



Australian Government
Immigration Assessment Authority

Decision and Reasons

Referred application

AFGHANISTAN
IAA reference: IAA23/10447

Date and time of decision: 4 May 2023 18:06:00
M Tubridy, 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 applicant claims to be a citizen of Afghanistan. On 23 March 2017 he lodged an application for a Safe Haven Enterprise visa (SHEV). On 6 July 2017 a delegate of the Minister (the delegate) refused to grant the visa.
2. The delegate accepted that the applicant was a national of Afghanistan, and an ethnic Hazara and a Shia Muslim who originated from the [District 1] (or [name variants]) District of Afghanistan's Parwan Province; but did not accept that the applicant had been detained by the Taliban in 2012 while travelling from Kabul to Parwan with his cousin (it is the applicant's claim that the Taliban found his cousin's interpreter identification card, and accused them both of being government sympathisers and helping foreigners, and after escaping he was thereafter fearful of being tracked down by the Taliban).
3. The delegate accepted that there was a real chance that the applicant may incur serious harm while traveling the roads in returning from Kabul to his home area in [District 1], but the delegate was not satisfied that the applicant would face a real chance of serious harm, or a real risk of significant harm, in either Kabul or Mazar-e-Sharif, whether for reason of being a Shia Hazara, or for reason of being a failed asylum seeker from the West (or by way of being perceived as an infidel or a Christian on this basis), and the delegate was satisfied it would be reasonable for the applicant to relocate to either Kabul or Mazar-e-Sharif.
4. On 11 July 2017 the matter was referred to the IAA, and on 20 April 2018 the IAA affirmed the decision not to grant the visa. [In] February 2023 the Federal Circuit and Family Court of Australia remitted the matter to the IAA for reconsideration.

Information before the IAA

5. I have had regard to the material given by the Secretary under s.473CB of the *Migration Act 1958* (the Act). An attached 23 March 2023 Departmental checklist indicates that this review material includes several pieces of information which were not provided with the original referral of 11 July 2017. Several of these are administrative documents, most of which relate to the applicant's arrival in Australia (including a detention notice, consular access form, case assessment, and a property document), and there is also documentation in regard to his subsequent bridging visa, and a copy of a South Australia driving licence issued to the applicant. I consider these documents to be purely administrative in nature and not information for the purposes of s.473DC(1) of the Act.
6. Also included in the review material (but not provided with the original referral) is a further copy of the applicant's purported Afghan taskera and a 15 October 2016 English translation, which in substance seem no different the copies of this taskera, or the 27 May 2016 English translation, which were provided in the original referral, such that these are not new information in the relevant sense.
7. Also included in the review material (but not provided with the original referral) is [a] July 2017 Departmental referral of the applicant to [Agency 1] for counselling. This is information which may be relevant and which was not before the delegate when he made his 6 July 2017 decision, and so is new information for the purposes of s.473DC(1) of the Act. Given that this information provides context to new claims which the applicant has made to the IAA

regarding his mental health, I am satisfied that there are exceptional circumstances to justify considering this new information. Also included in the review material (but not provided with the original referral) is the applicant's 2013 Health Discharge Assessment for Person in Immigration Detention. This is also information which may be relevant, and which may also not have been before the delegate when he made his decision. If this is new information, I am satisfied that there are exceptional circumstances to justify considering this as it likewise provides context to new claims which the applicant has made to the IAA regarding his mental health.

8. Also included in the review material (but not provided with the original referral) is the applicant's 2016 lodged Temporary Protection visa (TPV) application, and the Department's 4 May 2016 invitation for him to lodge an application for a TPV or a SHEV. This is also information which may be relevant, and which may also not have been before the delegate when he made his decision. If this is new information, I am satisfied that there are exceptional circumstances to justify considering this as it provides context to claims which the applicant has made regarding his father.
9. On 1 August 2017 the applicant's then representative, [Representative A], provided the IAA (on the applicant's behalf) with a document labelled as a submission, and which largely engages in argument with the delegate's findings with regard to the information which was before the delegate. It also provides some new information, and this is the applicant's claim that when he escaped from the Taliban, he (the applicant) did not know until later that his cousin escaped as well. It has been submitted that the applicant was deprived of the opportunity to explain this because the delegate did not put it to the applicant that he (the delegate) considered that the applicant had provided inconsistent evidence at the 2013 arrival interview by saying that he escaped while the Taliban took his cousin. I note, however, that although the applicant was not put on notice of this potential inconsistency, he was nevertheless provided the opportunity to provide a detailed account of what he was claiming had occurred in this regard, and it is thus not the case that he could not have told the delegate that when he escaped from the Taliban, he (the applicant) did not know until later that his cousin escaped as well. I am not satisfied that s.473DD(b)(i) is met. Even so, without entering into a deliberative consideration as the truth of this new information it is information which in itself is capable of being believed and which may have affected the consideration of the applicant's claims had it been known. I am satisfied that s.473DD(b)(ii) is met. Given also that the applicant was not given an opportunity to respond to the delegate's adverse concerns in this regard, I am satisfied that there are exceptional circumstance to justify considering this new information (notwithstanding that it is not the case that the applicant "could not" have provided this information).
10. On 22 December 2017 the applicant then representative, [Representative A], provided the IAA (on the applicant's behalf) with a document referred to as "Psychological Reports" and which attached a file named: "Doctor's letter". I note that the document is neither a psychologist's report, nor a letter from a doctor, but was instead authored by an individual from [Agency 1], [Mr A], who refers to himself as a "[a counselling title]" and has completed what he terms a "Summary of Psychological Treatment", though it is not apparent that [Mr A] is qualified to diagnose or treat psychological conditions. Nevertheless, this is new information which may be relevant as further evidence of what the applicant has claimed regarding his mental health and past circumstances, and the document is dated 15 December 2017 and concerns counselling sessions which began on 12 July 2017, and so this information could not have been provided to the delegate. I am satisfied that both s.473DD(b)(i) and s.473DD(b)(ii) are met and that there are exceptional circumstances to justify considering this new information.

11. I have myself obtained new information in the form of recent country information reports¹ about the situation in Afghanistan from reputable commentators on matters relevant to assessing claims to protection, including reports about the security situation and the situation for returnees from western countries, and for Shia Hazaras. Given the developing situation in Afghanistan, and notably the manner in which the Taliban swiftly took control of the country in mid-2021, I am satisfied that there are exceptional circumstances to justify considering this information. I have also obtained new information about the tribal and religious composition of the population of [District 1] (or [name variant]) in Afghanistan's Parwan Province, and given the need for such information to assess the credibility of the applicant's claims regarding his identity as a Shia Muslim, I am satisfied that there are exceptional circumstances to justify considering this new information.²
12. In April 2023 the applicant's current representative, [Representative B], provided the IAA with a submission which largely amounts to a short summary of the applicant's claims, and then arguments in favour of the applicant's case with respect to new information. Among the new information provided in this respect are extracts from DFAT's 14 January 2022 Thematic Report on Political and Security Developments in Afghanistan (August 2021 to January 2022). A copy of the report has not been provided (and it has been erroneously described as being undated), but as noted above I have in any event obtained this report myself. Also among the new information provided is a copy of DFAT's 12 April 2023 SmartTraveller advice, which is relied upon as evidence that Kabul airport and travel within Afghanistan is dangerous. The 12 April 2023 SmartTraveller advice is not personal information, but it is information which could not have been provided to the delegate before he made his decision, and so I am satisfied that s.473DD(b)(i) is met. I note, however, that SmartTraveller advice is provided specifically for the benefit of Australians considering travel to Afghanistan, rather than as dedicated security assessment of Kabul airport and travel within Afghanistan for Afghans. Given this, and given the recent reporting already available to me, I am not satisfied that there are exceptional circumstances to justify considering the SmartTraveller advice.
13. Also new information is the claim that Australians have committed war crimes against the Taliban and Afghans generally, and that the applicant (because he remained in Australia when these occurred) will be at risk on return to Afghanistan on this basis. This is not personal information, and no explanation is offered as to why this information could not have been provided to the delegate. Even allowing for the possibility that reference is being made to war crime allegations which came to light after the date of the delegate's decision, no

