

1110871 [2012] RRTA 131 (6 March 2012)

DECISION RECORD

RRT CASE NUMBER: 1110871

DIAC REFERENCE(S): CLF2011/109644

COUNTRY OF REFERENCE: Iraq

TRIBUNAL MEMBER: Ms Philippa McIntosh

DATE: 6 March 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, being a person to whom Australia has protection obligations under the Refugees Convention.

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 and Citizenship 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, arrived in Australia most recently on [date deleted under s.431(2) of the *Migration Act 1958* as this information may identify the applicant] April 2011 and applied to the Department of Immigration and Citizenship for the visa [in] July 2011. The delegate decided to refuse to grant the visa on [in] October 2011 and notified the applicant of the decision.
3. The delegate refused the visa application on the basis that the applicant was not a person to whom Australia had protection obligations under the Refugees Convention
4. The applicant applied to the Tribunal [in] October 2011 for review of the delegate's decision.
5. The Tribunal finds that the delegate's decision is an RRT-reviewable decision under s.411(1)(c) of the Act. The Tribunal finds that the applicant has made a valid application for review under s.412 of the Act.

RELEVANT LAW

6. 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. In general, the relevant criteria for the grant of a protection visa are those in force when the visa application was lodged although some statutory qualifications enacted since then may also be relevant.
7. Section 36(2)(a) of the Act 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 1951 Convention relating to the Status of Refugees as amended by the 1967 Protocol relating to the Status of Refugees (together, the Refugees Convention, or the Convention).
8. Further criteria for the grant of a Protection (Class XA) visa are set out in Part 866 of Schedule 2 to the Migration Regulations 1994.

Definition of 'refugee'

9. 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.

10. 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 and *Appellant S395/2002 v MIMA* (2003) 216 CLR 473.
11. 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.
12. There are four key elements to the Convention definition. First, an applicant must be outside his or her country.
13. 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.
14. 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.
15. 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.
16. 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 persecution 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.
17. 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.

18. 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.

CLAIMS AND EVIDENCE

19. 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.
20. The applicant appeared before the Tribunal [in] January 2012 to give evidence and present arguments. The Tribunal also received oral evidence from her daughter, [Ms A]. The Tribunal hearing was conducted with the assistance of an interpreter in the Arabic and English languages.
21. The applicant was represented in relation to the review by her registered [migration agent].

Claims made to the Department (DIAC)

22. The applicant claimed that she was a citizen of Iraq and of no other country. She had no right of residence elsewhere, whether temporary or permanent. Certified copies of the applicant's old and current passports were submitted, as was the cover page of her husband's Iraqi passport.
23. The applicant claimed that she was born in Baghdad, and was a Sunni Muslim. Her husband, [Mr B] was a Shi'a Moslem. The couple married in 1976.
24. She claimed that the couple frequently travelled to [Country 3] and other countries. According to details provided by her she had visited [Country 3] on 24 occasions, the UK on two occasions, Syria on 11 occasions, Lebanon on two occasions and Saudi Arabia on one occasion, as well as one previous visit to Australia in May 2010.
25. In 2006, on their return from a trip to [Country 3], they discovered that their home had been illegally occupied by Shi'a Moslems. They were given alternative accommodation by her husband's employer, and were pursuing the illegal occupation through legal avenues.
26. The applicant claimed that her husband was employed by [Employer 1] [Company 2] in Iraq. Evidence of his employment with this company was submitted in the form of a letter from the company. (Photocopy of letter dated 21 February 2010 to the Australian Embassy from [the] Director-General". It was on the letterhead of the "Republic of Iraq, Ministry of Oil, [Company 2] (Employer 1)". The author confirmed that [Mr B] was employed full-time by [Employer 1] [in a senior position]. Details of his salary were provided.)
27. [In] May 2010 the applicant arrived in Australia on a subclass 679 Sponsored Family Visitor visa. She left Australia [in] July 2010. (According to DIAC records, her husband was refused a visa to accompany her to Australia on this trip. The same record showed that he had advised

that he had been employed [in a senior role] within the Iraqi Ministry of Oil since 1999). One of the reasons for refusing the visa was "... high risk employment, very high risk of lodging PV application onshore").

