



**Upper Tribunal
(Immigration and Asylum Chamber)**

BA (Returns to Baghdad) Iraq CG [2017] UKUT 18 (IAC)

THE IMMIGRATION ACTS

**Heard at Field House
On 24-25 August 2016**

Decision Promulgated

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Before

**UPPER TRIBUNAL JUDGE KOPIECZEK
UPPER TRIBUNAL JUDGE CANAVAN**

Between

**B A
(ANONYMITY DIRECTION MADE)**

Appellant

And

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Anonymity

Rule 14: The Tribunal Procedure (Upper Tribunal) Rules 2008

We find that it is appropriate to make an anonymity direction because the case involves a protection claim. Unless and until a tribunal or court directs otherwise, the appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of his family. This direction applies both to the appellant and to the respondent.

Representation:

For the Appellant: Mr D. Lemer, Counsel instructed by Lawrence Lupin Solicitors
For the Respondent: Mr I. Jarvis, Senior Home Office Presenting Officer

- (i) *The level of general violence in Baghdad city remains significant, but the current evidence does not justify departing from the conclusion of the Tribunal in AA (Article 15(c)) Iraq CG [2015] UKUT 00544 (IAC).*
- (ii) *The evidence shows that those who worked for non-security related Western or international companies, or any other categories of people who would be perceived as having collaborated with foreign coalition forces, are still likely to be at risk in areas which are under ISIL control or have high levels of insurgent activity. At the current time the risk is likely to emanate from Sunni insurgent groups who continue to target Western or international companies as well as those who are perceived to collaborate with the Government of Iraq.*
- (iii) *The current evidence indicates that the risk in Baghdad to those who worked for non-security related Western or international companies is low although there is evidence to show that insurgent groups such as ISIL are active and capable of carrying out attacks in the city. In so far as there may be a low level of risk from such groups in Baghdad it is not sufficient to show a real risk solely as a perceived collaborator.*
- (iv) *Kidnapping has been, and remains, a significant and persistent problem contributing to the breakdown of law and order in Iraq. Incidents of kidnapping are likely to be underreported. Kidnappings might be linked to a political or sectarian motive; other kidnappings are rooted in criminal activity for a purely financial motive. Whether a returnee from the West is likely to be perceived as a potential target for kidnapping in Baghdad may depend on how long he or she has been away from Iraq. Each case will be fact sensitive, but in principle, the longer a person has spent abroad the greater the risk. However, the evidence does not show a real risk to a returnee in Baghdad on this ground alone.*
- (v) *Sectarian violence has increased since the withdrawal of US-led coalition forces in 2012, but is not at the levels seen in 2006-2007. A Shia dominated government is supported by Shia militias in Baghdad. The evidence indicates that Sunni men are more likely to be targeted as suspected supporters of Sunni extremist groups such as ISIL. However, Sunni identity alone is not sufficient to give rise to a real risk of serious harm.*
- (vi) *Individual characteristics, which do not in themselves create a real risk of serious harm on return to Baghdad, might amount to a real risk for the purpose of the Refugee Convention, Article 15(c) of the Qualification Directive or Article 3 of the ECHR if assessed on a cumulative basis. The assessment will depend on the facts of each case.*
- (vii) *In general, the authorities in Baghdad are unable, and in the case of Sunni complainants, are likely to be unwilling to provide sufficient protection.*

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GLOSSARY

AHH	Asa'ib Ahl al-Haqq
CIG	Home Office Country Information and Guidance
CSID	Civil Status Identity Document
FIS	Finnish Immigration Service
GoI	Government of Iraq
IBC	Iraq Body Count
IED	Improvised Explosive Device
ISF	Iraqi Security Forces
ISIL	Islamic State of Iraq and the Levant (also referred to as Da'esh or ISIS)
OHCHR	Office of the High Commissioner for Human Rights
PMF	Popular Mobilisation Forces
UNAMI	United Nations Assistance Mission for Iraq
UNHCR	United Nations High Commissioner for Refugees

DECISION AND REASONS

BACKGROUND TO THE PROTECTION CLAIM

1. In November 2003 the appellant began work as an assistant auditor for a large international auditing company in Baghdad. His work involved visiting various government ministries as well as companies based in the 'Green Zone'. In 2005 the security situation deteriorated. The company arranged for increased personal security measures following an attack on another international auditing company. In August 2005 the appellant's manager received a threatening letter. The letter was sent to his home. The letter warned him and his colleagues that they would be killed if they did not stop working for the Americans and leave Iraq. The letter purported to be from the Al Sunni Allies Army. The appellant and his colleagues met to discuss the threat but decided to continue work with increased caution.
2. In June 2006 the company decided to transfer the appellant to the London office for a period of six months training. He entered the UK on 20 June 2006 with entry clearance as a work permit holder, which was valid until 8 December 2006. The company decided to close the Baghdad office at the end of 2006. The appellant was offered a training contract in the London office. He was granted further leave to remain as a work permit holder until 27 November 2011.
3. The appellant says that a threatening letter was sent to his home in Baghdad in January 2007. The letter contained a bullet. It said that he deserved to be killed for cooperating with the Americans and should leave Iraq. Aside from the written threat there were no repercussions against his family. His mother received a threatening letter in mid-2008 telling her to stop helping Shia people. The letter was unrelated to the appellant's work and no action was taken against his mother, because she stopped her activities.
4. In September 2008 the appellant's training contract was terminated because he failed to pass an exam. When he explained why he could not return to Iraq the company gave him a one-year fixed term contract. However, when the contract expired in September 2009 he was unable to find an alternative work permit sponsor. He claimed asylum on 23 November 2009.
5. The Secretary of State refused the claim in a notice of decision dated 23 December 2009. The appellant's account was rejected on the ground that he failed to produce sufficient corroborative evidence. Even if the claim was taken at its highest he would not be at risk because he was no longer employed by the company.
6. Designated First-tier Tribunal Judge Manuell dismissed the appeal in a decision dated 2 March 2010. Having heard evidence from the appellant the judge found that he was a reliable witness and accepted his account of past events. However, he concluded that the appellant would not be at risk on return because he no longer worked for the company in question. The company no longer had an office in Iraq.

7. In a decision promulgated on 29 November 2010, Upper Tribunal Judge Gleeson set aside the First-tier Tribunal decision. The positive credibility findings were preserved. The Upper Tribunal found that the First-tier Tribunal failed to provide sufficient reasons to distinguish the facts of this case from the country guidance in *NS (Iraq: perceived collaborator: relocation)* CG [2007] UKAIT 00046 in assessing risk on return.
8. The appeal was identified as a suitable case to update the country guidance on the issue of perceived collaborators. As will be noted from the date of the error of law decision, there has been a considerable delay in listing the case for hearing. The reasons for the delay are somewhat unclear from the information before the panel but it seems that the case was set back to await the outcome of previous country guidance decisions. Such a long delay is regrettable. Since the decision in 2010 the situation in Iraq has changed considerably; as has the focus of this case.
9. The factual background of the case is not in dispute. The main issue is whether a person with the appellant's particular profile would be at real risk of serious harm if he is returned to Baghdad at the current time. We proceed on the basis that the following facts are accepted:
 - (i) The appellant is an Iraqi citizen who would be returned to his home area of Baghdad city. Although his wider family originates from Mosul the appellant and his immediate family members have lived in the same house in the Al-Ameriyah area of Mansour district since 1980.
 - (ii) Internal relocation is not an issue. It is accepted that the appellant will be returned to his home area of Baghdad and that there is no other safe or reasonable area of relocation outside his home area.
 - (iii) The appellant is a Sunni Muslim.
 - (iv) He worked as an assistant auditor for a Western/international auditing company in Baghdad from 2003 to 2006.
 - (v) In August 2005 the appellant's colleague, an operations manager, received a threatening letter.
 - (vi) As a result of the deteriorating security situation during 2006 the company decided to transfer staff out of Baghdad. The appellant entered the UK on a genuine Iraqi passport with a valid visa. The Baghdad office was closed a few months later.
 - (vii) In January 2007 a threatening letter was left at the appellant's home in Baghdad warning him to stop work for the company.
 - (viii) The appellant worked for the same company in the UK until September 2009.
 - (ix) The appellant's mother, sister and brother-in-law returned to the family home in Baghdad in or around September 2015 after his brother-in-law completed a four year posting to Kuwait as an Iraqi official.
10. The appellant's current fear of return to Iraq is based on a combination of factors. He fears that he would be at real risk of serious harm on return because (i) having worked for a Western/international company he might be perceived as a collaborator; (ii) as a Sunni Muslim he might be targeted by Shia militia; (iii) as a person who has spent time living in the West he might be at heightened risk of

kidnapping; and (iv) these risks are enhanced in the context of general insecurity and high levels of violence in Baghdad.

11. The appellant has lived in the UK for a period of 10 years. He says that his personal situation has changed since the First-tier Tribunal decision. He has been in a relationship with his partner for the past four years. She originates from Poland but is now a British citizen. While these are matters that might engage a private and family life claim under Article 8 of the European Convention we do not need to determine those issues. Mr Lemer made clear that human rights issues would be raised in a separate claim if necessary.

SCOPE OF COUNTRY GUIDANCE

12. This case was initially identified as one that was suitable to give guidance on the current risk to perceived collaborators. Further discussion took place at the hearing as to whether the case was appropriate for giving country guidance.
13. It became clear from the expert evidence that the issue became narrowly construed to the risk to “former employees of non-security related Western/international companies”. Dr George said that he had not been asked to consider a wider category of case but indicated that, without having had time to consider the matter in detail, his opinion as to the possible risk to other categories of perceived collaborators might be somewhat different e.g. interpreters or those who worked in a military context. The expert evidence concentrated mainly on the risk on return to Baghdad. The fact that the category was so narrow was hardly surprising given the facts of this particular case.
14. Mr Lemer acknowledged that the evidence produced in support of the appeal was insufficient to show that the appellant would be at real risk of serious harm solely on account of his profile as a former employee of a non-security related Western/international company. He accepted that the evidence relating to the other risk factors was also insufficient, if assessed individually, to found a claim. He made clear that he relied on a cumulative assessment of various potential risk factors in order to show a real risk on return.
15. Despite the Tribunal having expressed some initial concerns about our ability to provide clear guidance beyond the narrow scope set out at [13] above, both parties suggested that the case was suitable for country guidance. We agree. The decision may assist a wider readership in so far as the Tribunal sets out a summary of recent evidence relating to the situation in Baghdad regarding a number of potential risk factors, albeit that it is accepted that none of those factors, taken alone, are sufficient to found a claim at the current time.

RELEVANT COUNTRY GUIDANCE

NS (Iraq: perceived collaborator: relocation) CG [2007] UKAIT 00046

16. In *NS (Iraq: perceived collaborator: relocation)* CG [2007] UKAIT 00046 the Tribunal considered evidence as it stood at the date of the hearing in October 2006. A time when Iraq was in a period of intense sectarian conflict. The Tribunal concluded that an Iraqi who was perceived as a collaborator as a consequence of his work for the UN, an NGO, the Multi-national Force, the Coalition Provisional Authority or a foreign contractor, and who had attracted the hostility of an armed group, faced a real risk of persecution on return to his home area. Whether internal relocation was a reasonable option would depend on the individual circumstances of each case. The decision relied heavily on the fact that the respondent's Operational Guidance Note (January 2006) and the Country of Origin Information Report on Iraq (April 2006) outlined evidence to show that perceived collaborators (including interpreters) were being targeted by armed insurgent groups.

