



**Australian Government**  

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**Immigration Assessment Authority**

**Decision and Reasons**

**Referred application**

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AFGHANISTAN  
IAA reference: IAA20/08114

Date and time of decision: 4 May 2020 14:32:00  
D Hughes, Reviewer

**Decision**

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

*Any references appearing in square brackets indicate that information has been omitted from this decision pursuant to section 473EC(2) of the Migration Act 1958 and replaced with generic information which does not allow the identification of 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 national of Afghanistan. He applied for a protection visa on 11 November 2016. A delegate of the Minister for Immigration refused to grant the visa on 4 April 2020.

### Information before the IAA

2. I have had regard to the material given by the Secretary under s.473CB of the *Migration Act 1958* (the Act).
3. The applicant has made one submission to the IAA. I am satisfied the written submission turns on his existing claims and evidence and does not contain new information.
4. The submission does attach some new information, specifically copies of the applicant's Australian tax records. This has been provided as evidence that he has been working in Australia and paying his taxes, and positively contributing to the community. The applicant has provided earlier evidence of his employment, a work and character reference and evidence of his certifications and qualifications to work in Australia. I have assessed that existing evidence and I am under no doubt about the applicant's work in Australia, that he is a taxpayer, is appreciated by his employer and has made positive contributions in this country. I accept this is credible personal information, but I am not satisfied his tax records are relevant to this assessment (given the focus of this decision and other evidence before me). Moreover, given I am already satisfied of what this information is seeking to demonstrate, I do not consider any further evidence is needed. In all the circumstances, I am not satisfied there are exceptional circumstances to justify consideration of the new information.
5. While my conclusion in this assessment differs from that of the delegate, I am satisfied the determinative issues in this matter remain as they were identified by the delegate, including at the visa interview, in the delegate's decision and in the post interview submissions. I have not obtained further information, but have accepted and weighed the information put before me. I consider the applicant's submissions respond fully to the matters raised in the interview, the s.91W invitation, and later arising in the delegate's decision. I consider the substance of the Department's examination of his Taskera has been put to the applicant and he has had a chance to comment on it. I do not consider any further disclosure of that information or the relevant non-disclosure certificate is necessary. I am satisfied the applicant is under no misapprehension about the determinative issues arising in this case.
6. I have weighed whether the IAA should interview the applicant or obtain further information from him in relation to this claims, however I consider the applicant has had a fair and reasonable opportunity to make his case and respond to the delegate's concerns. In all the circumstances, I am not satisfied it is necessary to obtain new information from the applicant or seek his further comment, whether at interview or in writing.

### Applicant's claims for protection

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

- He is a Sunni Pashtun from Kandahar in Afghanistan. From 2006, he worked as a [Occupation 1] in Kandahar.
- In or around December 2012, the applicant noticed a threat letter outside his house. The letter was from the Taliban. It stated he should either join the Taliban in their jihad or he should [work] for them. The applicant did not want to join or help the Taliban, so he ignored the letter. However, he quit his job and stayed home.
- About three months after the first letter, he was approached by two unknown men as he returned from evening prayer at his mosque. The men said they wanted to have a word with him. He believed they may have wanted to place [an] order.
- The men told him they were with the Taliban and that he would need to follow their instructions. The applicant told the men he was the only male member of the household, and there was no one else to look after his wife, children and siblings. The men told him that they knew that he was a [Occupation 1] and said that even [providing a service to] the Taliban would contribute to Jihad and the cause. He told the men that it was not possible for him to do jihad or do [anything else] for the Taliban. The second man became angry and asked why he could [work] for the infidels and the government authorities, but not the Taliban. The man hit him on the head with an object hard, knocking him to the ground. When he was able to compose himself, the men were gone. He received treatment for his head wound and went home.
- About a week after the incident, the Taliban dropped another letter at his home. The contents of the letter were serious and threatening. The letter stated that since he did not respond to the Taliban's call, they would kill him. The Taliban further stated that they could trace and find him anywhere and would eliminate him wherever he went.
- If he returns to Afghanistan, he fears he will be targeted by the Taliban because he disobeyed their orders and threats and refused to join them.
- In addition, the fact that he came to Australia for the purpose of seeking protection is regarded an act of evil and harshly punishable by the Taliban or other militants in Afghanistan. The Taliban regard the West and Westerners as 'infidels', and those seeking their protection are regarded as 'apostates' and 'big sinners'. He would be in the same category of those people seeking the protection of the West, and the Taliban will show him no mercy by punishing him.

