



**Australian Government**  

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**Immigration Assessment Authority**

**Decision and Reasons**

**Referred application**

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AFGHANISTAN

IAA reference: IAA18/05823

Date and time of decision: 30 January 2019 17:42:00

J McLeod, Reviewer

**Decision**

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

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

## Background to the review

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### Visa application

1. The referred applicant (the applicant) claims to be a Sunni Tajik male from Afghanistan's Ghazni Province. He arrived in Australia on [date] June 2013 and lodged an application for a Safe Haven Enterprise visa (SHEV) on 11 July 2017. A delegate of the Minister for Immigration and Border Protection (the delegate) interviewed the applicant on 19 June 2018. While the delegate accepted there was more than a remote chance that applicant would face serious and significant harm in Ghazni, she found he could reasonably relocate to Kabul to avoid the harm feared. She refused the grant of visa on this basis on 9 October 2018.

### Information before the IAA

2. I have had regard to the material given by the Secretary under s.473CB of the *Migration Act 1958* (the Act)(the 'review material'). This includes inter alia, country information and various pieces of supporting documentary evidence relating to the applicant's identity, his education and training, his and his father's association with [Not for Profit Organisation 1] and threat letters purportedly received from the Taliban.
3. On 2 November 2018 the IAA received a submission from the applicant's new representative. To the extent that the submission reiterates the information already before the delegate and contains arguments addressing the delegate's findings, I am satisfied it is not new information and I have had regard to it.
4. However the submission raises new claims that were not advanced in the SHEV process. The submission states the applicant is interested in pursuing work in an NGO (non-governmental organisation) in Afghanistan because he finds the work rewarding, it is the work he has grown to love, and he wishes to follow in his father's footsteps, but that it would not be possible for him to pursue this work in Afghanistan. The representative asserts that the submission (as a whole) contains credible personal information about the applicant which was not previously known and which would affect the applicant's claims, and that the applicant could not have provided the information earlier because it responds to, and clarifies issues raised in the delegate's assessment. However given the submission does not suggest the applicant's desire to pursue such work is a newfound one, I have difficulty accepting this issue has only arisen from the delegate's findings. I take into account that when the applicant was still at school in Afghanistan he showed interest in, and volunteered with, [Not for Profit Organisation 1], and that his father is still working in the organisation and would have connections in the field. I also take into account that the applicant was not specifically asked what he would do for employment upon return. However he was represented in the SHEV process and he was advised by the delegate in the SHEV interview that he may not get a further opportunity to present claims. When speaking about why he would be targeted upon return he referred only to his and his father's past experiences and his time in the west. He suggested the Taliban would find him through his family connections, or through a spy at the airport. He also said he could not do his work and his business in Afghanistan and noting that it was separately submitted at the end of the SHEV interview and in the post-interview submission that he wants to start his own business and that running his own business is his dream job, I am satisfied this is the work to which he was referring in those discussions. I take into account that the applicant may not have initially had work rights but since November 2014 he has worked in [a particular] industry and there is no further information or evidence to support that he has pursued this NGO or human rights work he claims to love in the five years he has been in Australia. I take into account also that the

applicant's situation in Australia and the needs of his community in Australia is different to the situation he would face in his community in Afghanistan, but nonetheless, there is no evidence to suggest he has engaged in any type of community engagement or volunteering, any type of political activism or sought out roles or connections with NGOs in the past five and a half years. There is a complete paucity of any demonstration of this interest and I find the new information to be unconvincing and not credible in the circumstances. Section 473DD(a) requires that new information must only be considered in exceptional circumstances and it is difficult for me to see what those exceptional circumstances may be. None have been pointed out to me and nor are any apparent on the material. I am not satisfied there are any exceptional circumstances to justify considering this new information.

5. The submission also summarises and references country information reports which were not before the delegate when the decision was made. It is new information. As above, it is asserted the submission contains credible personal information about the applicant which was not previously known and which would affect the applicant's claims, and that the information responds to and clarifies issues raised in the decision so it could not have been provided earlier. However all of the reports pre-date the decision by at least two and a half years with the publication dates ranging between 2012 to February 2016, and I consider the reports constitute general country information rather than credible personal information. I am not satisfied that s.473DD(b) is met. Furthermore, the applicant and his representative have not pointed to any exceptional circumstances and none are apparent to me. I note the applicant was represented in the SHEV process, that the delegate raised some country information with the applicant in the SHEV interview and that the applicant provided numerous country information reports to the delegate both before and after the SHEV interview. I identify nothing exceptional in the circumstances. I am not satisfied there are exceptional circumstances to justify considering this new information. I am not satisfied that s.473DD(a) is met.
6. Provided with the submission was a bundle of supporting documents, none of which amount to new information. Two of the documents appear to add to those given to the delegate, but on closer inspection I am satisfied that they are in fact copies of documents given to the delegate, albeit now omitting some text due to apparent subsequent water damage. There were also translations of documents included in the bundle that had not been given earlier but I am satisfied that translations of documents already before the delegate do not constitute new information under the Act. As such, I have had regard to all of the documents in this bundle.

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

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7. The applicant's claims can be summarised as follows:
  - He is a Sunni Muslim of Tajik ethnicity from [Village 1] just outside the Ghazni City centre.
  - He and his father worked in [a] department of [Not for Profit Organisation 1] which [conducts specified activities]. He travelled to different villages with his colleagues to [hold] gatherings to inform audiences about [specific] issues. He also worked on [related functions]. His father still works for [Not for Profit Organisation 1 in a certain role].
  - One day he received a call purportedly from the Islamic Emirate of Afghanistan (the Taliban). The caller accused him of engaging in conduct contrary to Sharia law and teaching infidelity, and engaging in anti-Jihad activities and cooperating with infidels. He

threatened he would be punished for his anti-Islamic activities. The applicant thought the call was a joke and did not take it seriously. He did not discuss it at home.