28. On 29 May 2010, while driving to their home in Baghdad, her husband was attacked by people in a black car which had been following his own. He reported this matter to the police.
29. On 8 June 2010, the same car stopped him while he was driving in the evening, and one of its three occupants told him to leave his job. A photocopy of a document in Arabic was submitted, according to a translation of which the applicant's husband had lodged a complaint about this incident with the [Investigation Court in] June 2010. The applicant husband had had a gun pointed at his head and was told to resign from his [job] at [Company 2] and to leave Iraq or they would kill him. The man threatening him had said this was "the final warning". The applicant's husband also stated in this document that these men had previously intercepted him [in] May 2010 and that he had lodged a complaint at [a] police station. He requested that "legal procedures be taken against them". With this document was a photocopy of an apparently official receipt, according to a translation of which it was [dated] June 2010 and was a "receipt of government revenues" for 100 Iraqi dinars as "fee for investigation". It was issued by the "Republic of Iraq, High Judicial Council, Presidency of Appeal Court, Baghdad/Rassafa, Name of Court: [name deleted: s431(2)]". Also submitted were photographs of a car which appeared to have had its windows smashed.
30. In November 2010 two men came to the applicant's house, trying to smash in the door and shouting her name. When they could not get into the house they smashed up the couple's car. They fled when neighbours intervened.
31. On 27 March 2011 the applicant's husband received an e-mail threatening him and the applicant. According to a translation, which was submitted with a printout of the original document in Arabic, it was titled "A final warning" and said

To [name] may God curse him

In the name of God the Merciful the Compassionate

"Indeed, the penalty for those who wage war against Allah and his messenger and strive upon earth [to cause] corruption is none but that they be killed or crucified or that their hands and feet be cut off from opposite sides of that they be exiled from the land. That is for them a disgrace in this world; and for them in that Hereafter is a great punishment".

May God curse the hypocrites and disbelievers ... Victory is close, and we swear to kill you pull off your rotten heads and cut your hands and your feet

We warn you for the last time that we will be cutting off infidelity, corruption, hypocrisy, and this will happen when you and your bitch corrupt wife leave your work and your homes in a duration of up to 2 days, otherwise you will not enjoy life 1 minute after this deadline".

We know to our best knowledge that your offspring are in the land of infidelity and immorality, so, follow your children in the country of vice and corruption, so that you share with them disgrace in this world and the next world

You will be a lesson to others

He who warns is excused.

32. The applicant said that she and her husband did not know who sent this e-mail but from the style thought it was from one of the Shi'a militias. Her husband had reported this threat to his employers.
33. She re-entered Australia [in] April 2011 on a subclass 679 visa, and subsequently lodged the application for the protection visa.
34. On 1 June 2011 her husband was stopped by people in two cars and was taken from his car and assaulted. His shoulder was injured and he suffered bruising. The attackers ran off when people nearby tried to intervene. In evidence medical records were submitted. This was a document in English and Arabic, according to a translation of which it had been issued to a person in the name of the applicant's husband by [name deleted: s. 431(2)], Emergency doctor at Ibn Al-Nafees Hospital, on 1 June 2011. It stated that he had been admitted on the night [in] June 2011 to the emergency department suffering from a bleeding wound on the right shoulder and bruises on the right leg and left hand. He also was suffering from blurred vision and loss of hearing - the letter was a referral for a CT scan at another hospital. The author said that the patient had been "the victim of an assault ... by unknown persons".
35. The applicant's daughters no longer lived in Iraq. One was a permanent resident of Australia. One of her brothers lived in the USA.
36. The Iraqi government would be unable and/or unwilling to protect the applicant.
37. In his decision the Minister's Delegate accepted that the applicant was a citizen of Iraq and that she did not have effective protection of a third country under s.36(3) of the Migration Act. He appeared to accept that she was a Sunni Muslim in a mixed marriage, that her husband was a senior public servant with [Employer 1], and that the couple travelled extensively overseas and had children living abroad. He accepted that the harm feared, being killed, amounted to persecution. He accepted that the applicant and her husband had been unable to evict the people living in their apartment, but noted that [Employer 1] had provided them with an alternative place to live. He expressed "surprise" that the applicant's husband had been attacked on three occasions without being killed and that his assailants had just chosen to warn him to leave his work and to leave the country rather than kill him. However, although no clear finding was made on this point, he appears to have accepted that the threats occurred. He concluded that the applicant and her husband had done little to obtain protection from the authorities apart from making reports to the police. The applicants did not change address nor engage private protection, although he accepted that they exchanged cars with a relative and changed some of their travel movements. He considered that the authorities could have provided the applicant and her husband with a "high standard of protection" if they had sought it. He was satisfied that the applicant would not be denied protection for a Convention reason.

Submissions to this Tribunal

38. In a detailed submission received on 5 December 2011 from the [applicant's solicitor], it was submitted that the applicant had a well-founded fear of being persecuted in Iraq for a number of Convention reasons.
39. The first was her membership of a particular social group. Several particular social groups were listed, being: "Family members of government officials or other persons associated with the current Iraqi government, administration or institutions", "Iraqis in mixed marriages",

"Women in Iraq" and "Iraqis with family members residing in Western countries and/or returnees from the West".

