



**Australian Government**  
**Immigration Assessment Authority**

**Decision and Reasons**

**Referred application**

---

AFGHANISTAN

IAA reference: IAA20/07860

Date and time of decision: 10 March 2020 14:08:00

C Wilson, Reviewer

**Decision**

---

The IAA remits the decision for reconsideration with the direction that:

- there are substantial grounds for believing that, as a necessary and foreseeable consequence of the referred applicant being removed from Australia to a receiving country, there is a real risk that the referred applicant will suffer significant harm.

*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 Hazara Shia from Jaghori district, Afghanistan. He arrived in Australia as an unauthorised maritime arrival [in] August 2012. He applied for a Safe Haven Enterprise Visa (SHEV) on 17 November 2015.
2. A delegate of the then Minister for Immigration and Border Protection (the delegate) refused the application on 16 September 2016. The delegate did not accept the applicant had been abducted by, and escaped, the Taliban in 2012 but did accept the applicant may face harm when travelling on the roads between his family home in Jaghori and his studies in Kabul. However the delegate considered the applicant could live in Kabul where he would not face a real chance or real risk of harm in the reasonably foreseeable future and could reasonably relocate there.
3. [In] March 2017 the IAA affirmed the delegate's decision.<sup>1</sup> The applicant sought judicial review, and [in] February 2020 the decision was remitted by consent for reconsideration.

### Information before the IAA

4. I have had regard to the material given by the Secretary under s.473CB of the *Migration Act 1958* (the Act).
5. Taking into account the considerable period of time since the delegate's decision I have obtained more up to date country information on the situation for Hazaras in Afghanistan, and on the security situation in Jaghori, Ghazni province, and Kabul, including road security. I have obtained the Department of Foreign Affairs and Trade (DFAT) Country Information Report Afghanistan dated 27 June 2019, the European Asylum Support Office (EASO) Afghanistan: Security Situation report dated 12 June 2019, and the United Nations Assistance Mission in Afghanistan (UNAMA) Afghanistan Protection of Civilians in Armed Conflict 2019 report dated 22 February 2020. I am satisfied there are exceptional circumstances to justify considering these reports, taking into account the fluidity of the security situation in Afghanistan and the unusual circumstance that it has been more than 3 years since the delegate's decision was made. As none of the country information I have obtained would be the reason or part of the reason for affirming the decision, I have not found it necessary to put it to the applicant for comment.
6. On 20 October 2016 the applicant's then representative provided written submission and new information in the form of country information. I have had regard to the legal argument and comment on the delegate's decision in the submissions. The submissions contain footnotes of country information, some of which was not before the delegate. As only hyperlinks were provided in the footnotes, and not copies of the documents, I have not accepted this information. I acknowledge the previous reviewer accepted some country information provided with the submissions, which was appropriate at that time. However, given more than 3 years has passed and given that I have obtained more recent country information, I am not satisfied there are exceptional circumstances to justify considering outdated country information provided in 2016.

