



Australian Government

Immigration Assessment Authority

Decision and Reasons

Referred application

AFGHANISTAN

IAA reference: IAA20/08622

Date and time of decision: 15 September 2020 10:09:00

N Becke, Reviewer

Decision

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

Visa application

1. The referred applicant (the applicant) claims to be a Sunni Muslim and ethnic Tajik from [District 1], Takhar Province, Afghanistan. On 21 November 2016 he lodged a valid application for a Safe Haven Enterprise Visa (SHEV). On 17 June 2017 a delegate of the Minister for Immigration (the delegate) refused to grant this visa.
2. On 19 March 2018 the IAA affirmed the decision not to grant the applicant a SHEV. [In] July 2020 the Federal Circuit Court remitted the matter to the IAA for reconsideration on the basis that the IAA had failed to adequately consider the matter of relocation.

Information before the IAA

3. I have had regard to the material given by the Secretary under s.473CB of the *Migration Act 1958* (the Act).
4. On 4 January 2018 the IAA received a legal submission on behalf of the applicant from his representative ('the first IAA submission'). A significant portion of the first IAA submission is devoted to reiterating claims and arguments made to the delegate as to why the applicant cannot relocate to another part of Afghanistan which, for the reasons given in this decision, I have found it unnecessary to consider. The first IAA submission also reiterates claims and arguments made to the delegate about other matters contained in the review material, which I have noted and considered.
5. The first IAA submission also footnotes a new source of country information, a July 2017 report from the Edmund Rice Centre, which was not before the delegate and is new information. The applicant had earlier been provided with a copy of the IAA's Practice Direction,¹ and a fact sheet in his own language, which specified the requirements of giving information to the IAA. Contrary to the requirements of the relevant IAA Practice Direction the new country information was not accompanied by copies or extracts of that information. The applicant was on notice of the need to provide copies or extracts of material relied upon, as would have been his representative, a solicitor and registered migration agent. I note also that the information itself appears to be quite dated. In the circumstances, pursuant to ss.473DC(2) and 473FB(5), I have decided not to accept the new source of country information in the first IAA submission.
6. The first IAA submission also claims that due to the applicant's health conditions he would be unable to relocate to Kabul or Mazar-e-Sharif, where the medical facilities are insufficient, and argues that the delegate should have obtained further information about the applicant's health from the Department's records, or specifically requested the applicant to provide more information. The post SHEV interview submission, which was before the delegate, briefly noted that the applicant suffers from hepatitis C and tuberculosis but did not provide further details. Nor did the applicant claim in his written SHEV application, or at SHEV interview, that he fears harm on this basis.
7. Accompanying the first IAA submission is also a series of emails between the applicant's representative and the Department's 'Health Services and Policy Division' during January 2017 regarding the applicant's health. These emails were not included in the referred materials and I am satisfied that the emails constitute new information which was not before the delegate. I

¹ 'Practice Direction for Applicants, Representatives and Authorised Recipients', 6 February 2017

am also satisfied that these emails postdate the delegate's decision and constitute credible, personal information about the applicant.

8. The first IAA submission does not request the IAA obtain further information about the applicant's health but simply notes that his health conditions, hepatitis C and tuberculosis, are relevant to the matter of relocation to Kabul or Mazar-e-Sharif. Nor do the emails provide any additional information about the applicant's health apart from noting that he suffers from hepatitis B (I note that all other references to his health refer consistently to hepatitis C). The delegate accepted the applicant suffered from hepatitis C and tuberculosis and took this into account when assessing the reasonableness of relocation. I also accept the applicant was suffering from hepatitis and tuberculosis around the time of the delegate's decision.
9. The applicant has retained the same representative throughout his interactions with the Department and the IAA, and I note that the most recent submission (August 2020) from this representative does not indicate whether the applicant continues to suffer from these health conditions, nor raise the matter of his health more generally and no medical reports have been put forward by the applicant at any stage of the process. I have also found it unnecessary to consider whether the applicant could relocate to another part of Afghanistan, which is the apparent context in which the new claims about his health have been raised. Given all the circumstances, I am not satisfied exceptional circumstances exist to justify consideration of this new information.
10. On 21 February 2018 the IAA wrote to the applicant and invited him to comment on new country information from the 2017 Department of Foreign Affairs and Trade (DFAT) report "Country Information Report: Afghanistan", the 2017 European Asylum Support Office (EASO) report, "Afghanistan: Key Socio-Economic Indicators: Focus on Kabul City, Mazar-e-Sharif and Herat City", and a domestic airline schedule for Afghanistan.
11. On 7 March 2018 the IAA received a response from the applicant ('the second IAA submission'). The second IAA submission mostly consists of argument as to why the applicant cannot relocate to Mazar-e-Sharif, but again also reiterates claims and arguments made to the delegate about other matters contained in the review material, which I have noted and considered. In addition the submission also raises a new claim which was not before the delegate. That is that Tajiks "detest" other Tajiks who kill members of their own community. As the applicant's brother ('[Brother A]'), has been accused of killing a relative of their uncle ('[Uncle A]'), the Tajik community will not protect the applicant when [Uncle A] seeks revenge. The matter of the applicant's purported dispute with [Uncle A] and the applicant's return to Afghanistan were squarely at issue during the SHEV interview, and were also the focus of the post SHEV interview submission from the applicant's representative, who has been assisting him since the lodgement of his SHEV application. The second IAA submission does not explain why the applicant did not raise this claim earlier if it was relevant to his application for protection and I consider that if it had any basis in fact it would have been raised earlier. Nor does the submission provide any country information or other evidence to corroborate the Tajik community's purported attitude towards its members accused of killing fellow Tajiks. Given all the circumstances, I am not satisfied exceptional circumstances exist to justify consideration of the new claim in the second IAA.
12. In relation to the other new information, for the reasons given later in this decision, I have found that it unnecessary to consider whether the applicant can relocate (by air or any other means) to another part of Afghanistan, such as Mazar-e-Sharif, such that would require reference to an airline schedule. I have also obtained and considered the most recent version of the DFAT report. In relation to the 2017 EASO report, "Afghanistan: Key Socio-Economic

