



Australian Government
Immigration Assessment Authority

Decision and Reasons

Referred application

AFGHANISTAN

IAA reference: IAA23/10425

Date and time of decision: 17 April 2023 15:11:00

D Hughes, Reviewer

Decision

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

- the referred applicant is a refugee within the meaning of s.5H(1) of the *Migration Act 1958*.

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 national of Afghanistan. He applied for a protection visa on 22 August 2016. A delegate of the Minister for Immigration refused to grant the visa on 29 March 2018.
2. This matter was previously before the IAA. A decision to affirm the delegate's decision was made by the IAA on 10 September 2018. The matter was remitted to the IAA by judgment 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).
4. The applicant has made submissions to the IAA, during the previous and current reviews.

2018 submission

5. The applicant's first submission to the IAA, dated 1 May 2018, contained reference to new country information from The Washington Post, The Hindu, The Independent, The Guardian, Al Jazeera, and Time. With the exception of April 2018 articles from Time and Al Jazeera, the remaining new information predated the delegate's decision. There is nothing to suggest it contained credible personal information in any relevant sense or that it would have affected the consideration of the applicant's claims. In terms of that information, I am not satisfied the new information was not, and could not have been, provided to the Minister before the Minister's delegate made the decision. I am also not satisfied the new information is credible personal information, which was not previously known and, had it been known, may have affected the consideration of the applicant's claims.
6. The information in the reports referred to in the first submission 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, the applicant has now put before me more recent country information which accounts for the changes in the security environment in Afghanistan. While I accept the April 2018 reports satisfy s.473DD(b), I am not satisfied that there are exceptional circumstances to justify considering that new information or indeed any of the other new country information referred to in that submission.

2023 submission

7. On 2 February 2023, following the remittal of this matter to the IAA, the applicant made further submissions through his current representative.

New country information (2023 submission)

8. The submission included new country information. Specifically, an ACCORD report from November 2007, a DFAT report from January 2022, Radio Free Europe reports from November and December 2021, a Guardian article from September 2022, a Landinfo report

from November 2011, a UK Home Office report from April 2022, and a UNHCR Guidance Note from February 2022.

9. The 2021 and 2022 reports are recent and postdate the delegate's decision. I am satisfied they meet s.473DD. The Taliban takeover of Afghanistan in 2021 represented a shift in the security environment in the country. I agree that it is necessary to have regard to country information that relates to the Taliban takeover and updated assessments of the risk to individuals and profile groups living in Afghanistan. I am satisfied that there are exceptional circumstances to justify considering the new information.
10. I have considered below whether the 2007 and 2011 country information reports meet the requirements of s.473DD.

Letter from [Community Group 1] (2023 submission)

11. Since his visa application, the applicant has claimed to be a Shia and be at risk on that basis if he returned to Afghanistan. The applicant has provided a supporting letter from [Community Group 1], dated 5 December 2022, indicating he is actively involved in this Shia community in Melbourne.
12. The applicant has consistently maintained that he is a Shia. At the visa interview, he explained his faith and confirmed he still practised as a Shia. I note the delegate found him to be a moderate Shia and that he did not attend mosque regularly.
13. This new evidence suggests the applicant is quite involved in the Shia community in Melbourne. I find the evidence credible and consider it is relevant to his risk profile as a Shia. I also consider it is some indication that he would be similarly involved if he returned to Afghanistan and may have affected consideration of his claims. I am satisfied the information meets s.473DD(b). Given the delegate's assessment of his religious engagement, the level of risk for Shias, and the change in the security environment in Afghanistan, I consider there are exceptional circumstances to justify considering the new information.

New claims (2023 submission)

14. The 2023 submissions expanded on his existing claims and raised new claims that the applicant wished to be considered. I am satisfied this is new information.

Extramarital relationship and blood feud

15. The applicant claims that he is now in a blood feud with two Afghan families, one family in Australia and one in Afghanistan, both 'feuds' stemming from his extra-marital relationship with a woman (H). He claims H was from a conservative family in Australia. After the relationship soured he was assaulted on two occasions by H's family. He contends two reports were made to police. He also claims another man in Afghanistan, unrelated to H's family but who was previously in a relationship with H, blames the applicant for the breakdown of their relationship. He contends the man is from a family of powerbrokers connected to the Taliban and he has vowed revenge against the applicant if he returns. He contends this man and his family also know about his past work with the US forces. As referenced above, he has provided reports from Landinfo (2011) and ACCORD (2007) relating to the incidence of blood feuds between families in Afghanistan and the issue of divorce/extramarital relationships.

16. The applicant has not provided any supporting evidence regarding the above claims. He contends he disposed of much of the evidence as he was heartbroken. He claims he also feared his family in Pakistan may face retribution. The representative contends that the applicant's inability to provide documentary evidence of this claim should not be held against him given his emotions have caused him to dispose of all traces of this relationship, including the violent experiences. He contends this is not unusual but reflects ordinary experience.
17. I accept that it is not always possible to provide evidence or documentation to support a claim. However, this is a sur place claim principally relating to the applicant's recent experiences in Australia. Given the seriousness of his claims, I consider he would have been able to provide some degree of supporting evidence about the claimed relationship, the parties, the alleged assaults, police involvement, legal proceedings, and/or further details about the threats and injuries he received.
18. On its face, I accept the information would satisfy s.473DD(b)(i) as the information was not, and could not have been, provided to the Minister before the delegate made the decision. However, I am not satisfied the new information is credible personal information which was not previously known and may have affected the consideration of the applicant's claims. Were it credible, I consider at least some supporting evidence would have been provided. I am not satisfied the mere assertion of these claims means they are credible in the sense of being capable of being believed.
19. I have considered whether there are exceptional circumstances to consider the new information. This is the applicant's second IAA review and he is represented. I consider he and the representative understand it is the applicant's responsibility to put forward his case. I am concerned about the lack of supporting evidence, and what I consider to be unpersuasive explanations for why there is no such evidence. I have considered his explanations, but I do not accept them. I do not consider he could have destroyed all the evidence related to these claims. He has not explained how his family in Pakistan could face retribution from the fallout of this purported relationship. In all the circumstances, I am not satisfied that there are exceptional circumstances to justify considering this new information, or the new country information, related to these claims.

