



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

**Decision and Reasons**

**Referred application**

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AFGHANISTAN

IAA reference: IAA22/10417

Date and time of decision: 6 April 2023 14:56:00

D Hughes, Reviewer

**Decision**

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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

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### Visa application

1. The referred applicant (the applicant) claims to be a national of Afghanistan. He applied for a protection visa on 23 February 2017. A delegate of the Minister for Immigration refused to grant the visa on 24 May 2017.
2. This matter was previously before the IAA. A decision to affirm the delegate's decision was made by the IAA on 13 December 2017 (IAA17/02766). The matter was remitted to the IAA by consent orders of the Federal Circuit and Family Court of Australia [in] November 2022.

### Information before the IAA

3. I have had regard to the review material given by the Secretary under s.473CB of the *Migration Act 1958* (the Act). The review material included information related to the visa applications of the applicant's family members, as discussed below.
4. The applicant's first submission to the IAA on 16 June 2017, contained new country information from DFAT, CNN, BBC and UNHCR. With the exception of a 2016 DFAT report, which the representative contends was available to the delegate and should have been considered, I accept the information postdates the delegate's decision. I also note the previous IAA accepted the 2016 DFAT report, noting that the delegate was required to consider that report under then Ministerial Direction No.56. The previous IAA also obtained a 2017 DFAT report.
5. The information in the reports referred to in the 16 June 2017 submission, and as obtained by the previous IAA, were current at the time of the submission, however several years have now passed and with the changes in Afghanistan the information no longer has the currency or relevance it did at that time. It is also very dated in terms of any forward assessment. As discussed below, I have obtained more current country advice. I have also invited the applicant to provide information in response to that new information. I accept that, aside from the 2016 DFAT report, the new information from 2017 satisfies s.473DD(b), however I am not satisfied that there are exceptional circumstances to justify considering any of the new information from 2017, including the 2016 and 2017 DFAT reports.
6. Following remittal of this matter to the IAA, the applicant made a further submission to the IAA through his current representative, dated 23 January 2023. It refers to the risk to the applicant from living in a western country (Australia) for ten years and that persons with this profile are considered non-Muslim and non-Afghan. He contends he would be on a list of people to be targeted and killed by the Taliban, which took over the country in August 2021.
7. The applicant's profile related to his time in Australia was not a specific claim he made before the delegate, however the delegate did consider it in the context of the Department's data breach in 2014. I accept that risk profile may be more of a concern for the applicant now given the Taliban takeover in 2021 and his further years in Australia. To the extent this is new information, I am satisfied the new information could not have been provided to the Minister before the Minister's delegate made the decision. Given the shift in the security environment in Afghanistan, I am satisfied that there are exceptional circumstances to justify considering the new information.

8. The Taliban takeover of Afghanistan in 2021 was a seismic shift in the security environment in the country. In undertaking this review, I have obtained new country information that relates to the Taliban takeover and updated assessments of the risk to individuals and profile groups living in Afghanistan.<sup>1</sup> In terms of the applicant's reference to the Taliban takeover in his 23 January 2023 submissions, and the new country reports I have obtained, I am satisfied that there are exceptional circumstances to justify considering the new information.
9. On 2 March 2023, I invited the applicant to provide new information in view of that more recent country information. The applicant responded to the invitation on 15 March 2023. The response did not contain new information. I have considered that response in the assessment below.

### **Invitation to comment**

10. Information was provided to the IAA by the Secretary following the remittal of this matter to the IAA. The information provided was the subject of a non-disclosure certificate issued by a delegate of the Minister under s.473GB on 22 December 2022.
11. The information came from visa applications made by the applicant's family members. Specifically, information from his brother's application for a protection visa made in February 2017, as well as information from his family's unsuccessful September 2012 offshore humanitarian visa application (which included the applicant) which was proposed by his uncle in Australia.
12. Not all of the information provided by the Secretary is new information. I note aspects of this information, and the sources of the information, were discussed with the applicant at the visa interview before the delegate. I also note that some of the information was referred to in the previous IAA decision, and that it was the previous IAA's use of this information that resulted in the matter being remitted back to the IAA for reconsideration.
13. Not all the information provided to the IAA was relevant or material to this assessment. However, I considered there were aspects of this information that I found relevant and material to this review. To the extent that the information provided by the Secretary for the current review is new information, I am satisfied that there are exceptional circumstances to justify considering these aspects of the new information.
14. On 2 March 2023, I invited the applicant to comment on adverse information identified from these files. The applicant responded to that invitation on 15 March 2023. I have considered that response in the assessment below. I am satisfied that there are exceptional circumstances to justify considering the new information in the applicant's response to the invitation.

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

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15. The applicant's claims in his application for a protection visa were as follows:

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<sup>1</sup> Department of Foreign Affairs and Trade (DFAT), 'Thematic Report on Political and Security Developments in Afghanistan (August 2021 to January 2022)', 14 January 2022; Danish Immigration Service (DIS), 'Afghanistan – Taliban's Impact on the Population', 1 July 2022; European Union Agency for Asylum (EUAA), 'Country Guidance: Afghanistan (January 2023)', 24 January 2023.