## **Factual findings**

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8. I have serious concerns about the applicant's identity, claims, and credibility. More specifically, I have concerns that the applicant's Afghan Taskera (a form of national identity document) and Afghan driver's licence are bogus documents.
9. In undertaking the assessment, I have weighed his submissions about his mental health. That evidence states that the applicant was diagnosed with depression in March 2018 and since then he has been seeing a mental health worker on a monthly basis. It states he has also commenced taking medication and has a medical review once every 2 months. It states his symptoms include poor sleep, low mood and difficulties in focusing and concentrating.
10. I accept that evidence and have weighed it in this assessment. I am conscious that his medical evidence is relevant when considering concerns with this evidence. Equally, I also note that during the visa interview, far from appearing confused or having concerns with his memory or concentration, the applicant often provided prompt, confident and detailed answers to the

delegate's questions. He did not give any obvious impression that he had any difficulty articulating himself or recollecting facts, nor do I consider his evidence obviously revealed any confusion or lack of concentration. It was only when the delegate identified concerns with this evidence that the applicant made reference to having mental health issues and taking medication, and the potential impact on his evidence.

11. I have also considered the applicant's concerns about the delegate's approach. I do not accept the submission that the delegate was biased during the protection visa interview and had made up his mind before interviewing the applicant. In my assessment, the delegate was very prepared and his questioning of the applicant focussed on a number of very apparent discrepancies that arose in his evidence. I accept there are errors in the written assessment, including a reference to an NGO claim and one reference to Khost instead of Kandahar. In this regard I note the decision was made on 4 April 2020, during the initial stages of Covid-19 restrictions, and during a period in which many were adapting to changing arrangements. I accept those errors are concerning for the applicant, however I also consider they were unintentional and not demonstrative of any bias on the part of the delegate.

### **Documents provided in visa application**

12. The applicant has provided a copy and translation of his Afghan Taskera. The translation of the Taskera includes biographical details consistent with the applicant's claims, and contains a photo of the applicant. It indicates it was issued in Kandahar [in] 2012. It appears copies of the Taskera were provided by a third party in a 2013 email to the Department, and in his visa application from November 2016. The Taskera itself was provided to the delegate during the visa interview.
13. In the visa interview, the applicant first indicated that he left his Taskera at home in Afghanistan and that he asked for it to be sent to him in Australia. He claimed it was sent by an intermediary (his cousin). His family gave it to his cousin who then sent it to him by post. When asked whether he lives in Kandahar, the applicant indicated he lived in Pakistan.
14. The applicant contended that he is certain that his Taskera is genuine in all regards. He advised that he has obtained the Taskera himself in person by making a lawful application in the relevant District Office in Kandahar Province.
15. In addition to his Taskera, the applicant provided a copy of his Afghan driver's licence, again provided through an email in 2013 and his visa application in November 2016. The translation of the licence includes biographical details also consistent with the applicant's claims, and it contains a photo of the applicant. The translation of the licence indicates it was issued in Kandahar [in] 2012. The applicant did not provide a copy of the licence at the visa interview, indicating it had been lost.

### **Photosets of the applicant**

16. In addition to his identity documents, the applicant (through an intermediary) provided the Department three sets of photographs. These are high quality passport type photos, depicting the applicant in three different sets of clothing and hats, against three different coloured backgrounds. It appears from the departmental records that these photos were provided along with the copies of his Taskera and licence in July 2013.<sup>1</sup>

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<sup>1</sup> 'Unverified Documents - VES019 - Ahsan Ullah - Copy.msg'

