



Australian Government
Immigration Assessment Authority

Decision and Reasons

Referred application

AFGHANISTAN
IAA reference: IAA19/07367

Date and time of decision: 19 November 2019 16:16:00
M Brereton, Reviewer

Decision

The IAA affirms the decision not to grant the referred applicant a protection visa.

Any references appearing in square brackets indicate that information has been omitted from this decision pursuant to section 473EC(2) of the Migration Act 1958 and replaced with generic information which does not allow the identification of a referred applicant, or their relative or other dependant.

Background to the review

Visa application

1. The referred applicant (the applicant) claims to be a Shi'a and a Hazara from the Jaghori district, Ghazni province, Afghanistan. He departed Afghanistan legally in February 2013 and arrived on Christmas Island [in] March 2013. On 29 April 2016, he lodged a valid application for a Safe Haven Enterprise Visa (SHEV). On 9 March 2017, a delegate of the then Minister for Immigration and Border Protection (the delegate) refused to grant the visa.
2. On 22 November 2017, the Immigration Assessment Authority (IAA) affirmed the delegate's decision. [In] September 2019, the Federal Circuit Court of Australia set aside the delegate's decision and remitted the matter to the IAA for reconsideration.
3. The applicant claimed to fear harm from the Taliban as a Shi'a and a Hazara, because of imputed opposition to the Taliban, and as a returned asylum-seeker from a Western country.
4. The delegate accepted the applicant's claims as to identity, origin and past personal history. The delegate found that the applicant had a well-founded fear of persecution in his home area but that he did not face a real chance or real risk of significant harm in Kabul, and that it would be reasonable for him to relocate there.

Information before the IAA

5. I have had regard to the material given by the Secretary under s.473CB of the *Migration Act 1958* (the Act) (the review material).
6. The review material contains two documents that do not relate to the applicant. The Department of Immigration (Department) has confirmed that these were referred in error and asked the IAA to ignore them. I have not further considered these documents.
7. On 4 April 2017, the applicant (through his agent) provided a submission and information to the IAA. Parts of the submission refer to the delegate's decision and make argument in respect of that decision and information that was before the delegate. I am satisfied that this is not new information.
8. The submission refers to documents that were not before the delegate. I am satisfied that these documents are new information. The documents comprise:
 - Two reports written by Professor William Maley, dated 22 November 2016 and 22 December 2016 respectively;
 - A media report dated 8 March 2017 referring to an attack on a military hospital in Kabul;
 - A media report dated 25 March 2017 referring to the Taliban takeover of a town in Helmand province; and
 - A decision of the Administrative Appeals Tribunal (AAT) dated May 2016.
9. The reports by Professor Maley have been updated by a new 2019 report that I have considered (see further below). That report sets out the same information that is in the 2016 reports and then updates it with recent information. As I am satisfied that the 2019 report

provides more current analysis of the situation in Afghanistan, I am not satisfied that there are exceptional circumstances to justify considering the 2016 reports.

10. The two media reports are now somewhat outdated and there have been significant events in Afghanistan, including the applicant's home province, since that time. The reports do not refer to the applicant personally, nor do they refer to or otherwise substantiate his personal claims. There is more recent information before me, including information provided by the applicant and information relating specifically to the applicant's home province. I am not satisfied that there are exceptional circumstances to justify considering this new information.
11. The AAT decision does not relate to the applicant or his family. Although it does relate to a Hazara applicant, it was an assessment by the AAT of that applicant on the basis of information that was before the AAT but is not before me. It was also decided on the basis of information current as at 2016. I have more recent information before me, as well as information relating specifically to the applicant. I am not satisfied that there are exceptional circumstances to justify considering the AAT decision.
12. On 26 and 27 October 2019, the applicant (through his agent) provided further information to the IAA. The document provided on 26 October 2019 is an Australian-issued document evidently provided for the purpose of updating the applicant's current address which has been noted. I am satisfied that this document is not otherwise relevant to the review and have not considered it further.
13. The document provided on 27 October 2019 is an updated report from Professor Maley, dated 8 October 2019. I am satisfied that it could not have been given to the Minister before the delegate made the decision. This report updates the 2016 reports referred to above and includes analyses of the recent developments in Afghanistan. It is more current than the information that was before the delegate and refers specifically to the situation facing Hazaras who may be returned to Afghanistan. It also refers to recent Taliban incursions in the Jaghori area. Having regard to all of the above, I am satisfied that there are exceptional circumstances to justify considering this report.
14. The delegate considered the 2016 country information report prepared by the Australian Department of Foreign Affairs and Trade (DFAT). For the purpose of the first IAA review in this matter, the IAA obtained two updated DFAT reports dated 18 September 2017. On 27 June 2019, DFAT released its most recent country information report on Afghanistan¹, which I have also obtained. The 2019 report, which explicitly replaces the 18 September 2017 reports, is substantially more current than the versions dated 2016 and 2017. It contains information relevant to returned asylum-seekers including those who have been in the West. It also contains information relating to Hazaras in Ghazni province, particularly following the 2018 Taliban incursion. I consider that DFAT provides an authoritative source of information and analysis. It refers to information from government, non-government and other sources. Having regard to all of the above, I am satisfied that there are exceptional circumstances to justify considering the 2019 DFAT report. As this report replaces the 2017 reports obtained earlier, I am not satisfied that there are exceptional circumstances to justify considering the 2017 reports.
15. The first IAA review also obtained a report from the European Asylum Support Office (EASO) dated 1 November 2016, and the United Nations Assistance Mission in Afghanistan (UNAMA)

¹ Department of Foreign Affairs and Trade (DFAT), "DFAT Country Information Report Afghanistan 27 June 2019", 27 June 2019, 20190627113333.

dated 1 July 2017. Both of these reports are now outdated and have been replaced by more recent information from both sources.² Those more recent reports refer to the situation for Hazaras in Ghazni and Hazaras generally following the 2018 events. I have obtained these more recent reports and I am satisfied that there are exceptional circumstances to justify considering them. As they replace the earlier versions obtained by the IAA, I am not satisfied that there are exceptional circumstances to justify considering those earlier versions.