¹ UK Home Office, "Afghans perceived as Westernised", 17 June 2021, 20210621090637; Latifi, A.M. 'On an Istanbul-Kabul flight, refugees and emigres prepare to see a new Afghanistan', Middle East Eye, 1 June 2022, 20220602162031; IOM, 'Migration Policy Practice (Vol. XI, Number 4, December 2021-April 2022)', 17 June 2022, 20220708123141; Landinfo, 'Afghanistan - Departures and returns after Taliban's takeover', 29 September 2022, 20230316101138; Clark, K. & R. Shapour, "What Do The Taleban Spend Afghanistan's Money On?", AAN, 16 March 2023, 20230317085618; DFAT, "DFAT Thematic Report: Political & Security Developments in Afghanistan (August 2021 to January 2022)", 14 January 2022, 20220114090718; Adili, A.Y., "A Community Under Attack: How successive governments failed west Kabul and the Hazaras who live there", AAN, 17 January 2022, 20220117133414; Netherlands BZ, "General Country of Origin Information Report Afghanistan", 28 March 2022, 20220801142319; UK Home Office, "Afghanistan - Fear of the Taliban", 29 April 2022, 20220502130414; Germany BAMF, "Briefing on the situation of the Hazaras in Afghanistan", May 2022, 20220621112654; EUAA, "Afghanistan - Security situation", 23 August 2022, 20220824095014; APW, "Weekly Briefing Aug 13 - 20", 24 August 2022, 20220825091634; [Source deleted]; EUAA, "COI Query Response - Afghanistan - Major legislative, security-related, and humanitarian developments", 4 November 2022, 20221108095739; EUAA, "Country Guidance: Afghanistan", January 2023, 20230130112357; Kittelson, S. "Afghanistan's Hazara minority increasingly fearful under Taliban", AI Monitor, 13 January 2023, 20230117113415; Gayakwad, S. "Suicide bomb attack targeting Shia Hazara area in Kabul reflects persistent sectarian violence and worsening security in Afghanistan", Jane's Country Risk Daily Report, 4 October 2022, 20221005114132; UNHCR, "Guidance Note on the International Protection Needs of People Fleeing Afghanistan - Update I", 14 February 2023, 20230220095752.

² 'Surki Parsa District Parwan Province', Afghan Biographies, 28 April 2013, CIS36DE0BB2248.

supporting evidence has been provided about such matters, let alone that Afghans who have lived in Australia would be at risk of harm on this basis. I am not satisfied that there are exceptional circumstances to justify considering this new information.

Applicant's claims for protection

14. The applicant's claims can be summarised as follows:

- He is a citizen of Afghanistan, and no other country, and an ethnic Hazara and a Shia Muslim, who was born in and originates from [Village 1] in the [Area 1] area of [District 1] in Afghanistan's Parwan Province.
- He fears that if forced to return to Afghanistan he would be seriously harmed by the Taliban and other Sunni Muslim insurgent groups because of his Hazara ethnicity (by which he will be imputed to be a supporter of foreigners against the Taliban) and his Shia faith, and also because he was a university student (and will be imputed to have been with the government), and of his imputed political opposition to the Taliban, and as a returnee and a failed asylum seeker from a western country (and on this basis will be declared an infidel and imputed to have become a Christian, and also to be a spy for a foreign country), and also as someone who has escaped from the Taliban, and because he was a university student.
- He fears he will be seriously physically abused, killed or subjected to an extraordinary level of discrimination that will threaten his ability to subsist or otherwise significantly harmed.

Factual findings

15. The applicant arrived in Australian territory [in] January 2013 as an unauthorised maritime arrival and presented himself as [the applicant's three names] a citizen of Afghanistan, with [the last name] presented as his family name. The applicant has consistently claimed that he is unable to provide a copy of his Afghan passport because this was taken from him in [Country 1] by a smuggler. The applicant has provided what presents as his 2009 issued Afghan taskera certificate (and he claims to be in possession of the original of this),³ which is the principal identity document in Afghanistan, and the format of the document is consistent with the reported appearance of such documents, and it carries a photograph which would appear to be of the applicant.
16. In terms of the purported taskera's content the accompanying English translation has revealed a complication in that it gives no indication of the applicant having the last name of [the applicant's last name]; instead referring to him only as [the applicant's first two names], the son of [Father A], and the grandson of [Grandfather A]. In this regard the applicant submitted to the delegate that [the last name] was a name he adopted upon arrival in Australia, and I note in this that it is well known that: Most Afghans do not have a last name but may choose one if they are in contact with other cultures.⁴ Afghan taskera certificates have no significant security features beyond a stamped seal,⁵ and it is reported that in Afghanistan and Pakistan forged identity documents, including tazkeras, are readily available

³ DFAT, "DFAT Country Report: Afghanistan", 26 March 2014, CIS2F827D91263.

⁴ Megerdooian, K. "The Structure of Afghan Names", The Mitre Corporation, November 2009, CIS27953.

⁵ DFAT, "DFAT Country Report: Afghanistan", 26 March 2014, CIS2F827D91263.

(as are “asylum stories”).⁶ This noted, and while this means there can be little confidence in such documents in general, I have no specific reason to doubt the authenticity of the purported taskera certificate provided by the applicant.

17. More broadly, and while I have doubts about the credibility of certain aspects of the applicant’s claims (and which I address further below), the applicant has in other regards proven able to speak about his life in Afghanistan in a manner that suggests he does indeed originate from Afghanistan. The applicant has also provided what presents as a [year] issued Afghan secondary education [grade] graduation certificate. This indicates that the applicant was born in [year], meaning he was [age] years of age when he finished his schooling; and while this seems a late age to completing such education, the date of birth itself is nevertheless consistent with the age listed in the applicant’s purported taskera ([age] years old in 2009) and what the applicant has consistently claimed regarding his approximate age (it is typically the case that Afghans are unaware of their exact date of birth) and personal history.
18. Taking all this evidence as a whole, I am satisfied that the applicant is a national of Afghanistan, and that he was known in Afghanistan as [the applicant’s first two names], and I find that Afghanistan is the applicant’s receiving country for the purpose of this review.
19. Among the applicant’s central claims has been that he fears harm from the Taliban as a result of an incident which occurred in 2012 in which he and his cousin were stopped and detained by the Taliban while travelling from Kabul to [Area 1]. I note that the applicant spoke about this matter at his 21 February 2013 Departmental arrival interview, which took place in Darwin some eight weeks after his [January] 2013 arrival. As noted above he claimed his Afghan passport was taken from him in [Country 1] by the persons who had arranged his travel; and later in the interview he said this was taken from him when he embarked on a boat which took him from [Country 1] to Indonesia, and that he and the other passengers were told the passport was no longer of any use to them). He estimated he had obtained his Afghan passport about seven or eight months ago (in around mid-2012), and he estimated that he left Afghanistan [in] September 2012; and later in the interview he was asked about how he had obtained his passport, and he said that he went and obtained it from [Town 1].
20. Asked what Afghan identity documents he had, he said that he had a taskera in Afghanistan, and also a [Grade] Certificate, and a driving licence (he has never provided the latter). Asked if these were originals that were in Afghanistan, he said that they were. He said that he had not yet had copies of these sent to him.
21. He said he had lived his whole life in Afghanistan, and that he had originally resided with his family in [Village 1 name variant], in [Area 1] in [District 1] in Afghanistan’s Parwan Province, and he had finished [Grade] there in [year], and that he had also worked on the family farm while undertaking his schooling. He gave his brother’s telephone number as his contact number. He said his father had been missing for five or six years, later he estimated it was seven years, and that he did not know what had happened. He said that during the year prior to his departure from Afghanistan he resided in the Kabul neighbourhood of [Town 2] and was studying the first year of a [degree] at [University 1]. He said that during that time he had also worked driving a minibus, sometimes in the city and sometimes driving to his birthplace. He said that [all] of his brothers were under 18 years of age and did not work, and that they

⁶ DIS, "Country of Origin Information for Use in the Asylum Determination Process: Report from the Danish Immigration Service's Fact Finding Mission to Kabul, Afghanistan, 25 February to 4 March 2012", May 2012, CIS23406; MRT-RRT Country Advice, "Afghanistan: AFG42414 – Document Fraud – Tazkira", 25 June 2013, CRAD81550110.

and his [other family members] and his mother were all financially dependent on him, but were surviving on their farmland.

