

1112306 [2012] RRTA 341 (17 May 2012)

DECISION RECORD

RRT CASE NUMBER: 1112306

DIAC REFERENCE(S): CLF2011/57880

COUNTRY OF REFERENCE: Iraq

TRIBUNAL MEMBER: Simon Jeans

DATE: 17 May 2012

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 1958*.

STATEMENT OF DECISION AND REASONS

APPLICATION FOR REVIEW

1. This is an application for review of a decision made by a delegate of the Minister for Immigration to refuse to grant the applicant a Protection (Class XA) visa under s.65 of the *Migration Act 1958* (the Act).
2. The applicant who claims to be a citizen of Iraq, applied to the Department of Immigration and Citizenship for the visa on [date deleted under s.431(2) of the *Migration Act 1958* as this information may identify the applicant] April 2011.
3. The delegate refused to grant the visa [in] November 2011, and the applicant applied to the Tribunal for review of that decision.

RELEVANT LAW

4. Under s.65(1) a visa may be granted only if the decision maker is satisfied that the prescribed criteria for the visa have been satisfied. The criteria for a protection visa are set out in s.36 of the Act and Part 866 of Schedule 2 to the *Migration Regulations 1994* (the Regulations). An applicant for the visa must meet one of the alternative criteria in s.36(2)(a), (aa), (b), or (c). That is, the applicant is either a person to whom Australia has protection obligations under the 1951 Convention relating to the Status of Refugees and the 1967 Protocol relating to the Status of Refugees (together, the Refugees Convention, or the Convention), or on other 'complementary protection' grounds, or is a member of the same family unit as a person to whom Australia has protection obligations under s.36(2) and that person holds a protection visa.

Refugee criterion

5. Section 36(2)(a) provides that a criterion for a protection visa is that the applicant for the visa is a non-citizen in Australia to whom the Minister is satisfied Australia has protection obligations under the Refugees Convention.
6. Australia is a party to the Refugees Convention and generally speaking, has protection obligations to people who are refugees as defined in Article 1 of the Convention. Article 1A(2) relevantly defines a refugee as any person who:

owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence, is unable or, owing to such fear, is unwilling to return to it.
7. The High Court has considered this definition in a number of cases, notably *Chan Yee Kin v MIEA* (1989) 169 CLR 379, *Applicant A v MIEA* (1997) 190 CLR 225, *MIEA v Guo* (1997) 191 CLR 559, *Chen Shi Hai v MIMA* (2000) 201 CLR 293, *MIMA v Haji Ibrahim* (2000) 204 CLR 1, *MIMA v Khawar* (2002) 210 CLR 1, *MIMA v Respondents S152/2003* (2004) 222 CLR 1, *Applicant S v MIMA* (2004) 217 CLR 387, *Appellant S395/2002 v MIMA* (2003) 216 CLR 473, *SZATV v MIAC* (2007) 233 CLR 18 and *SZF DV v MIAC* (2007) 233 CLR 51.

8. Sections 91R and 91S of the Act qualify some aspects of Article 1A(2) for the purposes of the application of the Act and the regulations to a particular person.
9. There are four key elements to the Convention definition. First, an applicant must be outside his or her country.
10. Second, an applicant must fear persecution. Under s.91R(1) of the Act persecution must involve 'serious harm' to the applicant (s.91R(1)(b)), and systematic and discriminatory conduct (s.91R(1)(c)). The expression 'serious harm' includes, for example, a threat to life or liberty, significant physical harassment or ill-treatment, or significant economic hardship or denial of access to basic services or denial of capacity to earn a livelihood, where such hardship or denial threatens the applicant's capacity to subsist: s.91R(2) of the Act. The High Court has explained that persecution may be directed against a person as an individual or as a member of a group. The persecution must have an official quality, in the sense that it is official, or officially tolerated or uncontrollable by the authorities of the country of nationality. However, the threat of harm need not be the product of government policy; it may be enough that the government has failed or is unable to protect the applicant from persecution.
11. Further, persecution implies an element of motivation on the part of those who persecute for the infliction of harm. People are persecuted for something perceived about them or attributed to them by their persecutors.
12. Third, the persecution which the applicant fears must be for one or more of the reasons enumerated in the Convention definition - race, religion, nationality, membership of a particular social group or political opinion. The phrase 'for reasons of' serves to identify the motivation for the infliction of the persecution. The persecution feared need not be *solely* attributable to a Convention reason. However, persecution for multiple motivations will not satisfy the relevant test unless a Convention reason or reasons constitute at least the essential and significant motivation for the persecution feared: s.91R(1)(a) of the Act.
13. It is well established that a family is capable of constituting a particular social group within the meaning of the Convention. However, this is subject to s.91S of the Act, which provides that the following matters must be disregarded in determining whether a person has a well-founded fear of being persecuted for reasons of membership of a particular social group that consists of the person's family:
 - (a) any fear of persecution, or any persecution, that any other family member has experienced, where the fear or persecution is not for one of the Convention reasons; and
 - (b) any fear of persecution, or any persecution, that the applicant or any other family member has experienced, where it is reasonable to conclude that the fear or persecution would not exist if it were assumed that the fear or persecution mentioned in (a) above had never existed.
14. Therefore, a person who is pursued because he or she is a relative of a person targeted for a non-Convention reason does not fall within the grounds for persecution covered in the Convention definition.
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 fear is well-founded where there is a real substantial basis for it but not if it is merely assumed or based on mere speculation. A 'real chance' is one that is not remote or insubstantial or a far-fetched possibility. A person can have a well-founded fear of persecution even though the possibility of the persecution occurring is well below 50 per cent.

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 to 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 to 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.

CLAIMS AND EVIDENCE

21. The Tribunal has before it the Department's file relating to the applicant. The Tribunal also has had regard to the material referred to in the delegate's decision, and other material available to it from a range of sources.
22. The applicant was represented in relation to the review by his registered migration agent, [name and firm deleted: s.431(2)].