40. The second was "imputed political opinion". It was argued that a political opinion would be imputed to her that she supported [Employer 1] because of her husband's employment, making her vulnerable to persecution by Shi'a or Sunni Moslem insurgents who opposed [Employer 1] and/or the Ministry of Oil. Extremist Sunni militia groups could impute her with the political opinion that she supported the Shi'a dominated government because of her husband's employment and their mixed marriage. Alternatively some extremist Shi'a militia groups could impute her with the political opinion that she was opposed to their ideology because she was a Sunni Moslem. These militias and Al Qaeda in Iraq all believed that the USA invaded Iraq to steal oil. [Employer 1] was involved in exporting to the American [buyers]. Evidence of this was provided on the website of [URL deleted: s. 431(2)]. Her husband was employed by [Employer 1] as head of [department deleted: s. 431(2)]. [Employer 1] was part of Iraq's Ministry of Oil.
41. The Tribunal was referred to the UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Iraqi Asylum Seekers, April 2009, which included in a list of categories of people at risk "Government officials and other persons associated with the current Iraqi Government, Administration or Institutions". It reported that there were also many attacks on government employees, including by targeting their private or office vehicles, and government buildings. Family members, in particular of senior government officials, were also at risk of being killed or wounded in attacks or, in some cases, had been targeted deliberately. This information was confirmed in a "Note on the Continued Applicability ..." of the above April 2009 guidelines, issued by UNHCR on 28 July 2010 (UN High Commissioner for Refugees, Note on the Continued Applicability of the April 2009 UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Iraqi Asylum-Seekers, 28 July 2010, <http://www.unhcr.org/refworld/docid/4c4fed282.html> [accessed 24 January 2012]).
42. A report from the UN Assistance Mission for Iraq (UNAMI), dated January 2011, was also relied on. It confirmed that assassinations, targeted killings and extrajudicial executions continued to take place throughout most of Iraq. Victims included civil servants and other government employees. There were reports that a number of these attacks were perpetrated by members of armed groups. Many of these attacks appeared to be aimed at undermining the functioning of state institutions and to "punish" anyone seen to be associated with them. Of particular relevance to the present matter, the report observes that family members of the targets were routinely harmed when these crimes were committed. Also of particular relevance to the present matter, this report noted that a large number of public servants attached to various government Ministries, including the Oil Ministry, were also targeted. It was noted that, according to a press report from an independent newsagency in Iraq, the Director-General of [Employer 1] was shot dead by an "unknown armed group" in Baghdad [in] March 2011 [URL deleted: s.431(2)]. It was stated by the applicant's solicitor that this translated job title was misleading and that the description of this man's position was better translated as leader or director. It was submitted that her husband held the [similar] position in the [department] of [Employer 1]. It was also noted that this man was killed in the same month that the applicant and her husband received the threatening e-mail. The Tribunal was also referred to a more recent killing of an Iraqi Oil Ministry official in Baghdad (in Aswat al-Iraq, 23 October 2011).

43. As to the issue of state protection, the Tribunal was referred to the UNHCR Eligibility Guidelines (2009) which stated at paragraph 91 that "persecution emanates mainly from a range of non-State actors. Generally, protection by national authorities will not be available given that the national authorities have yet limited capacity to enforce law and order, the ISF may be infiltrated by radical elements and the judiciary is prone to intimidation and corruption". Similar evidence was provided from the Danish Immigration Service, "Security and Human Rights in South/Central Iraq", from 10 September 2010, which set as follows:

a reliable source in Iraq stated that Iraqis in S/C Iraq cannot turn to the authorities for protection from nonstate actors. There is little real police activity in Iraq when it comes to protecting people making claims. A person can file a case, however very little investigation would be made into the case. The police are ill trained and ill equipped to take on such duties ... Structurally, the police are still "miles away" from being able to address reports that filed.

It is fundamental to realise that in the current situation, the Iraqi authorities are unable to provide protection to its citizens and seeking the state protection really isn't an option. A source in Baghdad did not consider that a person in a situation where he or she has been threatened could seek the protection of the police.

44. Numerous other reports from credible and reputable sources were submitted confirming this, and indicating that (contrary to the observations of the Delegate) the "International/Green Zone" would not be accessible to the applicant to provide her with safety. For example the Danish Immigration Service (2010) observed that individuals who worked in this area of Baghdad would not tell their families they were employed in there as they feared being kidnapped or otherwise targeted. Other reports, including one from DFAT, noted that the Green Zone was often attacked by rockets, mortars and car bombs. As to the applicant and her husband getting protection from [Employer 1], it was submitted that her husband had reported the threat to his employer, which had offered no protection. Evidence was also submitted from the Danish Immigration Service (2010) that the loyalty of private contractors working as guards was highly unreliable and that some had attacked their employers.
45. On 19 January 2012 the Tribunal received a letter from a psychiatrist, advising that he considered the applicant to be suffering from Anxiety-Depression. He referred to her having told him that her husband had been assaulted twice in Baghdad and his life threatened. She was currently taking an anti-depressant (Prof. [name deleted: s.431(2)], [January] 2012).
46. In oral evidence to the Tribunal, the applicant confirmed that she was taking an anti-depressant. She confirmed that she considered herself able to give oral evidence and to understand the hearing proceedings. After the hearing further evidence was submitted that the applicant was taking an antidepressant.
47. Agreeing that she had travelled a great deal, the applicant said that she currently did not have the right to enter and reside in any country other than Iraq. For example in [Country 3] she required an invitation from her daughter in order to be granted a one month visa. That visa could only be extended to a maximum of 3 months.
48. As to her family members, she said that she had three daughters and no sons. One daughter was in Australia, one in the UK and one in [Country 3]. She also had a brother in Baghdad. He was employed as a government clerk. Her sister had left Iraq for [Country 3] two months earlier because she was so tired of the general violence and uncertainty.
49. She advised that she had not asked her daughter in Australia to give oral evidence, but that her daughter was available and would be willing to give evidence if required.