- He was born in Afghanistan in [year]. His parents are citizens of Afghanistan. He is a Sunni Tajik from a town/village in [District 1], Baghlan Province.
  - He left Afghanistan because there was no security due to the war. He feared harm at the hands of the Taliban and the Afghanistan National Army (ANA).
  - He fears the Taliban because of his Tajik ethnicity. As a Tajik, he only speaks the Dari language. The Taliban only speak Pashto and dislike anyone who does not speak the language. The Taliban want everyone to follow them and speak and act like they do.
  - He also fears the Taliban because they want him to join them and fight for them. One night he was alone on the street near his house, when someone approached him and asked him to join the army to fight against the Americans.
  - The people who approached him wore a cloth wrapped around their face and he had no idea who they were. He does not know which group they belonged to because they were wearing normal clothing. He refused to join them. He was only 14 at the time and had little recollection as to what happened after he was approached to join the army. He remembers them being angry and then they disappeared. He also remembers that people came to their house and knocked on their door but he is unaware of what was said as he did not speak to them. He believes that the people who approached him were from the ANA, however it is his understanding that the army has links with the Taliban so it may have been someone from either group.
  - If he is forced to return to Afghanistan, he fears conscription to the Taliban or ANA and being killed in an active war at the hands of the Taliban or the ANA.
  - He also fears harm in terms of his political views that are opposed to that of the anti-American views that the Taliban holds for being against the war in Afghanistan.
  - He cannot rely on the protection of the Afghanistan state and cannot safely relocate anywhere else in Afghanistan
16. In February 2014, some of the applicant's personal data was inadvertently published in a breach of departmental systems. At the visa interview before the delegate, the applicant indicated some concerns about being identified by the Taliban as a result of that data breach.
17. Following remittal of this matter back to the IAA, the applicant noted in his January 2023 submission that the Taliban had taken over the country in August 2021. He states that Afghanistan is one of the dangerous countries to return to. He believes he is at risk of being targeted and killed by the Taliban for having lived in a western country for nearly ten years.

### **Factual findings**

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18. The applicant stated in his visa application that he finds it very hard to answer some questions. He prefers when questions are asked in a slower and simpler manner. He is easily confused in situations where he is being questioned. He has also found it very hard to learn English. He has had no schooling and was never taught to read or write. He claims he is illiterate. He has spoken to his GP about his difficulties learning English, however he was given no diagnosis about his difficulties. He requests that his circumstances and vulnerabilities be taken into account.
19. In the first IAA submission, the applicant's then representative reiterated his concerns and their relevance to his claims. She suggested the applicant may have a 'possible cognitive impairment' and that his vulnerabilities were apparent from the interview.

20. It was my assessment that the applicant acquitted himself well during the interview. I consider the delegate provided space for the applicant to give his evidence and I did not get any sense the applicant was disadvantaged or unable to present his claims. I am satisfied he has been given a fair and reasonable opportunity to put forward his claims. I also consider he has benefitted from later submissions to address any concerns that may have been missed.
21. The applicant has consistently claimed he never went to school and only worked on his family farm. I accept there may have been some barriers to him attending school due to his vulnerable age, although I do accept those barriers persist today. Given his limited education, I am prepared to accept that he is illiterate, has some difficulties learning and sometimes gets confused when being questioned. I have weighed those matters when assessing his evidence. However, based on what is before me, I am not satisfied he suffers from any cognitive impairment or is 'intellectually limited' as suggested in the 2017 submissions.

### **Identity and background**

22. The applicant has been broadly consistent about his identity and citizenship.
23. He contends his date of birth has been incorrectly noted. His actual date of birth is [date] as stated on his passport. It was stated incorrectly on his UNCHR certificate. He believes this was misinterpreted by the Farsi interpreter as his primary language is Dari.
24. He also contends there was an error in his entry interview, in which he was translated as saying that he is a Shia Muslim. He states he is actually a Sunni Muslim. He believes that this error was also due to a misinterpretation with a Hazaragi interpreter when he only speaks Dari. He also contends he had no sleep ahead of that interview and had a headache.
25. The applicant contends he has had two passports. His evidence at the visa interview about the passports was somewhat confused, however I did not get the impression he was trying to mislead the delegate. It appears a second passport was used to facilitate his travel from Afghanistan to Australia and that this has been lost.
26. More broadly, I found the applicant's own evidence about his identity and background to be generally consistent and credible. Based on what evidence is before me, I accept the applicant is a Sunni Tajik from Baghlan Province in Afghanistan.

### **Past claims**

27. The applicant claims that on one occasion he was approached by a bearded man (or men) with cloth wrapped around their face. He contends he was asked to join the army and fight against the Americans. The applicant refused. He claims he was only 14 at the time and had little recollection about what happened after. He remembered they got angry and disappeared. He also remembered that men came to their home and knocked on the door, but he did not know what was said as he did not speak to them.
28. At the visa interview, the applicant said that a Wakeel (a form of local representative) approached his father and said that he had five sons and should give them a son (or sons) to fight the Americans. Later in the visa interview, he indicated these groups tried to 'gather' and 'encourage' people to fight against the Americans.

