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April 21, 2010

VIA E-MAIL AND FEDERAL EXPRESS

Attn: Field Director Officer: Suzanne Sinclair-Smith  
US Citizenship and Immigration Services  
Department of Homeland Security  
C/O American Embassy, DOS  
Al-Umawyeen Street, Abdoun  
Amman, Jordan

REFR  
SAMPLE  
#2

To Whom It May Concern:

This Request for Reconsideration is submitted on behalf of my client, Mr. [REDACTED] to request a reconsideration of the denial of his application for refugee resettlement in the United States. We are submitting this request to the Amman Office.

Mr. [REDACTED]'s case is particularly urgent because the Syrian government has informed [REDACTED] that he and his family will no longer be able to renew their residency permit from May 31, 2010, and that they will be deported to Iraq.

Mr. [REDACTED] does not have official correspondence regarding his family's deportation. They have renewed their permits at the Syrian passport office in the Al-Baramaka district. During their last visit, they were informed that they could only renew their residency permits through the end of May.

Given the likelihood of Mr. [REDACTED]'s imminent deportation, I would like to request that consideration of his application be expedited.

Sincerely,

SEYFARTH SHAW LLP

  
Robin M. Cleary

RMC:kar

12258996v.1

Attn: Field Director Officer: Ms. Suzanne Sinclair-Smith  
U.S. Citizenship and Immigration Services  
Department of Homeland Security  
C/o American Embassy Amman  
Al-Umawyeen Street, Abdoun  
Amman, Jordan

April 22, 2010

Re: [REDACTED] (born [REDACTED])  
A-file Number: [REDACTED]  
Case Number: [REDACTED]

### Request for Reconsideration

To Whom It May Concern:

This Request for Reconsideration (RFR) is submitted on behalf of my client, Mr. [REDACTED], to request a reconsideration of the denial of his application for refugee resettlement in the United States. *See* Form G-28, Notice of Entry of Appearance as Attorney or Representative (Encl. 1). We are submitting this request to the Amman Office. Mr. [REDACTED]'s case is particularly urgent because the Syrian government has informed Mr. [REDACTED] that he and his family will no longer be able to renew their residency permit from May 31, 2010, and that they will be deported to Iraq, where they face a well-founded fear of persecution.

Mr. [REDACTED] was denied resettlement in the United States on the grounds that: (1) he did not establish that he was unable to return to Iraq; and (2) he was unable to reconcile discrepancies outlined by the USCIS officer concerning material facts. *See* Notice of Ineligibility for Resettlement, *hereinafter* Notice of Ineligibility (Encl. 2).

Mr. [REDACTED]'s case should be reconsidered because: **(i) The adjudicating officer significantly erred by determining that Mr. [REDACTED] could safely return to Iraq.** Mr. [REDACTED] has never attempted to hide the fact that he made brief visits to Iraq after he and his family fled from their home to escape persecution. However, Mr. [REDACTED] risked his life to return to Iraq because he desperately needed to obtain official documents that allowed him to receive the pension necessary to support his family in Syria. Mr. [REDACTED] cannot return home safely and remains a refugee under United States law. **(ii) New evidence is being submitted to support Mr. [REDACTED]'s inability to permanently return to Iraq and to establish the necessity of his brief visits to Iraq.** This new evidence, which consists of a third-party affidavit, government documents and medical records, demonstrates that Mr. [REDACTED] could not return permanently to Iraq and that his brief visits to Iraq were required for the family's survival. **(iii) The adjudicating officer significantly erred because Mr. [REDACTED] was not made aware of any issues regarding his credibility during the interview and was not afforded the opportunity to clarify any perceived discrepancies.**

In this RFR, we present the basic facts of Mr. ██████'s case and then address each of the three reasons why USCIS should reconsider his case.<sup>1</sup>

## **I. STATEMENT OF FACTS**

### **A. Mr. ██████'s Background and Life in Iraq Before 2003**

Mr. ██████ was born on ██████, in Baghdad, Iraq. In October 1973, Mr. Dawood married his wife ██████. They had four children: ██████ and ██████. The family was Shi'a and lived in the ██████ neighborhood in Baghdad, which was populated by both Shi'a and Sunnis. *See* Statement of ██████ hereinafter Statement, ¶ 1 (Encl. 3). Mr. ██████ worked as a fire truck driver at ██████ factory, and also occasionally as a taxi driver.

Mr. ██████ was twice drafted into the Iraqi army, but he was an unarmed soldier for most of his time in the military. His flat feet, and his age at the time of his second conscription in 1984, meant that he was assigned to manual labor or clerical jobs. He never fought in combat.

### **B. Persecution of the ██████ Family After the 2003 Invasion**

In the years following the American invasion of Iraq in 2003, the ██████ family suffered increasing threats of persecution, beginning with threats against their daughter because of her job at a hospital and then targeted threats against the ██████ family because of their Shi'a religion.

Immediately after the invasion, Mr. ██████ his family suffered along with their neighbors. Residents became increasingly afraid as ██████ became more dangerous, and some people were killed or disappeared. *See* Statement ¶14. Access to services such as water and electricity was lost. In 2006, unsigned leaflets threatened staff at the hospital where Mr. ██████'s daughter ██████ worked. The family believes that hospital workers were targeted because they had begun to receive their pay in American dollars, thus establishing a perceived link between them and the American military. Some

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<sup>1</sup> Mr. ██████'s Notice of Ineligibility is dated 20 May 2009. However, he did not receive this letter until July 2009. *See* Notice of Ineligibility, *see also* Statement of ██████, hereinafter Statement, ¶ 47 (Encl. 3). Following his initial denial, Mr. ██████ wrote an appeal in Arabic; took the appeal to a professional translator; and then submitted the appeal to the offices of the International Organization of Migration, as instructed by the officials at the office where he received his denial, on July 23, 2009. *See* Initial Letter of Appeal (Encl. 4). UNHCR contacted Mr. ██████ and interviewed him on October 29, 2009 about his rejection. Believing that his case was erroneously rejected, UNHCR referred Mr. Dawood's case to Yale Law School's Iraqi Refugee Assistance Project (IRAP) for assistance. Due to the challenges of locating additional evidence and communicating safely with Mr. ██████ in Syria, this RFR could not be completed until the present time. We respectfully request that USCIS accept this additional RFR submission because Mr. ██████ has made a good-faith effort to comply with the 90-day deadline and additional time was required to locate new evidence and prepare this RFR in English.

of [REDACTED]'s co-workers disappeared, and others were killed. See Statement ¶15. On August 3, 2006, Mr. [REDACTED], his wife and his youngest son, [REDACTED], took [REDACTED] to Iran to stay with friends in order to ensure her safety. *Id.* She has never returned to Iraq. Mr. [REDACTED], his wife and [REDACTED] returned to Iraq about a month later.

Upon the family's return, the violence in [REDACTED] became worse. The increasingly hostile Sunni population harassed the Shi'a in the neighborhood, who were being driven out of their homes. See Statement ¶16. See also Affidavit of [REDACTED], hereinafter [REDACTED] Affidavit ¶¶4-5 (Encl. 5). Business owners in the neighborhood were killed according to their profession. Worse, Mr. [REDACTED] and his family had unintentionally drawn attention to themselves by leaving Iraq to take [REDACTED] Iran. See Statement ¶17, see also Threat Letter "A" (Encl. 6).<sup>2</sup> In September 2006, a mortar shell had hit the family home. [REDACTED] who was outside, the house, suffered injuries from flying shrapnel.

After a few months, [REDACTED]'s residency permit in Iran expired. She was still afraid for her life and unwilling to return to Iraq. On October 9, 2006, she left Iran and went to Syria. Mr. [REDACTED], his wife, and [REDACTED] met her there to help her get settled. Mr. [REDACTED] and his wife stayed there for two weeks and then returned to Iraq. They left [REDACTED] in Syria with [REDACTED] because they were concerned about his health. See Statement ¶19.

On December 10, 2006, an unknown militia vandalized Mr. [REDACTED]'s home. Specifically, the militants painted an "X" on their front door with a message ordering them to leave the city. See Statement ¶20. In addition, they had scattered threatening letters referring to the family's Shi'a religious affiliation all over their lawn. See Statement ¶20. Later that day, militants twice fired several bullets at the house from a machine gun. See Statement ¶21.

The family was very afraid for their safety and fled their home at dawn the next day, carrying only money, jewelry, and their identification documents. They went to the neighborhood of [REDACTED] and hid in the home of a friend named [REDACTED], who himself fled to [REDACTED]. See Statement ¶22. Mr. [REDACTED] was never able to return home after fleeing on December 11, 2006. When Mr. [REDACTED] attempted to return to his home to retrieve his family's possessions, he was unable to do so because of the violence in the area. Once, a group of men stopped him a few blocks from his home, and told him that the area was too dangerous to enter. See Statement ¶23.