23. The applicant stated in his protection visa application that he was a citizen of Iraq. He submitted a copy of an extract of his G series Iraqi passport. He indicated he was born in Basra in [month and year deleted: s.431(2)]; he was fluent in Arabic and English; he was an Arab; his religion was Islam; he never married; he came to Australia in June 2007 as a student; he was previously living in the United Arab Emirates between September 1997 and June 2007 and prior to that in Jordan between November 1993 and September 1997; he was a temporary resident in Jordan and UAE; he had undertaken 16 years of education; and his parents and [sibling] resided in Australia.
24. The applicant claimed his father was a doctor and university staff member who was discriminated against by the regime of Saddam Hussein which forced him and his family to leave Iraq when he was a small child. He cannot remember anything personally but his family explained the reasons of the departure. After the overthrow of the Saddam Hussein regime, his father was subjected to persecution and accused him of being a supporter of Saddam Hussein and perceived as a Ba'athist because he was a university professor under the previous regime. All his family became targets. He would be killed by radicals who have an interest in his father and his family. He has no family members in Iraqi who could protect him. He cannot speak an Iraqi dialect having lived in UAE and Australia. He would be perceived as a foreigner. He would be singled out and harmed because he had lived in a Western country. The Islamic groups belonging to the Shi'a and Sunni would harm or mistreat him if he returned to Iraq. He would be harmed in Iraq for a number of reasons: as the member of a well-known [specialist's] family; as the member of a family of a targeted university professor and intellectual; as a returnee who had spent most of his life outside Iraq and be perceived as a traitor; as a person who had no family in Iraq protecting him; and as someone who will criticise the armed Islamic groups and tell everyone about the Western style of politics and democracy. He also claimed he will be denied his liberty to live a lifestyle that he likes having adopted a Western lifestyle. He did not believe that the Iraqi authorities will protect him because they could not protect their own people and government, had turned a blind eye to the "radicals" and were under the control of the "radicals and extremists who have no mercy" towards their targets.
25. The representative provided a written submission to the Department [in] October 2011 and the following is a summary. The applicant's parents arrived in Australia and applied for a protection visa which was granted. They were assessed as refugees as members of a particular social group comprising intellectuals, university staff, doctors and their family. He referred to country information about Iraq which indicated the security environment in Iraq remained extremely dangerous and there was a threat of kidnapping which would apply to the applicant because he is perceived as a foreigner, a returnee from a Western country, the son of a wealthy family or intellectual family residing in a Western country, as a lonely young man who has no family supporting him and an imputed political opinion. The applicant knew nothing about the area where his family previously lived in Iraq and there was information which indicated that Iraq is attached to their neighbourhoods and support is very important. The applicant would be perceived as a collaborator because of his residence in Australia where he has adopted and admired the political system. He would express his political opinion if he returned to Iraq and he is opposed to the armed Islamic groups who are competing for control in Iraq. The freedom to express his views is of particular importance. The Iraqi government cannot protect the applicant and is unable to protect its own members. The applicant cannot relocate safely to another part of Iraq because the whole country is in turmoil. The applicant is at harm from Shi'a radicals because the applicant is a moderate Shi'a. The applicant does not have a right of residence in any other country. He was residing in the UAE but his temporary residence was cancelled upon departure. The applicant had a

well-founded fear of persecution on account of his religion, political opinion and membership of several particular social groups.

26. The applicant provided his S series Iraqi passport to the Department which contained residence stamps for the UAE. The most recent stamp was valid between [January] 2007 and [January] 2010 and states the permit becomes invalid if the bearer resides outside of the UAE for more than six months. The residence visa indicates it was cancelled [in] February 2010, which was during the applicant's most recent absence from Australia.
27. The applicant was interviewed by a delegate of the Minister [in] October 2011. There is no recording of the interview held on the Departmental file. The Tribunal has referred to the handwritten notes of the delegate and the following is a summary His religion is Shi'a. He has [siblings] living in the United Kingdom and a [sibling] living [in Australia]. He lives with his family in Sydney. He has aunts in Baghdad, Dubai and USA, and an uncle in Syria. His parents live in Sydney. He cannot return to Iraq because he will be killed or kidnapped because of his father's social status. His father went to Iraq three or four years ago and was threatened when he tried to resume his position. This occurred in Basra. He was given a note and bullet telling him to leave or he would be killed. He has lived in Australia and is Westernised. He attended an American school in Dubai. He would be forced to align himself with the Shi'a militia, does not know anyone in Iraq, has no friends and it would be dangerous for him to go there. He is a secular Muslim and drinks and smokes which would not be tolerated. He has not been to Iraq since 1994. His family is well-known in Basra.
28. The delegate made a decision [in] November 2011 to refuse to grant the visa to the applicant. The delegate did not accept the applicant was the member of a particular social group as a university student because he did not study in Iraq and would not be a university student there. He did not accept that foreigners were a particular social group because they are not a homogenous group. He did not accept he was a returnee from a Western country because he had spent most of his life in Jordan and the UAE. The delegate did not accept the applicant's father would still be well-known in Iraq. The delegate found there would be a significant number of relatives remaining in Iraq who could protect him. The delegate found that if the applicant was abducted, this would be motivated for financial gain and not for reasons of persecution related to the Convention. He did not accept the Shi'a militia controlled Basra and found that the applicant would be able to access effective state protection.
29. The applicant's parents travelled to Australia in August 2010 and applied for a protection visa within one week of their arrival: CLF2010/104558. His father provided a statement with the application which indicated he was appointed as a member of the university academic staff at [a university] and was always asked to join the Ba'ath Party, but declined. He suffered various forms of persecution from the former regime because of his religion. In November 1993 he went to Jordan. Agents of the Iraqi regime in Jordan were assassinating many Iraqis so he travelled to Dubai in September 1997 and worked at [a university]. He returned to Basra in April 2010 following a call from the new Iraqi government for academics to return home. The Chancellor of the [university] refused to meet him and he was told by a human resources manager that he was an enemy. He was threatened with death. His wife was threatened because she did not wear Islamic clothes and was wearing make-up. He was given an envelope containing a bullet and a death threat. He returned to the UAE. He could not return to Iraq because he was a doctor, university professor and was perceived as a supporter of the former regime. He had [details in relation to siblings deleted: s.431(2)]. He provided a resume which confirmed his position as a senior academic and [a] specialist.

