



**Australian Government**  

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**Immigration Assessment Authority**

**Decision and Reasons**

**Referred application**

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AFGHANISTAN

IAA reference: IAA16/00232

Date and time of decision: 01 July 2016 16:25:50

Denny Hughes, Reviewer

**Decision**

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

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

## Background to the review

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### Visa application

1. The referred applicant (the applicant) claims to be a citizen of Afghanistan. He applied for a Safe Haven Enterprise Visa (SHEV) [in] October 2015. A delegate of the Minister refused to grant the visa [in] May 2016.
2. The delegate accepted that the applicant was a Hazara Shia from Kabul, Afghanistan, however she rejected claims that the applicant had in the past been threatened by the Taliban. The delegate was not satisfied there was a real chance that the applicant would be targeted for harm in Kabul for reason of his race, religion, political opinion or membership of a particular social group. The delegate also found that there was no real risk of the applicant being significantly harmed in Kabul for any reason.

### Information before the IAA

3. I have had regard to the material referred by the Secretary under s.473CB of the *Migration Act 1958* (the Act).
4. No further information was obtained or received.

### Applicant's claims for protection

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5. The applicant's claims are contained in the information referred to the IAA. They can be summarised as follows:
  - He fears harm throughout Afghanistan on the basis of ethnicity as a Hazara and his religion as a Shia Muslim, either from the Taliban or other insurgent groups such as Daesh (Islamic State).
  - He fears harm on the basis of an imputed political opinion of opposition to the Taliban stemming from his time working at a [Business 1] that supplied [products] to the Afghan military. He fears that he will be a targeted man on return. The Taliban and are other insurgent groups are engaging in a violent armed conflict against the government, its international partners and civilians suspected of aiding the government, even if remotely.
  - He also fears harm as a member of particular social groups of 'western returnees' and 'returnees who have spent considerable time outside Afghanistan' and as a person who has sought asylum. He also fears harm from the Taliban if they find out his [Relative A] helped him escape Afghanistan.
  - He will be declared an infidel on return from the west and people will be suspicious of his of his motives for returning to Afghanistan. Extremist Sunni groups will believe he has become a Christian.
  - He will be denied access to services and an opportunity to earn a livelihood because of his race and religion. He will be seriously physically abused, killed or subjected to an extraordinary level of discrimination that will threaten his ability to subsist, or otherwise be significantly harmed if he is returned to Afghanistan.

- He has been mentally traumatised from the deaths of his parents and [Relative A] and he has not fully recovered.

## **Factual findings**

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### *Identity*

6. The applicant has provided copies of his Taskera. While there is some question of the provenance of the copies provided to the Department, the results of the Departmental assessment of these documents was inconclusive. On the basis of his Taskera, and the applicant's narrative of his life in Afghanistan, I am satisfied he is a Hazara male from Kabul, Afghanistan. There is no suggestion that the applicant has any right to enter and reside in any third country. I have assessed his claims against Afghanistan as his receiving country.

### *Early life in Afghanistan*

7. The applicant claims that he grew up in [his home village] in Kabul. The applicant has worked since he was a child, first selling items by the roadside and later as [an Occupation 1]. The applicant has worked at a number of different [businesses] during his time in Kabul.
8. His father worked as a [different occupation]. In 1993, when the applicant was around [age] years old, his father did not return from work. The applicant stated that the impact on him was significant, but he was saved by the love and care of his mother, however she too was killed by a [projectile] that hit their house when he was still quite young. The applicant was then raised by his [Relative A], who took care of him. He claims his [Relative A] was killed in the Ashura bombings in Kabul in 2011.
9. Since the time of the entry interview, the applicant has given a general, but otherwise consistent and plausible account of the disappearance of his father, and the death of his mother and [Relative A]. Those claims are consistent with country information about violence towards the Hazara Shia population prior to the Taliban being deposed in 2001, and more recent information of sporadic violence against Hazara Shia in Kabul, notably the attack against an Ashura temple in Kabul in 2011.<sup>1</sup>
10. I accept the applicant's account that his father is missing, presumed dead, and that his mother and [Relative A] were killed as claimed.

