



Australian Government
Immigration Assessment Authority

Decision and Reasons

Referred application

AFGHANISTAN
IAA reference: IAA19/06527

Date and time of decision: 8 May 2019 14:04:00
M Brereton, Reviewer

Decision

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

- there are substantial grounds for believing that, as a necessary and foreseeable consequence of the referred applicant being removed from Australia to a receiving country, there is a real risk that the referred applicant will suffer significant harm.

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

Background to the review

Visa application

1. The referred applicant (the applicant) claims to be a Shi'a and a Hazara from Kabul, Afghanistan. He departed Afghanistan in February 2013 and arrived on Christmas Island [in] April 2013. On 11 October 2016, he lodged a valid application for a Safe Haven Enterprise Visa (SHEV). A delegate of the then Minister for Immigration and Border Protection (the delegate) refused to grant the visa on 17 March 2017.
2. On 8 January 2018, the Immigration Assessment Authority (IAA) affirmed the delegate's decision. [In] March 2019, the Federal Circuit Court of Australia quashed that decision and remitted the matter to the IAA for determination.
3. The applicant claimed to fear harm, including from the Taliban and Islamic State (IS), because he was chased by the Taliban, is a Shi'a and a Hazara, and will be returning to Kabul after residing in a Western country.
4. The delegate accepted the applicant's claims as to identity and origin. The delegate accepted that the applicant had been chased by the Taliban on one occasion but found that this occurred outside Kabul and did not give rise to a specific profile or targeting within Kabul. The delegate considered the applicant's ethnicity, religion and time spent in Australia against country information and found that the applicant did not face a real chance of serious harm or a real risk of significant harm in Kabul, and that he could safely access Kabul.

Information before the IAA

5. I have had regard to the material given by the Secretary under s.473CB of the *Migration Act 1958* (the Act) (the review material).
6. The applicant, through his former migration agent, provided a submission to the IAA on 12 April 2017. The 12 April 2017 submission states that the applicant continued to rely on the post-interview submissions provided to the Department (which are in the review material) and made submissions in respect of the delegate's decision and information that was before the delegate. To that extent it is not new information. The submission attached two articles which post-date the delegate's decision and which refer to the security situation in Afghanistan in 2017. The articles are dated February and March 2017 respectively and are more than two years old. The applicant has since provided more current country and other information which refers to the current situation in Afghanistan. Given the fluid situation in Afghanistan, the developments since 2017 and the currency of the other material before me, I am not satisfied that there are exceptional circumstances to justify considering the 2017 articles.
7. The applicant, through his current migration agent, provided a further submission on 5 April 2019 which refers to the time that has passed since the delegate's decision, attaches updated country information and media reporting, and makes submissions in respect of that information and reporting.
8. Four of the attached reports and a media article pre-date the delegate's decision but were not before the delegate. The applicant submits that these are provided in response to the delegate's findings as to the level of harm faced by Shi'as, and by returnees who are perceived as Westernised. The applicant submits that as these reports and article respond to

those issues, they could not have been provided before the decision was made. The four reports are from UNAMA (published February 2017), the European Asylum Support Office (EASO) (published November 2016), the Refugee Support Network (RSN) report on involuntary returnees (published April 2016) and the Forced Migration Review comments on the RSN report (published February 2017). The media article is from the British Broadcasting Commission (BBC). It discusses how successful IS has been in Afghanistan and is dated 25 February 2017. The reports and article are general reports on the situation in Afghanistan and the situation faced by returnees to Afghanistan. There is more current information before me, including information provided by the applicant, which deals directly with these issues. I am not satisfied that there are exceptional circumstances to justify considering these reports or the media article.

9. The 2019 submission refers to and attaches 24 country information reports and media articles which post-date the delegate's decision. I am satisfied that this information could not have been provided to the Minister before the delegate made the decision.
10. The country reports are from the United Nations High Commissioner for Refugees (UNHCR)¹, United Nations Assistance Mission in Afghanistan (UNAMA)², Jamestown Foundation³, ANALYSIS⁴, and the Australian Department of Foreign Affairs and Trade (DFAT)⁵. The DFAT report is already before me (as discussed further below). In relation to the other reports, I am satisfied that these contain current information sourced from a range of generally authoritative sources, provide current analyses, and are directly relevant to the situations and conditions that the applicant may face should he return to Afghanistan. I am satisfied that there are exceptional circumstances to justify considering these reports.
11. The media articles date from June 2017 to March 2019. All but one of the incidents reported in these articles have been referred to and analysed in the country information reports before me and as that information, including broader and official analysis of it, is already before me, I am not satisfied that there are exceptional circumstances to justify considering those media articles. There is one article dated 21 March 2019⁶ that refers to a bomb blast at a Shi'a shrine in Kabul. This incident post-dates the most recent country information and analyses before me and as the incident is directly relevant to the issues in this review, I am satisfied that there are exceptional circumstances to justify considering this media article.
12. I have obtained new information, being the most recent country information report published by DFAT⁷ and the thematic report on Hazaras referred to above. These reports are provided by DFAT to assist with the determination of protection claims and to provide specific information in relation to Hazaras in Afghanistan. I consider DFAT to be an authoritative source of information the information in these reports include its most current assessments and is directly relevant to the issues in this review. I am satisfied that there are exceptional circumstances to justify considering these reports.

