



**Australian Government**  
**Immigration Assessment Authority**

**Decision and Reasons**

**Referred application**

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AFGHANISTAN  
IAA reference: IAA20/07833

Date and time of decision: 17 March 2020 10:05:00  
D Power, 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 Pashtun from Afghanistan. On 20 June 2017 he lodged an application for a Safe Haven Enterprise visa (SHEV).
2. On 31 January 2020, a delegate of the Minister for Immigration (the delegate) made a decision to refuse to grant the applicant a protection visa. The delegate found the applicant's claim that the Taliban had attempted to forcibly recruit him not to be credible. He further found that the applicant would not face harm because of his ethnicity or religion, the security situation in his home region, as a returnee from a western country or because his personal details had been disclosed on the internet.

### Information before the IAA

3. I have had regard to the material given by the Secretary under s.473CB of the *Migration Act 1958* (the Act).
4. On 26 February 2020, the IAA received a submission from the applicant's migration agent which refutes a number of the delegate's findings and takes issue with the process. These matters may be regarded as argument rather than information to which I have had regard. The submission also reiterates a number of claims made to the delegate.
5. The agent has also forwarded a statutory declaration from the applicant. Much of the information in the statutory declaration restates claims or explanations made by the applicant at interview.
6. However, the applicant's statutory declaration also includes an explanation of why he did not previously put forward a warning letter from the Taliban, a copy of which is attached to the statutory declaration. The alleged warning letter is new information. The applicant states that it was only after the decision was made to refuse to grant him a protection visa that his father made him aware of the threatening letter from the Taliban so that he could emphasise to the 'authorities' the dangers he would face on return to Afghanistan.
7. The warning letter from the Taliban is accompanied by an English translation. The applicant said that his father did not tell him of the letter earlier because he did not want to add to the applicant's worries about the dangers facing him in Afghanistan. At the point in April 2013, when the Taliban entered their house and demanded the applicant be readied to join them, it seems unlikely that the existence of the letter referring to events that had already unfolded could have added much to the fear the whole family felt at allegedly being threatened by the Taliban at gunpoint or the urgency with which they apparently arranged the applicant's departure. Even if the applicant's father somehow thought that the existence of the letter would have further troubled the applicant at the time, that still does not explain why the father did not think to mention it to the applicant once he had arrived in Australia, especially at the point that the applicant decided to lodge an application for protection, based in great part on the alleged forcible recruitment attempt by the Taliban. Clearly, the applicant is in regular contact with his family and has kept them informed of his plans to apply for protection, given that the applicant alleges the father mentioned the letter on hearing news of the applicant's unsuccessful visa application.

8. The applicant also states in his statutory declaration that his father originally thought the letter was a fake. Given that the applicant has stated in his written claims that he grew up in “a very much troubled area with strong Taliban activities”, it is difficult to accept that his father dismissed the letter so casually. The letter is also dated [in] February 2013 and the applicant confirms that his father received it “on or around” that date. The applicant reports that the Taliban eventually came to their home sometime in April 2013. If the father thought the letter fake, it is not clear why he would still have had it in his possession two months later when the Taliban called. Nor is it clear why his father would then have kept the letter (in apparently excellent condition) for a further six years if he did not intend to make the applicant aware of its existence.
9. The letter itself also raises concerns as to its authenticity. As noted above, the letter is dated [in] February 2013, which means that the letter was sent (and the applicant indicates received) approximately two months before the Taliban showed up at the family’s home in April 2013. However, the translation states that the applicant’s father is being sent the letter on Friday so that he can hand the boy over. It is not clear why the Taliban would send a letter two months in advance of actually turning up to claim the applicant or what Friday they could be referring to given they waited another two months to appear at the family’s home. The letter also states that the father will need to hand the boy over and that if he does not comply he would be punished. However, at interview the applicant claimed that when the Taliban appeared at the house, they told the father to get him ready and that they would pick him up on the coming Friday. The applicant did not mention that the Taliban made any reference to the letter they supposedly sent, nor does he state that they expressed any displeasure that the applicant was not already available to leave with them.
10. I do not accept the applicant’s reasons for not putting forward the letter earlier. I also have real concerns about the credibility of the letter itself and its corroborative value. Given all of the above, I am not satisfied that there are exceptional circumstances that justify consideration of this information.
11. The applicant has also advanced further details about his alleged experiences in the mosque in his village. The applicant now says that he thinks that the mullah may have been a member of the Taliban. He says that the mullah regularly kept young men the applicant’s age back after religious studies classes to preach to them that it was their duty to sacrifice their lives for the Taliban. He claims the mullah did not preach this openly to the congregation, only to young boys of the applicant’s age. The applicant says that he was always “very uncomfortable” with the mullah’s preaching, a process he now considers brainwashing, but was afraid to speak up because of the mullah’s position of authority in the village.
12. The applicant was [age] years old when he left Afghanistan. He has had a number of years since to reflect on his experiences in Afghanistan and had the assistance of a registered migration agent in preparing his SHEV application and at his SHEV interview. The applicant stated in his statutory declaration that he thought the information on the mullah would be “unnecessary detail” and claims that he was not asked the follow-up questions that would have enable him to provide these details. I do not accept either of those propositions. It was clear from the interview that the delegate questioned why the Taliban would be so focused on recruiting the applicant and why they would target the applicant and not his older brother. After putting his concerns to the applicant, the delegate also afforded the applicant a break in the interview to talk with his representative and put forward any additional details or comments he had in regard to his claims. In that context, the notion that the applicant would consider important information about the mullah and his alleged campaign of indoctrination to be “unnecessary detail” is particularly difficult to accept. The delegate also reminded the