### *Claims related to employment*

11. One of the applicant's central claims stems from his time working for a large [Business 1] in [a location] in Kabul. The applicant claims this [Business 1] supplied [products] to [Afghan] military camps in Kabul.
12. According to his statement, the applicant was threatened and warned by two men to cease working for the [Business 1]. He initially thought they were disgruntled business competitors, as other employees had also been warned and came to the same conclusion. His employer was also a Tajik, and Sunni Muslim, and he thought no one would touch him. One morning his employer and another employee were kidnapped. Five days later, their bodies were found in [a place], about 15 minutes away the [Business 1]. The applicant also was told by a [worker] that

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<sup>1</sup> Department of Foreign Affairs and Trade (DFAT), "DFAT Country Information Report - Afghanistan September 2015", 18 September 2015, CISEC96CF13366; DFAT, "DFAT Thematic Report Hazaras in Afghanistan and Pakistan 26 March 2014", 26 March 2014, CIS2F827D91264.

the Taliban had come looking for him and other employees. They were not happy with the [Business 1] supplying [products] to the Afghan military camps and had ignored their warning. He knew he was in grave danger and decided to flee Afghanistan with the help of his [Relative A]. For the reasons given below, I have found this claim not to be credible. And I do not accept that the applicant's employer was killed or that the applicant was threatened with harm by the Taliban for working at the [Business 1].

## **Refugee assessment**

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13. 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**

14. 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.

15. In weighing the applicant's evidence I have been conscious of the trauma that he has experienced and the evidence on file from 2013 that the applicant had received counselling and treatment for that trauma. I have also weighed the evidence before the delegate of ongoing difficulties the applicant has experienced in Australia, including the circumstances that culminated in the cancellation of his [temporary] visa.

16. However, even having allowed for his health issues, I have significant concerns with the credibility and the plausibility of his evidence. A key concern for me is his failure to raise his claim relating to threats he received from the Taliban while working at a [Business 1] in Kabul until the SHEV application, in addition to other concerns I have with aspects of his evidence on these claims.

17. During the entry interview, the applicant was asked to provide reasons, in one or two sentences, why he left Afghanistan. The applicant indicated he had two main reasons. He first claimed that economically it was hard to live in Afghanistan and make a living. Secondly, he claimed he that if he had to go and work on the streets he would have been targeted the same

way his [Relative A] was – i.e. killed in a suicide bombing. He noted that responsibility for his [Relative A's] family fell on his shoulders, and he did not know who would take care of them.

18. In the entry interview, the applicant made no reference to harm he feared directly from the Taliban, nor of the claimed events at the [Business 1] that preceded his departure. In a statement to the Department, the applicant claimed that he was told to give just one or two brief sentences of his claims at the entry interview and that was the reason he could not explain that his fear was also due to threats from the Taliban. It is correct that the interviewer did ask that he keep his answer to one or two sentences. In this respect, I find it significant that his focus was on the economic situation and his obligation to his family and his fears that he would be harmed in a suicide bombing like his [Relative A].
19. The applicant also contended that his omission was due to the fact that he only answered the questions he was asked. While this could potentially explain the omission, this is not an accurate reflection of the interview. The applicant was asked two open questions towards the end of the interview relating to what he thinks would happen to him if returned to Afghanistan, and whether there was anything else he had not been asked about or any other information that he wished to tell the interviewer. The applicant responded that he did not have anything else to add, and that he thought the interviewer had asked all the questions he could think of.
20. I agree with the submission that there can be good reasons not to place undue weight on omissions at the entry interview, however it can be a relevant consideration when weighing an applicant's credibility, provided it is considered in its context. It is significant to me that in his later evidence, the applicant claimed that the events at the [Business 1] were the catalyst for his departure from Afghanistan. And yet those events formed no part of his claims in the entry interview, not even in a general sense. While he was asked to keep his earlier answers brief, he was also provided with adequate opportunities to summarise his claims and later expand on them at the end of the interview.
21. During the interview, the applicant did indicate that he sometimes has difficulty remembering details – as was evident in his discussion of the origin of copies of his Taskera – however he did not appear to be stressed by the questioning, or otherwise claim that he had difficulty giving evidence. I am satisfied the applicant was able to freely give evidence during the entry interview. Considering all the circumstances, I place significant weight on the applicant's omission of this claim at the entry interview.
22. In weighing the [Business 1] claims, I have also considered the applicant's evidence given during the SHEV interview. In this interview he claimed that he was threatened twice by the Taliban. The first time, two people threatened him in person. He was intimidated and told not to work for the [Business 1] because it was working for the government. The applicant indicated that he was not threatened directly on the second occasion, but had heard about the threat through the [worker] of the [Business 1]. He told them that people came to the [Business 1] and asked about his name. The [worker] explained to these men that there were a lot of employees ([number range]) and he did not know the person they asked about (being the applicant).
23. The applicant gave evidence that the [Business 1] was a large enterprise, with multiple shifts, running [number range] [appliances], and employing approximately [number range] people. He was asked how it would be possible that these people who allegedly threatened him would know his name, given the size of the [Business 1]. The applicant responded that he did not know.