Indicators: Focus on Kabul City, Mazar-e-Sharif and Herat City”, this report is quite dated and it deals with matters which, while relevant to the matter of relocation, ultimately do not need to be considered upon review. Given all the circumstances, I am not satisfied exceptional circumstances exist to justify consideration of the 2017 DFAT and EASO reports, or the airline schedule.

13. On 18 August 2020 the IAA received another submission from the applicant’s representative (‘the third IAA submission’). Although the third IAA submission acknowledges that the current IAA review is being conducted on a ‘de novo’ basis, the submission argues that the IAA cannot depart from the findings of fact made by the delegate or the previous IAA decision, and which were accepted by the Minister during the course of the applicant’s judicial review application.² I do not agree. The first IAA decision has been quashed, and I am considering the matter afresh.
14. Attached to the third IAA submission is a new statement from the applicant in which he raises the following new claims:
 - In June 2018 his [Brother A], was released from prison in Afghanistan having served ten years of his [sentence].
 - Several months later [number] relatives, aligned with [Uncle A], attacked him. [Brother A] drew his gun and shot at the main offender but missed and hit a [bystander].
 - The police arrested [Brother A] who explained it was an accident and that he had been attempting to act in self-defence. The police released [Brother A] and arrested the main offender from the group of [relatives].
 - [Brother A] realised that he would not be able to live safely in Afghanistan as [Uncle A] and his allied relatives would continue to pursue him. [Brother A] fled to Iran, where he remains illegally. This proves it is not safe for the applicant to return to Afghanistan.
 - The applicant’s siblings ([Brother A] and [others specified]) are not speaking to him because he did not stay to fight for the land which rightfully belongs to their family. Furthermore, the applicant’s nephew, who came with him to Australia and “may be” in [a specified city], is in a “spot of trouble with the law for a serious motor accident” and could be sent to jail. [This nephew’s parent] does not understand the Australian legal system and is angry the applicant will not assist her son. This proves the applicant cannot expect support from his [siblings’] families upon return.
15. The new statement explains that these events have taken place since the delegate’s decision (and since the previous IAA review) and so constitute new information which could not have been provided earlier. The new statement argues exceptional circumstances exist to justify consideration of this new information because it is credible and personal and because it may have affected consideration of the applicant’s claims.
16. However, I consider that the new statement lacks any real detail and there is no evidence to corroborate the assertions it contains. The applicant has not previously claimed that his siblings are angry with him for not staying to fight for the family land and he has not provided any reason as to why this is now purportedly the case, twelve years after his departure from Afghanistan. Furthermore, I consider this at odds with the applicant’s evidence during his arrival interview that in 2012 his [relative] organised and paid for the smuggler for his and his nephew’s journey to Australia. Nor has the applicant provided evidence to corroborate his

² [Deleted].

new claim regarding his nephew and the motor vehicle incident in Australia or, in the alternative, an explanation as to why such evidence is not available to him.

