



Australian Government

Immigration Assessment Authority

Decision and Reasons

Referred application

AFGHANISTAN

IAA reference: IAA23/10598

Date and time of decision: 24 October 2023 09:52:00

R Mikhail, Reviewer

Decision

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

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

Background to the review

Visa application

1. The applicant, who claims to be a national of Afghanistan, lodged an application for a Temporary Protection Visa on 23 March 2017.
2. On 27 September 2023 a delegate of the Minister for Immigration refused to grant the visa on the basis that the applicant did not satisfy subsection 36(2) of the *Migration Act 1958*.

Information before the IAA

3. I have had regard to the material referred by the Secretary under s.473CB of the *Migration Act 1958*.

Protection visa assessment

4. Under s.36(2) of the Act, the criteria for the grant of a protection visa require that the applicant for the visa is a 'non-citizen in Australia'. This means that a protection visa may only be granted if the applicant is physically present in Australia.
5. The information provided by the Department specifies that the applicant is no longer in Australia. As such I am satisfied that the applicant is not a 'non-citizen in Australia' and so does not meet the requirements of s.36(2). The applicant does not satisfy the criteria for the grant of the visa.

Decision

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

Migration Act 1958

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 under the Refugees Convention as amended by the Refugees Protocol 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.

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