¹ United Nations High Commissioner for Refugees (UNHCR), "UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Asylum-Seekers from Afghanistan", 30 August 2018, UN3079B839.

² United Nations Assistance Mission in Afghanistan (UNAMA), "Afghanistan: Protection of Civilians Annual Report 2018", 24 February 2019, 20190226143710; UNAMA, "UNAMA Afghanistan Protection of Civilians in Armed Conflict Annual Report 2017", 1 February 2018, CIS7B8394110044.

³ Jamestown Foundation, "Terrorism Monitor", Volume XVI, Issue 19, 12 October 2018.

⁴ ANALYSIS, "Global Threat Forecast 2019", 13 January 2019.

⁵ Department of Foreign Affairs and Trade (DFAT), "DFAT Thematic Report - Hazaras in Afghanistan 18 September 2017", 18 September 2017, CISED50AD5681.

⁶ "Explosions target Shiite shrine in Kabul: official", Sydney Morning Herald, The, 21 March 2019.

⁷ DFAT, "DFAT Country Information Report Afghanistan 18 September 2017", 18 September 2017, CISED50AD5680.

13. The delegate did not consider relocation. For the reasons given below, I have considered whether the applicant can relocate to Mazar-e-Sharif. I have obtained new information, being a report from EASO in relation to the conditions for returnees to Afghanistan, including in Mazar-e-Sharif.⁸ This report draws from a variety of sources and provides an assessment of specific issues facing returned asylum-seekers and internally displaced persons. It is directly material to the issues of relocation and I am satisfied that there are exceptional circumstances to justify considering this new information.
14. The 2019 submission asserts that the risk of harm from IS and other anti-government elements (AGE) is present throughout Afghanistan, as is the risk of harm from being identified as a returned asylum-seeker who has been in the West. The applicant has not provided any further submission or comment in respect of relocation but given the findings I have reached, I have not found it necessary to seek further information or comment from the applicant on this issue.
15. The 2019 submission requests that the IAA exercises its discretion pursuant to s.473DC(3) to invite the applicant to a hearing to address his claims for protection and any adverse information that may arise during the review. Given the findings I have reached, I have not found it necessary to consider exercising my discretion.

Applicant's claims for protection

16. The applicant's claims can be summarised as follows:
 - He is a Shi'a and a Hazara who lived in Kabul, Afghanistan. His wife and children remain in Kabul with his [siblings].
 - He worked as a [Occupation 1] in a family business until about 2005. He saved some money and purchased a minibus.
 - He drove the minibus between West Kabul and the [City 1]. His customers were local Hazaras. He made the trip every week or 10 days and although the roads were dangerous he did not have any problems until about 2012.
 - On his second last trip (in around 2012) he was travelling a bit later in the day than usual when he left the valley. He came across a checkpoint manned by the Taliban, who signalled for him to stop. He thought he would be killed and accelerated through the checkpoint. Some of the Taliban chased him in a vehicle but gave up when he reached the main highway.
 - About ten days later he stopped at his usual service station on his way back into the valley. The owner told him that he had heard the Taliban talking about chasing the applicant and planning to set up a roadblock to get him. The owner warned him not to travel on this route anymore.
 - He knew he had to leave Afghanistan. He sold the minibus and [worked in a different job] in Kabul for about six months, to provide subsistence while he was arranging his escape. He [did] not feel safe. He sold [a specific item] just before coming to Australia.
 - He fears harm in Kabul as a Shi'a and a Hazara. He does not have contacts or family anywhere else in Afghanistan. His deceased father had some land in the [City 1] but this land is being used by another person and is too small to support a family.

⁸ European Asylum Support Office (EASO), "Key socio-economic indicators, state protection, and mobility in Kabul City, Mazar-e-Sharif, and Herat City", 1 August 2017, CISED50AD5465.

- If he returns to Afghanistan it will be reported in social and other media and the Taliban will find out.