29. The applicant said that his father talked to his brother. They decided that life was not possible there anymore. They left for Pakistan approximately two and a half months later. He said his family sold the land and moved to Pakistan.

*Past claims of family members – adverse information*

30. At the visa interview, the applicant claimed that while men approached his father to ask him and his brothers to fight against the Americans, nothing had ever happened to him or his brothers, his father or grandfather. When questioned by the delegate, he indicated that no one in his family had been harmed or hurt in Afghanistan. He also indicated nothing had happened to him in Pakistan and while he had faced some discrimination, he had never been threatened or harmed.
31. As noted above, new information was provided to the IAA by the Secretary following the remittal of this matter to the IAA. Aspects of this evidence were not consistent with the applicant's claims regarding his and his family's past experiences in Afghanistan and Pakistan.
32. Firstly, the applicant's brother previously claimed in his protection visa application that his father was taken by the Taliban on two occasions. The first time his father was taken he gave the Taliban some money and he was released. On the second occasion, his brother claimed the Taliban kidnapped their father, their grandfather, their uncle and two cousins. Their aunt was also shot at by the Taliban. His brother claimed their father was detained by the Taliban for one year and escaped when the Taliban collapsed. His brother also claimed their cousins were killed.
33. Secondly, the applicant's brother claimed that in 2011 the Taliban had asked the brothers to join them. In the same year, his brother was abducted by two men from the Taliban and was detained for a week. He was beaten and suffered facial and head injuries. His family paid a ransom of \$5000. His brother claimed that their father was also beaten when he went to retrieve the applicant's brother. Two weeks after his release, the family left for Pakistan.
34. Thirdly, in a humanitarian visa application lodged in September 2012 (which included the applicant, his parents and his siblings as applicants) included a statement that in March 2012, another of the applicant's brothers was recognised by Afghan Taliban while the family was in Pakistan. The Taliban asked for the family's address and when the brother did not give it to them, he was beaten unconscious.
35. Fourthly, in the applicant's visa interview, he had advised that his grandfather was alive and living in Kabul with one of his grandsons. However, his brother had previously claimed in his own protection visa application that his grandfather was abducted by the Taliban and the family had not had news about what happened to him. Information from his family's humanitarian visa application also indicated his family had a number of other relatives in Afghanistan, in Baghlan and Kabul.
36. The applicant was invited to comment on this information as it appeared that he and his family members had not been consistent or credible in relation to their past experiences and circumstances in Afghanistan and Pakistan. The representative responded simply that the applicant had not been informed about the above matters when they occurred. This was due to his young age and the family did not want to worry him.
37. It is not implausible that a family would choose to not provide information about serious events such as this to a young family member when they occurred. However, I do not

consider it credible or plausible the applicant would not be told or otherwise come to know about those matters at some later point and that he would not have provided that information at some point to the Department or IAA. When he left Afghanistan, he was around [age] years of age. He was around [age] years of age at the time he arrived in Australia. At the time of his visa application in 2017, he was around [age]. Yet, at no point did he include these claims about his brother, his father or other relatives. I find that significant.

38. In terms of the claims related to his brothers, I do not consider it plausible he would not be told about his brother's claimed abduction by the Taliban in Afghanistan in 2011 or the beating of another brother by the Taliban in Pakistan in 2012. The applicant was almost [age] at the point of his brother's claimed abduction. I also do not consider it plausible that he would not be aware that his brother was missing, or that he had been abducted and suffered injuries if that had occurred. It also would have been clear that this event, had it occurred, was the catalyst for their departure to Pakistan. I further consider there would have been no reason for his family to withhold information from him about his brother being beaten by the Taliban in Pakistan in 2012. I do not consider his brief explanation for not advancing these claims is credible.
39. In his response to the invitation, the applicant did not contend that the inconsistent evidence was due to his illiteracy, lack of education and learning difficulties, or his confusion when being questioned. I have had regard to those matters in any event, but I do not consider they would explain or overcome my concerns. In this respect, I note the delegate asked him very specific but simple questions about what had happened to him and his family, including whether he or his family have ever been threatened or harmed. He was consistent about his own experiences in his oral and written evidence and did not claim anything else had happened to his family. I find that significant. I also note he had had legal representation in both his IAA reviews, but outside of his representative's brief response to the IAA's invitation he did not revise his evidence in relation to the claimed experiences of his family members.
40. I am not satisfied his response to the IAA's invitation is satisfactory or overcomes my concerns with the inconsistencies between his claims and the claims of his family members. Ultimately, had the claims of his family been true, I consider those claims would have formed part of the applicant's evidence at some point prior to the delegate's decision.
41. The applicant was a party to the humanitarian visa application. The applicant also arrived in Australia with his brothers. Given his proximity to his family, I find it difficult to accept he would not know their additional claims as put forward in these other visa applications. That raises concerns for me about the credibility of his and his family's accounts. However, it is also possible he had no knowledge that his family had made these additional claims. I note, in the main, the applicant was reasonably consistent in terms of his own past experiences.
42. In the circumstances, I consider the applicant's claims as put to the delegate may have been an accurate account of what happened to him and his family. On the basis of his oral and written evidence, I am prepared to accept the applicant's claims. I accept there were visits to his family by a local representative (a wakeel). While the applicant contended in his written application that he did not know the details of these conversations, I accept his evidence at the interview that these may have been discussions with his father about the applicant and/or his brothers joining the fight against the Americans.
43. I also consider it plausible and accept the applicant was approached one night by a man (or men) and asked to join the fight against the Americans. I accept the man (or men) may have