applicant at the commencement of the interview that he should put forward all the information he wished to rely on and that if his application for protection was unsuccessful, he may not have another chance. The delegate also spent some time at interview discussing the approach the Taliban made to his father and the applicant's attendance at the mosque in the village, asking a number of follow-up questions. In these circumstances I do not consider the new information credible. Given all of the above, I am not satisfied that there are exceptional circumstances that justify consideration of this information.

13. The agent has also stated that due to "the particular compelling circumstances of the review", the IAA should consider exercising its discretion to afford the applicant an interview. The circumstances outlined by the agent include contentions that the delegate's findings were largely based on credibility issues, and that the delegate made factual and jurisdictional errors. The agent also states that the applicant should be invited to provide evidence on whether any new information provided meets the limbs of s473DD. In regard to the last point, I consider the applicant has already availed themselves of the opportunity to do this. Even in the event the applicant had something to contribute in this regard, the agent has not explained why it could not have been included in the "new information submission" or in the applicant's own statutory declaration to the IAA. The agent has also stated that if the IAA concludes that 'any particular material' included with the submission is new information, the agent should be given an opportunity to respond. However, the agent accompanied the new information with three pages of argument contending that the new material (most relevantly the alleged threat letter from the Taliban) is not new information while also putting forward arguments as to why it should be considered anyway if the IAA does conclude that it is new information. The agent has not specified what additional argument they would wish to put forward nor explained why such argument or reasoning could not have been included in the submissions already before the IAA. Under all the circumstances, and noting the relevant arguments outlined above, I have decided to proceed without providing the agent or the applicant a further opportunity to respond in regard to the new information included with their submission to the IAA.
14. As to the other points, the IAA process is a mechanism of limited review and reviews are generally made on the papers and without the consideration of new information except in exceptional circumstances. The IAA is not bound by the delegate's findings but must consider the evidence afresh. The IAA does have a discretion to get new information, including by way of interview, but I have decided not to exercise that discretion in this instance. The applicant was represented by a registered migration agent during his interview with the delegate. The delegate also offered the agent and the applicant a break in the interview to consider and respond to any issues that had been raised. The applicant's original agent also subsequently made a post-interview submission to the delegate and forwarded additional documentation. I consider that he was given a meaningful opportunity at his interview with the delegate to put forward his claims and to provide whatever additional clarification or information he wished in support of those claims. The applicant has also had ample opportunity to provide further information on any matters he consider material to his case subsequent to that interview and also to comment on the matters that are material to this review. The applicant also requests a chance to explain what he has put down in his statutory declaration, but similarly does not give any indication of what that would entail or why such information could not have been included in his statutory declaration. No details have been provided about the sorts of additional evidence the applicant would seek to provide at that interview. Under all the circumstances, I have decided to proceed without providing the applicant an interview or giving either the agent or the applicant a further opportunity to respond.