Profile related to his time in Australia and political views

20. The applicant claims his profile has changed from his time in Australia. He claims he cannot adapt to a life under the Taliban. He has never lived in Afghanistan as an adult. He has grown accustomed to the freedoms in Australia. His behaviour, mannerisms and mentality have changed. He states he is a liberal Muslim. He does his best to be a practising Muslim, but he also dresses liberally, listens to music, and has extra-marital relations. He believes in freedom of speech and assembly for women and men. Politically, he contends he has spoken outwardly of his hate towards the Taliban, including to people who are Taliban supporters. He claims as a Shia he will always be opposed to the Taliban and their extremist ideologies. He supports the removal of the Taliban and he would support the National Resistance Front (NRF). Due to his 10 years in Australia, he fears he will be perceived as a wealthy western returnee and that he would be targeted for extortion. He claims he would only return to Afghanistan by force.
21. The applicant has again provided no supporting evidence of his claims in this regard and that again raises concerns for me about the depth of these claims. However, in contrast to his claims relating to his purported relationship, I consider there is at least some independent information providing support for these claims – his age on arrival in Australia ([under age])

and the amount of time he has spent in a western country (now around ten years). In that context, I consider his claims in this respect are at least capable of being believed.

22. In terms of aspects of his profile related to that extended time in the west, I am satisfied the new information is credible personal information which was not previously known and may have affected the consideration of the applicant's claims. Given the time that has passed, and the changing security environment in Afghanistan, I am satisfied that there are exceptional circumstances to justify considering the new information.
23. However, in terms of his contentions regarding his political opinions, the expression of those opinions, or his support for the NRF, I am again concerned about the lack of supporting evidence, and limited detail regarding these claims. I note these are emerging risk profiles in Afghanistan, particularly in terms of support for the NRF. Given how superficial his claims are in this regard, I have concerns he is tailoring his evidence to fit these risk profiles. He has provided no explanation for why he has given no supporting evidence in this regard.
24. While I accept the information would satisfy s.473DD(b)(i) I am not satisfied the new information is credible personal information which was not previously known and may have affected the consideration of the applicant's claims. In all the circumstances, I am not satisfied that there are exceptional circumstances to justify considering these aspects of his new claims.

Profile related to his past work in Afghanistan

25. The applicant claims the Taliban view people who worked for the previous government, or took any salary from that administration, as slaves or traitors. Senior Taliban view people such as him as untrustworthy and un-Islamic, allowing Taliban foot soldiers to persecute them with impunity. Taliban foot soldiers have attacked and killed [District 1] locals as retribution for their past support for the international forces. He claims their deaths have been covered up and that they were killed in the floods.
26. He claims that he has lived away for so long that all of his family friends, extended family and even locals unknown to him know he fled due to his employment. He claims they know this due to 'word of mouth' and because he has posted updates on social media. He fears locals will extort him for his past employment.
27. The applicant claims his work with the international forces was leaked. He has heard the Taliban has access to Ministry of Defence records. He believes his records would be on these systems because he was vetted to work on the base. He is most worried about local Taliban who have taken residence in a nearby town's Shia mosque.
28. Aspects of this information are contained in the new country information that I have accepted – for example, there is some indication that the Taliban has access to the records of people who worked for the previous government. For the reasons set out below, I also accept on the basis of his existing evidence that people in his community would know about his past employment.
29. However, the applicant has not provided country advice or other evidence of retaliation against the community in [District 1], the takeover of the local mosque, or his activities on social media regarding his past employment.
30. While the information may satisfy s.473DD(b)(i) as it is recent, given the lack of any supporting evidence or country information, I am not satisfied the new information is

credible personal information which was not previously known and may have affected the consideration of the applicant's claims. In all the circumstances, I am not satisfied that there are exceptional circumstances to justify considering these aspects of his new claims.

New country information – IAA

31. 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 in Afghanistan.¹
32. I have also obtained information regarding the company the applicant claims he worked for ([Business 1]).² The delegate had referred to a website ([website 1]) that facilitated business, organisations and investors in Afghanistan and abroad, as well as [Business 1's] (then) website ([specified]). Neither website was accessible to the IAA at the time of this decision. As such, I obtained further information about [Business 1] from its current website. I note the previous IAA appears to have done the same, however historical copies of these webpages were not on file.
33. I am satisfied that there are exceptional circumstances to justify considering the new information.

Applicant's claims for protection

34. The applicant's claims can be summarised as follows:
 - He is a Tajik and a Shia Muslim from (B) Village, [District 1] of Logar Province in Afghanistan. He was born in or about [specified year].
 - His family moved to Parachinar when he was very small. They returned to [District 1] when he was [age range] years old, in approximately 2005. He undertook some schooling in Logar until he was about [age range] years old. His family grew [specified produce] in his village upon their return.
 - His father still resides in [District 1]. His father is [age range] years of age and his health is weak. His sister (SH) is living in Logar. [One sibling] fled to Iran. [Another sibling] [married] and moved to Parachinar. [Another sibling] was also in Afghanistan, but has travelled to live with [in-laws] in Pakistan. He has [another sibling] in Australia. He contends he did not mention [them] in his arrival interview because he did not want to contradict [them].
 - His mother died in or around 2009. She had heart issues and had suffered shock when she witnessed the aftermath of a Taliban attack on a bus travelling from Parachinar in which two of her friends had died. His mother died three days later.
 - The applicant had a friend (G) who was working with the US forces. His friend was from (B) in [District 1] and helped him find the same work. The applicant worked with the US forces in Afghanistan for 12 to 13 months, in or about mid-2011. His employer was a company ([Business 1]). He was [an occupation 1] and [related role]. His assigned work location was a US military camp called [Camp 1] in [Kabul].

