



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

**Decision and Reasons**

**Referred application**

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AFGHANISTAN  
IAA reference: IAA20/08412

Date and time of decision: 25 June 2020 18:59:00  
D Hughes, Reviewer

**Decision**

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

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

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

## Background to the review

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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 2 June 2016. A delegate of the Minister for Immigration refused to grant the visa on 6 September 2016. A decision in this matter was initially made by the IAA on 9 December 2016 (IAA16/00786). The matter is currently before the IAA by judgment and orders of Justice Jackson of the Federal Court, dated 21 April 2020.<sup>1</sup>

### 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. In the course of the first IAA review, the applicant's former representative made submissions to the IAA dated 29 September 2016.
4. Following remittal of this matter to the IAA, the applicant has appointed a new representative. The current representative requested that the submission to the IAA tendered 29 September 2016 for the first IAA review be withdrawn so that a new submission could be considered.
5. I note that it is not uncommon for an additional submission to be provided to the IAA following remittal from the courts, but that can raise concerns about the status of any earlier submission. It can also raise issues in terms of compliance with the AAT Practice Direction, most obviously the five page limit on submissions. I am appreciative of the representative for providing clear advice in relation to the previous and new submissions.
6. I am satisfied the new submission complies with the Practice Direction. The submission contains new information, specifically country information relating to Afghanistan and updated information about the applicant's individual circumstances, including new information about his health concerns. I am satisfied the information satisfies s.473DD(b) in that it either was not, and could not have been, provided to the Minister before the Minister made the decision under section 65; and/or is credible personal information which was not previously known and, had it been known, may have affected the consideration of the referred applicant's claims.
7. I am satisfied the updated medical evidence is credible and immediately relevant to his claims, particularly in terms of relocation as the representative has emphasised. In terms of the country information, while I consider recency alone will typically not be an exceptional circumstance to justify consideration of new country information, I note that nearly four years has passed since the delegate's decision in this matter. In that time, the security environment in Afghanistan has evolved considerably, and in a way I am satisfied is material to the applicant's claims. Looking to all the circumstances, I am satisfied there are exceptional circumstances to justify consideration of the new information.

### Applicant's claims for protection

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

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<sup>1</sup> ACE17 v Minister for Immigration and Border Protection [2019] FCCA 1321.

- The applicant is a citizen of Afghanistan. He is of Tajik ethnicity and a Sunni Muslim. He is from [a village] in [a] District, in Logar Province. The applicant lived in this area from birth until his departure in March 2013. His mother, wife and [children], and his [step brother] continue to reside in the village. His [step sisters] reside in other villages in Logar with their husbands.
  - The applicant's father was killed in 2008 or 2009 by the Taliban. His brother was killed by the Taliban just prior to the applicant's departure from Afghanistan in 2013.
  - The applicant's father was a driver who in approximately 2008 or 2009 received threats from the Taliban warning him not to work for the government. His father continued driving and sometime after receiving the threats, the car he was driving from Logar to Kabul was attacked and he was killed.
  - The applicant and his brother ran a business supplying [materials]. They also worked in [Work sector].
  - A few months before the applicant's departure from Afghanistan, the applicant and his brother were contracted (subcontracted) to undertake some [Work sector] work for the local government in [District].
  - The applicant claims that because of this, he and his brother received a threatening letter from Taliban. They continued to work. One day, the vehicle he and his brother were travelling in was ambushed by the Taliban. His brother died from gunshot wounds inflicted by the Taliban. The applicant managed to escape and made his way to Kabul.
  - If returned to Afghanistan, the applicant fears he will be killed by the Taliban because of his work as a government contractor. He is unable to relocate as the Taliban is active throughout Afghanistan and if he were to move to a new area, he would become a target when the reason for leaving his village becomes known.
9. The applicant expanded on his reasons for not being able to relocate within Afghanistan in his submissions to the IAA, these included updated information about his current health conditions. The submissions contend that the applicant requires durable and extensive community and medical support of a level not available in Kabul. His ability to secure employment is also compromised. The applicant also highlights the continuing deterioration in security in Kabul, which he contends is at a level that makes relocation unreasonable.

