

1209934 [2012] RRTA 723 (21 August 2012)

DECISION RECORD

RRT CASE NUMBER:	1209934
DIAC REFERENCE(S):	CLF2012/93522
COUNTRY OF REFERENCE:	Iraq
TRIBUNAL MEMBER:	R Mathlin
DATE:	21 August 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.

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 for the visa on [date deleted under s.431(2) of the *Migration Act 1958* as this information may identify the applicant] May 2012.
3. The delegate refused to grant the visa [in] June 2012, 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 as amended by 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. 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.
14. 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.

15. 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

16. 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').
17. '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.
18. 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

19. The Tribunal has before it the Department's file CLF2012/93522, relating to the applicant, and the Tribunal file, and has had regard to the information on these files, including the material referred to in the delegate's decision, and the other material from a range of sources which is set out below.

Irregular Maritime Arrival entry interview

20. The applicant appears to have been interviewed [in] February 2012 by telephone and [in] March 2012 by different officers of the Department after arriving in Australia by boat.
21. He stated that he was born in Iraq in [year deleted: s431(2)] and most recently resided at an address in [District 1, in Baghdad].
22. The applicant stated that he has nine years school education and then obtained qualifications as an electrician. He stated that he completed his military service under Saddam's government.
23. He stated that from [the mid 1990s] until 2011 he worked in a family business as a wholesaler of imported [goods]; from 2004 until 2011 he had his own electrical business where he worked in the afternoons.

24. He stated that his wife and [children] are currently living in [District 1], at a different address to the applicant's former residence.
25. The applicant provided detailed information about his travel to Australia, stating that he flew to [a city outside Iraq] holding a business visa issued ostensibly so that he could attend a conference. He came to Australia by boat. He stated that the smuggler wanted the applicant to destroy his Iraqi passport but instead the applicant sent it to [a sibling] who lives [abroad].
26. The applicant stated that he feared that he would be killed if he returned to Iraq because, as an electrician, he had been asked by militias to design electronic circuits for bombs and explosive devices and had refused to do so. The applicant and his family had been attacked in their home. The applicant reported this to the police and then took his family to [Locality 2] in Kurdistan where they stayed with a friend. They returned to Baghdad when the applicant was informed by a neighbour that his home and business premises had been destroyed in a fire. The applicant took his family to his wife's parents' home for one night and then they stayed in a hotel for one month. His wife and children are now with his wife's parents again. The applicant reported the fire to the police and blamed the militia group as responsible. He was then contacted again by the group saying that they knew everything about him – that he had been to [Locality 2] and to the police; he was offered a further opportunity to reconsider his decision to refuse to help them. The applicant indicated that he would think about this and immediately began to arrange his departure from Iraq.
27. The applicant provided a number of documents at the interview, including Iraqi identity cards; an extract of his Iraqi passport; documents showing his membership of local Chambers of Commerce; medical reports [relating to his wife]; untranslated police reports referring to the home invasion and the destruction of the applicant's property; photographs purporting to show the applicant's home and business during and after the fire; and an untranslated bill from [a hotel] in Baghdad.

Protection visa application

28. The applicant was interviewed by his migration adviser, who was allocated under the IAAAS scheme, [in] April 2012. His protection visa application was completed and signed on the same day. It was lodged [in] May 2012.
29. The protection visa application contains essentially the same personal information as was provided in his Entry Interview.
30. In a statutory declaration [dated] April 2012 setting out details of his claims to refugee status, the applicant stated that he is a [age deleted: s.431(2)] male citizen of Iraq, born in [District 1]. He is married with [a number of] children.
31. He stated that from 2004 until he left Iraq he was a successful and well known electrician with his own small business and workshop [in District 1]. He mainly worked installing [certain equipment].
32. [In] 2008 he was subcontracted to do electrical work [for a foreign contractor]. The applicant kept this a secret as it would have put him at risk of harm from Sunni and Shia militias.
33. He stated that [in] August 2011 he was first approached by a man who called himself [Mr A] who said that he was an importer of tools and parts to make [certain products]. He asked the