¹ Danish Immigration Service (DIS), 'Afghanistan – Taliban's Impact on the Population', 1 July 2022, 20220704104853; European Union Agency for Asylum (EUAA), 'Country Guidance: Afghanistan (January 2023)', 24 January 2023, 20230130112357; EUAA, 'Afghanistan - Security situation', 23 August 2022, 20220824095014.

² [Source deleted.]

- The camp was in a secure area in Kabul. Many diplomats from foreign embassies would come and spend the night due to it being a maximum security location.
- Employees who work or worked for foreign forces in Afghanistan have become targets of the Taliban. These employees include drivers, kitchenhands, cleaners, labourers as well as interpreters, public servants, and army personnel. The Taliban view all US employees as being traitors of Afghanistan and akin to foreign infidels.
- When he commenced the job, he thought he would be cautious and make sure knowledge of his employment was kept confidential within his family and friends. However, knowledge of his employment leaked out and he became aware that a larger circle of people knew of his employment. This was concerning to him.
- On leaving work each day there were Taliban spies present to observe employees departing the Camp. Their job was to accurately identify persons for the purposes of targeting by the Taliban. Methods of killing employees considered to be traitors or foreign infidels included garrotting, hacking off of heads and many such gruesome acts of violence. Such methods are strategically designed to instil fear.
- After work his routine was to catch an unmarked taxi. On one occasion as he was flagging the unmarked taxi, he noticed he was being watched by a man with a beard. As a result, he became extremely fearful. He believes he is now blacklisted by the Taliban.
- His friend G was killed by the Taliban in early 2016 in Afghanistan just after he had ceased work. He was only about 21 years old.
- He is personally traumatised. He tried to block out all thoughts of Afghanistan and the evil acts being perpetrated on his fellow Afghans. When he sees Talib beards and clothing it sends chills down his spine. When in Logar Province this Talib style dress is now everywhere.
- Many employees of foreign troops have been accepted as refugees in other countries due to the general understanding and acceptance that their lives are now on the line for the work they have done.
- The Taliban are active all over Afghanistan. The Taliban intelligence network is sophisticated, active and well established. They communicate information well across the whole country including Kabul. There is little difficulty for them in identifying local individuals who they deem as infidels, enemies or on their blacklist.
- His accent and appearance identify him as a Tajik man from Logar Province, Afghanistan. Many areas of Logar Province are under Taliban control or have Taliban support. There has been considerable violence in the province. He is afraid that he would be killed or significantly harmed in Kabul or anywhere in Afghanistan.
- He also fears that if he is forcibly returned to Afghanistan, he will be harmed or killed by the Taliban because of his Tajik ethnicity and/or his Shia Islam religion.
- He also fears being harmed, kidnapped or killed by the Taliban for being part of the group of Afghans who have worked for foreign troops in Afghanistan, or on the basis of an imputed political opinion due to that work.
- He also fears being harmed, kidnapped or killed by the Taliban for being part of the group of failed returned asylum seekers from Western nations or an imputed political and/or religious opinion and or come under suspicion of the Taliban as being a spy due to having lived in a Western nation. He would only return to Afghanistan if forced to do so.

Factual findings

35. The applicant has been consistent in terms of his identity, nationality and home area in Afghanistan. He has provided copies of his and his father's Taskera (an Afghan identity document). His father's Taskera is an older style 'Daoudi' booklet, whereas the applicant's Taskera is the more recent single page document. The issuance year ([range specified]) of his father's Taskera is consistent with the issuance date of that type of Taskera.³ The originals have not been sighted and the photocopies are poor quality, however the translated content of both documents is consistent with his claims and evidence about his identity and background.
36. The applicant spoke through a Dari interpreter at the visa interview. He gave a credible account of his life between Afghanistan and Pakistan. I considered his discussion of life in Kabul was reasonably detailed and spontaneous. It gave the impression of a lived experience.
37. The applicant claims to be a Shia Muslim. He has provided a supporting letter from [Community Group 1], indicating he is quite involved in this community in Melbourne. Although not expressly stated, I accept this is a Shia organisation given its reference to Shia commemorations. I accept the applicant is a Shia Muslim, that continues to practise his faith and has become quite active within his Shia community in Australia.
38. I accept the applicant is a Tajik Shia from Logar. I note that 2016 advice from EASO indicates a number of Afghan Local Police had been recruited from the Dari speaking Shia minority in Logar, and this had created tensions with the Sunni Pashtun majority.⁴ I accept that members of the Tajik Shia community in Logar supported the former government and security forces.
39. The applicant has lived in Pakistan and has family that continue to live there. It is not entirely clear what status his family has in Pakistan. However, I accept that in 2016 there were an estimated 1.5 million Afghans living in Pakistan.⁵ I have some questions about his own status in Pakistan given that he indicated in the arrival interview that he was deported from [Country 1] to Pakistan (but not returned to Afghanistan) during his initial attempt to travel to Australia. However, I found his account of his past experiences in Afghanistan to be persuasive and consistent with his documentary evidence. In view of the evidence before me, I accept the applicant is a Tajik Shia from Logar, Afghanistan. I find that Afghanistan is his receiving country.

Work for [Business 1] at [Camp 1] (Kabul)

40. I have considered the applicant's submissions regarding his evidence at the arrival interview. While I accept the context of the arrival interview is limited, I also believe the interviewing officer gave the applicant a reasonable opportunity to detail his reasons for leaving Afghanistan. At that interview, the applicant made no mention that he feared being targeted because of his work for a foreign organisation in Kabul or that he was specifically at threat because of that employment. I accept the applicant was a minor at the time of that interview. I also note he provided evidence at that interview about his employment that is consistent with his later claims and he separately expressed fears of the Taliban, at least in general terms.