17. In light of this, I also consider the lack of evidence to corroborate the new claim that [Brother A] was released [number] years early from his murder sentence, or that he is in Iran, is concerning. Overall, I consider the contents of the new statement are little more than unsubstantiated assertions. Given the circumstances I am not satisfied exceptional circumstances exist to justify consideration of the claims contained in the new statement.
18. I have obtained the following new pieces of country information: the DFAT report “Country Information Report: Afghanistan”, published in June 2019, the EASO report, “Country of Origin Information Report: Afghanistan – Security Situation”, published in June 2019, and the EASO report, “Afghanistan: Key Socio-Economic Indicators: Focus on Kabul City, Mazar-e-Sharif and Herat City”, published in August 2020. On 21 August 2020 I wrote to the applicant requesting comment on matters relevant to the applicant’s claims for protection drawn from the above three new sources. On 4 September 2020 the IAA received a response in which the applicant’s representative has argued that relocation to Herat, Kabul, or Mazar-e-Sharif is not “reasonable or practicable” for the applicant and has copied extracts from the August 2020 EASO report to support this. The representative’s response does not provide comment on the June 2019 DFAT and June 2019 EASO reports.
19. The delegate’s decision is now more than three years old and the country information therein has since been superseded. I am satisfied the June 2019 DFAT and June 2019 EASO reports provide a more recent picture on the security and human rights situation for persons of the applicant’s profile in Afghanistan, including in Takhar Province, and that exceptional circumstances exist to justify their consideration.
20. However, during the course of this review I have found the applicant does not face a real chance or real risk of harm in Takhar Province and that it is unnecessary to consider whether he can relocate to another part of Afghanistan. As the August 2020 EASO report focus solely on the current conditions in Kabul, Herat City, and Mazar-e-Sharif, I am not satisfied it is in fact material to the review. I am not satisfied there are exceptional circumstances to consider it.
21. Similarly, attached to the third IAA submission was also a new piece of country information, the Austrian Centre for Country of Origin and Asylum Research and Documentation (ACCORD) report, “Security Situation and Socio-Economic Situation in Herat City and Mazar-e-Sharif”, published in May 2020. This report from a well-known and reputable source, and I am satisfied that it is new information which could not have been provided prior to the delegate’s decision. However, the report deals entirely with the current conditions in the cities of Herat and Mazar-e-Sharif and for the reasons given in this decision, I have found it unnecessary to consider whether the applicant can safely and reasonably relocate to either of those locations. Given the circumstances, I am not satisfied exceptional circumstances exist to justify consideration of the ACCORD report.

Applicant’s claims for protection

22. The applicant’s claims can be summarised as follows:
 - In [year] he was born in [District 1], Takhar Province.
 - His father and his [uncle], [Uncle A], had joint use of the family farming land. In 1987 his father passed away and [Uncle A] wanted all the land for his own family.

- Many years later the village elders confirmed the applicant and [Brother A] owned the land. [Uncle A] and his cousins were unhappy with this.
- In December 2008 [Uncle A], his children and cousins attacked [Brother A] when he was alone. [Brother A] received several stab wounds and one of [Uncle A's] cousins, [Cousin A], was killed. The police arrested [Uncle A], his [sons], and [Brother A]. [Uncle A] accused [Brother A] of killing [Cousin A].
- The applicant was at the mosque at the time of the incident, and a friend warned him not to return to the village. Instead he went to Takhar City where his [relative] lives. He travelled to Kabul with his nephew for one night, then Kandahar and Quetta before settling in Karachi, Pakistan.
- The police went to his house in [District 1] looking for him on several occasions shortly after his departure.
- [Uncle A] is well connected to the Afghan authorities. After the applicant's departure the police went to his house in [District 1] several times looking for him. [Uncle A] and his sons were released but [Brother A] was wrongly convicted of [Cousin A]'s murder.
- In 2012 the applicant and his nephew departed Pakistan by plane with the assistance of a people smuggler.
- One of [Uncle A's] sons is a police officer in Kabul, another son is a police officer in Takhar. Two other sons are [specified occupations] in Takhar. The family are very influential in Takhar and well connected to the authorities.
- [Uncle A] has illegally retained possession of the family land in [District 1]. The applicant's mother and [a sibling] are living together in Takhar City and his [specified siblings] also reside there with their families.
- The applicant fears that if he returns to Afghanistan [Uncle A] and his allied relatives will seriously harm or kill him as revenge for [Cousin A]'s death and because [Uncle A] wants to prevent the applicant from reclaiming the land. He also fears harm from corrupt police allied with [Uncle A].
- He also fears the Taliban or other militants will impute him to hold a political opinion against them, and seriously harm or kill him, because he has been away from Afghanistan and sought asylum in Australia.