30. A delegate of the Minister accepted the applicant's father was employed as a professor at [a university], was a private medical practitioner and was a [specialist]. There were reports of the victimisation and killing of doctors as a consequence of their professional status and that the kidnapping and abduction of doctors was not uncommon. The delegate referred to his frequent journeys to Iraq for the purpose of him preparing to permanently re-establish his life. The delegate accepted he was selectively targeted and faced a real chance of persecution on return to Iraq. The delegate did not accept there was an internal flight or relocation alternative available to him. The delegate found that although the general security situation in Iraq had improved substantially in recent years, armed groups continued to murder whilst bombings, assassinations and kidnappings continued to occur. The delegate did not consider effective state protection was available to him. The delegate found the applicant's father was a person to whom Australia has protection obligations and the applicant's parents were granted a protection visa [in] February 2011.
31. According to the Department's electronic movement records, the applicant first arrived in Australia [in] June 2007 as the holder of a Class TU subclass 573 student visa. He made eight journeys to and from Australia of relatively short duration since his initial arrival. His last Class TU subclass 573 student visa ceased [in] September 2011.
32. The applicant made an application to the Tribunal [in] November 2011 to review the delegate's decision. No further evidence was provided with the application. [In] March 2012 the Tribunal invited the applicant to appear before the Tribunal [in] May 2012 to give evidence and present arguments relating to the issues arising in his case. The Tribunal also wrote to the applicant with information that would, subject to his comment or response, form the reason, or part of the reason, for affirming the decision under review which related to the delay in the application between the time of his first arrival [in] June 2007 and the application made [in] April 2011, a period of more than three years and nine months. The Tribunal stated this may indicate he did not have a well-founded fear of persecution or there were not substantial grounds for believing there is a real risk that if he returned to Iraq he would be subjected to any form of significant harm. He was asked to provide the Tribunal with a copy of all the pages of his Iraqi passport and evidence of his residence in the UAE. The applicant was given until [a date in] March 2012 to provide a response.
33. On [a date in] March 2012 the representative submitted the response to hearing invitation and stated the applicant would be attending the hearing and requested that the Tribunal take evidence from his father.
34. [In] May 2012 the representative provided written submissions to the Tribunal. He referred to the applicant's claims. He stated independent evidence confirms the applicant cannot obtain effective protection in Iraq. He referred to recent advice from the Department of Foreign Affairs and Trade and the British Foreign and Commonwealth Office which referred to terrorist activities which affected many places throughout Iraq including Basra. He referred to major incidents within the last six months including car bombings suicide attacks, and improvised explosive devices which have killed hundreds of people. He referred to reports of the killing of young people who appeared to adopt a Western-style appearance such in their clothes or hairstyle and who were killed by having their head smashed with a rock weighing over 5 kilos. He stated it would not be possible for the applicant to safely relocate to another part of Iraq. He stated that the applicant does not have any family members in Iraq who could offer effective protection. He stated that he applicant was a refugee and there was no need to make any submissions in relation to complementary protection.

35. The applicant appeared before the Tribunal [in] May 2012 to give evidence and present arguments. The Tribunal also received oral evidence from [the applicant's father]. The Tribunal hearing was conducted with the assistance of an interpreter in the Arabic and English languages. The representative attended the hearing. The following is a summary of the oral evidence.
36. The Tribunal asked about the composition of the applicant's family. He stated [details deleted: s.431(2)].
37. The Tribunal asked about his uncles and aunts. He stated on his father side he has [details deleted: s.431(2)]. He does not know where they are living and is not in contact with them.
38. The Tribunal asked why he had not provided the names of his [siblings] living in the UK in his protection visa application form and character assessment form. He stated he did not think it was important because they did not live in Australia. In relation to his extended family, one aunt lives in USA but he does not know about the others. He does not have any contact with his cousins such as through his Facebook page. The Tribunal stated that failing to provide accurate information in an application may cast doubt on his credibility and this may affect the outcome of the application. The Tribunal stated it was important to provide accurate information about family composition in an application for a visa and he should provide a new character assessment form 80 to the Department containing the correct information.
39. The Tribunal asked why he applied for a protection visa. He stated his life would be threatened in Iraq. He was the member of a family associated with the Ba'ath Party. His father was captured once. He has political views and he cannot express his opinion because the government is under the control of religious groups. His lifestyle is different.
40. The Tribunal asked about the cancellation stamp on the UAE visa in his S series passport. He stated that when he travelled to Abu Dhabi, he was told at the airport he had to provide the S series passport which contained the UAE visa. He forgot to bring this passport with him. He remained at the airport in Abu Dhabi whilst they resolved this. They were going to send him back to Australia but the next flight was 36 hours later. They kept his passport as a bond until he provided the passport with the visa. The visa was cancelled during the time he was in UAE.
41. The Tribunal took evidence from the applicant's father and the following is a summary. In relation to what happened in the UAE, the applicant was under his sponsorship and when he arrived at the airport, the authorities saw that the visa was still valid from their computer records but because he did not have the passport, they stopped the applicant leaving the airport. He went to the person in charge of the airport and explained that this was his son and his visa was under his sponsorship, he was a medical practitioner and academic and promised to obtain the passport in 2 to 3 weeks. The officer agreed and he gave his passport as a bond. After receiving the passport from Australia, it was provided to the authorities. He decided to cancel the applicant's residence visa and the next time when he travelled to the UAE, he would obtain a normal tourist visa. As he was a student, it was difficult for him to return every six months to renew the visa.
42. He has [details in relation to siblings deleted: s.431(2)].
43. He returned to Iraq two or three times in 2009. The last time he returned he was threatened by the Jaysh Al Mahdi. He owns a house in Basra and it is occupied by relatives.

44. The applicant is his son and he does not advise any parent to send their children back to Iraq. The government is under religious influence and does not allow people to have a different opinion, especially the youth. Anyone who opposes them is accused of being a Ba'athist. If a family is threatened, all members are threatened, not just the father. He is well-known in Iraq and they will kill the applicant because he is his son. If they do not kill him, they will abduct him because his father is a doctor living in Australia and demand an extortionate ransom. Lately they were targeting young men, putting them on the ground and smashing their heads and accusing them of various offences because of the way they looked or dressed. Most of his former colleagues have left Iraq. Most of the educated people have left and the country is governed by religious people. His relatives are constantly under threat. The children of his brother-in-law were abducted three times and they had to pay money to secure their release. The religious groups are threatening the children of his relatives. Three million well-educated people have left Iraq and the same problems are now facing Syria and Libya. If the applicant returns to Iraq, he will be killed within a few days.

COUNTRY INFORMATION

45. Despite the decrease in reported levels of violence, suicide bombings, murders, kidnappings and disappearances of soldiers, police, government officials and civilians remain a daily occurrence in Iraq. Whilst the level of violence has decreased, experts warn that Al Qaeda, Ansar Al Islam, the Jaysh Al Mahdi and neo-Baathists remain actively engaged in violent activities as a means of promoting their objectives: see Center for Strategic and International Studies, Iraq: The Broader Trends in Violence, 30 April 2009. There is ongoing evidence that the level of violence has begun to escalate. The US State Department report on human rights in Iraq, March 2010:

During the year the following significant human rights problems were reported: arbitrary or unlawful killings; insurgent and terrorist bombings and executions; disruption of authority by sectarian, criminal, and extremist groups; arbitrary deprivation of life; disappearances; torture and other cruel, inhuman, or degrading treatment or punishment; impunity; poor conditions in pretrial detention and prison facilities; denial of fair public trials; delays in resolving property restitution claims; immature judicial institutions lacking capacity; arbitrary arrest and detention; arbitrary interference with privacy and home; other abuses in internal conflicts; limits on freedoms of speech, press, assembly, and association due to sectarianism and extremist threats and violence; limits on religious freedom due to extremist threats and violence; restrictions on freedom of movement; large numbers of internally displaced persons (IDPs) and refugees; lack of protection of refugees and stateless persons; lack of transparency and significant widespread corruption at all levels of government; constraints on international organizations and nongovernmental organizations' (NGOs) investigations of alleged violations of human rights; discrimination against and societal abuses of women and ethnic and religious minorities; human trafficking; societal discrimination and violence against individuals based on sexual orientation; and limited exercise of labor rights.