50. The applicant said that her husband was currently in Baghdad. He spent all his time at work, his hours being 8am to 3pm and 6pm to 10pm. She explained that his office was 3 minutes' walk from the family's home, which was all in a single compound. He did not need to go out into the streets to go to work. Every 15-20 days he left the compound with a friend to shop for household necessities. On these occasions he dressed in a dishdasha rather than Western clothes
51. [In] May and [June] 2010, while she was in Australia, her husband was threatened. I asked her why she had chosen to return to Iraq from Australia under those circumstances. She responded that she had told her husband she was fearful about going back, and asked him his opinion as to if she should apply for a Protection Visa in Australia. He had told her that it was "not that bad", and might be a "one off" or a coincidence, and that she should not be afraid. As a result she had gone back.
52. As to if she had any idea why, 7 years after the overthrow of Saddam, people began to target her husband, she said that she thought it may have been because of his managerial position. Prior to 2009 or 2010 he had been a departmental head, but was then promoted to Manager of [a department] of [Employer 1], so became head of all departments. In the hierarchy his position was thus immediately below that of [Employers 1's] general manager. The applicant added that perhaps he also became a target because of increasing actions by Sunni militias, and fighting between Sunnis and Shi'a.
53. She confirmed that men had tried to break into her home, shouting her name, in November 2010. Asked if she could recall what else they said, she stated that they had used swear words. They saw her immoral because her daughters were married outside Iraq. The men had known about her situation, saying she had married her daughters to "infidels" so "why are you here?" The applicant explained to the Tribunal that her daughter in the UK was married to a British citizen, albeit a Muslim, and maybe this was why the men saw the applicant as immoral. She added that her daughters had attended Catholic schools in Iraq. She said she herself did not discriminate against people.
54. When the men tried to break in to her home, her neighbours came out. The men smashed up the applicant's car. A neighbour told the applicant that he saw 2-3 men running away.
55. The applicant had lost consciousness and was immediately taken to hospital. Someone rang her husband, who contacted her daughter in [Country 3]. The applicant and her husband went to [Country 3] the next day and remained there for several weeks. However her husband had to go back to Baghdad for work on 10 December. The applicant was scared of being alone so went back with him, but her condition deteriorated severely. She confirmed that the address to which they returned was that provided by [Employer 1] at [the company] Residential Campus, [address deleted: s. 431(2)].
56. She gave evidence that less than 200 [Employer 1] or other government employees lived in that compound. It contained about 20 residential buildings as well as the [Employer 1] headquarters.
57. I noted evidence indicating that government employees were at risk of being targeted for harm in Iraq, and asked her if the compound was considered relatively secure by the residents. She responded that there were guards and detection equipment at the entrance. However her home was on the other side of the compound, in a more secluded area, and she assumed the men who came to her home had jumped over a wall there.