Refugee assessment

23. 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

24. 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.
25. The applicant has consistently claimed that he is a Sunni Tajik from [Village 1], [District 1], Takhar Province, Afghanistan, and has provided what he claims is a copy of his Afghan taskera in support. On the basis of the information before me I am satisfied the applicant's identity is as claimed and that Afghanistan is the receiving country for the purposes of this assessment.
26. The post SHEV interview submission notes that the applicant suffers from hepatitis C and tuberculosis for which he sees a doctor on a monthly basis, and this means he would be unable to relocate to another area of Afghanistan as he is not an "able bodied man". The 2017 submission notes that the Department has a full record of the applicant's health conditions but the applicant himself has not put forward any medical evidence in support of his claims. The applicant has received considerable assistance from the same representative (a solicitor and registered migration agent) throughout the SHEV application process, who has provided a wealth of other information to the IAA since the delegate's decision. No medical evidence was provided in the most recent submissions, or indeed information providing any tangible insight into the current state of the applicant's health. I am prepared to accept around the time of the delegate's decision the applicant suffered from hepatitis and tuberculosis, but I am not satisfied that he continues to do so.
27. During the SHEV interview the applicant advised the delegate that he lived at the same address in [Village 1] from birth until his 2008 departure from Afghanistan. Later in the SHEV interview the applicant also told the delegate that [Uncle A] currently has possession of the family land and the applicant's former home in [Village 1], and for the reasons given below I accept this is the case. The applicant told the delegate that since his departure his mother, [and specified relatives], all of whom he supports financially, have resided in Takhar City; and that his [other siblings], who are married, also reside there with their families. The applicant also told the delegate that he and his family had previously owned land in Takhar City which they sold to fund his journey to Australia.
28. I also note the information before the Department which indicates that on at least twenty occasions between November 2015 and March 2017 the applicant transferred sums of money to various individuals in Takhar City.³ During the SHEV interview the delegate and the applicant discussed these transactions at length, and the applicant explained that they were made to people who lived in the same area as him, to his mother and [siblings], and to family friends. I note that while the applicant has also transferred money to individuals in the capital Kabul and in [District 1], there are significantly fewer of these transactions.

³ The capital of Takhar Province, also known as Taloqan.

29. For the reasons given in this decision, I am satisfied that the applicant continues to own farmland and other assets in [Village 1] and that he may choose to return there because of these links. However, the financial transactions and other evidence before me also indicate that the applicant has long standing familial, social, and economic ties to nearby Takhar City and on the evidence overall I consider that this is the area to where he would very likely return. In any event, for the reasons given below, I not satisfied that the applicant faces a real chance or real risk of harm in either location.
30. I accept the applicant is from a family which owns a number of plots of land in [Village 1], [District 1], Afghanistan. I accept the applicant's father and [Uncle A] held joint ownership of the family farmland in [District 1] until the applicant's father passed away when the applicant was around [age] years old. In the applicant's written SHEV statement he claims:

After my father passed away, he [[Uncle A]] continued to occupy the land. [Uncle A] and his cousins wanted all to their family [sic]. My brother and I went to the village elders and the local government to take what was rightfully ours. The dispute over the land has been going on since my dad died. When the elders finally decided on what belonged to us, my uncle and his cousins were not happy, and the animosity became worse.

31. The applicant has provided an undated, handwritten "Inheritance Advice" document with his SHEV application, which he claims was written and fingerprinted by village elders and which is accompanied by an accredited English translation. The translation indicates that the estate of the applicant's father, comprising of 16 separate plots of land around [District 1], has been left to the applicant and the applicant's [Brother A]. The translation does not name anyone else as a beneficiary of the estate, including the applicant's uncle, [Uncle A], or the applicant's other brother, [Brother B], who he claims was [killed] in 2004. The applicant has not indicated when the village elders reached the decision given in the inheritance advice document, which is undated; however, the exclusion of [Brother B] suggests it may have been issued after 2004. I note the post SHEV interview submission also acknowledges that as a son and a male heir, [Brother B] would ordinarily have also been a beneficiary of his father's estate. Despite the applicant's description of [Uncle A] as a "wealthy and powerful" person with significant influence in their local area, the document does not mention that [Uncle A] has been occupying the 16 plots of land on a long term basis, or that there is a dispute about its possession.
32. The post SHEV interview written submission also asserts that between the death of the applicant's father in 1987 and the applicant's departure from Afghanistan in 2008, [Uncle A] controlled "everything" on the farms and did not give the applicant and [Brother A] their due. However, in the 'employment history' section of the applicant's 2013 arrival interview he stated that between 2002 (the year he finished [school grade]) and 2008 (the year he departed Afghanistan) he was self-employed, "on our property in [Village 1], [District 1], Takhar Province". In the 'employment history' section of his 2016 SHEV application the applicant again described himself as "self-employed on our own property" between 2002 and 2008, during which period he was aged in his [age range]. Given the applicant was only [age] years old when his father passed away, it is plausible that his uncle may have retained primary custody of the land during the period that the applicant was a student. However, I also give weight to the applicant's evidence that he was self-employed on a full-time basis "on our own property" after he had finished his studies in 2002. This, and the wording of the 'Inheritance Advice' document lead me to doubt the applicant's claim that his land was being controlled by his uncle against his will, or that he was not receiving his due.