When Mr. [REDACTED] was unable to return to his home or recover his family's possessions, he went to the local council in [REDACTED]. The officials there said that they could not help him because his house was not in their district. See Statement ¶24. He then went to the local council in [REDACTED], where he was told to fill out some paperwork and wait for someone to contact him, but no one ever did. The officials told Mr. [REDACTED] that he needed to get the new *shahadat al-jensiya* (also known as the Iraqi Nationality Certificate), as the government had started issuing a new version of the document that

<sup>2</sup>In regards to the accuracy of all translated exhibits, please see the translators' certifications, Enclosure 37.

bore a hologram. They said that they would be sympathetic this time, but that for any future dealings with the government, he would need the new version. *See Statement ¶25.*

The officials at the local council in ██████████ were able to provide Mr. ██████████ with a letter confirming that he had been displaced from his house and that his furniture was burned. *See Documents from Local Government Bodies (Encl. 7b).* As Mr. ██████████ was fled the country, he gave this document to his son, ██████████ who presented it to the local council in ██████████ but only received minimal aid in the form of lentils and cooking utensils. *See Statement ¶25.*

**C. Having fled to Syria, Mr. ██████████ returned to Iraq only in order to support his family. While there, he was afraid of the continuing violence and the danger of being targeted, and remained in hiding.**

After fleeing to Syria because of the persecution they experienced on account of their Shi'a religion, Mr. ██████████ and his family made a few brief trips to Iraq, all of which were motivated either by the need to support themselves in Syria or by the hope of returning safely to Iraq—hopes that were defeated each time by the continued violence and threats facing the family in Iraq.

Mr. ██████████, ██████████, and ██████████ fled to Syria on April 6, 2007, thoroughly convinced that they would not be able to safely return home or retrieve any of their possessions in the near future. ██████████ and ██████████ who were married with their own families, were unable to leave the country because they could not afford to move their families. They remained in the home of their family friend ██████████ in ██████████. *See Statement ¶27.*

In November 2007, Mr. ██████████ needed to return to Iraq in order to obtain the new version of the *shahadat al-jensiya*, or Iraqi Nationality Certificate, a document that was necessary in order to receive his retirement pay, which he needed to support his family in Syria (for more information about the importance of such documentation, see section II(A)(2)(b), *infra, passim*). In addition, it would be needed to obtain a new G series passport from the Iraqi embassy. *See G Series Passports (Encl. 8b).* Mr. ██████████ also needed to obtain Aqeel's school records, in order for him to attend school in Syria. *See section II(A)(2)(b)(ii), infra.* Mr. ██████████ also intended to attempt a visit to the family's home. *See Statement ¶¶30-34.*

During this time, Mr. ██████████ remained in hiding in ██████████' house in ██████████ where his two children ██████████ and ██████████ were staying, because he still feared persecution and wanted to keep a low profile. He never went out unless it concerned the business he needed to transact. *See Statement ¶30.* When he tried to visit ██████████'s high school—██████████ in ██████████—two men approached Mr. ██████████ and told him that snipers on the roofs might shoot him if he walked by. The school had been hit by a mortar, and part of the building was destroyed. An administrative assistant in the otherwise deserted school told Mr. ██████████ that there were no teachers present, and no classes were being held. However, he was able to give Mr. ██████████ the papers he needed for ██████████ to attend school in Syria. *See Statement ¶31.*

Mr. ██████ tried to obtain his *shahadat al-jensiya*, but the process was repeatedly delayed because the officials were often not at work and the continuing chaos and violence made it difficult to safely visit the agency. He finally received the document in late December, although it was dated December 9, 2007. See Statement ¶33. Shortly afterward, on January 2, 2008, Mr. ██████ returned to Syria. See Statement ¶34.

In 2008, Mr. ██████ needed to obtain a new food ration card, or *al-bataqa al-tamwinya*, an important identification document issued every year, which is vital when any Iraqi interacts with the government. Possession of the new card would allow him to obtain his retirement pay that year. See ██████ Affidavit ¶¶6-7. He needed to obtain the card in person. In order to do so, he needed to return to Iraq on March 26, 2008. See Statement ¶35. Mr. ██████'s retirement pay accumulated over time, and he could pick it up in a lump sum at a bank in Al-Shu'la, Baghdad, a somewhat safer neighborhood. See Statement ¶3. Still afraid for his safety, Mr. ██████ once again stayed at the house in ██████ and only ventured out of the house to visit the necessary government agencies to obtain his food ration card and to obtain medicine after he fell ill. See Statement ¶36. While in Iraq, he contracted Malta fever and was bedridden for approximately 4 - 6 weeks. See Medical Report of ██████ (Encl. 9). See Statement ¶37. As soon as he obtained his 2008 food ration card, he used it to collect his retirement pay. When he had recovered enough from the Malta fever to travel, and was able to book a return trip on the bus—a time-consuming process—he returned to Syria on June 1, 2008. See Statement ¶¶37-38.

Mr. ██████ and his family are very concerned about ██████'s ability to continue his education. They wanted to determine if ██████'s Syrian school credentials would qualify him to attend university in Iraq, and if it would be safe to do so. ██████ and ██████ went briefly to Baghdad, staying for less than a week. They found the city to be chaotic, violent, and terrifying. They remained in hiding at the house in ██████, and quickly returned to Syria because they were too afraid to stay in Baghdad any longer. See Statement ¶39.

Rumors among the Iraqi refugee community continued to emphasize the importance of the new, required G series passport. ██████ needed a new *shahdat al-jensiya* in order to obtain one; she also needed to be present for the *shahadat al-jensiya* to be issued. Mr. ██████ accompanied her. They returned to Iraq from October 14, 2008 to December 24, 2008. As on all the trips to Iraq, they stayed in hiding in ██████, without having any contact with anyone besides their children, ██████ and ██████ and the necessary government officials. The official issue date for the *shahadat al-jensiya* was November 5, 2008; however, they were not able to actually gain possession of it until late December, due to agency delay and violence and chaos in the streets that made it unsafe to travel to the office. See *Shahadat al-jensiya of ██████* (Encl. 32). See also Statement ¶40.

The family continually struggled to survive in Syria with their few resources. Mr. ██████'s retirement pay was needed to provide them with food and other necessities, but he was unable to obtain it without returning to Iraq. Therefore, on January 21, 2009,

Mr. [REDACTED] made the risky trip back, in order to get the food ration card for 2009, which would enable him to pick up installments of his retirement pay during the year. See Statement ¶41.

The family had seen reports in the Iraqi news media claiming that the security situation in Baghdad was much improved, and that it was safe for students to return and begin enrolling in school. Furthermore, the channels reported that the government would help students who had finished their schooling in Syria get into university and would provide financial assistance to students and families who did so. Multiple major Iraqi channels—Al-Furat, Al-Sharqiya, and Al-Iraqiya, the official government channel—were all saying something similar. However, [REDACTED] and [REDACTED] found that the reports were inaccurate. The situation had not improved from the violent, chaotic scene they had experienced the previous August. They were very afraid, and stayed hidden at the house in [REDACTED]. [REDACTED] quickly returned to Syria, while [REDACTED] stayed behind out of concern for [REDACTED] who had fallen ill. See Statement ¶¶42-43.

In February 2009, [REDACTED] sent a messenger to tell the family that he was returning to his house, and asking them to leave. [REDACTED] had never been personally threatened like the [REDACTED] family, and [REDACTED] was not as dangerous as Al-Ghazaliya, so he decided to return. With [REDACTED] ill, and the situation in Baghdad still dangerous, Mr. [REDACTED] stayed to help his children prepare for the necessary move. He also made one final attempt to get the local councils to help him or compensate him for the loss of his home, to no avail. After [REDACTED]'s recovery, Mr. [REDACTED] and [REDACTED] returned to Syria on March 9, 2009. See Statement ¶¶41, 44.

After [REDACTED] and [REDACTED] left [REDACTED] home, they each went to live with the families of their respective in-laws. [REDACTED] is in [REDACTED], and [REDACTED] is in A [REDACTED]. There is no room [REDACTED] and [REDACTED] to live with either of their families, and no money to provide for them, either. Although they live in relatively safer neighborhoods, [REDACTED] and [REDACTED] are still quite afraid. However, they each have a spouse and children, and they cannot afford to move their families out of Iraq. See Statement ¶48.