58. She confirmed that she was still living in the [Employer 1] accommodation in late March 2011, before she left Iraq to return to Australia, when the e-mail arrived addressed to her husband making extremely serious threats to her and to him. She said the email came [in] March and she had left for Australia [in] April. She had continued living at the [Employer 1] accommodation in that fortnight.
59. I asked her what steps she and her husband had taken to protect themselves in that period. She said that, because of her poor psychological state, her husband had not initially told her about the email. A friend of his had accidentally mentioned it to her four days later, and her husband had then told her about it, saying he had not wanted to worry her. He made the arrangements for her trip through her daughter in Australia. He sold the car, so had no car, and got her to leave. He said he could protect himself if he was alone. It was at this time that he had started only leaving the compound every 20 days to shop.
60. As to why, knowing that men had already managed to get right to her front door in November 2010, she and her husband continued to live at that address at all, the applicant said that place was more secure than any other. At least there was some level of protection.
61. As to her husband's other activities, and why he had continued working at [Employer 1] until now, she said that although he had to travel to and from [City 2] for work sometimes, he could not leave [Employer 1] as he would lose his pension if he did.
62. As to why he had not come to Australia with her in late April 2011, she said that his visa application had been rejected the previous year [as is consistent with evidence on DIAC records], so he had not applied to come with her in 2011 in case doing so jeopardised her own visa application.
63. She and her husband had not discussed what she would do after arriving in Australia. So far as she had thought about it, she was coming here to rest, and would go back to Iraq.
64. Noting her claim that on 1 June 2011 her husband was assaulted, and that the applicant was already here in Australia, I asked her what further steps he had taken to protect himself after that. She said that on the day of the assault he was hospitalised. On release he went to [City 2] immediately. She had been unable to contact him and had become worried so had rung her daughter in [City 2]. Her daughter then revealed that he had been assaulted and was with her. He stayed in [City 2] for 2½ months. He took leave from [Employer 1], then unpaid leave. He recovered then went back to Baghdad.
65. As to why, having arrived in Australia in April 2011, she had not applied for the Protection Visa until [July] 2011, she said that it had not been her intention to stay but that after the assault she had been very fearful. Her husband had told her to apply for the Protection Visa after the assault. He had sent her various documents, and she had then located her present solicitor. All this had taken time. At this point [the representative] advised that his records showed she had first made contact with his firm in June 2011.
66. As to if other [Employer 1] employees living in the compound were also facing threats, the applicant said that they were. For example her husband's friend [Mr C], a [Employer 1] manager, was killed 100m from the compound [in] March 2011. He had also received threats, but had been "careless".

67. The applicant confirmed that her husband was still currently employed by [Employer 1]. Asked why had not left his job, she said it was because he would not want to feel “beaten”, and also she and he had no other source of income.
68. As to if resigning from [Employer 1] would lessen the risk to him, the applicant said it probably would not because their mixed marriage was so well known. Asked if she or her husband had ever been targeted by anyone for that reason before 2010, she said she thought it was an important reason for their first house having been taken over. Even when she completed paperwork she was advised not to write the name [name deleted: s. 431(2)] as it was a Sunni Muslim name, and thus was dangerous.
69. Asked if she considered she would remain at risk from these people if she settled somewhere in Iraq outside Baghdad, she said she had never been anywhere but Baghdad, and her husband was also from Baghdad. They knew no one outside Baghdad, and had no relatives or friends outside the city. Also there was no security throughout Iraq.
70. Noting that she had not mentioned her husband’s having received any threats since her interview with DIAC in relation to the Protection Visa, I asked her why he might not have been threatened. The applicant responded that maybe he was being threatened but was not telling her because of her poor psychological condition.
71. Invited to add anything further she wished the applicant said that ever since she had lived in that part of Baghdad she had felt very fearful because there were radical Shi’a Moslems there, especially in the area of the oil ministry itself. She had felt "unwanted". She added that because the Shi’a Moslems were so radical in that area and she dressed like a westerner she had felt uncomfortable so had covered her hair.
72. Asked what she would do if she returned to Iraq she said that she would have to again live in the [Employer 1] compound and she was sure that her husband would continue to go to work. As to her fears about what might happen to her under the circumstances she said she feared she would be killed because now the sectarian fights had become political, even between the Prime Minister and the President. It was Shi’a against Sunni, and they were attacking each others' areas. She thought that the Shi’a who threatened her and her husband would kill her. Her husband had gone twice to the police but nothing has happened and they had said there was nothing they could do.
73. The applicant’s solicitor made brief oral submissions. He advised that a map from the Gulf/2000 Project revealed an increase in the proportion of Shi’a Moslems in the applicant’s [suburb]. He also advised that there had been bomb attacks in Baghdad in recent days. These were Sunni-influenced and were targeting areas used by Shi’a pilgrims, so the sectarian conflict could reignite. Shi’a paramilitaries were trying to enter the political sphere. This included a breakaway group from the Mahdi Army, which may be backed by Iranian Revolutionary Guards. This showed that the influence of the Shi’a was growing, and that hostility against Sunni Moslems was growing. He referred the Tribunal to recent sources of this information - "Eclipse of the Sunnis: Power, Exile, and Upheaval in the Middle East", Amos D., PublicAffairs, USA, 2010; and “Cultural Cleansing in Iraq, Why Museums Were Looted, Libraries Burned and Academics Murdered” , Eds. Baker R.W., Ismael S.T., Ismael T.Y., Pluto Press, London, 2010).

Oral evidence of [Ms A]

74. The witness confirmed that she was the applicant's daughter. She said that her sister in [Country 3] had told her what had happened to their father when he was beaten up in June. Her sister had cried on the telephone, saying he had been injured. The witness said that she suffered from a heart condition so had not been told all the details as to why he had been attacked or the extent of his injuries.
75. The witness said that she considered her mother to be very unwell. She had been very shocked as a result of the initial rejection of her application for a Protection Visa. The witness was very worried about her mother's condition.