33. During the SHEV interview the delegate asked the applicant about his own relationship with [Uncle A] leading up to his departure from Afghanistan in 2008. In my view his answers were unconvincing, at best. The applicant told the delegate that [Uncle A] and his relatives “always had a cause or excuse to fight with me”, but when asked for a specific example he only referred to an incident in 2007 during which he entered a mosque to pray and encountered a baby goat. Seven or eight relatives, allied with [Uncle A], saw the goat run out of the mosque and accused the applicant of breaking its leg. The relatives beat the applicant and he retaliated, following which the police detained him for around six days for fighting. When the delegate invited the applicant to describe any other incidents between himself and [Uncle A] and his relatives, the applicant again referred to the incident with the goat but this time claimed that he had been detained for a day or two (rather than six). I note this incident is not included in the applicant’s written SHEV statement and I have serious doubts about its veracity.
34. The applicant claims that in December 2008 [Uncle A] and a group of relatives attacked the applicant’s brother [Brother A], when he was alone. [Brother A] was stabbed three times and one of [Uncle A’s] relatives, [Cousin A], was killed. The applicant claims that [Uncle A], his sons, and [Brother A] were arrested the same day. The applicant claims that at the time of the incident he was at the mosque and someone called him and warned him not to return home. Instead the applicant claims that he went to his [relative’s] house in Takhar City, where he collected his nephew and they immediately left for Pakistan via an overnight stay in Kabul and a stop in Kandahar. The applicant claims that the police came to his house in [District 1] looking for him after his departure.
35. The applicant claims that because the Afghan authorities are corrupt [Uncle A] was able to use his power and influence to have his and his sons’ convictions overturned, whereas [Brother A] was wrongly convicted of [Cousin A]’s murder and sentenced to [period] years’ jail. The applicant has provided a photocopy of what he claims is a court document or letter, accompanied by an accredited English translation, with his SHEV application. The letter purports to be from [Court 1] and is dated [in] August 2010. The letter is addressed to [Court 2] and states that it is in relation to the murder case relating to [Brother A], [Uncle A], and [number] other persons, whom the applicant has consistently claimed are [Uncle A’s] sons. The letter notes on [a day in] December 2008 [Brother A] was subject to [period] imprisonment, on [a day in] January 2009 [Uncle A] paid an 12,000 Afghani penalty, and that the [other] persons, whom the letter identifies as the sons of [Uncle A], were each sentenced to a prison term of one year. The letter notes that [in] February 2010 [Court 1] overturned these decisions and [Brother A] was sentenced to capital punishment and [Uncle A’s] [sons] were released. The letter then notes that the case was referred to an (unspecified) court which made the final decision to reinstate [Brother A’s] original sentence of [period] and the (unspecified) decisions relating to the other accused persons.
36. I have some concerns about the letter, which appears to be a photocopy of a document which is largely handwritten. There are two emblems at the top, one a ‘scales of justice’, but otherwise it bears little in the way of any “official” markings. I also note that while the letter identifies the [other] persons as the son of [Uncle A], it does not identify the existence of any family relationships between them and [Brother A] ([nephew]/uncle and cousins). While the letter includes the names of [Uncle A] and his sons in relation to the murder case, it does not specify what they were charged with resulting in the fine ([Uncle A]) and a year in prison ([his] sons).
37. On the evidence overall I am not satisfied that the court letter supports the applicant’s claim that [Uncle A] was able to use his power and influence to have his or his sons’ convictions overturned and have [Brother A] imprisoned, as the applicant claims. The letter clearly states

that in January 2009 [Uncle A] was fined 12,000 Afghanis (for an unspecified reason) and that his sons spent a year in prison and were released in February 2010. While the letter indicates [Brother A] was initially sentenced to [period] imprisonment, on appeal in February 2010 this was converted to capital punishment. Then in June 2010 the appeal decision was overturned and the [period] sentence reinstated. If [Uncle A] and his sons were prosecuted for the reasons the applicant claims (instigating an attack on [Brother A] during which he received three stab wounds) then I consider that their respective penalties appear to reflect their involvement. Furthermore, while the applicant claims that [Brother A] was wrongfully convicted of [Cousin A]'s murder, he also claims that [Brother A] faced his attackers alone and he has not proffered any credible reason as to why, in these circumstances, [Brother A] could not have been responsible for [Cousin A]'s death.