24. The applicant was asked by the delegate why he did not leave the [Business 1] and find a new job at another [Business 1] given the threats. He claimed that the [Business 1] had a lot of jobs and high salaries, but after that he stopped working. When asked again why there was any reason he could not get a job at another [Business 1], he responded that the main reason was the salary.
25. The applicant was asked how long it was between him ceasing work at the [Business 1] and his departure from Afghanistan. He claimed that he did not remember exactly. When prompted to estimate, he indicated it was a week to a month, or more.
26. At the SHEV interview, the applicant was also asked about the entry interview. The delegate noted that he was asked to give short answers at the entry interview, and that he provided evidence of his claims relating to his family, but did not mention the claims relating to the [Business 1]. He responded that he was not questioned on this and that he only gave answers to the questions he was asked and not more. The delegate noted that he was asked why he left his country of nationality and noted his answers were about economic reasons, and his fear of working on the streets and being killed in the same way as his [Relative A]. She also noted that he was asked specifically if there were any armed groups operating in the area in which he lived, yet he made no mention of the Taliban or the threats he received.
27. The applicant responded that he was only asked whether the Taliban or other groups were active in his home area, which he confirmed was not the case. He also claimed that he did mention that there were risks in him going to work.
28. While I agree with the applicant that he was asked about whether armed groups were operating in his home area, and not his place of work, I nevertheless find it significant that this line of questioning did not prompt him to talk about his specific concerns with the Taliban at his place of work.
29. I also found the applicant's explanation for why he did not look to find work elsewhere to be unconvincing. If the applicant was in fact fearful of his life, I find it implausible that the higher salary at the [Business 1] would be his principal concern and he would not seek to find safer work closer to his home area.
30. A further concern for me was that he did not provide evidence of the disappearance and killing of his employer at the [Business 1] during the SHEV interview. While this may have been due to the way in which he was questioned, in the context of other unsatisfactory aspects of his evidence, I find its omission to be notable and another factor that gives me concern about the credibility of this claim.
31. Most critically for me, though, is the timing of the entry interview. It took place [in] February 2013, only a few months after the claims related to the [Business 1] took place in late 2012. If indeed these events were a major factor for why he decided to depart Afghanistan, I find it implausible that this would not be at the forefront of his claims during the arrival interview. The applicant was given several opportunities in the interview to raise this claim, but he did not, nor has he satisfied me why he did not so.
32. The applicant has been consistent about his work experience and I am prepared to accept that he worked for a [Business 1] that may provide goods to the Afghan military. However, given his omissions at the entry interview and my other concerns with his evidence, I find the claims of threats emanating from his work not to be credible and I do not accept that these events occurred. Individually, these concerns may not have led me to reject this claim, however

when considered cumulatively, they point to an untrue account. Accordingly, I find that there is no real chance of him being harmed on the basis of these claims should he return to Kabul.