Refugee assessment

17. 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

18. 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.
19. The applicant claims to be a Shi’a and a Hazara from Kabul. He has provided copies of his *taskera*⁹, marriage certificate and Afghan driver’s licence, and was able to answer questions about Kabul. I am satisfied that the applicant is a Shi’a and a Hazara from Kabul, and that Afghanistan is the receiving country for the purposes of this review.
20. The applicant has provided a consistent and plausible account of his history in Afghanistan, including his work as a minibus driver. I accept that he owned and operated a minibus driving passengers between Kabul and the [City 1]. He claims that on one occasion, he was confronted by a checkpoint manned by armed men. This is consistent with information that was before the delegate¹⁰ which indicates that the Taliban and other insurgent and criminal groups targeted the road network at this time, conducting unofficial checkpoints, attacks and other activities, such as kidnapping for ransom. I accept the claim that the applicant was confronted by a checkpoint. I am also prepared to accept that it was manned by the Taliban.
21. The applicant claims that he accelerated through the checkpoint and the Taliban pursued him but were unable to catch him. At the interview with the delegate on 31 January 2017 (the interview), the delegate expressed some doubts about the applicant’s claim to have escaped.

⁹ Afghan identity document

¹⁰ DFAT, “DFAT Thematic Report Hazaras in Afghanistan 2015-2016 update”, 8 February 2016, CIS38A8012186; UNAMA, “UNAMA Protection of Civilians Annual Report 2015”, 14 February 2016, CIS38A8012245.

The applicant's post-interview submission of 7 February 2017 refers to the poor condition of the roads and also notes that there was an official military checkpoint near the intersection with the main highway. This is consistent with the DFAT report cited above which notes that Afghanistan's road network, particularly in the mountain regions, is generally poor. I accept that the applicant was pursued but was able to escape.

22. The applicant claims that the next time he came to the area, he stopped at his usual service station. The owner told the applicant that he had heard the Taliban talking about the incident and making plans to stop the applicant if he returned. It is plausible that the Taliban would be interested in locating the vehicle that had refused to stop and it is also plausible that they identified the vehicle during the chase. The applicant has not claimed that he was personally identified by, or to, the Taliban or that the Taliban or any other group or person was asking for or about him by name. I accept that if he had continued to drive his minibus in that area, it is likely that he would have been identified and harmed, but I do not accept that he had any personal or individual profile with the Taliban. His evidence is that he no longer has the minibus and I am not satisfied that he would now, six years later, be identified as the person who failed to stop, or be of any interest to the Taliban for that reason. I am not satisfied that he faces a real chance of harm from the Taliban for any reason arising from the checkpoint incident.
23. The applicant claims that after he sold his minibus, he [worked in a different job] in Kabul city. Although he said that he did not feel safe, he was not harmed or threatened during the six months that he [undertook the work]. He has not otherwise claimed to fear harm for any reason arising from his previous [job].
24. The applicant claims to fear harm from the Taliban, IS and other AGE as a Shi'a and a Hazara in Kabul. He claims to be from the Bank-e-Seddar district, which borders the Dasht-e-Barchi district in West Kabul. His 2019 submission to the IAA attaches recent country information and media reporting relating to attacks on Shi'a and Hazaras in Kabul, particularly in and around Dasht-e-Barchi, and in Afghanistan more generally.
25. The most current assessment from UNAMA¹¹ reports that civilian casualties have steadily increased through 2018, with a significant increase in casualties caused by suicide attacks by IS (also referred to as Daesh and Islamic State in the Khorasan Province ((ISKP)). IS increased both the frequency and the intensity of its attacks throughout 2018, with most attacks (102) occurring in Nangarhar Province but 20 incidents occurring in Kabul city. UNAMA has attributed the increase in civilian casualties to the increased use of suicide and complex attacks, nearly all of which were carried out against civilians or in civilian-populated areas.
26. UNAMA notes that within the broader civilian casualties, 2018 saw a 34% increase in civilian casualties amongst Shi'a communities, and reported high levels of sectarian violence by IS against Shi'as and Hazaras. In March 2018, two attacks targeted Shi'a civilians in Kabul including a suicide attack on the Karte Sakhi Shi'a shrine during Persian New Year celebrations. UNAMA noted that while 2017 saw sectarian attacks against Shi'as in places of worship, the majority of attacks in 2018 occurred in other civilian areas, including Shi'a or Hazara majority neighbourhoods. This included a suicide attack in April 2018 which saw 60 Shi'a Hazaras killed at a voter registration centre in a Hazara neighbourhood. In August 2018, another IS suicide attack killed 40 civilians inside a Shi'a classroom in Dasht-e-Barchi. UNAMA states that, in its opinion, attacks on Shi'a Muslims infringe their right to freedom of religion, and the wide scope of these attacks beyond places of worship – at education centres, sports

¹¹ UNAMA, "Afghanistan: Protection of Civilians Annual Report 2018", 24 February 2019, 20190226143710.

clubs, celebratory events and other social gatherings – directly impedes their ability to carry out normal lives. UNAMA considers the situation for residents in Kabul displays disproportionate and extreme harm from suicide attacks.