### **Refugee assessment**

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10. 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**

11. Under s.5J of the Act 'well-founded fear of persecution' involves a number of components which include that:
- the person fears persecution and there is a real chance that the person would be persecuted

- the real chance of persecution relates to all areas of the receiving country
- the persecution involves serious harm and systematic and discriminatory conduct
- the essential and significant reason (or reasons) for the persecution is race, religion, nationality, membership of a particular social group or political opinion
- the person does not have a well-founded fear of persecution if effective protection measures are available to the person, and
- the person does not have a well-founded fear of persecution if they could take reasonable steps to modify their behaviour, other than certain types of modification.

## Identity

12. The applicant has been consistent about his identity and background since his arrival in Australia. He has provided a copy of his Taskera, a ubiquitous Afghan identity document.<sup>2</sup> There was some confusion about the issuance date of that document at the visa interview. The applicant initially claiming it was issued a few years prior to his departure, but when pressed by the delegate about the date of issue of the document (May 2013), the applicant then revised his evidence to state it was obtained later. While his evidence was problematic, it appears there may have been some confusion about the history of the document. I note that after expressing concerns about the applicant's evidence at the visa interview, the delegate indicated in his written statement that he was satisfied the applicant was confused, and that he had lost the original Taskera and later had a new one issued to him. I find his shifting evidence was the result of confusion and misremembering on the applicant's part. I have no other reason to consider the document is not genuine.
13. I consider his other evidence overwhelmingly supported his identity as claimed. His oral evidence was consistent throughout the process. The applicant spoke confidently about his background and home area, describing the local area (and nearby towns) in some detail. His history of claims was consistent and he spoke without hesitation about his circumstances in Afghanistan.
14. On the basis of the evidence before me, I accept the applicant's identity and background. I am satisfied that he is a citizen of Afghanistan, and a Sunni Tajik from Logar Province in Afghanistan.

## Assessment of claims – Logar

15. Other than some very minor discrepancies in his evidence (including the confusion about the issuance date of his Taskera), the applicant has provided what I consider to be a highly consistent account of his experiences in Logar. His evidence was spontaneous and confident, and while there were times that the delegate and the applicant misunderstood each other, I did not get the impression the applicant ever sought to mislead the delegate. I give weight to the fact that there has been no embellishment in his evidence across time.
16. The applicant claims that his father was targeted by the Taliban and killed because of his work for the government. At the visa interview, he expanded on these claims. He explained that his father had worked for an organisation that was helping women learn how to [do a job task]. It was a project funded by the government. He claimed his father was driving the women between Kabul and Logar. He contends his father received threats from the Taliban, but continued to do the work. His father was killed by the Taliban while driving on the road. I consider his account of his father's death has been consistently advanced since his arrival in Australia, and the claim is

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

consistent with country information about the targeting of those assisting the Afghan government and those supporting women's education.<sup>3</sup> I accept his father was targeted and killed by an armed group, likely the Taliban, as he claims.

17. The applicant has been consistent in his account of his and his brother's involvement in [Work sector] and the sale of [supplies] in Logar, and their eventual contract (subcontract) with the local government in [District]. He has been consistent that this contract involved supplying materials and providing [Work sector work] for the council and the period in which they did so. I note the applicant appears to have worked in [Work sector] during his time in Australia, perhaps providing some indirect corroboration for his claim to have a [Work sector] background. I accept the applicant's claimed employment background and history in Logar.
18. The applicant's account of his reasons for leaving Afghanistan have been consistently raised. He claims that he and his brother were threatened because of their work for the government. He has consistently claimed that he and his brother were later ambushed by the Taliban while they were driving. He claims their vehicle was shot at and his brother was killed. The applicant described the resultant crash of his vehicle, his exit from the vehicle, the injuries he suffered, and his escape into the trees, leaving his brother behind. While some aspects of his evidence were obviously speculative (for example his explanation for why he was not pursued after escaping the vehicle), I consider he was able to answer the delegate's questions promptly and with credible detail. I note from the audio of the visa interview that the applicant became quite distressed when the topic of his brother was raised. (I also note the delegate, very reasonably, took a pause in the interview to allow the applicant to compose himself).
19. There has been no equivocation in the applicant's evidence about his claims. His evidence at the visa interview about the threat they received from the Taliban regarding their work for infidels (the government) and the eventual ambush was consistent with country advice about the use of threat letters and the violent targeting of those who support, or who are perceived to support, the government and international forces. This includes country advice about insecurity and similar targeting in Logar Province.<sup>4</sup> The applicant also described general insecurity in the area in a way I consider plausible and consistent with the country information. Considering all the evidence before me, I accept the applicant's claims.
20. The applicant was asked why he would still be at risk on return to Afghanistan. He said they (the Taliban) know him as he has been there his whole life. They know his details and know where he lives. They know his father, his grandfather, and his whole family. His father and his brother were both killed by the Taliban. The applicant was personally at threat, and that is why he left. The delegate noted that he was only a contractor/subcontractor. The applicant responded that it did not matter. For the Taliban the fact that he had worked for the government was enough reason for them to target him. The applicant said the work he did for the government, and the [result of the work] itself, would always be a reminder to the Taliban of what he did.
21. The country information before me indicates that the security situation in Logar has been deteriorating since 2011. It indicates there is an open Taliban presence in many districts and the capital and [District] are described as contested. There are indications that government