### *Claims as a Hazara Shia*

33. The applicant also fears serious harm in Kabul and throughout Afghanistan as a Hazara Shia, from the Taliban, Islamic State (Daesh) and other insurgent groups.
34. As the Afghan Government does not have uniform and effective control throughout the country, the security situation remains volatile and uncertain in Afghanistan.<sup>2</sup> There are a number of areas in the country where there are credible risks, not only to Hazara Shia, but to other high profile groups, and Afghan citizens in a general sense.<sup>3</sup> The country information highlights threats posed by a number of AGEs, including the Taliban, and an evolving risk from Daesh (Islamic State).<sup>4</sup> Although in terms of Daesh, DFAT assesses that it has limited capacity and influence in the country and any risks associated with the group's activities are low.<sup>5</sup>
35. The situation is more stable in the applicant's home area of Kabul, and reports indicate the Government maintains effective control over the city.<sup>6</sup> While there is evidence of an ongoing insurgency in Kabul, the country information indicates that the focus of these attacks is not against Hazara Shia or other Afghan citizens, but instead has centred on high profile targets such as government institutions, political figures, the ANDSF, NATO-led and ISAF missions, other security forces, foreign missions, and international organisations.<sup>7</sup>
36. This is not to suggest there have been no incidents of violence and harm against Hazara Shia. In December 2011, a suicide bomber exploded a bomb among Shia worshipers celebrating Ashura at a Shia shrine in Kabul, killing over 80 people.<sup>8</sup> This is the same attack the applicant claims, and I accept, in which his [Relative A] was killed. However, country information indicates that with the exception of those travelling by road between Kabul and the Hazarajat, the incidence of inter-faith or inter-ethnic violence against Hazara Shia remains rare in Afghanistan.<sup>9</sup>
37. Country information does suggest that societal discrimination remains an issue for Hazara Shia in Afghanistan, however there is little or no evidence of official discrimination in the form of laws or government policies that discriminate against Hazara Shias, and what evidence there is of societal discrimination is low level and does not obviously limit the opportunities for them.<sup>10</sup> Reports are that the discrimination that does occur is generally a result of a positive preference for one's ethnic or religious group, rather than negative discrimination against others. And

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<sup>2</sup> DFAT, "DFAT Thematic Report – Hazaras in Afghanistan", 8 February 2016, CIS38A8012186, p.14; Afghanistan Analysts Network, "Hazaras in the Crosshairs? A scrutiny of recent incidents ", 24 April 2015, CXBD6A0DE5323.

<sup>3</sup> DFAT, "DFAT Country Information Report - Afghanistan September 2015", 18 September 2015, CISEC96CF13366; EASO, "Afghanistan Security Situation: EASO Country of Origin Information Report", 31 January 2015, CISEC96CF119; UNHCR, "UNHCR Eligibility guidelines for assessing the international protection needs of asylum-seekers from Afghanistan", 1 August 2013, CIS26045.

<sup>4</sup> DFAT, "DFAT Country Information Report - Afghanistan September 2015", 18 September 2015, CISEC96CF13366; EASO, "Afghanistan Security Situation: EASO Country of Origin Information Report", 31 January 2015, CISEC96CF1191, at p.38.

<sup>5</sup> DFAT, "DFAT Country Information Report - Afghanistan September 2015", 18 September 2015, CISEC96CF13366, at p.9.

<sup>6</sup> DFAT, "DFAT Thematic Report – Hazaras in Afghanistan", 8 February 2016, CIS38A8012186, p.6.

<sup>7</sup> EASO, "Afghanistan Security Situation: EASO Country of Origin Information Report", 31 January 2015, CISEC96CF1191, at p.34-37; DFAT, "DFAT Country Information Report - Afghanistan September 2015", 18 September 2015, CISEC96CF13366, p.9, 14-15.

<sup>8</sup> DFAT, "DFAT Thematic Report Hazaras in Afghanistan and Pakistan", 26 March 2014, CIS2F827D91264, at p.10.

<sup>9</sup> DFAT, "DFAT Country Information Report - Afghanistan ", 18 September 2015, CISEC96CF13366, p.11-12; DFAT, "DFAT Thematic Report – Hazaras in Afghanistan", 8 February 2016, CIS38A8012186, p.9-10.