27. An article in the Terrorism Monitor reported that following the September 2018 attacks in Kabul, President Ghani referred to “targeted mass-killings of Hazaras” and described them as a national security threat to Afghanistan. Western Kabul, particularly Dasht-e-Barchi, was described as having changed from a vibrant area famous for stability and tolerance, to a ghost city. The article reported that the trend of mass killings of Shi’as and Hazaras has pushed local people to take up arms and patrol streets and mosques, while cafes, restaurants, sporting clubs and other facilities can no longer operate due to the fear of suicide bombings. The growing armed Hazara militia has, according to the author, brought with it growing fears of a sectarian war.¹² The ANALYSIS article¹³ notes that between December 2017 and March 2018, as many as 69 members of IS core, and between 200 to 300 fighters from Iraq and Syria have relocated to Afghanistan, and this trend is likely to continue through 2019. The article opines that Afghanistan is emerging as an alternative theatre for foreign and local fighters in 2019. The 21 March 2019 media article¹⁴ reports on three explosions near a Shi’a shrine and cemetery in West Kabul, as people gathered to mark Persian New Year. Six people were killed and 23 were wounded. There were also reports of mortars being fired into West Kabul. No group had claimed responsibility at the time of publication.
28. The UNHCR 2018 guidelines¹⁵ note that Hazaras are reported to face continuing societal discrimination, as well as being targeted for extortion through illegal taxation, forced recruitment and forced labour, physical abuse, and detention. In recent years there has reportedly been a significant increase in harassment, intimidation, kidnappings and killings of Hazaras at the hands of Taliban, IS and other AGE.
29. The DFAT thematic report provided by the applicant is dated September 2017. DFAT assessed (at that time) that Hazaras, like other Afghans, were vulnerable to the threat posed by indiscriminate methods of attack against specific targets in Kabul. However, ordinary Hazaras who resided in Hazara-majority areas of Kabul and who did not have open affiliations with the government or international community were unlikely to face any greater threat than Afghans of other ethnicities. At the time of the DFAT assessment, the level of violence specifically targeting Shi’as and Hazaras in Kabul was less than what has continued through 2018 and the first part of 2019.
30. The applicant’s submission focusses on the risk of harm to himself from the growing trend of harm to Shi’a Hazaras in Kabul. His family remains in Kabul and he has not claimed in his 2019 submission that they have been affected by the deterioration of the security situation in any way.
31. On the information before me, the applicant’s home district has not reported any attacks or incidents during 2017-2019. However, it directly borders Dasht-e-Barchi, which has reported more serious sectarian incidents than any other part of Kabul. The applicant is a Hazara and I accept that as a Hazara he is visually distinct and can be so identified. Although he has lived in Kabul all of his life before coming to Australia in 2012, I am satisfied on the information

¹² Jamestown Foundation, “Terrorism Monitor”, Volume XVI, Issue 19, 12 October 2018.

¹³ ANALYSIS, “Global Threat Forecast 2019”, 13 January 2019.

¹⁴ “Explosions target Shiite shrine in Kabul: official”, Sydney Morning Herald, The, 21 March 2019.

¹⁵ UNHCR, “UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Asylum-Seekers from Afghanistan”, 30 August 2018, UN3079B839.

before me that the situation in Kabul has changed significantly since 2012 and that the rise of groups such as IS and their targeting of civilians and Shi'a/Hazara neighbourhoods has increased the risks faced by Shi'as and Hazaras in Kabul. Even though the applicant would most likely return to his family if he returned to Kabul, this would be to a Shi'a Hazara neighbourhood and the nature of the attacks throughout 2017, 2018 and 2019 indicates that Shi'as and Hazaras in and around Dasht-e-Barchi continue to face a level of risk in their day to day lives.