been angered when he refused, however I am satisfied the applicant was not threatened or harmed.

44. Country information referred to by the delegate indicates a significant amount of Taliban activity in Baghlan Province.<sup>2</sup> Advice from September 2016 indicates that even in areas where the Taliban needed to find extra fighters, the use of force or coercion for recruitment was considered exceptional.<sup>3</sup> This was consistent with advice in 2012<sup>4</sup> and 2023.<sup>5</sup>
45. I accept the country advice indicates that forced recruitment is, and was, rare or exceptional in Afghanistan. There is no reliable evidence before me that the applicant's family were threatened or forced to provide their sons to join the Taliban or any other armed group. I consider his reference to these groups gathering and encouraging people to join the fight is a strong indication that these recruitment requests did not involve force or coercion.
46. I accept his father faced requests for his son(s) to join the Taliban ad fight against the Americans. Regardless of whether there was any force or coercion, it is plausible that his father feared for the safety of his sons and whether they would be recruited to fight against the Americans. Coupled with insecurity in the area, I consider that a very plausible motivation for the applicant and his family to decide to leave their home and travel to Pakistan. I am satisfied that is the reality of what happened to his family. I find the applicant was never threatened or harmed. Other than the ordinary discussions with the applicant and his father, I find there was no other interaction, threat or harm to the applicant or his family prior to their departure to Pakistan.

#### **Family in Pakistan and Afghanistan**

47. The applicant said his parents and siblings continue to live in Pakistan, in an area (M) with his maternal aunt and her family, outside of Peshawar. The applicant confirmed nothing happened to him in Pakistan and he had not faced threats. However, the applicant said that they speak Pashto and Urdu in Pakistan, and when he spoke (Dari) there, they did not like it. He said they would laugh and make fun of his accent. I have no reason to doubt that was the case. I consider it plausible and accept it occurred. I accept the applicant's immediate family remains in Pakistan.
48. As put to the applicant in the invitation to comment, the applicant's brother had provided inconsistent evidence about his grandfather. His brother indicating that his grandfather had been abducted by the Taliban and they did not know his whereabouts.
49. When asked whether he had relatives in Kabul, the applicant initially said he did not know anybody in Kabul. When asked by the delegate whether his grandfather lived in Kabul, the applicant varied his evidence and confirmed his grandfather was living there. In subsequent questioning, he confirmed his grandmother was also alive and living in Kabul. He also said a grandson was looking after them, but curiously was unsure whether the grandson was one of his aunt's or uncle's children.
50. At the interview, the applicant said he has no relatives left in his village area in Baghlan. He said that 'Kuchis' were given weapons by the government and now control the area.

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<sup>2</sup> DIBP (COISS), 'Afghanistan: AFG CI160922133726518 - Security situation in Baghlan', 19 October 2016, CROD9DEFA340.

<sup>3</sup> EASO, 'Afghanistan - Recruitment by Armed Groups', 15 September 2016.

<sup>4</sup> EASO, 'Afghanistan - Taliban Strategies – Recruitment', 1 July 2012, CIS23515.

<sup>5</sup> European Union Agency for Asylum, 'Country Guidance: Afghanistan (January 2023)', 24 January 2023.



51. The applicant had not previously mentioned Kuchi (nomadic herders that seasonally clash with farmers) in his written application. Nor did Kuchi feature in the humanitarian visa application or his brother's case. If the presence of Kuchi nomads had been a part of their life in Baghlan, and resulted in his extended family leaving Baghlan, I consider it would have been a fuller part of their evidence.
52. In the 2012 humanitarian visa application, the applicant's family identified a number of relatives who were marked as unknown (whereabouts) or living in Afghanistan. Several of those relatives on his mother's side were from Baghlan and remained in Afghanistan at the time of that application.
53. I have some concerns about the applicant's evidence regarding his family in Afghanistan. While I am conscious of his difficulties in providing evidence, I also consider there has been some inconsistency and uncertainty about the situation and experiences of his family in Afghanistan. On the information before me, I accept the applicant's grandparents are in Kabul. However, based on what information is before me, the applicant has not satisfied me that his extended family from Baghlan have left that area, whether because of the Taliban, Kuchi nomads or otherwise. I accept a number of fairly tumultuous years have passed, however I consider he likely continues to have extended family in both Kabul and Baghlan.