Insurgent and extremist violence, coupled with weak government performance in upholding the rule of law, resulted in widespread and severe human rights abuses. Although their influence and ability to attack has significantly weakened since 2007, terrorist groups such as AQI and other extremist elements continued to launch highly destructive attacks, attempting to fuel sectarian tensions and undermine the government's ability to maintain law and order. Extremist and AQI attacks continued against ISF and government officials. AQI and other extremists also conducted high-profile bombings targeting urban areas, particularly prominent government buildings, Shia markets, and mosques, and killing Shia religious pilgrims. Religious minorities,

sometimes labeled "anti-Islamic," were often targeted in the violence. Insurgents also carried out a number of attacks against other civilians. During the year, despite some reconciliation and easing of tensions in several provinces, the government's human rights performance consistently fell short of according citizens the protections the law provides.

46. The independent information demonstrates that where a person is imputed with a political opinion that is adverse to the interests of the armed Islamic groups, they will be persecuted. The UNHCR Guidelines Relating to the Eligibility of Iraqi Asylum-Seekers, October 2005, describes the position of those how are imputed with a hostile political opinion:

Iraqis who previously worked for, presently worked for, or have any type of association with the MNF or any other type of international organization or company are perceived by the insurgency as condoning and supporting the occupation of Iraq and have been indiscriminately targeted since the fall of the former regime.

Acts committed against employees or perceived supporters of the MNF or international organization or companies may vary from verbal harassment and threats to individuals and their families to stop working for the 'enemy' to kidnapping, physical attacks and even murder. Neither the local authorities nor the MNF are capable for granting proper security to their respective local nationals and employees.

...

By mid July 2005, 204 foreign nationals had been taken hostage in the country since the US-led occupation began in 2003. 37 have been killed by their captors, but several have been released or have managed to escape, others are still being held or their status is unknown. Furthermore, although it remains virtually unreported by the international media, the harassment, kidnapping and killing of Iraqis has been commonplace. According to the former Iraqi Minister of Human Rights Bakhtiar Amin, 5,000 Iraqis have been kidnapped since the fall of the former regime, with many other such incidents going unreported. At a particular risk are those working or perceived to be working with the MNF, international organization or companies, as they are viewed as traitors and collaborators with the US military and the 'occupation'

47. A report prepared by the Research and Information Unit of the Immigration and Advisory Service (UK), "Iraq: Security and State Protection, Iraqi Civilian Targets, IFA, Returns", 25 October 2005, noted:

Many civilians have been killed because they were seen by armed groups to be providing support services to the Multi-National Forces (MNF) or the Iraqi administration as, for example, translators, drivers, or cleaners.

"Every Iraqi or foreigner who works with the coalition is a target. Ministers, mercenaries, translators, businessmen, cooks or maids, it doesn't matter the degree of collaboration. To sign a contract with the occupier is to sign your death certificate. Iraqi or not, these are traitors. Don't forget that we are at war. ...

Iraqis and foreigners who have been captured are known to have been detained in inhumane conditions and to have been tortured and ill-treated prior to having been killed. Indeed, although they received little international media attention, the majority of hostages are in fact Iraqi according to sources. Insurgent groups that target civilians in Iraq justify their actions on the basis that persons who support in any way the MNF, which they regard as foreign occupation, are not civilians entitled

to protection. They aim to punish them for their collaboration and to warn others to avoid such work. ...

It is of note that of the 34 contractors who were either killed, wounded or went missing in the same month, 32 were Iraqi nationals and none were American.

48. Human Rights Watch set out in their report, "A Face and a Name: Civilian Victims of the Insurgent Groups in Iraq" 2 October 2005, the increased willingness of members of the insurgency to target civilians that have an association with the government or the Multinational Forces in Iraq:

While most insurgent attacks in 2003 targeted Iraqi or multinational forces, by early 2004 insurgents began to attack so called "soft targets" affiliated with the foreign forces in Iraq; namely, Iraqi and foreign civilians working for, or suspected of working for, the Multi-National Force of the foreign governments. The total number of victims is unknown, but press reports and anecdotal evidence reveal a pattern of threats and attacks, including the murder of civilians who work with foreign governments in any capacity.

According to those claiming responsibility for attacks on these civilians, the victims were valid targets because they were collaborating with the foreign powers in Iraq. Even though they were not directly engaged in hostilities, they were viewed as aiding and abetting foreign forces by providing services to a government or military.

A well documented target among this category of victims is Iraqi and foreign civilians working on U.S-government-funded reconstruction contracts. According to a report by the U.S. government's Special Inspector General for Iraq Reconstruction, insurgent groups killed 276 civilians working on such contracts up to March 31, 2005.

49. The human rights environment remains poor, which is demonstrated in the US State Department in their most recent annual human rights report for Iraq, 8 April 2011:

Iraqi security forces (ISF) reported to civilian authorities, but continuing violence, corruption, and organizational dysfunction undermined the government's ability to protect human rights. During the year the following significant human rights problems were reported: arbitrary or unlawful deprivation of life; extremist and terrorist bombings and executions; disappearances; torture and other cruel, inhuman, or degrading treatment or punishment; poor conditions in pretrial detention and prison facilities; arbitrary arrest and detention; impunity; denial of fair public trials; delays in resolving property restitution claims; insufficient judicial institutional capacity; arbitrary interference with privacy and home; limits on freedoms of speech, press, and assembly and extremist threats and violence; limits on religious freedom due to extremist threats and violence; restrictions on freedom of movement; large numbers of internally displaced persons (IDPs) and refugees; lack of transparency and significant, widespread corruption at all levels of government; constraints on international organizations and nongovernmental organizations' (NGOs) investigations of alleged violations of human rights; discrimination against and societal abuses of women and ethnic, religious, and racial minorities; human trafficking; societal discrimination and violence against individuals based on sexual orientation; and limited exercise of labor rights.

Extremist violence, coupled with weak government performance in upholding the rule of law, resulted in widespread and severe human rights abuses. Terrorist groups, such as al-Qaida in Iraq (AQI), and other extremist elements continued to launch highly destructive attacks, attempting to influence the elections and government

formation process, fuel sectarian tensions, and undermine the government's ability to maintain law and order. Extremist and AQI attacks continued against ISF and government officials. AQI and other extremists also conducted high-profile bombings targeting urban areas, Shia markets, and mosques, and Shia religious pilgrims. Religious minorities, sometimes labeled "anti-Islamic," were often targeted in the violence.

50. Human rights abuses carried out by the security forces, officially or unofficially, and those posing as them is confirmed by the same US State Department report:

[T]here were reports of attacks by individuals posing as ISF. On January 17, a group of approximately 30 men dressed in military uniforms executed three brothers from the Mjamma'i tribe. On April 2, 16 gunmen in ISF uniforms killed 24 persons in the Sunni village of Albusaifi. Victims of this attack included former members of the Sons of Iraq (SOI), government-paid security forces who turned against al-Qaida. On October 11, gunmen wearing military uniforms killed four members of a government-supported Sunni militia in Yusufiya.