<sup>10</sup> DFAT, "DFAT Thematic Report – Hazaras in Afghanistan", 8 February 2016, CIS38A8012186, p.9-10; DFAT, "DFAT Thematic Report Hazaras in Afghanistan and Pakistan 26 March 2014", 26 March 2014, CIS2F827D91264, at p.6-7.

while Hazara Shia can face this type of discrimination from other ethnic groups, these same groups can face similar discrimination in Hazara-dominated areas.<sup>11</sup> Other reports indicate greater representation of Hazara Shia in universities, government and other aspects of Afghan life.<sup>12</sup> Conversely, there is no support in the country information for the representative's claim that the applicant would be discriminated against or denied access to state protection or health care on the basis of his ethnicity or religion.<sup>13</sup>

38. While I accept that the applicant may encounter a degree of societal discrimination on return to Kabul as a Hazara Shia, I find that the discrimination in Kabul would be low level and infrequent. It follows that I reject his claims that he would face an extraordinary level of discrimination on return and that he would be unable to subsist or earn a livelihood.
39. While I have rejected the applicant's claims that he was targeted for harm by the Taliban for working at a large [Business 1] in Kabul in 2012, I have considered whether his time working for this [Business 1] in the past, or if he were to return to work there in the future, could result in him being harmed in the future. I have accepted that insurgent attacks against international and government targets continue in Kabul, and that people who are openly affiliated with the government or the international community by way of employment, public statements or other associations, face a high risk of being targeted by insurgents across Afghanistan.<sup>14</sup> However, reports indicate that within Kabul these targets are high profile – principally government officials and security personnel and not Afghan civilians.<sup>15</sup> I am not satisfied that a low level [Occupation 1], working in a large [Business 1] of [number range] people, would be targeted for harm by the Taliban or other insurgent groups because that [Business 1] provides [products] to the Afghan military. I find that association is too peripheral and tangential to give rise to the type of profile that the country information indicates would put him at a real chance or risk of harm. I find that if he continued to work for this [Business 1] in the future, he would not face a real chance of serious harm as a result of that employment.
40. On a separate and independent basis, I find that if the applicant subjectively feared harm on the basis of this employment, he could seek alternative employment as [an Occupation 1] elsewhere in Kabul. It is apparent from his evidence that the applicant could take reasonable steps to avoid harm – he is an experienced [Occupation 1] and has worked for a large number of [businesses] in the past. He indicated that the only impediment for not finding other work was the salary, but there would appear to be no impediment to him finding work with a [Business 1] that is closer to his home, provides a safer workplace and is not connected to a government or international organisation. If the applicant were to find work with another [Business 1], I find that the applicant would be taking reasonable steps to modify his behaviour to avoid a real chance of persecution. And I am satisfied this would not conflict with any characteristic that is fundamental to the applicant's identity or conscience, nor would it conceal an innate or immutable characteristic of the applicant, in any of the ways contemplated by s.5J(3) or otherwise.
41. In view of the above, I find that if the applicant were to return to live in Kabul there is not a real chance that the applicant would be harmed, whether singularly or cumulatively, on the basis of his ethnicity as a Hazara, his faith as a Shia Muslim, or through any actual or imputed political opinion that would arise from his religious and ethnic background or from his past or

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<sup>11</sup> DFAT, "DFAT Thematic Report – Hazaras in Afghanistan", 8 February 2016, CIS38A8012186, p.9-10.

<sup>12</sup> Lifos, "Hazaras in Afghanistan", 28 August 2015, CISEC96CF14239, at p.10.

<sup>13</sup> DFAT, "DFAT Thematic Report Conditions in Kabul - September 2015", 18 September 2015, CISEC96CF13367, at p.9.

<sup>14</sup> DFAT, "DFAT Thematic Report – Hazaras in Afghanistan", 8 February 2016, CIS38A8012186, p.13.

<sup>15</sup> EASO, "Afghanistan Security Situation: EASO Country of Origin Information Report", 31 January 2015, CISEC96CF1191, at p.37.

future employment. I also find that there is no real chance that he would be harmed for these reasons if he returned to live in Kabul.