22. The interviewer then asked the applicant to explain, just briefly, what the reasons were for his leaving Afghanistan. The applicant responded: The main reason for me coming to Australia are, as you know, the situation of the Hazaras in Afghanistan and Pakistan as well, in Afghanistan we are located in a place geographically that is bound and that has got two ways to both side, and both ways that lead out of our area go through the Pashtun populated area; on the one side, is the Maidan Wardak and on the other side is the Ghorband Valley which is a big area consisting of another two to 22 valleys, which is Taliban populated, and the other side is Maiden Wardak which is also Pashtun Taliban populated and controlled; the same way, like many years ago when my father went missing, last year when I was travelling on the way, and the Taliban stopped me at Dara-e-Ghorband and I and one of my cousins was in the car and we were caught, we were in the vehicle and my cousin was an interpreter working with the foreign troops, I think he was working in [Town 3] somewhere, over there they caught us, I escaped but they actually took my cousin. The interviewer asked where this was, and the interpreter replied: Dara-e-Ghorband.
23. The interviewer asked the applicant how long the Taliban had kept him and his cousin. The applicant responded: So we were not in their detention for long, 20 minutes to half an hour, as you may know there are orchards or fruit farms and I actually escaped and went to the [Location 1] shops which is like [in] Ghorban, and from [Location 1] shops I went to Kabul; the main reason is that if they catch you with any government card or any government document they just decapitate you. The interviewer (who appears to have misunderstood the interpreter as having referred to a government "car" rather than "card") asked the applicant if he and his cousin were in a government car when they (the Taliban) caught him. The applicant responded: No, a private vehicle. The interviewer asked the applicant what a government car was and how you could tell the difference. The applicant responded: the private cars are like these flying coaches, which is like the vans and the Corolla cars and other normal cars are like private cars, but the government cars are usually the vehicles that are driven by the national army.
24. The interviewer submitted that the question was why the applicant had left Afghanistan. The interviewer said: If you were not driving a government car, then you are not at risk, is that correct? The applicant responded: It is not a necessity that you must be driving a government vehicle to be taken by the Taliban, a lot of those people who were decapitated by the Taliban last year were just students, and if you are just a student and you have a student card and things like that, they will just kill you for that. The interviewer said: It is important for this question that we get all of your reasons for leaving Afghanistan, and this is important for you and your case, so are there any other reasons? The applicant responded: So, the reason is that I was once caught by them and my identity was known to them, and the fact that once the Taliban find out that you are a university student and they take your ID card, your student university ID card, they just assume that you are with the government, that is enough reason for them to catch you and to look for you; so the situation is such that if one wants to go from our area to Kabul, he or she has to accept death risk of one hundred percent . The interviewer asked if there were any other reasons. The applicant responded: no.
25. Later in the arrival interview the applicant was asked what he thought would happen to him if he returned to Afghanistan, and he said that he would definitely be killed by people known as the Taliban but in reality who knew who they were or whether they did this because of ethnicity or ethnic belongings or any other reason, but the people that do it are the Taliban. The interviewer asked if the war was helping that situation and getting rid of the Taliban. The

applicant said that the way he saw it there was no war against the Taliban in Afghanistan, because if they could come into Kabul and attack the traffic police headquarters they can do so, and it would be very easy for the Taliban to attack in his area. Asked if there was anything he wanted to say which they had not spoken about he answered: no.

26. Asked when he started to make arrangements to come to Australia, the applicant said: the beginning of Afghanistan's new year, about ten months ago, and in the Christian calendar that would mean that after 21 March 2012.
27. Asked who the people smuggler was who arranged his travel, the applicant said he did not know the people smuggler, and the one who arranged his travel was his maternal uncle (who remained in Afghanistan), and that USD14,000 was paid for the applicant's travel, and that he raised this by selling his vehicle, and by selling a block of land in Kabul, and this raised USD10,000 and the remainder was provided by the applicant's maternal uncle. Asked when and how he left Afghanistan, the applicant said that as he had mentioned previously it was around four months ago plus some days, around [a day in] September 2012, and that he left by air from Kabul. Asked if his maternal uncle had organised his tickets and visa, the applicant said yes, and also the passport and the visa for [Country 2]. He said he arrived [there] where he was provided an address to stay, and a visa for [Country 1] was obtained for him, and that he was there for around 50 days (until around [a day in] November 2012), and that he flew to [Country 1] where he was in a hotel for [number] days (until around [later in] November 2012), and was then taken by boat to Indonesia, and an airport and flew to Jakarta where he stayed for [number] days (until around [later in] November 2012), and was then driven to the boat which brought him to Australia.
28. I note that the above timeline cannot be accurate since the applicant arrived in Australia [in] January 2013, and it is thus doubtful that he would have embarked from Indonesia and later than around [late] December 2012, and if the applicant's account is otherwise accurate then he must have departed Afghanistan no earlier than late October 2012. The applicant would appear to have subsequently calculated this as being the case also, for in his subsequent 2017 SHEV application he would indeed list his departure date from Afghanistan as: [a day in] October 2012.
29. In 2016 the applicant lodged his initial TPV application. I note, in this regard that as per his arrival interview the applicant claimed that his father was missing (as noted above, at the arrival interview the applicant had claimed his father had been missing for five or six years, or seven years, and that he did not know what had happened but his father went missing while travelling through Dara-e-Ghorband, and in the same way the applicant himself and a cousin were detained by the Taliban while travelling this route). But in 2017 the applicant lodged his SHEV application and he now indicated his father was living with other family members in Parwan, in [variant of Village 1], and he included a Form 1023 in which he explained the previous incorrect information as a technical error. I do not accept that this is an adequate explanation for why the applicant had previously claimed his father was missing; and given other concerns which I will discuss below, I consider it likely that the applicant had initially considered that his core claim (to fear harm after escaping from being detained by the Taliban in Dara-e-Ghorband) was more likely to be successful if he claimed that his father had previously gone missing after travelling through Dara-e-Ghorband. I note also that, whereas previously the applicant listed his mother and all of his siblings as residing in Parwan, the applicant now indicated (without any explanation as to whether circumstances had changed, or whether previous information was incorrect) that his [brothers] were both outside of Afghanistan. In Part B he listed [one brother] as living in [Country 3] while [another] was in [Country 4]; but in Part C he said that both were in [Country 3].

30. Attached to the 2017 SHEV application is a June 2017 statutory declaration in which the applicant detailed what cards and documents he was claiming he and cousin were carrying when stopped by the Taliban, stating that his cousin who was an interpreter had his card and tazkera copies with him, and the applicant had a copy of his tazkera and university card with him. The applicant claimed that the Taliban accused them of being government sympathisers, and his cousin was accused of working with foreigners, and the applicant was accused of being a student as well as working as a driver for an interpreter, and the applicant told them he was not a permanent driver and they were just travelling to Parwan to visit their families, but they did not accept that, and they were beaten and humiliated.
31. I note at the arrival interview the applicant offered no explanation for how it was that he had been able to escape into an orchard after being held for 20 minutes by the Taliban who took his cousin. It was also unclear from that interview how the applicant could have raised money for his travel by selling his vehicle if that vehicle had been left behind when the applicant had escaped into an orchard. In his June 2017 statutory declaration, the applicant claimed that luck was on their side as heard gunfire from the Afghan army, and the Taliban were forced to fight and that was their opportunity to escape (such that the applicant claimed he and also his cousin escaped from the Taliban), and they made their way to [Location 1] by foot in about 45 minutes, and then caught a ride back to Kabul where the applicant went to the Transport Department to report his taxi as left on the road to Dara-e-Ghorband after being detained by the Taliban, and he later received a telephone call that the army had brought his vehicle back to Kabul, and he went to claim it back. He thought he was safe in Kabul and resumed his life but a week later he was warned by others that the Taliban were targeting people who had escaped from them. He discussed his concerns with his family and the decision was made to for him to seek refuge in an unknown country.
32. On 28 June 2017 the delegate interviewed the applicant by video about his claims to protection. The delegate asked the applicant if he had any family living in Kabul when he was residing there, and he said he did not. Asked about the cousin he claimed to have working in Kabul, the applicant said this person did not originate from Kabul. Asked about why he feared returning to Afghanistan, the applicant said that in August, on [a specified day], he and his cousin had decided to return to see their families in Parwan, and his cousin had been working as an interpreter for foreigners somewhere near Kabul, and just above the Ghorband Valley there was a shopping precinct where they were stopped by the Taliban, and they searched them and found their documents, including his cousin's interpreter's ID, and they said you are infidels and unbelievers and working with the foreigners, and they were beating them and trying to take them into the jungle, and at that time the Afghan national army were passing by and so there was a fight between them, and as the national army got close the Taliban who was dragging them also started to shoot, and so they took the opportunity to escape, and they went behind a wall and there were some shops there, the [Location 1] shopping precinct, and then they returned to Kabul, and his cousin returned to where he was working with the foreigners, and the applicant went to see the transport authority and informed them about the incident and that his car had been left there. The delegate asked the applicant if he was saying his cousin worked in Kabul. The applicant said, no his cousin worked as an interpreter with foreigners in [Town 3] which was one hour, or one hour and twenty minutes away from Kabul.
33. The delegate asked whether the Taliban who detained him were on foot or in vehicles. He said they were on foot and had come from the jungle and the farms on the road. Asked how long he was detained by the Taliban before his escape he estimated 30 to 35 minutes. The delegate asked the applicant if he could explain why his arrival interview recorded him as saying was detained for some four to five hours. The applicant said that if the audio was