32. I acknowledge the large population of Kabul (estimated to be between three and seven million)¹⁶ as well as the large number of Hazaras there, which DFAT estimates to be at between 40-50 percent of Kabul's population.¹⁷ Although the number of incidents in comparison to the large Shi'a Hazara population indicates, on its face, a close to remote chance of harm, the information I have considered above assesses that Shi'a Hazaras continue to be targeted and that recent years have seen an increase in bombings and mass casualty incidents at Shi'a religious and other events, official buildings, schools and other places where Shi'a Hazaras gather or need to attend. There is no indication in any of the information referred to above that such violence is decreasing or that the situation is expected to improve; rather, the more recent information provided by the applicant (and which I accept) suggests that the situation for Shi'as and Hazaras in Kabul will remain at least at the current level of violence for the foreseeable future and any change is likely to be an increase.
33. Ultimately, taking all of the above into account, I consider that the applicant, as a Shi'a and Hazara living in a Hazara-majority area close to Dasht-e-Barchi, faces a small, but nonetheless real, chance of being caught up in sectarian violence. I am satisfied that the level of harm inflicted on civilians includes death and serious injury and is serious harm as contemplated by s.5J(5) of the Act. I am satisfied that it is inflicted for the essential and significant reasons of race and religion. I am satisfied that the applicant has a well-founded fear of persecution as a Shi'a and a Hazara in Kabul.
34. Section 5J(1)(c) of the Act requires that the real chance of persecution relates to all areas of the receiving country. The applicant has submitted that the risk of harm from IS exists throughout Afghanistan, as does the risk that he will be identified as a returned asylum-seeker who has been in the West.
35. For the following reasons, I am not satisfied that the applicant faces a real chance of serious harm as a Shi'a, Hazara or returned asylum-seeker from the West in Mazar-e-Sharif.
36. Mazar-e-Sharif is the capital of the province of Balkh, which is in the northern part of Afghanistan. It has a population of over 590,000 citizens and is one of the biggest commercial and financial centres of Afghanistan. The major ethnic groups are Tajiks and Pashtuns, followed by Uzbeks, Hazaras, Turkmen, Arabs and Baluch.¹⁸
37. DFAT has reported that on 12 October 2016 a bomb exploded outside a Shi'a mosque in Balkh province. 18 people were killed and 67 were injured. Although the DFAT report states that no group had, at the time the information was published, claimed responsibility for the Balkh attack, there were subsequent attacks on Shi'as around Afghanistan that were claimed

¹⁶ EASO, "Key socio-economic indicators, state protection, and mobility in Kabul City, Mazar-e-Sharif, and Herat City", 1 August 2017, CISED50AD5465.

¹⁷ DFAT, "DFAT Thematic Report - Hazaras in Afghanistan 18 September 2017", 18 September 2017, CISED50AD5681.

¹⁸ EASO, "Key socio-economic indicators, state protection, and mobility in Kabul City, Mazar-e-Sharif, and Herat City", 1 August 2017, CISED50AD5465.

by ISKP. ISKP emphasised that the attacks were religiously motivated and called for further attacks on Shi'as¹⁹ but the information before me, including the most recent 2019 UNAMA report, does not indicate that there have been further religiously-motivated attacks in Balkh province.

38. I have considered the information above both in terms of individual incidents as well as in the context of the overall and developing situation. The information does not lead me to conclude that Mazar-e-Sharif has seen any deterioration in the security situation faced by Shi'as and Hazaras. While I accept that attacks on Shi'as, Hazaras and Shi'a Hazaras have occurred for religious, ethnic and political reasons in the past, the information before me does not indicate that Mazar-e-Sharif or Balkh province has experienced any such attacks since the bombing of the mosque in October 2016. The information also indicates that previous attacks were sporadic. Post-October 2016 violence reported inside Balkh province has been targeted at the military, government and international presence. Further, while there continues to be armed persons and incidents of criminal activity in and around Mazar-e-Sharif, the information before me does not indicate that there have been incidents (including criminal incidents) targeted at any particular ethnic or religious group. As I have noted above, I do not accept that the applicant has any other adverse profile with any AGE.
39. Having regard to all of the above, I am not satisfied that the applicant faces a real chance of harm from the Taliban, IS or any other AGE in Mazar-e-Sharif. I am not satisfied that the applicant faces a real chance of harm arising from his ethnicity or religion in Mazar-e-Sharif.
40. According to DFAT, most returnees to Afghanistan arrive by air at Kabul.²⁰ The DFAT and EASO information before me reports attacks in and around Kabul airport and along the road to Kabul city (about 1 kilometre away) but I note that the reported attacks have been mainly targeted at foreign forces, foreign and domestic government officials and security forces. The attacks have seen an increase in the use of suicide bombs, improvised explosive devices and targeting of high profile figures. I accept that there remains a risk of the applicant being caught up in attacks at Kabul airport as a bystander, but having regard to the nature of the attacks reported in recent years, I consider that any such chance is remote. I am not satisfied that the applicant faces a real chance of harm at Kabul airport while waiting to transit to Mazar-e-Sharif.
41. I have considered whether the applicant may face harm accessing Mazar-e-Sharif. Information in the review material indicates that there are domestic flights between Kabul and Mazar-e-Sharif. The applicant has worked in Australia and has not claimed to be in debt or to have limited funds. I am satisfied that he would be able to obtain travel by air to Mazar-e-Sharif.
42. According to EASO,²¹ the Mazar-e-Sharif airport is approximately 9 kilometres east of the city and the time to access the city by car is about 15 minutes. The road between the airport and the city is patrolled regularly and EASO reported that travel on this route during daylight hours was considered relatively safe. None of the information before me indicates that there have been recent attacks or other incidents on the road between Mazar-e-Sharif and the airport. I consider that the short time the applicant would need to spend on the road, together with the information about the safety of this route, indicates that there is only a remote chance that the applicant will be harmed accessing Mazar-e-Sharif from the airport. I

¹⁹ DFAT "DFAT Thematic Report - Hazaras in Afghanistan 18 September 2017", 18 September 2017, CISED50AD5681.