- A couple of days later an incident occurred ('the motorbike incident'). He was returning home when he noticed two people sitting on a motorbike in [a town]. They asked him to stop and confirmed his name. They said *"You infidels do not give up"* and one of them tried to take out a revolver. The applicant pushed him and ran to the police checkpoint at the outskirts of [a] military base. He entered the base and stayed for about two hours and preferring not to go home, he was taken to his sister's place. He told his father about the incident and they agreed he should leave Afghanistan for his own safety.
- When he departed Afghanistan, the Taliban demanded that his two younger brothers should join the jihad. His father sent them out of the country.
- His father receives protection from [Not for Profit Organisation 1], but the rest of the family cannot avail such protection.
- In [2016], some other [Not for Profit Organisation 1] employees were kidnapped by the Taliban on [a] Highway. [Also in] 2016, [Not for Profit Organisation 1]'s regional officer with whom the applicant used to work, was taken by the Taliban in [named] district. Other agencies in Ghazni province experience the same treatment. In [another] district five [workers] and the driver were abducted by the Taliban. These incidents are frequent, but many are not reported for privacy reasons.
- He fears that if returned he will be killed by militant groups (including Taliban, Daesh, Al Qaeda) because he refused to join the Taliban, his previous work with [Not for Profit Organisation 1] and his father's ongoing work, his residence in Australia/ a western country, because he is in the Tajik ethnic minority. He also fears being kidnapped for ransom.

## **Refugee assessment**

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8. 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**

9. 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.

#### *Identity/ Background*

10. In support of his identity claims, the applicant provided inter alia, purported copies of his Taskera he held as a child, a second Taskera he obtained more recently and his Afghan drivers licence. I share the delegate's concerns about the driver's licence given it indicates it was issued by an official in Paktika Province and the applicant's evidence at the SHEV interview was that he had never been anywhere in the country apart from Ghazni, Jalalabad and Kabul. Nevertheless, the applicant has given other supporting documentation and an otherwise convincing and consistent biographical narrative. While there are some anomalies with respect to his name and date of birth I accept the clarifications and explanations given. I accept the applicant's identity and Ghazni origin is as claimed. I find that Afghanistan is his receiving country and the Ghazni City area (which encompasses [Village 1]) is his home region, the place his family still reside and the place to which he would return.

#### *Risk arising from previous threats association with [Not for Profit Organisation 1]*

11. The applicant claims to fear harm on account of threats received from the Taliban stemming from his father's employment and his own voluntary work with [a]division of [Not for Profit Organisation 1]. He claims that his father was also threatened, and that after he left Afghanistan, the Taliban called and threatened his brothers who were studying in Jalalabad, demanding that since the applicant had not joined with them they must join instead. He claims his brothers left in fear for [Country 1] and the family has since lost contact with them.
12. The applicant claims that after he told his father about the motorbike incident and earlier phone threat his father revealed that he had also received Taliban warnings through some phone calls and a letter threatening to kill his son and the rest of the family if he did not stop working with the non-believers. He claims his father said he had not mentioned it earlier because he had not wanted to worry the family and he thought he was going to "sort it out". He claims his father told him he couldn't keep him safe and they agreed he would leave Afghanistan and the next morning he left for Kabul. The applicant claims his father also received further Taliban warnings/threats after he left Afghanistan and due to these threats, his family (his parents,[and some of his siblings]) are moving around Ghazni, not staying in one place for too long.
13. The applicant has provided what he claims are copies of four Taliban threat/warning letters given to his father, all of which address his father personally:
- The June 2012 letter accuses the applicant's father of organising un-Islamic [training] and demands that he stop.
  - The October 2012 letter accuses the applicant's father of, despite being warned previously, continuing his anti-Islamic [activities] against Sharia law and of serving Jews and Christians. It states he is not repentant and threatens that Allah willing, he and his children will face consequences and will "go to hill very soon".
  - The February 2016 letter states they had previously spoken to the applicant's father and sent a letter about his working at the "infidels NGO". It also states they had asked him to send his son (the applicant) to serve them but he escaped. They request the

applicant's father summon him, or that another of the sons be sent to join them immediately.

- The October 2016 letter accuses the applicant's father of "*always serving the infidel and also encouraging his son to follow his path*". It refers to their earlier failed request for the applicant's father to send him or another son to join the Mujahidin and states that he would be punished for his wrongdoing.

14. I accept the applicant's claims with regards to his father's employment and his own voluntary involvement in [Not for Profit Organisation 1], an NGO which as the delegate noted, works in [various] sectors and most relevantly to the applicant's circumstances, [conducts specified activities].

15. I accept the applicant's evidence that his father has worked [with Not for Profit Organisation 1] for more than 14 years, working five days a week, and that for much of this time he [acted in a specific role]. I accept the applicant's father is based in the office but I have some reservations about the applicant's claims that his is permanently in the office and does not go out on site or field visits. It does not seem plausible to me that [an officer in such a position] in a field office in Ghazni would not on occasion need to visit a project site, or attend another location in the course of their work. I consider the applicant has embellished on this aspect of his claims.

16. I accept the applicant's volunteering role involved doing some typing in the office and accompanying [staff] when they went to [deliver] sessions to civilians in other areas of Ghazni. I accept this often took place in schools or mosques and that the [topics] included inter alia, [specified topics]. I am satisfied on the evidence that the applicant's role in these scenarios was limited to observing, that he attended [Not for Profit Organisation 1] voluntarily when he "*felt like it*" outside of his school hours and that he did not carry any responsibilities.