16. I have formed a different view to the delegate in relation to the applicant's ability to return to Jaghori. The delegate's decision was made some time ago but the applicant's personal history and claims to fear harm have not changed; however, there have been developments in the security situation in Afghanistan generally, and Jaghori in particular. I have considered new information in relation to these issues, including information provided by the applicant himself, as well as the applicant's submissions in relation to his fear of harm in Jaghori. I also note that the first IAA also came to a different view to the delegate and although that decision is now quashed, I consider that the issue of harm in Jaghori was squarely raised and remains an issue that the applicant is aware of. I also note the agent's request that the IAA let him know "whether any further country information or updates is required to support the case and add to the FCCA Decision". I consider that overall the applicant has had a real and meaningful opportunity to provide information and comment on this issue and has done so. In particular, I note that Professor Maley refers to and makes comment in relation to both the new DFAT and new EASO reports that I have obtained. Having regard to all of the above, I have considered s.473DC(3) but have decided to proceed on the basis of the information before me.

Applicant's claims for protection

17. The applicant's claims can be summarised as follows:
- He is a Shi'a and a Hazara from the Jaghori district in Ghazni, Afghanistan. He lived in [Country 1] between 1988 and 1990, and 1994 and 1995 but otherwise lived in Jaghori until he left Afghanistan to come to Australia.
 - When he lived in Afghanistan he worked on the family farmland until 2006. He and his brother then became truck drivers in Afghanistan.
 - The Taliban used to stop them and question them about their cargo and employers. The Taliban would take their photographs, identity and registration details. The Taliban would call them names, beat them and threaten them, saying not to work for the government or non-government organisations (NGO). The Taliban said that if it found out they were doing this work, they would be killed.
 - On one occasion while travelling he stopped to say his prayers. He was attacked by the Taliban and beaten with a gun butt.
 - In 2012, his brother was badly injured in a suicide bombing in Herat.
 - In 2013, the applicant and two other drivers were driving from Herat to Kabul. The applicant stopped to change a tyre and then continued. He saw the one of the other trucks at the side of the road. The body of the driver was lying nearby. Further along the road he saw the second truck but the driver was missing. Further along the road he

² European Asylum Support Office (EASO), "Afghanistan: Security situation", 12 June 2019, 20190613124844; United Nations Assistance Mission in Afghanistan (UNAMA), "MIDYEAR UPDATE ON THE PROTECTION OF CIVILIANS IN ARMED CONFLICT: 1 JANUARY TO 30 JUNE 2019*", 30 July 2019, 20190808111453.

heard someone calling on him to stop. He did not stop and he was fired at. He found bullet holes in his truck.

- The applicant was scared and sold his truck. He came to Australia shortly after.
- He believes that the Taliban targeted him and will do so if he returns. He will face harm as a Shi'a and a Hazara. The Taliban will also be suspicious of his motives for returning from the West and will suspect he has become a Christian.

Refugee assessment

18. Section 5H(1) of the Act provides that a person is a refugee if, in a case where the person has a nationality, he or she is outside the country of his or her nationality and, owing to a well-founded fear of persecution, is unable or unwilling to avail himself or herself of the protection of that country; or in a case where the person does not have a nationality—is outside the country of his or her former habitual residence and owing to a well-founded fear of persecution, is unable or unwilling to return to it.

Well-founded fear of persecution

19. Under s.5J of the Act 'well-founded fear of persecution' involves a number of components which include that:
- the person fears persecution and there is a real chance that the person would be persecuted
 - the real chance of persecution relates to all areas of the receiving country
 - the persecution involves serious harm and systematic and discriminatory conduct
 - the essential and significant reason (or reasons) for the persecution is race, religion, nationality, membership of a particular social group or political opinion
 - the person does not have a well-founded fear of persecution if effective protection measures are available to the person, and
 - the person does not have a well-founded fear of persecution if they could take reasonable steps to modify their behaviour, other than certain types of modification.
20. The applicant claims to be a Shi'a and Hazara from Jaghori district, Ghazni province, Afghanistan. He has been consistent in these claims and has provided documentary evidence in the form of a copy and translation of a taskera.³ He was assisted during the application process by Hazaragi interpreters. I accept the applicant's claims as to identity and origin. I find that he is a Shi'a and a Hazara from this part of Afghanistan and that Afghanistan is the receiving country for the purposes of this review.
21. The applicant claims that his family (his wife, children, brother and brother's children) remains in Jaghori, with another married sister living in Ghazni City. Apart from his claims in respect of the Taliban (considered further below), he has not claimed that he is unable to return to and remain in the family home. He has not claimed to have suffered any previous harm in Jaghori and has not claimed that his family fears any harm there now. There is nothing else before me that indicates that the applicant would want to return to any other

³ Afghan identity document.

part of Afghanistan. I find that the applicant will return to Jaghori should he return to Afghanistan.

22. The applicant has given generally consistent and plausible evidence in relation to his past history. I note that at the entry interview on 17 May 2013 (the entry interview) he did not mention any individual incidents affecting him personally, but he did refer to both he and his brother being truck drivers. In his SHEV application and at the interview with the delegate on 1 March 2017 (the interview), he provided additional detail including the claims that he had been stopped by the Taliban in the past and had escaped a Taliban ambush in 2013. He was able to provide plausible and consistent evidence of these incidents during the interview and answered questions appropriately and with detail.
23. I accept that the applicant and his brother worked as truck drivers from 2006 onwards. I have considered the country information in the review material and I accept that the applicant and his brother were stopped by the Taliban at different times while driving. It is plausible, and I accept, that the Taliban collected personal and registration details. I accept that the applicant and his brother were subjected to abuse, threats and beatings because they are Hazara, and that they were warned not to work with government or NGO agencies. I note that they were never detained beyond these incidents, taken to Taliban camps or subjected to any kidnap attempts. While I accept that these incidents occurred, I am not satisfied that either the applicant or his brother had any adverse profile other than being Hazaras and truck drivers. I am not satisfied that the Taliban showed any ongoing personal interest in them.
24. I accept that on one occasion when he was travelling the applicant was attacked while praying. He believes that this was the Taliban because they were armed and wore turbans. The attackers did not say anything or claim to be Taliban and I consider the applicant's belief to be somewhat speculative. Even if the attackers were Taliban, the applicant does not claim he was personally identified or singled out for any reason other than saying his prayers. He did not claim that he had to escape and from his evidence it appears that after beating him, the attackers had no further interest in him. I find that the applicant was identified as a Shi'a and/or Hazara and attacked for that reason.
25. I accept that the applicant's brother was injured in an explosion in Herat. He claims that this occurred during the period of Ramadan and that the bomb exploded in front of his brother. He has not provided any further detail of this incident. He has not claimed, and the evidence he has provided does not suggest, that the bomb was targeted at his brother personally, as opposed to being targeted at Shi'as generally, particularly as this occurred at the time of a religious observance. While I accept that this incident occurred, I am not satisfied that the applicant's brother was targeted or identified, or that the applicant was, or will be, subject to any adverse interest for any reason arising from this incident.
26. I accept that the applicant was travelling from Herat to Kabul with two other drivers one day in 2013. They were all carrying [specified cargo]. The applicant stopped to fix a flat tyre and then he resumed his journey. About two hours later he found the other two trucks and one dead body. This occurred between Helmand Province and Kandahar, some distance from Kabul. He has not claimed to have seen what happened or to have spoken to anyone who saw what happened, but he told the delegate that he thinks someone in Herat reported the trucks as carrying goods for a government or foreign organisation. He has not claimed that he has spoken about this incident to any other person or that anyone has told him that he and the other drivers were reported to the Taliban. While it is possible that the trucks were