AA (Article 15(c)) Iraq CG [2015] UKUT 00544 (IAC)

17. The most recent country guidance is *AA (Article 15(c)) Iraq CG [2015] UKUT 00544 (IAC)*. The Tribunal conducted a comprehensive analysis of the situation in Iraq as the evidence stood at the date of the hearing in May 2015. The focus of the decision was narrowed to Humanitarian Protection issues under Article 15(c) of the Qualification Directive (2004/84/EC) (see [2] of *AA*). It did not purport to identify any specific risk categories with reference to the Refugee Convention or any enhanced risk categories for the purpose of Article 15(c). However, the Tribunal considered that the nature of the internal armed conflict in Iraq had changed to such a significant extent that the decision replaced all previous country guidance on Iraq [204(F)], including the decision in *NS (Iraq)*.
18. Although the decision in *AA (Iraq)* was confined to a broad assessment of Humanitarian Protection issues under Article 15(c) the underlying analysis of the situation in various areas of Iraq is also applicable to a proper assessment of protection claims within the context of the Refugee Convention.
19. For the purpose of this appeal, which concentrates solely on return to Baghdad, it is sufficient to note the Tribunal's conclusions relating to the levels of indiscriminate violence in Iraq for the purpose of Article 15(c) at [204]:
 - "1. There is at present a state of internal armed conflict in certain parts of Iraq, involving government security forces, militias of various kinds, and the Islamic group known as ISIL. The intensity of this armed conflict in the so-called "contested areas", comprising the governorates of Anbar, Diyala, Kirkuk, (aka Ta'min), Ninewah and Salah Al-din, is such that, as a general matter, there are substantial grounds for believing that any civilian returned there, solely on account of his or her presence there, faces a real risk of being subjected to indiscriminate violence amounting to serious harm within the scope of Article 15(c) of the Qualification Directive.
 2. The degree of armed conflict in certain parts of the "Baghdad Belts" (the urban environs around Baghdad City) is also of the intensity described in paragraph 1 above, thereby giving rise to a generalised Article 15(c) risk. The parts of the Baghdad Belts concerned are those

forming the border between the Baghdad Governorate and the contested areas described in paragraph 1.

3. The degree of armed conflict in the remainder of Iraq (including Baghdad City) is not such as to give rise to indiscriminate violence amounting to such serious harm to civilians, irrespective of their individual characteristics, so as to engage Article 15(c).
4. In accordance with the principles set out in Elgafaji (C-465/07) and QD (Iraq) v Secretary of State for the Home Department [2009] EWCA Civ 620, decision-makers in Iraqi cases should assess the individual characteristics of the person claiming humanitarian protection, in order to ascertain whether those characteristics are such as to put that person at real risk of Article 15(c) harm."

20. We note that the Tribunal's overarching conclusion regarding the level of armed conflict in Baghdad was made "irrespective" of a person's individual characteristics. In other words, the level of armed conflict was not deemed sufficiently intense to show, solely on account of a person's presence in Baghdad, that there was a real risk of being subjected to indiscriminate violence amounting to serious harm for the purpose of Article 15(c). The Tribunal took care to outline the relevant legal framework [83-86] and highlighted the principles set out by the Court of Justice of the European Union (CJEU) in *Elgafaji v Staatssecretaris van Justitie* [2009] Imm AR 477. The Tribunal quoted from the review of the relevant ECJ jurisprudence outlined in *MOJ & Others (Return to Mogadishu) Somalia* CG [2014] UKUT 00442 (IAC) [86]. In considering the ECJ decision in *Diakité v Commissaire général aux réfugiés et aux apatrides* [2014] WLR (D) 37, the Tribunal in *MOJ (Somalia)* observed [32]:

"At [31] the Court reaffirmed the view it expressed in Elgafaji at [39] that Article 15(c) also contains (what UNHCR has termed) a "sliding scale" such that "the more the applicant is able to show that he is specifically affected by reason of factors particular to his personal circumstances, the lower the level of indiscriminate violence required for him to be eligible for subsidiary protection." The court thereby recognised that a person may still be accorded protection even when the general level of violence is not very high if they are able to show that there are specific reasons, over and above them being mere civilians, for being affected by the indiscriminate violence. In this way the Article 15(c) enquiry is two-pronged: (a) it asks whether the level of violence is so high that there is a general risk to all civilians; (b) it asks that even if there is not such a general risk, there is a specific risk based on the "sliding scale" notion."

21. In *AA (Iraq)* the Tribunal made clear that it was necessary for decision makers in Iraqi cases to consider whether individual characteristics would place a person at real risk of serious harm for the purpose of Article 15(c) but did not purport to identify any enhanced risk categories. We will consider the Tribunal's findings regarding the general situation in Baghdad as part of our overall assessment of the evidence.
22. On 21 July 2016 the Court of Appeal granted permission to appeal on a single ground relating to whether failure to obtain a Civil Status Identity Document (CSID), in the absence of any other means of support, was likely to give rise to a breach of Article 3. The parties were agreed that the grant of permission does not affect the issues that the Tribunal will have to consider in this case.

***JK and Others v Sweden* (Application no. 59166/12) (23 August 2016)**

23. The day before the hearing before the Upper Tribunal the Grand Chamber of the European Court of Human Rights (“ECtHR”) issued a judgment in the case of *JK v Sweden*. Although it is not country guidance within the context of UK law it is necessary to refer to the decision. Both parties submitted that it was unlikely to have any significant bearing on the outcome of this case because the evidence considered by the ECtHR pre-dated much of the evidence currently before this Tribunal.
24. The Court noted that the most recent evidence from the Swedish Migration Agency concluded that the intensity of violence in Baghdad did not constitute a real risk of treatment contrary to Article 3 of the Convention. The Government referred to the United Kingdom Home Office’s report from April 2015 and reports by the Norwegian Landinfo from 2014 and 2015. The Court recognised that the security situation in Baghdad City had deteriorated but concluded that the reports it had considered did not show that the intensity of violence had reached a level which would constitute a real risk of treatment contrary to Article 3 of the Convention [110]. Having concluded that the general security situation in Iraq did not prevent the applicants’ removal, the Court went on to consider whether their personal circumstances would place them at risk. The Court acknowledged that the family had been exposed to the most serious forms of abuses by Al Qaeda in the period from 2004 to 2008. Having regard to the fact that the applicants were subjected to ill-treatment by Al Qaeda the Court found that there was a strong indication that they would continue to be at risk from non-state actors in Iraq [114]. The Court considered the Home Office Country of Origin Information report dated 2009 and the subsequent Home Office report dated 2014, which indicated that “persons who were perceived to collaborate or had collaborated with the current Iraqi Government and its institutions, the former US or multinational forces or foreign companies were at risk of persecution in Iraq. The reports single out certain particularly targeted groups, such as interpreters, Iraqi nationals employed by foreign companies, and certain affiliated professionals such as judges, academics, teachers and legal professionals.” [116]
25. The Court found that the first applicant belonged to a group of people systematically targeted for their relationship with American armed forces. It stated that it was mindful of the fact that the level and forms of involvement in “collaboration” with foreign troops and authorities may vary, and as such, so may the level of risk. The Court took into account the fact that the appellant suffered serious harm in the past as well as the fact that his work on an American military base was “highly visible”. A majority of the Court concluded that the applicant and his family would face a real risk of continued persecution by non-state actors if returned to Iraq [117].
26. The Court went on to consider whether the Iraqi authorities were able to provide an effective system of protection in Baghdad. The Court made the following findings:

“120. It appears from the most recent objective international human rights sources that there are deficits in both the capacity and the integrity of the Iraqi security and legal system. The system still works, but the shortcomings have increased since 2010 (see paragraph 43 above).

Moreover, the US Department of State [February 2015] has noted that widespread corruption at all levels of government and society has exacerbated the lack of effective human rights protections and that the security forces have made limited efforts to prevent or respond to societal violence (see paragraph 44 above). The situation has thus clearly deteriorated since 2011 and 2012, when the Migration Agency and the Migration Court respectively assessed the situation and the latter found that, in the event that threat still existed, it appeared likely that the Iraqi law-enforcement authorities were both willing and able to offer the applicants the necessary protection (see paragraph 19 above). Lastly, this issue is to be seen against the background of a generally deteriorating security situation, marked by an increase in sectarian violence and attacks and advances by ISIS, as a result of which large areas of the territory are outside the Iraqi Government's effective control (see paragraph 44 above).

121. The Court considers that, in the light of the above information on matters including the complex and volatile general security situation, the Iraqi authorities' capacity to protect their people must be regarded as diminished. Although the current level of protection may still be sufficient for the general public in Iraq, the situation is different for individuals, such as the applicants, who are members of a targeted group. The Court is therefore not convinced, in the particular circumstances of the applicants' case, that the Iraqi State would be able to provide them with effective protection against threats by al-Qaeda or other private groups in the current situation. The cumulative effect of the applicants' personal circumstances and the Iraqi authorities' diminished ability to protect them must therefore be considered to create a real risk of ill-treatment in the event of their return to Iraq.

122. As the Iraqi authorities' ability to protect the applicants must be regarded as diminished throughout Iraq, the possibility of internal relocation is not a realistic option in the applicants' case.

123. The Court therefore finds that substantial grounds have been shown for believing that the applicants would run a real risk of treatment contrary to Article 3 if returned to Iraq. Accordingly, the Court considers that the implementation of the deportation order in respect of the applicants would entail a violation of Article 3 of the Convention."

27. The Court held by ten votes to seven that deportation would give rise to a violation of Article 3. It should be noted that a significant minority of the Court issued a dissenting opinion. Two judges who formed part of the majority also issued separate opinions. Much of their concerns rested with the approach the majority judgment took to the legal principles applicable to a proper assessment of Article 3. In particular, concerns were expressed about the way in which the majority judgment dealt with the issue of what weight should be placed on past persecution when assessing current risk. The dissenting opinion observed that there was little reasoning to explain why the majority judgment applied an apparently more stringent test in [102] [114] that past persecution provided a "strong indication" of current risk, rather than the usual test of "serious indication" (echoed in the Qualification Directive). Concerns were also expressed about the legal principles relating to the burden of proof set out in the majority judgment. While the Court emphasised that, in principle, the burden of proof lay on the applicant, it purported to shift the burden to the domestic immigration authorities to establish the general situation in another country, including the ability of its public authorities [98]. It also appeared to suggest that the burden shifted to the Government to "dispel any doubts" about risk on return in circumstances where the court found that there was a "strong indication" arising out of past persecution that the applicants would be at risk from non-state actors [115].
28. We did not hear submissions on these legal issues. However, we observe that decisions of the ECtHR are to be taken into account but are not binding. On the face

of it the Court's position on the two points outlined above appear to be contrary to Article 4 of the Qualification Directive and the legal framework that is currently applicable to protection claims in the UK. Given that neither party suggested that that this legal approach had any direct bearing on the country guidance issues with which we are concerned it is not necessary for us to say anything further about the approach taken by the ECtHR in that particular case.