*Claims relating to time in the west*

42. The applicant has claimed to fear harm as a result of his time in the west. He fears harm as a member of the particular social groups of 'western returnees' and 'returnees who have spent considerable time outside Afghanistan' and as a person who has sought and failed to obtain asylum. He also fears harm from the Taliban if they find out his [Relative A] helped him escape Afghanistan. He additionally claims extremist Sunni groups will believe he has become a Christian or he will be seen as an infidel, and people will be suspicious of his of his motives for returning to Afghanistan. For the following reasons I find there is no real chance of him being harmed for any of the reasons advanced.
43. According to the EASO, the current population of Kabul is somewhere between 3 and 7 million.<sup>16</sup> Kabul has experienced significant population growth over the last 15 years due to high numbers of refugees and internally displaced persons returning to the city.<sup>17</sup> Hazaras are the largest ethnic group in Kabul, and are estimated to make up approximately 40 to 50 percent of the population. This puts their numbers at close to two million people.<sup>18</sup>
44. DFAT advises that in part as result of Kabul's size and diversity, a returnee is unlikely to be discriminated against or subjected to violence on the basis of ethnicity or religion.<sup>19</sup> DFAT also indicates that while it is aware of reports of returnees from western countries alleging that they have been kidnapped or otherwise targeted on the basis of having spent time in a western country, in general, returnees from western countries to Kabul are not specifically targeted on the basis of their being failed asylum seekers.<sup>20</sup> While the country information clearly suggests there is a higher risk for individuals that have worked for, support or are associated with the international community, DFAT's assessment is that with exception of those travelling by road between Kabul and the Hazarajat, low-profile Hazaras who have spent time in western countries face a low risk of violence as a result of those international links.<sup>21</sup> The country information does point to difficulties returnees may have in employment and reintegration,<sup>22</sup> but I note that the applicant is someone who has spent a significant part of his life working in Kabul, and is a relatively recent departure from the city. I do not accept that he falls into the cohort of returnees that may experience difficulties reintegrating to life in Kabul or Afghanistan more generally.
45. In terms of his claims relating to religion, the applicant has not claimed to have abandoned his faith, nor is there any suggestion that he has become a Christian. This claim instead stems from a fear that he will be imputed to have abandoned his Shia faith or assumed a new one (Christianity) as a result of spending time in the west. As noted above, returnees are not targeted on the basis of their ethnicity or religion in Kabul.<sup>23</sup> There is no country information

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<sup>16</sup> EASO, "Afghanistan Security Situation: EASO Country of Origin Information Report", 31 January 2015, CISEC96CF1191, at p.35.

<sup>17</sup> DFAT, "DFAT Thematic Report Conditions in Kabul - September 2015", 18 September 2015, CISEC96CF13367, at p.5; EASO, "Afghanistan Security Situation: EASO Country of Origin Information Report", 31 January 2015, CISEC96CF1191, at p.35.

<sup>18</sup> DFAT, "DFAT Thematic Report Hazaras in Afghanistan and Pakistan 26 March 2014", 26 March 2014, CIS2F827D91264, at p.4. DFAT, "Thematic Report: Hazaras in Afghanistan", 8 February 2016, CIS38A8012186 at p.4.

<sup>19</sup> DFAT, "DFAT Country Information Report - Afghanistan", 18 September 2015, CISEC96CF13366, at p.23.

<sup>20</sup> DFAT, "DFAT Country Information Report - Afghanistan", 18 September 2015, CISEC96CF13366, at p.23-24.

<sup>21</sup> DFAT, "Thematic Report: Hazaras in Afghanistan", 8 February 2016, CIS38A8012186 at p.13.

<sup>22</sup> UK Home Office, "Country of origin information report Afghanistan", 8 May 2013, OGC0D145410.

<sup>23</sup> DFAT, "DFAT Thematic Report Conditions in Kabul - September 2015", 18 September 2015, CISEC96CF13367, at p.11-12.

before me that indicates a person who has spent time in the west would be imputed to be an infidel, to have abandoned their faith or become a Christian solely on the basis of returning to Afghanistan from the west or that they would face a real chance of harm on this basis.