17. Country information considered by the delegate including the United Nations High Commissioner for Refugees' (UNHCR's) 2013 and 2016 Eligibility Guidelines, the 2017 report from the Department of Foreign Affairs and Trade (DFAT) and the European Asylum Support Office's (EASO's) 2018 Country Guidance report for Afghanistan notes the existence of reports of Anti-Government Elements (AGEs) including the Taliban targeting civilians employed by international humanitarian and development agencies, as well as human rights defenders and others with international or government associations. Various EASO reports considered by the delegate indicate that the Taliban were highly active around Ghazni city when the applicant lived there and that they have maintained a presence there. It is plausible that the Taliban and other AGEs have targeted [Not for Profit Organisation 1] employees or employees of similar agencies.

18. However I have concerns with the veracity of the applicant's claims that this happened to him and his family.

19. I have difficulty accepting that as someone who grew up in an environment which, as noted above, had a highly active Taliban presence, and as someone whose father went to and from work under security escort and worked in a guarded building, and who himself volunteered in that guarded building, the applicant would have treated the phone threat as a joke and not mentioned it to his father. I also have some concerns about discrepancies between the applicant's accounts as to whether the motorbike incident occurred two days (as per his written statement of 1 June 2017) or two weeks (as per his evidence in the SHEV interview) after receiving the threatening phone call, and also as to whether he pushed the person and escaped as he was attempting to take out his gun (as per his written statement of 1 June 2017) or whether the gun was actually being pointed at him when he escaped (as per his evidence in the

SHEV interview). I also have some doubts about the plausibility of the applicant being able to escape by pushing the person with the gun.

20. The applicant's descriptions of the warnings/threats vacillate between the whether the Taliban were focussed on his involvement with [Not for Profit Organisation 1] or the fact that he hadn't joined them or both. While in his written claims the applicant stated his threatening phone call focused on his work with the infidels, it wasn't until the SHEV interview that he said they also asked him to join them. I have concerns about this earlier omission and find the applicant has painted a confused picture of the issues the Taliban took with him. I also have concerns with the plausibility of the Taliban trying to recruit the applicant in the same conversation (or in the same letter) that they were accusing him and threatening to harm him for doing un-Islamic activities and working with infidels, their enemies.
21. I have concerns too about the plausibility of the applicant's father reacting by immediately arranging for him to leave Ghazni and Afghanistan following the phone call and the motorbike incident but not making similar arrangements in respect of any other family members who, applicant claims (and the letters also suggest) were also being threatened. I note the father's comment about trying to 'sort it out' but there is no evidence before me of any protective or precautionary measures put in place for any other family members in the following two years. On the evidence, the only family members to leave the area after the applicant left were his brothers who went to Jalalabad and I am satisfied this was not for around two years after the applicant's departure and that they did not face problems in Ghazni in these intervening two years. I am satisfied that rather than leaving Ghazni for Jalalabad for safety reasons, they went there to undertake their tertiary studies.
22. Apart from the motorbike incident (which I have noted my other concerns about), there is no evidence to suggest that the Taliban took any steps to attempt to apprehend or physically harm the applicant, his father or any member of his family. I have difficulty accepting the Taliban issued repeated warnings/threats in the manner claimed and over the timeframe claimed without taking steps to carry out their threat, particularly as all their demands continued unmet.
23. I also have concerns about the evidence the applicant has given with respect to his brothers with whom he claims he has lost contact. In the SHEV interview the delegate noted the family appeared to be a close family and his brothers would likely have needed financial assistance in this time. She put to him that it was difficult to accept noting these factors, and especially in this age of social media, that the family do not know where his brothers are and have had no contact with them in the past few years. The applicant maintained that they had gone to [Country 1] and told their father from there that they did not want to come back. He said "*we don't know if they're alive or not*" or what might have happened to them. I have considered the applicant's responses but I concur with the sentiments the delegate expressed in the SHEV interview and I am unconvinced by the applicant's responses. While I accept his brothers are overseas, I do not accept they disappeared as the applicant claims and nor do I accept their absence resulted from them being targeted by the Taliban, or anyone.
24. While the applicant claims that in recent years his family have had to keep moving house to avoid the Taliban he confirmed at the SHEV interview that his father is still working at [Not for Profit Organisation 1] office in Ghazni and his younger brothers are still attending the same school. He said they are able to because they receive protection. However this is inconsistent with his claims and his purported letter from [Not for Profit Organisation 1] suggesting that only his father receives protection; not the other family members. I have concerns about this inconsistency and I also consider it implausible that the applicant's family would keep moving their residency but maintain other routines. The applicant claims the threat letters were not

delivered at home or to his father's workplace due to the security presence but were hand delivered to his father by unknown people when they saw him out in the city. This seems implausible to me but even in the event that this were true, I would still find the evidence concerning because it indicates to me that his father continued to go out and about and was able to be found by people acting for the Taliban but was not subject to any other action from them. I am satisfied that had they wanted to, the Taliban had opportunities to harm the applicant's father or other family members.