THE HEARING

29. Upper Tribunal Judge Gleeson set aside the First-tier Tribunal findings relating to risk on return. The appeal was listed for a resumed hearing in order to remake the decision. The respondent published a number of reports on Iraq a few days before the hearing. The Tribunal agreed to admit the evidence under rule 15(2A) of The Tribunal Procedure (Upper Tribunal) Rules 2008. We heard evidence from the appellant and an expert witness.

The appellant

30. The appellant gave evidence in English. He confirmed and adopted the contents of several witness statements prepared during the course of his asylum claim. He was asked whether his family name would be recognisable as a Sunni name. He said that the name would indicate that his family came from Mosul, which would be identified as a Sunni area. He explained that the name referred to a wider family group of around 250 people but did not denote a group as large as a tribe. The appellant told us that his first name was an unusual name that was mainly given to Sunni people. When asked to explain how people would know that his family originated from Mosul he said that it would become known through the "social habits" of people who would ask questions about where a person is from and accumulate knowledge about them. The appellant told us that his mother returned to Iraq last year after his brother-in-law completed a four year posting in Kuwait. She had to return to Iraq because she could not extend her residency in Kuwait.

31. In cross-examination the appellant said that he thought his sister and her husband returned to Iraq in September 2015. They returned to the family home in Al-Ameriyah, which remained empty while they were in Kuwait. He was asked why, if the situation in Baghdad was so dangerous, they had not sought to travel to a safe country rather than return to Baghdad. The appellant said that there was a general risk for everyone. Those living in Iraq just had to deal with it. His brother-in-law had to return because of his job. It was not easy to get asylum in another country, especially in an Arabic country. He said that, if his brother in law was still working in the same place, it was a 30 minute car journey from their house. As far as he knew they had not been threatened since they returned to Iraq. The appellant said that he did not know the exact percentage of Sunni and Shia in Baghdad but he would describe the city as mixed. He confirmed that Al-Ameriyah is a neighbourhood in west Baghdad and is a predominantly Sunni area.

Dr Alan George

32. It is not necessary for us to set out Dr George's qualifications and experience in detail. He is a recognised academic expert in Middle Eastern affairs who has given expert evidence before the Tribunal in a number of reported cases. His reports were prepared with input from both parties. His expertise to comment on the situation in Iraq is not disputed. Nor was the substance of his oral or written evidence challenged by either party.
33. Dr George has prepared a number of reports during the course of this appeal. We were only asked to consider the two most recent reports. His fourth report dated 10 June 2016 is a comprehensive report outlining the recent historical background to the current situation in Iraq as well as considering whether the individual circumstances of this case are likely to give rise to a risk on return. The fifth report is dated 8 July 2016. It responds to a number of questions from the respondent, which Dr George was asked to answer. The report also amends some minor reference errors in the fourth report. Dr George confirmed the contents of both reports and adopted them as part of his evidence before answering questions about the detail.
34. We found Dr George's evidence to be well-balanced. He was plainly well aware of his role as an expert. When necessary he acknowledged the difficulties in interpreting some of the evidence relating to the current situation in Iraq. When asked to give an opinion as to the risks on return he made clear that he was aware that the ultimate assessment was a matter for the Tribunal. He explained how and why he gave weight to certain sources and how he came to his conclusions on various different issues. He made it clear if he was unable to give a confident answer or had not been asked to research a particular point that was raised. We do not consider it necessary to set out every part of his oral evidence. Instead, we incorporate Dr George's written and oral evidence in relation to various different issues into our overall assessment of the evidence set out below.

Submissions

The respondent

35. Mr Jarvis prepared comprehensive written submissions. He asked us to note that the ECtHR in *JK v Sweden* concluded that there is no generalised Article 3 risk in Baghdad although he recognised that the Court considered a narrower range of evidence. He outlined how the facts of the case differed from this case. The applicant had more visible contacts with the US army. He submitted that there were limitations to the decision because it was not taken in the context of the same levels of evidence usually considered in UK country guidance cases.
36. He submitted that the evidence did not show that there was a real risk on return in relation to any of the potential risk categories identified in this case. The written submissions outlined the evidence he relied upon, which referred largely to evidence

relating to numbers of Sunni Muslims living in Baghdad. Mr Jarvis argued that the evidence showed that there are a large number of Sunnis living in Baghdad, many of whom are able to live a normal life despite an “overarching threat”. He asked us to note that the appellant’s mother, sister and brother-in-law returned to Baghdad in September 2015. His brother-in-law works in a government position. He submitted that there is nothing to prevent the appellant from resuming a relatively normal life in Baghdad. Internal movement around the city is possible. He submitted that there is no reasonable degree of likelihood that the appellant would be at real risk of serious harm if stopped at a checkpoint or when travelling around Baghdad.

37. Mr Jarvis said that Dr George’s evidence was that Al-Qaeda in Iraq had largely been assimilated into ISIL. In his view the threat as a perceived collaborator would mostly be confined to the areas under ISIL control. Mr Jarvis said that the ECtHR had limited evidence upon which to make its findings regarding sufficiency of protection in Baghdad. He submitted that the evidence in this case showed that the government and security forces were Shia dominated, as was the capital. He submitted there was sufficient evidence before the Tribunal to draw a different conclusion. The ECtHR relied on a Home Office report dated 2009 but we had up to date Home Office reports dated August 2016.
38. Mr Jarvis concluded by saying that the cumulative risk did not add much to the case in circumstances where the risk relating to each element was identified as being low. The appellant’s brother-in-law returned to Baghdad but there was nothing to suggest that he had any particular difficulties.

The appellant

39. Mr Lemer relied on his skeleton argument. He accepted that Dr George’s evidence meant that the appellant’s prospects of showing a real risk solely as a perceived collaborator were problematic. The thrust of his case rested firmly on the submission that there is a cumulative risk. The primary function of the Tribunal is to conduct a holistic assessment considering all relevant factors. The parties were in agreement that there should be no interference with the findings made in *AA (Iraq)* regarding the risk of generalised violence in Baghdad. However, he submitted that the Tribunal’s finding that the decision was intended to replace all country guidance on Iraq should not be read to include country guidance on issues that were not considered in *AA (Iraq)* e.g. country guidance cases relating to the situation in KRG.
40. With regard to the legal framework he submitted that persecutory conduct can have more than one motive. He pointed out that the ECtHR in *JK v Sweden* took into account the earlier decision in *NA v UK* [2008] ECHR 616. He argued that the appellant did not need to show a consistent or systematic pattern of ill-treatment to show a real risk on return. He submitted that some of Dr George’s evidence regarding what he meant by the level of risk came close to meeting the legal test. He argued that *AA (Iraq)* focussed on generalised violence and did not deal with enhanced risk categories under Article 15(c).

41. Mr Lemer referred us to evidence relating to each of the highlighted risk categories, which is considered as part of our overall assessment of the evidence. He acknowledged that Dr George's evidence concentrated on the risk to former employees of non-military Western companies and did not deal with other categories of perceived collaborators. Dr George said that the risk was significantly lower than previously. He accepted that tens of thousands of people could have worked for such companies and that there was limited evidence to show that such people continue to be targeted. Dr George identified an increased risk in areas controlled by ISIL or other anti-American extremist groups. Mr Lemer noted that Dr George considered any risk emanated from Sunni extremist groups and not from Shia militias. He acknowledged that this factor, taken alone, was unlikely to place the appellant at real risk but submitted that it was not the only factor to be taken into account.
42. Mr Lemer also acknowledged that the evidence did not show that a person would be at real risk in Baghdad solely on account of his or her Sunni religious identity. He argued that the evidence relied upon by the respondent from 2014 was out of date. There was more up to date evidence to show increasing sectarian violence in Baghdad albeit that Dr George's opinion was that it had not yet reached the levels seen in 2006-2007. Mr Lemer argued that the fact that the appellant is a Sunni, who would return to an area of Baghdad likely to be viewed by Shia militias as an area that might harbour Sunni extremists, was an aggravating factor cumulatively leading to a real risk on return. It was not suggested that effective state protection is available. The evidence showed that Shia militias act with impunity.
43. Mr Lemer acknowledged that Dr George considered the risk of kidnapping was "quite low", but pointed out that, when pressed, he referred to a spectrum of risk of about 10-15%. Mr Lemer submitted that this was likely to meet the legal test but he argued the point on the basis that it formed a further cumulative factor relating to risk on return. He referred to various reports of kidnapping and submitted that there was a heightened risk for a person who had spent a significant period of time living in the West. He would be perceived as having wealth and may be targeted for kidnapping for that reason. Mr Lemer also noted that there was evidence to show that Sunnis have been targeted for kidnapping although he acknowledged that the evidence did not show a real risk solely on account of being Sunni.
44. Mr Lemer concluded by arguing that if the risk factors are assessed on a cumulative basis, in the proper context of the generalised levels of violence in Baghdad, the appellant would be at real risk on return. The Tribunal in *AA (Iraq)* found that the degree of armed conflict in Baghdad was not, in itself, sufficiently severe to engage Article 15(c). However, Dr George expressed real concerns about the high levels of violence in Baghdad. The general situation in Baghdad still disclosed significant problems.

ASSESSMENT OF THE EVIDENCE

Empirical limitations

45. Both parties acknowledge the empirical limitations of some of the evidence relating to the situation in Iraq to varying extents. In *HM and others (Article 15(c)) Iraq* CG [2012] UKUT 409 (“HM2”) the Tribunal noted that any attempt to distinguish between a real risk of targeted and incidental killing of civilians may be difficult but observed that the incidence and numbers of deaths are a helpful starting point to the assessment of whether the level of risk reaches the required threshold [44].
46. In *AA (Iraq)* the Tribunal made clear that its task was to conduct an analysis of the violence that was “both qualitative and quantitative and is not to be restricted to a purely quantitative analysis of the number of civilian deaths and injuries in Iraq” [89]. The Tribunal also took into account the likelihood of underreporting of incidents when it analysed the evidence relating to the levels of violence in Baghdad [126].
47. Dr George emphasised the difficulty in identifying the motives for some of the killings reported in Baghdad. He also considered that it was reasonable to infer that there was likely to be underreporting of some incidents such as kidnapping. Kidnapping may be accompanied by threats not to report the matter to the police.
48. In his report, Dr George noted an email dated 30 May 2016 from Hamit Dardagan, a co-founder of Iraq Body Count (IBC), who made clear that demographic information is not available for deaths on their records. Coverage for certain occupations is more consistent and complete than for others. For example, the killing of police, security forces and certain other professions such as journalists is often mentioned in reports. In other cases it is harder to discover the reason why a person might have been targeted. For this reason IBC “lacks occupational information for the vast majority of the dead”. He went on to explain that, while the presence of a particular category of case in the IBC database “might be taken as indicative of targeting (especially when it is likely to be a very small demographic to begin with), its absence cannot be taken as meaningful.”
49. We also take into account the difficulty in defining the scope of some phrases used to define a potential risk category. Broadly speaking the term “collaborator” has been used in the past to refer to those working for coalition forces, international organisations or anyone who was perceived to be acting contrary to the agenda of various armed groups. What seems clear is that the term “collaborator” could be applied to a range of different circumstances. The risk may vary depending on the level of involvement of a person with international forces or organisations and whether they worked in a military/security context or in a non-security context. The current evidence indicates that the term “collaborator” might also include those perceived by some insurgent groups to work for or assist the Government of Iraq. We do not seek to define the term more specifically. The assessment of whether a person is likely to be perceived as a collaborator will depend on the facts of each case.