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

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

- The applicant is a Sunni Pashtun from Paktia province in Afghanistan.
- In about April 2013, the applicant's family was at home one evening when they heard a knock on the door. A group of men with turbans and covered faces, bearing firearms, entered the house. The men, apparently Taliban, told the applicant's father that they wanted the applicant to join them and to have the applicant ready to leave with them that coming Friday.
- Both the applicant and his father opposed the Taliban and did not want the applicant to join them. Through acquaintances, his father was able to arrange the applicant's departure from Afghanistan before Friday came.
- After the applicant left, his family went into hiding to avoid the Taliban before eventually departing for Pakistan. The Taliban subsequently destroyed the family home.
- The applicant fears being targeted by the Taliban on return to Afghanistan. They will punish him for defying them and escaping their vengeance. With their networks of supporters and informers, the Taliban would be able to find him anywhere in Afghanistan.
- The applicant also claimed that people will think he has changed religion and done things that are forbidden because of his time spent in Australia. He has changed his manner of attire and his hairstyle and would be targeted on this basis. The Taliban would target him for escaping them.

## **Refugee assessment**

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16. 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**

17. 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.
18. The applicant claims to be from Paktia province in Afghanistan. He provided a taskera and an Afghan passport in support of his claimed identity and nationality. The applicant has consistently claimed to be a Sunni Pashtun.
  19. Despite the fact that he has recently obtained a genuine Afghani passport, there are some concerns with the applicant's claim to be an Afghan national. The only funds remitted by the applicant from Australia went to an individual in Pakistan. The applicant's family all reside in Pakistan, and the applicant's sister is married to a Pakistani citizen. The applicant has not provided any documentation or other evidence to establish the family's refugee status in Pakistan. The applicant departed from Pakistan on a Pakistani passport. When questioned about the details of that passport, he claimed not to have looked at the name. I do not consider it plausible that the applicant would not have made himself aware of the details in the allegedly falsely obtained passport he was using in order to move through passport control and consider that it raises the possibility that the applicant left on a genuine Pakistani passport in his own name.
  20. I note that the applicant has a recent Afghani passport with several modern security features. The applicant also has a paper taskera. The applicant did not describe the process for obtaining his Afghani passport in Australia. The taskera is the only other Afghan ID he possesses and it is entirely possible that this was the only document supplied to support his application for a passport. If that is the case, the passport is no greater proof of his identity than the taskera with which it was obtained, and there is ample evidence that taskeras are easy to forge or obtain by fraudulent means<sup>1</sup>. The applicant also has a support letter from the Afghan Youth Association of Australia. The letter does not explicitly state the author's belief that the applicant is Afghani or indicate that any sort of background checks are done on those who seek to join the association. While I consider that the letter was provided in good faith, its probative value is limited.
  21. However, the delegate spent some time questioning the applicant about the area where he grew up. The applicant was able to describe the climate and geography of the area and some of the local landmarks, as well as identify the approximate number of districts in Paktia and name some of them. It is also true that there is no direct evidence that the applicant is a Pakistani citizen and that some of the concerns noted above involve a degree of speculation.
  22. Given this, and without direct evidence to the contrary, I accept that the applicant's identity, ethnicity, and religion are as claimed, that he is a national of Afghanistan, and that Afghanistan is his receiving country for the purposes of this review.
  23. The applicant claims to come from a village in Paktia province. However, he claims that his entire family are now in Pakistan. The applicant noted that he had an uncle in Ghazni but claimed that his family had little contact with him. The applicant claimed never to have worked in Paktia before departing Afghanistan. DFAT indicates that returnees from western countries are almost invariably returned to Kabul and notes in-country sources as indicating that many remain there for economic reasons rather than return to their home province<sup>2</sup>. Given that the

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<sup>1</sup> Fraud Prevention Unit, US Embassy, Kabul, "A Guide to Afghan Documents", Wikileaks, 1 June 2011, 20190116100937; Australia: Department of Foreign Affairs and Trade (DFAT), "DFAT Country Information Report Afghanistan 27 June 2019", 27 June 2019, 20190627113333

<sup>2</sup> DFAT, "DFAT Country Information Report Afghanistan 27 June 2019", 27 June 2019, 20190627113333

applicant has no family or other obvious ties to Paktia, never pursued a livelihood while there, and expressed a reluctance to return there, I consider it highly likely that the applicant will not only return to, but also remain in Kabul.