25. I am nonetheless prepared to accept the applicant's submissions that [Not for Profit Organisation 1] workers he knew and employees of other similar organisations have been targeted for kidnappings and other harm in Afghanistan. As noted by the delegate, sources such as DFAT, EASO and UNHCR have reported on the targeting of people with government or international associations. Given the longevity of the applicant's father's service in [Not for Profit Organisation 1] in Ghazni, I accept the Taliban may be aware of his father's work and I accept [Not for Profit Organisation 1] offers some limited protections to its employees. However given my numerous concerns with the inconsistencies and implausibilities outlined above, I am not satisfied that the applicant's claims of his being targeted by the Taliban for his [Not for Profit Organisation 1] work/association or for his father's role and association with [Not for Profit Organisation 1] are credible. I do not accept that the applicant received a threatening phone call or that the motorbike incident occurred. I do not accept his father and family have been receiving threatening phone calls and letters, that they have had to move houses, or that his brothers went to Jalalabad and left the country because they were being threatened by the Taliban. I do not accept the applicant is of adverse interest to the Taliban for these claimed reasons.
26. Given my findings in the preceding paragraph, the limited and irregular nature of the applicant's volunteering with [Not for Profit Organisation 1] and that around six years have passed since he was last in Afghanistan and was engaged with [Not for Profit Organisation 1], I do not accept there is a real chance the applicant would be identified as having been associated with [Not for Profit Organisation 1] and will be harmed on this basis, nor for his familial connection to this father. I do not accept there is a real chance of the applicant facing harm due to his past association or his father's ongoing association with [Not for Profit Organisation 1].
27. I have considered what the applicant would do on return to Ghazni and I take into account that he has previously volunteered with [Not for Profit Organisation 1] and that his father still works and has connections there. I also take into account that when asked what he would have studied if he had gone on a student visa to [Country 1], he said he would probably have studied [either of two academic disciplines] (like his father). However he made no indication that he would (or that he would be afraid to) try to get work in [Not for Profit Organisation 1] or something similar upon return and in his five and a half years in Australia he has worked only in [a certain] industry and has shown no inclination to engage in any type of community engagement or volunteering, development or human rights issues or any type of political activism, nor has he sought out roles or connections with NGOs. It was submitted that he wants to run his own business and that that would be his dream job. I take into account that the applicant's situation in Australia and the needs of his community in Australia is different to the situation he would face in his community in Afghanistan but even so, he has not claimed he would return to [Not for Profit Organisation 1] or anything similar. There is no evidence of his having any ongoing contacts with the organisation and nothing to suggest he would be offered any sort of role in the agency, nor any similar ones in the reasonably foreseeable future. It is at best speculative for me to find that he would seek out such work. I am not satisfied that he would, or that his not doing so would be out of a fear of persecution.



*Risk arising from attempted recruitment*

28. Country information from EASO reports that were before the delegate does support claims about the Taliban putting pressure on families to provide members in certain regions. It also indicates that the prevalence of forced recruitment strategies is directly proportionate to the level of pressure being faced by the armed group, that the Taliban was facing increased pressure in 2012 and that they were highly active around Ghazni city. It is not implausible that the Taliban was pressuring young men in the applicant's area to join their cause.
29. However as above, I have numerous concerns with the credibility of the applicant's claims including inter alia, his delay in raising any claims with regard to Taliban recruitment, the confused evidence he gave vacillating between the reasons for the Taliban interest in him, and about the plausibility of their wanting him to join whilst at the same time threatening him for being an infidel. My concerns outlined above with his claims regarding the phone call and motorbike incident and about the other evidence he gave in relation to their threats and threat letters are also of concern here. I am not willing to extend the applicant the benefit of the doubt on his recruitment claims. For the reasons outlined above, I do not accept his claims regarding the attempts to recruit him, nor that there were consequential threats for his resistance. Given this I do not accept the applicant will face a real chance of harm arising from any previous resistance to joining the Taliban.
30. I have nonetheless considered the risk of forced recruitment or repercussions arising from attempts to recruit him upon return. However while the applicant indicates the family are worried about his younger brothers, there is nothing to suggest any approaches or attempts have been made by the Taliban to recruit them and country information also does not support that the Taliban's recruitment practises in the applicant's home area are such that it would indicate a real chance of the applicant being targeted upon return.
31. UNHCR's 2013 reporting indicated that in areas where AGEs exercise effective control over territory and the population, they are reported to use a variety of mechanisms to recruit fighters, including recruitment mechanisms based on coercive strategies and that persons who resist recruitment, and their family members, are at risk of being killed or punished. While the Taliban is active in the applicant's home area and sources including consecutive years reports from EASO covering 2015 - 2018, and 2017 reporting from the Afghanistan Analysts Network and the Long War Journal the delegate considered indicate there have been several attacks conducted by anti-government elements (AGEs), primarily the Taliban, in Ghazni city in recent years, the information before me does not indicate they exercise effective control over Ghazni city and nor am I satisfied they will do so in the reasonably foreseeable future. The information before me also does not indicate that there is systematic or widespread forced recruitment in Ghazni city or other parts of Ghazni province.
32. In 2016 EASO's Recruitment by Armed Groups report noted that in Afghan social structures, decisions to mobilise fighters is made by heads of families, tribal elders and community leaders as Afghan culture defers to collective rather than individual rights. Such decisions are perceived as legitimate and accepted by the social units (family and tribe). Similarly, the Taliban may use coercion, financial inducements or other inducements such as weapons or cars to encourage 'voluntary' recruitment. This information was published in 2016 however it is not contradicted by other more recent sources and I am not, on the evidence, satisfied that the instance of forcible recruiting has increased in Ghazni city, or more broadly in the province. Furthermore, EASO reported in its 2018 Country Guidance report that the Taliban have no shortage of volunteers/recruits and only make use of forced recruitment in exceptional cases, such as if they need a person's specific skillset or military background, or if they are in situations of acute

pressure. Given this, I consider the chances of the applicant being sought by them to be remote. I am satisfied that forcible recruitment is not widely used by the Taliban and that other methods are more likely to be deployed. Even taking into account that he would be a young male of fighting age, I am not satisfied that the applicant faces any more than a remote chance of being forcibly recruited or facing harm from resisting recruitment now or in the foreseeable future.