Since the January 2009 trip, Mr. [REDACTED] has not returned to Iraq, and refuses to do so, even though it means he no longer receives the retirement pay so important to his family's maintenance. After all the violence he has seen on his return trips to Iraq, which caused him to stay in hiding in [REDACTED], he remains very frightened. He is thoroughly convinced that the family would still be in grave danger of persecution if they returned to Iraq. Furthermore they have no house, no resources, and no viable support network within the country. See Statement ¶48. Mr. [REDACTED]'s only current income is UNHCR aid, mostly in the form of food, as he is not allowed to work. Without his retirement pay, the family cannot afford several necessary items; among these is meat, and their diet is very low in protein. They live in a dwelling that is less than 50 square meters in an impoverished neighborhood. Compounding the family's struggle, the Syrian government has declined to renew their residency permits, which expire on May 31, 2010. The prospect of being forced to return to Iraq very much frightens Mr. [REDACTED] and his family. See Statement ¶47.

## II. BASIS FOR RECONSIDERATION

Mr. [REDACTED]'s request for reconsideration is based upon three factors: (i) the adjudicating officer significantly erred in determining that Mr. [REDACTED] could return to Iraq and live safely there; (ii) Mr. [REDACTED] presents new evidence that corroborate his statement and explain the crucial nature of the documents he returned to Iraq to obtain, including a translation error on a document submitted with Mr. [REDACTED]'s initial application, which he could not detect because he cannot read English; and (iii) the adjudicating officer erred significantly by making a negative credibility determination without providing Mr. [REDACTED] the opportunity to answer further questions or clarify his statement.

### A. **USCIS Significantly Erred by Determining that Mr. [REDACTED] Was Not a Refugee Because He Could Return to Iraq and Live Safely There.**

Mr. [REDACTED] was denied resettlement on the grounds that he could return to Iraq and live there safely. However, this determination was based upon incomplete information regarding the trips he made back to Iraq. Mr. [REDACTED] returned to Iraq in order to receive the pension that he was using to help his family survive in Syria. He stayed in hiding at the home where his children were living, and he remained greatly afraid of his persecutors and of the violence in [REDACTED]. These trips do not support the feasibility of his family's permanent safe return to Iraq.

USCIS training materials clearly establish the standard of review for requests for review. They must fall into one or both of these categories: "1) an allegation of error in the determination to deny eligibility for resettlement, 2) new information that allegedly provides a basis for resettlement eligibility."<sup>3</sup> Mr. [REDACTED]'s request falls into both categories.

The standard of review in such a case is that the reviewing officer must first determine if the adjudicator erred, and then determine if the errors were significant. An error is significant "where it is more likely than not to have affected the result in a refugee case."<sup>4</sup>

According to the letter he received, Mr. [REDACTED] was denied on account of "return" and "credibility". See Notice of Ineligibility. Therefore, an error made that regards his alleged ability to return to Iraq is a significant error, and cause for review.

#### 1. **Mr. [REDACTED] suffered past persecution in Iraq on account of his Shi'a religion and continues to have a well-founded fear of persecution.**

In order to meet the definition of a refugee as stated in the United States Code, an individual must be unable or unwilling to return to their home country "because of

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<sup>3</sup> May 3, 2005 Guidance for Adjudicating Requests for Review of Denied I-590 Applications from Joseph D. Cuddihy, Director of Office of Refugee, Asylum and International Operations, 2, *hereinafter* Guidance Memo (Encl. 10).

<sup>4</sup> *Id.* 3.



persecution or a well-founded fear of persecution on account of race, religion, nationality, membership in a particular social group, or political opinion.”<sup>5</sup> Mr. ██████ was both persecuted based on his religion and continues to have a reasonable fear of persecution in Iraq today.

**a. Mr. ██████’s family was persecuted in Iraq on account of their Shi’a religion.**

Mr. ██████ and his family were persecuted in Iraq due to their Shi’a religion. The letter he received from USCIS explaining the denial of his asylum application did not indicate that the asylum officers found an issue with his family’s persecution (although there is no specification whether this was in regard to past persecution or a well-founded fear). *See* Notice of Ineligibility.

In *Garces v. Mukasey*, 312 Fed. Appx. 12 (Ninth Circuit, 2009), the standards for proving past persecution are provided. To prove past persecution, an applicant must show evidence of “(1) an incident, or incidents, that rise to the level of persecution; (2) that is on account of one of the statutorily-protected grounds; and (3) is committed by the government or forces the government is either unable or unwilling to control.” 312 Fed.Appx. 12, 14, citing *Lopez v. Ashcroft*, 33 F.3d 799, 802-03 (Ninth Circuit, 2004). In 2006, as Iraq devolved what was essentially into a sectarian civil war, Sunni militias targeted Shi’a families in Al-Ghazaliya.<sup>6</sup> Immediately after the invasion, Mr. ██████ and his family suffered along with their neighbors. At the end of 2006, militias threatened the family with letters referring to their Shi’a religion on their front lawn, and their home was marked with an “X” and shot by unknown militia groups. *See* Statement ¶¶19-20 The threats and the attack on their home rises to the level of persecution on account of their Shi’a religion. In *Shirley v. United States Attorney General*, 2010 WL 715360, 1 (Eleventh Circuit, 2010), *Toska v. Attorney General of the United States*, 2009 WL 4755710, 3 (Third Circuit, 2009), and *Ortiz v. Immigration and Naturalization Service*, 33 Fed. Appx. 351, 352 (Ninth Circuit, 2002), having shots fired at one’s house was considered past persecution. *Shirley* (2010 WL, 4755701,1) and *Ortiz* (33 Fed. Appx. 351, 352) emphasize the importance of establishing a nexus between the attack and a protected characteristic is stressed. In Mr. ██████’s case the appearance at their home of the letters that explicitly cite their religion as the reason for the threats and the machine gun attack occurred on the same day. *See* Statement ¶¶20-21 Their temporal proximity allows for the reasonable conclusion that the attack and the leaflets are related, and that the attack was similarly motivated by religious hatred.

According to the framework provided in *Garces*, Mr. ██████ and his family have demonstrated that they experienced events constituting persecution (the targeted attack on their home), and that it was due to one of the protected grounds (religion). Further, the Iraqi government was unable or unwilling to protect Mr. Dawood and his

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<sup>5</sup> 8 USC §1101(a)(42)(A).

<sup>6</sup> Sabrina Tavernise, *Sects’ Strife Takes a Toll on Baghdad’s Daily Bread*, NEW YORK TIMES, July 21, 2006, available at <http://www.nytimes.com/2006/07/21/world/middleeast/21bakers.html?scp=1&sq=Al%20Ghazaliya%20Baghdad%202006&st=cse>. (Encl. 11).

family. The 2006 Iraq Country Report on Human Rights Practices, published by the United States State Department (Encl. 12), notes that “[w]idespread violence seriously compromised the government’s ability to protect human rights”, later observing with respect to the killing of ordinary citizens that “[t]he government was unable to diminish these violent attacks.”<sup>7</sup> Therefore, Mr. [REDACTED] has proved that he has suffered past persecution, following the *Garces* requirements.

**b. Due to his past persecution, Mr. [REDACTED] is entitled to the presumption that he has a well-founded fear of future persecution.**

According to the United States Code of Federal Regulations, “[a]n applicant who has been found to have established such past persecution shall also be presumed to have a well-founded fear of persecution on the basis of the original claim.”<sup>8</sup> Because Mr. [REDACTED] was already persecuted in Iraq on account of his religion and fled as a result, he is entitled to a presumption of a continued well-founded fear absent a clear change in country conditions or evidence that an individual may safely relocate elsewhere within the country. 312 Fed.Appx. 12, 1, citing 366 F.3d 799, 802.

Please see section II(A)(3), *infra*, for a discussion of why Mr. [REDACTED] cannot safely relocate elsewhere in Iraq. The conditions in Iraq have not changed substantially enough that refugees can safely return. As to any change in country conditions, it has not been drastic enough to result in the possibility of safe return for refugees. The U.S. State Department says that Iraq “remains dangerous and unpredictable...Attacks against military and civilian targets throughout Iraq continue”.<sup>9</sup> In March, in the 2009 Iraq Country Report on Human Rights (Encl. 14), the Department of State noted that “insurgent and terrorist bombings, executions, and killings were regular occurrences throughout all regions and sectors of society.”<sup>10</sup> Baghdad has recently been the site of continued sectarian violence, perhaps intended to disrupt the coming elections; 121 were killed in a series of car bombs on December 7, 2009, at government buildings, schools, a mosque, and a bank.<sup>11</sup> On January 25, 2010, bombs struck three hotels in downtown Baghdad in a coordinated attack.<sup>12</sup> UNHCR has expressed concern for the plight of Iraqi refugees who return to their homes: “In view of the ongoing violence, serious human

<sup>7</sup> United States Department of State, 2006 Country Report on Human Rights Practices: Iraq, Introductory Section, March 6, 2007, available at <http://www.state.gov/g/drl/rls/hrrpt/2006/78853.htm> (Encl. 12).