Evidence from other sources

76. A number of sources report on the targeting of government workers by militant groups in Iraq. They reported that government workers were seen as targets because of their role in the reconstruction programs of the Iraqi government and the US. In 2007 the *Los Angeles Times* reported that “insurgents regularly threaten and kill municipal workers, bureaucrats and government employees, whom they view as US collaborators” and the Cross-Cultural Understanding website noted the killing of a number of local government officials and employees around the country. The “deputy director of the Baghdad sewage system department” was reportedly killed by “[u]nidentified gunmen” while he was leaving his work in Baghdad (‘Iraq: Decline in municipal services boosts violence and disease’ 2007, *IRIN*, 25 April, <http://www.irinnews.org/Report.aspx?ReportId=71800> – accessed 19 February 2008; Berthelsen, C. 2007, ‘Chalabi returns to prominence and power’, *Los Angeles Times*, 13 November <http://www.latimes.com/news/nationworld/world/la-fg-chalabi13nov13,0,2576954.story?coll=la-home-world> – accessed 19 February 2008; ‘Bombs and ballots’ 2004, *The Economist*, 13 February, <http://hercules.gcsu.edu/~hedmonds/Reserve%20Reading/Pol%20Theory%20I/Trouble%20in%20Iraq/Trouble%20in%20Iraq.htm> – accessed 19 February 2008; ‘Iraq’s insurgents wage bloody war on “collaborators”’, *The Telegraph* [UK], 6 August; UK Home Office 2008, ‘Country of Origin Information Report: Iraq’, UK Home Office website, 8 January <http://www.homeoffice.gov.uk/rds/pdfs08/iraq-250108.doc> – accessed 29 January 2008; ‘Gunmen kill senior employee in Baghdad’ 2007, Cross-Cultural Understanding website, source: Baghdad – Voices of Iraq, 6 November, <http://www.ccun.org/News/2007/November/6%20n/6%20US%20Soldiers,%2034%20Iraqis%20Killed,%20Including%2022%20Executed%20by%20Death%20Squads,%20According%20to%20a%20November%206%20Report.htm> – accessed 19 February 2008).
77. More recently numerous reports, of which the following is typical, noted attacks on government employees.
78. UNAMI reported that in 2010 at least nine former or current members and employees of various Governorate Councils were killed in separate incidents. In Mosul, a parliament member was shot by gunmen and subsequently died of his injuries. In June two persons who had run as candidates in the general election were killed. Furthermore seven mayors of districts, villages or city neighbourhoods were assassinated. In addition a “large number” of public servants attached to various Ministries including the Oil Ministry were targeted. At least 22 government employees were killed in various incidents in Baghdad and elsewhere. In addition to these incidents, a Ministry of Education official was assassinated, while a staff member of the Prime Minister’s office survived an attempt on his life (UN Assistance Mission for Iraq & Office of the High Commissioner for Human Rights 2011, *2010 Report*

on Human Rights in Iraq, “Attacks on Government employees, officials and public figures”, January, 2.2.1).

79. In 2009 UNHCR reported that in 2008 a civil servant working for the Iraqi North Oil Company was kidnapped by an armed group in front of his house in Kirkuk City, and in February 2009 gunmen kidnapped three employees of Iraq’s state-run Northern Oil Company south-west of Kirkuk. (fn 503). In 2008 and early 2009 there were several targeted attacks on high-ranking government officials, including the deputy Minister of Oil in Baghdad (para. 282 and fn 871). The report observes in its section headed “Government officials and other persons associated with the current Iraqi Government, Administration or Institutions” (at paras. 278 and 280) that various armed groups were being held responsible for targeting persons involved in the Iraqi Government and Administration at the federal and local levels, members of their families and bodyguards. The perpetrators and their motives were multi-layered. While certain acts may be motivated to delegitimize the Iraqi Government and spread fear, other attacks seemed to clearly target government officials, be it for their belonging to a certain political party or their involvement in certain political affairs. As seen in the past, extremist groups were also stepping up their efforts ahead of sensitive political events such as elections or during negotiations of legislative projects. Armed groups such as AQI and Shi’ite militias were also targeting government officials in an attempt to disrupt the political process. Since 2008, there had been a noted increase in assassinations of government officials and government-affiliated party officials by the use of “sticky bombs” attached under vehicles as well as guns equipped with silencers. The Iraqi MoI issued a warning asking government employees not to park their cars in public places to avoid militants attaching adhesive bombs to their vehicles.
80. At para. 282 this report notes that in 2008 and early 2009 there were several targeted attacks on high-ranking government officials, including members of the CoR, (deputy) ministers, other senior ministry officials and advisors to the PM. At the local level, governors, deputy governors, local mayors and members of provincial and municipal councils were targeted. There were also many attacks on government employees, including by targeting their private or office vehicles, and government buildings. Family members, drivers and bodyguards, in particular of senior government officials, were also at risk of being killed or wounded in attack or, in some case, had been targeted deliberately. (ibid)
81. At para. 332, the report observes that, while women in Iraq fall victim to a range of human rights violations, those with “specific profiles” are specifically targeted on account of their (perceived) political, sectarian or social role. In particular, women perceived or actually transgressing traditional roles and/or exposed in society have been subjected to intimidation and targeted attacks, including murder, at the hands of mainly non-state actors, including party militias, insurgents, Islamic extremists and others. This may include women engaged in politics, professionals, civil society activists or women that transgress social or religious mores. Women continued to be targeted for not conforming to conservative dress codes. (ibid)