²⁰ DFAT, "DFAT Country Information Report Afghanistan 18 September 2017", 18 September 2017, CISED50AD5680.

²¹ EASO, "Key socio-economic indicators, state protection, and mobility in Kabul City, Mazar-e-Sharif, and Herat City", 1 August 2017, CISED50AD5465.

am satisfied that the applicant does not face a real chance of harm accessing Mazar-e-Sharif should he return to Afghanistan.

43. The applicant claims to fear harm as a returned asylum-seeker who has spent time in the West. He submits that he fears harm due to his actual adoption of some Western attitudes and beliefs, as well as the perception that he would have adopted such attitudes and beliefs during the six years he has been outside Afghanistan. He also claims that his return to Afghanistan will be reported in social and other media.
44. According to its most recent report, DFAT is aware of occasional reports alleging that returnees from western countries have been kidnapped or otherwise targeted based on their having spent time in a western country. DFAT also notes that people who identified as having international associations face a high risk of being targeted by anti-government groups and this may possibly include returnees from western countries; however, most returnees take measures to conceal their association with the country from which they have returned and keep a low profile on return. DFAT assesses that people in this situation do not face a “significantly higher” risk of violence or discrimination than other Afghans with similar profiles.²² I note that the relevant question is not whether the applicant faces a “significantly higher risk” but rather, whether he faces a real chance or a real risk of relevant harm.
45. The applicant has not further detailed the attitudes or beliefs he has adopted, whether they affect or alter his external presentation, or whether he will need, or want, to express them in Afghanistan. He has not claimed to have any speech, accent or physical characteristics which would identify him as someone who has been in the West. He has not claimed that he will need, or want, to carry or display any documentation in relation to his asylum claims or his time in the West, or that he will need, want, or intends to disclose this to any person. He claims to have no relatives or community outside Kabul and there is nothing in the evidence before me to indicate that he or his history of being in Australia would be known to anyone outside his family in Kabul.
46. At the interview, the applicant said that his return to Afghanistan would be reported on social media and in the newspapers. The delegate asked why this would happen and the applicant said that it had happened to other people. He did not know who would report on him but he knew that it would happen and he would be targeted. The delegate asked a number of times why anyone would report on the applicant’s return but the applicant reiterated that he did not know why, only that he knew it would happen. There is no other evidence before me to indicate that the applicant has an active social media profile, and the information before me does not indicate that returnees to Afghanistan are generally reported in social or other media. I consider this claim to be speculative and unsupported and I am not satisfied that the applicant will be reported in social or other media should he return to Afghanistan.
47. I am not satisfied that the applicant will display any characteristic or behaviour that will identify him, or that he is otherwise identifiable, as a returned asylum-seeker who has spent time in the West. I am not satisfied that he faces a real chance of harm in Mazar-e-Sharif for this reason.
48. Having regard to all of the above, I am not satisfied that the applicant faces a real chance of harm: from the Taliban, IS or any other AGE; because of his ethnicity or religion; or for being a returned asylum-seeker who has spent time in the West, if he was to relocate to Mazar-e-Sharif.

²² DFAT, "DFAT Country Information Report Afghanistan 18 September 2017", 18 September 2017, CISED50AD5680.

Refugee: conclusion

49. 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

50. 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

51. 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.
52. I have found above that the applicant faces a real chance of being seriously harmed if he returns to Kabul. This serious harm includes significant mistreatment or death and I am satisfied that this is conduct that amounts to significant harm. As 'real chance' and 'real risk' equate to the same threshold,²³ and for the same reasons as given above, I am satisfied that there are substantial grounds for believing that, as a necessary and foreseeable consequence of the applicant's removal to Afghanistan, the applicant will face a real risk of significant harm in Kabul.
53. However, section 36(2B) provides that there is taken not to be a real risk that a person will suffer significant harm in a country if:
- it would be reasonable for the person to relocate to an area of the country where there would not be a real risk that the person will suffer significant harm
 - the person could obtain, from an authority of the country, protection such that there would not be a real risk that the person will suffer significant harm, or
 - the real risk is one faced by the population of the country generally and is not faced by the person personally.
54. I have found above that the applicant does not face a real chance of harm in Mazar-e-Sharif from the Taliban, IS or any other AGE; because of his ethnicity or religion; or for being a returned asylum-seeker who has spent time in the West. As noted above, 'real chance' and 'real risk' equate to the same threshold and for the same reasons as given above, I am also

²³ *MIAC v SZQRB* (2013) 210 FCR 505

not satisfied that there are substantial grounds for believing that, as a necessary and foreseeable consequence of the applicant's removal to Afghanistan, the applicant will face a real risk of significant harm accessing or remaining in Mazar-e-Sharif for those reasons.