17. The applicant gave evidence in his visa interview about his life in Afghanistan, the acquisition of his identity documents in Kandahar, and his period in Pakistan awaiting a passport and transit out of the country.
18. The applicant was shown the three sets of photos by the delegate during the visa interview, and each set was discussed individually. The applicant was initially uncertain where they were taken, but as they went through the photos, it became apparent that he believed they were taken in Quetta at the same time. He explained the context was for the (false Pakistani) passport. He indicated it was a studio photo shoot and that different backgrounds and clothing were used. The delegate did not clearly identify which photos he was discussing during the interview itself, numbering them verbally one to three. However, they were discussed in detail. The applicant's evidence was quite clear on one point, that he was wearing the same shirt in two of the sets of photos. I note one set of photos (brown hat and black jacket) and another (grey hat and grey vest) the applicant is wearing what appears to be the same white shirt. I am satisfied these are the photos being referred to in this visa interview. In that part of the visa interview, the applicant also confirmed that he did not on any other occasion undertake multiple photo shoots like this. The applicant said none of these photos were used for the passport, but another set not included had been used.
19. The delegate then put to him that one of these sets of photos (the photos showing the applicant in a brown hat and black jacket) was the same photos used in the Taskera and Afghan driver's licence, and asked him to reconcile how photos taken in Quetta in 2013 could appear on his 2012 Afghan documents. The applicant then revised his evidence and said that set of photos was taken in Afghanistan. He explained that there were five sets of photos and two were missing. In terms of the three presented by the delegate, two of the sets were taken in Pakistan, and one in Afghanistan.
20. The delegate asked why or how the intermediary (his cousin) could send sheets of high quality photos from both Afghanistan and Pakistan, taken in two different years (2012 and 2013). The applicant said he did not know how. The delegate also observed it was remarkable that all his photos could survive, but none of his family's documents.
21. In his post interview submission, the applicant stated that on arrival in Pakistan, the people smuggler asked him to provide photos for his passport. The applicant claimed that he had already taken one set of photos at a studio in Afghanistan, but the smuggler noticed he had used these photos in his Taskera and licence, and asked the applicant to take different sets of photos in Quetta. The applicant acknowledges that the photo set from Afghanistan was 'really similar' to the ones taken in Quetta, but said that not all the photos were taken in Quetta. He recalls that one set of the photos shown at the visa interview were brought from Afghanistan (presumably the brown hat and black jacket set). He claims he gave copies of his documents and photos to his friend in Quetta to send to him later if necessary.
22. With respect to the applicant's response, it is apparent that the three sets of photos bear striking similarities in terms of size, bordering (black line), presentation and format. They were provided to the Department in the same format and at the same time, despite his later claim that they were taken in different countries and in different years. I note there is no damage or obvious difference in the presentation of the photos.
23. The applicant gave clear evidence in the visa interview that the photos were taken at the same time in Quetta, providing clear evidence about the context (photos for the passport) and discussing the changes in clothing and backgrounds. The applicant reiterated the context when asked by the delegate. He also confirmed he did not previously undertake any such photo

shoots prior to Quetta. Significantly, he highlighted the same shirt was used in two different photos taken in Quetta. One of those sets of photos (brown hat and black jacket) appears to be the same photo used in the applicant's Afghan Taskera and driver's licence, which were both purportedly issued in Kandahar in 2012. It is apparent to me that the shirt used in the 'brown hat and black jacket' and 'grey hat and grey jacket' photo sets are the same. There is also a strong consistency in the size and black outline of each of the photos, and also the size and quality of the scans. I consider any contention that they were taken in different countries and in different years, and provided by a friend or cousin in Quetta at the same time, to be farfetched.

24. It follows that I prefer the applicant's spontaneous oral evidence given in the earlier parts of the visa interview – that these photos were taken at the same time in Quetta, as part of a photo shoot in which he changed outfits and backgrounds several times. The evidence leaves me with little doubt that the photos were taken together at the same time. I consider the applicant has provided inconsistent and unconvincing evidence about the origin and history of these photos, and I find his later explanations are not credible. I am not satisfied and do not accept that these photos were taken at different times or in different countries.

#### **Document examination**

25. The Department's Document Examination Unit (DEU) undertook an examination of the applicant's Taskera.
26. The examiner notes that the printing type was not consistent with reference material. The examiner also notes some differences between the original and the electronic version provided previously, including damage, as well as some handwritten ink that indicates a different pen was used.
27. The examiner concludes that the Taskera does not exhibit all the manufacturing characteristics expected in this document. He states that the security characteristics introduced during the document issuing process are operating effectively, however they have limited security value. He states there is no evidence to determine if the damaged areas are a significant fraudulent alteration to the personal data, wear and tear, or accidental damage. The examiner concludes that the quality of the security limits the ability to determine whether the Taskera is a legitimately manufactured and issued document. The result is inconclusive.
28. In terms of the damage to the document, I consider this unremarkable if the document had been in the possession of others and carried by the applicant for some time. Other aspects of the report leave me with some concerns.
29. The applicant's representative queried the assessment given it was inconclusive. I accept that the examiner's final assessment was inconclusive, but I also consider that assessment was predicated on the absence of integrity within the Taskera system,<sup>2</sup> rather than equivocation about whether the document was genuine or fraudulent. Even within a document that has few security features, the DEU examiner identified concerns with the document. I accept the examiner does not find the document fraudulent, however I also do not consider that the assessment is any endorsement of the document as genuine. While inconclusive, I consider it material to this assessment.

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<sup>2</sup> DFAT 'Country Information Report – Afghanistan', 27 June 2019, 20190627113333.

30. In an email to the Department, the applicant advised that the original copy of his Taskera had been withheld by the Department. As a consequence, he would be unable to obtain verification and authentication from the relevant authorities in Afghanistan or the Afghan Embassy in Canberra.
31. I note the applicant had scans of these documents. However he has provided no further advice about his attempts to verify this document through official Afghan channels.