applicant to assemble these [products] which were for a particular type of [equipment]. The applicant asked him to return with the model. He did so a few days later, also bringing the necessary parts. The applicant realised immediately that the [product] and the parts were not for [the type of equipment stated]. Finally [Mr A] told the applicant that the equipment was for [a type of explosive device]. The applicant realised that [Mr A] was with a militia and suspected that it was the Badr Organisation. The applicant said that he did not want to kill innocent people and [Mr A] replied that they only killed criminals, traitors and spies who worked for [foreign] forces. The applicant continued to refuse and a week later [Mr A] threatened the applicant by phone saying that he and his family would be harmed; he said that his group was supported by the government and could get the applicant anywhere, anytime.

34. At midnight [in] September 2011 the applicant answered a knock at the door and four armed men burst into his home. They locked his children in a room, assaulted his wife and threatened to rape her and kill the children if the applicant did not do as they wanted. The applicant agreed. They said that they would bring him the material in a few days.
35. The next day the applicant reported the assault to the police. His wife required medical treatment [details deleted: s.431(2)]. The applicant then fled with his family to [Locality 2] where they stayed with a friend for a week until the applicant was informed that his house and business premises had been destroyed in a fire.
36. They all returned to Baghdad where the applicant lodged another complaint with the police. The family stayed in hiding at a hotel and with the applicant's wife's family until the applicant was able to organise his travel out of Iraq.
37. Immediately after going to the police he received a further call from [Mr A] offering him a last opportunity to comply with his demands.

Protection interview

38. The applicant was interviewed about his claims to protection by an officer of the Department [in] May 2012. He provided information essentially consistent with that provided elsewhere.

Delegate's decision

39. The delegate refused to grant the applicant a protection visa. He accepted that the applicant was an electrician and that he had worked as an electrical sub-contractor [for a foreign contractor] in 2008. He found the applicant's claims to have been approached by member of a Shia militia and asked to build explosive devices implausible. He relied on country information indicating that groups such as the Badr Organisation have received training from the Iranian military in constructing such devices as well as the materials necessary to do so. The delegate did not accept that the applicant would have been asked to make sophisticated explosive devices without any experience in doing so. The delegate could find no country information indicating that electricians have been requested to make bombs. He found it implausible that a militia would risk approaching a stranger without first establishing his political views.
40. The delegate also found it implausible that the applicant did not tell the police as soon as he was approached by the militia member. He found that the applicant's explanation for not having done so after the first approach - because he did not realise that [Mr A] was serious - was at odds with his claim that he did go to the police after the militia attacked him in his

home and later burned it down. The delegate also found it implausible that the militia would offer the applicant compensation for the destruction of his property; and that the applicant would return to Baghdad with his wife and children after the destruction of his properties, having fled from Baghdad in fear of their lives only a week earlier.

41. On the basis of these findings the delegate rejected the applicant's account of having been approached by [Mr A] on behalf of a militia; of having been attacked in his home; and that his home and business were burned down. The delegate did not accept that the applicant was threatened again by phone after having reported the matter to the police, and found that he would not be at risk of harm for the reasons claimed if he returned to Iraq.