---

<sup>1</sup> IAA16/00887

7. On 23 February 2017 the IAA wrote to the applicant inviting him to comment on recent attacks in Kabul and Mazar-e-Sharif and on issues relevant to relocation. The applicant responded on 9 March 2017. Their response included a number of reports and articles referred to only in footnotes. The country information referred to both in the invitation dated 23 February 2017 and the response is now outdated. Given the passage of time, and the lack of relevance of the material regarding relocation, I am not satisfied there are exceptional circumstances to justify considering the response to the invitation or the country information referred to in the invitation and the response.
8. Following the remittal by consent of this matter from the Federal Circuit Court, the applicant's representative provided on 13 February 2020 new information including country information and personal information regarding the applicant.
9. New country information was provided as an 'update on the security situation in Afghanistan [and] Shia and Hazara target killings'. These included the 2019 DFAT Country Information Report Afghanistan, an overview of Afghanistan from the World Bank, a quarterly report from UNAMA for 1 January to 30 September 2019, and an article from the Afghanistan Analysts Network (AAN) dated 3 February 2019 on attacks against Shias in Herat city. I have already obtained the DFAT report. In regards to the UNAMA quarterly report, I have obtained the more recent full 2019 report, and I consider the information in the quarterly report to have been subsumed by the fuller annual report. The AAN article concerns the situation for Shias in Herat city, not an area the applicant will return to or travel to, and I consider it is of limited relevance. The overview from the World Bank on the economic outlook for Afghanistan is of limited relevance for the review. I have obtained more recent information on the security situation and the situation for Hazara Shias in the DFAT, UNAMA and EASO reports. I am not satisfied there are exceptional circumstances to justify considering the country information provided by the applicant including the World Bank overview, the UNAMA quarterly report or the AAN article.
10. New country information relevant to the issue of the reasonableness of relocation was also provided in the form of various articles and reports amounting to more than 500 pages of information. Although I have considered the issue of relocation, for reasons given in this decision I have found relocation is not reasonable given the applicant's poor health. I am not satisfied there are exceptional circumstances to justify considering the very large amount of country information provided by the applicant regarding the issue of relocation when I have sufficient information before me to make a positive finding for the applicant that relocation is not reasonable.
11. The applicant provided new information that his family had fled their village in Jaghori during a Taliban attack in Jaghori in 2018; sought shelter in Nahur district; safely returned home two week later; although his mother has since developed health issues from this experience including back pain, headaches and sleeplessness (no medical evidence was provided to support this). I have obtained new country information that includes information regarding the Taliban incursion into Jaghori in 2018 and the resultant mass (but temporary) displacement of people in that area. The new information provided by the applicant is brief and lacking any statements or firsthand evidence from his family. There is no suggestion they were harmed in the attack. As the applicant's new information adds little to what is already known from country information, I am not satisfied there are exceptional circumstances to justify considering this new information.
12. The applicant provided new information about his health. This included new information that the applicant suffers mental health issues, a claim that a return to Afghanistan would

cause a significant deterioration in his mental health, and the provision of two reports from Psychologist [dated] [June] 2017 and [February] 2020. I accept this is credible personal information that may have affected the consideration of the applicant's claims, noting the delegate stated in their decision 'there is no evidence[the applicant] has any health problems or any identified specific vulnerabilities'. Taking into account the long duration of his mental health problems (since June 2017 at least) and its relevance to his ability to return and his need to travel from his home area to access medical treatment, I am satisfied there are exceptional circumstances to justify considering this new information.

13. The applicant also provided new information on another health issue, that is, a [Medical Condition 1] operation in August 2019 and ongoing complications from the surgery that to date have prevented him from returning to work. He provided a bundle of medical documents related to the surgery and sequelae, as well as two journal articles concerning chronic [pain]. I am satisfied the medical evidence regarding the [Medical Condition 1] operation and sequelae is credible personal information that may have affected the delegate's consideration of the applicant's claims (particularly in regards to relocation). I accept the medical articles could not have been provided earlier because it was not known until August 2019 that the applicant had this condition. I am satisfied there are exceptional circumstances to justify considering this new information, as I consider his current health, need for treatment and inability to work are relevant and significant new developments.
14. On 9 March 2020 the applicant provided further new information in the form of a bundle of articles. Three of the articles date from 2018. As I have obtained more recent country information from 2019 and 2020 I am not satisfied there are exceptional circumstances to justify considering older country information. Another article is an opinion piece that speculates on the consequence for Hazaras in a possible US-Taliban deal. I am not satisfied there are exceptional circumstances to justify considering an opinion piece that speculates on possible outcomes from a deal that had not been made at the time the article was written in 2019. The final article reports on an attack in Kabul by ISIS on 6 March 2020. I consider I have sufficient country information before me of the general insecurity in Kabul and attacks by ISIS. I am not satisfied there are exceptional circumstances to justify considering this new information.