38. I also have significant doubts regarding the credibility of the applicant's claim that [Uncle A's] children work for the Afghan authorities. During the first half of the SHEV interview the delegate asked the applicant about [Uncle A's] children. The applicant responded that of [Uncle A's] [number range] children from two wives he knew three of them lived in Takhar City but that he didn't have information about the rest. When asked what [Uncle A's] children do for work, the applicant responded that he did not have much information, but that he believes two of them worked for the government. When asked for more specific information, the applicant responded that he didn't have any further details to provide but reiterated that they worked for the government and another two were [specified occupations] in Takhar. When asked twice more if he had any other information about the occupations of [Uncle A's] children the applicant responded in the negative.
39. These somewhat ambiguous responses are in contrast to the applicant's written SHEV statement. In that document, prepared about six months earlier, he claimed that one of [Uncle A's] sons was a police officer in Kabul and another was a police officer in Takhar and that this was the reason he could return to either of those locations. Following a break at the end of the SHEV interview, during which the applicant conferred with his representative, the representative pointed out that the applicant had stated that [Uncle A's] sons held "government positions" and that this was the same as saying they are police officers. In response the delegate noted that the applicant had also said that he did not have any further information about those positions. The applicant then asserted that he didn't realise the delegate had been requesting him to clarify what those government positions were; however, the delegate again drew the applicant's attention to his earlier admission that he did not know any further details.
40. The representative then reiterated that the applicant was tired because of the length of the (three hour) SHEV interview and that was the reason for the applicant's oversight. This argument was raised again in the first IAA submission, alongside the lack of refreshment breaks during the interview. The interview was lengthy, but I note the applicant was able to give detailed information about other matters during the SHEV interview, such as his family composition and contextual information about the various individuals to whom he had transferred sums of money from Australia. The delegate's questioning on this issue was also clear and repeated a number of times. I do not accept that fatigue adequately explains the omissions.
41. While the delegate questioned the applicant rigorously during the SHEV interview, he also gave the applicant multiple opportunities to specify that two of [Uncle A's] sons were police officers. I do not accept the representative's argument that simply because the applicant mentioned that two of the sons were police officers in his written statutory declaration that this removed the need for the applicant to provide that detail again during the SHEV interview when directly

asked (on multiple occasions). Moreover, this is not simply a case of the applicant of the applicant not elaborating. He clearly indicated he had no further information about their occupations. Given evidence overall I do not accept that any of [Uncle A's] sons are police officers or that [Uncle A] has any influence over the Afghan authorities.

42. I also have concerns given the applicant's evidence in his arrival interview, held six weeks after his arrival in Australia, during which he provided a different account. When asked why he had left Afghanistan the applicant stated that in 2008 his [uncle] and cousins wanted to kill him and his brother over a division of land, which had resulted in the applicant and his brother being awarded the same amount of land as his uncle and his many children. During the arrival interview the applicant also briefly mentioned that his uncle had (unspecified) government connections and had a plan to put the applicant's brother in jail. However, at no point did the applicant mention that [Brother A] had already been in jail for five years, since the incident in December 2008. Although the applicant's representative argues that the applicant was not required to give details of his protection claims during his arrival interview, and was told to keep his answers brief, I am not satisfied this adequately explains why the applicant would omit to advise [Brother A] had already been (wrongly) jailed, and suggest instead that this was a future possibility, particularly given the applicant now claims this is one of the central reasons he fears returning to Afghanistan.
43. Two weeks after the SHEV interview the applicant's representative provided a written submission which sought to address some of the concerns which the delegate had raised during the interview. The written submission provides significantly more detail about the applicant's family background and the historical context in which the land dispute is said to have arisen. The written submission does not explain why the applicant did not provide these details at the time of the SHEV interview just two weeks earlier and I consider the simple, narrative style in which the representative has presented these additional details as fact, without any corroborative evidence, does not allay my concerns about the credibility of the applicant's claims.
44. For the reasons already given I consider the applicant's evidence regarding his claimed dispute with [Uncle A] over the farmland following the death of his father in 1987 lacks meaningful detail and is unconvincing at best. I find it difficult to accept that over a twenty year period the only example the applicant was able to provide of direct personal conflict between himself and [Uncle A] was the baby goat outside the mosque incident and given the applicant's contradictory evidence about the details, I am not satisfied that this did, in fact, occur. Furthermore, the "Inheritance Advice" document clearly confirms that the applicant and [Brother A] are the inheritors and owners of the 16 plots of land and does not mention [Uncle A] at all, despite his purported occupation and utilisation of the assets against the will of the applicant, and despite [Uncle A's] purported personal influence in their home area. On the evidence overall, I am not satisfied that there has ever been land dispute between the applicant and [Brother A], and [Uncle A] and his relatives.
45. I am prepared to accept that in June 2010 the applicant's brother was given a final sentence of [period]s for the murder of a person called [Cousin A]. Given the applicant's consistent evidence that his uncle is named [Uncle A], I am also prepared to accept that this uncle and his sons (the cousins of the applicant and [Brother A]) are those named in the court letter and were also involved in the late 2008 incident and penalised. However, I am not satisfied that the letter supports the applicant's claim that [Cousin A] was a person aligned with [Uncle A], that the incident was connected to the estate of the applicant's father, or that [Cousin A]'s death has led to a family blood feud. I also do not accept that the police came looking for the applicant in relation to this incident in late 2008, or that he is a person of adverse interest to them. Given

the circumstances, I do not accept the applicant departed Afghanistan in 2008 for the reasons claimed.