#### *Risks arising from ethnicity*

33. I accept the applicant is a Sunni Muslim of Tajik ethnicity. The applicant claims he will be harmed because Tajiks are in the ethnic minority and are being targeted by the Taliban. He has submitted a paper by Graeme Swincer of the Blue Mountains Refugee Support Group titled "*Tajiks and their security in Afghanistan*" ('the Swincer paper').
34. Tajiks make up a significant proportion of the population of Afghanistan. According to 2017 reporting from DFAT and the Norwegian Afghanistan Committee they are the second largest ethnic group in Afghanistan, comprising 25 or 30% of the population. EASO's December 2017 report on the Afghanistan security situation describes Ghazni as being culturally diverse, with the largest groups being Pashtuns and Hazaras, with a small Tajik population concentrated in Ghazni city. The Swincer paper and other sources before the delegate indicate there has been some discrimination and historical violence against the Tajik community in Afghanistan and that there are security concerns at the Tajikistan-Afghanistan border. However I have not accepted the applicant's claims of previously being targeted by the Taliban and he has not raised any other claims of personal experiences of racial discrimination or violence. There is also no evidence in the country information of people of Tajik ethnicity being recently targeted in Ghazni or elsewhere in Afghanistan. There is no indication in the information before me that Tajiks (or Tajik Sunnis) are targeted for serious harm on the basis of their ethnicity and/or their religion.
35. There is also no evidence of any official policy of discrimination on the basis of ethnicity, with ethnic minorities having their own media outlets, political parties and politically active representatives. DFAT (2015, 2016, 2017) notes evidence of ethnic based societal discrimination at a community level but according to 2017 reporting from Minority Rights International and the Norwegian Afghanistan Committee, traditionally, Tajiks have dominated the bureaucracy and elite groups. I accept that being one in a small population of Tajiks in Ghazni City the applicant may face some discrimination, but the evidence does not indicate it manifests in a way that amounts to serious harm. In view of the information before me, I am satisfied the applicant does not face a real chance of serious harm as a Tajik or Tajik Sunni in Afghanistan.

#### *Risks for returnees*

36. I have given consideration to the applicant's return after seeking asylum in Australia/the west and I note the comments given by himself and his representative in the SHEV interview that people may perceive that he is an informer, a kafir, a non-believer. The applicant's representative submitted that the applicant's adjustment to a western-lifestyle will be evident, including through his appearance and his way of talking and the fact that he speaks English. The applicant has also raised concerns regarding [social media] posts revealing his whereabouts and western connections.
37. UNHCR's 2016 report and DFAT's 2017 report considered by the delegate reported on risks to returnees with international or government associations as being 'high', however the UNHCR stated this depends on individual circumstances and DFAT noted only occasional reports of returnees from western countries (including two Hazaras from Australia in 2014) allegedly being targeted for having spent time in a western country. However unlike the applicant who is Tajik

and Sunni, these incidents involved persons of Hazara ethnicity and there are no such reports of targeting against Tajik returnees, nor are there any more recent reports of reports of individual returnees from Australia being targeted since the two incidents in 2014.

38. EASO's 'Individuals targeted under societal and legal norms' report of December 2017 also contains information from reliable and authoritative sources relevant to this matter. In August 2017, the International Organisation for Migration's (IOM's) national programme manager on return, reintegration and resettlement told EASO that based on his work with other 20 000 Afghan returnees from Europe and Australia, IOM has not documented state or non-state targeting of Afghan returnees due to 'Westernisation' or time spent abroad. IOM has indicated that contrary to recent reporting about the killing of a deportee from Germany in April-May 2017, the incident 'has not been confirmed by any reliable sources'. Similarly, in December 2017 EASO noted it was unable to locate any corroborating information regarding a claimed targeted killing of a returnee from Norway and nor was there any corroborating information in any other sources before me. EASO also referred to some other incidents reported by the UNHCR, the Refugee Support Network and the Guardian however I am satisfied those incidents involved mostly younger returnees with and in particular circumstances which I do not accept are reflective of the applicant's.
39. EASO's Afghanistan Country Guidance report of June 2018 considered by the delegate notes that Afghans identifying with western values may be targeted by insurgent groups, since they can be perceived as un-Islamic, or pro-government, or can be considered spies but that very few incidents related to westernisation are reported. EASO reports that in general, the risk of persecution for men perceived as westernised is minimal and dependent on the specific individual circumstances.
40. The applicant is still young, being only [age] years old, but he has only spent the last five of these years in Australia/a western country. I am satisfied he would be returning to Afghanistan with knowledge and personal experience of Afghan culture. I do not consider he would have lost his knowledge and practise of his Afghan culture in these years in Australia to any large extent and there is no indication before me that the applicant has changed his religion. The evidence before me does not indicate the applicant has foreign or western mannerisms that would reveal his residence in a western country or would otherwise place him at risk upon return. I have not accepted he would seek out work with [Not for Profit Organisation 1] or similar organisations upon return, and that he would not be returning as someone wanted by the Taliban or any group stemming from his [Not for Profit Organisation 1] volunteering, or even his father's role, nor for resisting recruitment. I also do not accept his return from the west would impute him with any such profile, nor as a spy or as someone who is un-Islamic.
41. I note the concern about his speaking English and about posts on [social media] revealing his whereabouts, but even so, I do not accept these factors, even when taken cumulatively, will lead to the applicant being targeted for his western connections. Overall, the country information does not indicate there is systematic targeting of returnees in Afghanistan, including those who return from Australia, those with western clothing or mannerisms or who are failed asylum seekers. It does not indicate they are targeted due a perception that they are infidels or spies. I am satisfied that the chance of the applicant being harmed on account of being a returnee asylum seeker from the west - nor for any related opinion or profile is remote and therefore not real.
42. While the information does not indicate that a failure to do so would lead to a real chance of harm, I have considered that EASO's December 2017 report suggests that returnees adjust their behaviour and that DFAT advises that most returnees take measures to conceal their association