### **Applicant's claims for protection**

---

15. The applicant's claims can be summarised as follows:
  - The applicant is a single Hazara Shia man, born in [location], Jaghori district, Ghazni province.
  - In 2006 his father and brother were killed in a car accident. His remaining family include his mother, [number of] sisters and nephew (son of his later brother). Apart from a married sister they all live in the family home in [location].
  - After completing high school the applicant commenced a degree in [Discipline 1] majoring in [subject] at a university in Kabul. He lived in Kabul but travelled home between university terms. He was usually careful not to carry his student identification card.
  - When travelling from Jaghori to Kabul in April 2012 the taxi he was travelling in was stopped by the Taliban. He was one of 5 passengers, all Hazara, but they took only him when they found his student card in his backpack. He was taken to a house and detained. They searched his phone and saw some of his [work] he had saved on his

phone. The Taliban were planning to execute him but a Hazara woman helped him to escape.

- The applicant returned to Kabul but did not return to university for fear the Taliban would be looking for him. He kept a low profile until he made arrangements to leave Afghanistan.
- He fears returning to Afghanistan because the Taliban will harm or kill him because he is of Hazara ethnicity and Shia religion. He can be easily identified as Hazara by his facial features. His studies in [Discipline 1], western clothing, liberal views and support for democracy also make him a natural target of the Taliban.
- It is unsafe for him to travel in Afghanistan, as he experienced firsthand when he was abducted.
- He also fears harm from other Sunni militant groups such as Islamic State in Iraq and Syria (ISIS).
- His physical and mental health has deteriorated and this will affect his ability to return to Afghanistan, to relocate, and to find work and support himself and his family.

### **Refugee assessment**

---

16. 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**

17. 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.
18. I accept the applicant is a citizen of Afghanistan based on the identity documents provided by the applicant. The applicant was born in Jaghori, Ghazni province and his mother and siblings still live there. I find Afghanistan is his receiving country and Jaghori is the place he is likely to return to.

19. I accept the applicant is a Hazara Shia from Jaghori who was a student at [university] in [Discipline 1]. These claims have been consistently made and his appearance, identity documents including student identification, and oral evidence all support these claims.
20. The applicant claims he left Afghanistan following an abduction by the Taliban. He claims he was travelling between his home in Jaghori and Kabul in a taxi with 4 other Hazara passengers when they were stopped by the Taliban in a place called [District 1] in Ghazni province. After the Taliban searched them and found the applicant's student card, they took him but let the others go. He was taken to a house and detained for 2 days. The Taliban kept his student card and his mobile phone, which contained images of him from [his studies] in his [Discipline 1] course. He feared he would be executed. A Pashtun woman was bringing him food and water during the captivity but he was too scared to eat and they had no common language to communicate in. She brought a Hazara woman who could speak his language and he found out the Hazara woman had been forced to marry one of the Taliban. She felt sorry for the applicant because he was a young man, and decided to help him escape. Before dawn she unlocked the door and gave him directions to the main road. He was able to flag down a passing vehicle, driven by a Hazara man, who took him to Kabul.
21. The delegate did not accept the abduction had occurred. She did not accept the applicant would be so reckless to carry his student identification card or evidence of his study on his phone, nor that a Hazara woman would risk her life to help him, nor that a Pashtun woman would help him by bringing the Hazara woman to speak to him. I agree with the delegate that some aspects of the applicant's account appear unlikely, including the fortuitous arrival of a Hazara driver who was willing to take him to Kabul when he flagged down a car on the main road. I acknowledge the applicant has consistently claimed since his arrival interview in Australia that he left Afghanistan following an abduction by the Taliban that he managed to escape from. I acknowledge also the applicant was one year from finishing his degree in Kabul in a course that he appears to have been happily engaged in whilst living on a scholarship. I consider his sudden departure from Afghanistan likely had some push factor, whether it was a personal threat or general fear as a Hazara in Afghanistan. However I am not persuaded the abduction and escape occurred as told by the applicant. I find his account is not plausible, and if there is some truth to an abduction attempt, I consider he has embellished it. I do accept however that the applicant has a subjective fear of such an event happening should he return to Afghanistan in the reasonably foreseeable future.
22. If I am wrong and the applicant was abducted and detained by the Taliban as claimed, I do not accept they have kept his student identity card or mobile phone. I do not accept they would have any ongoing interest in him personally. Despite the claim they had this identifying information, there is no claim the Taliban pursued him in the next few months in Kabul before he was able to leave. I acknowledge his claim that he kept a low profile and remained at home, but I consider they could have found him there if he was of personal interest. There is no claim the Taliban ever contacted his home in Jaghori either. The alleged abduction occurred 8 years ago. I consider it farfetched that anyone in the Taliban has consciously kept his student card and mobile phone with the intention of identifying and targeting the applicant in the future.
23. The applicant claims that as a Hazara Shia who studied [Discipline 1] and is returning from the west, he is a natural target of the Taliban. Whilst such characteristics are anathema to the Taliban, I do not accept the applicant would have a profile such that he would be individually targeted. The common targets of the Taliban have been government institutions, political figures, security forces, demonstrations, foreign diplomatic missions, international