listened to you would hear he had said he had said 30 to 35 minutes, and he did not know why this was written incorrectly. The delegate said this was fine and this was something he could check. The delegate asked the applicant if his hands were bound, and how many Taliban were involved, and if they were armed. The applicant said he was not bound, and that there were four or five Taliban, and they were all armed. The delegate said he found it hard to believe the applicant was walked for 30 to 35 minutes by men on foot, and without their having bound his hands, and that by accident they would encounter an Afghan unit and a firefight would ensue which enabled his escape. The applicant said that during most of the 30 to 35 minutes they were searching them, and that the area was known to be at risk of Taliban attacks, and so that is why the security forces were regularly patrolling that area. He said that after this he only stayed in Kabul for approximately two weeks, and he stopped working and he was very scared and then he left Afghanistan.

34. I note that the applicant's then representative subsequently provided a number of reports to illustrate that in the years leading up to 2012 the Dara-e-Ghorband area became well known for being affected by incidents in which the Taliban checkpoints were stopping travellers, and were alleged to have targeted foreigners, and police, and members of the Afghan army, and also prominent officials, and any persons perceived as spies or collaborators with the then Afghan government; and that there had been several security operations in an effort to clear the roads of Taliban.⁷ It is not apparent from this, or from reporting, that the Taliban was ever targeting male university students in such a regard; indeed, one of the reports carries commentary from a Kabul University student from Ghorband, who told GlobalPost⁸ the rebels had backing from ethnic Hazaras and Tajiks in the area, as well as Pashtuns (as I will discuss further below, the area is unusual in that the majority of its ethnic Hazara population are Sunni rather than Shia Muslim). But there is ample information to indicate that interpreters working with foreign forces were high value targets for the Taliban broadly.⁹ All this being the case, it is difficult to believe that if the applicant really did have a cousin who worked as an interpreter working for foreign forces, that such a person would have carried an ID document which identified him as such when he knew he would be travelling through an area known for having a high risk of Taliban checkpoints; and I note, in this regard, that during the period in question interpreters (because they were known to be high targets for the Taliban) were known to keep their work secret if they could (and even lower risk personnel like NGO staff were known not to carry their IDs when operating in high-risk areas).¹⁰
35. I note, moreover, that notwithstanding the importance which the applicant has placed on his cousin's being an interpreter with foreign forces at [Town 3], and notwithstanding the manner in which the applicant's credibility has been in doubt, he has never provided any evidence to establish that his cousin did actually have employment of this kind. Indeed, given the manner in which the figure of the applicant's cousin has disappeared from the applicant's narrative following the purported escape from the Taliban (seeming only to appear for the narrative purpose of travelling into a known Taliban area while carrying his interpreter ID card and thereby triggering Taliban interest in the applicant by way of association), I have real doubts about the applicant's claim that one of his cousins was working as interpreter.

⁷ Ruttig, T. "Ghorband A Valley Once Friendly", AAN, 9 July 2011; "Taliban's Ghorband valley stronghold", BBC News, 11 August 2012; Sands, C, "Afghanistan: Taliban fear grips once peaceful Parwan", GlobalPost, 1 November 2012.

⁸ Sands, C, "Afghanistan: Taliban fear grips once peaceful Parwan", GlobalPost, 1 November 2012.

⁹ DIS, "Country of Origin Information for Use in the Asylum Determination Process: Report from the Danish Immigration Service's Fact Finding Mission to Kabul, Afghanistan, 25 February to 4 March 2012", May 2012, CIS23406.

¹⁰ DIS, "Country of Origin Information for Use in the Asylum Determination Process: Report from the Danish Immigration Service's Fact Finding Mission to Kabul, Afghanistan, 25 February to 4 March 2012", May 2012, CIS23406.

36. The delegate subsequently had regard to audio recording of the 2013 arrival interview and, in his subsequent decision, he noted that at the arrival interview the applicant made no mention of the Afghan army being involved in his escape from the Taliban, and most importantly, that (whereas at the 28 June 2017 interview the applicant claimed he and his cousin escaped together) in 2013 the applicant had stated that: I escaped but they [the Taliban] actually took my cousin. The delegate considered these matters to be inconsistencies, and significant enough that he did not accept that the applicant was detained by the Taliban.
37. To the IAA it has been argued that the applicant has not been inconsistent with respect to his claims about his cousin, and that at the time of his escape from the Taliban he (the applicant) did not know that his cousin escaped as well until they met up later. I have not found this persuasive. Firstly, because if the applicant really had escaped separately from his cousin with whom he met up later, it seems doubtful that would have begun his account of this by so emphatically stating that: I escaped but they [the Taliban] actually took my cousin. And secondly because at his 28 June 2017 interview (and for that matter in his June 2017 statutory declaration) the applicant plainly gave an account in which he and his cousin escaped together and in each other's company from the vicinity of the Taliban, rather than separately. It seems far more likely that the applicant simply forgot that at his arrival interview he had claimed that his cousin was captured by the Taliban, and that this is because the applicant's claims in this regard are fabrications.
38. To the IAA it has been argued that at the arrival interview the applicant did not provide the additional detail which he would later provide, because the interviewer at the arrival interview sometimes interrupted the applicant's account with questions, some of which confused the applicant. I accept that at the arrival interview the interviewer did sometimes interrupt the applicant's account with questions, but it is not apparent that this ever confused the applicant (on the contrary, it was the interviewer who sometimes seemed confused). I note, moreover, that the applicant was not interrupted at the arrival interview when he elected to move from answering a question about the length of his detention by the Taliban, to then asserting that he escaped into a nearby orchard, and then travelled onward to [Location 1]. I note, in this regard, that even allowing for the circumstances of an arrival interview, it is difficult to imagine that the applicant would have said nothing about the Taliban being attacked by the Afghan army at this exact moment, if something so remarkable had actually occurred to enable his escape (and, likewise, that he would have said nothing later in the interview in explaining how he was able to fund his travel, if something as remarkable as the Afghan army having secured his vehicle and returned it safely all the way to Kabul, had actually occurred). It seems more likely that such claims were contrived by the applicant after his arrival interview, to account for his escape and also how he was able to raise money for his travel by having sold his vehicle.
39. I note also that the applicant's account of the timeline in which all of this occurred has varied significantly. For, at the 28 June 2017 interview the applicant sought to claim that the purported incident with the Taliban happened in August on [a specified day], and that following the incident he remained in Kabul for just two weeks before leaving Afghanistan (which would have been early September 2012), and he was so scared (of being targeted even in Kabul) that he stopped working. But as noted above the applicant's travel history is such that he cannot have departed Afghanistan any earlier than late October 2012. What is more, at his February 2013 arrival interview the applicant said that he started to make arrangements to come to Australia about ten months ago; which would mean that the applicant began making these arrangements no later than April 2012, and that the decision to leave Afghanistan, and thus his purported incident with the Taliban, would have to have

occurred during or before April 2012 (and indeed his SHEV application appeared to align his employment history with this earlier claim by indicating that he ceased employment as [an occupation 1] in March 2012, albeit while also indicating that his studies nonetheless continued until his October 2012 departure from Afghanistan). Further, at the February 2013 arrival interview the applicant said he obtained his passport about eight months ago (that is, in around June/July 2012), and he also submitted that he went and obtained it from [Town 1] (that is, that he obtained it by travelling to [this town in] Parwan Province in mid-2012). All of this adds further to my impression that the applicant has contrived his claim to have been detained by the Taliban.