55. Turning then to s.36(2B), the most recent guidelines published by the UNHCR consider that relocation within Afghanistan generally is reasonable only where the individual has access to shelter, essential services (sanitation, health care, education) and livelihood opportunities, as well as access to a traditional support network of members of his or her (extended) family or members of his or her larger ethnic community, who have been assessed to be willing and able to provide genuine support to the applicant in practice. UNHCR considers that in its opinion, the only exceptions to this requirement are able-bodied single men and married couples of working age without identified specific vulnerabilities. UNHCR considers that such persons may, in certain circumstances, be able to subsist without family and community support in urban and semi-urban areas that have the necessary infrastructure and livelihood opportunities to meet the basic necessities of life and that are under effective Government control.
56. DFAT has reported that major cities offer greater opportunities for employment and are home to communities from virtually all of Afghanistan's ethnic groups. However, it also reports that there are high rates of unemployment and underemployment and there are considerable security and economic factors that limit the ability of Afghans of all ethnicities to relocate safely and successfully.²⁴
57. In relation to Mazar-e-Sharif, EASO²⁵ has reported that while that city is under considerable urbanisation pressure, the relatively peaceful situation in Balkh and an "economic boom" after 2004 led to the city having had by far the biggest share of economic migrants of all five major cities in Afghanistan. It had a strong and relatively diversified economy including "robust" construction, manufacturing and services sectors. It also had the largest share of self-employed persons and has provided a source of non-agricultural income for many households.
58. That said, there has been a visible decline since 2013, attributed in part to the closure of military bases and the withdrawal of foreign troops and finance. The second half of 2015 also saw the deteriorating security situation in Afghanistan have a negative effect on employment and wages. In Mazar-e-Sharif, casual labourers are reported to be finding less work and are receiving stagnant or lower wages, and are also reported to be at a disadvantage relative to those who are known in the community and can make use of family/social networks to find work. Returnees and Internally Displaced Persons (IDP) (who are mostly former farmers) often rely on daily wage jobs which can be more limited in the autumn and winter seasons.
59. EASO refers to reporting that suggests that those who have no strong or solid social connections cannot find work. The principal determinant in recruiting is trust and what outsiders often label as corruption or nepotism, is in fact a system based on (dis)trust. There is so much distrust in the Afghan society that all possible employers, including international actors, only hire people who are suggested to them. If nobody suggests a person to a possible employer, that person will end up in the ever-shrinking casual day labour market, even if they hold a diploma. In general, ethnicity alone is not enough of a solid network to find a job.

²⁴ DFAT, "DFAT Country Information Report Afghanistan 18 September 2017", 18 September 2017, CISED50AD5680.

²⁵ EASO, "Key socio-economic indicators, state protection, and mobility in Kabul City, Mazar-e-Sharif, and Herat City", 1 August 2017, CISED50AD5465.

60. EASO notes that only about 15% of inhabitants of Mazar-e-Sharif live above the poverty line and the city has the largest proportion of income earners who earn only an irregular income. The report notes that food diversity is a problem and that this makes food less affordable than in other areas. The absorption capacity of Mazar-e-Sharif and the wider province has been stretched and some IDP have had to return to their places of origin because they could no longer afford the rent and living expenses of Mazar-e-Sharif. This has included IDP who had come from insecure areas.
61. EASO also reports that in the absence of protection from authorities in IDP or informal settlements, people can get caught up with, or must seek protection from, local powerbrokers. Individuals who have no established networks locally are more likely to be taken advantage of, or be viewed critically by the local population. It has been suggested to EASO that the police would be unlikely to help somebody in such a situation because he or she would have no established local networks to vouch for them. It has also been suggested that the lack of any established networks to help a person navigate locally would lead to significant difficulty resettling and that people who have been outside the country and/or grew up in another country would be in a particularly difficult position due to their unfamiliarity with local systems. They may not know how to react in local situations, which could put them in a position where they are threatened or have their rights violated.
62. EASO further notes that 85 % of labourers in Mazar-e-Sharif reported being recruited through friends or family. Only 7 % of employees reported having a formal work contract. This, EASO states, highlights the informal nature of employment relations in Afghanistan and reinforces the assumption that most businesses are family-run. EASO also refers to a report that '[t]here is uniform contention that access to employment is severely compromised by corruption and nepotism. Bribery is a pre-condition of gaining employment even if a candidate has the necessary qualifications. There are allegations of ordinary government positions being sold for up to 60,000 Afghanis. EASO also quotes a UNHCR statement in 2017 that both IDP and returnees faced significant challenges in accessing meaningful employment and livelihood opportunities. Some IDP have been forced to return to their places of origin because they could no longer afford the rent and living expenses in Mazar –e-Sharif.
63. As well as the increasing competition for work, as noted earlier, the level and type of employment available in Afghanistan as a whole has also changed considerably in recent years due to the withdrawal of international military troops, the reduction in international aid, and the dramatic drop in investment. In the cities, returnees create additional competition for jobs, putting high pressure on labour markets, resulting in few opportunities and lower wages. While some research suggested that returnees have benefited from their migration history, other research suggests that the acquired skills often do not match demand.
64. In relation to the applicant's personal circumstances, he is aged about [number]. He does not have any family, tribal network or existing community support networks in Mazar-e-Sharif. Nevertheless, there is a sizeable Shi'a population there and I take into account that the applicant was brought up in a Shi'a family in Afghanistan and has lived his life as a Shi'a there until he came to Australia. I am satisfied that he speaks the language and knows the general customs observed among Shi'as and Hazaras in Afghanistan.
65. The applicant has a wife and [children] who are currently living with his [siblings] in Kabul. His children are all [a certain age]. He told the delegate that his (deceased) father had some land in another province but this land is now farmed by a neighbour, who sends a little of the produce to the family in Kabul. He said that the land on its own could not support his family.