organisations, mosques, schools, and hospitals.<sup>2</sup> I consider an ex-student returnee from the west who is living in a Hazara dominated area is unlikely to be noticed by the Taliban.

24. The applicant's home village in Jaghori is in an area known as 'the Hazarajat'. This area is the traditional home of the Hazara and includes the Hazara majority provinces of Bamiyan and Daykundi, as well as parts of Ghazni, Ghor, Uruzgan and Wardak provinces. Bamiyan and Daykundi provinces have a population of around 75% Hazara, whilst the applicant's home province Ghazni is around 40% Hazara.<sup>3</sup> The applicant has himself described his village and home area as Hazara dominated. The security situation in the Hazarajat has, in recent years, been considerably better than most other parts of Afghanistan. The mountainous terrain of the Hazarajat has been a form of natural protection. The largely Hazara population means there is less ethnic tension than more diverse areas, and non-Hazara have found it difficult to infiltrate the area given the Hazara are visually distinct from other ethnicities in Afghanistan.<sup>4</sup>
25. Country information before me indicates the Taliban, and other militant groups, are present in the applicant's home province of Ghazni. The Taliban in particular have an established and significant influence in the province, but there is also a significant Afghanistan National Army presence.<sup>5</sup> UNAMA reported 213 civilians were killed in Ghazni in 2019, and a further 460 injured. The leading cause of death and injury was improvised explosive devices (suicide and non-suicide). This was a slight 3% increase from casualties in 2018.<sup>6</sup>
26. The takeover of Afghanistan by the Taliban in 1996 marked a period of considerable violence and repression for the Hazara in Afghanistan. Although the Hazara have made significant gains in Afghanistan since the fall of the Taliban in 2001, many Hazara remain concerned and this has contributed to many leaving Afghanistan.<sup>7</sup> Although the Hazarajat generally has been a secure area for the Hazara population, security in Ghazni deteriorated significantly in 2018 with a large scale attack by the Taliban against the formerly peaceful Hazara dominated districts of Jaghori and Malestan. The attack allegedly began as a dispute between the Taliban and a Hazara former Afghan Local Police commander, but soon escalated into protracted fighting and the massive displacement of civilians. UNAMA reported 20 civilian deaths and 6 injuries in Jaghori, and 4 deaths and 7 injuries in Malestan, as a consequence of the incursion. In reality the number of civilian deaths was higher, as civilians became involved in the hostilities and were counted as combatants. Local leaders had amassed groups of Hazaras to fight back against the Taliban amidst concerns that the security forces were not acting quickly enough. By the end of November 2018 the Taliban were successfully pushed out of Jaghori and Malestan, although some sources report the threat of renewed attacks still exists. The attacks in Jaghori and Malestan were interpreted by some as an attempt by the Taliban to gain a foothold among Hazara communities, after the traditionally Pashtun-dominated Taliban have succeeded in governing ethnic Tajik and Uzbek communities in northern Afghanistan. However the aim of integrating Hazara fighters into the Taliban is likely to be much harder to achieve, given past atrocities committed by the Taliban against Hazaras.<sup>8</sup>
27. Despite the violence in Ghazni more broadly, I am not aware of further significant attacks in Jaghori district since late 2018. As noted above, the area has long been peaceful and there are no reports before me of any significant ethnic or sectarian violence in the district. There

---

<sup>2</sup> DFAT, Country Information Report Afghanistan, 27 June 2019.

<sup>3</sup> DFAT, Thematic Report Hazaras in Afghanistan, 8 February 2016.