46. I accept that the applicant's family (mother and [siblings]) now reside in Takhar City, that [Brother A] is in jail, and there are no other male members of his immediate family. In this context, it is plausible that [Uncle A] currently uses the farmland and house in [District 1], given his longstanding connection to the property. When asked if he would fight with [Uncle A] and his relatives upon return, the applicant stated, "isn't it right to fight for it, our house, our land, our farm?" However, as noted above, I am not satisfied that the applicant has presented any credible, specific evidence of historical conflict between himself and [Uncle A] and I consider his assertion in this regard to be wholly unconvincing. On the evidence overall I am satisfied that if [Uncle A] is currently using the land then it is with the consent of the applicant and that the applicant could return to farming his land in [District 1] if he chose to do so, although, for the reasons already given, I consider that he has closer ties to Takhar City and would very likely return there instead. In relation to the murder of [Cousin A] in 2008, for which I accept his brother [Brother A] was charged and jailed, the applicant has not provided any credible evidence as to how this incident affects him personally. I am satisfied the applicant faces no more than a remote chance of harm in Afghanistan in relation to this matter.
47. The applicant claims that upon return to Afghanistan the Taliban and other insurgents will be able to sense that he has been away from Afghanistan and if they find out he has been in Australia they will harm him. DFAT notes that Amnesty International has reported that there have been cases in which returnees from Europe have been killed after arrival in Afghanistan. DFAT assesses that these cases are more likely to have been connected to the dangerous general security situation, which affects all Afghans.⁴
48. The applicant claims that as an involuntary returnee the police will be waiting for him when he arrives at Kabul airport, and as the Afghan police are corrupt, and under [Uncle A's] influence, they will send him to jail as they did to [Brother A]. However, for the reasons given above, I do not accept that [Uncle A] has any connection to the Afghan authorities, or any reason to harm the applicant. Furthermore, the applicant has not provided any country information to support his claim regarding the purported treatment of involuntary returnees generally, and the information which is before me does not indicate that the Afghan authorities pay particular attention to this cohort. DFAT also notes that there is no information to suggest that returnees from Western countries otherwise attract negative attention from the Afghan authorities.⁵
49. DFAT also understands that most returnees take measures to conceal their association with the country from which they have returned, and keep a low profile on return, but does not explain what, if anything, is faced by those who do not try to conceal their association. In this case, the applicant has not explained what it is about his appearance (or about himself more generally) that would lead the Taliban to "sense" he has been out of the country and I consider his evidence in this regard to be speculative only. Even if the applicant was identifiable as a returnee from the West, and on the evidence he has put forward I do not accept that he would be, DFAT does not suggest that such persons are imputed to hold an anti-Taliban, or anti-militant, political opinion or that they otherwise face harm because of this profile.⁶ In any case, on the evidence before me I am not satisfied that the applicant indeed holds such a political opinion. Overall I am not satisfied the applicant would be identifiable as a returnee from the West and consider that he faces no more than a remote chance of harm for this reason.

⁴ Department of Foreign Affairs and Trade (DFAT), "DFAT Country Information Report Afghanistan", 27 June 2019

⁵ Ibid.

⁶ Ibid.

50. I have also considered the general security situation in Takhar Province. EASO cites data from the United Nations Assistance Mission in Afghanistan (UNAMA), which indicates that there were 113 civilian casualties in Takhar Province during 2018 as the result of ground engagements, IEDs, and threats/intimidation/harassment; as well as from the Global Incidents Map website which reported 88 incidents related to insurgents in Takhar Province during the period 1 January 2018 to February 2019.⁷ In its most recent report DFAT notes UNAMA has expressed concerns over the actions of several pro-government armed groups, particularly in Faryab and Takhar provinces. UNAMA reports that these groups operate with impunity, conducting search operations, deliberately killing civilians, including over personal disputes, and engaging in armed clashes with AGEs and with other illegal armed groups. In its assessment of violence against journalists DFAT also makes a brief reference to a February 2019 incident in which militants shot two journalists on an attack on their radio station in Taloqan (Takhar City).⁸ EASO cites data from the BBC and the Long War Journal which indicates that both [District 1] and Taloqan (Takhar city) have continuously been under the control of the Afghan authorities during the reporting period (August 2017-2019).⁹ There is no more recent information before me to suggest that the status of these areas has changed since then.
51. DFAT also observes that in 2018 Kabul and Nangarhar provinces suffered the most civilian casualties, with the next three highest ranking provinces being Helmand, Ghazni, and Faryab, with Wardak Province experiencing the highest rise in civilian casualties from the previous year.¹⁰ I give significant weight to the fact that DFAT does not make any specific reference to Takhar Province in its assessment of civilian casualties in Afghanistan and there is nothing else in the material before me to suggest the security situation in Takhar is particularly volatile. Given the country information before me, I am not satisfied that violence in Takhar Province is at such a level, or frequency, that the applicant would face anything more than a remote chance of harm there.
52. I have also considered whether the applicant would be able to safely access Takhar City upon return to Afghanistan. DFAT indicates that returnees from Western countries are almost exclusively returned to Kabul,¹¹ and I am satisfied the applicant would very likely transit there on his way to Takhar. DFAT notes that when abductions of travellers do take place it is difficult to establish motivation as criminals and insurgents on the roads tend to target people of all ethnicities, who appear wealthy, in attacks that can include kidnapping for ransom. DFAT also concurs with the assessment of UNAMA and other international sources that the primary motivations for kidnapping/abductions include taking hostages for ransom or prisoner exchange, or to target those with connections to the government or international community.¹² EASO reported that some two years ago, the Taliban abducted 170 travellers on route to Kabul through Takhar.¹³ EASO does not provide further detail of the profile of the travellers, or the outcome of the incident, and there are no more recent reports of similar activity in the material before me.
53. Given the evidence I accept that in general journeys by road in Afghanistan present some risks for travellers. However, on the evidence before me regarding the frequency of such incidents overall, I am not satisfied that the chance of an attack occurring on the roads in Afghanistan is