ambushed by the Taliban, the reports of road violence before me indicate that it could equally have been other extremists or criminal groups.

27. The applicant did not claim that anyone attempted to stop or harm him while he was travelling through the area of the ambush. He told the delegate that he continued to Kandahar where his documents and cargo were checked by officials. He did not claim to have reported the ambush or deaths to any officials, the owner of the cargo, family or any other persons. He said that he obtained the necessary stamps on his documents and continued with his journey. The next morning, when he was closer to Kabul, he heard someone call out his name. He saw four or five men come out of an orchard and run towards his truck, shouting at him to stop. He was scared and did not stop. He heard shots but was able to escape. He told the delegate that he believes the Taliban who ambushed the trucks reported him to other Taliban along the road, who then attempted to ambush him but missed him, as he was driving ahead of schedule. He arrived in Kabul and saw bullet holes in his truck. He telephoned the owner of the cargo and told him that it was ready to be unloaded he did not report the ambush or attempted ambush to any officials, the owner or any other person. He said that he was scared that the Taliban was looking for him so he hid in hotels for about 16 days, sold his truck and used some of the money to come to Australia. He has not claimed to have heard then, or at any time since, that the Taliban was searching for him.
28. I consider the applicant's belief that it was the Taliban who ambushed the trucks to be speculative, although I accept that two attacks on one trip (the ambush, followed by the attempted ambush of the applicant) suggests that the incidents were linked to each other. I accept that the two incidents occurred and I am prepared to accept that the attempt to stop the applicant may have been linked to the previous day's ambush.
29. I take into account the applicant's evidence that on previous journeys, his name and registration details were taken by the Taliban. While he was mistreated, insulted and threatened, he was not subjected to any other harm at those times. Although his personal details were recorded, he was never visited at home, approached or threatened at any other time, apart from when passing through checkpoints. I accept that his details were recorded on these occasions but I am not satisfied that this indicates that the applicant was of personal and ongoing adverse interest to the Taliban. I consider that this was essentially an administrative task and not a matter of the Taliban recording the details of persons of interest.
30. I am not satisfied that the applicant had ever been of personal adverse interest to the Taliban or any other group prior to the attempted ambush. As noted above, he has not claimed that anyone has looked for, or asked about, him since this incident. I do not accept that he had any sort of personal profile with the Taliban, or that he heard someone calling his name. I do accept that someone shouted at him to stop and fired at him when he did not do so. I am not satisfied on the evidence before me that he was otherwise personally identified, or that he would be of any adverse interest to any group or person now, some six years later, because of this incident, or from having his personal details recorded previously. I am not satisfied that the applicant is of any adverse interest to the Taliban or any other extremist group now, that he will be of interest in the reasonably foreseeable future, or that he faces a real chance of harm for any reason arising from his past history, including having been a truck driver or from the attempted ambush.
31. I accept that the applicant is a Shi'a and a Hazara. Professor Maley reports that in June 2019, a major cross-national study concluded that Afghanistan is now the least peaceful country in the world, replacing Syria. He notes that the 2019 DFAT country information report:

... warns as of 8 October 2019 of “the extremely dangerous security situation and the very high threat of terrorist attack”, noting that “The frequency of attacks in Kabul, and across the country, has continued to increase with many killed and wounded. There are credible reports of imminent attacks. Large scale attacks in July, August and September 2019 resulted in hundreds killed and injured in each instance”. It goes on that ‘Terrorist attacks can occur anywhere, anytime and are common in Kabul’, and states that ‘No region is immune from violence. Opportunistic and targeted hostile acts can occur throughout the country’. The US Department of State warns as of 8 October 2019 that ‘Travel to **all** areas of Afghanistan is unsafe because of critical levels of kidnappings, hostage taking, suicide bombings, widespread military combat operations, landmines, and terrorist and insurgent attacks, including attacks using vehicle-borne, magnetic, or other improvised explosive devices (IEDs), suicide vests, and grenades’ (emphasis added). It is essential to appreciate that the situation in Afghanistan is extraordinarily fluid, and assessments of the situation made even quite recently do not necessarily provide an accurate picture of the situation in late 2019 and beyond.

32. Professor Maley notes that even the most recent reports have been outdated by the September 2019 collapse of peace talks between the United States and the Taliban. He urges that the situation needs to be appreciated as “extraordinarily fluid”, of which the coordinated Taliban assault on Jaghori in November 2018 is a powerful illustration. He notes that in August 2018, the town of Ghazni, strategically located between Kabul and Kandahar, fell to the Taliban for five days, with grim reports of destruction and mayhem during the time it was occupied. He continues:

From late October 2018, Taliban forces undertook coordinated attacks against Hazaras in Khas Uruzgan, Malestan and Jaghori. Many Hazara asylum seekers in western countries originate from these districts. The districts are, however, of no military significance, and the attacks make more sense as a symbolic strike designed to highlight the inability of the Afghan state effectively to protect members of a vulnerable ethnic and sectarian minority, and as punishment for the relatively tolerant and liberal lifestyle of these communities, far removed from the puritanical extremism of the Taliban. ... On 12 November 2018, as Hazara protestors gathered in Kabul to protest the relative inaction of the Afghan government in face of these attacks, a suicide bomber struck the protesters, killing at least six people. The targeting of these districts completely discredits the narrative that they constitute ‘safe’ areas to which Hazaras can reasonably be expected to return.