50. Similarly, the definition of broad terms such as “Western companies” might also need to be approached with some caution. In the context of this case the term “Western” is likely to relate to large international companies whose origins or headquarters are based in developed countries, or have particular connections to countries that formed part of the US-led coalition forces.

General situation

51. In *AA (Iraq)* the Tribunal summarised developments since the withdrawal of US-led coalition forces in 2012 [91-100]. The Tribunal noted the rise of ISIL as well as other anti-government groups active in Iraq. Various estimates of the number of deaths in Iraq during 2014 ranged from around 10,000-26,000 [100]. While the levels of civilian deaths and injuries in Baghdad city were not significantly different from the statistics for some of the governorates in contested areas, the Tribunal drew a distinction between the asymmetrical violence in Baghdad city and all out fighting seen in the contested areas, before concluding that the levels of violence in Baghdad city did not amount to a generalised risk for the purpose of Article 15(c) [127-132]. The Tribunal also considered the general conditions in Baghdad relating to employment and living conditions [188-203].
52. Dr George’s fourth report provided a history of the political and security situation in Iraq since the first Gulf war, which included an outline of the rise of ISIL. Dr George highlighted IBC’s analysis of the levels of violence entitled ‘Iraq 2015: A Catastrophic Normal’. The report stated that 16,115 civilians were recorded killed during 2015 compared to 20,030 in 2014. Although the death toll was lower than 2014 the report observed that, aside from the exceptionally high death tolls recorded in June and August of 2014, the level of deaths in 2015 “were very similar” to those in 2014. The greatest number of civilian deaths in 2015 were reported for the governorates of Ninewa, Anbar and Baghdad, followed by Salah al-Din and Diyala. Those five provinces accounted for 90% of civilians killed in Iraq in 2015.
53. Dr George also referred to a report on the Musings on Iraq blog run by Joel Wing entitled ‘Violence in Iraq, April 2016’ (09 May 2016). In oral evidence Dr George said that he considered Joel Wing to be a reliable source of information. With reference to the levels of violence in Baghdad city during April 2016 alone the report stated:

“The capital has become the main target of the Islamic State as it loses territory in the country. There were 273 incidents there leading to 413 dead and 1,006 wounded. IS picked up its bombings in the governorate with 4 suicide bombers and 8 car bombs. In comparison there was just 1 suicide bomber and no successful car bombs in Baghdad in March, 4 suicide bombers and 1 car bomb in February, and 3 suicide bombers and 3 car bombs in January. The 8 car bombs in April was the most the province had seen since 11 went off in August 2015.

Southern Baghdad continued to face the most violence. There were 101 incidents there versus 55 in the east, 53 in the north, 43 in the west, 16 in the center, and 5 in unknown locations. The south witnessed a mortar attack, 2 car bombs, 2 grenade attacks, 7 sticky bombs, 16 shootings, and 71 IEDs. In the east incidents were a mixture of IS attacks along

with vigilantes, criminals and Hashd elements, which was shown with 1 stabbing, 3 kidnappings, 4 major robberies, and 13 bodies being dumped there. The capital like the rest of the country has seen a growth in crime with the insecurity. There were 10 kidnappings reported, 14 robberies of sizeable sums of money, and 34 bodies found in the streets during the month.”

54. The Home Office Country Information and Guidance report (CIG) on the security situation in Baghdad (August 2016) produces a number of graphs relating to levels of violence in Baghdad between February 2014 and July 2016 with reference to the underlying source materials. We take into account the difficulty in collating and analysing evidence relating to violence in Iraq, and the fact that the report states that some statistics are not included, such as data from Joel Wing on civilian fatalities in Baghdad. The trends outlined in the most recent CIG vary slightly but indicate similar levels of violence to those considered by the Tribunal in *AA (Iraq)* in May 2015.
55. The evidence contained in the CIG drawn from Joel Wing’s Musings on Iraq suggests an overall rise in security incidents in Baghdad during 2016. The information relating to civilian casualties remained broadly the same save for information from UN Iraq showing a sharp spike in civilian casualties in or around June 2016. The report does not include an analysis to explain why there might have been such a sharp spike in casualties in Baghdad in mid-2016 but we note that serious bomb attacks occurred in Baghdad at the beginning of July 2016, which led to hundreds of casualties. We are unable to discern from the evidence currently before us whether this forms part of a trend of increasing violence or whether this was an unusual spike in the general levels of violence. While the levels of violence in Baghdad remain at a serious level we conclude that the evidence does not show a significant increase in the overall levels of violence that would lead us to come to a different conclusion from the Tribunal in *AA (Iraq)*.
56. This decision focusses on the situation in Baghdad city. Although the evidence shows that there have been some changes in the security situation in other areas of Iraq since the Tribunal heard *AA (Iraq)* it is beyond the scope of this case to give guidance on the situation outside Baghdad. The evidence shows that the security situation in other areas of Iraq continues to be extremely fluid. The parties were in agreement that the Tribunal’s findings in *AA (Iraq)* regarding generalised violence continue to apply.

Potential risk as a perceived collaborator:

Former employees of a non-security related Western / international company

57. In his fourth report dated 10 June 2016 Dr George said that when he prepared his last report in this case in December 2012 there was ample evidence to show that Iraqis who had worked with Western companies in Iraq would be at real risk. However, in light of the current evidence, his opinion had changed. In 2012 the US and UK occupation had recently ended. The previous insurgency in Iraq was mainly directed against Western military presence in Iraq. It was logical, from their perspective, for

the insurgents to target Iraqis who were actually or perceived to be working with Western forces and companies that had come to Iraq after the invasion in 2003.

58. Dr George outlined the evidence he reviewed and the enquiries that he made with reliable sources such as Joel Wing and IRC. His review of publicly available information did not reveal a single instance in which a person was recorded as having been targeted because they worked with a non-security related Western company. On 24 May 2016 he received a brief email from Joel Wing to say that he had not heard of any recent evidence to indicate whether former interpreters and employees of Western companies and the military were being targeted in Iraq at the current time. Hamit Dardogan was able to identify the death of one individual from their records since 2012 of a person who formerly worked as an interpreter for US forces. Another interpreter who worked for the Venezuelan Embassy was killed in Baghdad.
59. Dr George also contacted UNHCR and UNAMI but he had not received replies to his enquiries. He concluded that a person who had worked for a non-security related Western company, especially a person such as the appellant who left Iraq 10 years ago, would not face the same level of risk as before. There was little evidence to suggest that accountants and auditors are amongst certain professions that are known to be targeted, such as doctors and lawyers. He considered that a person such as the appellant might still be targeted by “ultra-militant factions” but there is no evidence to indicate that such persons are now being “targeted systematically”. In oral evidence he clarified that the risk included ISIL and other extremist groups who continued to be opposed to Western countries and ideology. He assessed the risk to be “relatively low”. Any potential risk was likely to emanate from Sunni extremist groups and not from Shia militias in Baghdad.
60. Dr George’s reports are supplemented by a number of source materials. An article from the International Business Times dated 18 June 2014 reported a number of incidents in which expatriate workers for foreign companies were targeted by groups such as ISIL in areas outside Baghdad. The UNHCR position on returns to Iraq dated October 2014 stated that the southern governorates continued to see security incidents including car bomb attacks, as well as targeted killings/kidnappings and sectarian reprisal attacks against individuals, including members of political parties, religious and tribal figures, government employees and professionals [15].
61. Both the US State Department Iraq travel warning dated 04 December 2015, and the Foreign and Commonwealth Office Iraq travel advice dated 18 May 2016, warned that Western interests continue to be targeted throughout Iraq.
62. A Landinfo response dated 07 April 2016 considered the situation for persons who have worked for foreign companies. The response stated that there was no longer a risk of targeting by Shia militias following the pull out of US-led coalition forces at the end of 2011. Although UNHCR noted in 2012 that there were some attacks against persons who had been working for foreign forces or organisations the Shia militias are mainly focussed on combating the threat from ISIL. The Shia militias, the Iraqi authorities and the US military now have a common goal in fighting ISIL.

63. The most recent US Department of State report dated 13 April 2016 stated that ISIL forces targeted Sunni civilians who cooperated with the Iraqi security forces. The evidence related largely to abuses that occurred in areas outside Baghdad city. In Baghdad ISIL reportedly carried out bomb attacks against civilians in Shia majority neighbourhoods.
64. The Home Office CIG report relating to the security situation in Baghdad is dated August 2016. Annex B contains a letter from the British Embassy in Baghdad dated 29 March 2016, which reports on the levels of violence in various areas of Baghdad city. With reference to the activities of Sunni insurgent groups in the capital the letter said:

“Sunni insurgents, most notably Da’esh, remain tactically agile and continue to adapt and respond to the changing situation on the ground. Despite being constrained by logistical limitations and a lack of freedom of movement in Baghdad, Da’esh retains the capability to maintain its operational tempo in the capital. At present they are conducting a two-track campaign focused on propagating sectarian discord through attacks targeting the majority Shia community in Baghdad whilst also attempting to undermine the Shia-led government by maintaining the perception of the Government of Iraq’s (GoI) inability to maintain an effective security environment. On a tactical level this is played out in two different ways. Firstly, and accounting for the vast majority of their activity, their attacks are directed towards ISF and GoI personnel and civilians and comprise small roadside Improvised Explosive Devices (IEDs) and Under Vehicle IEDs (UVIEDs) alongside Small Arms Fire (SAF) attacks, including assassinations. These attacks can be targeted or random in nature but have little practical risk of large-scale collateral damage. Targeted individuals are typically singled out for attack due to a lack of security awareness - driving clearly marked government vehicles or wearing uniform off duty. Secondly, Da’esh and associated Sunni insurgent groups maintain the intent and capability to conduct standalone and coordinated high-intensity attacks... These attacks are capable of causing numerous casualties; however their lethality is far reduced from the types of devices seen between 2004 to 2007. Targets for these high-intensity attacks tend to be Shia gathering areas, including cafés/restaurants, markets and mosques.”