<sup>8</sup> 8 CFR §1208.13 (b)(1).

<sup>9</sup> United States Department of State, “Travel Warning” February 25, 2010, ¶2, available at [http://travel.state.gov/travel/cis\\_pa\\_tw/tw/tw\\_921.html](http://travel.state.gov/travel/cis_pa_tw/tw/tw_921.html). A note on the page says that the information is current as of April 7, 2010 (Encl. 13).

<sup>10</sup> United States Department of State, 2009 Country Report on Human Rights Practices: Iraq, §1a, March 11, 2010, available at <http://www.state.gov/g/drl/rls/hrrpt/2009/nea/136069.htm> (Encl. 14).

<sup>11</sup> Steven Lee Myers & Mark Santora, *Election Date Set in Iraq as Bombs Kill Scores*, N.Y. TIMES, December 8, 2009, available at <http://www.nytimes.com/2009/12/09/world/middleeast/09iraq.html> (Encl. 15).

<sup>12</sup> Anthony Shadid & John Leland, *Baghdad Blasts Shatter Sense of Security in Capital*, N. Y. TIMES, January 25, 2010, available at <http://www.nytimes.com/2010/01/26/world/middleeast/26iraq.html?scp=1&sq=Jan.%2025%20baghdad&st=cse> (Encl. 16).

rights violations and continuing security incidents, primarily in the five central Governorates of Iraq, UNHCR does not consider that conditions are appropriate for the large-scale return of refugees to those areas.”<sup>13</sup> UNHCR’s 2009 report, *Eligibility Guidelines for Assessing the International Protection Needs of Asylum Seekers* (Encl. 18), judges the Central Governorates, including Baghdad, to be to dangerous for Iraqis to move into these areas due to factors such as “(i) the ability of non-State agents of persecution to perpetrate acts of violence with impunity, (ii) the ongoing levels of violence in mainly the Central Governorates...”<sup>14</sup> The same report also notes that “protection by national authorities will not be available given that the national authorities have yet limited capacity to enforce law and order”.<sup>15</sup>

**2. Mr. [REDACTED] is unable and unwilling to return to Iraq due to the past persecution he suffered and his well-founded fear of future persecution.**

**a. Mr. [REDACTED]’s visits to Iraq were brief, desperate attempts to support his family and do not indicate that a permanent safe return is feasible.**

**i. USCIS Refugee Officers must consider the totality of the circumstances of any returns, including the reason for return, threats faced upon return, and length of return.**

Despite the fact that Mr. [REDACTED] had to return to Iraq, he still maintains refugee status. USCIS Training Materials instruct that

[t]he fact that an applicant returned to a country of persecution or feared persecution *may indicate* that the applicant is willing and able to return, but does not in and of itself preclude establishment of eligibility. The reasons that motivated the applicant’s temporary visit, and any problems or lack of problems the applicant faced upon return must be evaluated to determine if the applicant is unable or unwilling to return...The officer should not conclude that return due to compelling factors establishes that the applicant is able and willing to return (emphasis added).<sup>16</sup>

USCIS Training Materials addressing the establishment of an applicant’s well-founded fear similarly advise consideration of the entire circumstances when an applicant has

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<sup>13</sup> Farah Dakhilallah, *Poor Conditions in Iraq Drive Returned Refugees Back to Syria*, United Nations High Commissioner for Refugees (UNHCR), December 22, 2009, available at <http://www.unhcr.org/4b30f6de9.html> (Encl. 17).

<sup>14</sup> UNHCR, *UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Asylum Seekers*, April 2009, available at <http://www.unhcr.org/refworld/docid/49f569cf2.html>, hereinafter *Eligibility Guidelines*, ¶90 (Encl. 18).

<sup>15</sup> *Id.* ¶91.

<sup>16</sup> United States Citizenship and Immigration Service, *Refugee Eligibility Part I: Definition of Refugee; Definition of Persecution; Eligibility Based on Past Persecution*, 9 (March–April 2009), hereinafter *Refugee Eligibility Part I* (Encl. 19).

returned to their home country.<sup>17</sup> The officer is also instructed to consider whether the applicant was able to live openly during the time spent in their country, or if they remained in hiding.<sup>18</sup> While Mr. ██████ was forced to wait for the Iraqi government to process his identification documents, he stayed hidden in the house in ██████, afraid to go out except when absolutely necessary. *See* Statement, *passim*. *See also* section II(2)(1)(b), *infra*, for details about Mr. ██████'s reasons for returning, and the dangers that he encountered upon doing so.

According to both USCIS and UNHCR guidelines, Mr. ██████'s return visits must not be viewed as dispositive, and any evaluation that does not take into account the specific circumstances surrounding his visits meets the significant error standard for review and merits reconsideration.

Mr. ██████ only returned to Iraq for compelling reasons, in an effort to support and care for his family.

All of Mr. ██████ trips to Iraq were made for such compelling reasons that his pervasive fear could not prevent him from traveling there. Thus, they should not be used to show he is willing and able to return to Iraq. Each of his returns falls into one of three compelling categories: 1) Mr. ██████ returned to Iraq to get vital identification documents, which allowed his family to get the new G-series passports they needed, and, more importantly, enabled him to pick up his retirement pay, which sustained his family in Syria; 2) Mr. ██████ returned to retrieve records necessary to allow his son to continue his education and attend school in Syria; and 3) Mr. ██████'s wife and son returned to investigate the possibility of ██████ attending university, but remained only a short time, and in hiding, terrified by the pervasive violence. On each trip, Mr. ██████ contacted local government officials to investigate the possibility of receiving remuneration for their lost home and possessions, which would have further supported his family, but was unsuccessful in his efforts to obtain such benefits.

- ii. **Mr. ██████ needed key identification documents that would allow him to receive the retirement pay vital to maintaining his family in Syria, and also enable his family to get the new passports that they understood were necessary.**

Mr. ██████'s first compelling reason for return was to retrieve vital identification documents for himself and his family. The truly essential nature of these documents can only be understood within the context of their extensive use in Iraqi life. A December 2009 UNHCR report notes that, "[i]n Iraq, documentation is central to exercise citizenship rights, including registration as IDPs or Returnees, voting and accessing basic services, to accessing income/financial assistance, (pension/service records, driver's

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<sup>17</sup> United States Citizenship and Immigration Service, *Refugee Eligibility Part II: Well-founded Fear* 7 (March-April 2009). (Encl. 20)

<sup>18</sup> *Id.* 8.

licenses and car registration, medical committee certificates and property deeds).<sup>20</sup> Indeed, Mr. [REDACTED] needed several critical documents to be able to access his retirement income. His reliance on his retirement pay to support his family in Syria is a documented practice among Iraqi refugees—a University of Bern field-report found that “Iraqis continue to draw government pensions and even salaries while in Syria,” as a source of monetary support.<sup>21</sup> New evidence here submitted, in the form of an affidavit by Iraqi citizen Amaar Al-Hayder (Encl. 5), as well as reports by UNHCR (Encl. 26), the United Kingdom Border and Immigration Agency (Encl. 27), and the Internal Displacement Monitoring Center (IDMC) (Encl. 22), confirms the importance of the documents Mr. [REDACTED] returned to Iraq to obtain. This information demonstrates how crucial these documents were to Mr. [REDACTED] efforts to support his family.

Perhaps the most vital is the Iraqi food ration card (*al-betaqa al-tamwinya*). Without this document, Mr. [REDACTED] would be unable to obtain the identification necessary to pick up his retirement pay in Baghdad; it was not much money, but it was needed to buy adequate food and otherwise support his family. The food ration card is re-issued every year, and every Iraqi must obtain the new card. See Statement ¶¶35,41. See [REDACTED] Affidavit ¶¶6-7. Mr. [REDACTED] traveled to Iraq on March 26, 2008, in order to get the new food ration card for that year, and again on January 21, 2009 to get the 2009 version of the ration card.

In order to facilitate distribution as part of the U.N. Oil for Food Program, a computer database was created with information on Iraqis.<sup>22</sup> the Iraqi government still relies on it as

the best, most up-to-date database and automatic information system. Even now, if an Iraqi family needs to deal with the government or its officials, they will be required to produce their food basket card. This includes (but is not restricted to) selling or buying property, such as a house or car; marriage; divorce; procuring a birth or death certificate; visits to the hospital or police station; picking up one’s salary or retirement benefits; having a Jensiya, Shahadat Al-Jensiya, or passport issued... [REDACTED] Affidavit ¶6.