<sup>4</sup> DFAT, Country Information Report Afghanistan, 27 June 2019.

<sup>5</sup> EASO, Afghanistan Security Situation, June 2019.

<sup>6</sup> UNAMA, Afghanistan Protection of Civilians in Armed Conflict, February 2020.

<sup>7</sup> DFAT, Country Information Report Afghanistan, 27 June 2019.

<sup>8</sup> EASO, Afghanistan Security Situation, June 2019; Country Information Report Afghanistan, 27 June 2019.

is no claim the Taliban targeted the applicant's village or family in their home area before or since the applicant left Afghanistan. The information before me does not support a conclusion that Shia Hazaras in Jaghori are facing targeted attacks from the Taliban or other militant groups for reason of their religion, ethnicity or any other reason. DFAT assesses Hazaras living in the Hazarajat face a lower risk of experiencing conflict-related violence than those living in other parts of the country. They are also at a lower risk of experiencing societal discrimination in relation to employment opportunities. I consider the chance of the applicant facing harm as a Hazara Shia in his home area in the reasonably foreseeable future is too remote to amount to a real chance. I make this finding even taking into account the events of late 2018, and the applicant's personal characteristics including his studies in Kabul and his time in a western country. In his Hazara dominated district I do not accept such personal characteristics would elevate his risk of harm.

28. Although I am satisfied the applicant would not face a real chance of harm in his home area, I acknowledge he will need to travel there from Kabul if he is returned to Afghanistan. I also accept he will need to travel to Kabul, or at least another large city such as Ghazni, for medical reasons. The applicant now has complex medical needs for which he is being treated in Australia. He has been seeing a psychologist for 3 years for mental health issues including depression and anxiety. I have had regard to the medical evidence provided regarding the applicant's failed [Medical Condition 1] repair and his ongoing complications, which are consistent with possible adverse outcomes as discussed in the medical articles provided. The applicant is receiving ongoing medical treatment for the complications from the [Medical Condition 1] operation in August 2019, which are significantly impacting his ability to work and undertake daily activities. Whilst the sequelae from the [Medical Condition 1] repair may eventually resolve with further treatment, and his mental health may improve, I accept his medical conditions are likely to significantly limit him and that he will require treatment for the reasonably foreseeable future. Basic health care in Afghanistan was reported in 2015 as being available to about 85% of the population, but there are significant barriers to accessing treatment for mental health issues.<sup>9</sup> I acknowledge the specialist medical care the applicant requires is unlikely to be available in Jaghori district, and that he will need to travel to Ghazni city or more likely Kabul to access necessary treatment.
29. DFAT reports Afghanistan's road network is generally poor, with unsafe driving practices accounting for the majority of fatalities on Afghan roads. However road insecurity is also a significant problem particularly on roads that pass through areas contested by insurgents. The Taliban and other anti-government groups are known to target the national highway and secondary roads, and unofficial checkpoints manned by armed insurgents are common. In 2018 the Taliban threatened strategic parts of the Kabul-Kandahar highway in Ghazni. In addition to casualties caused by insurgent fighting or improved explosive devices left on roads, there is also a known risk of kidnapping when travelling. Both criminals and insurgents are said to target people who appear wealthy or are associated with the government or international community. Whilst people from all ethnicities are vulnerable to such targeting, DFAT assesses Hazaras are particularly at risk in the selection of victims once an abduction is in progress. DFAT also reports some bus companies refuse to carry Hazaras because of the presence of 'spotters', that is, people who call ahead to insurgents to warn them which buses will be carrying Hazara passengers. DFAT assesses Hazara remain particularly vulnerable to being selected for abduction or violence if their vehicle is stopped by insurgents or criminals.<sup>10</sup>

---

<sup>9</sup> DFAT, Country Information Report Afghanistan, 27 June 2019.

<sup>10</sup> DFAT, Country Information Report Afghanistan, 27 June 2019.