65. In our assessment the evidence shows that those who worked for non-security related Western or international companies, or any other categories of people who would be perceived as having collaborated with foreign coalition forces, are still likely to be at risk in areas which are under ISIL control or have high levels of insurgent activity. At the current time the risk is likely to emanate from Sunni insurgent groups who continue to target Western or international companies as well as those who it is perceived collaborated with the Government of Iraq.
66. The evidence shows that Shias control the Government of Iraq and are the dominant religious group in Baghdad city. The government is reliant on Shia militias to maintain its position but has little control over them. Perceived collaborators with foreign forces and companies were targeted in the past but since the withdrawal of coalition forces at the end of 2011 the Shia militias are focussed on combatting the threat from extremist groups such as ISIL. The evidence indicates that the risk to those who worked for non-security related Western or international companies in Baghdad is now low. However, there is evidence to show that insurgent groups such as ISIL are active and capable of carrying out attacks in the city. We also take into

account the empirical limitations in assessing the motive for many killings in Baghdad, which includes difficulty in ascertaining the background of many victims. Despite not finding any direct reference to a person who had worked for a non-security related company being targeted in Baghdad, and taking into account the empirical limitations, Dr George's opinion was that there is a relatively low level of risk emanating from ultra-militant groups operating in Baghdad if a person's background becomes known. In so far as there may still be a low level of risk from such groups our assessment of the evidence is that it is not sufficient to show a real risk of targeting in Baghdad solely as a perceived collaborator.

67. We make clear that we have not considered any detailed evidence on the potential risk to perceived collaborators in other categories such as those who worked in a military or security setting, including interpreters. Dr George was not in a position to comment in any detail without further research. However, the evidence outlined above shows that such people are likely to be at risk in areas under ISIL control outside Baghdad. We bear in mind that the case was not prepared with those potential risk categories in mind. Although there is likely to be the same low level of risk from ISIL in Baghdad, Dr George's initial opinion was that there may be a slightly enhanced risk to those who worked in a military or security setting. Nothing in the evidence that we have considered suggests that there are regular reported incidents of collaborators from a security setting being targeted in Baghdad city. However, given the focus of this case we are unable to give any clear guidance relating to the possibility of an enhanced risk to perceived collaborators from a military or security setting without further evidence.

Kidnapping (including returnees from the West)

68. Dr George's fourth report outlines a number of pieces of evidence relating to high levels of crime in Iraq. He explained that the collapse of state structures following the 2003 invasion and Iraq's accompanying fragmentation resulted in an unprecedented crime wave albeit that he recognised that there are no precise statistics on the phenomenon.
69. The United States Overseas Security Advisory Council (OSAC) is an organisation that promotes security co-operation between US private sector business interests abroad and the US Department of State. The OSAC Crime and Safety Report on Baghdad dated 09 February 2015 stated that crime statistics and/or crime reporting mechanisms are incomplete and inconsistent.
70. Dr George also referred to an article dated 21 October 2009 by Joel Wing, a respected blogger on Iraq. In 'The Rising Crime Rate in Iraq' Joel Wing said that Iraqis were facing a new danger from rising crime. One crime that was getting increasing press attention was kidnapping. Kidnappings occurred before, but they had political or sectarian overtones or were done to fund militant groups. He said that kidnappings increasingly were carried out for profit. Many families were said to negotiate with the criminals rather than go to the police. In evidence Dr George said that kidnapping seemed to be a "widespread problem" that had gone on for a long time.

While he acknowledged that there had been some incidents when the authorities intervened to free a victim, the general position in relation to Iraqi victims of kidnapping, was that the kidnappers can act with impunity. Dr George's evidence was that the overall risk of kidnapping was likely to be "low" but in his report he made clear that kidnapping has been, and remains, a "significant dimension" in the breakdown in law and order since the 2003 invasion. We accept that the evidence shows that kidnapping remains a significant and persistent problem in Iraq.

71. Dr George cited a UN High Commissioner for Human Rights report dated 09 June 2004 called 'The Present Situation of Human Rights in Iraq'. The report stated that Iraqis returning from Western countries might well be exposed to kidnapping because they are perceived as "financially privileged". He also referred to a Danish-Norwegian fact-finding mission report published in July 2009 entitled 'Security and Human Rights issues in Kurdistan Region of Iraq and South/Central Iraq', which referred to returnees from Europe being "self-illuminating" targets for kidnappers.
72. The US State Department Report dated 13 April 2016 stated:

"Disappearances and kidnappings were regular occurrences, and some kidnappers who did not receive a ransom killed their victims. There were also cases reported in which the abductor killed the kidnapped individual despite receiving ransom payments. Most kidnappings appeared to be financially motivated. Da'esh forces and illegal armed groups engaged in widespread kidnapping of members of the Iraq's ethnic and religious communities. The Ministry of Human Rights reported that the numbers of missing persons from June 2014 to June 2015 had reached 2,935. According to UNAMI estimates, there were numerous "execution style" killings of victims kidnapped for ransom to intimidate members of their communities.

Criminal groups were most often associated with abductions outside of Da'esh controlled areas. Kidnapping cases increased throughout the year, with criminals and some militias exploiting the security situation to carry out kidnappings, either for personal gain or for sectarian reasons."

73. Dr George considered that a person such as the appellant could be regarded by armed criminals and insurgents in central and southern Iraq as "a prime target for kidnapping". As someone who had spent time abroad he might be perceived as relatively wealthy. When asked how anyone would know that the appellant in this case had been in the West Dr George explained that people do not live in isolation like they do in Europe. A person's background will become known within the local community. However, in his view the risk of kidnapping solely on this basis "would not be high". When asked to clarify this assessment in evidence at the hearing Dr George made clear that it was difficult to assess the level of risk given the likelihood of underreporting. He said that it was impossible to be precise but sought to express his assessment as something in the region of a 10-15% risk.
74. Dr George referred to an Al Jazeera report dated 29 January 2016 entitled 'Which kidnap victim is more valuable - US or Iraqi'. The report stated that accurate figures on kidnappings are impossible to come by because the Iraqi government does not keep crime figures. The report mentioned that abducted Americans represented only a small fraction of the people who go missing in Iraq each day. Often families of the

victims get no help from the police and are left to deal with the kidnapers themselves.

75. Dr George's fifth report also cites a report published by the US Army War College's Strategic Studies Institute called 'Criminals, Militias, and Insurgents: Organized Crime in Iraq'. The report is dated June 2009 but Dr George considered that, as an account of Iraq's 'kidnapping industry', the report remained valid today. He quoted this extract from the report to illustrate the difficulty in assessing the scale of the problem:

"... criminal activities in Iraq related to oil are highly complex. Kidnapping in Iraq, if anything, is even more convoluted than oil and petroleum smuggling. Kidnapping is both a highly profitable activity in the form of asymmetric warfare for the weak against the strong; it empowers the perpetrator and demeans the victims; sometimes it garners international attention but most often it occurs in relative obscurity; it can end in death and tragedy or relief and celebration. In Iraq it is often unclear who is responsible for particular kidnappings, how and why specific individuals are targeted, or why some kidnap victims are killed while others are released unharmed. Furthermore, obtaining an accurate assessment of the scale and scope of the kidnapping industry in the country is well-nigh impossible since most kidnap victims are Iraqis, and the reporting of these abductions-either to the authorities or in the press-is fragmentary at best.

Similarly, identifying trends in Iraqi kidnapping is complicated by underreporting, the absence of a centralised repository of kidnapping incidents, and what, with a few exceptions, appears as the indifference of the Western news media. Kidnapping of Iraqis, unlike the kidnapping of foreigners, rarely results in much publicity, let alone the headlines and outrage generated by the abduction of foreigners. Consequently, the gaps in information and knowledge are enormous. As one official at the US Embassy in Baghdad acknowledged, the most that can be done is a "tip-of-the-iceberg analysis."

76. We note that the report goes on to outline the difficulties in ascertaining the motive for many kidnappings:

"Kidnapping in Iraq has several distinct dimensions. First is motivation. Different kinds of kidnapping are determined largely by the motivations of the perpetrators. Although the main focus in this chapter is economic or for-profit kidnapping rather than political kidnapping, the distinction between the two is not as clear as it initially appears. Sometimes it is impossible to determine whether a kidnapping is primarily about money or about politics. Indeed, it is often apparent only in retrospect - and sometimes not even then - as to which category of kidnapping is a particular abduction belongs. As one commentary noted, "abductions are sometimes lucrative criminal enterprises, sometimes brutal aspects of sectarian violence, and sometimes a tangled mix of the two."

77. In AA (*Iraq*) the Tribunal considered expert evidence relating to incidents of kidnapping and killings in Baghdad as part of its overall assessment of the level of indiscriminate violence:

"124. Dr Fatah explains that it is Baghdad's Shiite districts that have borne the brunt of the bomb attacks - with the perpetrators generally believed to be either ISIL or other Sunni insurgents. Amnesty International reports that Shia militias, backed by GoI, have been abducting and killing Sunni civilian men in Baghdad, and around the country - indicating that it has documented "dozens" of such cases in Baghdad, Samarra and Kirkuk. Dr Fatah observes that Sunni districts experience fewer incidents than Shia districts and that such

incidents as there are largely take the form of kidnappings and killings. Sunnis are targeted, amongst other reasons, as retribution for the acts of ISIL.”

78. Both parties referred to a report issued by the Finnish Immigration Service (FIS) dated 29 April 2015 entitled ‘Security Situation in Baghdad – The Shia Militias’. In so far as it makes reference to kidnappings of Sunnis by Shia militias the report stated:

“Shia militias and kidnapping gangs kidnap Sunnis and almost invariably demand a ransom. After the ransom is paid, the victims are released, or in the worst cases are found dead, killed in the manner of an execution. According to the United Nations Assistance Mission for Iraq (UNAMI), the number of kidnappings after which the victims are found shot in such a manner is growing in Baghdad. In November 2013, there was a dramatic increase in the number of such incidents. In January - February 2014, UNAMI recorded 245 execution style killings, at least 39 of which took place in Baghdad. In December 2014, the command and control centre of the Baghdad security forces confirmed that kidnappings in Baghdad had decreased considerably, by as much as 90%. Financial rewards are used as an incentive to encourage people to reveal the whereabouts of kidnappers or gangs. Arrests have been made in various Shia districts, such as Baladiyat and Shu’ala.”

79. We discuss the evidence relating to the potential risk to Sunni Muslims elsewhere. For the purpose of this part of the decision it is necessary to note that Dr George expressed some concern about the source of the information relied upon to suggest that there was a considerable reduction in kidnappings in Baghdad by the end of 2014. He said that he would distrust a source from the Iraqi security services and would take such statements with a “pinch of salt”. He queried how the authorities could claim such precise figures given the difficulties in ascertaining the scale of the problem as outlined above.
80. Mr Jarvis referred to several reports relating to the voluntary return of Iraqi asylum seekers from a number of countries in Europe including Belgium and Finland. Some reports refer to returns to Baghdad as well as Erbil. We take into account the fact that there are no specific reports of returnees being targeted on return solely on account of having spent time in the West. An International Organisation for Migration (IOM) report dated 02 February 2016 stated that more than 3,000 Iraqis received assistance to return to Iraq from 14 European countries during 2015. The reports appear to indicate that many of the returnees had only been in Europe for a matter of months after having joined the overland migration into Europe.
81. We do not consider that this evidence takes our assessment any further. While the voluntary return of a number of Iraqi citizens from Europe is notable, in the context of the difficulties in ascertaining any precise figures regarding the level of kidnappings in Baghdad, or the motives for such kidnappings, we find that the fact that there is no specific evidence showing targeting of recent returnees does not necessarily indicate an absence of risk. Dr George said that he would be surprised if no returnees from Baghdad had ever been robbed, however, he was unable to give any specific examples.
82. The evidence shows that incidents of kidnapping are likely to be significantly underreported. Even taking this into account Mr Lemer accepts that the evidence does not show that there are substantial grounds for believing that a person would

be at real risk of serious harm on this basis alone. Our holistic assessment of the evidence shows that kidnapping is a significant and persistent problem contributing to the breakdown of law and order in Iraq. On a purely statistical analysis, which is in any event difficult to assess, it cannot be said that there is in general a real risk of kidnapping to a returnee from abroad given the population of Baghdad. However, the incidents of kidnapping are sufficiently widespread that the risk cannot be discounted. In some cases kidnappings might be linked to a political or sectarian motive; other kidnappings are rooted in criminal activity with a purely financial motive.