with the country from which they have returned, and keep a low profile on return. I have no reason to conclude the applicant would not also act in this manner upon return. I am satisfied he would adjust his approach and behaviour in line with the context and environment to which he returns. I am satisfied that the applicant's adjustment of approach and behaviour would involve taking reasonable steps to modify his conduct to avoid any future chance or risk of harm, for example through not openly discussing his time in Australia, by taking steps to protect any documentation or history that may link him to Australia or the west, or in dressing and acting in a way that is more consistent with other Afghans, and speaking Dari or Pashto. I note in this respect that I have found the applicant would have sufficiently retained his cultural identity and will sufficiently re-adapt to cultural and linguistic practises upon return. As for his [social media account] and any other social media profile/s, given the applicant has articulated that he has fears about his pictures being on [social media account] and that the Taliban may find him through his [social media account], I am satisfied he would manage his [social media account] and other relevant accounts by removing information and photos he is concerned about or would otherwise change his location and security and privacy settings so that only chosen trusted people could view his profile and/or so that the viewable information and pictures did not reveal overt western connections. I consider that for the applicant, taking such steps would be reasonable and relatively minor inconveniences. I consider that for the applicant, taking such steps to modify his behaviour to avoid what I consider to be an already remote chance of persecution for reasons of his links with Australia and the west, his asylum claim and western influences or experiences and any related profile would be reasonable and would not in themselves expose him to a real chance of harm of any kind. I am not satisfied that they would compromise an innate or immutable characteristic or a characteristic fundamental to his identity or conscience, or that this would amount to a modification that falls within any other s.5J(3) limitation.

43. Country information indicates that most returnees are returned to Kabul airport and I accept the applicant may need to wait briefly in Kabul for his onward transport to Ghazni City. I am satisfied on the basis of country information that was before the delegate that there is a strong military presence in Kabul and the city remains under the effective control of the Afghan government, and that this is likely to remain the case in the reasonably foreseeable future. The security situation on the roads in Afghanistan generally remains an issue due to lawlessness and criminal activity and en route to Ghazni, the applicant would pass through areas where there have been incidents of abduction targeting civilians. However there is no evidence of returnees being targeted on the relevant roads since 2014 and as DFAT and EASO have noted some of these issues can be attributed to land and resource disputes between locals. I am satisfied that these circumstances are distinct from those of the applicant, who would only be briefly travelling through a number of areas on the way to Ghazni City. I am satisfied that the applicant was not of personal interest to the Taliban (or anyone) when he left the country and I am satisfied, taking into account the applicant's personal profile and relevant country information, that the chance that the applicant would be harmed in or around Kabul during any brief stay, or on his single return trip to the Ghazni City area is remote.
44. I have considered the general security situation in and around Ghazni City. Insurgent attacks have occurred in and around Ghazni City including recently and given the city's strategic importance for both the Taliban and the government and international forces, I accept they will continue to some extent. However the information in the EASO reports considered by the delegate, the DFAT reports and other sources including those referenced by the applicant, indicates that the primary targets of Taliban and insurgent attacks are the military, police, government officials and people associated with the international community, and civilian groups such as human rights defenders, journalists, lawyers and judges, aid workers and civil servants and I am not satisfied the applicant holds any of these profiles or that he would seek to.

I take into account that the applicant's father still works at [Not for Profit Organisation 1] so he may be in some proximity to [Not for Profit Organisation 1] or similar workers, or to the building itself. However even so, I find the chance the applicant would be harmed as a bystander, inadvertently getting caught up in attacks against the [Not for Profit Organisation 1] or [Not for Profit Organisation 1] personnel, or against any other target, or otherwise through generalised violence is remote. I am not satisfied that the applicant faces a real chance of harm in the foreseeable future from the Taliban or other insurgent groups due to the general security situation in his home area. Also, even taking into account that I accept insurgent-government/international forces clashes will continue in the area and road closures may sporadically occur, I find the chance that the applicant could not access his home area due to such factors is remote.

45. As for criminality, I accept that all of Afghanistan is affected by crime and that police capacity to maintain law and order is constrained by a lack of resources, and equipment, poor training, low education levels and corruption. The applicant's representative has submitted that the applicant's family's comfortable financial position and the applicant's return from a western country will of themselves make him a kidnapping target. However there is no indication before me that the applicant or any of his family members have ever previously targeted for money and country information does not indicate that there is systematic targeting of persons for ransom money, and in any case, I consider the chance that the applicant's financial position would be apparent is remote. Furthermore, I am satisfied that the applicant's familiarisation with Afghan culture will be conducive to his integration and his ability to take reasonable precautions consistent with those taken by other ordinary civilians in Afghanistan which would not amount to precluded modifications of behaviour. Considering all of this, I am not, on the evidence, satisfied that the applicant would face a real chance of harm in Afghanistan as a consequence of criminality.
46. I am also satisfied that any harm the applicant may possibly face in relation to generalised violence or criminality would not be for the essential and significant reason or reasons of his race, religion, nationality, membership of a particular social group or political opinion, but rather a consequence of any ongoing insurgency or insecurity present in the country overall. Accordingly, s.5J(1)(a) and 5J(4)(a) of the Act would also not be satisfied.

#### **Refugee: conclusion**

47. I have found the applicant's claims of previous problems and threats from the Taliban are not credible and that he would not be of any adverse interest to the Taliban or to any insurgents upon return. While the applicant may face some discrimination as a Tajik in Ghazni city I am not satisfied it would amount to or lead to serious harm and I am not satisfied there is a real chance that the applicant would face harm for any other reason. I find that the applicant, a Sunni Tajik [male] who has sought asylum in and lived in Australia/the west does not face a real chance of persecution in Afghanistan now, or in the reasonably foreseeable future. I also find there is no real chance of the applicant facing harm arising from generalised violence or criminality in or returning to his home area.

#### **Refugee: conclusion**

48. 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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49. 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**

50. 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.

51. I accepted he may face some discrimination upon return. However I am satisfied that it would not amount to serious harm and similarly, I am satisfied that any such discrimination would not manifest in any way that would result in a real risk of his facing harm amounting to significant harm as defined for the purposes of s.36(2A).

52. I have otherwise found the applicant would not face a real chance of harm on return – not for any reasons relating to his individual profile and circumstances, nor in the course of generalised violence, or any criminal incidents. For the same reason, and noting the reasonable steps and precautions I found the applicant would take consistent with other Afghans including returnees, I am not satisfied he faces a real risk of harm, including significant harm. Further I am also satisfied that the risks arising from the general security situation and crime in Afghanistan are risks are faced by the population of the country generally and are not faced by the applicant personally, and as such under s.36(2B)(c) there would be taken not to be a real risk that the applicant will suffer significant harm in Afghanistan.