FINDINGS AND REASONS

82. The applicant has submitted a current passport and other documentary evidence that she is a citizen of Iraq. Nothing in the evidence before the Tribunal indicates otherwise. Therefore I accept that she is a national of Iraq.

83. She has claimed that she does not have the nationality of any other country. Of [Country 3] in particular, a country which she has visited on numerous occasions, I am satisfied, as was evidenced by the content of her passports, that she has required a visa to enter that country on each occasion. I accept, as she claims, that the visa for which she was eligible was valid for renewal up to a period of three months and no more. I accept that she does not presently have the right to enter and reside in [Country 3], or in any other country apart from Iraq.
84. The applicant claims to be a Sunni Moslem and her husband to be a Shi'a Moslem. She has made this claim consistently and I consider that claim plausible and accept it to be true.
85. There is evidence, and I accept, that [Employer 1] (see [URL deleted: s.431(2)]). The applicant has given consistent oral evidence and has provided documentary evidence that her husband is employed in a senior capacity by [Employer 1]. I accept that he is, and that he has been for some years employed in various capacities by this branch of the Iraqi Oil Ministry. I accept, as the applicant stated, that he was promoted in 2009 or early 2010.
86. The applicant has described a number of threats against her husband, a raid on her home and two assaults on her husband since the above promotion. She has made these claims consistently and I consider her account to be highly plausible, both because of the manner in which she gave it in her oral evidence at the Tribunal hearing, because of the internal consistency of her account, because her claims are highly consistent with evidence from a number of reliable sources about threats and attacks on government employees and because the claims are also consistent with UNHCR's evidence that fatal attacks by armed groups on government employees were escalating in Baghdad around the time of the applicant's husband's promotion (UNHCR 2009, para. 282). Further, the claims are highly consistent with evidence from UNAMI (2011, 2.2.1) and Aswat al-Iraq 2011 that a number of public servants attached to government ministries including the Oil Ministry itself were targeted and in most cases killed in 2010 and 2011 in Baghdad and elsewhere. It is entirely plausible that an organisation exporting Iraqi oil to American companies [URL deleted: s.431(2)] would attract the particular hostility of armed groups that regarded the USA as an invader whose real intention was to get access to Iraq's oil.
87. I have considered the evidence given by the applicant that her husband continues to be employed in his senior position within [Employer 1], that he has repeatedly chosen to return to Baghdad from [Country 3] despite the claimed threats and that he continues to live at the home which, according to the applicant's account, was located and attacked by a number of violent and abusive men. The fact that the applicant was frank about these matters when she could have altered her evidence on these points to strengthen her case in my view reflects her overall transparency and credibility as a witness. It appears to me that her husband has shown considerable courage, even stubbornness, by continuing to go to work and to live at his home. The applicant indicated that her husband did not want to give into the pressure being applied to him, but also indicated that the employment with [Employer 1] was her and her husband's only source of current and future income. Further, she indicated that the [Employer 1] compound provided at least some level of security for her husband, while if he moved out of the compound in order to evade the people threatening him he would be at increased risk, presumably either from them or from the generalised violence in the country. On this final point I note and accept that the applicant's sister has recently left Iraq for the latter reason.
88. Having regard to these considerations I do not propose to infer that the applicant has not been truthful when she says that she and her husband were the target of serious threats before the applicant's most recent arrival in Australia. I accept that they were.