Tribunal proceedings

42. The applicant appeared before the Tribunal at a hearing held [in] August 2012 to give evidence and present arguments. The Tribunal hearing was conducted with the assistance of an interpreter in the Arabic and English languages. The applicant continued to be represented in relation to the review by his registered migration agent, who attended the hearing.
43. During the hearing the Tribunal received a detailed submission from the applicant's adviser, together with copies of the documents presented by the applicant to the Department, including translations of the two police reports.
44. The applicant stated that he had been a bit concerned about the interpreting in the two earlier interviews; until the hearing, he had never had an Iraqi Arabic interpreter and he thought that there were some problems with some names and pronunciations.
45. He said that his wife and children are still living with his wife's family in an area of Baghdad which is about twenty five minutes' drive from their old home.
46. The applicant confirmed that he was an electrician and that his business specialised in [certain services]. I asked about the references to [certain products] in his earlier statements [and the applicant explained what those products were, and that a large part of his business involved assembling these products].
47. The applicant also clarified [certain matters relating to the Mr A's name].
48. He said that when [Mr A] came to see the applicant the first time he said that he wanted the applicant to assemble [certain products] for him, to be used for generators. The applicant told [Mr A] to come back with the [products] that he wanted him to build. [Mr A] then brought some parts and a plan. The applicant said that he knew immediately that the [product] was not for a generator [details deleted: s.431(2)] and eventually [Mr A] said that it was for a [certain type of explosive device]. The applicant said that of course he was scared when [Mr A] told him this; his first thought was of the innocent people, including children such as his own, who could be killed by such a device.
49. I asked why he thought [Mr A] would have asked him to do this work. The applicant said that he was excellent at his job and had a very good reputation; people even came to his shop from outside Baghdad. I put to the applicant that if he was known to be such an expert, [Mr A] must have known that he would recognise immediately that the [product] was not for a generator. The applicant agreed; he said, however, that [Mr A] tried to take advantage of something he knew about the applicant to put pressure on him: he knew that the applicant had

worked for [a foreign contractor] and indicated that the applicant could therefore be killed as a traitor or a spy if he did not do what they wanted. I put to the applicant that he had previously stated that nobody knew that he had done this work. He said that he had not really talked about it, but people knew.

50. I put to the applicant that this was a very significant detail that he had not mentioned in his protection visa application or at either of the two earlier interviews. The applicant was adamant that he had mentioned it. He said that perhaps nobody had paid attention to this detail.
51. I put to the applicant that in the absence of this factor, it was hard to believe that [Mr A] would take the risk of approaching someone unknown to perform the task of making bombs. The applicant said that [Mr A] had the air of someone very confident, carefree and strong; his demeanour suggested that he was sustained and supported by a powerful group. Such people are not afraid in Iraq where no one really cares about the law.
52. I asked the applicant why he had not gone straight to the police when asked to make the bombs. He said that there was no point; he could tell by [Mr A]'s attitude that he thought he was untouchable. The applicant just hoped that he could decline to do the work and [Mr A] might accept it and not return. He added that nothing would have happened if he had reported it; with money or connections you can do what you want in Iraq.
53. I asked the applicant in that case why he had subsequently bothered to report the assault in his house and the burning of his home and business. He said that it was just a last attempt in the hope that some action might be taken; but his intuition was right and nothing happened.
54. I asked the applicant why he had returned to Baghdad from [Locality 2] with his family after the destruction of the properties, since by this time it must have been evident that the danger was very real. The applicant said firstly, that he could not leave his wife with a stranger. Secondly, he thought that this might have been the end of things. Thirdly, he had no other choice, because to start again he needed to return to Baghdad to organise money, business connections etc. The applicant said that he does not think his wife or extended family members are at ongoing risk of harm because they live outside the area where their previous home and business were located.
55. I asked the applicant whether he could avoid harm from the militia by relocating to another part of Iraq. He explained that the personal registration system in Iraq means that he would be required to provide his new address to the local authorities in the area where he is moving from. This information could then easily be obtained by his enemies, as the militias have infiltrated the police and other relevant agencies.
56. I asked the applicant to comment on the information relied on by the delegate suggesting that Shia militias are armed and trained by Iran and would not need to rely on local people such as the applicant to build bombs. He said that not all the militia groups are loyal to Iran, and there are small independent groups. He was simply speculating when he stated that he thought [Mr A] was from the Badr Organisation. He said that in Baghdad you do get to recognise the groups that people belong to. Badr is the most powerful organisation and because of [Mr A]'s confident demeanour he assumed that his connection might be with Badr, but this was purely speculative.