33. I note the travel warning issued by the United States Department of State. This warning appears to be directed at persons intending to travel to Afghanistan, rather than being a specific assessment of the risks facing Afghan citizens or returned asylum-seekers. I accept that this assessment indicates a high level of threat in Afghanistan generally, including on the roads, but I have also considered other information that provides more specific analyses, including at provincial level.
34. According to DFAT⁴, parts of Ghazni are included in what is known as the Hazarajat, a mountainous region consisting of the provinces of Bamiyan and Daykundi and parts of the provinces of Ghazni, Ghor, Uruzgan and Wardok. The Hazarajat is the traditional homeland of the Hazara people. The Hazara make up around 40 per cent of Ghazni province’s estimated overall population of 1.2 million, which is 50% Pashtun. While Bamiyan province and (to a lesser extent) Daykundi province are largely secure, ongoing armed insurgency has affected the provinces surrounding them and road transportation links between the

⁴ DFAT, “DFAT Country Information Report Afghanistan 27 June 2019”, 27 June 2019, 20190627113333

Hazarajat and major cities are far from secure. The security situation in the Hazarajat, particularly Bamiyan province, has been considerably better than in most other parts of Afghanistan in recent years. There are a number of factors behind this: the Hazara comprise the vast majority of the population in most districts in these provinces, which means there are fewer opportunities for ethnic tension; and because the Hazaras are visually distinct, non-Hazaras have found it difficult to infiltrate these areas without detection. The mountainous terrain of the Hazarajat also offers a form of natural protection, with few routes for outsiders to traverse these provinces.

35. DFAT reports that although civilian casualties from ground fighting between the government and anti-government elements (AGE) dropped sharply in 2017, Ghazni experienced an 84% increase in civilian casualties from 2017. In August 2018, there was a large-scale Taliban attack against Ghazni City that resulted in protracted fighting for more than a week and caused hundreds of civilian casualties, mainly from ground fighting and airstrikes. The Taliban reportedly used lists containing names and addresses of government and Afghan national security forces employees to target them and their family members: victims of targeted killings included the brother of a police commander, a district prosecutor, and a parliamentary candidate. Witnesses also reported intentional damage to civilian property. Security concerns remained high throughout the end of the year, with the Taliban continuing to maintain pressure on government forces surrounding Ghazni City.
36. DFAT also reports that in late October 2018, the Taliban began offensive operations in the Malestan and Jaghuri (Jaghori) districts of Ghazni province which ended in both locations by 19 November after large-scale operations by pro-government forces. According to DFAT, UNAMA verified 20 civilian deaths and six injuries in Jaghuri and four deaths and seven injuries in Malestan, all caused by the Taliban during the period of the offensive. UNAMA determined that dozens of additional casualties had likely lost their civilian status due to direct participation in hostilities. The Taliban issued a public statement in November 2018 to deny that the group was actively targeting civilians based on specific race, ethnicity, or sect. The statement came in response to allegations that the Taliban offences in Ghazni province had been ethnically motivated. As of June 2019, government security forces had reclaimed several districts in Ghazni that had been under Taliban control for several years.⁵
37. Other reports are consistent with the DFAT reporting above. EASO notes that while the Taliban insurgency in 2018 purportedly mainly targeted government forces' security check posts and government offices, the fighting caused over 200 civilian casualties (69 deaths and 141 injured), as well as intentional damage to civilian property. According to UNAMA, the fighting caused significant harm to the civilian population not only in terms of casualties (UNAMA quoted 262 civilian casualties verified: 79 deaths, 183 injured) but also because of the infrastructural damage. After the attack concerns remained about the possibility of another large-scale assault in the south-east, including against Ghazni City. Although that did not occur, the Taliban continued to pressure government forces in the outskirts of the city, surrounding districts and along the main highway and eventually captured Andar district on 14 October 2018. The main highway is said to have been partly destroyed and contaminated with improvised explosive devices (IED). In August 2018, travel from Kabul to Ghazni was said to be possible but "risky". Other highways were reported closed during the fighting in October-December 2018.⁶

⁵ DFAT, "DFAT Country Information Report Afghanistan 27 June 2019", 27 June 2019, 20190627113333.

⁶ EASO, "Afghanistan: Security situation", 12 June 2019, 20190613124844.

38. Ghazni has been categorised as a “restive” province. The Taliban has “long-established significant influence” in the province and dominated “ ... all but one of the 18 district centres and some larger areas in three districts” in July 2018, as well as overrunning the provincial capital in August 2018. Since then, there has been continuing unrest in Ghazni. The capital was assessed in December 2018 as having an open Taliban presence, although Jaghori was assessed as being under at least 80% government control.⁷
39. UNAMA reports that from 1 January to 30 June 2019, there were 3,812 civilian casualties throughout Afghanistan (1,366 deaths and 2,446 injured), a 27 per cent decrease from the same period in 2018 and the lowest total of civilian casualties for the first six months of the year since 2012. While the number of injured civilians in the second quarter is comparable to the first quarter of 2019, UNAMA documented a 27 per cent increase in civilian deaths from the first to second quarter in 2019. Trends documented in the first quarter of 2019 continued and AGE continued to cause the majority of civilian casualties. Civilian deaths (not total casualties) attributed to pro-government forces continued to exceed those caused by AGE. Civilians living in a number of provinces, including Ghazni, were the most affected. This included an IED detonated in the yard of a school that was being used as a voter registration centre, injuring three police officers who were acting as guards for the centre. Other incidents involved threats of attack and the abduction of the head of a voter registration centre, who was held in Taliban custody for a few days before being released as a result of mediation by tribal elders.⁸
40. I take into account Professor Maley’s concern that the motives for the insurgent attacks in Ghazni and Jaghori were ethnic or religiously based; however, the other information before me indicates that this is less likely. In particular, I note the Taliban statement that it was not targeting people on ethnic or religious grounds, which appears to be corroborated by the analyses that the civilian casualties were due to fighting rather than targeted assassinations or targeted sectarian/religious attacks. Turning to the collapse of peace talks, while Professor Maley’s concerns are understandable, the information before me does not indicate that there has been any deterioration in the security situation since September 2019.
41. I acknowledge the unpredictable nature of violence in Afghanistan and consider that a lack of recent violence in one area is not necessarily a basis on which to assess a low present or future risk there. However, Jaghori is part of the Hazarajat, which is a Hazara-majority area and traditional homeland that crosses a number of provinces. Overall, the Hazarajat has not reported any significant ethnic or sectarian violence for some years. I have considered the recent incursions in Ghazni, Malestan and Jaghori but I note that these do not appear to have been targeted on ethnic grounds. Even treating with caution the Taliban statement that it is not targeting people on these grounds, the reports of fighting and casualties indicate that casualties were not due to targeted sectarian attacks or other sectarian based violence. Rather, they were due to direct participation in the hostilities or as bystanders caught up in cross fire or similar situations. In my view, the information before me does not indicate that Shi’a Hazaras in Jaghori or the broader Hazarajat are generally facing targeted attacks or serious harm from the Taliban or other AGE because of their religious or ethnic profiles. The areas where Shi’as and Hazaras have faced most violence have been non-Hazara majority areas, or within the city of Kabul, where violence has targeted religious gatherings, educational establishments, sporting clubs and similar. The information before me does not indicate any increase in the broader targeting of Shi’a Hazaras outside Kabul or the other