24. The applicant grew up in a village called [Village 1], in [District 1] of Paktia province. The applicant was the middle of three sons. His older brother assisted their father with his business. The applicant was asked to concentrate on his religious studies rather than attend school.
25. The applicant claims that a group of eight to ten armed Taliban arrived at their house one night and informed the father that the applicant was required to join their ranks. They demanded that the applicant's father have him ready to go with the Taliban that coming Friday. The applicant stated at interview that his regular attendance at the mosque may have been one of the reasons he was allegedly targeted.
26. Neither the applicant nor his father wanted him to join the Taliban. The father immediately made plans to send the applicant abroad. He was able to arrange this through his network of acquaintances. The applicant's family then remained in Afghanistan for a further three months, hiding at the houses of neighbours in the village until they eventually left for Pakistan. The Taliban later came to the family home and 'finished it off' (destroyed it).
27. I have a number of concerns with this account.
28. The apparent swiftness with which his father acted after the Taliban's visit is notable. The applicant claims that the Taliban came to the house sometime in April 2013 and asked his father to make the applicant ready by the coming Friday. At interview, the applicant also noted that the Taliban said they would come on Friday to pick him up. Even if the Taliban's visit occurred on a Friday, a promise to return on the coming Friday could not have given the family more than a week to prepare. However, in that very short space of time, the father was able to make contact with a people smuggler in Quetta, arrange for the applicant's departure from Afghanistan, send him out of the country and put his entire family into hiding before the Taliban could return and apprehend them. The family were also able to do this without alerting the Taliban, despite the applicant's claim that they had a network of informers in the local area.
29. The applicant claims that his family then stayed on in Afghanistan for another three months. The applicant has variously stated that they stayed at the homes of their neighbours in the village. The applicant has repeatedly claimed that the Taliban have an extensive network of supporters and informers, and that if he returned to Afghanistan the Taliban would quickly find out. It is difficult to reconcile this claim with his contention that a family of six people (including a young child) were able to evade the Taliban for months simply by shuttling around the houses of neighbours and friends within their local area.
30. The applicant also noted that his sister was already in Pakistan by the time of the Taliban's visit. The delegate asked why the applicant's father did not simply send him to his sister in Pakistan. The applicant indicated that his father had made the arrangements. He then said that the Taliban had a network of contacts in Pakistan also and that his father felt he would be unsafe there. The delegate asked the applicant why he would be unsafe in Pakistan given his family has managed to stay there safely. The applicant merely stated that his family would not have left the country (meaning Afghanistan) if they did not have a problem. He otherwise provided no sound explanation as to why he could not also have gone to Pakistan, especially

considering he has a sister there that has been willing to offer support in the form of accommodation to his entire family.

31. The applicant's description of his supposed forced recruitment is also out of step with the reported approaches adopted by the Taliban. The Taliban are known to use a number of strategies to recruit fighters, some of them coercive. However, by far the most common strategy is the offering of incentives, as well as patriotic and religious appeals<sup>3</sup>. A 2012 European Asylum Support Office (EASO) report quotes a finding by the Institute of War and Peace Reporting that up to 70% of young Taliban fighters in Afghanistan fight for money and not ideology<sup>4</sup>. The EASO report predates the visit from Taliban to the applicant's family by less than a year.
32. The EASO report does include some reports of coercive recruiting by the Taliban. However, the bulk of the evidence indicates that coercion is rare. One source reported instances of forced recruitment occurring in Uruzgan in 2008, when members of the Pakistani Taliban replaced the local Afghan commanders. Those forcibly recruited at that time often died in battles against central government and foreign troops, undermining local support for the Taliban in the area. A source quoted by EASO in April 2012 stated that there was greater use of genuine persuasion and patriotic or religious appeals to duty in recruiting by the Taliban and much less coercion. The source also indicated few cases of actual violence against individuals escaping recruitment, noting that this would go against Taliban notions of justice and good governance and alienate communities<sup>5</sup>. It quoted the Afghan Independent Human Rights Commission as saying that "there is no reporting of forced recruitment by the Taliban and most recruits joined voluntarily". This sentiment was echoed by the Cooperation for Peace and Unity who also indicated that there was no need for the Taliban to forcibly recruit. It also mirrors a finding by Landinfo in 2011 which noted the rarity of forced recruitment, finding that the Taliban had sufficient volunteers without needing to resort to forcible recruitment. Other commentators quoted by EASO indicated that forcible recruitment was rare and only occurred in refugee camps. EASO also talked to an independent research institute in Kabul that said it may happen that the Taliban would demand a certain number of fighters from a village but "wouldn't put a request to an individual family". While some sources noted past instances of Taliban targeting people with specialised technical or medical knowledge, I note that the applicant claims to be illiterate and to have never attended school.
33. The United Nations High Commissioner for Refugees (UNHCR) Guidelines discuss Taliban recruiting and quotes the following information from a September 2016 report by EASO: "[I]n many villages there was a well-established agreement within the tribe on mobilisation of fighters. Large families usually contribute two fighters [to Taliban]. In case of emergency, for example when facing an imminent attack, refusing this mobilisation would be difficult. It can be avoided by the family paying a 'fine'."<sup>6</sup> This information post-dates the applicant's departure by just a few years and is consonant with earlier reports indicating the transactional nature of Taliban recruiting practices. The applicant's father ran a business and in relatively short order was able to raise \$15,000 USD to send the applicant out of the country. Yet the applicant did not indicate that the family ever attempted to pay (or offer to pay) a "fine" to spare the applicant from joining the Taliban. Nor did he indicate that there was ongoing conflict in his area at the time or that the need for recruits was urgent.