51. The US State Department report on International Religious Freedom for Iraq, released in November 2010, indicates that sectarian and religiously inspired violence continues to be widespread in Iraq:

Although the government generally endorsed these rights, violence conducted by terrorists, extremists, and criminal gangs restricted the free exercise of religion and posed a significant threat to the country's vulnerable religious minorities throughout the reporting period. Radical Islamic elements from outside the government exerted tremendous pressure on individuals and groups to conform to extremist interpretations of Islamic precepts. Sectarian violence, including attacks on religious leaders and religious places of worship, hampered the ability to practice religion freely.

52. A list of attacks on Iraqi civilians throughout the years since the fall of the Saddam Hussein regime shows these attacks are systematically targeted at those associated with the Americans and Iraqi civil society. The targets include: policemen, truck drivers delivering goods to US bases, telephone company workers, judges, engineers working for foreign companies, international sportsmen, college deans and academics, politicians, TV presenters, Red Crescent Society volunteers, actors, army generals, doctors, contractors at US bases, employees of the US Embassy, bank managers, tribal leaders, security guards at government properties, government employees, teachers, translators, and other foreign embassy staff. The close family members of these people have also being targeted: see <http://icasualties.org/Iraq/index.aspx>, accessed 23 December 2011.

53. There are reports of recent attacks against academics, scientists and other intellectuals, CX262681: IRAQ: Iraqi scientists, doctors targeted , Al Arabiya (TV), 9 April 2011, <http://www.alarabiya.net/articles/2011/04/09/144874.html>, added: 14/04/2011:

IRAQ: Iraqi scientists, doctors targeted

By Dina Al Shibeeb

Iraqi scientists and doctors are increasingly expressing alarm about threats to their lives as the numbers targeted in killings rise while a weak government seems unable to provide adequate security.

The latest victim in the spree of apparently targeted killings was Zaid Abdul Mun'im, head of research of the molecular department at al-Mustansiriya University in Baghdad. He died after a bomb went off in his car on April 3.

Prior to his death, Mohammed Alwan, a prominent Baghdadi surgeon and the dean of the faculty of medicine of the same university, was assassinated on March 29.

Neither of the men had any known political affiliations.

"A government that cannot protect its people, does not deserve to be a government," said Hikmat Jamil, head of the self-funded group International Society of Iraqi Scientists, and a professor of medicine at the Wayne State University in Michigan.

"We have sent letters to al-Mustansiriya University and the government condemning the assassination of Dr. Mun'im," he told alarabiya.net.

The British newspaper *The Independent* placed the death toll of Iraqi academics at more than 470 by the end of 2006.

Reports from the Iraqi Physicians Union said that more than 500 of Iraq's leading medical professionals have been assassinated and more than 7,000 have been forced to leave the country after receiving death threats.

Analysts have offered many theories as to why physicians and academics have been targeted, but nothing has been substantiated. Some point the finger at Israeli intelligence services. Others believe the U.S. is aware of the planned killings and silently endorses them.

"The [incidents of targeted killings] seem to be continuing since 2003, and I don't think it will stop in the near future," said Iyad al-Zamily, founder and editor-in-chief of the Iraqi cultural website, Kitabat.com, based in Germany.

"Some of the academics were forced to seek protection by militias and political parties and to change their political views to blend in, since the government is not capable of protecting them," he added.

Mr. al-Zamily said he believes there are solutions to combat these target killings, but they get lost amid the political divisiveness which ends up exacerbating security problems.

While the Iraqi parliament is mulling laws to protect Iraqi physicians, them carrying a weapon being the latest, al-Zamily said "all Iraqis are entitled to protection, as everyone is [a target]."

Adil E. Shamoo, an Iraqi-American who is a senior analyst for the think tank Foreign Policy In Focus in Washington and author of *Who Assassinated Iraqi Academics?* said: "The evidence so far is sufficient to warrant a thorough investigation by an independent body. Iraqis, Americans, and the world need to know the truth."

The six-member Gulf Cooperation Council, and the U.S. have called on the Obama Administration to "open a serious and transparent investigation" into possible "crimes against humanity."

Before the 2003 toppling of its then-president Saddam Hussein, Iraq was known for its healthcare. Technologically, its facilities were more advanced than most other

Middle East countries. Prior to the U.S.-led invasion, students in the region flocked to Baghdad's universities and other educational institutions.

54. There is further evidence the campaign of targeted killings had recommenced and heading towards the same levels as it was a few years ago: CX264160: IRAQ: Killers target Iraq's ravaged elite again , United Press International (UPI), 11 April 2011, http://www.upi.com/Top_News/Special/2011/04/11/Killers-target-Iraqs-ravaged-elite-again/UPI-91351302548597/:

The recent murder of an Iraqi surgeon and a university researcher indicates that insurgents are again assassinating scientists, doctors and academics, even as those who survived an earlier wave of attacks are starting to return from exile to help rebuild their country.

Zaid Abdul Munim, head of research of the molecular department at al-Mustansiriya University in Baghdad was fatally wounded by a bomb that exploded under his car April 3.

Mohammed Alwan, a leading surgeon and the dean of the faculty of medicine at the same university, was assassinated March 29.

They were among a dozen Iraqi academics, journalists, scientists and other prominent professional men who have been murdered in recent months.

Few had any known political affiliations and apparently were killed by sectarian death squads or insurgents, possibly backed by Iran which seeks to absorb Iraq, its historic enemy, into its ideological and political orbit as U.S. forces move towards completion of a withdrawal scheduled for the end of the year.

This has caused alarm in Iraq's professional and academic circles because the Shiite-dominated government of Prime Minister Nouri al-Maliki doesn't appear to be able to provide security.

"A government that cannot protect its people does not deserve to be a government," complained Hikmat Jalal, head of the International Society of Iraqi Scientists and currently a professor of medicine at Wayne State University in Michigan.

Hundreds of scientists, doctors, scholars, university lecturers, artists, lawyer and others fled Iraq in 2004-08 amid the systematic slaughter of the country's leading intellectuals by killer gangs, including Islamist fanatics, who appeared determined to kill them or drive them into exile.

In early 2008, the Health Ministry said 628 medical personnel had been killed since 2003.

The Iraqi Physicians Union said more than 500 leading medical figures had been assassinated and more than 7,000 forced to flee abroad.

Before the 2003 U.S.-led invasion that toppled Saddam Hussein, Iraq, despite his brutal regime, was famed for its universities and its healthcare system.

But that all vanished amid the orgy of killings and the climate of fear it engendered among Iraq's elite.