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<sup>20</sup> UNHCR, *UNHCR Iraq Protection Monitoring Assessments Summary, January-October 2009*, December 2009, 3, available at [http://www.internal-displacement.org/8025708F004CE90B/\(httpDocuments\)/F59A083A0F39BB81C12576A8004CFEDA/\\$file/UNHCR-Iraq-Protection-Monitoring\\_Jan-Oct2009.pdf](http://www.internal-displacement.org/8025708F004CE90B/(httpDocuments)/F59A083A0F39BB81C12576A8004CFEDA/$file/UNHCR-Iraq-Protection-Monitoring_Jan-Oct2009.pdf) (Encl. 21). See also Internal Displacement Monitoring Centre (IDMC), *Iraq: Little new displacement but in the region of 2.8 million Iraqis remain internally displaced. A profile of the internal displacement situation*, 203, available at <http://www.unhcr.org/refworld/docid/4b90da1d.html> (March 4, 2010), hereinafter *Profile of Internal Displacement* (Encl. 22).

<sup>21</sup> Ashraf al-Khalidi, Sophia Hoffman, and Victor Tanner, *Iraqi Refugees in the Syrian Arab Republic: A Field-Based Snapshot*, The Brookings Institute—University of Bern Project on Internal Displacement, 36 (June 2007), available at <http://www.brookings.edu/fp/projects/idp/200706iraq.pdf>, hereinafter *Iraqi Refugees in Syria* (Encl. 23).

<sup>22</sup> United States Government Accountability Office, *Report to Congressional Committees: Rebuilding Iraq: U.S. Assistance for the January 2005 Elections*, 5n6, September 7, 2005, available at <http://www.gao.gov/new.items/d05932r.pdf> (Encl. 24).

The importance of the food ration card and the database that supports it is corroborated by the fact that Iraq's "passive voter registration system [is] based on registration in the Public Distribution System (PDS), or food ration database. This means that voters do not need to initiate their own registration; instead, they are automatically registered to vote when they register for a food ration card."<sup>23</sup> The food ration, or PDS, card is also necessary to obtain another extremely vital identification document—the civil status identification document—which in turn is required to "obtain any other documents or record. It is a requisite document to obtain passports and PDS cards and to access health care, employment, education, housing and social welfare."<sup>24</sup> Indeed, "[i]n most cases, documents can only be obtained if other documents are already available or otherwise be obtained first, which can involve lengthy (and costly) procedures."<sup>25</sup>

With the renewed food basket card, Mr. ██████ could get his *shahadat al-jensiya*, or Iraqi Nationality Certificate. This document was also needed to pick up his retirement pay. Mr. ██████'s November 2007 trip was made in part because he needed a new copy of his *shahadat al-jensiya*. In October 2008, his wife ██████ needed a new one as well, and Mr. ██████ accompanied her. The *shahadat al-jensiya* was necessary to obtain a G series passport. The family heard rumors among the Iraqi refugee community that they should obtain these new passports from the Iraqi embassy. See Statement ¶¶32, 40.

In a 2007 report, UNHCR noted that the *shahadat al-jensiya*, along with the Civil Identification Card, are "the most essential forms of documentation as they are required in order to obtain most official documents such as passports, birth and death certificates, marriage certificates and food ration cards." The report also states that "Nationality Certificates [among other things]...could assist in obtaining new documentation, proving Iraqi citizenship or regaining property."<sup>26</sup> Furthermore, a United Kingdom (UK) Border and Immigration Agency report states that the "main identification documents needed for any kind of interaction with the authorities to access entitlements were the Iraqi Nationality Certificate and the Iraqi Civil Status ID."<sup>27</sup> The report further states that these documents must be picked up in person because of the unreliability of the mail. The IMDC corroborates this: "in order to obtain the civil status identification document and the nationality certificate... [displaced Iraqis] must show up in person as it is not permitted by law to appoint a third parties [*sic*], even if they were issued a power of attorney."<sup>28</sup> Obtaining these documents is a long, complex process. In 2008, UNHCR noted the "problems or delays [faced by displaced people] when applying for documents

<sup>23</sup> United States Embassy in Iraq, "Iraq National Elections 2010 – FAQs", ¶14, available at <http://iraq.usembassy.gov/iraq-national-elections-faqs.html> (last visited March 8, 2010) (Encl. 25).

<sup>24</sup> *Profile of Internal Displacement*, 203.

<sup>25</sup> *Id.*, 209.

<sup>26</sup> Office of the UN High Commissioner for Refugees (UNHCR). *Governorate Assessment Report: Dahuk Governorate*, 12 (September 2007) available at <http://www.unhcr.org/cgi-bin/texis/vtx/refworld/rwmain?docid=471f4c9ba> (Encl. 26). The bureaucracy in Dahuk Governorate, on which this report focused, was running more smoothly than in Baghdad. Instead of the few days it might take to obtain documents in Dahuk, Mr. Dawood faced lengthy delays when he attempted to do the same. See Statement ¶¶33, 37, 40. See also *Profile of Internal Displacement* 203.

<sup>27</sup> United Kingdom Border and Immigration Agency, *Country of Origin Information Report: Iraq*, ¶30.19, (Jan. 8, 2008) available at <http://www.homeoffice.gov.uk/rds/pdfs08/iraq-250108.doc> (Encl. 27).

<sup>28</sup> *Profile of Internal Displacement* 213.

since departments often lack employees, experience and training and have limited or no access to relevant legislation and instructions. Bureaucracy and, slow legal procedures leads to considerable delays in issuance of documents.”<sup>29</sup> During each trip, Mr. [REDACTED] had to remain in Iraq, in hiding with his children, long enough for the documents to be prepared, and sometimes encountered severe delays. *See* Statement ¶¶33, 37, 40.

Like the food ration card, Mr. [REDACTED] had to obtain the new Iraqi Nationality Certificate in person. These documents had to be presented for any dealings he had with the Iraqi government, including when he applied for the new G series passports, requested financial compensation from the government for the loss of nearly all his family’s property, and, most importantly, retrieved his retirement pay. This accumulated over the months, and he could pick up the payments in bulk at the government bank in Al-Shu’la, Baghdad, a district that was somewhat safer than his home neighborhood of [REDACTED]. *See* Statement ¶ 33. Iraqi refugees in Syria often travel to pick up such payments. Many found this to be necessary because they are not allowed to work in Syria. *See supra*, section II(2)(1)(b)(i).

In early 2009, Mr. [REDACTED] returned from his last trip to Iraq. He has decided that he could no longer make the dangerous trip back; he was simply too afraid. Without the retirement pay, his family has had to make substantial cut backs in their already meager lifestyle. Mr. [REDACTED]’s only current income is UNHCR aid, mostly in the form of food. He is not allowed to work in Syria. The family cannot afford meat, and their diet is very low in protein. They live in a dwelling that is less than 50 square meters in an impoverished neighborhood. *See* Statement ¶47.

The food ration card and Iraqi Nationality Certificate are absolutely crucial documents that allowed Mr. [REDACTED] to receive his retirement pay and support his family in Syria. It was necessary for him to return to Iraq in order to retrieve both the documents, and the money. His family’s reduced circumstances and struggle to survive, in the wake of his decision that he cannot return and risk danger once again, demonstrate how crucial the retirement pay was, and how essential the trips he made in his efforts to obtain it were.

**iii. Without documents from Iraq, Mr. [REDACTED]’s son [REDACTED] would be unable to continue his schooling in Syria.**

Mr. [REDACTED]’s son [REDACTED] was nearly finished with high school when the family fled to Syria, and Mr. [REDACTED] was determined not to let their flight interfere with his son’s education and his future. *See* Statement ¶31 In order for [REDACTED] to enroll in Syrian schools and continue his education, Mr. [REDACTED] needed to provide the Syrian school with [REDACTED]’s Iraqi school record. A report by the University of Bern confirms that “specific documentation is also required [for enrolling in Syrian schools], especially for secondary schools, such as papers documenting the student’s last classes in Iraq, a passport or birth certificate, and approval from the Iraqi National Union for Students in Syria...One Iraqi woman [interviewed for the report] was told by a school that she had to return to

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<sup>29</sup> *Id.* 203.

Baghdad to get complete documents.”<sup>30</sup> Mr. ██████ thus returned to Iraq, and went to the dangerous neighborhood where ██████’s school was located, in order to obtain his school records. *See* Statement ¶ 31 Mr. ██████’s desire to help his son continue his education should be considered a compelling reason to return.

- iv. **Mr. ██████’s wife and son returned in an effort to secure ██████’s future education, but the violence and chaos of Baghdad convinced them that he could not live and go to school there.**

According to *De Santamaria v. United States Att’y Gen.*, 525 F.3d 999, at 1011 (Eleventh Circuit, 2008), courts should not view returns to the home country as definitive in determining whether or not applicant has a well founded fear of persecution. “In light of strong attachments to their home countries, refugees may venture abroad in a state of uncertainty about the permanence of their departure, hoping that the persecution will abate so that they can return home.” It is perfectly reasonable that the family might hope to be able to return home, and that ██████ could go to college in Iraq.