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<sup>3</sup> EASO, "EASO Country of Origin Information Report, Afghanistan, Taliban Strategies – Recruitment" , 1 July 2012, CIS23515

<sup>4</sup> Ibid

<sup>5</sup> Ibid

<sup>6</sup> UNHCR, "UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Asylum-Seekers from Afghanistan", 30 August 2018, UN3079B839



34. The available country information overall does not support the view that the Taliban would be interested in targeting specific persons of the applicant's profile or that their default position would be to demand a recruit by force. There is always the possibility that in a particular area conditions may differ or local commanders may take a different approach. However, the weight of available country information indicates that it was very unlikely that the Taliban would forcibly recruit the applicant or that they would do so in the manner described even if coercion was used. When considered in combination with some significant implausibilities in the applicant's account at interview, I am not satisfied that the applicant or his family were ever approached by the Taliban or that he was ever coerced to join them.
35. I consider that Kabul is the area to which the applicant will return (and very likely remain) in Afghanistan. I have considered the general security environment in Kabul, noting that there were 554 civilian fatalities in Kabul in 2018<sup>7</sup>. However, attacks in the capital disproportionately targeted the Shia minority and security and law enforcement personnel, with foreigners and those associated with the central government also at risk. EASO notes attacks on a voter registration centre in a Hazara-dominated neighbourhood, and an attack on a shrine where Shia had gathered to celebrate Nowruz (New Year)<sup>8</sup>. The most significant incident in 2018 was a car bomb outside a government compound that killed 114 civilians. Other significant incidents included an attack on the Intercontinental Hotel in Kabul and attacks on polling centres. EASO does not list any attacks aimed at Sunnis or Pashtuns per se. The number of fatalities in 2018 represented a slight increase of 5% over the 2017 figure. However, the number of suicide attacks (a key insurgent tactic) between 16 November and 7 February 2019 declined by 61%, a decrease the UN Secretary indicated may represent successful interdiction efforts by Afghan security forces in Kabul and Jalalabad<sup>9</sup>. It should also be noted that Kabul is by far Afghanistan's most populous centre, with estimates variously placing the population at between four and five million people<sup>10</sup>. In general, EASO notes of Kabul that "indiscriminate violence is taking place, however not at a high level" and that the city is not precluded from consideration as a viable internal protection alternative<sup>11</sup>.
36. EASO has listed a number of groups as having particular profiles of concern<sup>12</sup>. These groups include members of the security forces or pro-government militias, religious leaders, insurgents, educational and humanitarian workers, human rights defenders, and the media. It also lists a number of ethnic and religious minorities, most notably those of the Shia faith and Hazaras.
37. The applicant is Sunni, not Shia. He is also Pashtun, the predominant ethnic grouping in Kabul province. Muslims comprise 99% of the Afghani population, of which Sunni Muslims make up 85%. Pashtuns are the largest ethnic grouping comprising 40% of the population. These groups are not listed among the profiles that EASO has highlighted, nor is there any indication that there were any attacks in Kabul targeting Sunnis or Pashtuns on the basis of faith or ethnicity. I note that the Taliban has a Sunni orientation with its heartland in the predominantly Pashtun regions in the south and east of Afghanistan<sup>13</sup>. I do not accept that the Taliban ever attempted to forcibly recruit the applicant, and he has not otherwise claimed to have any association with the Taliban or any pro-government militia. Similarly, he has never claimed to have any

<sup>7</sup> EASO, "Country Guidance: Afghanistan", 30 June 2019

<sup>8</sup> Ibid

<sup>9</sup> Ibid

<sup>10</sup> EASO, "Country Guidance: Afghanistan", 30 June 2019; Department of Foreign Affairs and Trade (DFAT), "DFAT Country Information Report Afghanistan 27 June 2019", 27 June 2019, 20190627113333

<sup>11</sup> EASO, "Country Guidance: Afghanistan", 30 June 2019

<sup>12</sup> Ibid

<sup>13</sup> IHS Jane's World Insurgency and Terrorism, "Taliban", 28 September 2016, CIS38A80122216

association with the central or provincial governments or to have worked in any government role, or to have politically or socially active.