³ US Embassy Kabul, 'A Guide to Afghan Documents', 1 June 2011, CISD9559B12375.

⁴ EASO, 'Country of Origin Information Report – Afghanistan Security Situation', 1 November 2016, CIS38A80122597.

⁵ Daily Times (Pakistan), 'UNHCR increases aid package for Afghan refugees', 30 June 2016, CX6A26A6E6779.

41. In his visa application, the applicant contended that he worked for the US forces in Afghanistan for 12 to 13 months, from about mid-2011. His employer was a [company] called [Business 1]. He was [an occupation 1] and [related role]. His assigned work location was a US military camp called [Camp 1] in [Kabul].
42. The applicant has provided a number of documents in support of his claimed work as [an occupation 1] and [related role] with [Business 1] – including two sets of ID cards with consecutive expiry dates. The photocopies of the documents are again of not great quality, but details are evident from the copies, and they appear credible and consistent with his claims.
43. The applicant explained the security processes at the camp which he claimed to work, including security checkpoints and the use of his ID cards. He explained the nature of the camp, the clientele and its [location]. He has consistently described the work he was undertaking. He did struggle to recall the names of his American supervisors but recalled the first name of at least one supervisor. That name was consistent with the signatory of a certificate of appreciation issued to the applicant.
44. The delegate accepted the applicant was employed by [Business 1] in Kabul, however they did not find any credible evidence that he had interactions with the US military as he had claimed. That finding was in part based on the applicant's evidence (including his difficulty remembering the names of his American supervisors) and the delegate's difficulty obtaining information that indicated [Business 1] worked in Kabul or was engaged by the US military. The delegate referred to [Business 1's] (then) website ([specified]) which indicated it had extensive business interests in Afghanistan. The delegate had also referred to a website ([website 1]) that related to organisations and investors in Afghanistan. The delegate was concerned that website did not list [Business 1] as operating in Afghanistan.
45. [Business 1's] current website indicates it is a [company] with a regional office in Kabul. The company undertakes a range of projects in [specified] environments' and offers opportunities to local labour workforces.⁶ One such project was a 2011 subcontract for [specified] services at [Camp 1] in Kabul, Afghanistan'. Another was a subcontract from 2007 for 'Provision of [specified] Services, additional [supplies], ... at [Agency 1] facilities in Kabul, Afghanistan'.⁷ The website expands on the [services] provided by [Business 1], referring to '[Camp 1]' and other camps. It also states that [staff tailor specified service].⁸
46. The applicant claims to have worked as a '[role 1]' for [Business 1] in [Camp 1] between 2011 and 2012. He has ID cards that are consistent with that timeline. He has a 'final certification' of 'Foreign National Employer' from the Regional Security Office, American Embassy, Kabul, signed in September 2011. It states his position is '[role 1]' and agency as '[Agency 1]'. This certification is valid for two years. The issuance date and details are consistent with his claims.
47. The applicant provided a 'certificate of appreciation' from [Business 1] which thanks him for his valuable contributions as '[role 1]' for the [named] operation at [Camp 1] during [named projects]. While the certificate itself is fairly basic, I find it quite probative given its consistency with independent third party information from [Business 1's] website regarding such [operations]. I also consider those [operations] are consistent with [Business 1] providing services to an American clientele.

⁶ [Source deleted.]

⁷ [Source deleted.]

⁸ [Source deleted.]

48. I found the applicant's evidence regarding this work to be plausible and corroborated. I am satisfied and accept the applicant worked as [an] '[occupation 1]/[role 1]' for [Business 1] between 2011 and 2012. I am satisfied that he worked at [Camp 1], a base that supported US forces and staff at [an agency] in Kabul.
49. The applicant claims to fear harm from this employment. He says the Taliban view all US employees as traitors of Afghanistan and akin to foreign infidels. In his evidence, he contends that he had hoped to keep knowledge of his employment within his circle of family and friends, however knowledge of his employment leaked out. In his most recent submission, he contends the IAA in the previous review did not believe he had adequately explained how his employment at [Business 1] was exposed.
50. In terms of his claim the Taliban found out about his employment, I am not persuaded. I accept the applicant's evidence that the Taliban has a network of spies and that members of the group may have had interest in identifying who was working within the secure government and embassy zones, whether directly or through contractors.
51. It is not implausible the Taliban could identify the applicant and his role. However, I am not persuaded he was identified by the Taliban or threatened as he contends. I did not find his written and oral evidence at the interview about this claim to be plausible or credible.
52. The applicant has referred to a single instance where he was watched and followed by a man that he suspects was from the Taliban. In his written application, he states that on one occasion as he was flagging an unmarked taxi, he noticed he was being watched by a man with a beard. As a result, he became extremely fearful. He believed he was blacklisted by the Taliban. At the interview, he expanded on these claims. He said he was followed by a man that he had no doubts was Taliban. The man started speaking but the applicant ignored him, before fleeing from the taxi. He states he was terrified. When asked what the man said to him, the applicant claimed the man said 'salaam' (a simple greeting). The delegate asked why he was scared if he had just said hello. The applicant said he knew from his look that he was Taliban
53. The applicant has indicated he was certain that the man was from the Taliban, however given his evidence about the limited interaction, I am not satisfied this was the case. The man may have looked or dressed in such a way, but I do not consider that would be determinative. Even if it was the case that the man appeared to be a member of the Taliban, the applicant does not know the man's intentions. Given how little was said, I do not think the applicant can in any way be certain about the reality of that interaction.
54. At the interview the applicant said that he suspected that if he did not leave the country he would be killed. The applicant confirmed there was no other incident apart from when he believes he was followed by the man. He contends that he fled to Logar. He said he told people what happened. They told him the Taliban must be following him and he had no chance and that he would be followed and killed. He claimed he stayed in Logar for one day before leaving for Pakistan. He also claimed his sister left Kabul because people knew about his work.
55. While I accept the applicant may have encountered the man with the beard, I am not satisfied he was at threat as he contends. The man had not used his name. No direct threat was made. He was not visited or threatened at his sister's home in Kabul, nor had there been any direct approach or threat to him in Logar. There was not yet any clear indication anyone

knew the applicant's identity, his occupation or where he lived, or that he was at immediate threat.