46. The country information before me does not indicate that failed asylum seekers or returnees from the west (or those who have spent considerable time outside Afghanistan), including family members that assisted people to leave the country and apply for asylum, are being targeted for harm within Kabul. There is also no evidence to indicate low-profile individuals are viewed with suspicion, considered to be infidels or Christians, or otherwise subject to discrimination or violence as a result of them having spent time in western countries.<sup>24</sup>
47. I have weighed the country information before me, including that provided by the applicant and his previous representative, on the security situation in Kabul and Afghanistan, including travels warnings from the Australian and US authorities. While I accept there are ongoing security concerns in Kabul, I have found the applicant is a low-profile Hazara Shia that possesses no additional profile that would put him at risk of harm in the city. Instead, he would be one of many low-profile Hazara (and non-Hazara) people that have returned to Afghanistan to live in Kabul over the last decade or more.
48. The applicant's representative has made submissions on the applicant's mental health going towards the issue of character. The question of the applicant's character is not one that I can determine, and I note no specific protection claims have been advanced in relation to the applicant's mental health, apart perhaps from a claim of discrimination in access to health care – which I have not accepted. In the circumstances, I am not satisfied that the applicant would face a risk of harm on the basis of his mental health. I note that he would have the support of a family structure, including [Relative A's] and grandparents, on return to Kabul.
49. In view of the above, I find that the applicant has no specific profile as a Hazara, a Shia, a failed asylum seeker (including because his [Relative A] helped him escape Afghanistan), or a returnee from the west, which would cause him to face a real chance of harm if he returned to Afghanistan and lived in Kabul. I do not accept that he would be viewed as (or be imputed to be) an infidel, a Christian or that he would be otherwise be considered with suspicion. I have found that he has not changed his religious practices, and I do not accept that those views would be imputed to him simply on the basis that he has returned from the west. Again, in light of the large numbers of people returning to Kabul, both from in and outside of Afghanistan, I am not satisfied that the applicant would face a real chance of harm for any of these reasons, singularly or cumulatively, if he were to return to Kabul.

#### **Refugee: conclusion**

50. In view of the evidence and submissions before me, I find there is not a real chance the applicant would suffer serious harm in his home area in the reasonably foreseeable future from the Taliban, Daesh or any other insurgent group, on the basis of his ethnicity, his religion, his time the west, as a returnee from the west or a failed asylum seeker (including his information released in the data breach), or any political opinion imputed to him on the basis of his employment or for any other reason.

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<sup>24</sup> UNHCR, "UNHCR Eligibility guidelines for assessing the international protection needs of asylum-seekers from Afghanistan", 1 August 2013, CIS26045; UK Home Office, "Country of origin information report Afghanistan", 8 May 2013, OGCOD145410.

51. It follows that I find that the real chance of harm persecution does not relate to all areas of the receiving country and s.5J(1)(c) is not satisfied and the applicant does not have a well-founded fear of persecution in Afghanistan.
52. The applicant does not meet the requirements of the definition of refugee in s.5H(1). The applicant does not meet s.36(2)(a).

### **Complementary protection assessment**

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53. A criterion for a protection visa is that the applicant is a non citizen in Australia (other than a person who is a refugee) in respect of whom the Minister (or Reviewer) is satisfied Australia has protection obligations because there are substantial grounds for believing that, as a necessary and foreseeable consequence of the person being removed from Australia to a receiving country, there is a real risk that the person will suffer significant harm.

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

54. Under s.36(2A), a person will suffer 'significant harm' if:
- the person will be arbitrarily deprived of his or her life
  - the death penalty will be carried out on the person
  - the person will be subjected to torture
  - the person will be subjected to cruel or inhuman treatment or punishment, or
  - the person will be subjected to degrading treatment or punishment.
55. As detailed above, I have found that if the applicant were to return to Kabul there is not a real chance that he would be seriously harmed there for any of the reasons he has advanced. In light of the authority in *MIAC v SZQRB* (2013) 210 FCR 505, for the same reasons I am satisfied that there are not substantial grounds for believing that, as a necessary foreseeable consequence of the applicant's removal to Afghanistan, the applicant will face a real risk of being significantly harmed if he returns to his home area in Kabul, Afghanistan.

### **Complementary protection: conclusion**

56. There are not substantial grounds for believing that, as a necessary and foreseeable consequence of being returned from Australia to a receiving country, there is a real risk that the applicant will suffer significant harm. The applicant does not meet s.36(2)(aa).

### **Decision**

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

## Applicable law

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### ***Migration Act 1958***

#### **5 (1) Interpretation**

...

***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.

...