40. I note, with regard to the applicant's claim to have been detained and mistreated by the Taliban, that it is apparent from the applicant's 2013 Health Discharge Assessment for Person in Immigration Detention indicates that when he first disclosed this claim he was offered specialist counselling services, which he declined. It is also apparent that just a few days after the 6 July 2017 refusal of his SHEV application, the applicant made [a] July 2017 request for such counselling and was referred to [Agency 1]. Then, in December 2017 he provided the IAA with a "Summary of Psychological Treatment" from a [Mr A] of [Agency 1] who states that he employed provided treatment to the applicant in the form of techniques such as progressive muscle relaxation, and supportive counselling; and that he considered the applicant to require further treatment to overcome separation anxiety, major depression, and refugee trauma. I note that it is not apparent that [Mr A] is qualified to diagnose mental health conditions, or that his experience extends beyond counselling, nor is it apparent that the applicant ever sought assistance with regard to mental health matters from a doctor or any other suitably qualified person. [Mr A's] account of his counselling sessions relate that the applicant disclosed being tortured and persecuted by the Taliban, and anxiety about uncertainty with regard to his visa status in Australia. Such evidence does not overcome the serious doubts arising from the applicant's inconsistent evidence about his claim to have had a single instance of mistreatment by the Taliban.
41. The applicant claims to originate from [Village 1] in the [District 1] of Afghanistan's Parwan Province, and his taskera supports this claim, and I accept this is the case. The applicant claims that he completed [Grade] at [Village 1] High School in [year], and his [Grade] Graduation Certificate supports this claim, and I accept this is the case. The applicant claims to be an ethnic Hazara, and physically he presents with the distinctive appearance of an ethnic Hazara.¹¹ The applicant has consistently claimed to be a Shia Muslim, and I note that Hazaras are known for being almost exclusively Shia Muslims. I note also, however, that [District 1] is unusual in this respect in that it is known for having a Hazara population which is Sunni Muslim,¹² although it is also reported that of the three Hazara tribes in [District 1] (these being [named tribes]), that the [specified] tribe (also known as the [name]) who live in [Area 1] are entirely Shia Muslim.¹³ I note that the applicant claims that [Village 1] is located in [Area 1 variant], and that when the delegate asked the applicant about his tribal identity he said he was part of a small tribe called the [name] which was part of a larger tribe, and when asked for the name of this larger tribe, he identified the [named tribe]. I accept that the applicant is a Hazara and a Shia Muslim.
42. I note also that at his arrival interview the applicant indicated that in the year prior to his departure he was residing in Kabul, in [Town 2] (a Hazara neighbourhood in [Kabul]); and in his SHEV application he listed himself as residing in Kabul during this period in [Village 2],

¹¹ DFAT, "DFAT Thematic Report: Hazaras in Afghanistan and Pakistan", 26 March 2014, CIS27600.

¹² [Source deleted].

¹³ [Source deleted].

which I note is an area of Kabul's [Town 2] settlement.¹⁴ I accept that the applicant was residing in this location in the year prior to his departure from Afghanistan. The applicant has provided no documentary evidence of his having worked as [an occupation 1] while in Kabul, but given that such work in Afghanistan is generally conducted in an informal manner, I am nonetheless willing to accept that this was the case.

43. But given the concerns outlined above, I am not satisfied that the applicant was ever detained by the Taliban, or that he ever had a cousin who was employed as an interpreter with foreign forces in Afghanistan. Given also the manner in which he has provided no documentary evidence whatsoever of his having ever been enrolled as a student at [University 1] (even while seeking to make much of this in his claims, and even though it is difficult to imagine he would be unable to provide such documentary evidence were this true), or an explanation for why this has not been provided (even though in being invited to lodge an application for a TPV or a SHEV he was put on notice writing that it was his responsibility to provide evidence to support his claims, or an explanation if he was unable to provide such evidence), and given the extent to which the applicant has proven not to be a credible source of information in other respects, I find it difficult to feel satisfied that he was ever enrolled as a student at [University 1]. I am not satisfied that he was.

Refugee assessment

44. 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

45. 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.
46. The applicant claims that if forced to return to Afghanistan he would be seriously harmed by the Taliban and other Sunni Muslim insurgent groups because of his Hazara ethnicity (by which he will be imputed to be a supporter of foreigners against the Taliban) and his Shia

¹⁴ [Source deleted].

faith, and of his imputed political opposition to the Taliban, and as a returnee and a failed asylum seeker from a western country (and on this basis will be declared an infidel and imputed to have become a Christian, and also to be a spy for a foreign country).

47. With regard to the situation for persons returning to Afghanistan from western countries there have been only occasional reports of such returnees having been harmed by the Taliban on this basis in recent decades; notably in 2014 when a Hazara deported by the Australian authorities claimed to have been abducted and then to have escaped from Taliban who stopped him while travelling to Ghazni for having an Australian driving licence, and also the case of a Hazara, who was an Australian-Afghan citizen, who was reportedly pulled from a bus by Taliban who killed him. Subsequent years also saw occasional claims of persons saying they had been stopped and beaten by the Taliban after having been identified as being returned from a western country, but more broadly it has been reported that where instances of harm have occurred it has typically been for reasons such as a pre-existing enmity, rather than because the person had returned from a western country. There have, moreover, been very few such known incidents when it is considered that tens of thousands of asylum seekers returned to Afghanistan from western countries between 2010 and 2019.¹⁵
48. In April 2021 United States announcement that it would withdraw all its remaining troops from Afghanistan (by September 2021), the Taliban began a sweeping advance across large swaths of rural Afghanistan in which it encountered minimal resistance, and by August 2021 they were in control of most of the country, including Kabul.¹⁶ Afghanistan's airports became operational again in early 2022 when Turkey and Qatar assumed responsibility for operating Afghanistan airports, including responsibility for security, and it was reported of Kabul airport that there were no Taliban in sight, though they were everywhere outside the airport and in the street. In late 2022 arrangements changed, and an Abu Dhabi-based firm was contracted to manage the airport,¹⁷ and in March 2023 it was reported that at Kabul airport all employees are experienced personnel from the former government, but with Taliban now working alongside them.¹⁸ Such reporting gives no indication of whether this has resulted in any additional scrutiny of returnees on the part of the Taliban, or any particular interest in whether returning Afghan nationals they have spent time in a western country or sought asylum.
49. From August 2021 to May 2022 some 653,000 people have either been deported or returned voluntarily following the Taliban takeover of power, the vast majority from neighbouring areas, according to figures from the Afghanistan's de facto authorities' Ministry of Refugees and Repatriation. Since the Taliban takeover there have been no forced returns from any European countries,¹⁹ and the extent of voluntary returns or travel by Afghans from western countries to Afghanistan in this period is unclear, but in June 2022 it was reported anecdotally of most flights from Istanbul to Kabul that: the passengers are a mix of families from nearby European nations visiting family, businesspeople, NGO workers returning from

¹⁵ DIBP-COISS, "AFG Returnees Issues Paper July 2015", 30 July 2015, CRF909496131, CRF90949687; ERIN, "ERIN Specific Action Program Afghanistan Briefing Note", January 2017, CISED50AD4276; Bjelica, J. & T. Ruttig, "Voluntary and Forced Returns to Afghanistan in 2016/17: Trends, statistics and experiences", AAN, 19 May 2017, CXC9040667688; UK Home Office, "Afghans perceived as Westernised", 17 June 2021, 20210621090637.