57. After a ten minute break, I asked the applicant again why he had reported the attack in his home and the burning of his properties to the police, especially given that his evidence suggested that this would have been pointless at best, and possibly dangerous, given his claims about the infiltration of police and government agencies by militia. He said that the police had attended the fires and he had to make a report about it as a matter of procedure; he also had to make it clear that he was still alive. Also, he thought that maybe the group now had its revenge and that would be the end of the matter. I put to the applicant that he could have attended to the administrative arrangements with the police without disclosing the details of his dealings with [Mr A], and identifying his group as responsible for the fires, as the police statements showed he had done. The applicant said that he was hoping that justice might prevail and that there might be an honest person within the police who would take action.
58. I asked the applicant why he thought [Mr A] had given him a further chance to comply with his demands after his properties were burned. He said that [Mr A] was completely sure that the applicant was the only person who could do what he wanted.
59. The applicant was asked whether he had anything to add and he provided further information about the registration card which he said meant that he would not be able to safely relocate away from Baghdad. I told the applicant that I accepted that this was the case.
60. The applicant's adviser made submissions in relation to the apparent omission from earlier statements of the applicant's claim that [Mr A] had threatened him on the basis of his previous employment with [a foreign contractor]. He drew my attention to paragraph 17 of the applicant's statutory declaration [of] April 2012, which states "He [Mr A] said we were not killing innocent people, we were only killing criminals, traitors and spies who worked for [foreign] forces". It was submitted that the applicant took this to be an implied threat.

Country information

61. According to the UNHCR *Eligibility Guidelines for Assessing the International Protection Needs of Iraqi Asylum-Seekers*¹, 31 May 2012, Iraqi civilians face significant risks. Although the number of civilian deaths from suicide attacks and car bombs decreased in 2011 compared to previous years (still averaging 6.6 per day), the statistics indicated that an increasing number of Iraqis, especially government and security officials, are being individually targeted. Baghdad governorate is one of the areas where violence is concentrated. Armed Sunni groups such as Al-Qa'eda in Iraq and Ansar Al-Islam are thought to be responsible for most of the violence and although Shi'ite armed groups have to a large extent been integrated into the ISF and the political process, they reportedly maintain their independent military capabilities. As to the situation regarding Shi'ite militia, the *Guidelines* state:

After 2003, a range of armed Shi'ite groups reportedly started to compete for power and religious influence in Iraq, at times resulting in violent intra-Shi'ite clashes. This was the case, in particular, between the Badr Corps, the armed wing of the Supreme Council for the Islamic Revolution in Iraq/ Islamic Supreme Council of Iraq, and the Jaysh Al-Mahdi, the armed wing of the Sadrist Movement led by cleric Muqtada Al-Sadr. Jaysh Al-Mahdi became the main Shi'ite opposition to the foreign coalition

¹ UN High Commissioner for Refugees, UNHCR *Eligibility Guidelines for Assessing the International Protection Needs of Asylum-Seekers from Iraq*, 31 May 2012, HCR/EG/IRQ/12/03, available at: <http://www.unhcr.org/refworld/docid/4fc77d522.html>

forces in Iraq after the fall of the former regime in 2003. It staged two uprisings against US forces in April and August 2004 and launched numerous attacks against mainly US military targets. Attacks on US forces peaked in mid-2007, when Jaysh Al-Mahdi was responsible for the majority of all US casualties. Both the Badr Corps and the Sadrists have integrated into the political process and the Sadrists have become a major political force and main backer of Prime Minister Al-Maliki. However, none of these groups have given up military capacity and, in the case of Jaysh Al-Mahdi /Promised Day Brigades, sporadic attacks on US targets continued into 2011. Some members of the Badr Corps, and to a lesser extent the Jaysh Al-Mahdi, have been integrated into the ISF. ... Jaysh Al-Mahdi... splintered into various factions with differing agendas (so-called “Special Groups”), some of them engaging in mainly criminal activities. In recent years, three main armed Shi’ite groups have been active: Jaysh Al-Mahdi /Promised Day Brigades; Asa’ib Ahl Al-Haq, which was created by former Sadrist Qays Al-Khazali; and Kata’ib Hezbollah. In 2011, these groups claimed responsibility for lethal attacks against the USF-I aimed at expediting the withdrawal of foreign forces from Iraq.