⁷ *ibid.*

⁸ UNAMA, “MIDYEAR UPDATE ON THE PROTECTION OF CIVILIANS IN ARMED CONFLICT: 1 JANUARY TO 30 JUNE 2019*”, 30 July 2019, 20190808111453.

areas where such attacks have occurred. Having regard to all of the above, while I cannot discount the possibility of the applicant being harmed in sectarian attacks as a Shi'a and a Hazara in or around Jaghori, I am not satisfied on the evidence before me that this is more than a remote chance.

42. I accept that the situation in Ghazni and Jaghori remains fluid and that there continue to be attacks, IED incidents and other violence that is affecting Hazara civilians. I accept that the number of civilian casualties increased in 2018, but the information noted above indicates that this was due in large part to the Taliban insurgency that has now ceased. I accept that local and international observers remain concerned about possible future insurgencies, although the information before me does not provide any evidence on which to assess the likelihood of this occurring in the reasonably foreseeable future. I accept that IED and other explosive remnants of war have also caused civilian casualties, although the evidence before me does not indicate that such incidents have been targeted at Hazaras or civilians; rather, they have been incidents of generalised violence affecting bystanders and travellers.
43. The information before me does not indicate that the number of civilian casualties from generalised violence, IED or explosive remnants of war, aside from those suffered during the insurgency periods, has been increasing, or that it is so high as to indicate a real chance of civilians being harmed in day to day life. While I cannot discount the possibility that the applicant may be harmed as a bystander or in generalised incidents such as IED, the information before me does not indicate that such incidents are common or widespread. I also note that over recent years security levels in parts of the Hazarajat have deteriorated as a result of the insurgency and some areas have experienced a gradual increase in the level of harm caused to civilians. I acknowledge that these trends may continue. However, the information noted above indicates that such harm to civilians as occurs generally affects Afghan government officials and employees rather than the wider populace. I consider that the possibility of the applicant suffering any harm on the basis of such generalised violence seems remote.
44. DFAT has also assessed that people working for, supporting or associated with the Afghan government and/or the international community (or perceived to be doing so) face a high risk of violence perpetrated by AGE, particularly the Taliban. DFAT also assessed that because Hazara are widely perceived to be supporters of the government, the risk profile described for people associated with the government or international community is applicable to them. While the insurgency in Ghazni and neighbouring provinces did not target Hazaras *per se*, it did target the Afghan government, military and security forces. It is possible that some Hazara casualties were as a result of a real or imputed involvement or association with the government. However, the information does not indicate that merely being Hazara, even in the areas of the insurgency, was something that in itself resulted in Shi'a Hazaras with no other profile or engagement (such as would be the case with the applicant) facing a real chance of harm of some kind from the Taliban or other Sunni insurgent group, because of any imputed opposition to these groups.
45. I have considered whether the applicant may face harm in the form of general or societal discrimination as a Shi'a and a Hazara. I note firstly that I have found the applicant will return to his family and home area in Jaghori, which is a Hazara-majority area and part of the Hazarajat. DFAT⁹ reports that Afghanistan's Hazara population has long faced social, economic, and political discrimination, although the extent of this discrimination has varied over time and the Hazaras have made significant social, political and economic gains in

⁹ DFAT, "DFAT Country Information Report Afghanistan 27 June 2019", 27 June 2019, 20190627113333.

Afghanistan since the fall of the Taliban in 2001, albeit from a low base. International observers have reported cases of societal discrimination against Hazaras in the form of extortion of money through illegal taxation, forced recruitment and forced labour, physical abuse, and detention. As specific information is not provided in relation to these cases, including the geographic location, DFAT is not able to comment on their veracity. DFAT does assess that cases of societal discrimination are most likely to occur in areas where the ethnic group concerned is in the minority, and those residing in the Hazarajat are at a lower risk of experiencing societal discrimination in relation to employment opportunities than those residing elsewhere, due to their being in the ethnic majority. While I have referred above to the particular targeting of Shi'as and Hazaras outside the Hazarajat, DFAT has not identified any additional risks of general or societal discrimination for Shi'as in Shi'a or Hazara-majority areas. Having regard to all of the above, I am not satisfied that the applicant faces any more than a remote chance of harm arising from general or societal discrimination as a Shi'a or a Shi'a Hazara in Jaghori, or within the broader Hazarajat.

