



DEPARTMENT OF IMMIGRATION AND MULTICULTURAL  
AND INDIGENOUS AFFAIRS

Secretary

Mr John Lynch  
Registrar  
Refugee Review Tribunal  
Locked Bag A3  
Sydney South NSW 1235

Dear Mr Lynch

I am writing to you under s423(2) of the *Migration Act 1958* on matters relating to the impact of the conflict in Iraq on the processing of onshore protection visa applications concerning claims by Iraqi nationals.

The Department has issued the attached instruction - *Guidelines for Processing of Protection Visas in light of Armed Conflict in Iraq* (No. 17 of 27 March 2003) - to all DIMIA decision makers.

I would be grateful if the Tribunal would adopt similar guidelines in dealing with review applications from Iraqi nationals in the interests of consistency.

I have also attached for your information a set of Questions and Answers on the same topic, also developed by my Department, which has been made available to the general public.

I will keep you informed of progress in obtaining clear and reliable country information and in relation to timing of a resumption by DIMIA of decision making on the cases affected by these temporary arrangements. If you have any enquiries on this matter, please contact Robert Illingworth, Assistant Secretary, Onshore Protection Branch, telephone 02 6264 4677.

Yours sincerely

WJ Farmer  
April 2003



# ONSHORE PROTECTION INTERIM PROCEDURES ADVICE

No: 17

## TITLE: GUIDELINES FOR PROCESSING OF PROTECTION VISAS IN LIGHT OF ARMED CONFLICT IN IRAQ

ISSUED: 27 March 2003

AUTHORISING OFFICER: Robert Illingworth, Assistant Secretary, Onshore Protection Branch, Refugee and Humanitarian Division.

\* The Onshore Protection Interim Procedures Advice (OPIPA) format has been adopted to formalise and standardise interim procedures advising. OPIPA's will normally be incorporated into PAM (including the PV Procedures Manual) on a regular basis after which time the individual OPIPA will cease to apply.

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The following guidelines now apply to the processing of protection visa applications by **Iraqi asylum seekers** (including TPV holders). They have been developed in response to the volatile situation in Iraq and the impact of this upon the availability of reliable country information on Iraq.

### **Country Information Unreliable**

2. The recent events commencing on 20 March 2003 have rendered unreliable existing information about the human rights and security situation in Iraq. This has direct implications for the capacity of case managers to make reliable decisions on cases which require an accurate and reliable understanding of the situation in Iraq.

### **Decision-making to Continue where Possible**

3. There is no deferral of processing of protection visa applications by Iraqi asylum seekers.
4. It is expected that s65 delegates and s501 delegates (case-managers) will continue to make decisions on protection visa applications from Iraqi asylum seekers wherever this is possible and decisions can be made reliably.
5. For example, decision-making could continue where the rapidly changing country situation is not relevant to the decision, such as where issues of nationality fraud, effective protection or character (including exclusion under 1F) mean a decision will not require accurate country information on Iraq.

### **Deferring Decision-Making where Appropriate**

6. However, where a decision is dependent upon reliable country information, case managers should defer their decision until the country situation has settled and reliable country information is available. The Country Information Service (CIS) is urgently seeking such information to enable reliable decision-making to resume on affected Iraqi protection visa applications as soon as possible.

7. Decision-making utilising out-of-date or unreliable country information can result in the refusal of a protection visa to an applicant who, may in fact be owed protection or grant of a protection visa to a person who is not owed protection. Situations of uncertain country information make it more difficult for decision makers to be satisfied in accordance with their delegations under s65 of the Migration Act 1958 that the criteria for grant of the protection visa have been met.

### **Where Decisions Have Already been Made**

8. If a decision has been made to grant or refuse a protection visa, then the grant or refusal of that visa stands. This is the case irrespective of whether these guidelines were issued at the time of decision.
9. Where case managers or their supervisors are unsure as to whether a decision to grant or refuse a protection visa has been made, the State Onshore Protection Manager should be consulted in the first instance, where any doubt remains the Director Protection Strategy should be contacted for guidance.
10. State ONPRO Managers and their team leaders/supervisors are asked to ensure that case managers are particularly aware of this issue and that sound decision-making, ISCE data entry and file management practices continue to operate.

### **Other Nationalities**

11. It is possible that the conflict in Iraq could impact significantly on other countries in the region, thus affecting the reliability of country information in regard to those states. If this occurs, you will be advised of the inclusion of asylum seekers from other nationalities in the coverage of these guidelines.

### **Processing of Further Applications by TPV Holders**

12. These guidelines apply both to first time protection visa applicants and to Iraqi TPV holders who have lodged further applications for protection visas. More specific information in regard to the processing of further protection visa applications by TPV holders (regardless of nationality) will be provided separately.