30. As a student in Kabul the applicant was familiar with how to travel back to Jaghori, a trip he did a number of times. His evidence regarding the precautions he usually took when undertaking journeys between Jaghori and Kabul indicated he was aware and fearful of possible harm on the roads. That is, he says he took care to dress in traditional clothes, not shave, and (normally) not carry items to identify himself as a student. I consider he could take similar precautions in future travel, but he cannot conceal his ethnicity. His travel will take him through some of the most dangerous province in Afghanistan, that is Kabul, and the fourth most dangerous in 2019, Ghazni.<sup>11</sup> Were he to travel but once to return to his relatively safe home area, I may not be satisfied the chance of harm in one journey would amount to a real chance. However, taking into account the more frequent travel he will need to undertake to access medical care, I consider the presence of the Taliban and other militant or criminal groups in areas surrounding the Hazarajat, in Kabul, and on the major roads between Jaghori and Kabul, and the targeting of Hazaras over other ethnicities in abduction attempts and sectarian violence, I am satisfied that the chance of harm in travelling a number of times between his home in Jaghori to Ghazni city or Kabul is more than remote. I find he has a real chance of harm as a vulnerable Hazara travelling on the roads through Ghazni province and Kabul.
31. I have considered whether the applicant could remain in Kabul if he returned to Afghanistan, to access medical care and avoid the risks associated with road travel. I note the security situation in Kabul has deteriorated in recent years. It has been a particularly significant target for attacks against both civilian and non-civilian targets, carried out by anti-government militants. In 2018 the UNAMA documented 1686 civilian casualties in Kabul city from suicide and complex attacks. The main targets were government administration, places of worship, education facilities, election related sites, and other 'soft' targets.<sup>12</sup> In 2019 UNAMA documented 1563 civilian casualties, which was the highest number of casualties for any province in Afghanistan. Many of the attacks have significantly affected the Hazara population, with attacks against an anti-Taliban demonstration in November 2018 mainly comprising Hazara, and attacks against a sports club, educational centre and voter registration centre which were all in Hazara neighbourhoods in Kabul. In addition to attacks by the Taliban, there have also been significant ISIS attacks in Kabul.<sup>13</sup> On 17 August 2019 an ISIS suicide bomber attacked a Shia Hazara wedding, killing at least 91 people and injuring 143 more.<sup>14</sup> Taking into account the current security situation in Kabul and the targeting of Hazaras and Shias, I accept the applicant would face a real chance of harm for reason of his Hazara ethnicity and Shia religion in Kabul.
32. Accepting that the applicant faces a real chance of harm in Kabul and in undertaking necessary travel from his safe home area in the Hazarajat, I have considered whether the real chance of persecution relates to all areas of Afghanistan. I have considered whether he could relocate to another large city in Afghanistan, such as Mazar-e-Sharif, where he could live safely and access medical treatment without the need to travel.
33. Mazar-e-Sharif is the provincial capital of Balkh province in the north of Afghanistan. It has an ethnically diverse population including a Hazara community. The area is considered an import/export hub and a regional trading centre. As a provincial capital it has a number of hospitals and health clinics. There is a major airport with scheduled passenger services to

---

<sup>11</sup> 'Dangerous' in terms of the highest number of casualties; UNAMA, Afghanistan Protection of Civilians in Armed Conflict, February 2020.

<sup>12</sup> EASO, Afghanistan Security Situation, June 2019.

<sup>13</sup> EASO, Afghanistan Security Situation, June 2019; UNAMA, Afghanistan Protection of Civilians in Armed Conflict, February 2020.

<sup>14</sup> UNAMA, Afghanistan Protection of Civilians in Armed Conflict, February 2020.

national and international destinations, thus negating the need to undertake risky road travel. It may be possible for the applicant to fly into Mazar-e-Sharif directly from outside Afghanistan, but if it is not I accept he may have a short layover in Kabul. I do not accept a short period of transit in Kabul would give rise to a real chance of harm.