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<sup>3</sup> DFAT, 'Country Information Report – Afghanistan', 27 June 2019, 20190627113333; UNHCR, 'Eligibility Guidelines for Afghanistan', 19 April 2016, UN6C8EFBB3, and others.

<sup>4</sup> Institute for the Study of War, 'Regional Command East', 20 June 2016, CIS38A80121119; EASO, 'Afghanistan - Security situation', 12 June 2019, 20190613124844; UNHCR, 'Eligibility Guidelines for Afghanistan', 19 April 2016, UN6C8EFBB3;

employees, and those that are suspected of having such a profile, have recently been targeted in the area.<sup>5</sup>

22. I accept the applicant has a past profile with the Taliban. The applicant has lived in the area his whole life. His father was killed by the Taliban in or around 2008 for supporting a government initiative to educate women. The applicant and his own brother were threatened and later ambushed by the Taliban in 2013 because of their work for the government. The applicant escaped, but his brother was killed. I accept that he is known to the local Taliban in his area and that he previously had an adverse profile because of his subcontracted work for the government.
23. There is no suggestion the applicant's work (and profile) with the government would continue on his return to Logar, but I am satisfied that his family is known and his profile was serious enough to the local Taliban that he was targeted and his brother killed. If he returned to Logar, I consider the applicant would return to [Work sector] work, and that would likely require him to travel around the province and nearby districts.
24. The evidence before me is that those associated with the government remain a high risk profile in Afghanistan<sup>6</sup> and there is recent evidence before me that those with such a profile in Logar continue to be targeted.<sup>7</sup> Having regard to my assessment of his profile and the country advice before me, if the applicant were to return to live in Logar, I am satisfied there is a more than remote chance that the applicant would be identified by the Taliban and face serious harm in Logar for reasons of his past profile and work for the government.
25. While I accept there are credible risks to the applicant in returning to his home area, the applicant has not satisfied me that he is at any chance or risk of harm outside Logar, whether from the Taliban, or any other person or group. In fact, I do not consider he is currently a person of interest to the Taliban in Logar. I consider the chance or risk of harm to the applicant is entirely localised to his home area in Logar and is contingent on him returning to that area, and being identified and/or connected to his family, his past history and profile of having worked for the government. Beyond that, I am not satisfied he has any extant profile. I note he was not threatened by the Taliban prior to his work for the government.
26. I acknowledge the applicant's contentions about the Taliban's reach and the potential for him to be identified in other areas, however I am not satisfied he has any profile outside of his area, nor do I consider he is being pursued by the Taliban outside his area. I again note that I consider his profile is contingent on him returning to his home area in Logar and being identified. While I accept the Taliban has a network of informants, I also give weight to the country advice that the Taliban would be unlikely to trace or find a person in a major city such as Kabul.<sup>8</sup>
27. It follows that while I accept there is a real chance of the applicant facing serious harm in his home area in Logar Province, I am not satisfied the real chance of persecution relates to all areas of Afghanistan, including Kabul, and therefore s.5J(1)(c) is not met in relation to these claims.

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<sup>5</sup> EASO, 'Afghanistan - Security situation', 12 June 2019, 20190613124844.

<sup>6</sup> DFAT, 'Country Information Report – Afghanistan', 27 June 2019, 20190627113333; UNHCR, 'Eligibility Guidelines for Afghanistan', 19 April 2016, UN6C8EFBB3.