Their presence is mainly reported in Baghdad, Basrah, Missan, Thi-Qar, Kerbala, Babel, Najef, Wassit and Diwaniyah.

...

While armed Shi’ite groups have in the past publicly focussed on attacking the MNF-I/USF-I, there are reports that they also single out Iraqis of various profiles for kidnapping and assassination, including former Ba’athists, security and government officials, political/religious rivals, and persons considered as “collaborators” with the foreign forces, especially the US.

62. The *Guidelines* further report that a number of armed groups, both Sunni and Shia, target individuals associated with, or perceived to be supporting the Iraqi authorities, the Iraqi Security Forces or the (former) Multinational and US Forces in Iraq, including subcontractors. [Information deleted: s.431(2).]
63. The *Guidelines* note that crime is widespread and some armed groups reportedly engage in extortion, kidnappings and armed robberies to fund their politically, religiously, or ideologically - motivated activities.
64. Additional information on the Badr Organisation indicates that Badr militants have not been fully disarmed², and that the organisation would “almost certainly” have access to sophisticated Iranian weaponry, although reportedly “A surge of anti-Iranian sentiment among Iraqis has led many Shi’as to abandon and inform on” a range of pro-Iranian armed militia groups, and in addition Iran’s motivation for funding and equipping such groups may also have fallen.³
65. According to one source⁴, in 2009:

² Reidar Visser, Religious Allegiances among Pro-Iranian Special Groups in Iraq, Combating Terrorism Center at West Point, 26 September 2011, <http://www.ctc.usma.edu/posts/religiousallegiances-among-pro-iranian-special-groups-in-iraq>

³ David C. Gompert, Terrence K. Kelly and Jessica Watkins, Security in Iraq - A Framework for Analyzing Emerging Threats as U.S. Forces Leave, RAND National Defense Research Institute, 2010, pp. 24, 41-42, http://www.ndu.edu/inss/docuploaded/rand_gompert1.pdf

⁴ <http://www.ncfpeace.org/drupal/content/supplementary-report-iraq> (Next Century Foundation, January 2009)

The Iranians have produced a C4 sticky bomb which is now being used in Iraq. This is a new weapon and can be exploded by mobile phone. They are taken into the country by small groups and sold in the market for seventy-five thousand dinars which is about \$70 even a kid can buy this stuff. There are no direct orders from Iran on their use, they just make these things available. ... Eight percent of the bomb materials used in Iraq are of Iranian origin.

66. A news report from 2008 notes the increased use of sticky bombs at that time and quotes a security source stating that “a lot of the sticky bombs came from outside Iraq and local insurgents were trained how to detonate them and attach them to cars. But we’re seeing sticky bombs produced locally in the last couple of months after increasing security measures on the border.” The same source noted that such bombs are usually detonated by cellphone.⁵
67. A 2010 report by the Combating Terror Centre⁶ refers to the ready supply of rocket/mortar systems and components to the Badr Organisation by Iran but notes that even, so “local sourcing of rockets is undertaken whenever possible” The same report refers to bomb making cells located in areas including Baghdad.
68. In July 2011 it was reported that the Iraqi military had successfully launched a crackdown on the smuggling by militia groups of arms and weaponry from Iran.⁷
69. State protection
70. The UNHCR *Guidelines* assess that the Iraqi national authorities have limited capacity to enforce law and order, and that as a result of the weak law enforcement and justice system, people at risk of persecution are unable to find protection or judicial redress.