56. I do not consider it plausible or credible that the interaction would result in him immediately leaving Kabul, then leaving Logar for Pakistan, all in the space of one or two days. I also do not consider it plausible it would result in his sister leaving Kabul. While I consider it plausible the interaction with the man occurred, I am not satisfied the applicant's work was known in Kabul by the Taliban, that his identity was known, that his residence in Kabul or Logar was known, or that he was at any threat from the Taliban or anyone else at that point.
57. The delegate noted at the visa interview that it had been five years since he had worked for [Business 1], and yet no one had come for him in that time. The applicant said he would be caught by the Taliban as he suspected his name has been reported to them by people in Logar and that everyone there knew he was working for foreigners. The delegate put to him that he had said his [sibling's family] had returned to Afghanistan and nothing had happened to them. The applicant said even if he returned for one day, the Taliban would come to know it through word of mouth. Even if he went elsewhere, he would be identifiable by his Logari accent.
58. There is nothing in the applicant's evidence that indicates that his family was ever visited or threatened, which can be a tactic used by the Taliban when targeting individuals.⁹ The absence of any threat to his family, while not determinative of itself, is a further indication to me that he was not known and not at threat at the time he left Afghanistan, nor did a profile develop in the years after he left Afghanistan.
59. I accept it plausible that a wider circle of people in his home area in Logar know about his employment. I consider it plausible his employment could have been a discussion point for family and friends. However, I find it significant that the applicant detailed no additional threat or interaction with the Taliban. His only additional comment was that his sister-in-law told him that when people asked her where he was she would tell them he is missing.
60. The applicant's evidence indicates to me that he was not at immediate threat on the basis of his past employment, nor was he obviously a target of the Taliban when he left the country. I find he was not being targeted by the Taliban when he left Afghanistan.
61. The applicant also claims his friend G was killed by the Taliban in early 2016 just after he had ceased work for [Business 1]. At the interview, he indicated that G had left his job and had joined the Afghan Army. If G had been in the Afghan Army at the time he was killed, I consider it was very likely for that reason, and not his association with [Business 1]. I accept G was killed, but I do not consider it informs the applicant's own risk profile in Afghanistan.

Data breach, political views, time in the west and asylum claims

62. The information before me indicates the applicant was affected by a breach of departmental systems in 2014. 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, or any other person or group, has accessed this information in the years that have passed since that breach, or targeted persons for harm on that basis. In any

⁹ UK Home Office, 'Country Policy and Information Note - Afghanistan - Fear of anti-government elements', 1 December 2016, OGD7C848D96.

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 also accept he would not return voluntarily and that would necessitate some cooperation with the current Afghan government in terms of his return. I accept it would be apparent that he is a returnee from the west and an asylum seeker on return to Afghanistan.

63. The applicant has sought to detail how entrenched he has become in western life. He claims he dresses liberally and listens to music. He claims his behaviour, mannerisms and mentality have changed and that he is a liberal Muslim. He believes in freedom of speech and assembly for women and men.
64. I note the only supporting evidence I have before me relates to the applicant's religion. That information indicates that he is a practising Shia and active supporter within his Shia community in Australia. Given his age when he arrived in Australia and the period he has spent in the 'west', I accept he is to some extent westernised and that he has grown accustomed to life and the freedoms in Australia. I accept he does dress in western clothing, that he listens to music and that his behaviour, mannerisms and mentality have changed. While he has not provided any supporting evidence in this regard, I accept to some degree that this is the case given the time that he has spent in Australia and his young age when he arrived.
65. Given his ten years in Australia, I accept his views may be more liberal than when he departed Afghanistan and that he believes in freedom of speech and assembly for women and men. However, he has not provided any supporting evidence that he has been politically active or outspoken. I accept he may hold western or liberal views, as I expect many Afghans do, but the applicant has not satisfied me that he is politically outspoken or active, or that he would be on return to Afghanistan.

Refugee assessment

66. 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

67. 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.

Profile related to work for [Business 1]

68. I accept the applicant was formerly employed by a company named [Business 1] that was contracted to provide support services to the US forces and [an agency] at [Camp 1] in Kabul. I accept this was very likely known within his community in Logar, however I do not accept he was identified by the Taliban or threatened while he worked in Kabul.
69. According to DFAT, former Afghan interpreters and other locally-engaged personnel who assisted US or other allied forces have also reportedly been subject to Taliban violence.¹⁰
70. EUAA identifies persons affiliated with foreign forces as a 'risk profile'. This profile refers to individuals who are associated with the foreign troops which were present in Afghanistan, such as interpreters, security guards, civilian contractors, administrators and logistics personnel. Interpreters in particular were identified as a top priority target of the Taliban. The EUAA indicates that individuals not on the payroll of the foreign forces but doing general maintenance jobs, have not been as systematically targeted, although attacks have occurred.¹¹
71. After the Taliban takeover, thousands of interpreters who worked for international and US forces applied for special visa arrangements to leave the country. It was reported that the US managed to evacuate most of its Afghan spies and informants and their relatives. However, tens of thousands of interpreters and other foreign force collaborators reportedly remained in Afghanistan.¹² During their first press conference after the takeover, the Taliban announced a general amnesty, saying that they have pardoned 'all of those who had fought against them'. Despite this amnesty, retaliatory acts by Taliban members against such persons were reported and several reports claimed that the amnesty was not fully respected by Taliban members. A source reported that in the period immediately following their takeover in August 2021, the Taliban rounded up Afghans on a blacklist and targeted people with suspected links to the previous administration or US-led forces. House-to-house searches to find blacklisted individuals were also reported. Incidents of summary executions, detentions, torture, abuses and forced disappearances of persons affiliated with foreign forces have been reported. Efforts were made by the Taliban to track down such persons through local informants, the use of existing databases and intimidation. As at February 2023, EUAA opined that a person affiliated with foreign forces would in general have a well-founded fear of persecution.¹³
72. The Danish Immigration Service (DIS) in mid-2022 assessed that the extent to which former Afghan employees of foreign troops have been subject to persecution depends on several factors. One factor potentially leading to persecution is if employees of foreign troops have previously been engaged in combat with the Taliban. A second factor is the extent to which the surrounding community and the Taliban are aware of the previous function of the employee. A third factor mentioned by the sources is individual circumstances such as the