<sup>7</sup> EASO, 'Afghanistan - Security situation', 12 June 2019, 20190613124844.

<sup>8</sup> Danish Immigration Service, 'Country of Origin Information for Use in the Asylum Determination Process: Report from the Danish Immigration Service's Fact Finding Mission to Kabul, Afghanistan', 1 May 2012, CIS23406.

## **Refugee: conclusion**

28. 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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29. 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**

30. 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.

31. 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.

32. In the assessment above, I have accepted the applicant would face a real chance of harm in Logar from the Taliban on the basis of his profile from having worked with the local government. However, I have found that profile is localised, and I have found the real chance does not and would not extend outside of his home area in Logar Province. For the same reasons, and having regard to the same considerations, I am also satisfied there would be a real risk of significant harm for the applicant in Logar, but not a real risk of significant harm in other parts of the country, such as the capital of Kabul.

## **Qualifications to the real risk threshold**

33. Section 36(2B) provides that there is taken not to be a real risk that a person will suffer significant harm in a country if:

- it would be reasonable for the person to relocate to an area of the country where there would not be a real risk that the person will suffer significant harm
- the person could obtain, from an authority of the country, protection such that there would not be a real risk that the person will suffer significant harm, or
- the real risk is one faced by the population of the country generally and is not faced by the person personally.

34. Having accepted there is a real risk the applicant would face significant harm in Logar, I have considered whether it would be reasonable for the applicant to relocate to an area of the country where there would not be a real risk that the person will suffer significant harm, such as Kabul.

### **Education, work and skillset and future employment**

35. The applicant has some limited education. The applicant has what appears to be considerable experience in [Work sector], as well as running a family business in the supply of [materials] while living in Logar. It appears the applicant and his brother were sufficiently adroit in their business dealings to enter into contracts/subcontracts with the local government. I note the applicant has worked [while] living in Australia. I consider the applicant has a strong set of skills, and experience running a small business. I find these factors are positive factors in terms of any potential relocation within the country.
36. As noted by the applicant, DFAT states that because of Kabul's size, centrality and status as the national capital, it offers a greater range of employment opportunities than other areas of Afghanistan, particularly in work related to government and the international community. However, the substantial drawdown of the international presence and associated reduced aid and other financial flows since 2011 has had a major impact on Kabul's economy. The recent large-scale influx of internally displaced persons and returnees from abroad has placed considerable pressure on Kabul's labour market. While reliable statistics are unavailable, unemployment and underemployment are widespread in Kabul, as they are elsewhere in Afghanistan.<sup>9</sup> Given the applicant's experiences and skillset, I consider he has the potential to find employment in Kabul, although I accept this would be challenging in the current economic environment.

### **Family support in Kabul**

37. The applicant indicated that he has some limited relatives in Kabul; a second cousin and some other distant relatives. Advice from the UNHCR suggests that internal relocation in Afghanistan would only be reasonable where an individual has access to a traditional support network of members of his or her (extended) family or members of his or her larger ethnic community in the area of prospective relocation, who have been assessed to be willing and able to provide genuine support to the applicant in practice.<sup>10</sup>
38. At the interview, the applicant confirmed he went to Kabul prior to his departure. He indicated that he drew on some support in Kabul prior to his departure from Afghanistan, referring to a person (N) who advised him he could not return to Logar. When asked his relationship with this man, the applicant said he was not a relative, but a member of their tribe, and he is no longer in contact with him. When asked about his other relations in the Kabul area, the applicant said there is one relative (A) that his family have visited when they go to Kabul.
39. In his submissions to the IAA, the applicant stressed that his connections and networks in Kabul were non-close family, and that the actual capacity or willingness of that distant family to provide meaningful assistance was not established and does not exist.
40. Based on the evidence before me, I consider the applicant has somewhat understated his links in Kabul. I find the applicant does have some family/tribal connections in Kabul. I consider this is a positive factor in terms of relocation, however I also accept the submissions that there is little

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<sup>9</sup> DFAT, 'Country Information Report – Afghanistan', 27 June 2019, 20190627113333.

