuse because of his dress. As it was, he avoided this verbal abuse in the street by conforming to the Iraqi dress codes. At his hearing, the applicant was asked whether he was abused by his customers when he was driving taxis in Nasiriya for almost ten years because his accent marked him out as a Kuwaiti Bidoon. He replied that this did not occur.

42. The applicant claimed that he was excluded from a number of services because he was not only a Bidoon, but a stateless Bidoon. He claimed that he could not register his children for school, and had to pay the full price for medical services. He claimed that his sons could not find employment because of their Bidoon ethnicity. He claimed that he was unable to get title to property, including his own home, because of his ethnicity and his statelessness. The applicant did not claim to have suffered any other disadvantages because of his Bidoon ethnicity, or his Bidoon ethnicity combined with his statelessness

43. The applicant said at his Tribunal hearing that his family was financially provided for, and said that he had been able to buy land, for which he had paid 7 million dinars or about $A6,000, and build the family home in part from his savings made in Kuwait and converted to gold, and in part from his work as a farmer and then as a taxi-driver in Iraq. He was able to finance his travel to Australia, including the payment of a people smuggler. The applicant was able to pay for the medical care in a hospital for his daughter on one occasion. The applicant said at his hearing that he lived in an area in which there were both Iraqis and Bidoons. He did not claim that there was any conflict between the two groups in his own local community.

44. While the Tribunal accepts that the applicant has been insulted and verbally abused because of his ethnicity, it does not accept that such treatment is sufficiently serious as to amount to persecution in a Convention sense. While the applicant may have been required to pay for access to some services, and was not able to formally own his own home, the Tribunal does not accept that these restrictions and hardships were sufficiently serious as to amount to persecution in a Convention sense. The applicant on his evidence has not been rendered destitute, or suffered significant economic hardship or denial of access to basic services or denial of capacity to earn a livelihood, where such hardship or denial threatened his capacity to subsist, according to s.91R(2) of the Act. The Tribunal therefore finds that the applicant has not in the past suffered serious harm for the purposes of s91R(1)(b) of the Act.

45. There is no evidence before the Tribunal to indicate that the situation for Bidoons is likely to change in the foreseeable future.

46. On the evidence before it, the Tribunal finds that the applicant has not been persecuted for reason of his ethnicity as a Bidoon in the past. It is not satisfied that there is a real chance that he will suffer serious harm amounting to persecution in a Convention sense for this reason if he returns to Iraq in the foreseeable future.

47. The Tribunal also notes that even if the applicant had been a stateless Bidoon, as he claims, it finds that the disadvantages he has suffered for this reason have not been sufficiently serious as to amount to persecution in a Convention sense, and it is not satisfied that there is a real chance that he will be persecuted for this reason if he returns to Iraq in the foreseeable future.

The applicant's religion as a Sunni Muslim

48. The Tribunal accepts that the applicant is a Sunni Muslim. The Tribunal further accepts on the evidence of country information to this effect that Nasiriya is a city which is mainly Shi'a[12]. The UNHCR *Guidelines* of May 2012 list those individuals who are "likely to be in need of international refugee protection" for various reasons. This includes "Sunni Arabs in Majority Shi'ite Arab areas and Shi'ite Arabs in Majority Sunni Arab Areas". The Guidelines say:

> Both Shi'ites in Sunni dominated neighbourhoods and Sunnis in Shi'ite-dominated neighbourhoods have reportedly been subjected to threatening letters demanding that they vacate their homes. In cases where individuals do not comply, there are reports of violence or harassment, including killings.[13]

49. The Tribunal accepts the applicant's claim, made at his Tribunal hearing, that he is unable to attend the usual Sunni mosques in his area because they have been closed by Shi'a. It accepts the applicant's claim that he and members of his family have been verbally abused in the past because of their religion. It also accepts the applicant's claim that he and members of his family have stayed in their home as much as possible because they fear attacks by Shi'a militias.