Relocation

71. The UNHCR *Guidelines* assess that

Armed groups reportedly have operatives in many parts of the country and, as a result, a viable [relocation option] will likely not exist for individuals at risk of being targeted by such groups in southern and central Iraq. As reported throughout these Guidelines, armed groups are present in many parts of the country and have demonstrated mobility in accessing areas where they do not have strongholds. The mobility and reach of armed groups should not be underestimated ...

Generally, protection by national authorities will not be available given that the national authorities have as yet limited capacity to enforce law and order.

...

Travel by road within the central and southern governorates remains dangerous, especially at night.

FINDINGS AND REASONS

72. The applicant claims to be a national of Iraq. He provided copies of various Iraqi identity documents, including pages from his passport, to the Department. These documents are held on the Department's file. Based on the documentary evidence I accept that the applicant is a national of Iraq. He does not claim, and there is no evidence to suggest, that he has the right to enter and reside in any other country. His claims to refugee status will be assessed as against Iraq, as his country of nationality.
73. The applicant claims that he will be killed or otherwise harmed by an unspecified Shia militia group if he returns to Iraq because he refused to comply with the demands of a member of the group that he assist them by building [certain types of] bombs. He claims that prior to his departure the group threatened him, assaulted him and members of his family in their home, and burned his house and business to the ground.
74. The delegate did not accept the applicant's account because he found a number of the applicant's claims not to be credible.
75. However, in my view, the applicant has presented his claims very consistently at all stages of the processing of his application. He has provided a number of documents to support his claims. His claims have been presented with a considerable amount of credible detail and at the Tribunal hearing he was able to provide additional information and clarify issues without hesitation, and apparently frankly. In my view, his claims are broadly consistent with independent country information.
76. The delegate relied on country information indicating that Shia militias such as the Badr Organisation receive equipment and training from Iran, and found on this basis that it would be unlikely that they would recruit local personnel to make bombs. He therefore found the applicant's claim that he had been approached for this purpose not to be credible.
77. While the country information does indicate that Iran has, certainly in the past, provided specialised training in bomb making, as well as military equipment including the materiel necessary for making [certain types of explosive devices], to militia groups, and notably to the Badr Organisation, I note first of all that the applicant was merely speculating when he surmised that [Mr A] was from the Badr Organisation. While he provided cogent and persuasive reasons for his conclusion at the Tribunal hearing, which in my view adds to his overall credibility, it is evident, and the applicant acknowledged, that [Mr A] could have come from any militia, including a small independent group not associated with Iran. Moreover, as the applicant's adviser submitted, independent information states that "the Badr Organisation has become an increasingly loosely-knit network of local militias that often serve local power-brokers and engage in freelance criminal and sectarian violence"⁸; in these circumstances, it is possible that the applicant correctly identified [Mr A] as connected with the Badr Organisation, but that he was from a splinter group not receiving military assistance from Iran. In any case, one of the reports cited above estimates that only 8% of the bomb materials used in Iraq are sourced in Iran; another reports that Iran is currently pulling back from its support of the militia groups; and another reports a crackdown by Iraqi authorities on the smuggling of weapons and material from Iran into Iraq. None of the independent information cited above, supports a conclusion that all bomb makers and all materiel for bombs utilised by Shia militia, even including the Badr Organisation, are supplied by Iran;

⁸ UK Home Office 2011, *Country of Origin Report – Iraq*, 25 March, Section 12.14

this is clearly not the case. In my view, the available evidence does not justify a conclusion that the applicant's claim of having been approached to make [certain explosive devices] is not credible; indeed, the country information cited above indicates that it is plausible that Iraqi Shia militia would rely on locally based technicians and locally sourced components to manufacture [such devices]. Finally, with respect to the delegate's conclusion, the absence of independent information indicating that electricians are approached to perform this role does not lead logically to a conclusion that this does not happen. Accepting that the applicant is an experienced and well known electrician with particular expertise [information deleted: s.431(2)], I consider his claim to have been approached to assemble components necessary for [certain explosive devices] to be, on its face, plausible.