83. There is evidence to indicate that those returning from Western countries might be at heightened risk of kidnapping. Whether a returnee from the West is likely to be perceived as a potential target for kidnapping in Baghdad may depend on how long he or she has been away from Iraq. We find that it is reasonable to infer that the longer a person has been abroad the greater the perception might be that they have benefited from opportunities in the West and may be worth targeting. Conversely, those who have only spent short periods of time away might not be perceived as having had time to accumulate sufficient wealth to render them a likely target. The evidence does not show a real risk on this ground alone but it may form one part of a cumulative assessment of risk on return depending on the facts of a particular case.

Sunni identity

84. Dr George's fourth report explained that Iraqis identify principally with the ethnic and religious communities to which they belong. Membership of a particular religious community is not just a matter of faith but also a matter of cultural and political identity. With the breakdown of the Iraqi state after the 2003 invasion many Iraqis turned to their religious communities as sources of identity and protection. By 2006-2007 the country became engulfed in a ferocious sectarian civil war pitting Sunni against Shia. He cited an article from the New York Times dated 05 September 2006, which outlined incidents of targeting by Shia "death squads" at checkpoints during the height of the sectarian conflict. After 2007 there was a sharp decrease in so-called 'ID killings' based solely on religio-political identity, but since 2013 sectarian tensions have escalated.
85. He refers to a number of pieces of evidence including the US Commission on International Religious Freedom (USCIRF) Annual Report on Iraq dated 02 May 2016 and the US State Department International Religious Freedom (USIRF) report for 2014 (issued 14 October 2015). Both reports state that there has been a deterioration in religious freedom in 2014 and 2015. While extremist groups such as ISIL were responsible for a large proportion of abuses the reports also outline abuses by the Popular Mobilization Forces (PMF). The USCIRF reported:

"While ISIL was the most egregious perpetrator of human rights and religious freedom violations, the Popular Mobilization Forces (PMF), recognized by Prime Minister al-Abadi in September 2015 as officially part of the Iraqi state, have continued to commit systematic attacks against Sunni Muslim civilians, exacerbating sectarian tensions. Although al-Abadi attempted to bring the PMF into the fold of government-sanctioned armed groups through

this maneuver so far it has remained clear that the group - which technically reports to the Ministry of Interior - exercises a significant amount of autonomy and espouses strong, pro-Shi'a leanings, mostly to the exclusion of Iraq's Sunni population. However, because the PMF is one of the most effective groups in fighting ISIL, the Iraqi government has not curtailed their activities or prosecuted those who have perpetrated violent attacks."

86. The USCIRF report said that Sunni Muslim groups stated that there was an ongoing campaign of revenge by the Shia majority because there was a public perception that Sunnis sympathised with the regime of Saddam Hussein and with extremist groups such as ISIL. The evidence outlines reports of Shia militias carrying out abuses in areas retaken from ISIL control. In evidence at the hearing Dr George said that there were areas in which Sunni identity might give rise to a potential risk. In areas liberated from ISIL there was a risk that Shia militias would target Sunnis as perceived collaborators with ISIL. For example, his report outlines an incident in Diyala in January 2015 when Shia militiamen were reported to have killed more than 70 Sunnis.
87. With reference to the situation in Baghdad, a BBC online news article dated 09 July 2014 reported that Iraqi security forces found the bodies of 53 men in a mainly Shia area south of Baghdad. The article went on to state that Sunni militants had been carrying out attacks around the southern outskirts of Baghdad. In response, Shia militiamen had been rounding up Sunnis they suspected of being behind the violence, many of whom later turned up dead. The number of bodies found around the capital reportedly had risen since the beginning of that year, sparking fears of a return to the peak of sectarian civil war in 2006 and 2007.
88. The FIS report stated:

"ISIS continues to set off bombs in Baghdad almost daily, targeting Shia districts with the intention of demonstrating its ability to push into Baghdad. Together with the Iraqi security forces, Shia militias are inciting fear amongst Baghdad's Sunni population. It is feared that the Shia militias will take revenge for ISIS's actions on Sunnis who have nothing to do with ISIS. Shia militias have committed serious human rights violations against the Sunnis.

.....

Shia militias are actively recruiting fighters, not only to fight against ISIS on the front line but also to guard Baghdad's various districts. Militant groups in Iraq are becoming increasingly powerful and independent. The current Prime Minister, Haidar al-Abadi, is unable to control the Shia militias, nor are they punished for the acts of violence they are committing. Shia militias operate independently and the government is unwilling or unable to control them. Some Shia politicians fear that the Shia militia will become as radical as the Sunni al-Qaeda.

According to Amnesty International, Shia militias are violating the human rights of Sunni. During the civil war, all Shia militias were referred to as the Mahdi Army, a habit which appears to have persisted. Sunnis are harassed at checkpoints. They have been sent threatening letters and been driven from their homes by the militias. Besides engaging in Sunni persecution, Shia militias have also assumed the role of moral guardians. They have raided liquor stores and killed the owners. They also persecute people on the basis of their occupations. Although Sunnis have reported falling victim to persecution and discrimination by the Shia militias, they also report being rescued from the militias by their Shia neighbours."

89. Paragraph 5.3-5.4 of the FIS report highlighted information gained from various sources in 2014 and 2015 regarding the number of checkpoints in Baghdad. Reportedly there were approximately 200 checkpoints. Sunnis are said to be inspected more thoroughly than Shias. Checkpoints are often adorned with Shia religious iconography. Militia members had been seen helping security forces check identities and vehicles. It is difficult to make a distinction between armed militias and the security forces. There are several illegal checkpoints in Baghdad run by armed militias. People are stopped at these checkpoints, asked to show identification and are asked questions about their sectarian orientation.

90. With reference to the identification of Sunnis as checkpoints the FIS report stated [5.5]:

“Sunnis have experienced problems at checkpoints because of their names. Back in 2003-2005, during the sectarian conflict, many Iraqis acquired two identification documents, one with a Sunni name and another with a Shia name. This was particularly the case with people who had to travel between different parts of the town for work-related reasons. The same holds true to this day: Sunnis acquire identity documents indicating they are Shiites to avoid trouble. In a Shia-dominated district in western Baghdad with a 20% Sunni population, Sunnis have to pose as Shiites to avoid being killed by the militias or being driven away from that part of town.

However, it is difficult to know whether a person is Sunni or Shiite simply on the basis of their name. In Iraq there are Sunnis called Ali and Hussein and Shia called Omar, even though some sources suggest that even secular Shia parents would not name their children Omar, Abu Bakri, Othman or Aisha. Traditionally names such as Omar, Abu Bakr and Yazid are Sunni names while Ali, Hassan and Hussein are Shia names. Mohammed and Fatima are popular with both Sunnis and Shiites. Omar appears to be one of the names that causes trouble for Sunnis.

There were already problems with the name Omar during the Civil War in 2006. In July 2006, the police found 14 young men dead in Baghdad. They were all Sunnis who had been shot in the head. All of them have the first name, Omar. Meanwhile, Shiites have reportedly experienced problems at the hands of Sunni militant groups such as ISIS due to their names.”

91. Paragraph 5.6 of the FIS report outlined media reports of victims being found in Baghdad who have been executed in “typical Shia militia style” i.e. shot in the head with their arms tied behind their backs. Human Rights Watch (HRW) reported in July 2014 that, according to pathologists working in Baghdad, a growing number of Sunnis shot in the head were being brought into mortuaries, typically 9-10 bodies a day. They were mainly from the districts of Saidiyya, Dora, Ghazaliyya, Shu’ala, Washashi and Mansour. These are said to be areas under the control of a Shia militia called the Asa’ib Ahl al-Haqq (AHH).

92. Paragraphs 7-8 of the UNHCR Position on Returns to Iraq dated October 2014 also refer to reports of extrajudicial execution of Sunni prisoners in retaliation for military advances by ISIL, as well as kidnappings and summary executions by security forces and associated groups of Sunni civilians. Reports indicated a resurgence of sectarian reprisals with bodies of Sunni men found blindfolded, handcuffed and apparently executed in different parts of the country, but primarily in Baghdad. We note that the main source of information, a report from UNAMI/OHCHR on the Protection of

Civilians in Armed conflict in Iraq dated 02 October 2014, appeared to refer to a large number of killings in Baghdad governorate rather than Baghdad City.

93. The Home Office published a new CIG report on 'Iraq: Sunni (Arab) Muslims' shortly before the hearing. The report is dated August 2016. The preface to the report makes clear that the guidance only applies to Home Office decision makers when they are handling particular types of protection and human rights claims. The report makes reference to a number of sources that we have already considered including the FIS report and the most recent US State Department report.

94. Paragraph 7.6.3 of the CIG report quotes from a UNHCR report 'Relevant COI for Assessments on the Availability of an Internal Flight or Relocation Alternative (IFA/IRA) in Baghdad for Sunni Arabs from ISIS-Held Areas' (May 2016):

"According to reports, there has been a renewed surge in targeted violence against Sunni Arabs in Baghdad since 2014... There has reportedly been a renewed increase in bodies discovered, mostly of Sunni Arab men, who are found blindfolded, handcuffed and apparently executed on a daily basis, mostly in Baghdad. According to reports, the mode of killing and the geographic location where the bodies are found often correspond with known patterns of Shi'ite militias killing for sectarian or political motivations. Families of those abducted or killed are reportedly often apprehensive about reporting the abduction or killing to the police, or checking the morgue, as they fear being subjected to reprisals."

95. We note that the Home Office policy summary relating to the risk to Sunnis states [3.1.1]:

"Sunnis may face a real risk of persecution or serious harm from the Shia militia in Baghdad and the 'contested' governorates. However, there may be circumstances, including tribal, family or political links, which mean a person is not at risk and can return or relocate to Baghdad."

96. Mr Jarvis also referred us to a number of pieces of evidence relating to statistical estimates of the number of Sunnis in Baghdad, including large flows of internally displaced people who have entered the city from surrounding areas. We find that a detailed analysis of that evidence is unlikely to be helpful save to note that if a purely statistical assessment of the numbers of Sunnis and reported killings is conducted, the number of killings only form a small percentage of the overall population of Sunnis in Baghdad.

97. We have exercised some caution in assessing the evidence and have taken into account the empirical difficulties outlined above. It is unhelpful to enter into a detailed analysis of the ethnic and religious make-up of specific neighbourhoods in Baghdad. It would be inconsistent with the purpose of international protection mechanisms to expect a person to be confined to a small enclave as a long term solution to protection issues unless they could lead a relatively normal life without it being unduly harsh. This is not to say that, if a person has particular links with a specific neighbourhood, it will not be relevant to an overall assessment of risk on return.