38. The applicant will be returning to Afghanistan after six years away from the country. I accept that he may be seen as a returnee from a western country. The applicant also claimed that he would be at risk because people will think he has changed religion or done other forbidden things in the time he has been in Australia. He also indicated that his hairstyle and dress had changed and he had western mannerisms which would make him stand out. The applicant also stated that there is a lack of shelter, food, employment, sanitation and medical access in Afghanistan.
39. DFAT confirms that returnees from western countries are almost invariably returned directly to Kabul<sup>14</sup>. Kabul's size and status as the national capital means it offers greater employment opportunities than other areas of Afghanistan<sup>15</sup>. Despite a drawdown in the presence of the international community there, wages still tend to be higher in Kabul as do both the quality of and access to public services<sup>16</sup>. EASO states that when considering issues such as health and housing, basic healthcare, and hygiene (including access to fresh water), the available COI does not preclude Kabul as a reasonable place to settle<sup>17</sup>. I note also that the applicant is still relatively young and in apparent good health.
40. Although the applicant claims not to have had any work experience in Afghanistan before his departure, he has been working in Australia for some time. The applicant works at a [specified] store. The applicant stated that he attended the store personally and asked about vacancies in order to get the job. He previously worked as an [Occupation 1] and purchased his own [assets] with money he saved from working. The applicant showed a good deal of initiative and discipline in finding work and saving up for his own [assets] in order to start as an [Occupation 1].
41. Kabul, like most of Afghanistan, faces challenges with employment and underemployment<sup>18</sup>. However, a 2018 study found that those displaced to Kabul found significantly fewer opportunities there in the agriculture/livestock sector but greater opportunities in retail and transport, two sectors in which the applicant has some experience<sup>19</sup>. The same report noted that many IDPs, including in Kabul, had issues accessing employment and other services due to a lack of documentation. The applicant has a taskera and a current, modern Afghani passport. There are also instances in which returnees have been able to use their foreign language skills, such as English, to supplement their income or find a job<sup>20</sup>. The applicant noted at interview that he has learned to read and write some English during his time in Australia.
42. I also consider that the evidence indicates that the applicant has been able to save a reasonably significant sum of money from his time in the workforce in Australia. The applicant stated that he purchased and now owns the [asset] he used as an [Occupation 1]. There is also evidence of substantial sums of money being moved around the applicant's accounts. When this was put to the applicant he claimed that some of the money was from an insurance payout

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<sup>14</sup> Department of Foreign Affairs and Trade (DFAT), "DFAT Country Information Report Afghanistan 27 June 2019", 27 June 2019, 20190627113333

<sup>15</sup> Ibid

<sup>16</sup> Ibid

<sup>17</sup> EASO, "Country Guidance: Afghanistan", 30 June 2019

<sup>18</sup> DFAT, "DFAT Country Information Report Afghanistan 27 June 2019", 27 June 2019, 20190627113333

<sup>19</sup> Norwegian Refugee Council, "Escaping War: Where to next? The Challenges of IDP Protection in Afghanistan", 24 January 2018, CIS7B83941157

<sup>20</sup> Oxford University Press, "What happens post-deportation? The experience of deported Afghans", Liza Schustery and Nassim Majidi, 1 May 2013, CIS28996

and another portion was a loan from a friend but was unable to account for the entire sum. The applicant also sent \$4000 back to Pakistan to an individual who was not a family member. The applicant contends that he sent the money for a friend who was indisposed due to an injury and could not send the money himself. However, the delegate provided the applicant with evidence that his friend had also sent funds to Pakistan on the same day and to the same person. I do not accept that the applicant sent this money on behalf of an ailing friend and consider that it is further evidence that the applicant has funds at his disposal. Although I do not imply or infer that the applicant has done anything wrong in regards to his financial affairs, I consider that the evidence clearly indicates that he has savings that he could access on return to Afghanistan and that this will assist him to meet whatever challenges he may encounter on return, particularly in the initial period as he reintegrates back into Afghani society.