Mr. ██████ made a few attempts to reach his home, in the hope that conditions might have improved and to see if anything was left of their possessions, but each time he was unable to get there because of the violence in the neighborhood. *See* Statement ¶23, 24, 26, 30, 36, 46. Similarly, ██████ and ██████ ventured to Iraq in August 2008 and January 2009 to look into the feasibility of university for Aqeel. The August trip was brief and terrifying for both of them; they remained in hiding with ██████ and ██████ due to the violence and chaos of Baghdad.

The trip in January 2009 was made only because the family saw advertisements on the major Iraqi TV channels—such as Al-Furat, Al-Sharqiya, and Al-Iraqiya, the official government channel—claiming that conditions had improved enough for students to return and safely attend school, and promising financial aid for students who did so and their families. However, when ██████ and ██████ arrived in Baghdad, they saw that this was far from the case, and quickly realized how dangerous conditions remained for them. Again, they remained in hiding in ██████. ██████ returned to Syria almost immediately. ██████ did so after shepherding their daughter ██████ through an illness. *See* Statement ¶42. Indeed, a 2008 Amnesty International report confirms that

[t]he Iraqi government has strongly encouraged “voluntary” returns, particularly since the end of 2007. Such encouragement has taken the form of advertisements on state-owned television channels, asking people to tell friends and relatives to return because of the perceived decrease in violence, and an organized return convoy. There have also been official statements at the highest level, including Prime Minister al-Maliki’s April 2008 speech to the European Parliament in Brussels, which called for Iraqis to return home. Figures given by the Iraqi authorities of the numbers returning continue to be much

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<sup>30</sup> *Iraqi Refugees in Syria* 33.



higher than those provided by other sources, including UNHCR and the Iraqi Red Crescent.... Many of the individuals who returned found dreadful conditions.<sup>31</sup>

The [REDACTED] family attempted—like others influenced by positive press—to see if it was safe to return home, only to find that the danger and fear of persecution they experienced in Iraq makes this impossible. The return trips of Mr. [REDACTED] and his family should not be used as evidence to show they are able and willing to return to Iraq, but rather as evidence that they are in fact currently both unable and unwilling to return, despite their hope of returning home after hearing conditions had improved.

**b. Mr. [REDACTED]'s experiences during his trips back to Iraq demonstrate both his unwillingness and his inability to return there to live.**

USCIS Training Materials state that “any problems or lack of problems the applicant faced upon return must be evaluated to determine if the applicant is unable or unwilling to return.”<sup>32</sup> On each of his return trips to Iraq, Mr. [REDACTED] found Baghdad to be a violent, chaotic city. He believed that he was at risk for continued persecution, and remained in hiding at the house in [REDACTED], venturing outside only to visit necessary government agencies or, on one crucial occasion, his son’s school. See Statement, ¶¶30, 31, 34, 36, 43, 46. Furthermore, Mr. [REDACTED] has never felt secure enough to return to his home, and as a result has not been there since the family fled on December 11, 2006. Mr. [REDACTED] twice ventured within a few blocks of his house, but on each occasion, he was approached by men who spoke to him obliquely about the violence in the area. They were either warning or threatening him. See Statement ¶¶26, 31. These experiences firmly convinced him not only that it was far too dangerous for him to return to his house, but that it is too risky for him and his family to return to the country, even for his retirement pay. The family has suffered a dramatic decrease in its budget as a result of the immense fear Mr. [REDACTED] feels at the prospect of returning to Iraq. See Statement ¶¶46, 48. Mr. [REDACTED] is unwilling to return to Iraq to expose his family to danger, and unable to return there without once again living in hiding, afraid of future persecution.

Mr. [REDACTED]'s actions are those of a person who wanted very much to go home, but over time became more and more convinced that this was not possible for his family. On all of the family’s trips, they remained in hiding and had very little contact with the outside world. They returned either to get documents and money necessary to their survival in Syria, and to request that the Iraqi government help them recover their lost possessions or provide them with compensation; or to inquire about [REDACTED]'s uncertain future, which, like any family, they hope will include higher education. As noted in *De Santamaria*, the “totality of the circumstances” should be taken into consideration with respect to a refugee’s return trips to their home. 525 F.3d 999, 1011. USCIS guidelines similarly

<sup>31</sup> Amnesty International, *Rhetoric and Reality: The Iraqi Refugee Crisis*, 25, available at <http://www.amnesty.org/en/library/asset/MDE14/011/2008/en/2e602733-42da-11dd-9452-091b75948109/mde140112008eng.pdf> (June 2008), hereinafter *Iraqi Refugee Crisis* (Encl. 28).

<sup>32</sup> *Refugee Eligibility Part I* 9.

instruct that “compelling factors” for return be taken into consideration.<sup>34</sup> The “totality of the circumstances” surrounding Mr. [REDACTED]’s returns involve obtaining documents that would enable him to receive financial support necessary to care for his family; the pervasive fear he experienced and his insistence on remaining in hiding when he was in Iraq; and an understandable, although incorrect, belief that at some point they might be able to safely return to their country, enroll their son in school, and regain some semblance of normalcy in their lives. These “compelling factors” should be given significant consideration when evaluating Mr. [REDACTED]’s return trips to Iraq. They demonstrate that he is unwilling and unable to return there to live.

**c. Mr. [REDACTED]’s returns to Iraq were necessary, brief, and discontinuous; legal precedent provides parallel situations in which an applicant retained their status as a refugee.**

The outcome of previous asylum cases in which a refugee returned home supports the contention Mr. [REDACTED]’s brief, discontinuous return trips, when viewed in the context of his entire case, are not sufficient evidence to overcome the threat of future persecution. According to the U.S. Code of Federal Regulations, “[a]n applicant who has been found to have established such past persecution shall also be presumed to have a well-founded fear of persecution on the basis of the original claim.”<sup>35</sup> The burden rests with the asylum officer or immigration judge to rebut this presumption by showing, by a preponderance of the evidence, either a “fundamental change in circumstances such that the applicant’s life or freedom would not be threatened on account of any of the five [protected] grounds...” or the reasonable possibility of internal relocation.<sup>36</sup> See section II(A)(3) *infra*, for a discussion of the infeasibility of internal relocation for Mr. [REDACTED] and his family.

Earlier this year, in *Kone v. Holder*, the Second Circuit firmly rejected “the erroneous belief that voluntary return trips are sufficient, as a matter of law, to rebut the presumption of future persecution to which [an applicant] is entitled...[and finds] the mere fact of such trips, standing alone, does not suggest either any fundamental change in circumstances or the possibility of internal relocation.” 596 F.3d 141, 148. The context of Mr. [REDACTED]’s return trips do not reveal any such “fundamental change in circumstances” or reasonable “possibility of internal relocation” that would rebut the presumption of future persecution.

In fact, the Second Circuit goes further, stating:

[t]he simple fact of a safe return on a particular occasion does not negate the potential of future harm. Nothing in the regulations requires an applicant to show that she would be immediately persecuted upon return, that persecution would be likely to occur within some short time span, or that it would occur in regular intervals. To the contrary, the regulations speak broadly of the future; ‘to rebut the regulatory presumption, the

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<sup>34</sup> *Refugee Eligibility Part I* 9.

<sup>35</sup> 8 C.F.R. §1208.13 (b)(1).

<sup>36</sup> 8 C.F.R. § 1208.16(b)(1)(i)-(ii).

government must show that changed conditions obviate the risk [of future persecution] related to the original claim.’ *Id.*, 22-23, citing *Bah v. Mukasey*, 529 F.3d 99, 115 (2008).

Kone spent more than 20 years in her home country, without incident, between the initial act of persecution and her first trip the U.S. and made four returns (including one that lasted approximately eight months) back to her home country after that before resolving to seek asylum. Still, the Court declared that the great lengths of time she had spent in her country were not sufficient to render unreasonable a well-founded fear of persecution. *Id.* 5-7.

In contrast, Mr. [REDACTED] has spent a relatively minor amount of time in Iraq since his past persecution. Furthermore, the number of return trips made by Mr. [REDACTED]—four—in itself is clearly not a bar to establishing his well-founded fear of future persecution, given that the court in *Kone* did not find this same number too many. None of Mr. [REDACTED]’s trips to Iraq approached even five months in duration, let alone the eight months of one of Kone’s return trips, and on each occasion he returned to Syria as soon as he was practically able—given medical, bureaucratic, and logistical constraints—in order to spend as little time as possible in Iraq. His experiences there frightened him, and his life in hiding, speaking only to his children and to government officials, bears no semblance to normalcy. He was frightened by violence in the streets; he may have been threatened as he approached his home; and the Iraqi government was unwilling or unable to help him either claim his family’s lost possessions or compensate him for their loss. His behavior while in Iraq and his testimony do not provide any indication that he no longer fears persecution, and therefore his return trips should not be viewed as dispositive. Furthermore, as noted by the Second Circuit in *Kone*, the fact that he managed to escape Iraq unharmed—recall that he lived in hiding—does not mean that he could do so in the future.