46. The applicant was employed as a long distance truck driver prior to leaving Afghanistan in 2013. Before he was a truck driver, he worked on the family land and he has also worked as a [Occupation 1] in [Industry 1] in [Country 1]. He has not claimed that he will need, wants or intends to work as a driver should he return to Afghanistan and he told the delegate that his brother no longer works as a driver. He does claim that there is no work in Jaghori now and even if he was able to return there, he would have to leave and would face harm on the roads.
47. The applicant told the delegate that the family still owns and farms the land that he and his brother farmed before becoming drivers. He has not claimed that he cannot work on this land and he has not claimed that his family is unable to support itself in Jaghori. I also note that he has [Industry 1] experience and told the delegate that he is self-employed as a [Occupation 2] in Australia. He has lived most of his life in Jaghori, was educated there, has work experience in Afghanistan as well as Australia, and has access to his family and the broader Hazara community in Jaghori. Having regard to all of this, I consider that he has skills, abilities, local knowledge and community support and I am not satisfied that he would be unable to find work in or around Jaghori, or that he will need to leave Jaghori or the wider Hazarajat to obtain work.
48. Having regard to all of the above, I am not satisfied that the applicant faces more than a remote chance of being harmed in Ghazni, including Jaghori, as a Shi'a, a Shi'a Hazara, from imputed opposition to the Taliban as a Shi'a Hazara, or from generalised violence or discrimination, now or in the reasonably foreseeable future should he return.
49. The applicant claims to fear harm as a returned asylum-seeker who has been in the West, including for being imputed to be Christian. He has not claimed to have converted to Christianity or to have attended any Christian activities and his claim of imputation is said to arise solely from his having been in Australia.
50. DFAT¹⁰ reports that it has no information to suggest that returnees from western countries attract negative attention from state authorities for having sought and failed to gain asylum, and assesses that these cases are more likely to have related to the highly dangerous general security situation, which affects all Afghans. DFAT understands that most returnees take measures to conceal their association with the country from which they have returned, and keep a low profile on return. DFAT assesses that people in this situation do not face a

¹⁰ DFAT, "DFAT Country Information Report Afghanistan 27 June 2019", 27 June 2019, 20190627113333.

significantly higher risk of violence or discrimination than other Afghans with a similar profile. I note that the relevant question is not whether the applicant faces a “significantly higher risk” but rather, whether he faces a real chance or a real risk of relevant harm.

51. The applicant’s evidence does not indicate that his travel to Australia or his asylum claims are known to any person in Afghanistan beyond his family. The evidence before me does not indicate that the applicant has adopted any accent, mannerism, mode of dress or any other behaviour or characteristic that may identify him as having spent time in the West. He has not claimed that he will need or want, or intends, to disclose his asylum claims or time in Australia to any person, or that he will need or want, or intends, to carry any document or other item which would identify him as having claimed asylum or spent time in the West. There is no evidence before me that suggests his claims or presence in Australia would become known for any other reason.
52. Even if his time in Australia was to become known, I have noted above that he will return to his family in Jaghori, in the Hazarajat. I have found above that there is no more than a remote chance that the applicant would be targeted as a Shi’a or Hazara, or for any imputed support of the government or foreign forces, in the Hazarajat on ethnic or religious grounds only. Professor Maley notes two cases reported from Ghazni province where, in 2014, two persons who had been returned from Australia were targeted by the Taliban while travelling in this province. One was killed and the other was “severely tortured”. While both men were Hazaras, Professor Maley’s report does not indicate why they were targeted, or whether they were targeted because of their ethnicity, religion, previous profiles in Afghanistan, or because they had been identified as having returned from the West. Further, his updated 2019 report does not refer to any other incidents of returnees from Australia, or the West, being targeted because of that profile only.
53. The information before me does not indicate any reason that the applicant might be imputed to be Christian, other than his having been in the West (should that even become known). Even if his time in the West was to become known, the information before me does not indicate that returned asylum-seekers have been targeted and harmed only on the basis of being imputed to have converted to Christianity. While I am prepared to accept that a general suspicion may exist that persons who have been in the West may have been exposed to Christianity, I am not satisfied on the evidence before me that there is any more than a remote chance that the applicant will be harmed because he is imputed to be a Christian.
54. Having regard to all of the above, I am not satisfied that there is a more than remote chance that the applicant’s asylum claims or his presence in Australia will become known to any person or group, or that he will be otherwise reported to, or harmed by, any persons or groups because of being a returned asylum-seeker or for having been in the West (including any imputation of being Christian).
55. I have considered whether the applicant can safely access Jaghori and remain there. I have found that the applicant does not have any adverse profile that may single him out for harm while travelling, other than being a Shi’a and a Hazara. I have noted Professor Maley’s report of Hazara travellers in Ghazni being harmed.
56. I accept that the applicant may be harmed by IED or other explosive remnants of war while travelling on the roads. The information before me refers to roads being closed during previous fighting in 2018 and I accept that there may be a continued presence of Taliban along the road from Kabul to Ghazni. I am sympathetic to the applicant’s fear of returning to that area and I accept that there is a chance that he may be stopped while travelling to

Ghazni. However, the information before me does not indicate that civilians, including Shi'a Hazara civilians, have recently been targeted for harm for ethnic or religious reasons.

57. DFAT has noted that during the 2018 incursions " ... the Taliban temporarily gained control of strategic check posts, including along major roadways leading to Kabul city, further restricting freedom of movement for residents and hampering movement of goods and people between major cities. The pressure on the population and non- governmental community to pay illegal taxes to the Taliban reportedly reached higher levels than in recent years as the movement attempted to assert its presence across larger areas of the country and the Taliban's leadership ordered local groups to become more reliant on local sources of revenue."¹¹ Despite the Taliban having this significant presence on the roads during 2018, there are no reports of civilians or Shi'a Hazaras in Ghazni being killed or kidnapped for ethnic or religious reasons, and I also note the Taliban statement that it is not targeting people for such reasons.
58. The information before me does not indicate that other AGE (such as Daesh) have a presence in Ghazni or have been targeting Shi'a Hazaras on the roads to, or within, Ghazni. While I cannot discount completely the possibility that the applicant may be stopped while travelling, I have found above that he does not have an adverse personal profile with the Taliban, nor does he face a real chance of harm from the Taliban as a Shi'a and a Hazara, or as a returnee from the West. Taking all of this into account, I am not satisfied that the applicant faces any more than a remote chance of harm when accessing Jaghori or Ghazni.
59. Having regard to all of the above, I am not satisfied that the applicant faces a real chance of harm from the Taliban or any other group or organisation for any reason relating to his past history, as a Shi'a and a Hazara, or as a returned asylum-seeker who has been in the West, should he return to Afghanistan. I am not satisfied that he has a well-founded fear of persecution.

Refugee: conclusion

60. The applicant does not meet the requirements of the definition of refugee in s.5H(1). The applicant does not meet s.36(2)(a).

Complementary protection assessment

61. A criterion for a protection visa is that the applicant is a non-citizen in Australia (other than a person who is a refugee) in respect of whom the Minister (or Reviewer) is satisfied Australia has protection obligations because there are substantial grounds for believing that, as a necessary and foreseeable consequence of the person being removed from Australia to a receiving country, there is a real risk that the person will suffer significant harm.