53. Given that I have found there is no real risk of the applicant facing significant harm in his home area including when returning there, I have not considered, as the delegate did, whether the applicant could reasonably locate to Kabul.

### **Complementary protection: conclusion**

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

## **Decision**

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

## Applicable law

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

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

In this Act, unless the contrary intention appears:

...

***bogus document***, in relation to a person, means a document that the Minister reasonably suspects is a document that:

- (a) purports to have been, but was not, issued in respect of the person; or
- (b) is counterfeit or has been altered by a person who does not have authority to do so; or
- (c) was obtained because of a false or misleading statement, whether or not made knowingly

...

***cruel or inhuman treatment or punishment*** means an act or omission by which:

- (a) severe pain or suffering, whether physical or mental, is intentionally inflicted on a person; or
- (b) pain or suffering, whether physical or mental, is intentionally inflicted on a person so long as, in all the circumstances, the act or omission could reasonably be regarded as cruel or inhuman in nature;

but does not include an act or omission:

- (c) that is not inconsistent with Article 7 of the Covenant; or
- (d) arising only from, inherent in or incidental to, lawful sanctions that are not inconsistent with the Articles of the Covenant.

...

***degrading treatment or punishment*** means an act or omission that causes, and is intended to cause, extreme humiliation which is unreasonable, but does not include an act or omission:

- (a) that is not inconsistent with Article 7 of the Covenant; or
- (b) that causes, and is intended to cause, extreme humiliation arising only from, inherent in or incidental to, lawful sanctions that are not inconsistent with the Articles of the Covenant.

...

***receiving country***, in relation to a non-citizen, means:

- (a) a country of which the non-citizen is a national, to be determined solely by reference to the law of the relevant country; or
- (b) if the non-citizen has no country of nationality—a country of his or her former habitual residence, regardless of whether it would be possible to return the non-citizen to the country.

...

***torture*** means an act or omission by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person:

- (a) for the purpose of obtaining from the person or from a third person information or a confession; or
- (b) for the purpose of punishing the person for an act which that person or a third person has committed or is suspected of having committed; or
- (c) for the purpose of intimidating or coercing the person or a third person; or
- (d) for a purpose related to a purpose mentioned in paragraph (a), (b) or (c); or
- (e) for any reason based on discrimination that is inconsistent with the Articles of the Covenant;

but does not include an act or omission arising only from, inherent in or incidental to, lawful sanctions that are not inconsistent with the Articles of the Covenant.

...

#### **5H Meaning of refugee**

(1) For the purposes of the application of this Act and the regulations to a particular person in Australia, the person is a refugee if the person:

- (a) in a case where the person has a nationality—is outside the country of his or her nationality and, owing to a well-founded fear of persecution, is unable or unwilling to avail himself or herself of the protection of that country; or
- (b) in a case where the person does not have a nationality—is outside the country of his or her former habitual residence and owing to a well-founded fear of persecution, is unable or unwilling to return to it.

Note: For the meaning of ***well-founded fear of persecution***, see section 5J.

...

### 5J Meaning of well-founded fear of persecution

- (1) For the purposes of the application of this Act and the regulations to a particular person, the person has a well-founded fear of persecution if:
  - (a) the person fears being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion; and
  - (b) there is a real chance that, if the person returned to the receiving country, the person would be persecuted for one or more of the reasons mentioned in paragraph (a); and
  - (c) the real chance of persecution relates to all areas of a receiving country.

Note: For membership of a particular social group, see sections 5K and 5L.
- (2) A person does not have a well-founded fear of persecution if effective protection measures are available to the person in a receiving country.

Note: For effective protection measures, see section 5LA.
- (3) A person does not have a well-founded fear of persecution if the person could take reasonable steps to modify his or her behaviour so as to avoid a real chance of persecution in a receiving country, other than a modification that would:
  - (a) conflict with a characteristic that is fundamental to the person's identity or conscience; or
  - (b) conceal an innate or immutable characteristic of the person; or
  - (c) without limiting paragraph (a) or (b), require the person to do any of the following:
    - (i) alter his or her religious beliefs, including by renouncing a religious conversion, or conceal his or her true religious beliefs, or cease to be involved in the practice of his or her faith;
    - (ii) conceal his or her true race, ethnicity, nationality or country of origin;
    - (iii) alter his or her political beliefs or conceal his or her true political beliefs;
    - (iv) conceal a physical, psychological or intellectual disability;
    - (v) enter into or remain in a marriage to which that person is opposed, or accept the forced marriage of a child;
    - (vi) alter his or her sexual orientation or gender identity or conceal his or her true sexual orientation, gender identity or intersex status.
- (4) If a person fears persecution for one or more of the reasons mentioned in paragraph (1)(a):
  - (a) that reason must be the essential and significant reason, or those reasons must be the essential and significant reasons, for the persecution; and
  - (b) the persecution must involve serious harm to the person; and
  - (c) the persecution must involve systematic and discriminatory conduct.
- (5) Without limiting what is serious harm for the purposes of paragraph (4)(b), the following are instances of **serious harm** for the purposes of that paragraph:
  - (a) a threat to the person's life or liberty;
  - (b) significant physical harassment of the person;
  - (c) significant physical ill-treatment of the person;
  - (d) significant economic hardship that threatens the person's capacity to subsist;
  - (e) denial of access to basic services, where the denial threatens the person's capacity to subsist;
  - (f) denial of capacity to earn a livelihood of any kind, where the denial threatens the person's capacity to subsist.
- (6) In determining whether the person has a **well-founded fear of persecution** for one or more of the reasons mentioned in paragraph (1)(a), any conduct engaged in by the person in Australia is to be disregarded unless the person satisfies the Minister that the person engaged in the conduct otherwise than for the purpose of strengthening the person's claim to be a refugee.