The letter that Mr. [REDACTED] received informing him that he was ineligible to receive asylum indicated that the officer had made a negative credibility finding. *See* Notice of Ineligibility. *See* section II(C), *infra*. If this conclusion was reached solely on the basis of his trips to Iraq, according to the Second Circuit, it would be an error. The presence of voluntary return trips is not in itself enough to substantiate a negative credibility determination: “[w]hile voluntary return trips may be relevant to credibility in the exercise of an IJ’s informed discretion, return trips alone are insufficient to establish lack of credibility. Under various circumstances, a person very well might risk persecution to return to his or her home country, despite previous persecution or a well-founded fear of future persecution.” *Id.* 24-25.

In cases in which asylum applicants were found to lack credibility in part based on voluntary return trips, there were issues involved that are not present in the instant case. *See, e.g., Tarraf v. Gonzales*, 495 F.3d 525, 531 (7th Cir. 2007) (finding that “[m]ore significant’ to the credibility issue [than return trips], according to the IJ, were the ‘drastic’ discrepancies between the written application and the in-court testimony”); *See also Belayneh v. INS*, 213 F.3d 488, 491 (9th Cir. 2000) (determining that the presumption was rebutted when the applicant made three return trips, there had been two

favorable changes in government, fifteen years had passed between the past persecution and the asylum request, and there was no nexus between the spouse's persecution and the applicant's fear)." There are no such major inconsistencies in Mr. ██████'s case. He has never lived normally in Iraq for even a small period of time since his family's flight to Syria, nor has he stopped fearing persecution. An adverse credibility determination cannot be supported by his brief and necessary trips to Iraq.

When evaluating the length of Mr. ██████'s return trips to retrieve essential documents, it is important to recognize the difficult and lengthy process that is often involved in getting the local government offices to issue them. *See* section II(A)(2)(1)(b), *supra*. Mr. ██████ indeed experienced such delays when seeking to have his food ration cards and *shahadat al-jensiya* issued, and at times also had difficulty accessing the local government office due to turmoil and security concerns in the neighborhood. *See* Statement ¶¶33, 37, 40. As a result of these conditions, Mr. ██████ often had to stay longer in Iraq than he had hoped in order to obtain these documents. Given the widespread delays in this process, the duration of Mr. ██████'s return visits should not be held against him; bureaucratic inefficiencies in issuing the documents he needed to support his family were beyond his control.

### 3. Internal Relocation is Not a Reasonable Alternative for Mr. ██████

It is unreasonable to presume that Mr. ██████ and his family may safely live elsewhere in Iraq. One of the considerations UNHCR includes in evaluating the internal relocation option is the "reasonableness analysis", i.e., "whether the individual could live a relatively normal life in that area without facing hardship."<sup>37</sup> This does not apply to Mr. ██████ and his family. When they have returned to Iraq, they have done so out of necessity and lived in fear, hiding in the home in Al-Mansour. "In 2009, continuing insecurity, lack of livelihoods and basic services, [and] destroyed or occupied housing"<sup>38</sup> faced refugees attempting to return to Iraq. Mr. ██████ and his family were told by neighbors that their furniture had been burned after they fled, and this information was recorded in the letter from their local council describing their situation. *See* Documents from Local Government Bodies. They do not have a home or possessions to which they can reasonably expect to return. Further, basic services including health care—which is also very difficult to access<sup>39</sup>—are very important to the family, as ██████ still needs surgery to remove shrapnel from wounds suffered in the mortar attack. *See* Statement ¶47.

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<sup>37</sup> *Eligibility Guidelines*, ¶89. The continuing violence in Iraq is an important factor in this "reasonableness analysis". Amnesty International has drawn attention to recent attacks specifically targeting civilians. Amnesty International, *Killing of civilians in Iraq constitute 'war crimes'*, April 7, 2010, available at: <http://www.unhcr.org/refworld/docid/4bc2ccd929.html> (Encl. 29). In December 2009, UNHCR renewed its recommendation that refugees not be forcibly returned to Iraq due to "continuing violence and human rights violations." *See* United Nations News Service, *Asylum-seekers must not be forcibly returned to central Iraq - UN*, December 11, 2009, available at <http://www.unhcr.org/refworld/docid/4b29ee033.html>. (Encl. 30).

<sup>38</sup> *Profile of Internal Displacement* 269.

<sup>39</sup> *Id.*, 269-270.

UNHCR noted that even when the security situation has seemed greatly improved, non-State persecutors are still a danger, and “have proven in the past to be quite mobile and have often resurged in formerly ‘cleared’ areas.”<sup>40</sup> Sectarian violence is still occurring.<sup>41</sup> Reconciliation efforts necessary for refugees to move safely into areas rent by sectarian violence “remain meager”.<sup>42</sup> Since Mr. [REDACTED] and his family lived in such a neighborhood, and were specifically targeted for their Shi’a faith, they reasonably fear falling victim to further attacks.

Mr. [REDACTED] and his family are unable to live with their children who remain in Iraq because they are currently residing with their spouses’ families, and have no room in their homes. In addition, Mr. [REDACTED] has no resources with which to rent or purchase a home for his family. The retirement pay he received only allowed his family to survive in Syria because it was supplementing assistance from UNHCR. Many internally displaced Iraqis have been forced to pay exorbitant rental fees, sometimes being asked to provide a year’s rent in advance, which Mr. [REDACTED] would certainly be unable to afford.<sup>43</sup> Considering this serious economic hardship, the difficulties of obtaining basic services<sup>44</sup>, and the continued fear of violence, UNHCR

considers it unreasonable to expect an individual fleeing persecution in Iraq to relocate to another area in the Central and Southern Governorates. Such an individual would not be able to lead a relatively normal life without undue hardship. Lack of basic facilities and difficulties with livelihoods and survival render it extremely harsh for persons to live normal lives at even basic subsistence levels within the Central and Southern Governorates.<sup>45</sup>

If Mr. [REDACTED] and his family were forced to return to Iraq, they would face such a dire situation.

**B. New evidence supports Mr. [REDACTED] inability to permanently return to Iraq and to establish the necessity of his brief visits to Iraq.**

According to USCIS guidelines, requests for review made upon the basis of new evidence automatically qualify for scrutiny for error.<sup>46</sup> The standard of review for new evidence provided with a request for review is that the evidence provides new information that may affect the outcome of the applicant’s claim.<sup>47</sup> The new evidence here provided supports Mr. [REDACTED]’s statement. Much of it goes directly to the reasons behind Mr. [REDACTED]’s return to Iraq: he had to obtain the necessary official documents to receive the retirement pay he needed to support his family in Syria.

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<sup>40</sup> *Eligibility Guidelines*, ¶92.

<sup>41</sup> Institute for War and Peace Reporting, *Iraqis Fear Renewed Sectarian Violence*, February 26, 2010, available at <http://www.unhcr.org/refworld/docid/4b8cc843c.html> (Encl. 31).

<sup>42</sup> *Profile of Internal Displacement*, 269.

<sup>43</sup> *Eligibility Guidelines*, ¶104.

<sup>44</sup> *Id.*, ¶¶105ff.

<sup>45</sup> *Id.*, ¶101.

<sup>46</sup> Guidance Memo 6.

<sup>47</sup> *Id.* 4.