50. The Tribunal also accepts the applicant's claim that his brother has received a threatening letter demanding that he leave the area in which he was living because of his religion, and that after he failed to do so, two of his children disappeared, a disappearance which was reported to the police, according to the documentary evidence submitted by the applicant's adviser [in] February 2013. It accepts that both the applicant and his brother fear that the children have been kidnapped by a Shi'a militia.

51. There is a substantial amount of country information relating to sectarian violence in Iraq, which has increased since the fall of Saddam Hussein.[14] News reports from 2013 and 2011 refer to Sunnis receiving threatening letters from Shia militia groups demanding they leave their homes.[15]

52. The Tribunal formed the impression at the hearing that the applicant was not particularly concerned that he was unable to attend a local mosque and had to pray at home. He said it was better for the family to pray at home, since they were afraid that if they had far to travel to a mosque it would be dangerous. On the evidence before it, the Tribunal finds that the fact that local Sunni mosques have been closed resulting in the applicant having to pray at home is not sufficiently serious as to constitute persecution in a Convention sense, particularly in light of the applicant's evidence of his own reaction to such restrictions. The Tribunal has however considered whether the applicant would have been at risk of serious harm had he not decided to avoid travel to mosques outside his local area. While there are

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[12] see pp.31 & 25 in: 'Measuring Stability and Security in Iraq' 2009, US Department of Defense.

[13] UNHCR Guidelines May 2012, http://ncadc.org.uk/coi/2012/05/iraq-unhcr-eligibility-guidelines-for-assessing-the-international-protection-needs-of-asylum-seekers/

[14] For example, the US Stat Department's *International Religious Freedom Report* for Iraq, published July 2011

[15] The Sunni rise again: Uprising in Syria emboldens Iraq's minority community' 2013, *The Independent*, March 20 <http://www.independent.co.uk/news/world/middle-east/the-sunni-rise-again-uprising-in-syria-emboldens-iraqs-minority-community-8521665.html> Accessed 20 March 2013;

many reports of increasing sectarian violence in Iraq, the Tribunal was unable to find evidence of mosques or Sunnis attending Sunni mosques being targeted for harm in the applicant's province. While the Tribunal accepts that the applicant has been verbally abused for reason of his religion, it finds that this is not sufficiently serious as to amount to persecution in a Convention sense.

53. The Tribunal finds that the applicant has not been persecuted in a Convention sense in the past for reason of his religion.

54. The Tribunal has considered whether there is a real chance that the applicant will be persecuted for his religion if he returns to Iraq in the foreseeable future. The applicant said at his Tribunal hearing that one of his neighbours was Shi'a, while the other was Sunni. He did not indicate that he had ever been involved in any sectarian conflict, although he claimed to have avoided going out of his home in case he should become caught up in sectarian violence. The applicant said at his Tribunal hearing that his brother lived [distance deleted: s.431(2)] away from him, and that while his brother had received a threatening letter, he himself had not done so.

55. While there is evidence of continuing and indeed increasing sectarian violence in Iraq, and the UNHCR has singled out Sunnis living in Shi'a-dominated areas in Iraq as at risk of harm, the applicant has never personally encountered it, even though he has lived in Iraq for some twenty years, for most of those years at the same address, and might be considered especially vulnerable as a Bidoon. There is no evidence before the Tribunal that sectarian violence has increased in the applicant's home area, and the Tribunal finds that there is not a real chance that the applicant will be seriously harmed in the foreseeable future, as he has not been seriously harmed in the past, for reason of his religion.

56. The Tribunal has also considered whether the experiences of the applicant's brother are relevant for the applicant in considering the applicant's risk of serious harm in the foreseeable future. It does not seem to the Tribunal that those Shi'a individuals or the Shi'a militia who sent his brother a threatening letter would have any reason to connect the applicant with his brother, given that they lived a considerable distance apart. The applicant, unlike his brother, has never received threatening letters.

57. On the evidence before it, the Tribunal is not satisfied that there is a real chance that the applicant will be persecuted for reason of his religion if he returns to Iraq in the foreseeable future.