¹⁰ DFAT, 'Thematic Report on Political and Security Developments in Afghanistan', 14 January 2022.

¹¹ EUAA, 'Country Guidance: Afghanistan (January 2023)', 24 January 2023, 20230130112357.

¹² EUAA, 'Country Guidance: Afghanistan (January 2023)', 24 January 2023, 20230130112357.

¹³ EUAA, 'Country Guidance: Afghanistan (January 2023)', 24 January 2023, 20230130112357.

job, the employer and family background. The advice from individual sources in the DIS report is mixed. Two sources assessed that people employed at military facilities in low-level positions, who were not associated with active combat, would not be persecuted solely based on their previous jobs. However, another source opined more generally (and without distinction) that former employees of foreign forces were a risk profile.¹⁴

73. The applicant worked for a subcontractor that I am satisfied provided [specified] services to the US forces and [an agency] at [Camp 1] in Kabul. The applicant's role was as [a role 1] over a period of 12-13 months in 2011-2012. I consider that profile is far different to that of an interpreter who provided support in military matters for the US and Afghan armed forces. However, as his employment was associated with [an agency] and armed forces supporting [that agency], then I consider his proximity to the US forces would not be insignificant. I note the UK Home Office in 2022 indicated association with the US forces topped the hierarchy of risk. I also note that one source quoted by UK Home Office stated that it is difficult to conceal a person's occupation in Afghanistan.¹⁵
74. The applicant has provided a copy of his security clearance and ID cards. As above, I accept his employment is very likely known within parts of his home community and may be available on other databases used by the Taliban. I note the Taliban control Logar where I accept his past employment was known. Given the advice before me, I consider there is a more than remote likelihood that his employment and association with the US forces and [the agency] could be identified, whether on his return or in the foreseeable future.

Profile related to time in the west

75. I accept he may be recognised as 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.
76. The applicant made a number of contentions about how he has become westernised. While I do not accept his 'westernisation' is as extensive as he contends, I accept that to some degree his views, mannerisms and mentality have changed. I also accept he may dress liberally and listen to music. I accept he may hold liberal views, however I do not accept he would at all be political or outspoken. Given his time in Australia, I accept he has grown accustomed to life and the freedoms in Australia. I also again note it is the applicant's evidence that he is an active and engaged supporter of his Shia community in Australia.
77. In 2022, the UK Home Office referred to the risk profile of 'persons who do not conform to, or are perceived to not conform to, strict cultural and religious expectations/mores'. The risk profile refers to women in particular, but also persons perceived as 'westernised' after having spent time in the West'. Although it does qualify that there is no clear definition of what 'westernised' means or entails. It also states that access to independently verified information is limited, often conflicting, and the scale of targeting is unclear.¹⁶
78. Advice from EUAA in 2023 and DIS 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. One source cited by the EUAA stated that sometimes people were targeted

¹⁴ DIS, 'Afghanistan – Taliban's Impact on the Population', 1 July 2022, 20220704104853.

¹⁵ UK Home Office, Afghanistan - Fear of the Taliban, 29 April 2022, 20220502130414.

¹⁶ UK Home Office, 'Afghanistan - Fear of the Taliban', 29 April 2022, 20220502130414.

when they returned to Afghanistan, but the source did not see any clear connections simply to the fact that these individuals had left the country. Instead the targeting seemed to be connected to the reason for their initial departure from Afghanistan. Similarly, another source noted that it was not their impression that Afghans returning from the west would be subject to targeting by the Taliban, unless it was a result of a personal dispute or vendetta.¹⁷

79. The country advice suggests that factors relevant to the likelihood of harm would be the behaviour adopted by the individual, their visibility, area of origin and conservative environment, gender (with higher risks for women), age (due to the difficulty for children of certain ages readjusting to Afghanistan's social restrictions), and the duration of stay in a western country.¹⁸
80. While I have not accepted the applicant's full account of the extent of his westernisation, I do consider it credible that he adopted a more westernised persona. He was [under age] when he arrived in Australia and has been in the 'west' for around ten years. The applicant is an active Shia and I consider that may to some extent counter any suggestion he is un-Islamic. However, I consider he has adopted behaviours over time that are likely to be noticed in an increasingly conservative environment in Afghanistan, particularly in a more regional/rural area in Logar compared with a large city like Kabul.