Mustansiriya University, one of Iraq's most prestigious seats of learning, has figured prominently in these attacks.

In October 2009, Maliki, a former student there, closed the university for a time in a bid to rid it of a shadowy gang of Shiite students who allegedly murdered, tortured, beat up and raped fellow students and killed professors and administrators.

The closure of the university, which at the time has 24,000 students, followed the pistol whipping of Abdullah al-Bayati, a 63-year-old education professor, on the campus by the group known as the Students League.

He had publicly criticized the group, which acted with near impunity on the campus, controlling activities and security and even grading and admissions.

Since 2007, more than 325 students and staff members at Mustansiriya were killed or maimed. University officials said it was widely believed that Maliki's Shiite party, ad-Dawa, had links with the Students League.

Among the casualties were Jasim al-Fahaidawi, a professor of Arabic literature, shot dead on the campus in 2005.

Psychology professor Najib al-Salihi was kidnapped near the campus in 2006 and found shot to death in the morgue three weeks later.

Jassim Fiadh al-Shammari, another psychology professor, was fatally shot near the university, also in 2006.

In one of the grisliest attacks on academia, a female suicide bomber detonated a vest packed with explosives and ball bearings at the entrance to Mustansiriya's College of Business Administration and Economics in eastern Baghdad Feb. 25, 2007.

Forty-two people were killed, most of them female students waiting to take midterm examinations.

Five weeks earlier, 70 students were killed Jan. 16 when two car bombs exploded almost simultaneously near the main campus. It was one of the deadliest attacks on academia since the insurgency began following the 2003 invasion.

By late 2009, with security might tighter after U.S. forces mounted a surge offensive against the insurgents and sectarian militias, some Iraqi doctors and other professionals began to trickle back from Jordan and Syria and other countries to which they had fled in droves.

The government even decreed that doctors could legally carry guns to defend themselves. By June an estimated 600 doctors had returned.

Now the terror has started again.

55. The Network for Education & Academic Rights released an "Alert" on 21 April 2011 relating to the ongoing killings of Iraqi academics in a report entitled, New crackdown on Iraqi academic elite, <http://www.nearinternational.org/alert-detail.asp?alertid=588>, accessed 23 December 2011:

Iraqi academics have been once again the target of violent attacks by insurgencies, starting a new wave of assassinations several months ago, United Press International reported on 11 April.

Iraqi academics are again the target of insurgents as reports show the rise of attacks towards them. A dozen of academics, researchers, scientists and journalists and other

members of the country's elite have been assassinated in the last months. It appears that they were killed by insurgents or sectarian death squads and few had known political engagement. Iraq's academia is concerned of the apparent targeted rise of violence.

Academics have been increasingly worried about the rise of violence, and have publicly expressed their concerns. Hikmat Jalal, head of the International Society of Iraqi Scientists, criticized the Prime Minister Nouri al-Maliki and his Shi'ite-dominated government as unable to protect them.

NEAR would like to raise awareness about the case of five academics recently killed in this new wave of violence.

Ali Shalash, professor of Poultry Diseases in the College of Veterinary Medicine in Baghdad, has been killed by unidentified men who broke into his house on 17 February.

Saad Abduljabbar, professor in the Technological University in Baghdad was shot while inside of his car by unidentified men on 26 February.

Mohammed Alwan, Dean of Faculty of Medicine at Al- Mustansiriya University and prominent surgeon, was killed by a roadside bomb attached to his car on 29 March.

Zaid Abdul Munim, Head of Research at the Molecular Department at Al- Mustansiriya University was killed when a bomb exploded under his car on 3 April.

Yasser Ahmed Chet, Associate Dean of the Faculty of Fine Arts at the University of Mosul, and a member of the coalition, was shot down by unidentified gunmen on 9 April.

Al- Mustansiriya University, a leading university in Iraq, has been particularly targeted by recent attacks on its academic staff and students. The University had previously suffered from violent attacks and a total of 325 students and academics have been killed or badly injured since 2007.

BACKGROUND INFORMATION:

Under Saddam Hussein's rule, the Iraqi higher education system was well regarded, despite the regime's repression. Since 2004 and the beginning of the insurgency in Iraq, the country's elite has been systematically targeted by death gangs, including Islamists fanatics, willing to eliminate the elite either by killing or pushing them in exile. As a result of this climate of fear and death, several hundred academics, scholars and scientists, as well as journalists, doctors and lawyers, have fled Iraq since 2004 to avoid systematic killing. According to the Brussels Tribunal on Iraq, at least 453 academics have been killed in Iraq since 2003.

56. The targeted nature of killings and attempted assassinations of members of civil society is discussed in another recent report: CX264074: IRAQ : In Iraq, assassinations are a nightly event, The Washington Post, 4 May 2011, http://www.washingtonpost.com/world/middle-east/in-iraq-assassinations-are-a-nightly-event/2011/04/26/AFEWfVgF_story.html:

The assassins strike quietly, often just after dark, as Iraq's political and military leaders speed home surrounded by armed guards.

The dead in April alone included generals, police commanders, a deputy minister and the head of Iraq's tax agency. The wounded included a member of parliament, a judge and the head of the national theater, survivors of attacks on their motorcades.

Among 50 targeted killings last month, most were carried out by gunmen using silenced weapons, according to Iraq's Interior Ministry, which oversees the country's police forces.

Assassinations are not an entirely new feature of Iraq's political landscape. But a stealthy string of killings that began last month has given them new prominence, shaking Iraqis' confidence in their government's ability to protect them and raising questions about the country's security just months before the last U.S. troops are scheduled to withdraw.

In recent days, Prime Minister Nouri al-Maliki and members of parliament have felt compelled to address the killings repeatedly in public, vowing all-out efforts to stop them.

But the killings have continued with at least 14 more dead from gun attacks and targeted bombings, mostly against police officials, in the first three days of May. Late Tuesday, a car bomb killed at least 15 people and wounded more than 30 in a Shiite neighborhood in Baghdad.

Iraqi intelligence officials and U.S. military officers say the killings are being waged from both ends of Iraq's religious and political spectrum, as part of renewed jockeying for power in advance of the American pullout.

According to Iraqi officials, Sunni extremists, including the insurgent group al-Qaeda in Iraq and former members of Saddam Hussein's Baath Party, who still consider Iraq's elected government illegitimate, are behind most of the recent slayings. But they say Shiite Muslim militias, some with close ties to Iran, also appear to be conducting some of the killings to assert influence and settle scores.

Ali al-Dabbagh, Iraq's chief government spokesman, said there was no evidence that Shiite militias are behind the assassinations. But he acknowledged that the sheer number of killings of high-placed government officials has become a serious problem. "This is a new way of terrorism here in Iraq," Dabbagh said. "This is a big threat for the whole process, the whole government."