78. While it did initially appear to me somewhat implausible that a member of a militia would seek to recruit a person who had displayed no indication of being supportive of its cause or methods, especially given the risk that the person might inform the authorities, the applicant has provided evidence which, in my view, dispels these doubts. Firstly, he stated at the hearing that the man who approached him used the fact that the applicant had been involved in working for [a foreign contractor] in Iraq as a means of threatening him. While at first I thought that this was a new claim raised for the first time at the hearing as a means of overcoming the difficulties raised by the delegate, I accept that the applicant had, in fact, referred to this information in the statement submitted with his protection visa application, in that [Mr A]'s reported statement that his group would only kill traitors, spies and collaborators was meant as, and taken by the applicant to be, an implied threat. The applicant was adamant at the hearing that he had in fact mentioned the threat in his protection visa application and at the two Departmental interviews; he indicated that there had been some problems with the interpretation of his previous accounts, and this was borne out at the hearing when it became clear that the repeated reference to the [products] designed and built by the applicant were not palm sized GPS devices, but in fact, [quite different products]. Moreover, the applicant did not raise this claim at the hearing as a direct response to the particular credibility concern raised by the delegate, which might suggest that he had fabricated the information to overcome a problem already identified. Rather, he raised the issue in response to a question that he does not appear to have been asked before, and he appeared to do so in a spontaneous and inherently credible manner. I consider it likely that the precise nuance of the applicant's description of [Mr A]'s comment about the targets of the militia may not have been clearly conveyed as additionally being an implied threat to the applicant. This additional information, that the militia targeted the applicant not only because of his considerable expertise, but because they had a means of applying pressure to him, renders quite plausible, in my view, his claim to have been approached by the militia as described.
79. Moreover, the applicant has not sought to make out a claim that he is at risk of persecution because of his past association with [a foreign contractor] in Iraq, when the independent information might suggest that this is the case. In these circumstances, there would seem to have been little purpose in the applicant mentioning this past employment- which he has consistently at all stages of processing - except in the context of its relevance to the events which he does argue gave rise to his fear of persecution in Iraq; namely, that it was used as a means of putting pressure on him to comply with [Mr A]'s demands. I further note that while the applicant stated prior to the Tribunal hearing that he had not told anyone of this work, because to do so would put him at risk, I accept that nonetheless, this information may have been known [information deleted: s.431(2)].

80. I accept that the applicant would not have informed the authorities about [Mr A]’s first approaches to him. His evidence that he thought that [Mr A] was well connected with a group that had links with the government is credible and consistent with independent information that the major Shia militias, including the Badr Organisation, do. The country information also indicates, and I find, that the state authorities are unable to provide effective protection to Iraqi citizens, and I accept that the applicant believed that no help would have been forthcoming had he reported his dealings with [Mr A] to the authorities. Accepting this, the issue about which I do have credibility concerns is why the applicant then reported the subsequent attack on him and his family in their home, and the destruction of the home and business, to the police. As discussed at the hearing, his stated reasons for not having reported the initial contact are totally credible, and consistent with independent information suggesting that it is unlikely that assistance from the police would have been forthcoming. In these circumstances, it is difficult to understand what help the applicant thought he could have obtained following the subsequent attacks; indeed, his evidence, which is again supported by independent information, suggesting that militia groups such as the Badr Organisation have infiltrated the police, indicates that he was putting himself at greater risk of harm by reporting the activities of the group to the police.
81. The applicant’s explanation for his actions was essentially that he was in such a predicament by then that he simply hoped that perhaps someone in the police force might be honest and do their job. This might well be true; and it is evident that his situation was substantially different once the safety of his wife and children was directly threatened by criminal actions of which they were the victims. It is plausible, in my view, that the applicant felt more inclined to report these incidents than to inform the police that he had been asked by a man he could not identify to construct bombs. In any event, even if I rejected the applicant’s claim that he had been to the police and concluded that the police reports submitted in support of his claims were fraudulent, I do not consider that this would be a sufficient basis on which to conclude that his credibility is totally undermined and that none of his claims should be believed.
82. I accept that the applicant returned from [Locality 2] with his family after the destruction of their home because he could not leave his wife alone with his friend, and because he needed to return to Baghdad in order to organise his next steps. I accept that he stayed in a hotel and with his wife’s family in order to reduce any risk to himself and his family. I do not consider that the applicant’s decision to return to Baghdad with his family is inconsistent with the occurrence of the events he describes, or with the existence of a genuine fear arising in the circumstances claimed.
83. I accept the applicant’s claim that [Mr A] contacted him again after he had left the police station, offering a further opportunity for the applicant to change his mind, and compensation for the destruction of his property. I accept that [Mr A] and his group desperately wanted the applicant to help them; it is therefore plausible that now, having placed the applicant in a situation where he was virtually powerless against them, they would not only seek to drive home their advantage by forcing him to comply with their demands, but also to gain his allegiance by making good the damage done to him.
84. While, on one view, aspects of the applicant’s claims could be regarded as somewhat implausible, I found him to be an impressive witness who has provided a highly consistent and coherent account of the events which give rise to his claims. He has provided documentary evidence to provide his identity and support some of his claims, and on the basis of this evidence the delegate accepted, as do I, that he is a national of Iraq, that he was