Ethnicity and Shia faith

81. I accept the applicant is a Shia Muslim and of Tajik ethnicity. I accept he would be identifiable as a Tajik from his appearance and spoken language (Dari). I accept he would continue to practise his faith if he returned to Afghanistan, as do I accept he would be active and engaged within his Shia community. I accept he would be identifiable as a Shia.
82. The delegate found the applicant would not face a real chance of harm on the basis of his ethnic and religious profile in Kabul, basing that assessment on the then current 2017 advice from DFAT. I note some years have now passed since that assessment.
83. In 2022, DFAT stated that it was not aware of ethnic groups, other than Hazaras, facing discrimination or violence in Afghanistan on the basis of their ethnicity, despite the dominance of the Pashtun ethnic group within the Taliban.¹⁹
84. Other country reports indicate that the risk profile of Tajiks is not as clearcut as it has been in previous years. Specifically, recent advice from DIS and EUAA refers to instances of Tajiks being targeted where they are linked (or suspected of links) to the National Resistance Front. 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.²⁰
85. It does appear that the applicant is a Tajik Shia from an area where Tajik Shias supported the previous government and joined the Afghan Local Police, resulting in tensions with the Pashtun Sunni community.²¹ There have also been limited clashes between the NRF and the

¹⁷ EUAA, 'Country Guidance: Afghanistan (January 2023)', 24 January 2023; DIS, 'Afghanistan – Taliban's Impact on the Population', 1 July 2022.

¹⁸ EUAA, 'Country Guidance: Afghanistan (January 2023)', 24 January 2023; DIS, 'Afghanistan – Taliban's Impact on the Population', 1 July 2022.

¹⁹ DFAT, 'Thematic Report on Political and Security Developments in Afghanistan', 14 January 2022, 20220114090718.

²⁰ DIS, 'Afghanistan – Taliban's Impact on the Population', 1 July 2022; EUAA, 'Country Guidance: Afghanistan (January 2023)', 24 January 2023.

²¹ EASO, 'Country of Origin Information Report – Afghanistan Security Situation', 1 November 2016, CIS38A80122597.

Taliban in Logar.²² Equally, while the advice before me indicates concerns for Tajiks from Panjshir and parts of Baghlan, as well as Panjshiri Tajiks in other areas, it does not obviously suggest Tajiks in Logar (or Tajiks from Logar) are at risk on this basis.²³

86. In terms of his religious profile, DFAT's January 2022 assessment was that Shias face a high risk of being targeted by ISKP and other militant groups on the basis of their religious affiliation when assembling in large and identifiable groups, such as during demonstrations or when attending mosques during major religious festivals. DFAT states that the risk increases for those living in Shia majority or ethnic Hazara neighbourhoods in major cities such as Kabul and Herat.²⁴
87. Citing Human Rights Watch, in 2023 EUAA reported that ISKP had carried out 13 attacks against Hazara Shias since the Taliban takeover in August 2021, and that the group could be linked to 3 additional attacks, resulting in the death of at least 700 people. EUAA assesses that there have been two patterns of attacks targeting Hazara Shias after the Taliban takeover. The first pattern was attacks mainly targeting civilian passenger vehicles, particularly public transport minivans favoured by 'young, educated and professional Hazaras' such as government employees, journalists, and NGO staff. Hazaras had also been stopped and singled out when travelling on the highways. The second pattern was large-scale complex attacks, which have targeted Shia mosques, and hospitals and schools in Hazara dominated areas.²⁵
88. As a majority of the Shia Muslims in Afghanistan belong to the Hazara ethnic group, Hazaras have been the main victims of sectarian violence against Shias. However, EUAA states that other Shia groups have also been victims of targeted attacks, both before and after the Taliban takeover. Several attacks against Shia Muslims have occurred in areas that are not Hazara dominated.²⁶ The EUAA opines that an individual assessment of whether a Shia is likely to face persecution should consider their area of origin and whether ISKP has operational capacity there, with those from Hazara-dominated areas in larger cities being particularly at risk.
89. Logar is 70 percent Pashtun and 30 percent Tajik. There is no Hazara-dominant community in Logar, however there is a minority Shia community.²⁷ The advice before me indicates that ISKP is active in Logar, responsible for seven security incidents in the province (between August 2021 and June 2022), the majority of which were clashes with the Taliban. The country advice does not indicate any recent large scale attacks against the Shia population in Logar, although, on 4 November 2021, an explosion, caused by unknown perpetrators, occurred in front of a Shia mosque in Pul-e Alam District in Logar, reportedly killing two civilians.²⁸
90. I have considered DFAT's January 2022 analysis of the threat from ISKP, which it describes as strongly opposed to Shia Muslims and the west. Although conflict in Afghanistan has significantly eased, the situation is volatile and DFAT stated that the ability of the Taliban to control violent actors was not then currently clear, indicating this was particularly the case in relation to ISKP. DFAT concluded there was significant potential for violence throughout the

²² EUAA, 'Afghanistan - Security situation', 23 August 2022, 20220824095014.

²³ EUAA, 'Country Guidance: Afghanistan (January 2023)', 24 January 2023.

²⁴ DFAT, 'Thematic Report on Political and Security Developments in Afghanistan', 14 January 2022, 20220114090718.

²⁵ EUAA, 'Country Guidance: Afghanistan (January 2023)', 24 January 2023, 20230130112357.

²⁶ EUAA, 'Country Guidance: Afghanistan (January 2023)', 24 January 2023, 20230130112357.

²⁷ EASO, 'Country of Origin Information Report – Afghanistan Security Situation', 1 November 2016, CIS38A80122597.

²⁸ EUAA, 'Afghanistan - Security situation', 23 August 2022, 20220824095014.

country, particularly in eastern provinces where ISKP was strongest. DFAT also assessed that it was likely that terrorist attacks will continue and potentially increase.²⁹

91. While the Taliban has vowed to protect the Hazara community and guard Shia mosques,³⁰ DFAT also highlighted that the Taliban command-control structure was struggling to regulate the actions of its soldiers and regional commanders, which meant the behaviour of soldiers on the ground may be inconsistent with proclamations from central Taliban authorities, or may reflect local grievances.³¹ I again note that the Tajik Shia population in Logar had a history of being pro-Government and joining the Afghan Local Police in fighting the Taliban.³²
92. The reports before me indicate there is a non-Hazara Shia minority in parts of Logar. It suggests ISKP is active in the province. There is no clear indication that the group has been responsible for attacks against the province's Shia population, although there has been one instance of an explosion caused by unknown persons in front of a Shia mosque in Logar in November 2021.
93. I accept ISKP is active in Logar and that it remains strongly opposed to the Shia population in Afghanistan. I accept advice that the extent to which the Taliban can (or will) protect Shia communities and control violent actors such as ISKP is unpredictable, particularly in regional areas. I also accept the applicant is a Shia and that he would be actively involved in the Shia community in Logar.