Assassinations accounted for roughly 20 percent of about 251 violent deaths in Iraq last month. The death toll is orders of magnitude smaller than what Iraq endured during the height of the country's sectarian bloodshed in 2006 and 2007, when more than 2,000 Iraqis died in violent attacks each month. Iraq's overall homicide rate is now lower than in most American cities.

Calling the tactic "sick," Ad Melkert, the United Nations special representative in Iraq, said he alerted the Security Council last year to the increasing frequency of assassinations. Maj. Gen. Jeffrey S. Buchanan, the senior U.S. military spokesman in Iraq, said the country's security forces recorded an average of 20 assassinations in recent months and just more than 30 in March. Buchanan said that was more than the United States would classify strictly as assassinations but called the trend "worthy of concern" even before April's spike more than doubled the recent average.

The intensity of the recent assassinations has attracted lurid coverage in the Arabic-language media, with haunting details of the previous night's attacks recounted each morning in television and newspaper reports across the country.

Iraqi intelligence officials say the killers include gunmen who have stalked Iraqi bureaucrats with semiautomatic weapons muzzled with silencers. Others have been masked men on motorbikes who slap magnetic "sticky bombs" on motorcades carrying political and military elite.

In response, some police officers said they have refused to drive their state-run pickup trucks, shunning any vehicles with Iraqi government markings as "caskets." Iraq's intelligence agencies have acquired scores of beat-up taxis for agents and high-ranking officials so they can disguise themselves on their way to and from work.

To cut off potential escape routes, security forces have erected new roadblocks and checkpoints in recent days, contributing to traffic gridlock.

"It's a new, blind kind of insurgency," said Ahmen Riyad, 25, a police officer who was directing traffic this week at an intersection adorned with makeshift memorials to three assassinated police officers, including two killed recently by gunmen using silencers.

In recent congressional testimony, State Department officials have described Iraq as "relatively stable" as the roughly 50,000 U.S. troops still in the country begin to prepare for departure.

A front group for al-Qaeda in Iraq recently asserted responsibility for most of the killings in recent months. In a posting on an extremist Web site, the Islamic State of Iraq listed the names of 62 government employees and security workers it said it had killed, including 22 assassinated with silenced weapons.

In an interview deep inside one of Iraq's police compounds, Maj. Gen. Hussein Kamal, the domestic intelligence chief, said the government has information suggesting that remnants of the country's Baathist regime might have returned to Iraq in recent months from Syria.

But he said Sunni insurgents are not the only force behind the recent killings. Kamal said Shiite extremist groups, most notably Asaib Ahl al-Haq, which has ties to Iran, seem to be behind some of the killings, targeting anyone perceived as against them, he said.

Marisa Cochrane Sullivan, an expert on Shiite extremist groups in Iraq and the deputy director of the Institute for the Study of War in Washington, said she thinks the increase in assassinations has less to do with Iraq's neighbors attempting to compound turmoil in the Middle East than jockeying for superiority for when U.S. forces leave. "It's a very uncertain time, and groups are trying to work now to influence in their favor."

57. Death squads supported by Iran's Islamic Revolutionary Guards Corps and its Quds force have also carried out targeted killing: CX286829: IRAQ: Iraq Shiite militia splinters into hit squads, gangs, Al Arabiya (TV), 21 July 2011, <http://www.alarabiya.net/articles/2011/07/21/158642.html>. Added: 10/05/2012:

Anti-US cleric Moqtada Al Sadr's Mehdi Army has spawned dozens of renegade splinter groups which frequently assassinate Iraqi officials on behalf of foreign sponsors, Sadrist and security officials say.

The Mehdi Army, which fought against US troops after the 2003 invasion of Iraq, has fractured into small, well-trained and well-armed criminal gangs involved in contract

killings, kidnapping and extortion from homeowners, businessmen and government agencies, particularly in Baghdad.

58. The Department of Foreign Affairs and Trade providing the most recent travel advice for Iraq, dated 23 March 2012:

We strongly advise you not to travel to Iraq because of the extremely dangerous security situation and very high threat of terrorist attack. Australians who decide to stay should ensure they have appropriate personal security protection measures in place.

In 2012 insurgents have conducted a number of large attacks against the Government of Iraq and civilians that killed or injured hundreds of people in Baghdad and elsewhere in the country.

Heightened security arrangements will be in place for the Arab League Summit in Baghdad on 27-29 March 2012, including the expected closure of Baghdad International Airport on 26-30 March. See under Local travel for further information.

Terrorists and anti-government forces continue to conduct attacks against a range of civilian and government targets, including places frequented by foreigners. Rocket and mortar attacks, including in the International Zone in Baghdad, occur without warning.

Both foreign and Iraqi nationals continue to be at risk of being kidnapped or murdered.

59. In relation to the issue of an internal flight alternative, advice from the UNHCR in 2005 has stated that internal relocation is not reasonably available to most Iraqis:

Within the context of the current security situation in Iraq and in light of a range of open questions that will determine the future political, security and economic situation in the country (the ongoing political process, the status of Kurdish areas including Kirkuk and Mosul, large numbers of internally displaced persons (IDPs), property disputes, etc.), an extremely cautious approach should be adopted in assessing the availability of an internal flight or relocation alternative (IFA/IRA) within Iraq.

Furthermore, within the Iraqi context and with the exception of the capital city of Baghdad, cities are constituted of people belonging to specific tribes and families. Any newcomer, particularly when he/she does not belong to the existing tribes and families, is liable to be subject to discrimination.

60. Furthermore, there is a lack of appropriate housing, uncertain supplies of food and potable water, difficulties in accessing appropriate health care as outlined in the UNHCR Country of Origin Information, October 2005 at pages 91 - 113. In their advisory on internal flight, released April 2007, UNHCR notes "*there has been deterioration in the security situation in Iraq*" where "*massive targeted violations of human rights are prevalent*". They provide:

An individual, who relocates to an area from where she/he does not originate, would likely face serious ongoing difficulties given the lack of protection provided by local authorities, communities or tribes, ethno-religious hostilities and the lack of access to basic services.

61. The UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Iraqi Asylum Seekers, April 2009, provides the option of internal flight or relocation should be examined cautiously and in the context of the individual claim:

Generally, no internal flight alternative will be available because of (i) the ability of non-State agents of persecution to perpetrate acts of violence with impunity, (ii) the ongoing levels of violence in mainly the central governorates of Baghdad, Diyala Kirkuk, Ninewa and Salah Al-Din giving rise to new persecution, (iii) access and residency restrictions, and (iv) the hardships faced in ensuring even the basic survival in areas of relocation.