43. I am mindful that the applicant's experiences in Australia are not necessarily analogous with conditions he will find in Kabul. Nonetheless, the applicant has shown considerable initiative and discipline in sourcing employment and saving funds here. He has been able to do so in a culture that was initially quite foreign to him and without the benefit of an established network. He has experience in the [workforce], and has acquired a functional command of English while here. He will also be returning to Afghanistan as a healthy, single man without dependents, and with at least some funds to assist with his reintegration on return. Given all of the above, I am not satisfied that the applicant will be unable to subsist on return.
44. The applicant has claimed a number of times that he would be targeted because he would be considered to be wealthy. EASO does note instances of those perceived as wealthy being targeted on the basis<sup>21</sup>. However, the information before me does not support that people who return to Kabul from the west are imputed to be wealthy. The information does not indicate that returnees are targeted on that basis, nor has the applicant provided any sources to substantiate his assertion that he will be perceived as wealthy or targeted on that basis because of his time spent in Australia. DFAT particularly notes that criminals and insurgents on roads tend to target those who appear wealthy or have associations with the criminal community. However, as the applicant would fly directly into Kabul if returned, there is no immediate reason he would need to travel extensively on the roads. As noted above, EASO says of Kabul that although it does suffer from indiscriminate violence, it is not at a high level. While there is always the possibility that the applicant may be caught up in a violent or criminal act while in Kabul, I do not consider that the possibility of the applicant being targeted in Kabul due to perceptions of wealth rises beyond remote.
45. The applicant has claimed that he would stand out in Afghanistan as someone who has returned from the west because he has adopted western dress, mannerisms and a western way of "carrying" himself. The applicant did not elaborate further about the changes in his lifestyle or describe what western mannerisms entail. However, there is little evidence to suggest that militants or anti-government elements target returnees on the basis of their supposed 'westernisation' or because of having claimed protection or spent time abroad.
46. In 2017, over 620,000 Afghans returned to Afghanistan<sup>22</sup>. Despite those numbers, no specific, credible accounts of persons being targeted simply on the basis of their manner of dress or mannerisms could be located in the available country information. EASO currently states that

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<sup>21</sup> EASO, "Country Guidance: Afghanistan", 30 June 2019

<sup>22</sup> UNHCR, "UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Asylum-Seekers from Afghanistan", 30 August 2018, UN3079B839

very few cases of incidents related to 'Westernisation' are reported, and that some sectors of society are open to western views, particularly noting Kabul as such a place<sup>23</sup>.

47. DFAT has noted reports from Amnesty International of people who were alleged to have been killed after returning from the west, although it assesses that those cases are more likely to have been as a result of the general security situation<sup>24</sup>. It goes on to note that those having international associations (or identified as such) face a high risk of being targeted by AGEs, which may include returnees from western countries<sup>25</sup>. The agent has referred to information in the DFAT report which states that "most returnees take measures to conceal their association with the country from which they have returned, and keep a low profile on return", as evidence that concealment is necessary to avoid harm. However, DFAT also notes that those who do adopt a lower profile do not face a significantly higher risk of discrimination or violence. The report does not suggest that western dress of itself imputes an association with a particular western country or that persons have been targeted on this basis.
48. The applicant also mentions that he has acquired western "mannerisms" but does not provide any detail as to what these are. Again, the applicant may have developed some unconscious habits, or mannerisms, or even a particular way of carrying himself after living in a different culture for so long. EASO notes that women are generally much more vulnerable to perceptions that they have adopted "western" ideas or values and to suffer adverse consequences as a result<sup>26</sup>. The available country information also does not indicate that dressing in western clothes, adopting western mannerisms or having spent time in a western country, however that manifests itself, would lead to a real chance of the applicant being imputed with western values or otherwise targeted by AGEs in the absence of an established profile or other risk factors. The applicant has not indicated he otherwise has any intention or interest in raising his associations with Australia. I do not consider that concealment or discretion in regard to western clothing or other habits or mannerisms he may have picked up in Australia would be necessary, particularly as a male returning to Kabul where the attitude towards western views is more accommodating.
49. There were reports in 2014 that an Afghan Hazara deported back to Kabul by Australia had been tortured by the Taliban<sup>27</sup>. The report is now five years old and the story has never been confirmed. A 2016 report by the Refugee Support Network tracked 25 young Afghani returnees who had left Afghanistan as minors<sup>28</sup>. Some of these returnees claimed to have witnessed violence against others, and one claimed to have been held up at gunpoint by someone claiming to know he had returned from the UK. However, none of the returnees reported being personally targeted by militants as a result of their status as a returnee. I note that although the applicant was young when he left Afghanistan, he was an adult on departure and not a minor. These reports are all some years old and there are no recent, credible reports of returnees being targeted after residing in western countries in the information before me.
50. The UNHCR has noted some sources who indicate that there are sometimes issues for younger returnee men if they have embraced secularism, changed religion or come out as homosexual<sup>29</sup>. The applicant still identifies as Muslim, and has not made any claim to be