#### **Data breach, political opinion, time in the west and asylum claims**

54. I accept the applicant was affected by a breach of departmental systems in 2014. The applicant fears the Taliban will know he has been in Australia. He said that if they know he had been overseas, it would not be good for him.
55. The information potentially accessed from the departmental data breach included his biodata and detention details, however it did not include any contact information or information in respect of his protection claims. I have no information before me to suggest the Taliban has accessed this information in the nine years that have passed since that breach, or targeted persons for harm on that basis. In any event, regardless of whether the information was accessed, I accept the applicant has spent around ten years in the west (Australia) and sought asylum here. I accept he would hold that profile on return to Afghanistan.
56. I accept the applicant was against the war. I consider the only manifestation of the applicant's political opinion was in his desire not to fight for the Taliban or any armed force in Afghanistan. While I accept that when he was 14, he told the man (or men) he did not wish to join the fight against the Taliban, I otherwise have no information before me to indicate the applicant holds or would express political opinions or views antithetical to the Taliban or its regime. I accept the applicant would not support the Taliban on return to Afghanistan, and would not join any armed group, however the applicant has not satisfied me that he is politically minded or would be politically active or outspoken on return to Afghanistan.
57. In terms of his refusal to join the Taliban or any other armed group before they left Afghanistan, as I am not satisfied he was being forced or threatened to join the Taliban, I do not consider the applicant would have any adverse profile from not joining the Taliban in his fight against the Americans. Given my assessment above of his claims, I am not satisfied the applicant has any active and adverse profile with the Taliban or any other armed group.

## Refugee assessment

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58. 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

59. 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.
60. I have accepted the applicant is a Sunni Tajik from a village in [District 1], Baghlan Province.
61. The applicant has some links to Kabul. This is the area he left from after travelling back from Pakistan. I have found that his grandfather and some other relatives also currently reside there. I do not accept the submission by his former representative that there is an 'obvious lack of any relationship to other extended family who may be in Kabul'. If his grandfather is there, I consider he has reasonably close family links to that city.
62. The delegate's decision and the applicant's 2017 submissions both proceeded on the basis that the applicant would seek to return to Baghlan. In somewhat uncertain terms, the delegate concluded that the applicant could not return to Baghlan – not due to forced recruitment, but due to the presence of the Taliban. The delegate then assessed whether the applicant could relocate to Kabul. As is evident in the assessment below, the question of relocation to Kabul does not arise for consideration in this review.
63. While he has family in Kabul, the applicant has not indicated any desire to settle in the capital. I accept his immediate family may have sold their property in Baghlan when they left Afghanistan, however the applicant has not satisfied me his extended family have left the area. Although a number of years have passed, I consider he likely continues to have family and tribal links in Baghlan. I also note that Baghlan is an area where people share his ethnic and religious profile and speak the same language as he does. Without any clear indication that his intentions have changed, I find the applicant would seek to return to live in Baghlan.

64. The applicant's former representative made submissions in 2017 about the difficulties the applicant would face in finding work in Kabul given his limited education, illiteracy and the fact that he is Dari-speaking. Although raised in the relocation context, I have weighed those matters. In the context of Baghlan, where he would have some history and connections, be among Dari-speakers and people from his ethnic and religious background, I consider he would be better placed to find work, and I am not satisfied he would be at any obvious disadvantage or vulnerable to harm for these reasons. To avoid any uncertainty, based on what information is before me, I am not satisfied he would face a real chance of harm in returning to Baghlan on the basis of his individual circumstances and vulnerabilities, if he were to return to Afghanistan, now or in the reasonably foreseeable future.

### Religious and ethnic profile

65. The applicant is a Sunni Muslim, which is also the religion of the ruling Taliban regime. Sunnis make up approximately 80 percent of the Afghan population. At the interview, he indicated he continued to attend mosque. I have no reason to consider his level of religious involvement has changed. I find he is a practising Sunni.
66. The reports before me do not indicate that Sunnis are at risk of harm or violence on the basis of their religious profile.<sup>6</sup> Based on the limited country information before me, I find there is not a real chance of the applicant facing harm on the basis of his Sunni religion, if he were to return to Afghanistan, now or in the reasonably foreseeable future.
67. In his submission to the IAA, the applicant reiterates that he is from the Tajik ethnic group and Dari speaking group in Afghanistan. The applicant does not speak Pashto and is not from the Pashtun majority. Because of this, the applicant claims he is at threat from the Taliban.
68. I have accepted the applicant is of Tajik ethnicity. I am satisfied that Baghlan is an area with a significant and established Tajik population.<sup>7</sup> I accept his preferred language is Dari and that he does not speak Pashto. While I accept that certain minority ethnic groups have an elevated risk profile in Afghanistan, the advice before me does not indicate that Tajiks face a real chance of persecution or are being systematically and discriminatorily targeted for harm on the basis of their ethnicity or because they do not speak Pashto. I note that Dari and Pashto are both recognised as official languages. Dari is spoken by an estimated 50 percent of the population, Pashto by 35 percent.<sup>8</sup> The percentage of Dari speakers is even higher in Baghlan, estimated to be around 70 percent of the population and 73 percent of the villages.<sup>9</sup>
69. In its most recent report, DFAT states that it is not aware that, other than Hazaras, ethnic groups in Afghanistan face discrimination or violence on the basis of their ethnicity, despite the dominance of the Pashtun ethnic group within the Taliban. Armed resistance to the Taliban, including the last hold-outs in the Panjshir Valley, has ended, so there is limited potential for future challenge to the Taliban in the near term, including from various 'ethnic warlords'. These include Atta Mohammad Noor, an ethnic Tajik; General Abdul Rashid Dostum, an Uzbek; and Ahmad Massoud, also a Tajik. DFAT assesses that people from these