Treatment of returnees/Failed asylum seekers

58. The applicant has submitted that he will be severely mistreated on his return to Iraq for a number of reasons, including the fact that he left on a false passport and for his imputed political opinion as an opponent of the current regime. His adviser has submitted that the applicant's religion and ethnicity as a Bidoon should be considered cumulatively in assessing the extent and nature of the harm he might face in returning to Iraq.

59. In assessing whether the applicant will be at risk for his imputed political opinion as an opponent of the current regime, the Tribunal has taken into account the following evidence. The applicant has never been in trouble with the authorities in Iraq. He has had no connection to any political or other group which might be perceived as opposed to the regime, nor has he ever been involved in any activities which might be perceived as dissident.

He has no political profile in Iraq. The applicant did not indicate in his evidence that he had been involved in any political activities while out of Iraq. The Tribunal does not accept that simply a period of residence in the West is sufficient for the applicant to be imputed with a political opinion against the regime.

60. According to the most recent *Country Report on Human Rights Practices* for Iraq published by the US State Department in March 2012:

> The government generally cooperated with the Office of the United Nations High Commissioner for Refugees (UNHCR), the International Organization for Migration (IOM), and other humanitarian organizations in providing protection and assistance to IDPs, refugees**, returning refugees, asylum seekers, stateless persons**, and other persons of concern, although effective systems to assist these individuals were not fully established by year's end. [emphasis added].

61. The Report goes on to say that some 67,080 Iraqis returned to the country during 2011, as a result of improved security, and that almost all received a monetary grant from the government. However, the Report says: "While security gains and access to assistance attracted Iraqi refugees to return, high unemployment and an unstable political environment created significant challenges" The Report noted that many Iraqis were unwilling or unable to return to their homes because of their status as a religious minority there.

62. In considering the applicant's circumstances, the Tribunal has taken into account that the applicant lived in his own area without incident for some twenty years, and was able to make a reasonable living there. On the evidence before it, the Tribunal does not accept that the applicant will be persecuted in a Convention sense for reason of his being a returnee from the West, or a failed asylum seeker.

63. While the applicant might receive some penalty for leaving Iraq on a false passport, any such penalty would be imposed on him equally with others according to the operation of a law of general application in Iraq. There is no evidence that the applicant's ethnicity as a Bidoon or his religion as a Sunni or any other characteristic would make the penalty more severe, or would cause the applicant to be subjected to serious harm.

64. On the evidence before it, the Tribunal is not satisfied that there is a real chance that the applicant will be persecuted for reason of his membership of a particular social group, defined as "returnees from the West", "failed asylum seekers" or any other similar formulation, even when considered cumulatively with the applicant's Bidoon ethnicity, his Sunni religion, or his imputed political opinion as an opponent of the regime for having left Iraq and resided in a Western country.

65. For the reasons given above, 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).

Complementary Protection

66. 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).

67. The Tribunal has accepted that the applicant is Bidoon and Sunni. It has found, however, that neither the applicant's ethnicity nor his religion, even considered cumulatively,

or in combination with his claimed statelessness, have caused him to suffer Convention-based persecution in the past. The Tribunal was not satisfied on the evidence before it that there was a real chance that he would be persecuted for these reasons, considered singly or cumulatively, if he returned to Iraq in the foreseeable future.

68. The applicant has put forward no other reason for fearing to return to Iraq than those detailed above, nor has he given evidence that he has been seriously harmed in the past for any reason.

69. The Tribunal has considered whether the harm the applicant fears he will suffer if he returns to Iraq amounts to "significant harm" as defined in the legislation. 'Significant harm' for these purposes is exhaustively defined in s.36(2A): s.5(1) of the Act. 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.

70. The applicant has said in the past that he feared he would be imprisoned or killed for the reasons considered in detail under the headings above: his statelessness; his Bidoon ethnicity; his religion as a Sunni Muslim; his status as a failed asylum seeker or returnee from the West. The Tribunal accepts that imprisonment or death amounts to "significant harm" for the purposes of the Complementary Protection legislation.