¹⁶ EUAA, "Afghanistan - Security situation", 23 August 2022, 20220824095014.

¹⁷ Landinfo, "Afghanistan - Departures and returns after Taliban's takeover", 29 September 2022, 20230316101138

¹⁸ AAN, "What Do The Taleban Spend Afghanistan's Money On?", 16 March 2023, 20230317085618.

¹⁹ Landinfo, "Afghanistan - Departures and returns after Taliban's takeover", 29 September 2022, 20230316101138

quick trips abroad, and (from Turkey) deportees, and who upon arrival headed towards the final customs check and back into a new Kabul.²⁰

50. Since the August 2021 Taliban takeover some sources have expressed concern about the risks posed to such returnees (including those who returned from western countries prior to the Taliban takeover) but the problems identified by such reporting are generally limited to issues like low level discrimination as a result of mistrust, or vulnerability to crime, with this most often being a problem for those who left Afghanistan at a young age and who were attempting to settle in Kabul in circumstances where Afghanistan's capital was unknown to them and where they had no social networks.²¹ In January 2023 the EUAA noted that the Taliban have openly criticized individuals leaving for Western countries, saying that such persons create scandals against Islam and the Islamic System to receive asylum. Even so, it also reported that an anonymous organisation with presence in Afghanistan stated that sometimes people were targeted 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. Rather, the targeting seemed to be connected to the reason for their initial departure from Afghanistan. Similarly, another source noted that it was not his 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.²²
51. Given this, it seems only a remote possibility that the applicant would face any harm on return to Afghanistan for reason of being a returnee and a failed asylum seeker from a western country (and/or on this basis being declared an infidel and imputed to have become a Christian, and also to be a spy for a foreign country).
52. With regard to the situation for Shia Hazaras there are a mix of views and indications about what the security situation will be for this community now that the Taliban have taken control of Afghanistan. The Taliban led insurgency is almost entirely composed of Sunni Muslims and is largely ethnic Pashtun, and historically the minority Hazaras, who are almost entirely Shia Muslim, have largely aligned themselves with forces opposed to the Taliban; and those of the view that the Taliban has a deep political and/or ethno-sectarian antipathy toward the Hazara have often pointed to how during the civil conflict years of 1998 to 2001 the Taliban perpetrated massacres against Shia Hazara communities in Mazar-e Sharif in 1998, and Yaklawang in 2001. But others have argued that these incidents took place in the context of the Taliban's war with the Hazara Hezb-i Wahdat militia, and that while these were atrocities, they were also reprisals carried out in a specific place and time that did not extend into a broader program of mistreatment. Similarly, some have argued that such occasional abductions of Shia Hazara travellers by Taliban or other insurgent forces during recent decades are evidence that the Taliban has an ethno-sectarian antipathy toward the Hazara, and which has been added to by Taliban resentment toward the support shown by Shia Hazara to the government of the Islamic Republic of Afghanistan and its western backers, and their opposition to the Taliban. On the other hand, close studies of the circumstances of such abductions have found that initial reports have often exaggerated what has occurred (notably by reporting that victims have been beheaded), and that because those taken were Afghan security forces, or were wealthy, or were seized opportunistically for a prisoner swap, and because Afghan travellers from other communities (including Sunni Pashtuns) have been

²⁰ Latifi, A.M. 'On an Istanbul-Kabul flight, refugees and emigres prepare to see a new Afghanistan', Middle East Eye, 1 June 2022, 20220602162031.

²¹ IOM, 'Migration Policy Practice (Vol. XI, Number 4, December 2021-April 2022)', 17 June 2022, 20220708123141; and see: UK Home Office, "Afghanistan - Fear of the Taliban", 29 April 2022.

²² EUAA, "Country Guidance: Afghanistan", January 2023, 20230130112357.

similarly targeted, it would be an oversimplification or even a misrepresentation to say that the Taliban has systematically targeted Shia Hazara along ethno-sectarian lines.²³

53. Even so, over the recent decade it has been common for news reports to relate that Shia Hazaras (in Parwan and Kabul and elsewhere in Afghanistan) distrust the Taliban's professions of tolerance, and consider that the Taliban hate the Shiite sect, and that Shia Hazaras fear that were foreign forces leave and the Taliban were to come to power that the Taliban would pursue a sectarian agenda against them.²⁴
54. Following the August 2021 takeover the Taliban have declared several times that they respected the rights of ethnic and religious minorities, including Hazaras, and the Taliban have also taken other actions to demonstrate goodwill. These included permitting and protecting Shia religious holidays, returning weapons to Hazaras in order to protect mosques from attacks perpetrated by the avowedly sectarian Islamic State in Khorasan Province (ISKP); and by appointing some Hazaras to the local government of provinces. However, there were serious doubts about the sincerity of these intentions among experts and Hazaras due to the Taliban's bad reputation in this respect, the lack of high-level representation of Hazaras in the new interim government, recent incidents in which Taliban fighters killed Hazaras and expropriated property from Hazara communities on a large scale, and the unpredictable behaviour of individual Taliban fighters. According to some Hazaras and experts, the recent instances of violence against Hazaras (such as the revenge killings on two occasions of nine and thirteen Hazaras respectively) and the lack of any attempt by the Taliban to prosecute the perpetrators of such reprisals are evidence of the fact that Taliban violence and discrimination are still specifically targeting Hazaras. The Taliban themselves and some sources have stated that these incidents are part of a broader historical pattern of localised reprisals or cases of 'victor's rights' being exercised against Afghans of various backgrounds (expropriation of land or property for the benefit of Taliban fighters also took place among Pashtun citizens in places such as Kandahar and Musa Qala; and there were revenge killings of Pashtuns in places such as Spin Boldak).²⁵
55. On the other hand, there would appear to be a unanimous view that the avowedly sectarian ISKP has sought to target Shia Hazaras; and that ISKP considers Shias to be infidels, all the more so because of their perceived closeness and support for Iran and the fight against the Islamic State in Syria, and that ISKP considers that the Taliban is too tolerant of Shia Muslims.²⁶ Until mid-2016 the most significant attack to have been perpetrated in recent decades Afghanistan's Shia Muslim and/or Hazara population had been the December 2011 bombing of Ashura commemorations at Kabul's Abu Fazl Mosque which had killed some 80 persons, with responsibility being claimed by the avowedly sectarian Pakistani militant group Lashkar-e Jhangvi (LeJ). But in July 2016 ISKP perpetrated an attack upon a Hazara political demonstration in Kabul which killed some 85 civilians and injuring 413 others, with ISKP stating that the attack was retaliation for alleged Hazara participation in fighting in Syria on the side of the government, with anti-Shia Muslim statements delivered in the same message. This proved the first of a series of occasional attacks to be perpetrated by the ISKP

²³ Trofimov, Y. "Afghan Shiites Fear Sectarian Strife", Wall Street Journal, 10 December 2014, CX1B9ECAB9351; DIBP-COISS, "Afghanistan: Hazaras Issues Paper", 2 April 2015, CRF90949638; Germany BAMF, "Briefing on the situation of the Hazaras in Afghanistan", May 2022, 20220621112654; DFAT, "DFAT Country Information Report: Afghanistan", 18 September 2015, CISEC96CF13366; DFAT, "DFAT Thematic Report: Hazaras in Afghanistan", 8 February 2016, CIS38A8012186; Soroush, Q. "Hazaras in the Crosshairs? A scrutiny of recent incidents", AAN, 24 April 2015, CXBD6A0DE5323; Netherlands BZ, "General Country of Origin Information Report Afghanistan", 28 March 2022, 20220801142319.

²⁴ Trofimov, Y. "Afghan Shiites Fear Sectarian Strife", Wall Street Journal, 10 December 2014, CX1B9ECAB9351.

²⁵ Netherlands BZ, "General Country of Origin Information Report Afghanistan", 28 March 2022, 20220801142319.