#### **Acquisition of false Pakistani passport**

32. A further relevant consideration here relates to the applicant's evidence of his Pakistani travel document, which has been highly inconsistent across time. The applicant claims he used a false Pakistani passport to exit Pakistan. That passport was taken by smugglers on his arrival in Jakarta and cannot be produced or assessed.
33. In the entry/arrival interview, the applicant indicated that the Pakistani passport was given to him by the people smuggler in Kandahar.
34. In the visa interview, the applicant claimed that the passport photo was taken in Quetta and he was later given a false Pakistani passport at the airport in Islamabad. Later in the interview, he again confirmed his passport was arranged in Quetta, and handed to him in Islamabad. His evidence about the Quetta photo sets was that these photos were obtained for the Pakistani passport. At the interview, the delegate put to him that he had said in the arrival interview that he was given the passport by the smuggler in Kandahar. The applicant said it was not given to him in Kandahar, and that it may have been an interpreting issue in the earlier interview, but it was given to him in Islamabad. He was told not to look at it.
35. In his post interview submission, the applicant advised that when he arrived in Quetta the people smuggler asked him to provide him photos for his passport. He claimed the smuggler did not want to use the Afghan photo set and he was asked to take new photos in Quetta.
36. In the IAA submission, the applicant's evidence shifted again. He states that sometimes he is unable to concentrate on what has been asked of him. The applicant claimed that during his initial interview, he told the Department that his passport was provided by the smuggler in Kandahar, Afghanistan. He contends that when he arrived in Pakistan the smuggler took the passport in order to issue the applicant [a Country 2] visa. In the visa interview, he meant to state that the smuggler handed him the passport at Islamabad airport with [a Country 2] visa.
37. In the submission to the IAA, the applicant appears to again state that his passport was given to him in Afghanistan (as he previously claimed in his arrival interview). It was taken from him in Pakistan so that [a Country 2] visa could be obtained and included in the document, and that it was this updated document that was handed to him at the airport in Islamabad.
38. I do not accept that is the case. The applicant gave clear evidence about the need to obtain photos for his passport in Quetta in the visa interview and post-interview submission, being clear evidence that the passport was created in Pakistan and handed to him for the first time in Islamabad. I am not satisfied these are errors attributable to a lack of concentration. Instead, I consider the applicant has provided inconsistent evidence about the acquisition of his claimed false Pakistani passport, which raises further serious concerns for me about his credibility, his claims and identity.

39. I am conscious of the limits of memory, as well as the limits of relying on evidence at entry/arrival interviews. I have also had regard to his medical evidence. However, this is a case where the applicant has provided several highly inconsistent accounts. In his interview, post interview and IAA submissions, he has provided quite clear and specific evidence about what occurred. However, these accounts cannot be reconciled. For example, if his revised account is accepted and he was given the Pakistani passport in Afghanistan, this squarely contradicts his oral and written evidence about the need to obtain the passport photo sets in Quetta, and the details of what that involved.
40. I consider the applicant's account of the acquisition of his Pakistani passport is not credible, cannot be reconciled with his evidence about the photo sets taken in Quetta, and raises further concerns about the credibility of his claims and evidence, and credibility overall.

#### **Other concerns – surname and birth date**

41. A number of other issues arose in his evidence. The delegate was concerned about the applicant's use of a specific birthday on arrival in Australia. According to DFAT, reporting of birth dates is unreliable, and reported dates are likely to be approximate. Surnames are sometimes used, or alternatively father's names are used.<sup>3</sup> I am aware that birth dates and surnames are often not used in Afghanistan. However, I consider the applicant's explanation – that he had heard other people providing birth dates on his arrival – to be a plausible explanation for why he provided a specific birth date and surname he did not otherwise regularly use.
42. However, I do find the applicant's use of the surname [Surname 1] while in Australia to be perplexing, as did I find his explanation for why he volunteered this number when he registered his mobile phone number.
43. In the interview, the applicant confirmed his mobile sim card was registered under the name [Surname 1]. He claimed a shop in [Suburb 1] was selling sim cards. The delegate queried how he could register the phone in that name (given he had no identity documents with such a name). The applicant showed the seller his 'Immi Card' but asked if he could register the phone number under the name [Surname 1]. The applicant was not sure how he did it. He tried to change it, but he was concerned about using his other documents.
44. In the post interview submission, he claimed he never used the name [Surname 1] in any official documents, except the one time when he was purchasing a sim card. He claimed the name [Surname 1] 'slipped out' of his tongue. He has provided a screenshot, purportedly of his surname being changed to [Surname 2] on his account.
45. In his IAA submission, he claims no identity documents were asked for when he registered his sim card in [Suburb 1]. He affirms that he does not have any identity documents under a different name as raised by the officer in the decision record.
46. The delegate accessed information that appears to contradict the applicant's contention that he could register a surname without supporting information.<sup>4</sup> However, it is not clear from that information whether any name or details could be used, or whether incorrect details would prevent registration. I am prepared to accept a phone number could be registered with incorrect details, as am I prepared to accept those details have since been updated. What I

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<sup>3</sup> DFAT 'Country Information Report – Afghanistan', 27 June 2019, 20190627113333.