Real risk of significant harm

62. Under s.36(2A), a person will suffer 'significant harm' if:
 - the person will be arbitrarily deprived of his or her life
 - the death penalty will be carried out on the person
 - the person will be subjected to torture

¹¹ DFAT, "DFAT Country Information Report Afghanistan 27 June 2019", 27 June 2019, 20190627113333.

- the person will be subjected to cruel or inhuman treatment or punishment, or
- the person will be subjected to degrading treatment or punishment.

63. I have found that the applicant does not face a real chance of harm from the Taliban or any other group or organisation for any reason relating to his past history, as a Shi'a and a Hazara, or as a returned asylum-seeker who has been in the West. As 'real chance' and 'real risk' equate to the same threshold,¹² and for the same reasons as given above, I am not satisfied that there are substantial grounds for believing that, as a necessary and foreseeable consequence of the applicant's removal to Afghanistan, the applicant will face a real risk of significant harm in Jaghori.

Complementary protection: conclusion

64. There are not substantial grounds for believing that, as a necessary and foreseeable consequence of being returned from Australia to a receiving country, there is a real risk that the applicant will suffer significant harm. The applicant does not meet s.36(2)(aa).

Decision

The IAA affirms the decision not to grant the referred applicant a protection visa.

¹² *MIAC v SZQRB* (2013) 210 FCR 505

Applicable law

Migration Act 1958

5 (1) Interpretation

In this Act, unless the contrary intention appears:

...

bogus document, in relation to a person, means a document that the Minister reasonably suspects is a document that:

- (a) purports to have been, but was not, issued in respect of the person; or
- (b) is counterfeit or has been altered by a person who does not have authority to do so; or
- (c) was obtained because of a false or misleading statement, whether or not made knowingly

...

cruel or inhuman treatment or punishment means an act or omission by which:

- (a) severe pain or suffering, whether physical or mental, is intentionally inflicted on a person; or
 - (b) pain or suffering, whether physical or mental, is intentionally inflicted on a person so long as, in all the circumstances, the act or omission could reasonably be regarded as cruel or inhuman in nature;
- but does not include an act or omission:
- (c) that is not inconsistent with Article 7 of the Covenant; or
 - (d) arising only from, inherent in or incidental to, lawful sanctions that are not inconsistent with the Articles of the Covenant.

...

degrading treatment or punishment means an act or omission that causes, and is intended to cause, extreme humiliation which is unreasonable, but does not include an act or omission:

- (a) that is not inconsistent with Article 7 of the Covenant; or
- (b) that causes, and is intended to cause, extreme humiliation arising only from, inherent in or incidental to, lawful sanctions that are not inconsistent with the Articles of the Covenant.

...

receiving country, in relation to a non-citizen, means:

- (a) a country of which the non-citizen is a national, to be determined solely by reference to the law of the relevant country; or
- (b) if the non-citizen has no country of nationality—a country of his or her former habitual residence, regardless of whether it would be possible to return the non-citizen to the country.

...

torture means an act or omission by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person:

- (a) for the purpose of obtaining from the person or from a third person information or a confession; or
- (b) for the purpose of punishing the person for an act which that person or a third person has committed or is suspected of having committed; or
- (c) for the purpose of intimidating or coercing the person or a third person; or
- (d) for a purpose related to a purpose mentioned in paragraph (a), (b) or (c); or
- (e) for any reason based on discrimination that is inconsistent with the Articles of the Covenant;

but does not include an act or omission arising only from, inherent in or incidental to, lawful sanctions that are not inconsistent with the Articles of the Covenant.

...

5H Meaning of refugee

(1) For the purposes of the application of this Act and the regulations to a particular person in Australia, the person is a refugee if the person:

- (a) in a case where the person has a nationality—is outside the country of his or her nationality and, owing to a well-founded fear of persecution, is unable or unwilling to avail himself or herself of the protection of that country; or
- (b) in a case where the person does not have a nationality—is outside the country of his or her former habitual residence and owing to a well-founded fear of persecution, is unable or unwilling to return to it.

Note: For the meaning of **well-founded fear of persecution**, see section 5J.

...

5J Meaning of well-founded fear of persecution

- (1) For the purposes of the application of this Act and the regulations to a particular person, the person has a well-founded fear of persecution if:
 - (a) the person fears being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion; and
 - (b) there is a real chance that, if the person returned to the receiving country, the person would be persecuted for one or more of the reasons mentioned in paragraph (a); and
 - (c) the real chance of persecution relates to all areas of a receiving country.
Note: For membership of a particular social group, see sections 5K and 5L.
- (2) A person does not have a well-founded fear of persecution if effective protection measures are available to the person in a receiving country.
Note: For effective protection measures, see section 5LA.
- (3) A person does not have a well-founded fear of persecution if the person could take reasonable steps to modify his or her behaviour so as to avoid a real chance of persecution in a receiving country, other than a modification that would:
 - (a) conflict with a characteristic that is fundamental to the person's identity or conscience; or
 - (b) conceal an innate or immutable characteristic of the person; or
 - (c) without limiting paragraph (a) or (b), require the person to do any of the following:
 - (i) alter his or her religious beliefs, including by renouncing a religious conversion, or conceal his or her true religious beliefs, or cease to be involved in the practice of his or her faith;
 - (ii) conceal his or her true race, ethnicity, nationality or country of origin;
 - (iii) alter his or her political beliefs or conceal his or her true political beliefs;
 - (iv) conceal a physical, psychological or intellectual disability;
 - (v) enter into or remain in a marriage to which that person is opposed, or accept the forced marriage of a child;
 - (vi) alter his or her sexual orientation or gender identity or conceal his or her true sexual orientation, gender identity or intersex status.
- (4) If a person fears persecution for one or more of the reasons mentioned in paragraph (1)(a):
 - (a) that reason must be the essential and significant reason, or those reasons must be the essential and significant reasons, for the persecution; and
 - (b) the persecution must involve serious harm to the person; and
 - (c) the persecution must involve systematic and discriminatory conduct.
- (5) Without limiting what is serious harm for the purposes of paragraph (4)(b), the following are instances of **serious harm** for the purposes of that paragraph:
 - (a) a threat to the person's life or liberty;
 - (b) significant physical harassment of the person;
 - (c) significant physical ill-treatment of the person;
 - (d) significant economic hardship that threatens the person's capacity to subsist;
 - (e) denial of access to basic services, where the denial threatens the person's capacity to subsist;
 - (f) denial of capacity to earn a livelihood of any kind, where the denial threatens the person's capacity to subsist.
- (6) In determining whether the person has a **well-founded fear of persecution** for one or more of the reasons mentioned in paragraph (1)(a), any conduct engaged in by the person in Australia is to be disregarded unless the person satisfies the Minister that the person engaged in the conduct otherwise than for the purpose of strengthening the person's claim to be a refugee.