²⁶ Netherlands BZ, "General Country of Origin Information Report Afghanistan", 28 March 2022, 20220801142319; EUAA, "Country Guidance: Afghanistan", January 2023, 20230130112357.

movement, most of which have occurred in Kabul, and in the [Town 2], and which have targeted Shia Hazara places of worship, political gatherings, education centres, and cultural and sports centres; with some three to six incidents annually causing several hundred casualties each year in the city, and with some years seeing more isolated instances of such attacks in other major cities like Herat, or in regional areas such as in the provinces of Balkh province, Sar-e-Pul, and elsewhere.²⁷

56. In the year before the Taliban took power, sources expressed concern about an increase in this type of violence. In total, UNAMA documented twenty incidents targeting Shia/Hazaras between 1 January and 30 June 2021, in which 143 people were killed and 357 were injured, and ISKP claimed responsibility for most of these attacks.²⁸ The government and security forces of the former Islamic Republic of Afghanistan had proven unable to entirely prevent such attacks (notwithstanding increased security, and ongoing campaigns of arrest and also military action against ISKP) and it has been observed that little has changed since the Taliban took over these responsibilities in August 2021, and despite assurances by the Taliban to fight the ISKP rigorously, the latter is still capable of carrying out large and small attacks against the Hazaras (as well as the Taliban and the civilian population), with ISKP now seeking to undermine confidence in the ability of the Taliban to maintain security (and aspiring to replace the Taliban in governing Afghanistan).²⁹
57. The first ISKP attack against Hazaras after the Taliban came to power in 2021 occurred on 18 September 2021 in Dasht-e Barchi (Kabul, Police District 13), in which two people were injured. Then Kunduz Province saw an ISKP attack on the Shia Sayed Abad Mosque on 8 October 2021 which left 50 dead and 100 injured. A week later on 15 October 2021, ISKP explosives detonated in the largest Shia mosque in the city of Kandahar killing 47 and injuring 70. On 13 November 2021, a magnetic bomb explosion aimed at a Town Ace minivan in Dasht-e Barchi killed six civilians and injured at least seven others. On 17 November 2021, there was another explosion aimed at a Town Ace minivan in Dasht-e Barchi, killing two and injuring six. On 25 December 2021, the mullah of the Shia Imam Ali Mosque in Kandahar city was attacked with a knife, leaving him and three others injured. On 10 December 2021, West Kabul was again the target of three explosions with at least two Hazaras dead and four injured.³⁰
58. On 24 January 2022, an ISKP attack occurred in the Hazara neighbourhood of Haji Abbas in Herat city, killing seven and injuring ten. A bomb attack by ISKP on 1 April 2022 in the Hazara neighbourhood of Jebrail in Herat city at a sports field killed 12 young men and injured 25. At least 26 young Hazaras were killed and many others injured in two attacks in Kabul on 19 April 2022 at the largest school for boys in Dasht-e Barchi (Abdul Rahman Shahid School) and another educational institution. The ISKP did not claim responsibility for the attack although it was carried out according to a pattern resembling that of ISKP. Another attack followed in

²⁷ DFAT, "DFAT Thematic Report on Security Conditions in Afghanistan: 1 January to 31 August 2016", 5 September 2016, CIS38A80121778; Osman, B. "With an Active Cell in Kabul, ISKP Tries to Bring Sectarianism to the Afghan War", AAN, 19 October 2016, CX6A26A6E11358; EASO, "EASO COI Report, Afghanistan - Security Situation", November 2016, CIS38A80122597; UNAMA, 'Afghanistan Annual Report on Protection of Civilians in Armed Conflict: 2016', 6 February 2017, CISED50AD201; Adili, A.Y., "A Community Under Attack: How successive governments failed west Kabul and the Hazaras who live there", AAN, 17 January 2022, 20220117133414; Germany BAMF, "Briefing on the situation of the Hazaras in Afghanistan", May 2022, 20220621112654.

²⁸ Netherlands BZ, "General Country of Origin Information Report Afghanistan", 28 March 2022, 20220801142319.

²⁹ EUAA, "Afghanistan - Security situation", 23 August 2022, 20220824095014; Netherlands BZ, "General Country of Origin Information Report Afghanistan", 28 March 2022, 20220801142319; Adili, A.Y., "A Community Under Attack: How successive governments failed west Kabul and the Hazaras who live there", AAN, 17 January 2022, 20220117133414; Germany BAMF, "Briefing on the situation of the Hazaras in Afghanistan", May 2022, 20220621112654.

³⁰ Germany BAMF, "Briefing on the situation of the Hazaras in Afghanistan", May 2022, 20220621112654.

Dasht-e Barchi on 21 April 2022, in which two children were injured. There was equally no claim of responsibility. On the same day, there was an ISKP attack on a Shiite mosque in Mazar-e Sharif with 30 dead and 80 injured. Unidentified gunmen shot dead five Hazara passengers on Samangan highway in Dara-e Suf Bala district of Balkh province on 26 April 2022.³¹

59. There would then appear to have been something of a lull in such attacks even while ISKP attacks upon other targets (notably the Taliban government) continued to be attacked by ISKP. But some further attacks against Shia Hazaras have followed. A string of ISKP attacks targeting the Shia Hazara group occurred in Kabul City during three consecutive days (5–7 August 2022) before the Ashura' commemoration on 8 August 2022. These attacks included a bombing targeting a Shia religious mourning ceremony in Sar-e Kariz, PD6, Kabul City, where 8 people were reportedly killed and 18 injured. Another blast occurred in a busy shopping street in Pol-e-Sukhta (a Shia dominated area) in PD6, Kabul City. Reports on the death toll varied between 2, 3 and 8, as well as reports on the number of injured which ranged from 7 to 30. Last, a bombing targeted a minibus in Chindawol (another Shia dominated area) in Kabul City, in which no casualties were reported.³² On 13 August 2022 a bomb exploded in the Dasht-e-Barchi injuring four people, including two Taliban members, and ISK claimed responsibility for the blast.³³ On 10 September 2022 an explosion in in Dasht-e-Barchi wounded at least three people.³⁴ And on 30 September 2022, a suicide bombing was carried out against the Kaaj educational centre in the Shia Hazara Dasht-e-Barchi area of Kabul; and UNAMA reported that at least 53 people had been killed and over 110 injured. Most victims were reported to be teenage girls.³⁵ A further lull in such attacks would appear to have followed.
60. In January 2022 DFAT observed that Afghanistan is volatile but the country as a whole is (relatively) less dangerous than before August 2021 for many Afghans, due to the cessation of most armed conflict after the Taliban claimed victory; and that while Kabul remains insecure and has been subject to multiple attacks, local sources suggest parts of the country are returning to a 'normality' that has not been seen for many years, and that travel by road across Afghanistan is generally safer than it has been for some time, albeit from a low base. This noted, it was also observed that the security situation is still evolving, and it is unclear how long the current relative peace will continue, particularly if Afghanistan's economy collapses and the Taliban faces greater internal challenge; and that while the cessation of conflict between the Taliban and the former administration has made many parts of the country, especially rural areas, effectively free from armed conflict, the situation is highly volatile, and the ability of the Taliban to control violent actors is not currently clear; and that: While the Taliban may be attempting to disrupt ISKP and prevent its attacks on Hazaras, this, along with the Taliban's professed amnesty, does not indicate that it has put aside its historical antipathy towards Hazaras. While the level of mistreatment of Hazaras is currently less widespread than was predicted by some sources upon the fall of Kabul, members of the Hazara community have suffered from ISKP terror attacks and Taliban violence, including hundreds of evictions, and DFAT assessed that Hazaras in Afghanistan face a high risk of

³¹ Germany BAMF, "Briefing on the situation of the Hazaras in Afghanistan", May 2022, 20220621112654.

³² EUAA, "COI Query Response - Afghanistan - Major legislative, security-related, and humanitarian developments", 4 November 2022, 20221108095739.

³³ APW, "Weekly Briefing Aug 13 – 20", 24 August 2022, 20220825091634.

³⁴ [Source deleted].