<sup>10</sup> UNHCR, 'Eligibility Guidelines for Afghanistan', 19 April 2016, UN6C8EFBB3.



evidence before the IAA that his distant relatives or members of his tribe would be willing or able to provide meaningful assistance to the applicant. While I consider this is a positive factor in favour of relocation, I accept any support would be limited and low level.

### **Insecurity in Afghanistan**

41. In terms of insecurity in Kabul, advice from DFAT, UNAMA and EASO indicates there has been a clear deterioration in security in the city and that civilian casualty numbers remain high.<sup>11</sup> However, I also note that the applicant is not from a profile group I consider would be at a specific risk (e.g. Shias or government workers). As a Sunni Tajik who would likely return to work in [Work sector], I also do not consider there is any reason to consider the applicant would live or work in proximity to persons in the higher risk profiles. While the security environment in Kabul is challenging, I am not satisfied that generalised violence in the city is at such a level where there is a real chance or risk of the applicant facing harm there. I accept there is high insecurity, but I do not consider that insecurity is at such a scope or frequency that it would be unreasonable for the applicant to relocate there, particularly given his lack of profile, or proximity to high risk profile groups.

### **Applicant's health**

42. Since the first IAA decision, I accept the applicant's health has deteriorated, in terms of his mental health and neurological function, but also his physical health.

43. The applicant has physical concerns with his [Body part 1]. The issue with his [Body part 1] is described on a medical report as a [Medical detail], which is described as causing him 'significant functional distress'. The submissions contend that he has had surgery to address this issue, but his [Body part 1] continues to cause him pain and has negatively impacted his ability to do physical labour.

44. The submissions also refer to a deterioration in his mental and neurological health. A letter provided by the applicant confirms that he was referred for neurological assessment in November 2019. However, he has been unable to receive further specialist assessment due to the impacts of Covid-19. I accept that is the case.

45. There is corroboration of his neurological concerns from his treating psychiatrist. This includes a December 2019 letter, which I note predates the outcome of his Federal Court matter, discussing his situation.

46. The applicant's psychiatrist [states] that she provides specialised psychiatric services to [a named organisation]. She states that she is a Fellow of the Royal Australian and New Zealand College of Psychiatrists with over twenty years of experience in war trauma, post traumatic stress disorder and refugee mental health. She relevantly states:

- *He has developed a severe generalized anxiety disorder and more recently symptoms have emerged requiring an urgent neurological review. His daily anxiety is at a level where he experiences frequent panic, his concentration is poor, he is unable to sleep and is exhausted. He suffers from almost daily headache and a recent MRI scan shows neurological changes of vascular changes. Of even greater concern has been the*

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<sup>11</sup> EASO, 'Afghanistan - Security situation', 12 June 2019, 20190613124844; DFAT, 'Country Information Report – Afghanistan', 27 June 2019, 20190627113333; UNAMA, 'Afghanistan: Protection of civilians in armed conflict 2019', 22 February 2020, 20200224115345.

*development of a persisting tremor of his [Body part 2] and body. This is now requiring neurological assessment with concern there may be a more serious cause.*

*Currently [the applicant] attends for regular counselling, remains under frequent psychiatric review and is on psychotropic combination medications.*

47. An updated assessment from [the psychiatrist], dated June 2020, has also been provided. She relevantly states:

- *[The applicant] has remained in ongoing psychiatric care and on psychotropic medications. As previously documented he has developed symptoms of a post traumatic stress disorder with an associated high level of generalized anxiety. These symptoms have persisted as also the tremor of his [Body part 2] which is of concern. He remains in need of a neurological assessment, but the advent of COVID-19 has delayed this process and he has been allocated to a waiting list for neurological review. ...*
- *I remain in no doubt he would be at high emotional risk if he returned to Afghanistan and a possible underlying neurological disorder would remain undiagnosed and without treatment.*

48. The evidence from [the psychiatrist] is based on what appears to be some history with the applicant. Her background in the area is demonstrated and I consider her assessment is unequivocal. I accept and have weighed her assessment of the applicant's mental and neurological concerns.

49. The representative contends in her submission that given the applicant's now established vulnerabilities, (particularly his severe anxieties, lack of coping mechanism, and persistent tremor) the impact of relocating to Kabul, where he does not have close family, where support infrastructure, health, neurological, and psychiatric services are poor, and where there are now serious security concerns, will be significant and unreasonable.