⁷ European Asylum Support Office (EASO), "Country of Origin Information Report: Afghanistan – Security Situation", June 2019

⁸ DFAT, "DFAT Country Information Report Afghanistan", 27 June 2019

⁹ EASO, "Country of Origin Information Report: Afghanistan – Security Situation", June 2019

¹⁰ DFAT, "DFAT Country Information Report Afghanistan", 27 June 2019

¹¹ Ibid.

¹² Ibid.

¹³ EASO, "Country of Origin Information Report: Afghanistan – Security Situation", June 2019

any more than remote. Nor do I accept that the applicant is known to the Taliban, or any other group, and there are no reports before me to indicate that persons who have been resident in a Western country are being targeted on the roads between Kabul and Takhar Province (or anywhere else). In making my assessment regarding the applicant's overall profile I also give weight to the fact that he is not from a religious minority, nor does the evidence before me suggest that he would appear wealthy. I also note the applicant's evidence during the SHEV interview that he does not fear harm in Afghanistan on account of his Tajik race or Sunni religion, and his confirmation that he has not involved in the "war and problems" there.

54. Given all the evidence I am not satisfied the applicant, having spent almost fifteen years outside of Afghanistan, during which time he has sought asylum Australia, faces a real chance of harm when accessing, or when in, Takhar Province.
55. The applicant does not have a well-founded fear of persecution within the meaning of s.5J.

Refugee: conclusion

56. 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

57. 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

58. 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.
59. 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.
60. I have concluded that the applicant does not face a real chance of harm for any reason. Based on the same information, I am not satisfied that the applicant has a real risk of suffering significant harm.
61. After having regard to the applicant's circumstances, I find that he does not face a real risk of suffering significant harm.

Complementary protection: conclusion

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

Decision

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

Applicable law

Migration Act 1958

5 (1) Interpretation

In this Act, unless the contrary intention appears:

...

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

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

...

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

- (a) severe pain or suffering, whether physical or mental, is intentionally inflicted on a person; or
 - (b) pain or suffering, whether physical or mental, is intentionally inflicted on a person so long as, in all the circumstances, the act or omission could reasonably be regarded as cruel or inhuman in nature;
- but does not include an act or omission:
- (c) that is not inconsistent with Article 7 of the Covenant; or
 - (d) arising only from, inherent in or incidental to, lawful sanctions that are not inconsistent with the Articles of the Covenant.

...

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

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

...

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

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

...

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

- (a) for the purpose of obtaining from the person or from a third person information or a confession; or
 - (b) for the purpose of punishing the person for an act which that person or a third person has committed or is suspected of having committed; or
 - (c) for the purpose of intimidating or coercing the person or a third person; or
 - (d) for a purpose related to a purpose mentioned in paragraph (a), (b) or (c); or
 - (e) for any reason based on discrimination that is inconsistent with the Articles of the Covenant;
- but does not include an act or omission arising only from, inherent in or incidental to, lawful sanctions that are not inconsistent with the Articles of the Covenant.

...

5H Meaning of refugee

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

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

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

...

5J Meaning of well-founded fear of persecution

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

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

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

5K Membership of a particular social group consisting of family

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

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

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

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

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

5L Membership of a particular social group other than family

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

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

5LA Effective protection measures

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

...

36 Protection visas – criteria provided for by this Act

...

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

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

...

Protection obligations

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

Determining nationality

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