34. Balkh province has been one of Afghanistan's most stable provinces, and whilst there are reports of anti-government elements being active in the province, the capital Mazar-e-Sharif is under government control.<sup>15</sup> Balkh province has experienced an increase in civilian casualties in recent years<sup>16</sup>, but there is no information in the country information before me of recent large scale attacks on Hazaras or Shias in the city of Mazar-e-Sharif. I acknowledge Mazar-e-Sharif is not free from violence, but when considering the relative peace in Mazar-e-Sharif, I consider the chance of the applicant being targeted there as a Hazara Shia or being caught up in sectarian violence is too remote to amount to a real chance.
35. I acknowledge the applicant would be returning from a western country, and his appearance and past studies may also impute him as pro-west. In recent decades Afghanistan has seen large-scale population movements caused by conflict related instability, and returnees from western countries do not attract any adverse attention from the authorities. Mazar-e-Sharif has recently been a popular destination for migrants, due to its importance as a trading location and its relative stability. It also has a tradition of high education standards.<sup>17</sup> There is nothing in the country information before me to indicate returnees from abroad who are educated or western in appearance are targeted in Mazar-e-Sharif. I do not accept the applicant as a returnee from the west who had previously attended a [Discipline 1] university course would be targeted for these reasons in Mazar-e-Sharif. I find the chance of the applicant facing harm from the Taliban or ISIS or any other militant or criminal group in Mazar-e-Sharif because he is a western returnee or for reason of his education is too remote to amount to a real chance.
36. Even considered cumulatively, as a Hazara Shia, former university student, returning from the west, having a western appearance, and with medical health conditions, I am not satisfied the applicant's fear of persecution is well-founded in Mazar-e-Sharif. I find the applicant's real chance of persecution does not relate to all areas of his receiving country.

#### **Refugee: conclusion**

37. 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**

---

38. 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.

---

<sup>15</sup> EASO, Afghanistan Security Situation, June 2019.

<sup>16</sup> DFAT, Country Information Report Afghanistan, 27 June 2019; EASO, Afghanistan Security Situation, June 2019.

<sup>17</sup> DFAT, Country Information Report Afghanistan, 27 June 2019; EASO, Afghanistan Security Situation, June 2019.

### **Real risk of significant harm**

39. 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
  - the person will be subjected to cruel or inhuman treatment or punishment, or
  - the person will be subjected to degrading treatment or punishment.
40. The expressions 'torture', 'cruel or inhuman treatment or punishment' and 'degrading treatment or punishment' are in turn defined in s.5(1) of the Act.
41. I rely on the findings and country information referred to above to find the applicant would face a real risk of significant harm if returned to his home area because of his need to travel to access health care.

### **Qualifications to the real risk threshold**

42. Section 36(2B) provides that there is taken not to be a real risk that a person will suffer significant harm in a country if:
- it would be reasonable for the person to relocate to an area of the country where there would not be a real risk that the person will suffer significant harm
  - the person could obtain, from an authority of the country, protection such that there would not be a real risk that the person will suffer significant harm, or
  - the real risk is one faced by the population of the country generally and is not faced by the person personally.
43. I have considered whether it is reasonable for the applicant to relocate to a large city such as Mazar-e-Sharif where he would not need to travel to access health care and where I have found he would not face a real chance of harm. Noting that 'real chance' and 'real risk' has been found to equate to the same threshold, I find he would not face a real risk of harm in Mazar-e-Sharif.
44. The applicant claims relocation is unreasonable for a number of reasons, but now primarily because of his health issues. I accept the applicant has complex medical needs, with chronic depression and anxiety, and complications from his [Medical Condition 1] surgery. I accept that these conditions present a significant barrier to working, and may even mean the applicant is unable to work for the reasonably foreseeable future. I accept he would also have difficulty settling into a new city, find accommodation, and financially support himself, without the support of family or social networks. There is no evidence before me that the applicant has any family or social networks in Afghanistan outside of Jaghori district and Kabul.
45. Taking into account the applicant's chronic health conditions, I find it would be unreasonable for him to relocate to an area of Afghanistan, such as Mazar-e-Sharif, where there would not be a real risk of significant harm. I find therefore that s.36(2B) does not apply.

### **Complementary protection: conclusion**

46. There are 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.

### **Decision**

---

The IAA remits the decision for reconsideration with the direction that:

- there are substantial grounds for believing that, as a necessary and foreseeable consequence of the referred applicant being removed from Australia to a receiving country, there is a real risk that the referred applicant will suffer significant harm.

## 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.