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<sup>6</sup> DFAT, 'Country Information Report – Afghanistan', 18 September 2015, CISEC96CF13366; DFAT, 'Thematic Report - Political and Security Developments in Afghanistan', 14 January 2022, 20220114091740; EUAA, 'Country Guidance: Afghanistan (January 2023)', 24 January 2023.

<sup>7</sup> DIBP (COISS), 'Afghanistan: AFG CI160922133726518 - Security situation in Baghlan', 19 October 2016, CR0D9DEFA340.

<sup>8</sup> DFAT, 'Country Information Report – Afghanistan', 18 September 2015, CISEC96CF13366.

<sup>9</sup> DIBP (COISS), 'Afghanistan: AFG CI160922133726518 - Security situation in Baghlan', 19 October 2016, CR0D9DEFA340.

ethnic groups may face some risks of harassment from the Taliban if they are associated with any military threat, should it emerge.<sup>10</sup>

70. Given the changes in the security environment, I obtained information about the security situation in Afghanistan for Tajiks. That advice indicates that the risk profile of Tajiks is not as clearcut as it has been in previous years. Specifically, the advice refers to instances of Tajiks being targeted where they are linked (or suspected of links) to the National Resistance Front (NRF), with Tajiks from Panjshir and Andarab District (which is in Baghlan Province) being particularly at risk. While some Tajiks have been targeted, the advice does not indicate Tajiks are being more generally targeted by the Taliban for reasons of their ethnic profile alone.<sup>11</sup>
71. When this information was put to the applicant by the IAA, he said he does not agree with the above matters and that Afghanistan is one of the most dangerous countries for him.
72. I accept that Tajiks have been targeted in the post war environment in Afghanistan. I accept there have been instances of Tajiks with perceived links to the NRF being harmed and killed, searched and harassed, and discriminated against. However, outside of these instances, I am not satisfied that Tajiks are being systematically targeted on the basis of their ethnicity alone.
73. The applicant is not from Andarab District and I have no reason to consider he has links to Panjshir or the NRF or would be perceived to have such links. As above, he has firmly indicated no desire to participate in any conflict. While I accept that Tajiks with NRF links have been targeted, I am not satisfied this is indicative of the overall security environment for Tajiks in Afghanistan, or the situation for a Sunni Tajik such as the applicant whether in Kabul or in Baghlan (outside of Andarab).
74. In view of all the advice before me, I am not satisfied there is a real chance of the applicant facing harm on the basis of his ethnicity as a Tajik, his religious profile as a Sunni, and/or on the basis of any imputed profile linked to the NRF, whether now or in the reasonably foreseeable future. I accept the applicant would initially return to Kabul, however I am not satisfied that targeting of Tajiks or Sunni Tajiks in general is systematic or ongoing in the capital, or that there is any real chance of the applicant facing harm for these reasons in the context of a temporary stay in Kabul or his onward journey and resettlement in Baghlan.

### **Forced recruitment**

75. The applicant's past experiences in Afghanistan, and his reasons for leaving, primarily relate to his fear that he would be forcibly recruited to fight against the Americans, whether by the Taliban or the ANA. I have accepted that the applicant and his father may have been approached and requested that he and/or his brothers join the fight against the Americans. However, I am not satisfied the applicant was ever at threat of violence or forced recruitment. I am not satisfied he has any adverse or ongoing profile related to these matters. I find there is no real chance of the applicant facing harm for these reasons.
76. In any event, I consider with the end of the civil war, the chance or likelihood of any forced recruitment, already rare or exceptional, has reduced almost entirely. Recent country advice does not indicate the Taliban is engaged in forced recruitment. While advice indicates that the Taliban plans to build a regular army, it is suggested that it will recruit on a voluntary

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<sup>10</sup> DFAT, 'Thematic Report - Political and Security Developments in Afghanistan', 14 January 2022, 20220114091740.