98. Both parties are in agreement that the evidence does not show that a person would be at real risk of serious harm solely on account of his or her religious identity if returned to Baghdad at the current time. This is consistent with the findings made by the Tribunal in *AA (Iraq)* [136]. However, the evidence indicates that the number of sectarian attacks has increased since the withdrawal of US-led coalition forces in 2012. Dr George considered that there was a significant level of sectarian violence although, in his view, it had not yet reached the heights seen in the period 2006-2007.
99. The evidence shows that ISIL is capable of launching attacks in public areas of Baghdad largely populated by Shias. In response the Shia militias which control the city are reported to carry out targeted killings of Sunnis. The balance of power in Baghdad is firmly with the Shia controlled government; supported by militias. A large number of checkpoints are set up throughout the city. A number of checkpoints are illegal and by definition may move to different areas of the city. Many are manned by Shia militias. There are reports of some Sunnis being identified and taken away from checkpoints.
100. While it is difficult to ascertain the reasons behind some of the killings in Baghdad there is evidence to suggest that young Sunni men are more likely to be targeted as perceived ISIL supporters. Although a purely statistical analysis does not give risk to a real risk solely on account of Sunni identity, the number of kidnappings and killings, even taking into account the likelihood of underreporting, is a concern. Although the majority of Sunnis are likely to be able to lead a relatively normal life in Baghdad it is not without risk. The level of political and sectarian violence in Baghdad remains high even if it does not meet the threshold required to show a generalised risk of indiscriminate violence.
101. The respondent's most recent policy statement recognises that Sunnis may face a real risk of persecution or serious harm from Shia militias in Baghdad. It goes on to state that tribal, family or political links, might mean a person is not at risk and can return or relocate to Baghdad. We find that the significance of a person's religio-political identity to risk on return will inevitably depend on the circumstances of each case. The increasing levels of sectarian violence in Baghdad, albeit not sufficient if taken alone, are likely to be an important consideration in assessing whether a person can demonstrate individual characteristics that would place him or her at real risk of serious harm.

Sufficiency of protection

102. Dr George's "very firm opinion" was that the Baghdad based authorities would not be in a position to provide sufficient protection to a person who is likely to be at real risk of serious harm. The authorities have limited capacity to enforce law and order and are prone to corruption and infiltration. The Shia militias are so closely associated with the Baghdad authorities that there is no meaningful distinction between them.

103. The most recent US State Department report stated that civilian authorities did not always maintain effective control of the security forces, regular armed forces and domestic law enforcement bodies including the PMF. Information about abuses by government officials and members of the security forces was not publicly available. Impunity effectively existed for government officials and security forces personnel. In many cases the Shia PMF operated independently and without oversight or direction from the government. Security forces made limited efforts to prevent or respond to societal violence. The government did not effectively implement civil or administrative remedies for human rights violations.
104. The FIS report stated that it was a commonly held view among Sunnis that the authorities are unable or unwilling to help them because police officers are largely Shia. Police are unable to protect citizens against violent attacks. It is increasingly difficult for the police to perform their duties in densely populated areas such as Baghdad. The police are the most corrupted part of the Iraqi security force. The report goes on to say that, given the links between Shia militias and the authorities, it is understandable that people, especially Sunnis, are unwilling to report a crime committed by the militias. In some areas of Baghdad people have reported threats, assaults and kidnappings to the police but in most cases the police said that they were unable to help. One of the contributing factors is excessive workload and lack of resources, which prevent the police from investigating crimes.
105. The respondent did not seek to argue that the authorities in Baghdad are able to provide sufficient protection. The CIG guidance on Sunni Arab Muslims states the respondent's policy position in relation to Sunnis. In general, if a Sunni is at real risk of serious harm from the state and/or Shia militias, they will be unable to avail themselves of the protection of the authorities [3.1.3].
106. Inevitably there are some individual reports of incidents where the security forces have intervened. For example, a report from Joel Wing's blog dated 17 May 2015 describes how police were called in to Adhamiya neighbourhood to put down an incident of rioting. In our assessment the weight of the evidence shows that, in general, the authorities in Baghdad are unable, or in the case of Sunni complainants, are likely to be unwilling, to provide sufficient protection. Our findings are broadly consistent with the conclusions of the European Court in *JK v Sweden* in so far as those who are at risk of being targeted could not seek effective protection.

COUNTRY GUIDANCE

107. We are able to draw the following guidance from the evidence:
- (i) The level of general violence in Baghdad city remains significant, but the current evidence does not justify departing from the conclusion of the Tribunal in *AA (Article 15(c)) Iraq CG* [2015] UKUT 00544.
 - (ii) The evidence shows that those who worked for non-security related Western or international companies, or any other categories of people who would be

perceived as having collaborated with foreign coalition forces, are still likely to be at risk in areas which are under ISIL control or have high levels of insurgent activity. At the current time the risk is likely to emanate from Sunni insurgent groups who continue to target Western or international companies as well as those who are perceived to collaborate with the Government of Iraq.

- (iii) The current evidence indicates that the risk in Baghdad to those who worked for non-security related Western or international companies is low although there is evidence to show that insurgent groups such as ISIL are active and capable of carrying out attacks in the city. In so far as there may be a low level of risk from such groups in Baghdad it is not sufficient to show a real risk solely as a perceived collaborator.
- (iv) Kidnapping has been, and remains, a significant and persistent problem contributing to the breakdown of law and order in Iraq. Incidents of kidnapping are likely to be underreported. Kidnappings might be linked to a political or sectarian motive; other kidnappings are rooted in criminal activity for a purely financial motive. Whether a returnee from the West is likely to be perceived as a potential target for kidnapping in Baghdad may depend on how long he or she has been away from Iraq. Each case will be fact sensitive, but in principle, the longer a person has spent abroad the greater the risk. However, the evidence does not show a real risk to a returnee in Baghdad on this ground alone.
- (v) Sectarian violence has increased since the withdrawal of US-led coalition forces in 2012, but is not at the levels seen in 2006-2007. A Shia dominated government is supported by Shia militias in Baghdad. The evidence indicates that Sunni men are more likely to be targeted as suspected supporters of Sunni extremist groups such as ISIL. However, Sunni identity alone is not sufficient to give rise to a real risk of serious harm.
- (vi) Individual characteristics, which do not in themselves create a real risk of serious harm on return to Baghdad, might amount to a real risk for the purpose of the Refugee Convention, Article 15(c) of the Qualification Directive or Article 3 of the ECHR if assessed on a cumulative basis. The assessment will depend on the facts of each case.
- (vii) In general, the authorities in Baghdad are unable, and in the case of Sunni complainants, are likely to be unwilling to provide sufficient protection.

ASSESSMENT OF THE PROTECTION CLAIM

- 108. The factual matrix of the appellant's protection claim, as set out above, is not in dispute.
- 109. Article 4(4) of the Qualification Directive (2004/83/EC), reflected in paragraph 339K of the immigration rules, makes clear that the fact that a person has already been

subject to persecution or serious harm or to direct threats of such persecution or harm, is a serious indication of his well-founded fear of persecution or real risk of suffering serious harm, unless there are good reasons to consider that such persecution or serious harm will not be repeated. Acts of persecution must be sufficiently serious by their nature or repetition to constitute a severe violation of basic human rights or be an accumulation of various measures, which are sufficiently severe as to affect the individual in a similar manner (Article 9(1)).

110. In this case, the evidence shows that the level of potential harm from the risks identified above [107] is likely to be sufficiently serious to amount to persecution or serious harm. If targeted as a perceived collaborator, a suspected Sunni insurgent, or for kidnapping, the risks include death or serious physical harm. The central issue for determination in this appeal is whether there is a 'reasonable degree of likelihood' or 'substantial grounds for believing' that there is a real risk of such serious harm occurring. A low standard of proof is applied in a protection claim precisely because of the serious nature of the potential risk on return. It is trite law that the risk should be considered holistically, which might require an assessment of a number of cumulative factors.
111. Mr Lemer argued that a number of risk factors would place the appellant at real risk of serious harm if considered on a cumulative basis although he accepted that none of the individual risk factors, if taken alone, would give rise to a real risk.
112. The appellant worked for a non-security related Western/international auditing company in Iraq from 2003 to 2006. He worked in a small team. His manager received a threatening letter in August 2005. It seems that the company withdrew its operations from Baghdad at the end of 2006 precisely because of the deteriorating security situation and the risk to employees. The company sponsored the appellant to work in the UK until 2009. Not long after he left Iraq a threatening letter was received at his family's home in Baghdad.
113. At the relevant time the country guidance showed that an Iraqi who was perceived as a collaborator as a consequence of his work for a foreign contractor, and who had attracted the hostility of an armed group, faced a real risk of persecution on return to his home area: see *NS (Iraq: perceived collaborator: relocation) Iraq* CG [2007] UKAIT 00046. We are satisfied that this is sufficient to show that the appellant left Iraq with a well-founded fear of persecution for reasons of attributed political opinion or his membership of a particular social group of 'perceived collaborators'.
114. The fact that the appellant was subject to direct threats of serious harm in the past is a 'serious indication' of a real risk of suffering serious harm unless there are good reasons to consider that the serious harm will not be repeated. However, it is accepted that the evidence no longer shows a sufficiently high risk on this ground alone. Since the withdrawal of US-led coalition forces the risk is only likely to emanate from Sunni extremist groups such as ISIL. Baghdad is controlled by a Shia dominated government supported by Shia militias.