<sup>4</sup> [Source deleted].



remain concerned about is the applicant's use of this other surname. I find his contention that this was a slip of the tongue, raises questions as to whether this surname has a material connection to his identity.

47. Ultimately, I consider the evidence here is incomplete, and I give these factors no adverse weight. Equally, I also consider this evidence provides little positive support for his claims regarding his identity.

#### **Other concerns – substantive claims**

48. The delegate identified a number of concerns about the applicant's evidence in the assessment of his substantive claims.
49. In terms of his background, I am not overly concerned with the applicant's account of his employment history with his father. I do not consider there anything particularly implausible about the applicant having periods of no work and/or occasionally assisting his father with his shop for several years after he finished school. In terms of his schooling, while perhaps risky during the Taliban era, I also do not consider it particularly implausible that the applicant might receive private tutoring in English if his family believed this was in his best interests.
50. I do consider the applicant's account of the time of the Taliban rule and American intervention was general, but I have weighed his submissions. I consider that lack of detail may be explainable by his age and his account of being sheltered from the conflict. Equally, it must also be acknowledged that the generality of his evidence may provide further indication that he was not in Kandahar during the period when the international forces reclaimed Kandahar.
51. Of more concern to me are the specifics of his claims. The applicant claimed to have received two threat letters from the Taliban, and that an assault and second letter was his catalyst for him deciding to leave Afghanistan. He claims in his written application that the first letter was received in December 2012, and the second letter around three months later (March 2013).
52. At the start of the visa interview, the applicant and his representative clarified that the first warning letter was sent in July 2012, and the second around six months later. I note that it appears the applicant did not have copies of the threat letters until they were given to him by the delegate at the interview (the letters having earlier been emailed to the Department).
53. The interpreter undertook a sight translation of the letters at the visa interview. He confirmed the details of the letters. I note that other than the salutation 'brother' and a reference to the occupation of '[Occupation 1]', the applicant was not specifically named in the letters. Relevantly, the interpreter confirmed the dates on the letters as [in] December 2012 and [in] March 2013. The applicant then revised his evidence, stating that he received an earlier letter in July 2012, however he did not take it seriously and threw it away.
54. The delegate queried why the Taliban would use the Gregorian calendar in its threat letters. In his submission, the applicant states he does not know why the threat letters use a Gregorian date. He assumes it would have been written by a 'Talib' who belonged to a nearby country as many Taliban have come to Afghanistan during war with American from other countries including Pakistan and Arab countries.
55. The applicant has provided an inconsistent account of his experiences in Afghanistan. Prior to the visa interview, he referred to receiving two threat letters. It was only when the letters were

translated and the dates were identified as inconsistent with his claims that he changed his evidence, raising for the time first time the existence of a third letter.

56. Some confusion about his timeline and the letters he received may be understandable, given the potential impact of the incidents and the time that has passed. However, I find it concerning that the Taliban would use a Gregorian calendar when issuing threats to the applicant. Even in post-Taliban rule, Afghanistan relies on a solar calendar that is not the Gregorian calendar.<sup>5</sup>
57. I have considered the applicant's contention that it is possible a non-Afghan member of the Taliban issued the letter, but I find that fanciful, particularly given the Taliban's animosity to Western influences. I consider a far more plausible explanation is that the letter was created outside of Afghanistan, by someone unfamiliar with Afghan practices. I have serious concerns about the provenance of these letters, and the credibility of the applicant's claims in relation to these letters and overall.
58. The delegate also expressed concern about the absence of any evidence that demonstrated the existence of the applicant's family members in Afghanistan, including uncles and cousins he now claims are in Pakistan. The applicant has been unable to provide any other documentary evidence of his other family, whether in Afghanistan or Pakistan.
59. In his submissions, the applicant confirms that his wife and children never had Taskeras, as he stated in his visa interview. Regarding his parents' Taskeras, the applicant states that during his family's migration to Pakistan, and as a result of moving from one place to another, the family members lost their Taskeras.
60. If his parents have passed away, I accept it may be the case that he no longer has their identity documentation. I also accept it may be the case that his wife and children do not have identity documents, given their age and genders, and that it could be difficult and dangerous to obtain such documentation. However, I do not find it plausible and am not satisfied that all members of his extended family would have lost their Afghan identity documentation. The lack of any corroborative identity documents is not determinative, but it raises additional concerns for me about the credibility of the applicant's claims and evidence.
61. While aspects of the applicant's evidence have been consistent across time, I consider the weight of the applicant's evidence regarding his substantive claims raises further concerns about his credibility and identity, as does the evidence of the threat letters.