### **Country Information and Possible Natural Justice Issues**

13. The ONPRO Country Information Service (CIS) is closely monitoring the situation in Iraq. The CIS is working with DFAT to analyse developments in that country and to gather updated in-country information to support reliable decision making.
14. In the light of country information we will provide further advice on whether applicants need to be given additional opportunities to provide updated claims or information.

**Any Questions?**

15. If you have any questions in regard to the operation of these guidelines, in the first instance please contact your ONPRO State Manager. The Central Office contact is the Director, Protection Strategy Section on 02 6264 1832 .

## QUESTIONS AND ANSWERS

What is happening to the processing of the PV applications from Iraqi asylum seekers?

- Because of the changing situation the Country Information of Iraq may no longer be reliable or current.
- Processing of protection visa applications by Iraqi asylum seekers is continuing wherever reliable decisions can be made. Decision making on some applications may depend on a clear understanding of the situation in Iraq. Decisions on these cases will need to await comprehensive, updated country information, which is being sought on a continuing basis by my Department. Depending on developments in Iraq some applicants may need to be offered a fresh opportunity to provide claims and information to support their application for a protection visa before DIMIA makes a decision on their case.
- This situation affects both 'first time' Iraqi protection visa applicants and further protection applications by Iraqi temporary protection visa holders.

Has processing of PV applications for Iraqis been stopped?

- No. The processing of these applications is continuing wherever reliable decisions can be made.
- Some decisions will need to await further comprehensive, updated country information because developments in Iraq have rendered the existing country information outdated and unreliable.
- With major changes in the country situation, further opportunities may need to be offered to the protection visa applicants to provide further claims or information to support their application.
- However, even where decision-making on the application needs to await these processes, processing on the case is continuing as further country information is sought and administrative arrangements are developed and implemented to give applicants a fair opportunity to base their application on the changed country situation.

What if other countries in the Iraqi region are affected?

- Should other nationalities in the region also be affected by changes to the in-country situation, then similar considerations and arrangements may need to be applied.

**What is the Government doing to update its country information?**

- The Department has a specialised Country Information Service which maintains comprehensive information on the human rights and security situations in countries around the world. This is a primary resource used by protection visa decision-makers.
- The Country Information Service maintains close contact with the Department of Foreign Affairs and Trade and Australia's network of overseas posts.

- It also is in regular consultation with the equivalent research agencies in many other countries, in Europe and North America in particular.
- There is also close consultation with non-government and inter-governmental organisations and individual country experts, as well as extensive and continuous monitoring of media and Internet information sources.
- The Department has long identified Iraq has one of its top priorities for country research. In the light of recent events, this priority has been reaffirmed. The Country Information Service will be using all of the avenues mentioned above to actively search out relevant country information.

### Will Iraqi PV applicants have a further chance to raise more refugee claims?

- The Department may need to develop and put in place arrangements to ensure that Iraqi protection visa applicants are informed of any significant changes in their home country, and have an opportunity to raise any new information or claims they believe to be relevant.
- Whether this will need to be done will depend on how the situation in Iraq develops.

### Will Iraqi PV applicants awaiting a decision be required to return home?

- No applicants will be expected to return home or leave Australia if they have protection visa applications that have not been decided.
- TPV holders who have made further protection visa applications will have their TPV status and benefits continue until the further protection visa application is finally resolved.

Will deferral of decision-making meaning that some people may miss out on obtaining a protection visa?

- Protection visa decisions are made on the basis of the claims and country information available at the time of decision. Significant changes to a country situation may mean that some applicants may no longer need refugee protection while others may become in need of refugee protection.
- If decision-making proceeds when the country situation is uncertain, the decision-maker may be required by the Migration Act to refuse the visa application because they are unable to be satisfied that the criteria for grant are met.
- It is not possible to predict how the changing situation in Iraq might affect the decisions on individual protection visa applications. Each application is considered objectively on the merits of the claims put forward by the applicant.
- It is important to recognise that grant of a protection visa provides protection against possible future harm at the time of the decision. The Refugees Convention does not intend that people be given refugee status as some sort of remedy for their past experiences or because of generalised humanitarian concerns.

How many Iraqis might be affected by a deferral of decision making on their applications? (Note: **Some of the following data has been extracted from ISCE and this is being urgently checked**)

and purified because of system problems in distinguishing between first time applications and further PV applications from TPV holders.)

- At present there are less than 30 first time protection visa applications from Iraqi nationals awaiting a decision from the Department.
- There are also some 3 700 further protection visa applications lodged by Iraqis who already hold temporary protection visas, most of which are current until late-2003 or beyond.
- By mid-2003, some 1 930 of the Iraqi temporary protection visa holders will have reached the 30-month point at which the Department would normally aim to commence decision making on the further protection visa applications.
- There is no obligation on the Department to make decisions on the further protection visa applications at any particular time.
- The Government introduced regulation changes in 2001 and 2002 so that temporary protection visa holders can remain lawful, and retain their temporary protection visa status and benefits, while their further protection visa applications remain unresolved.

27 March 2003