<sup>11</sup> Danish Immigration Service, 'Afghanistan – Taliban's Impact on the Population', 1 July 2022; European Union Agency for Asylum, 'Country Guidance: Afghanistan (January 2023)', 24 January 2023.

basis. There are some limited reports of Islamic State attempts to recruit Tajiks in the north of Afghanistan, however there are no indications of forced recruitment.<sup>12</sup>

77. Given the demise of the ANA, I do not consider there is any chance of the applicant being forcibly recruited by pro-Government forces or militias. I have no information that indicates the National Resistance Front is engaged in forced recruitment or even that it has any genuine capacity to recruit on any realistic scale. I do not consider there is any chance of him being forcibly recruited by the NRF.
78. The applicant is a young Sunni Tajik male. I accept there may have been instances in the past where armed groups sought to recruit men such as the applicant, however based on the advice before me, I am not satisfied there is any real chance of the applicant facing forced recruitment to the Taliban, Islamic State, pro-government forces or militias, the NRF, or any other armed group, or that he would otherwise face a real chance of harm in connection with recruitment by such groups, whether now or in the reasonably foreseeable future.

#### **Data breach and returnees from the west (Australia)**

79. As above, it is not clear whether the Taliban would know the applicant has sought asylum in Australia through the data breach, but in any event I accept he has a profile of a person who has spent nearly ten years in the west (Australia) and sought asylum. I accept he would have that profile on return to Afghanistan.
80. In his evidence before the delegate, the applicant did not detail any fears on the basis of his time in the west, however in the visa interview he did mention that if people in Afghanistan knew his name and the fact that he came back from overseas as a result of the data breach, it would not be good for him.
81. In his recent submission to the IAA, the applicant stated that Afghanistan is one of the most dangerous countries to return to for an Afghan who has lived in a western country for several years. He contends they are on the list to be targeted and killed by the Taliban. They are considered non-Muslim and non-Afghan for living in a western country for several years. The applicant has been living in Australia for nearly 10 years. As a result of this, the applicant contends he is at risk of being targeted and killed by the Taliban in Afghanistan.
82. I invited the applicant to provide information about this claim and gave him the most recent country advice about this risk profile. The response via his representative was again brief – simply that the applicant did not agree with the country analysis and that Afghanistan remains one of the most dangerous countries for the applicant. He again reiterated his earlier submissions.
83. Beyond reference to his time in Australia, the applicant has not expanded on his profile in this regard. He has not contended that he is westernised in his appearance or views. He has not claimed to have left his religion. He has not indicated that he has become politically active in his time in Australia, or that he otherwise holds opinions or engaged in activities that could lead him to stand out or be targeted, or otherwise cause him to be imputed with any adverse political profile or opinions.

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<sup>12</sup> EUAA, 'Country Guidance: Afghanistan (January 2023)', 24 January 2023; DIS, 'Afghanistan – Taliban's Impact on the Population', 1 July 2022.

84. The country advice before me indicates that returnees are not being systematically targeted by the Taliban solely on the basis of their profile from living or seeking asylum in the west. Current advice does indicate a more restrictive and conservative environment in Afghanistan – for example in terms of the wearing of western style clothing and attitudes toward women. While returnees can face some stigma and harassment on return, sources cited in the country advice suggest it does not appear returnees from the west would be targeted by the Taliban unless they had some additional profile or as a result of personal dispute or vendetta.<sup>13</sup>
85. I have considered the applicant's individual profile overall. I give weight to the fact that I have found he has no adverse profile with the Taliban or any other person or group. I have no reason to accept he is on any Taliban list to be targeted or killed. He does not share the additional minority vulnerability of Shia Hazaras. He is a practising Sunni, which I consider would counter any suggestion that he is a 'non-Muslim' or had converted from Islam. He has mentioned no past disputes or conflicts with relatives or other people in his home area. He has no association with the past government or security forces. Given his limited profile, I am not satisfied there is a real chance he would face any stigma or harassment on return to Afghanistan.
86. While I accept the applicant has been in Australia for ten years, he has not satisfied me that his profile is such that he would face serious harm on return to Afghanistan, whether in Baghlan, Kabul or on any journey between these areas. I consider he does have the profile of a returnee from the west and a returned asylum seeker, but I am not satisfied he has any other profile or that his individual circumstances are at a level that would lead him to face a higher chance or risk of harm on the basis of such a profile. I am not satisfied he would be on any list related to his return or time in the west. On the information before me, I find there is not a real chance of the applicant facing serious harm, or any stigma or harassment, for reasons of his time in the west (Australia), his status as a returned asylum seeker, or any imputed political opinion or profile arising from his time in the west and unsuccessful asylum claims, if he returned to Afghanistan now or in the reasonably foreseeable future.