### **Assessment of identity documents**

62. The preliminary question before the IAA relates to the applicant's identity, and whether his Afghan Taskera or driver's licence are genuine documents.
63. An assessment of the applicant's Taskera by the Department's Document Examination Unit raised concerns, but was ultimately inconclusive. While inconclusive, I am satisfied that assessment provides little positive support for his contentions that this is a genuine document.
64. The applicant has also provided what I consider to be highly problematic evidence regarding the acquisition of the photos used in these documents.

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<sup>5</sup> My Afghan, 'Afghanistan re-adopts solar calendar', 8 February 2002, CX61709.

65. The applicant provided conflicting accounts of where he obtained his false Pakistani passport. He initially indicated in his arrival interview that it was obtained in Kandahar, before varying his evidence in the visa interview, providing very specific evidence that the passport was obtained in Quetta in 2013. The applicant also provided very specific evidence of the need to obtain passport photos at a studio in Quetta in 2013, explaining the reasons for doing so and the process involved. The applicant also provided very clear evidence about when he received the passport (in Islamabad, just before they arrived at the airport).
66. When concerns about his accounts of the photos, passport and timeline were put to him, the applicant sought to vary his evidence in his interview, post-interview and IAA submissions. The applicant sought to contend that the photos were taken at different times (2012 and 2013) and in different locations (Kandahar and Quetta). In the assessment above, I have rejected those contentions. I find that the photos used in these documents were taken at the same time as other sets provided to the Department by email in 2013.
67. In terms of the Pakistani passport, the applicant indicated in the visa interview and post interview submissions that it was acquired in Pakistan. In his IAA submissions, he has sought to reconcile his conflicting accounts, suggesting it was obtained in Afghanistan as he had earlier claimed, but that a visa to [Country 2] was added in Pakistan. I am not satisfied that final account is credible. In this regard, I note he provided very specific evidence about the acquisition of the passport in Quetta, and the need to obtain photos in order to get a travel document. I am not satisfied that any of his accounts is credible.
68. I have considered his other claims and evidence. While broadly there is a degree of consistency in his claims, I note the specifics of his claims also raise concerns about his credibility. The applicant gave inconsistent evidence about the threat letters, in terms of the quantity and timing of those threats. The threat letters are also problematic, containing a date format that is hard to reconcile with the Afghan calendar and the philosophy of the Taliban.
69. While not determinative, I also give weight to the fact that the applicant has provided no evidence from his family that might corroborate his claims that they are nationals of Afghanistan living in Pakistan. I accept there are many challenges in obtaining supporting evidence, but the applicant has not satisfied me that all members of his family could have lost their documentation, or that he could not provide some other form of third party corroboration that would support his claims, for example photos or other evidence.
70. I consider there is little within his substantive claims that provides positive support for his evidence regarding his claims, background or identity documentation.
71. I have weighed the time that has passed and the applicant's medical evidence about his mental health. I accept he has depression and takes medication, and that his symptoms include poor sleep, low mood and difficulties in focusing and concentrating. However, I have also noted that his evidence in the visa interview was prompt, confident and detailed. I accept that some variance must be accepted given his mental health profile, however I consider the discrepancies in his evidence are numerous, and have arisen at multiple stages in his evidence before the Department. I do not accept that his mental health concerns adequately explain or overcome the extent of his problematic evidence.
72. In view of everything before me, I am not satisfied the applicant is credible. I find the photo sets provided were taken on a single occasion in Quetta, likely in 2013, as the applicant spontaneously contended at the visa interview. As those photos were taken in Quetta, I am

not satisfied the applicant travelled (or returned) to Afghanistan to obtain a licence or Taskera, whether in 2012 or 2013.

73. I have considered whether the applicant undertook the entirety of the photo shoot in Kandahar, prior to obtaining his licence and Taskera in 2012, however that has not been his evidence, nor do I consider it reconcilable with the very specific evidence he gave during the visa interview, regarding the photo shoot, the timing of his false passport, and the reasons for obtaining the photos (on advice from the smuggler). I consider these photos, and the timing of these photos, cannot be reconciled with his claims to have obtained his Taskera and driver's licence in Afghanistan.
74. I find the photos were obtained by the applicant in Quetta, likely in 2013, it follows that the photos could not have existed at the time the Afghan Taskera and licence were issued in 2012. I have had regard to DFAT advice about the prevalence of document fraud in Afghanistan, and I consider the weight of evidence indicates these documents are not credible or genuine. It follows that I reasonably suspect that the applicant's Afghan Taskera and Afghan driver's licence are bogus documents, in that they either purport to have been, but were not, issued in respect of the applicant, or are counterfeit. I consider that may explain why scans of these documents, and the hardcopy of the Taskera, were only received after the applicant arrived in Australia.