50. She contends that the impact on the applicant will be heightened anxiety, panic, and a serious decline in his mental health that negatively impacts his coping and resourcefulness and would render relocation unreasonable. His increased anxiety together with his persistent tremor will severely compromise his ability to find work or accommodation in a difficult economic environment. She also contends that relocation to Kabul would be psychologically harmful to the applicant.

51. Based on the advice before me, I am not satisfied that the applicant's health concerns are so debilitating that there is no prospect of him relocating. I note the evidence of his neurological assessment has yet to be undertaken, but given his explanations, I accept he has been unable to do so.

52. I do accept his conditions, as do I accept he would continue to require medical support, medication and treatment. Perhaps more significantly, I accept the submissions that his conditions could quite seriously impact his ability to find work, at least in the short and medium term. I note the submission that his current health issues have already impacted his ability to work [in] in Australia. While I accept he has a demonstrated skillset and experience in [Work sector], if his [Body part 1] injury and his [Body part 2] and other physical tremors persist, I consider this could significantly impact his ability to find work and subsist in Kabul, particularly given the pressures of the economic and employment environment in the city, and indeed throughout Afghanistan.

53. I also consider his mental health concerns would potentially have a significant impact on his ability to find work. Necessarily, I consider much of the work he would do would be manual labour and likely take him outdoors. While I consider the chance or risk that he would personally be harmed to very remote, any assessment of the security environment in Kabul would reveal that the applicant would may have some indirect proximity to the insecurity in the city, whether in the form of increased security presences (e.g. roadblocks and other security measures) or the broader impact of actual attacks, such as bombings, IEDs or targeted killings. In that context, I accept the impact on his emotional and neurological health would potentially be deleterious in terms of finding work and his general wellbeing, and significantly offset any benefits of him in relocating. I also accept this could lead to a further deterioration in terms of his mental and physical health.
54. In terms of accessing the necessary health care he requires, DFAT states that the health care system in Afghanistan has improved greatly since 2001. Basic public health care is free, but medicines are not, which excludes the poor from treatment for common illnesses. Medical facilities in the public system, while still basic, tend to be better in Kabul than in other areas of Afghanistan, particularly remote rural areas. Better quality services are provided by private practices, but many residents cannot access these services because of their high cost. DFAT also highlights the difficulty and expense in obtaining specialist care, and the risks for those that cannot.<sup>12</sup>
55. While I find it relevant that access to health care is better in Kabul than elsewhere in Afghanistan, I also note that expense is a factor in obtaining medicines and specialist care – both of which the applicant requires, at least in the short to midterm. The potential for his work environment to be unfavourable (as discussed above) and the impacts on his financial position compound those risks, which I am concerned may create a vicious cycle for the applicant in which he cannot obtain the medical support he requires, negatively impacting his ability to work and therefore obtain the resources needed to obtain that care. In terms of the demands on health care, I also note UNAMA's concerns that the ongoing conflict could adversely impact the ability of the country to effectively combat Covid-19.<sup>13</sup> It is difficult to imagine that would improve his prospects of accessing the care he requires.
56. Ultimately, I consider his health concerns are a factor that goes against the prospects of him reasonably relocating within Afghanistan.

### **Situation of his immediately family**

57. The applicant's wife and children remain in Logar. I accept that the applicant has concerns for their wellbeing, but it also appears to me that they are not specifically at threat and remain in relative safety in the area. I consider that is a factor in favour of the applicant relocating.
58. Advice from the UNHCR highlights the difficulties for families relocating in Afghanistan where there is no extended family or tribal support. UNHCR considers the only exception to the requirement of such support are single able bodied men and married couples of working age without identified specific vulnerabilities.<sup>14</sup> If the applicant was able to relocate to Kabul on his own (at least initially) I consider that would assist in the prospects of him successfully relocating,

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<sup>12</sup> DFAT 'Thematic Report - Conditions in Kabul', 18 September 2015, CISEC96CF13367; DFAT, 'Country Information Report – Afghanistan', 27 June 2019, 20190627113333; UNAMA, 'Afghanistan: Protection of civilians in armed conflict 2019', 22 February 2020, 20200224115345.

<sup>13</sup> UNAMA, 'Afghanistan Protection of civilians in armed conflict first quarter report - 1 January - 31 March 2020', 27 April 2020, 2020050710095.