### **Security situation**

87. In his 2017 submissions to the IAA, the applicant's then representative made submissions regarding widespread violence, insurgent activity, and systemic breakdown of law enforcement in Kabul. That submission contended that (then) recent terror attacks and security conditions in Kabul were not properly considered by the delegate. The submission contended that those conditions, combined with his personal characteristics, created a risk of harm for the applicant that was real and personal.
88. As the security situation had changed considerably since the delegate's decision and previous IAA assessment, I put information to the applicant about the improved security environment within Afghanistan more generally, and Kabul and Baghlan specifically. The applicant's response was again that he did not agree with the country analysis and that Afghanistan remains one of the most dangerous countries for the applicant. He again reiterated his earlier submissions.
89. In terms of general insecurity, DFAT states that Afghanistan remains volatile but the country as a whole is (relatively) less dangerous than before the Taliban takeover for many Afghans,

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<sup>13</sup> EUAA, 'Country Guidance: Afghanistan (January 2023)', 24 January 2023; DIS, 'Afghanistan – Taliban's Impact on the Population', 1 July 2022

including road travel.<sup>14</sup> While indiscriminate violence does take place in Baghlan and Kabul, the EUAA assesses that violence does not reach a high level and notes a significant proportion of civilian fatalities in these areas are a result of targeted security incidents.<sup>15</sup>

90. I have not accepted the applicant would face a real chance of harm on the basis of his profile. I do not consider he would face a real chance of harm in terms of targeted security incidents within the overall security environment in Afghanistan. In terms of general insecurity, I accept the analysis from DFAT and the EUAA that the situation in Afghanistan is less dangerous than before the Taliban takeover and that indiscriminate violence within Kabul and Baghlan is not at a high level. In that context, I do not consider his individual circumstances expose him to any higher risk than that faced by other Afghan civilians.
91. While the situation remains volatile in Afghanistan, the country advice indicates that the overall security environment has improved under the Taliban rule. While I do not consider this suggests the Taliban will be a peaceful regime, it is evident that the war was a significant factor in the high level of violence and high number of casualties in Afghanistan during conflict. As I consider the advice from DFAT and EUAA indicates, the end of the conflict has resulted in a cessation of much of that violence and a reduction in the risks to Afghanistan's civilian population in general terms.
92. I consider the applicant would be returned to Kabul in the first instance. I accept that violence continues to occur in Kabul, including major attacks by groups such as Islamic State. However, I consider that violence in the capital has also reduced and is not at a level where he would face a real chance of harm during any temporary stay. I also do not consider he shares the risk profile of those that may be targeted by groups such as Islamic State (e.g. the country's minority Shia Muslim population<sup>16</sup>). I am not satisfied that, during any temporary stay in Kabul, there is a real chance of the applicant facing harm from generalised violence and insecurity, or indeed on any other basis as considered above.
93. I am aware that past country advice indicated significant insecurity on the roads during the conflict. According to DFAT's most recent advice, the relative peace has meant travel by road across Afghanistan is generally safer than it has been for some time, albeit from a low base.<sup>17</sup> I note that the applicant does not share the risk profile of minority groups (principally Hazaras) that have been assessed as being at an elevated risk when travelling on the roads in the past.<sup>18</sup> The advice before me also does not indicate he would be prevented from travelling to Baghlan. I am satisfied he would be able to access and return to Baghlan and that he would not face a real chance of harm in doing so.
94. Based on the available advice, and looking at the applicant's individual circumstances and profile overall, I find there is not a real chance of the applicant facing harm in generalised or indiscriminate violence or insecurity in Baghlan, in travelling to Baghlan, or during any temporary stay in Kabul, now or in the reasonably foreseeable future.

### **Refugee: conclusion**

95. 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).

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<sup>14</sup> DFAT, 'Thematic Report on Political and Security Developments in Afghanistan', 14 January 2022.

<sup>15</sup> European Union Agency for Asylum, 'Country Guidance: Afghanistan (January 2023)', 24 January 2023.

<sup>16</sup> DFAT, 'Thematic Report - Political and Security Developments in Afghanistan', 14 January 2022.

<sup>17</sup> DFAT, 'Thematic Report - Political and Security Developments in Afghanistan', 14 January 2022.

<sup>18</sup> DFAT, 'Country Information Report – Afghanistan', 18 September 2015, CI96CF13366.

## **Complementary protection assessment**

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96. 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**

97. 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.
98. 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.
99. In the assessment above, I have considered general insecurity and indiscriminate violence in Afghanistan, as well as his individual circumstances. I accept the applicant has vulnerabilities, however I have found he has no adverse profile, and I do not consider his individual circumstances put him at any higher or more specific risk of harm. I accept the risks in Afghanistan are not zero and the situation is volatile, however on the basis of the country advice that is before me, I am not satisfied he would face a real risk of significant harm for these reasons, if he were to return to Afghanistan, now or in the reasonably foreseeable future.
100. I have considered the applicant's individual characteristics and circumstances when assessing his other claims. I have found the applicant would not face a real chance of harm for any of the reasons he has claimed. Having regard to the material before me and analysis above, I am also not satisfied there is a real risk that the applicant will suffer significant harm for these reasons.
101. As I have found the applicant would not face a real chance or risk of serious or significant harm in returning to Baghlan, or in transiting through Kabul, it is not necessary to consider the issue of relocation. However, I have had regard to the applicant's individual circumstances and submissions in this regard to the extent that they are relevant.

### **Complementary protection: conclusion**

102. 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**

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

## Applicable law

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### **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.