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<sup>23</sup> EASO, "Country Guidance: Afghanistan", 30 June 2019

<sup>24</sup> DFAT, "DFAT Country Information Report Afghanistan 27 June 2019", 27 June 2019, 20190627113333

<sup>25</sup> Ibid

<sup>26</sup> EASO, "Country Guidance: Afghanistan", 30 June 2019

<sup>27</sup> The Saturday Paper, "Taliban tortures Abbott government deportee", 4 October 2014, CX1B9ECAB6244

<sup>28</sup> 'After Return', Refugee Support Network, 04 April 2016, CIS38A8012650

<sup>29</sup> UNHCR, "UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Asylum-Seekers from Afghanistan", 30 August 2018, UN3079B839

homosexual, or be outspoken on social issues. There is nothing in the available evidence to suggest that the mere fact that someone has spent time in a western country would lead to them being imputed as someone who has “changed religions”. The applicant has shown the ability to adapt successfully to life in Australia, as evidenced by ability to become reasonably fluent in English and find employment here. There is no reason to suppose he would not show the same adaptability on return to Afghanistan, a country he left when already an adult.

51. Included with the review material is a copy of a letter from the then Department of Immigration and Border Protection advising the applicant that some of his personal details were unintentionally made available on the internet by the Department. Although the applicant did not appear to be aware of this issue, the delegate has confirmed in his decision that the applicant was among those affected by the data breach.
52. I accept that the applicant was subject to unauthorised disclosure of his personal details by the (then) Department of Immigration and Border Protection. It is possible this information may have been accessed and viewed by the Afghani government, anti-government or extremist elements, or others although there is no evidence of such. This issue was not taken up in the previous agent’s post-interview submission to the delegate or the submission to the IAA.
53. As noted above, I accept that it is possible that the information disclosed by the Department in the internet was viewed by militant or extremist elements or others. However, even if the data regarding his detention was somehow in the hands of such persons, there is nothing to indicate that they would have any interest in targeting the applicant on that account, any way of relating that data back to a specific individual on their return, or any way of knowing if and when the applicant had re-entered the country. The letter clearly indicates that the unauthorised disclosure of personal information on the internet did not indicate whether or not people had applied for protection or any details of their protection claims. In any case, the data breach occurred sometime in February 2014, more than three years before the applicant made a SHEV application in June 2017. It has now been over six years since the applicant’s information was inadvertently made available on the internet for “a short period of time”. The information before me does not suggest that any individuals returning to Afghanistan have been targeted for reasons relating to the data breach. As set out above, I do not accept that the applicant ever came to the personal attention of any militant or extremist groups while in Afghanistan and I do not consider that the unauthorised disclosure some years ago of his personal information in the manner described above does anything to change that, or that there is a real chance it would lead to any harm.
54. DFAT does not have any information to suggest that returnees attract adverse attention from state authorities on return to Afghanistan, including those who have sought asylum abroad. The Afghani constitution guarantees the right of its citizens to travel out of and return to Afghanistan, and to settle anywhere in Afghanistan except in areas forbidden by law. DFAT notes that the Afghanistan government has signed a number of bilateral agreements for the return of former asylum seekers with European Union (EU) countries. DFAT says international observers report that although the Afghan government’s own capacity to assist returnees is limited, it co-operates with international agencies and humanitarian organisations who seek to assist those returning to Afghanistan.
55. I am not satisfied that there is a real chance the applicant would face any harm whether from the Taliban, the Government of Afghanistan or other government authority, due to his faith or ethnicity, the general security situation, his capacity to subsist, the unauthorised disclosure of his personal details on the internet, perceived wealth, his status as a former asylum seeker from a western country, or on any other account.

56. The applicant does not have a well-founded fear of persecution.

### **Refugee: conclusion**

57. 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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58. 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**

59. 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.

60. The expressions 'torture', 'cruel or inhuman treatment or punishment' and 'degrading treatment or punishment' are in turn defined in s.5(1) of the Act.

61. I have concluded that the applicant is not a person of interest to the Taliban, or any other AGE in Afghanistan, nor would he face a real chance of harm for any other reason including his religion or ethnicity, the general security situation, his capacity to subsist, the unauthorised disclosure of his personal information on the internet, his perceived wealth, or being a returning asylum seeker who has resided in a western country. Based on the same information, and for the reasons set out above, I find that the applicant does not have a real risk of suffering significant harm.

### **Complementary protection: conclusion**

62. 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.