<sup>14</sup> UNHCR, 'Eligibility Guidelines for Afghanistan', 19 April 2016, UN6C8EFBB3.

in terms of minimising his costs, finding work and saving the money necessary to have his family reunite with him.

59. It is a certainty the applicant would seek to reunite with his family at some point. I consider the benefits of reuniting with his family in terms of the applicant's mental health and wellbeing would be substantial. However, as above, I am concerned about the applicant's ability to find work and subsist in Kabul, let alone find accommodation and obtain the resources to reunite with his family. My concern is that his situation would either deteriorate in Kabul to the point where he was vulnerable and at risk of indigence in Kabul and unable to reunite with his family, or he would be inevitably forced to return to Logar, where I am satisfied the risk or chance of harm would be real.

## Summary

60. I note the delegate and first IAA review concluded that it would be reasonable for the applicant to relocate within Afghanistan, specifically by reference to Kabul. Ultimately, I consider there are several important considerations arising here that differ from the circumstances faced by the applicant at the conclusion of the delegate's decision and first IAA review, most critically the deterioration in his physical and mental health. I also consider the deterioration in the security environment in Kabul is a relevant factor, as is the advent of Covid-19.
61. Viewed individually, I do not consider the new matters raised by the applicant would necessarily mean that relocation would not be reasonable. For example, if the security and economic situation in Kabul was more stable, I consider the applicant may be able to obtain the support and assistance he requires, find work and bring his family safely to Kabul to reunite with him, notwithstanding his health concerns. Equally, if his current health issues were more stable, then the applicant could potentially overcome the economic and security issues in Kabul. However, when each of the above considerations are viewed in concert, I consider they indicate that relocation would not be reasonable in all the circumstances, at least in terms of the reasonably foreseeable future.
62. It may be that the applicant's physical and mental health improves in the mid to long term following this decision, particularly if he is able to obtain the treatment the evidence before me indicates that he requires. If so, his circumstances may evolve to a point where he is able to return to Afghanistan, and/or relocate with his family. However, this would be a matter for later decision makers to assess.
63. In undertaking this assessment, I have also weighed other areas in terms of relocation, such as Mazar-e-Sharif and Herat. I accept these areas provide a better option in terms of general security, however these smaller cities face equivalent challenges in terms of employment, accommodation, and safe access.<sup>15</sup> The latter particularly relevant considering both cities are a considerable distance from Kabul and Logar. I also note that in contrast to Kabul, he would have no family links in these areas. When viewed in the context of his other vulnerabilities, I am not satisfied these areas are more favourable in terms of relocation.

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<sup>15</sup> EASO, 'Afghanistan - Security situation', 12 June 2019, 20190613124844; DFAT, 'Country Information Report – Afghanistan', 27 June 2019, 20190627113333; UNAMA, 'Afghanistan: Protection of civilians in armed conflict 2019', 22 February 2020, 20200224115345.

64. Based on the information that is before me, I find that it would not be reasonable for the applicant to relocate to an area of the country where there would not be a real risk that he will suffer significant harm, whether that was in Kabul or elsewhere.
65. In terms of the other qualifications, given the limited effectiveness of the Afghan security forces and police throughout Afghanistan,<sup>16</sup> the challenging security environment in the country, more recent advice about open Taliban presence, control and insecurity in Logar,<sup>17</sup> his specific profile with the Taliban, and his current vulnerabilities, I have serious doubts as to whether the applicant would be able to access effective protection against the harm he fears within his home area. Considering all the circumstances, I am not satisfied the applicant could obtain protection from an authority of the country such that there would not be a real risk that he would suffer significant harm if he returned to live in Logar.
66. On the evidence before me, I am satisfied that the risk to the applicant would be due to his particular profile as iterated above, that the risks are faced by him personally, and are not risks faced by the population of the country generally.
67. Accordingly, I am satisfied that the qualifications in s.36(2B) do not apply and there is a real risk that the applicant will suffer significant harm if he returns to live in Afghanistan.

#### **Complementary protection: conclusion**

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

#### **Decision**

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

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

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<sup>16</sup> DFAT, 'Country Information Report – Afghanistan', 27 June 2019, 20190627113333.

<sup>17</sup> EASO, 'Afghanistan - Security situation', 12 June 2019, 20190613124844.

## 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.