115. The evidence shows that ISIL has some presence in Baghdad in order to launch asymmetric attacks. The recent CIG on the security situation in Baghdad states that the appellant's home area of Al-Ameriyah in Mansour district is a predominantly Sunni area. Al-Ameriyah was historically linked to Al-Qaeda in Iraq. The report states that ISIL may well use these areas as safe-havens to house insurgents who intend to mount operations in the city. In other words, there is some risk that Sunni insurgents could be operating in the area and may come to know of the appellant's background. As already indicated, Dr George's evidence is that people do not live anonymously in Iraq and that a person's background is likely to become known in a local area. However, there are very few reported incidents of perceived collaborators being targeted in recent years. We take into account that there is some level of risk on this ground albeit that it is not sufficient to found a real risk taken alone.
116. The appellant would return to Baghdad as someone who has lived in a Western country for a period of 10 years. He is educated and has experience of working in an international auditing company. The appellant's mother and sister are living in the family home in Baghdad. His brother-in-law is a government official who may be able to assist the appellant to find work. The appellant's profession is not amongst those that are reported to be targeted by armed groups. We take into account the empirical limitations of the evidence relating to kidnappings and the likelihood of underreporting. Dr George considered that the appellant's profile might lead armed criminals or insurgent groups to view him as a potential target for kidnapping because he would be perceived as "relatively wealthy" although he considers the risk on this ground alone "would not be high". We agree with this assessment. While the risk of kidnapping remains a serious problem in Baghdad and cannot be discounted, even taking into account the possibility of underreporting, the risk is not sufficiently high to reach the required level of a real risk.
117. The appellant is of Sunni ethnicity. Although he gave evidence to say that his name is likely to indicate that he is a Sunni, and that his family would be known to originate from the predominantly Sunni area of Mosul, no evidence supported this aspect of his claim. Dr George was unable to provide much assistance on this issue. There is some evidence to show that, in the past, some Sunnis felt the need to carry false identity cards to hide their religious identity. However, we have to assess the risk on the basis that the appellant should not be expected to lie about his identity if stopped and questioned.
118. There is a significant minority of Sunnis living in Baghdad. The incidents of targeted violence against Sunnis, albeit of concern, are not of such a persistent or widespread nature to create a real risk on return just by virtue of a person's Sunni identity. However, the evidence indicates that young men are more likely to be viewed as suspected supporters of Sunni insurgent groups. The incidents of kidnapping and killing of Sunnis largely appear to involve young men targeted by Shia militias in revenge for ISIL attacks in the city.
119. The evidence indicates that men are more likely to be the breadwinners in a family. The appellant is likely to be able to find work and is more likely to be travelling across the city for that purpose. Dr George acknowledged that there are significant

numbers of Sunnis living in Baghdad who are “living adequately” albeit that he qualified his evidence by saying: “well, they are not being relentlessly targeted”. There are a large number of legal and illegal checkpoints across the city. This gives rise to a reasonable degree of likelihood that the appellant would be stopped at a checkpoint on a fairly regular basis. The background evidence shows that checkpoints are largely manned by Shia militias. That evidence and the evidence given by Dr George suggest that checkpoints could be a point of potential risk. He said that it was not possible to predict the risk but “if you are the wrong person, at the wrong checkpoint at the wrong moment” checkpoints could involve a risk. He said that checkpoints historically are where car bomb attacks take place. Dr George made clear that freedom of movement in Baghdad is relative. People can travel from one area to another but would be well aware of the risks involved.

120. In addition to the evidence already outlined above, the FIS reported sectarian killings taking place in the appellant’s home district of Al-Ameriyah in 2013. Before the killings flyers were distributed in the area urging Sunnis to move out. In April 2013 a bomb exploded in a coffee shop in Al-Ameriyah. Shia militias were suspected to be behind the attack. They were seen driving through the streets of Al-Ameriyah during the night abducting Sunnis.
121. The evidence shows that the appellant’s profile as a returnee from the West who previously worked for a Western/international company is unlikely to attract the adverse attention of Shia militias at the current time. For the reasons outlined above, his profile as a young Sunni man who is more likely to be travelling across the city on a regular basis does enhance the risk over and above the mere fact of his Sunni identity. This factor is not sufficient on its own, but the evidence shows that there is some level of risk albeit that it is relatively low.
122. As part of our holistic assessment of risk on return we also take into account the general security situation in Baghdad. In *AA (Iraq)* the Tribunal made clear that the nature and the level of the conflict in Baghdad was not such as to give rise to substantial grounds for believing that there is a serious and individual threat to a civilian’s life or person by reason of indiscriminate violence. This finding was made “irrespective of their individual characteristics”. The respondent’s latest CIG report on the security situation in Baghdad recognises that decision makers should consider whether there are any particular factors relevant to a person’s individual circumstances which might nevertheless place them at enhanced risk [3.1.3].
123. We have also taken into account the fact that the appellant’s mother, sister and brother-in-law returned to Baghdad in September 2015. No serious incidents appear to have been reported. We have been provided with very little information about their circumstances. We do not know his brother-in-law’s religious identity, his background or the exact nature of his job. The fact that he has not suffered any serious harm in the last year might indicate a low level of risk but equally does not necessarily denote an absence of risk. We simply do not have sufficient information to assess whether his situation is relevant to the risks that the appellant is reasonably likely to face. We bear in mind that the appellant does not need to prove his case with certainty. He only needs to show that there is a reasonable degree of likelihood

that he would be at risk of serious harm. It is trite that the reason why there is a low standard of proof in asylum claims is because of the serious nature of the potential risks an appellant might face.

124. After having considered all of the circumstances as a whole we are satisfied that the appellant's individual profile is such that it would give rise to a real risk of serious harm if the appellant is returned to Baghdad. Although none of the factors outlined above are sufficient to give rise to a real risk if taken alone, there is some level of risk associated with each factor. If the risks are assessed on a cumulative basis we are satisfied that they are sufficient to meet the low standard of proof required in a protection claim given the serious nature of the potential harm involved. We have already found that there is no sufficiency of protection in Baghdad.
125. The evidence indicates that it is sometimes difficult to ascertain the motives for some of the killings in Baghdad. The risk of targeting as a perceived collaborator or as a suspected supporter of Sunni extremist groups clearly engage the operation of the Refugee Convention. The risk of targeting for kidnapping may be as a result of mixed motives of a political or criminal nature. The fact that his potential persecutors might have mixed motives does not detract from the protection offered by the Refugee Convention: see *Sivakumar v SSHD* [2003] INLR 457. Several Convention reasons could be engaged on the facts of this case. For this reason, we do not consider it necessary to identify one particular Convention reason.
126. We conclude that the appellant has a well-founded fear of persecution for one or more of the reasons outlined in the Refugee Convention. In the alternative, the same factors would give rise to an enhanced individual risk for the purpose of Humanitarian Protection under Article 15(c) of the Qualification Directive or for the purpose of Article 3 of the European Convention on Human Rights.

DECISION

We re-make the decision and ALLOW the appeal.

Upper Tribunal Judge Canavan
17 January 2017

APPENDIX
DOCUMENTARY EVIDENCE BEFORE THE UPPER TRIBUNAL

Expert Reports

<u>Date</u>	<u>Description</u>
8 July 2016	Expert's Fifth Report of Dr Alan George
10 June 2016	Expert's Fourth Report of Dr Alan George

Documents before the Upper Tribunal

<u>Date</u>	<u>Source</u>	<u>Description</u>
Undated		
Undated	<i>Asylum Research Consultancy Report</i>	Part 1 & 2 of Asylum Research Consultancy Report
Undated	Alison Shipitofsky, KPMG LLP, New York	The Danger Factor; How to Compensate Employees for Risking their lives
Undated	<i>Wikipedia</i>	Foreign Hostages in Iraq
Undated	<i>www.huffingtonpost.com</i>	Undercounting Contractor Casualties in Iraq
Undated	<i>Wikipedia</i>	List of private contractor details in Iraq
Undated	<i>Deutsche Welle</i>	Next stop Erbil: Iraqi refugees line up to return Home
2016		
3 August 2016	<i>Musings on Iraq - Iraq News, Politics, Economics, Society</i>	Violence in Iraq- posted by Joel Wing
August 2016	<i>United Kingdom Visa and Immigration website: Country Information and Guidance/Iraq 2016</i>	Security situation in Baghdad, the South and the Kurdistan region of Iraq (KRI)
August 2016	<i>United Kingdom Visa and Immigration website: Country Information and Guidance/Iraq 2016</i>	Sunni (Arab) Muslims
August 2016	<i>United Kingdom Visa and Immigration website: Country Information and Guidance/Iraq 2016</i>	Security Situation in the 'contested' areas
August 2016	<i>United Kingdom Visa and</i>	Return/ Internal relocation

	<i>Immigration website: Country Information and Guidance/Iraq 2016</i>	
June 2016	<i>International Organisation for Migration (IOM)</i>	Displacement Tracking Matrix- DTM Round 48
13 April 2016	<i>US Department of State, 2015 Country reports</i>	Country reports on Human Rights Practices
11 April 2016	<i>Danish Immigration Service</i>	The Kurdistan Region of Iraq (KRI): Access, Possibility of Protection, Security and Humanitarian Situation
5 April 2016	<i>The Guardian</i>	Iraqi Sunnis forced to abandon homes and identity in battle for survival
7 April 2016	<i>LANDINFO</i>	Iraq: The situation for persons who have worked for foreign companies
April 2016	<i>United Kingdom Visa and Immigration website: Country Information and Guidance/Iraq 2016</i>	Security situation in Baghdad, the South and the Kurdistan Region of Iraq (KRI)
10 March 2016	<i>US Overseas Security Advisory Council (OSAC)</i>	Iraq 2016 Crime & Safety Report: Basrah
15 March 2016	<i>International Organisation for Migration (IOM)</i>	IOM Surveys Iraqi Migrants to Europe
24 February 2016	<i>Amnesty International</i>	Amnesty International Report 2015/16: Iraq
12 February 2016	<i>Reuters</i>	Thousands of Iraqi refugees leave Finland voluntarily
2 February 2016	<i>International Organisation for Migration (IOM)</i>	IOM helps Iraqi migrants voluntarily return home from Belgium
27 January 2016	<i>Human Rights Watch</i>	World Report 2016: Iraq
18 January 2016	<i>Al Jazeera</i>	Americans' Abduction raises concerns about security in Iraq.
2016	<i>US State Department</i>	Iraq 2015 Human Rights Report
2015		
December 2015	<i>NGO Coordination Committee for Iraq (NCCI)</i>	Baghdad Governorate Profile
November 2015	<i>Refugees International</i>	Field report
October 2015	<i>International Organisation for Migration - Iraq (IOM)</i>	Displacement Tracking Matrix - DTM Round 30
August 2015	<i>International Organisation for Migration (IOM)</i>	Baghdad: Governorate Profile May - August 2015)
11 - 17 June 2015	<i>UNICEF</i>	Anbar Crisis - Iraq (Humanitarian Situation Report)

17 May 2015	<i>Musings on Iraq: Iraq news, Policies, Economics and Society</i>	Disaster in Iraq's Ahmadiya Neighbourhood Averted - posted by Joel Wing
29 April 2015	<i>Finnish Immigration Service - Country Information Service - Public theme Report</i>	Security Situation in Baghdad - The Shia Militas
1 March 2015	<i>Office of the United Nations High Commissioner for Human Rights (OHCHR)</i>	Report on the judicial response to allegations of torture in Iraq
22 January 2015	<i>Musings on Iraq: Iraq news, Policies, Economics and Society</i>	Dead Bodies dumped in Iraq's capital did not turn out as feared - posted by Joel Wing
2015	<i>Columbia University</i>	BAGHDAD: Ethnic composition in 2015
2015	<i>International Organisation for Migration (IOM)</i>	Assisted Voluntary Return and Reintegration at a glance
2014		
2014	<i>International Organisation for Migration (IOM)- Iraq</i>	Governorate Profile: Baghdad
2014	<i>Columbia University</i>	IRAQ: Ethnic composition in 2014 (summary)
2013		
2013	<i>thelistproject.org-2013</i>	The List (project to resettle Iraqi allies) "End Game in Iraq"
2012		
15 March 2012	<i>UKBA/Danish Immigration Service</i>	Fact finding mission report - March 2012
2011		
22 December 2011	<i>Al Jazeera</i>	Iraqis who aided US left behind and fearful
2009		
April 2009	<i>UNHCR</i>	UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Iraqi Asylum Seekers
2009	<i>Columbia University</i>	BAGHDAD: Ethnic composition at end of 2009

2007		
2007	<i>Columbia University</i>	BAGHDAD: Ethnic composition in late 2007