#### **Identity documents – bogus or destroyed documents**

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75. As is apparent from my analysis above, a preliminary issue in this case is whether the grant of the visa is prevented by operation of s.65 and s.91W or s.91WA of the Act. Under s.65, the Minister is to refuse to grant a visa to an applicant if, after considering a valid application for the visa, the Minister is not satisfied the grant of the visa is not prevented by s.91W (evidence of identity and bogus documents) or s.91WA (bogus documents and destroying identity documents).
76. Section 91W of the Act prevents the grant of a protection visa to an applicant who, without a reasonable explanation, refuses or fails to comply with a request to produce documentary evidence of their identity, nationality or citizenship, or produces a 'bogus document' (defined in s.5(1)) in response to the request. However, that requirement will not apply if the Minister is satisfied that the applicant has a reasonable explanation for the failure or refusal, and either provides the relevant documentary evidence or has taken reasonable steps to provide such evidence.
77. Relevantly to this matter, s.91WA(1) of the Act requires the Minister to refuse to grant a protection visa to an applicant if the applicant provides a 'bogus document' (defined in s.5(1)) as evidence of their identity, nationality or citizenship, or if the Minister is satisfied that the applicant has destroyed or disposed of, or caused the destruction or disposal of, documentary evidence of their identity, nationality or citizenship. However, that requirement will not apply if the Minister is satisfied that the applicant has a reasonable explanation for the provision, destruction or disposal, and either provides relevant documentary evidence or has taken reasonable steps to provide such evidence.
78. It is apparent the delegate was assessing the applicant against s.91W and s.91WA in the course of this review. On 17 November 2016, the applicant was sent a request checklist, which included a request for him to provide documentary evidence of his identity, nationality or citizenship, and explained his obligations under s.91W. On 9 July 2019, the applicant was invited to a visa interview and reminded that he may be required to provide information under

s.91W. I note that the delegate's concerns about his identity documents were raised and discussed at length in the visa interview. On 6 September 2019, the delegate advised the applicant that the Document Examination Unit within the Department had 'identified concerns about the Taskera, but have found the document to be inconclusive'. On 6 September 2019, the Department also requested under s.91W that the applicant provide a reasonable explanation for producing a bogus document. That letter states as follows:

- After consideration of your testimony at interview on 23 July 2019, a delegate of the Minister reasonably suspects that the Afghan Taskera numbered [number] that you provided as evidence of your identity, nationality or citizenship is counterfeit and therefore meets the definition of a bogus document.

79. The applicant responded by way of post-interview submissions, which I have considered above.

80. The delegate assessed s.91W/91WA in relation to the applicant's allegedly false Pakistani passport. He concludes:

- Despite this, I accept the applicant's explanation for disposing of his passport to be reasonable, and therefore find that s91WA does not apply. I also accept that the applicant has attempted to provide documentary evidence of his identity, and that he included scans of his Australian-issued documents in his SHEV application. I therefore find s91W to be met.

81. In terms of the s.91W/91WA assessment of the applicant's Taskera and driver's licence, the delegate goes on to make extensive findings about the applicant, his claims, his credibility, and his identity documents in the decision. The delegate concludes that he cannot accept the Taskera (or the driver's licence) as a genuine, unaltered document.

82. The delegate goes on to state that he is:

- [U]nable to make a definitive finding that the applicant is a Pakistani citizen, and will accept, for the purposes of this decision, that the applicant is an Afghan national ... When considering the evidence as discussed above, both individually and cumulatively, I am unable to make a robust identity finding. For these reasons, I must arrive at the conclusion that the applicant's identity is not supported.

83. The delegate had both concluded that he could not accept the Taskera and licence as genuine, unaltered documents, and found that the applicant's identity was unsupported. Notwithstanding those findings, the delegate also proceeded to assess the applicant's substantive claims against Afghanistan. The delegate did not go on to consider the applicant's explanations in relation to either document under s.91W(2)(c) or s.91WA(2)(a).

84. I am satisfied the delegate did not ultimately find s.91W or s.91WA applied, indeed there would have been no referral to the IAA had that been the case, but I consider his findings did everything short of finding that these provisions were engaged. As discussed above, I am satisfied the applicant is aware these are live issues, and has had a number of opportunities to respond to those concerns, at the interview, in post-interview and s.91W/91WA submissions, and in his IAA submission.