Assessment of the applicant's overall risk profile

94. I have considered the applicant's overall profile as a Tajik Shia from Logar Province and westernised returnee, with past employment and association with the US forces and [an agency] in Kabul.
95. As noted above, both DIS and EUAA cite sources that suggest the targeting of returnees from the west, where it occurs, appears to relate more to the reason for the person's initial departure from Afghanistan or personal dispute/vendetta rather than the fact that they spent time in the west.³³
96. I have not accepted evidence of the applicant being involved in any personal dispute/vendetta. Although I have not accepted the applicant was threatened by the Taliban, I have accepted that he was employed and associated with the US forces and [an agency] in Kabul. I have accepted that his employment is very likely known within his community in Logar, and I consider it plausible the Taliban may come to know of that profile – whether through word of mouth and/or the Taliban's own investigations or intelligence.
97. I accept his westernised appearance and behaviours may be identified by the Taliban, or other armed groups. Submissions from the applicant tend to confirm that the Taliban search, detain and question those they deem suspicious – including scrutiny of smartphones.³⁴ I accept it would be apparent to the Taliban 'authorities' on his return that the applicant spent time in the west and sought asylum there.

²⁹ DFAT, 'Thematic Report on Political and Security Developments in Afghanistan', 14 January 2022, 20220114090718.

³⁰ EUAA, 'Country Guidance: Afghanistan (January 2023)', 24 January 2023.

³¹ DFAT, 'Thematic Report on Political and Security Developments in Afghanistan', 14 January 2022, 20220114090718.

³² EASO, 'Country of Origin Information Report – Afghanistan Security Situation', 1 November 2016, CIS38A80122597.

³³ DIS, 'Afghanistan – Taliban's Impact on the Population', 1 July 2022; EUAA, 'Country Guidance: Afghanistan (January 2023)', 24 January 2023.

³⁴ Radio Free Europe, 'Afgans Complain of Beatings, Harassment as Taliban inspects Smartphones', 29 November 2021.

98. I have also accepted he is from a Tajik Shia community in Logar that is known to have supported the former government and security forces. In terms of his religious profile more specifically, I have accepted there are risks to Shias living in Logar, and throughout Afghanistan, from ISKP.
99. I have considered the Taliban's amnesty for its former opponents, but I also note scepticism in the reports before me about the genuineness of the amnesty, as well as clear reports of targeting of those who should have been protected under such an amnesty.³⁵ I have also considered DFAT's advice that the Taliban leadership is struggling to regulate actions of its regional soldiers and commanders, and that their behaviour on the ground, including violence towards at-risk groups, may be inconsistent with orders of the central Taliban authorities.³⁶
100. In my assessment, his overall profile increases the chance or risks he would otherwise face separately for these reasons. As a westernised returnee who was previously employed and associated with the US forces and [the agency] in Kabul, and as a person coming from an ethnic and religious minority community in Logar that was known to support the former government, I consider his profile is unique and more significant. I consider it likely the applicant's overall profile would be considered that of a supporter or collaborator of the former government and the US (the west), or anti-Taliban, and that he would therefore be more vulnerable to being harmed for these reasons.
101. In view of the advice before me about the risks to Shias and the treatment of collaborators of the former US and Afghan forces and those opposed to the Taliban,³⁷ I am satisfied there is a more than remote chance, and therefore a real chance, of the applicant facing serious harm for reasons of his overall profile.
102. I consider his profile would be most acute in Logar or Kabul, where he could be more readily linked to his past employment and time in the west, however given my concerns about Taliban control throughout the country, the threat of ISKP, and the unpredictable security environment, I consider he would face a more than remote chance of harm in all areas of the country for reasons of his overall profile.
103. I am satisfied the persecution he fears is for the essential and significant reasons of his religion, ethnicity and imputed political opinion. I am satisfied the persecution would involve serious harm – including arbitrary detention, beatings, torture, targeted killings or high casualty attacks – and that it would involve systematic and discriminatory conduct.
104. I consider these aspects of his overall profile are immutable. In all the circumstances, I am not satisfied he could take reasonable steps to modify his behaviour so as to avoid a real chance of persecution.
105. Given my concerns with the Taliban's ability to control its forces throughout the country, scepticism about its representations that certain groups will be protected (or given amnesty), and the lack of clarity as to whether the Taliban has the ability to control violent actors (such as ISKP), I am not satisfied the Taliban regime (or any other group) is willing or able to offer protection against the harm the applicant fears. I find that effective protection measures would not be available to the applicant in Afghanistan.

³⁵ EUAA, 'Country Guidance: Afghanistan (January 2023)', 24 January 2023; DFAT, 'Thematic Report on Political and Security Developments in Afghanistan', 14 January 2022, 20220114090718.

³⁶ DFAT, 'Thematic Report on Political and Security Developments in Afghanistan', 14 January 2022, 20220114090718.

³⁷ EUAA, 'Country Guidance: Afghanistan (January 2023)', 24 January 2023.

106. In all the circumstances, I find the applicant has a well-founded fear of persecution, if he were to return to Afghanistan, now or in the reasonably foreseeable future.

Refugee: conclusion

107. The applicant meets the requirements of the definition of refugee in s.5H(1).

Decision

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

- the referred applicant is a refugee within the meaning of s.5H(1) of the *Migration Act 1958*.

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.