He said that his [sibling] sometimes works as a [Occupation 2] but does not have regular work. The applicant's wife and children do not work. The applicant has not claimed, and the information before me does not indicate, that any other family member or other person is supporting, or is able or willing to support, his family. I accept that the applicant will want to support his family should he return to Afghanistan. His previous employment in Afghanistan was a [Occupation 1], minibus driver and then [Occupation 3], but neither he nor his family owns [the minibus] now. I also note that he has worked as a [Occupation 4] in Australia since 2015.

66. The information cited above leads me to the view that economic and employment prospects in Mazar-e-Sharif have deteriorated since 2016 and that persons who are obviously strangers to the area, with no networks or connections, and no education or specific labour skills, face significant difficulties in obtaining employment, particularly in light of the deteriorating economic situation and influx of IDP and returnees. In light of the above, I consider the following to be particularly relevant to the question of whether it is reasonable for the applicant to relocate to Mazar-e-Sharif:
- The economic situation in Mazar-e-Sharif appears to be one of increasing competition for reducing jobs, stagnant or reducing wages, and increasing poverty. In view of the increasing competition, family (or family networks), or being known to an employer, are significant (some reports suggest determinative) factors in obtaining work and subsistence.
 - The applicant has never lived outside Kabul and has no family or family networks, friends or contacts in Mazar-e-Sharif or Balkh province.
 - The applicant's employment experience in Afghanistan is [Occupation 1] and [other jobs]. The information before me does not indicate that such skills are seen as significant skills or that they are in demand in Mazar-e-Sharif.
 - His experience as a [Occupation 4] in Australia may be of assistance in obtaining employment, but I also note the information above that [Industry 3] and similar work is declining in Mazar-e-Sharif, particularly due to the drawdown of international forces and projects.
 - The applicant has a family (wife and [children]) in Kabul which will be dependent on him for financial support.
67. Although I am satisfied that the applicant will initially arrive and settle in Mazar-e-Sharif without his family, I accept that he will need, and want, to support his family in Afghanistan. I accept that his ability to subsist in Mazar-e-Sharif will be challenged by this. I also consider that it is likely that the applicant's wife and children will want to relocate to Mazar-e-Sharif to be with him and if they were to do so, as noted by both UNHCR and DFAT, being a married man with a dependent family will place further strain on the applicant's ability to subsist and access services in Mazar-e-Sharif in the longer term. Having regard to all of these factors, and taking into account the most recent country information and the applicant's personal circumstances, although this is a borderline case I am not satisfied that in all the circumstances it is reasonable for the applicant to relocate to Mazar-e-Sharif. Further, as the difficulties and factors outlined above will be at least the same, if not more pronounced, in other areas of Afghanistan, I am not satisfied that relocation to any other 'safe area' if there was to be one, would be reasonable.

Complementary protection: conclusion

68. There are 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.

Decision

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

- there are substantial grounds for believing that, as a necessary and foreseeable consequence of the referred applicant being removed from Australia to a receiving country, there is a real risk that the referred applicant will suffer significant harm.

Applicable law

Migration Act 1958

5 (1) Interpretation

In this Act, unless the contrary intention appears:

...

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

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

...

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

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

but does not include an act or omission:

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

...

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

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

...

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

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

...

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

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

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

...

5H Meaning of refugee

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

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

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

...

5J Meaning of well-founded fear of persecution

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

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

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

5K Membership of a particular social group consisting of family

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

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

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

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

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

5L Membership of a particular social group other than family

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

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

5LA Effective protection measures

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

...

36 Protection visas – criteria provided for by this Act

...

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

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

...

Protection obligations

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

Determining nationality

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