71. The Tribunal has not accepted that the applicant is stateless for the reasons given above. It therefore finds that there is no a real risk that he will significant harm for this reason if he returns to Iraq. The Tribunal has accepted that the applicant experienced discrimination in Iraq as a Bidoon. However it did not accept that verbal abuse was sufficiently serious as to amount of persecution. Having considered whether the discrimination suffered by the applicant amounted to "significant harm", and more specifically whether the verbal abuse amounted to cruel or inhuman treatment or punishment, or to degrading treatment or punishment, the Tribunal finds that it did not. It also considered whether the restrictions on owning his own home and his liability for payment for some services amounted to significant harm for the applicant as a Bidoon. Again, it does not find that the restrictions and hardships experienced by the applicant amounted to significant harm within the meaning of the legislation on Complementary Protection. The applicant did not claim, nor does the country information suggest, that the situation for Bidoons in Iraq is likely to change for the worse in the foreseeable future. The Tribunal therefore finds that there is not a real risk that the applicant will significant harm for reason of his ethnicity as a Bidoon if he is removed from Australia and returned to Iraq.

72. The Tribunal has considered whether there is a real risk that the applicant will suffer significant harm for reason of his Sunni religion if he is removed from Australia and returned to Iraq. While the Tribunal accepted that there is increasing sectarian violence in Iraq, and that the applicant's nephews may have been kidnapped by a Shi'a militia, it found that the applicant himself has not experienced anything more serious than verbal abuse or a restriction on his access to Sunni mosques, since some mosques in his local area had been closed by Shi'as. The Tribunal finds that there is not a real risk that the applicant will suffer significant harm for reason of his religion if he is removed from Australia and returned to Iraq because, despite sectarian violence in that country, the applicant himself has lived in the same house for most of the 20 years he has spent in Iraq without encountering violence. This is despite

the fact that his city of Nasiriya is dominated by Shi'as. In making this finding, the Tribunal has also taken account of the fact that the applicant's brother lived some considerable distance away from him in Iraq, and had received threatening letters prior to the disappearance of his sons. The Tribunal finds that there is not a real risk that the Shi'a militia who threatened the applicant's brother would connect him with the applicant.

73. The Tribunal has considered whether there is a real risk that the applicant will suffer significant harm for reason of his status as a failed asylum seeker or a returnee from the West if he is removed from Australia and returned to Iraq. As outlined above, the Tribunal has found that the applicant has no profile as a political dissident and would therefore be of no interest to the authorities for that reason if he returned to Iraq. While he might be liable to a penalty for leaving Iraq on a false passport, any such penalty would arise pursuant to lawful sanctions not inconsistent with the Articles of the ICCPR. There is no information before the Tribunal which might indicate that the applicant, because of his religion and ethnicity or for any other reason, would be subject to a level of suffering that went beyond that "inevitable element of suffering or humiliation connected with a given form of legitimate treatment or punishment", as held in some international jurisprudence.[16] The Tribunal finds that there is not a real risk that the applicant will suffer significant harm for reason of being a failed asylum seeker or a returnee from the West if he is removed from Australia and returned to Iraq.

74. The Tribunal has also considered the issues raised by the applicant cumulatively. On the evidence before it, the Tribunal is not satisfied that there are substantial grounds for believing that, as a necessary and foreseeable consequence of the applicant being removed from Australia to Iraq, there is a real risk that he will suffer significant harm, as defined in the Act.

75. The Tribunal is not satisfied that the applicant is a person in respect of whom Australia has protection obligations under s.36(2)(aa).

76. There is no suggestion that the applicant satisfies s.36(2) on the basis of being a member of the same family unit as a person who satisfies s.36(2)(a) or (aa) and who holds a protection visa. Accordingly, the applicant does not satisfy the criterion in s.36(2).

DECISION

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

[16] *Labita v Italy*, European Court of Human Rights, Application No 26772/95 (6 April 2000) [120]