89. The applicant said that if she returned to Iraq she would again live with her husband in the [Employer 1] compound in Baghdad. I accept that she would do this because there is nowhere else in Iraq where she could settle in safety. I accept that she and her husband are close as is indicated by her willingness to return to Iraq from Australia on the first occasion, despite her fears. If she were to return I accept that her husband would continue to work for [Employer 1] in his current capacity and that therefore he would continue to attract threats and assaults. The applicant does not claim to know the identity of her husband's assailants, although she considers it most likely they are "radical" Shi'a Moslems. There is too little information before the Tribunal to establish with confidence who they are. However I accept that they are either Sunni or Shi'a extremists who are probably members of one of the militant armed groups that remain active in Iraq (UNAMI 2011; UNHCR 2009).
90. I am satisfied that the motivation for future threats to and assaults on the applicant's husband would be a combination of a political opinion imputed to him and his membership of a particular social group "Iraqi government employees" or, as suggested by the applicants solicitor and drawn from the groups at risk listed by UNHCR (2009 & 2010) "government officials and other persons associated with the current Iraqi government, administration or institutions". The applicant's husband is not an applicant before this Tribunal. However I am of the view that the applicant herself, if she were to be targeted in future, would in large part be targeted because she is married to this particular man, and therefore would be targeted for the Convention reason of her membership of a particular social group being her family. That is consistent with evidence from various sources about intentional killing or wounding of the family members of senior government officials (UNHCR, 2009 & 2010).
91. I consider that there are additional factors that have attracted, and may continue to attract harm to her. One of these is that she is a Sunni woman married to a Shi'a man, a marriage likely to offend the ideology of religious extremists on both sides, and which I accept may have already led the couple to lose their previous home. I also consider, as was indicated by the men who came to her home and verbally abused her, that she is regarded as both unacceptably liberal in her social views, and as having family members (her son-in-law in the UK) from a member country of the coalition that invaded Iraq. It is apparent, and I accept, that she has been generally condemned by the people who are primarily targeting her husband - that is reflected in the fact that the threatening e-mail sent on 27 March 2011 to her husband included a direct reference to the claimant ("your corrupt bitch wife") and demanded that both leave within two days. I consider that e-mail to be what it purports to be, a threatening e-mail sent to the claimant and her husband by unidentified people.
92. I accept evidence from a psychiatrist that the applicant is suffering from Anxiety and Depression and I also accept that her daughter, the witness, is physically unwell. Under these circumstances I consider it quite plausible that the applicant's husband, already living under considerable pressure, would be reluctant to distress the applicant or daughter with bad news from Baghdad. I consider it plausible that this may provide an explanation for the lack of news about recent continued threats from him. On the other hand the fact is there is no evidence that he is continuing to be threatened. However in light of the evidence from other sources that threats towards government employees and attacks on them by violent extremists are continuing, I do not infer from the applicant husband's silence that the situation is resolved and he no longer considers himself to be at risk of harm.
93. I consider that the chance is not remote that, if the applicant returns to live with her husband at their previous address, she will be again threatened with serious harm. It is the case that, despite being threatened with death if they did not leave their home and her husband his job

within two days of 27 March 2011, neither left by that deadline and her husband is still alive. It is unclear why the threat has not been carried out, although I am satisfied that the applicant's husband is now highly vigilant about his safety.

94. I am satisfied that repeated threats of death coupled with verbal abuse and attacks on one's home and property constitute serious harm as envisaged in s.91R(1) of the Act, and I consider the chance not remote that if the claimant returns to her home in Baghdad she will again face such threats and attacks. While I consider there are multiple motivations, I further accept that the essential and significant reasons for this harm would be her membership of a particular social group, being her family and a political opinion imputed to her.
95. I accept that her husband twice unsuccessfully sought the protection of the police in Baghdad. The applicant's evidence about the response he received from the police is entirely consistent with the evidence from other sources about the inability of the police to protect citizens and investigate attacks, and the general serious inadequacy of state protection in Iraq (Danish Immigration Service, 2010). I am therefore satisfied that there is no adequate state protection from the harm feared by the applicant.
96. I find that the applicant has a well-founded fear of being subjected to treatment amounting to persecution for a Convention reason if she returns to her home in Baghdad. I am also satisfied that, if she and her husband moved to a different address in Baghdad itself but her husband continued to work at [Employer 1], the risk would continue that he and therefore the applicant would be located by their previous harassers such that her fear of persecution would remain well founded in Baghdad generally.
97. I have considered whether the applicant could relocate within Iraq to avoid being persecuted in Baghdad. While I do not consider that she faces a real chance of being persecuted for a Convention reason throughout the country, I do not consider it would be reasonable, in the sense of practicable, for her to relocate. There is abundant evidence of widespread violence throughout Iraq. The applicant has no family or friends outside Baghdad and, if her husband left his job in order to reside with her, would have no source of income and no home in which to live. I am satisfied that she would face considerable hardship if she were to attempt to settle anywhere outside Baghdad. Therefore I find that it would not be reasonable for her to relocate within Iraq in order to avoid the harm of which she has a well-founded fear in Baghdad.
98. For the reasons set out above I find that the applicant has a well-founded fear of being persecuted for a Convention reason in Iraq.

CONCLUSIONS

99. 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) for a protection visa.

DECISION

100. The Tribunal remits the matter for reconsideration with the direction that the applicant satisfies s.36(2)(a) of the Migration Act, being a person to whom Australia has protection obligations under the Refugees Convention.