5K Membership of a particular social group consisting of family

For the purposes of the application of this Act and the regulations to a particular person (the **first person**), in determining whether the first person has a well-founded fear of persecution for the reason of membership of a particular social group that consists of the first person's family:

- (a) disregard any fear of persecution, or any persecution, that any other member or former member (whether alive or dead) of the family has ever experienced, where the reason for the fear or persecution is not a reason mentioned in paragraph 5J(1)(a); and
- (b) disregard any fear of persecution, or any persecution, that:
 - (i) the first person has ever experienced; or

- (ii) any other member or former member (whether alive or dead) of the family has ever experienced;

where it is reasonable to conclude that the fear or persecution would not exist if it were assumed that the fear or persecution mentioned in paragraph (a) had never existed.

Note: Section 5G may be relevant for determining family relationships for the purposes of this section.

5L Membership of a particular social group other than family

For the purposes of the application of this Act and the regulations to a particular person, the person is to be treated as a member of a particular social group (other than the person's family) if:

- (a) a characteristic is shared by each member of the group; and
- (b) the person shares, or is perceived as sharing, the characteristic; and
- (c) any of the following apply:
 - (i) the characteristic is an innate or immutable characteristic;
 - (ii) the characteristic is so fundamental to a member's identity or conscience, the member should not be forced to renounce it;
 - (iii) the characteristic distinguishes the group from society; and
- (d) the characteristic is not a fear of persecution.

5LA Effective protection measures

- (1) For the purposes of the application of this Act and the regulations to a particular person, effective protection measures are available to the person in a receiving country if:
 - (a) protection against persecution could be provided to the person by:
 - (i) the relevant State; or
 - (ii) a party or organisation, including an international organisation, that controls the relevant State or a substantial part of the territory of the relevant State; and
 - (b) the relevant State, party or organisation mentioned in paragraph (a) is willing and able to offer such protection.
- (2) A relevant State, party or organisation mentioned in paragraph (1)(a) is taken to be able to offer protection against persecution to a person if:
 - (a) the person can access the protection; and
 - (b) the protection is durable; and
 - (c) in the case of protection provided by the relevant State—the protection consists of an appropriate criminal law, a reasonably effective police force and an impartial judicial system.

...

36 Protection visas – criteria provided for by this Act

...

- (2) A criterion for a protection visa is that the applicant for the visa is:
 - (a) a non-citizen in Australia in respect of whom the Minister is satisfied Australia has protection obligations because the person is a refugee; or
 - (aa) a non-citizen in Australia (other than a non-citizen mentioned in paragraph (a)) in respect of whom the Minister is satisfied Australia has protection obligations because the Minister has substantial grounds for believing that, as a necessary and foreseeable consequence of the non-citizen being removed from Australia to a receiving country, there is a real risk that the non-citizen will suffer significant harm; or
 - (b) a non-citizen in Australia who is a member of the same family unit as a non-citizen who:
 - (i) is mentioned in paragraph (a); and
 - (ii) holds a protection visa of the same class as that applied for by the applicant; or
 - (c) a non-citizen in Australia who is a member of the same family unit as a non-citizen who:
 - (i) is mentioned in paragraph (aa); and
 - (ii) holds a protection visa of the same class as that applied for by the applicant.
- (2A) A non-citizen will suffer **significant harm** if:
 - (a) the non-citizen will be arbitrarily deprived of his or her life; or
 - (b) the death penalty will be carried out on the non-citizen; or
 - (c) the non-citizen will be subjected to torture; or
 - (d) the non-citizen will be subjected to cruel or inhuman treatment or punishment; or
 - (e) the non-citizen will be subjected to degrading treatment or punishment.

- (2B) However, there is taken not to be a real risk that a non-citizen will suffer significant harm in a country if the Minister is satisfied that:
- (a) it would be reasonable for the non-citizen to relocate to an area of the country where there would not be a real risk that the non-citizen will suffer significant harm; or
 - (b) the non-citizen could obtain, from an authority of the country, protection such that there would not be a real risk that the non-citizen will suffer significant harm; or
 - (c) the real risk is one faced by the population of the country generally and is not faced by the non-citizen personally.

...

Protection obligations

- (3) Australia is taken not to have protection obligations in respect of a non-citizen who has not taken all possible steps to avail himself or herself of a right to enter and reside in, whether temporarily or permanently and however that right arose or is expressed, any country apart from Australia, including countries of which the non-citizen is a national.
- (4) However, subsection (3) does not apply in relation to a country in respect of which:
- (a) the non-citizen has a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion; or
 - (b) the Minister has substantial grounds for believing that, as a necessary and foreseeable consequence of the non-citizen availing himself or herself of a right mentioned in subsection (3), there would be a real risk that the non-citizen will suffer significant harm in relation to the country.
- (5) Subsection (3) does not apply in relation to a country if the non-citizen has a well-founded fear that:
- (a) the country will return the non-citizen to another country; and
 - (b) the non-citizen will be persecuted in that other country for reasons of race, religion, nationality, membership of a particular social group or political opinion.
- (5A) Also, subsection (3) does not apply in relation to a country if:
- (a) the non-citizen has a well-founded fear that the country will return the non-citizen to another country; and
 - (b) the Minister has substantial grounds for believing that, as a necessary and foreseeable consequence of the non-citizen availing himself or herself of a right mentioned in subsection (3), there would be a real risk that the non-citizen will suffer significant harm in relation to the other country.

Determining nationality

- (6) For the purposes of subsection (3), the question of whether a non-citizen is a national of a particular country must be determined solely by reference to the law of that country.
- (7) Subsection (6) does not, by implication, affect the interpretation of any other provision of this Act.