an electrician with his own business and that he was a sub-contractor with [a foreign entity] in 2008. Much of the applicant's account is consistent with independent evidence. This evidence indicates, and I find, that both Sunni and Shia militia target individuals who are perceived to be collaborators with the US and multinational forces in Iraq. This means that the applicant's claims that [Mr A] told him that such people were to be the targets of the bombs he was to make, and the implied threat against the applicant himself because of his work with [a foreign contractor], are consistent and plausible. The independent information indicates that [the type of device the applicant claims to have been asked to make parts for] are a commonly used [device], and indicates that the components for making these bombs, and the expertise to do so may be sourced within Iraq. As discussed above, I consider that the applicant has satisfactorily explained most of the issues on the basis of which the delegate rejected his claims as lacking in credibility. I do not consider that the areas of doubt are sufficiently cogent to justify the rejection of his entire account. His account is not inherently implausible. I cannot dismiss the possibility that the events described by the applicant in fact occurred.

85. In these circumstances, I accept that the applicant was approached by a militia to make or assemble bombs, and that because he refused to do so he and his family have been assaulted and threatened and his properties have been destroyed. I accept that the applicant may be at risk of further harm should he return to Iraq, because I accept that he would continue to refuse to comply with these demands. I accept that the harm may be serious and may include a threat to the applicant's life or serious physical harm. I find, based on the information provided by UNHCR, that individuals perceived as traitors or collaborators with [foreign forces] are at risk of harm from armed militia groups in Iraq, and that they are the targets of systematic, discriminatory and serious harm amounting to persecution. I am satisfied that the applicant would be perceived in this way because of his previous association with [a foreign contractor], and because of his perceived opposition to the group which attempted to recruit him which would be implied from his refusal to assist them. I therefore find that the applicant is at risk of persecution because of a political opinion imputed to him, and that the applicant has a well-founded fear of persecution for a Convention reason.
86. The country information indicates that state authorities cannot and do not provide effective protection to Iraqi nationals at risk of harm. I find that the applicant would not be able to avail himself of state protection if he were to return to Iraq.
87. I accept the advice in the UNHCR Guidelines that relocation is not a reasonable option in Iraq and I find that the applicant could not be expected to relocate to another area of Iraq to attempt to avoid the harm he faces in Baghdad. The country information indicates that many Shia militia groups have connections throughout the country, so that there is no certainty that the applicant could avoid the harm he faces in Baghdad even if he were to relocate; in these circumstances, I am satisfied that there would remain a real chance that he would face persecution anywhere in Iraq.

CONCLUSION

88. 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

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