### 5K Membership of a particular social group consisting of family

For the purposes of the application of this Act and the regulations to a particular person (the **first person**), in determining whether the first person has a well-founded fear of persecution for the reason of membership of a particular social group that consists of the first person's family:

- (a) disregard any fear of persecution, or any persecution, that any other member or former member (whether alive or dead) of the family has ever experienced, where the reason for the fear or persecution is not a reason mentioned in paragraph 5J(1)(a); and
- (b) disregard any fear of persecution, or any persecution, that:
  - (i) the first person has ever experienced; or



- (ii) any other member or former member (whether alive or dead) of the family has ever experienced;

where it is reasonable to conclude that the fear or persecution would not exist if it were assumed that the fear or persecution mentioned in paragraph (a) had never existed.

Note: Section 5G may be relevant for determining family relationships for the purposes of this section.

#### **5L Membership of a particular social group other than family**

For the purposes of the application of this Act and the regulations to a particular person, the person is to be treated as a member of a particular social group (other than the person's family) if:

- (a) a characteristic is shared by each member of the group; and
- (b) the person shares, or is perceived as sharing, the characteristic; and
- (c) any of the following apply:
  - (i) the characteristic is an innate or immutable characteristic;
  - (ii) the characteristic is so fundamental to a member's identity or conscience, the member should not be forced to renounce it;
  - (iii) the characteristic distinguishes the group from society; and
- (d) the characteristic is not a fear of persecution.

#### **5LA Effective protection measures**

- (1) For the purposes of the application of this Act and the regulations to a particular person, effective protection measures are available to the person in a receiving country if:
  - (a) protection against persecution could be provided to the person by:
    - (i) the relevant State; or
    - (ii) a party or organisation, including an international organisation, that controls the relevant State or a substantial part of the territory of the relevant State; and
  - (b) the relevant State, party or organisation mentioned in paragraph (a) is willing and able to offer such protection.
- (2) A relevant State, party or organisation mentioned in paragraph (1)(a) is taken to be able to offer protection against persecution to a person if:
  - (a) the person can access the protection; and
  - (b) the protection is durable; and
  - (c) in the case of protection provided by the relevant State—the protection consists of an appropriate criminal law, a reasonably effective police force and an impartial judicial system.

...

#### **36 Protection visas – criteria provided for by this Act**

...

- (2) A criterion for a protection visa is that the applicant for the visa is:
  - (a) a non-citizen in Australia in respect of whom the Minister is satisfied Australia has protection obligations because the person is a refugee; or
  - (aa) a non-citizen in Australia (other than a non-citizen mentioned in paragraph (a)) in respect of whom the Minister is satisfied Australia has protection obligations because the Minister has substantial grounds for believing that, as a necessary and foreseeable consequence of the non-citizen being removed from Australia to a receiving country, there is a real risk that the non-citizen will suffer significant harm; or
  - (b) a non-citizen in Australia who is a member of the same family unit as a non-citizen who:
    - (i) is mentioned in paragraph (a); and
    - (ii) holds a protection visa of the same class as that applied for by the applicant; or
  - (c) a non-citizen in Australia who is a member of the same family unit as a non-citizen who:
    - (i) is mentioned in paragraph (aa); and
    - (ii) holds a protection visa of the same class as that applied for by the applicant.
- (2A) A non-citizen will suffer **significant harm** if:
  - (a) the non-citizen will be arbitrarily deprived of his or her life; or
  - (b) the death penalty will be carried out on the non-citizen; or
  - (c) the non-citizen will be subjected to torture; or
  - (d) the non-citizen will be subjected to cruel or inhuman treatment or punishment; or
  - (e) the non-citizen will be subjected to degrading treatment or punishment.

- (2B) However, there is taken not to be a real risk that a non-citizen will suffer significant harm in a country if the Minister is satisfied that:
- (a) it would be reasonable for the non-citizen to relocate to an area of the country where there would not be a real risk that the non-citizen will suffer significant harm; or
  - (b) the non-citizen could obtain, from an authority of the country, protection such that there would not be a real risk that the non-citizen will suffer significant harm; or
  - (c) the real risk is one faced by the population of the country generally and is not faced by the non-citizen personally.

...

*Protection obligations*

- (3) Australia is taken not to have protection obligations in respect of a non-citizen who has not taken all possible steps to avail himself or herself of a right to enter and reside in, whether temporarily or permanently and however that right arose or is expressed, any country apart from Australia, including countries of which the non-citizen is a national.
- (4) However, subsection (3) does not apply in relation to a country in respect of which:
- (a) the non-citizen has a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion; or
  - (b) the Minister has substantial grounds for believing that, as a necessary and foreseeable consequence of the non-citizen availing himself or herself of a right mentioned in subsection (3), there would be a real risk that the non-citizen will suffer significant harm in relation to the country.
- (5) Subsection (3) does not apply in relation to a country if the non-citizen has a well-founded fear that:
- (a) the country will return the non-citizen to another country; and
  - (b) the non-citizen will be persecuted in that other country for reasons of race, religion, nationality, membership of a particular social group or political opinion.
- (5A) Also, subsection (3) does not apply in relation to a country if:
- (a) the non-citizen has a well-founded fear that the country will return the non-citizen to another country; and
  - (b) the Minister has substantial grounds for believing that, as a necessary and foreseeable consequence of the non-citizen availing himself or herself of a right mentioned in subsection (3), there would be a real risk that the non-citizen will suffer significant harm in relation to the other country.

*Determining nationality*

- (6) For the purposes of subsection (3), the question of whether a non-citizen is a national of a particular country must be determined solely by reference to the law of that country.
- (7) Subsection (6) does not, by implication, affect the interpretation of any other provision of this Act.