³⁵ Gayakwad, S. "Suicide bomb attack targeting Shia Hazara area in Kabul reflects persistent sectarian violence and worsening security in Afghanistan", Jane's Country Risk Daily Report, 4 October 2022, 20221005114132; EUAA, "Country Guidance: Afghanistan", January 2023, 20230130112357.

harassment and violence from both the Taliban and ISKP, on the basis of their ethnicity and sectarian affiliation.³⁶

61. A year later, in January 2023, the EUAA assessed that: The individual assessment of whether there is a reasonable degree of likelihood for a Hazara and/or Shia applicant to face persecution should take into account their area of origin and whether ISKP has operational capacity there, with those from Hazara-dominated areas in larger cities being particularly at risk.³⁷ I note also, in this regard, that that in January 2023 it was reported that a Shia Hazara former government official told Al-Monitor that anxiety levels were high among his community, but that he had also said that despite concerns about how the Taliban would treat the Shia Hazaras after their takeover of the country in August 2021, thus far there did not seem to be more targeting of the minority group than there had been prior to the ascent to power of the extremist group.³⁸
62. I note also, with regard to the above, that while it is concerning that attacks upon Shia Hazaras have continued to see several hundred casualties each year, it is also the case that there are around three million Hazaras live in Afghanistan (approximately nine per cent of the population, making them the country's third largest ethnic group), and that in Kabul (where most such attacks and casualties have occurred) estimates put the Hazara population at around 1.6 million to two million.³⁹ I note also that while there is evidence of some recent ISKP activity in Parwan Province (it is suspected that in April 2022 two power pylons in Takhma area in Salang District were destroyed by ISKP explosives,⁴⁰ and as of June 2022 new areas of ISKP activity reportedly include Parwan),⁴¹ there is as yet little evidence of recent attacks upon Shia Hazara by ISKP or anyone else in the vicinity of [District 1].
63. On the current extent to which attacks are actually occurring against Shia Hazaras, and/or against persons who have returned after living and seeking asylum in a western country, and even allowing for the possibility that rather than returning to [District 1] the applicant might return to Kabul, and to [Town 2], and to [specified employment], it is not clear that the level of risk to the applicant currently rises to that of a real chance.
64. I am, however, mindful the developing situation is complicated, and that the future outlook for Shia Hazaras is more concerning than it was prior to the rapid Taliban takeover of 2021. Following that take-over, the Taliban have permitted the Shia community to perform their religious ceremonies, such as annual celebrations of the Ashura, and the Taliban leadership have publicly pledged to provide security to Shia places of worship to better protect these from ISKP attacks. It is also the case that the Taliban is itself opposed to ISKP, and that Taliban forces are actively seeking to eliminate ISKP. Even so, there are mixed views about the Taliban's level of commitment to protecting Shia Hazaras, and about the extent to which the Taliban leadership will continue to be able to exercise control over its forces at the local level; and it is a concern that ISKP attacks on Shia Muslims would appear to be occurring across a greater range of locations in recent years, and it is also a concern that the ISKP has recruited a number of its commanders and fighters from disgruntled factions of the Taliban (and that

³⁶ DFAT, "DFAT Thematic Report: Political & Security Developments in Afghanistan (August 2021 to January 2022)", 14 January 2022, 20220114090718; UNHCR, "Guidance Note on the International Protection Needs of People Fleeing Afghanistan - Update I", 14 February 2023, 20230220095752.

³⁷ EUAA, "Country Guidance: Afghanistan", January 2023, 20230130112357.

³⁸ Kittelson, S. "Afghanistan's Hazara minority increasingly fearful under Taliban", Al Monitor, 13 January 2023, 20230117113415.

³⁹ DFAT, "DFAT Thematic Report: Hazaras in Afghanistan", 8 February 2016, CIS38A8012186.

⁴⁰ EUAA, "Afghanistan - Security situation", 23 August 2022, 20220824095014.

⁴¹ EUAA, "Country Guidance: Afghanistan", January 2023, 20230130112357.

some connections may continue to exist between ISKP and some Taliban factions, notably the Taliban affiliated Haqqani Network).⁴²

65. DFAT has reported that multiple sources have emphasised the factional nature of the Taliban, with different sub-groups within the organisation competing for influence and control. It has also been observed that the Taliban's command-control structure, which proved effective for a fighting force, appears to be struggling to regulate the actions of tens of thousands of foot soldiers (and their regional commanders), and that this means that behaviour on the ground, including violence towards at-risk groups, may be inconsistent with proclamations from the central Taliban authorities, or may reflect local grievances.⁴³ It is also notable that after initial promises of greater moderation, the Taliban's increasing restrictions on the freedom of women, and of organised protest activity, have raised concerns about the durability of the Taliban's other promises, such as to protect the Shia Muslim minority.⁴⁴
66. While I would say this case is borderline, and while I have rejected most of the applicant's substantive claims, I am unable to say with confidence at this particular point in time that the risks to the applicant simply as a Shia Hazara are remote. As matters develop we may arrive at a moment when it can be said with confidence that a person of the applicant's circumstances would not face a real chance of serious harm either now or for the foreseeable future were he to return to Afghanistan. But taking into account concerns about the reasonably foreseeable future, I am satisfied that there is a real chance that the applicant will face serious harm in the form of a threat to his life or significant physical harassment or ill-treatment, for reasons of his being a Shia Muslim. I am satisfied that would involve systematic and discriminatory conduct amounting to persecution, and that the essential and significant reason the applicant would face this harm is his religion, which he cannot be expected to conceal such that he could not take reasonable steps to modify his behaviour in order to avoid a real chance of harm for this reason. Given, moreover, that the Taliban are now effectively in control of the whole of Afghanistan, and given that the real risk arises in part from my lack of confidence in the protection that the Taliban may provide from ISKP, and indeed from elements within the Taliban itself, I am not satisfied the applicant could obtain effective protection in Afghanistan, and I am satisfied the applicant would face a real chance of persecution in all areas of the country.
67. For the above reasons I am satisfied that the applicant has a well-founded fear of persecution.

Refugee: conclusion

68. 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*.

⁴² EUAA, "Afghanistan - Security situation", 23 August 2022, 20220824095014.

⁴³ DFAT, "DFAT Thematic Report: Political & Security Developments in Afghanistan (August 2021 to January 2022)", 14 January 2022, 20220114090718; see also: EUAA, "Afghanistan - Security situation", 23 August 2022, 20220824095014.

⁴⁴ UNHCR, "Guidance Note on the International Protection Needs of People Fleeing Afghanistan - Update I", 14 February 2023, 20230220095752.

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.

91W Evidence of identity and bogus documents

- (1) The Minister or an officer may, either orally or in writing, request an applicant for a protection visa to produce, for inspection by the Minister or the officer, documentary evidence of the applicant's identity, nationality or citizenship.
- (2) The Minister must refuse to grant the protection visa to the applicant if:
- (a) the applicant has been given a request under subsection (1); and
 - (b) the applicant refuses or fails to comply with the request, or produces a bogus document in response to the request; and
 - (c) the applicant does not have a reasonable explanation for refusing or failing to comply with the request, or for producing the bogus document; and
 - (d) when the request was made, the applicant was given a warning, either orally or in writing, that the Minister cannot grant the protection visa to the applicant if the applicant:
 - (i) refuses or fails to comply with the request; or
 - (ii) produces a bogus document in response to the request.
- (3) Subsection (2) does not apply if the Minister is satisfied that the applicant:
- (a) has a reasonable explanation for refusing or failing to comply with the request or producing the bogus document; and
 - (b) either:
 - (i) produces documentary evidence of his or her identity, nationality or citizenship; or

- (ii) has taken reasonable steps to produce such evidence.
- (4) For the purposes of this section, a person produces a document if the person produces, gives, presents or provides the document or causes the document to be produced, given, presented or provided.

...

91WA Providing bogus documents or destroying identity documents

- (1) The Minister must refuse to grant a protection visa to an applicant for a protection visa if:
 - (a) the applicant provides a bogus document as evidence of the applicant's identity, nationality or citizenship; or
 - (b) the Minister is satisfied that the applicant:
 - (i) has destroyed or disposed of documentary evidence of the applicant's identity, nationality or citizenship; or
 - (ii) has caused such documentary evidence to be destroyed or disposed of.
- (2) Subsection (1) does not apply if the Minister is satisfied that the applicant:
 - (a) has a reasonable explanation for providing the bogus document or for the destruction or disposal of the documentary evidence; and
 - (b) either:
 - (i) provides documentary evidence of his or her identity, nationality or citizenship; or
 - (ii) has taken reasonable steps to provide such evidence.
- (3) For the purposes of this section, a person provides a document if the person provides, gives or presents the document or causes the document to be provided, given or presented.

...