FINDINGS AND REASONS

62. On the basis of the original Iraqi passport provided to the Tribunal and a copy of his previous Iraqi passport provided to the Department, the Tribunal finds the applicant is a national of Iraq. There is no evidence before the Tribunal that the applicant has a right of residence in any other country including Jordan or the United Arab Emirates. Accordingly, the applicant claims will be assessed against his country of nationality, Iraq.
63. The applicant claims to fear harm in Iraq because of his membership of several groups as the member of a well-known medical specialist's family, the member of a family of a former university professor and intellectual, a returnee who had spent most of his life outside Iraq and therefore perceived as a traitor, as someone who had no family members in Iraq, as having adopted a Western lifestyle, and on account of his political opinion because he would criticise the armed Islamic groups.
64. Having regard to the documentation provided in this application and the protection visa application of the applicant's father, the Tribunal accepts the applicant is a Shi'a Muslim whose father was a prominent academic and medical practitioner in Basra. The Tribunal also accepts that the applicant's father was looking to return to Iraq to establish his career but received death threats because of his past membership of the Ba'ath Party and as an academic and medical practitioner. The Tribunal notes that in February 2011 a delegate of the Minister found the applicant's father is a person to whom Australia has protection obligations.
65. The Tribunal has had regard to the country information which indicates that the human rights environment in the Iraq remains tenuous and unpredictable. The Tribunal has had regard to information that armed Islamic groups have carried out various terrorist attacks and gives significant weight to the evidence they have targeted individuals as academics and those associated with the former Ba'ath Party and their family members. The Tribunal accepts the advice of the Department of Foreign Affairs and Trade that violence persists in Iraq. The Tribunal gives significant weight to recent reports which indicate that the killing of intellectuals continues to be a significant problem in Iraq.
66. The Tribunal has considered whether the applicant's fear of persecution relating to his claimed fear of persecution as the member of his family should be disregarded under s.91S of the Act. The Tribunal accepts the applicant's family includes members who were academics, intellectuals and medical practitioners and these groups have been selectively targeted for persecution for reasons relating to the Convention. The Tribunal finds there is a real chance that the applicant's father will be persecuted if he returned to Iraq because of the Convention reason of an imputed political opinion given that all teachers and academics were forced to join the Ba'ath Party under the regime of Saddam Hussein and this has been used as a pretext for their persecution and killing since April 2003. The country information also indicates the selective targeting of academics and medical practitioners, or more broadly, intellectuals,

which constitutes a particular social group for the purposes of the Convention. The Tribunal accordingly finds the applicant's claims of persecution should not be disregarded in the assessment of his membership of his family as a particular social group.

67. Having regard to the country information cited above, the Tribunal accepts the applicant would be targeted by an armed Islamic group because of his membership of a particular social group comprising his family. The Tribunal accepts the applicant's father was a senior academic at [a university] and was, and continues to be, a well-known [specialist]. The Tribunal accepts that hundreds of academics, medical practitioners and intellectuals have been killed since April 2003 as part of a programme of targeted killings by armed Islamic groups with the intention of eliminating not only academics, but intellectuals more generally, and that programme of targeted killings continues to the present. The Tribunal accepts that members of the family of academics, intellectuals and medical practitioners have also been targeted for persecution. The Tribunal finds the applicant would be killed or subjected to other forms of serious harm if he returned to Iraq and the essential and significant reason for this is because of the membership of his family. The Tribunal accepts the applicant cannot access effective state protection because the independent evidence referred to above indicates the Iraqi authorities are themselves implicated in widespread human rights abuses. The Tribunal therefore finds the applicant would be subjected to Convention related persecution if he returned to Iraq within the reasonably foreseeable future.
68. The Tribunal has assessed these factors singularly and on a cumulative basis and finds there is a real chance that the applicant will face persecution amounting to serious harm for the purposes of s.91R(1)(b) of the Act, now or in the reasonably foreseeable future, should he return to Iraq, in that it involves a threat to his life or liberty or significant physical harassment or ill-treatment.
69. The Tribunal accepts that the applicant's claims which bring him within the scope of the Convention ground of membership of a particular social group which is the essential and significant reason for the persecution which he fears as required by s.91R(1)(a) of the Act.
70. The Tribunal finds that the persecution which the applicant fears involves systematic and discriminatory conduct as required by s.91R(1)(c) of the Act, in that it is deliberate or intentional and involves his selective harassment or persecution for a Convention reason, namely membership of a particular social group as the member of his family.
71. The applicant has made other claims in relation to his religion, political opinion and the membership of other particular social groups. As the Tribunal has already found that there is a real chance that the applicant will be persecuted in Iraq for reasons of his membership of a particular social group, the Tribunal does not need to make findings on all his other claims.
72. The Tribunal has considered whether there is an internal flight alternative reasonably available to the applicant. The Tribunal accepts the advice of UNHCR that an internal flight alternative in southern or central Iraq from an Iraqi asylum seeker is not available given the widespread violence, insecurity and human rights violations. The Tribunal notes the applicant originates from Basra but has been residing in Jordan, the UAE and Australia for most of his life. The Tribunal also notes the applicant does not have any immediate family members remaining in Iraq and his extended family members constitute a group of elderly aunts and uncles. The Tribunal also accepts, having heard the applicant in the hearing, and based on the Tribunal's experience of having interviewed hundreds of Iraqis living in Syria and Jordan between 2004 and 2010 in connection with the offshore refugee programme, he

has a barely detectable Iraqi accent to his Arabic language and this would quickly identify him as someone who has not been living in Iraq for many years. Having considered all this evidence and the UNHCR advice on internal relocation, the Tribunal finds it is not reasonable in all the circumstances of the applicant to relocate anywhere else safely within Iraq. The Tribunal finds on the basis of information in the application forms, the applicant has never lived, nor has any right of residence, in the three Kurdish governorates.

73. There is no evidence the applicant has a legally enforceable right, whether permanent or temporary, to enter and reside in any other country apart from Iraq. The Tribunal finds that s.36(3) of the Act does not apply to the applicant.

CONCLUSIONS

74. The Tribunal finds the applicant is outside his country of nationality, Iraq. For the reasons given above, the Tribunal finds he has a well-founded fear of being persecuted for reasons of membership of a particular social group if he returned to that country, now or in the reasonably foreseeable future. The Tribunal finds that the applicant is unwilling, owing to his fear of persecution, to avail himself of the protection of the Iraqi government. The Tribunal finds no internal flight alternative is reasonably available having regard to the applicant's circumstances. The Tribunal finds that the applicant is not excluded from Australia's protection by s.36(3) of the Act. It follows that the Tribunal is satisfied that the applicant is a person to whom Australia has protection obligations under the Refugees Convention. Consequently the applicant satisfies the criterion set out in s.36(2)(a) of the Act for the grant of a protection visa.

CONCLUSIONS

75. The Tribunal is satisfied that the applicant is a person to whom Australia has protection obligations under the Refugees Convention. Therefore the applicant satisfies the criterion set out in s.36(2)(a).

DECISION

76. The Tribunal remits the matter for reconsideration with the direction that the applicant satisfies s.36(2)(a) of the *Migration Act 1958*.