This evidence submitted includes:

- An affidavit by [REDACTED], an Iraqi citizen, attesting to the dangerous and violent conditions in [REDACTED], during the time Mr. [REDACTED] attempted to return to his home and retrieve his possessions. Further, Mr. [REDACTED] also explains the importance of the food ration card to the operation of the Iraqi bureaucracy, and corroborates Mr. [REDACTED]'s statement that he needed this document in order to receive his retirement pay. Affidavit of [REDACTED], Encl. 5.
- Letters issued by the Iraqi Ministry of Displacement and Migration, and the Al-Mansour local council, confirming that Mr. [REDACTED]'s family was forced to flee from their home, and that many of their possessions were destroyed. Documents from Local Government Bodies, Encl. 7a and 7b.
- A medical report, completed in Syria, detailing the results of a medical test that showed Mr. [REDACTED] was recovering from Malta fever, a grave illness which caused him to extend his stay in Iraq in early 2008. Medical Report of [REDACTED] Encl. 9.
- The *shahadat al-jensiya* obtained by Mr. [REDACTED] in order to apply for a new passport, as well as a new translation of the *shahadat al-jensiya* of Khairiya, issued November 8, 2008. The translation of this document provided with the family's original application included an incorrect date of "November 8, 2009". This error may have led the USCIS officer to question Mr. [REDACTED]'s account of his family's necessary returns to Iraq. *Shahadat al-jensiya* of [REDACTED], with Initial Translation and Corrected Translation; *Shahadat al-jensiya* of [REDACTED] Encl. 32.
- The family's new passports (along with their old S series passports) issued by the Iraqi embassy in Syria, for which Mr. [REDACTED] and his wife needed to obtain new *shahadat al-jinseas*, a process that could only be completed in Baghdad, in person. S and G Series Passports, Encls. 8a and 8b.<sup>48</sup>
- Copies of Mr. [REDACTED]'s food ration cards for 2008, and 2009, with translations, Encls. 33 and 34.
- Clarification regarding the report provided to USCIS by UNHCR, which contains some incorrect facts. These errors have been highlighted on the copy provided. Mr. [REDACTED] does not know how these mistakes were included in his file. If the asylum officer perceived a discrepancy between Mr. [REDACTED]'s statements during the interview and the UNHCR file, these may have been due to the errors contained within it. UNHCR Case File and explanatory notes, Encl. 35. Further corroboration is provided by the Employment Identification Card of [REDACTED], Encl. 35a.

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<sup>48</sup> Please be aware that the copies of the family's "S" series passports that we received also include images of the passport of [REDACTED]'s case has been severed from that of the rest of the family.

- A translation of Mr. [REDACTED]'s military register, corroborating his statements that he paid the 100 dinar fee to be exempt from service upon his first conscription, that he received deferrals due to his work at the [REDACTED] gas factor, and that he was an unarmed soldier. See Statement ¶¶2, 3, 5. See also Military Register of [REDACTED] pp. 1, 11, 24, 36, 38, 52, Encl. 36.<sup>50</sup>

- Clarification regarding the dates in the family's passports, provided by Mr. [REDACTED]'s Statement and an Amnesty International report providing corroboration. In order to renew their residency permits, the family would travel to the Syrian border, thereby receiving a stamp on their passport each time the permits were renewed. It may thereby appear that they left Syria on several occasions when they were simply having the permits renewed. See Statement ¶29 and *Iraqi Refugee Crisis* 9-10n19.

The totality of this evidence corroborates Mr. [REDACTED]'s statement, demonstrating his inability to return to his home, the illness that prevented him from leaving Iraq in the spring of 2008, and the completion of the necessary official business that he returned to Iraq to transact.

**C. Mr. [REDACTED]'s military service, about which he was questioned extensively during his USCIS interview, is not grounds for denial because he was not involved in the persecution of others, and indeed was never involved in actual fighting.**

As detailed in his Statement, Mr. [REDACTED] spent his time in the Iraqi military performing clerical tasks and menial work, and was never involved in a battle. See Statement ¶¶2, 3, 5-13. During Mr. [REDACTED]'s interview with USCIS, the officer questioned him extensively about his military service, but did not explain the import of these inquiries. Mr. [REDACTED]'s Notice of Ineligibility (see Notice of Ineligibility) did not indicate that he was denied resettlement because he was believed to have participated in the persecution of others.

However, if this was a factor in his denial, it would constitute significant error because it is not supported by the facts of the case.

Many judicial rulings have established that membership in a military organization alone does not prove that an applicant for asylum meets the requirements for persecutor status and is therefore ineligible as dictated by 8 U.S.C. §1101(a)(42). The individual must have specifically participated in the persecution of others: "there must have been some nexus between the alien's actions and the persecution of others, such that the alien can fairly be characterized as having actually assisted or otherwise participated in that persecution." *Diaz-Zanatta v. Holder*, 558 F.3d 450, 455 (Sixth Circuit, 2009), citing *Singh v. Gonzalez*, 217 F.3d 736 (Seventh Circuit, 2005). See also *Vukmirovic v. Ashcroft*, 362

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<sup>50</sup> The reference on page 10 of Mr. [REDACTED]'s military register to a "court martial" refers to a small fine (of 10 dinars) levied due to late registration at the recruiting office.

F.3d 1247, 1252 (Ninth Circuit, 2004), *Hernandez v. Reno*, 258 F.3d 806, 813 (Eighth Circuit, 2001).

The Iraqi military is a traditional organization with legitimate functions that do not include persecution. In such a case, a court must distinguish between “genuine assistance in persecution and inconsequential association with persecutors.” *Singh*, 217, F.3d 736, 739. Simply being a private in the Iraqi military is not sufficient evidence that Mr. [REDACTED] participated in persecution (to the extent such speculation played a role in the decision to deny Mr. Dawood’s application).

During his time in the military, Mr. [REDACTED]’s duties were circumscribed by his age and his flat feet. *See* Statement ¶¶2, 7, 13. He did not participate in the persecution of others, and there is no evidence that he was aware of any such activities on the part of the Iraqi military. He never even participated in combat. Moved from base to base and given odd jobs, he was a guard, a cook, a clerical assistant, and a laborer—he was never a persecutor.

If the decision to deny Mr. [REDACTED]’s application involved an adverse determination as to persecution, even though it is not indicated on the Notice of Ineligibility (*see* Notice of Ineligibility), this would constitute significant error, as the facts of Mr. [REDACTED]’s case do not support such a conclusion.

**D. USCIS significantly erred because Mr. [REDACTED] was not made aware of any issues regarding his credibility during the interview and was not afforded the opportunity to clarify any perceived discrepancies.**

USCIS training guidelines state that if an applicant has been denied resettlement based upon a negative credibility finding, “failures in fact finding and analysis will constitute a significant error”.<sup>51</sup> In order to avoid such errors, the following guidance is provided: “The matter(s) must be material to the refugee’s application for resettlement; and, [t]he applicant must have been made aware of the matter(s) and provided a fair opportunity to provide an explanation.”<sup>52</sup>

Mr. [REDACTED] was interviewed once with [REDACTED], [REDACTED] and [REDACTED], and once on his own. During the individual interview, the adjudicating officer focused on his military service, which he detailed at some length. Mr. [REDACTED] was extremely tired and under a great deal of stress and pressure. He was confused by all the questions, and was terribly afraid of answering something wrong. He was aware of the fact that he may have forgotten some dates, particularly as pertained to his military service. Mr. [REDACTED] was stationed at a variety of bases throughout his time in the military, and there were few jobs for him to do at most locations. He became more and more upset as he attempted to relay all of the dates and locations involved, and worried that he would make a mistake.

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<sup>51</sup> Guidance Memo 3.

<sup>52</sup> *Id.* 4.



Further, Mr. [REDACTED] was not notified of or given any opportunity to explain perceived discrepancies. USCIS guidelines state that applicants must be provided such an opportunity.<sup>53</sup> This is therefore significant error, and I request that Mr. [REDACTED] be granted another interview to clarify any alleged discrepancies.

### III. CONCLUSION

[REDACTED] is clearly eligible for resettlement in the United States. His family was persecuted on account of their Shi'a religion. They were threatened, attacked, and forced to flee from their home with only their most precious possessions. In only a few months, their residency in Syria will expire. They harbor the well-founded fear that they will face further persecution if they are forced to return to Iraq.

Mr. [REDACTED], like nearly all Iraqi refugees living in Syria, faces a desperate situation. Iraqi refugees are forbidden to work, and given their lack of income, savings are depleted quickly, leading to impoverishment. The family is currently living solely on aid from UNHCR. Mr. [REDACTED] is too afraid to return to Iraq again, even to receive his retirement benefits, and so they are barely surviving on their UNHCR assistance. *See Statement ¶46.* Mr. [REDACTED]'s case is particularly urgent because he has been informed by the Syrian government that he and his family cannot renew their residency permits again and will be deported on May 31, 2010. *See Statement ¶47.*

As noted above, Mr. [REDACTED] attempted to submit a request for reconsideration. It is unclear if this was ever presented to the proper authorities. I ask that in light of his good faith attempt to file such a review without the assistance of counsel and within the stated period for doing so, the 90-day deadline for filing a request for review be tolled and this request for review be accepted as timely.

This submission has been prepared on the basis of the information currently available. Should Mr. [REDACTED]'s denial be predicated upon grounds not addressed in this request, I request that I be given an opportunity to address those grounds in additional submissions. I can best be contacted at [rcleary@seyfarth.com](mailto:rcleary@seyfarth.com).

I appreciate your assistance and prompt attention to this urgent case.

Sincerely,

  
Robin Cleary  
Seyfarth Shaw LLP

Hayley Fink  
Law Student Intern  
Iraqi Refugee Assistance Project, Yale Law School

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<sup>53</sup> *Id.*

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