### Application of s.91WA to this case

85. Based on the analysis above, I reasonably suspect (as did the delegate) that the applicant's Afghan Taskera and Afghan driver's licence are bogus documents, in that they either purport to have been, but were not, issued in respect of the applicant, or are counterfeit.
86. I am satisfied these documents, including translations, were provided with his visa application. I am satisfied the Taskera itself was provided at the visa interview. I am satisfied that under s.91WA(1), the applicant has provided a bogus document as evidence of his identity, nationality, and citizenship.
87. In relation to s.91WA(2), the applicant was given a written opportunity to provide a reasonable explanation for providing a bogus document. The applicant continued to insist the documents are genuine and provided explanations to that effect. As above, I have serious concerns with those submissions as well. Based on the above assessment, I find the applicant's explanations or submissions that the documents are genuine, or that he believes they are genuine, are not credible and they are not accepted. I am not satisfied the applicant has provided a reasonable explanation for providing the bogus document(s).
88. As the delegate suspected, I consider the weight of evidence indicates that the applicant is a national or permanent resident of Pakistan. It is possible the applicant is ethnically Afghan, but whatever the case, based on the evidence before me, I am not satisfied he was in Kandahar in 2012, when he claims he obtained these documents. I am satisfied he has provided a bogus document as evidence of his nationality or citizenship.
89. For s.91W(3)(b), while the applicant has provided some documentary evidence of his identity in Australia, I find he has not produced documentary evidence of his nationality or citizenship; nor am I satisfied he has taken reasonable steps to produce such evidence.
90. It follows that s.91WA applies to the applicant. Therefore, the grant of the visa is prevented by that section.
91. Although unnecessary to conclude on, I am also satisfied s.91W applies to the applicant. For s.91W(1) and (2)(a) and (d), I am satisfied an officer of the Department requested, in writing, that the applicant produce, for inspection by the Minister or the officer, documentary evidence of the applicant's identity, nationality or citizenship. I am satisfied that when the request was made, the applicant was given a warning, in writing, that the Minister cannot grant the protection visa to the applicant if the applicant refuses or fails to comply with the request, or produces a bogus document in response to the request.
92. For s.91W(2)(b) and (c), for the same reasons as above, I am satisfied the applicant produced a bogus document in response to the request, specifically the Taskera provided in the visa application and at the visa interview, and he does not have a reasonable explanation for producing the bogus document. For s.91W(3)(a), the applicant has not satisfied me that he has a reasonable explanation for refusing or failing to comply with the request or producing the bogus document.
93. It follows that s.91W would also apply to the applicant, and the grant of the visa would be prevented by that section.

## **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.

#### **91W Evidence of identity and bogus documents**

- (1) The Minister or an officer may, either orally or in writing, request an applicant for a protection visa to produce, for inspection by the Minister or the officer, documentary evidence of the applicant's identity, nationality or citizenship.
- (2) The Minister must refuse to grant the protection visa to the applicant if:
- (a) the applicant has been given a request under subsection (1); and
  - (b) the applicant refuses or fails to comply with the request, or produces a bogus document in response to the request; and
  - (c) the applicant does not have a reasonable explanation for refusing or failing to comply with the request, or for producing the bogus document; and
  - (d) when the request was made, the applicant was given a warning, either orally or in writing, that the Minister cannot grant the protection visa to the applicant if the applicant:
    - (i) refuses or fails to comply with the request; or
    - (ii) produces a bogus document in response to the request.
- (3) Subsection (2) does not apply if the Minister is satisfied that the applicant:
- (a) has a reasonable explanation for refusing or failing to comply with the request or producing the bogus document; and
  - (b) either:
    - (i) produces documentary evidence of his or her identity, nationality or citizenship; or

- (ii) has taken reasonable steps to produce such evidence.
- (4) For the purposes of this section, a person produces a document if the person produces, gives, presents or provides the document or causes the document to be produced, given, presented or provided.

...

**91WA Providing bogus documents or destroying identity documents**

- (1) The Minister must refuse to grant a protection visa to an applicant for a protection visa if:
  - (a) the applicant provides a bogus document as evidence of the applicant's identity, nationality or citizenship; or
  - (b) the Minister is satisfied that the applicant:
    - (i) has destroyed or disposed of documentary evidence of the applicant's identity, nationality or citizenship; or
    - (ii) has caused such documentary evidence to be destroyed or disposed of.
- (2) Subsection (1) does not apply if the Minister is satisfied that the applicant:
  - (a) has a reasonable explanation for providing the bogus document or for the destruction or disposal of the documentary evidence; and
  - (b) either:
    - (i) provides documentary evidence of his or her identity, nationality or citizenship; or
    - (ii) has taken reasonable steps to provide such evidence.
- (3) For the purposes of this section, a person provides a document if the person provides, gives or presents the document or causes the document to be provided, given or presented.

...