



**Australian Government**  

---

**Immigration Assessment Authority**

**Decision and Reasons**

**Referred application**

---

AFGHANISTAN

IAA reference: IAA16/00830

Date and time of decision: 10 March 2017 16:01:00

Jessica McLeod, 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 an referred applicant, or their relative or other dependant.*

## Background to the review

---

### Visa application

1. The referred applicant (the applicant) claims to be a Hazara Shi'a citizen of Afghanistan. He lodged an invalid application for a Protection visa in 2013 and a valid application for a Safe Haven Enterprise visa (the SHEV application) [in] February 2016. A delegate of the Minister for Immigration and Border Protection (the delegate) refused to grant the visa [in] September 2016.
2. The delegate accepted the applicant is a Hazara Shi'a male from [District 1], Ghazni Province, Afghanistan. She did not accept he worked for the International Security Assistance Force (ISAF) in Afghanistan but found the applicant would face a real chance of persecution travelling on the roads to his home region in Ghazni. However the delegate found the applicant could safely reside in Kabul where he would not face a real chance of persecution or real risk of significant harm from the Taliban, Daesh or other insurgents in the reasonably foreseeable future. The delegate also found the applicant's relocation to Kabul would be reasonable in the circumstances.

### Information before the IAA

3. I have had regard to the material referred by the Secretary under s.473CB of the *Migration Act 1958* (the Act).
4. On 5 October 2016 the IAA received a submission from the applicant. The submission responds to specific aspects of the delegate's findings, disagrees with the delegate's interpretation of information and states that aspects of his claims had been overlooked. To the extent that the submission contains arguments responding to the delegate's decision and reasserts claims that were before the delegate, I am satisfied that this does not constitute new information as defined in s. 473DC(1) of the Act and have had regard to it.
5. In the SHEV interview the applicant invited the delegate to contact his claimed former Commander to verify his employment with ISAF and he has also extended this invitation to the IAA. He also indicated that the Commander has submitted the original version of the photograph a copy of which the applicant provided to the delegate. However apart from this copy, the applicant has not provided any corroborative information about his employment from this Commander, nor any other source. I am satisfied that the applicant has had ample time and opportunity to provide further evidence of his employment and the IAA does not have a duty to get, request or accept, any new information even when requested to do so by a referred applicant. It is under no duty to contact third parties to obtain evidence or to seek verification, nor to obtain third parties' information from the department (particularly without their express permission). I have not contacted the Commander or requested the Commander's information from the department as per the invitations however I have nevertheless accepted the applicant's claimed employment with ISAF and the genuineness of the non-original version of the photograph.
6. The applicant submitted new information which is relevant and was not before the delegate regarding his brother who previously resided in Kabul. He stated that in August 2016 (just prior to the delegate's decision in September) his brother in Kabul "...fled to [Country 1] because of the threat of Taliban and Daesh in Kabul". Given the close proximity in time to the delegate's decision I am prepared to accept it could not have been provided prior to the decision and that it

arises from a significant change in circumstance. I accept there are exceptional circumstances to justify considering this new information.

7. Just prior to, and subsequent to, the delegate's decision, several attacks occurred in Kabul, Balkh Province and Mazar-e-Sharif and I obtained relevant country information<sup>1</sup> regarding these attacks and the emergent threat of Islamic State in the country, and specifically how these factors may impact the risk facing the applicant in the reasonably foreseeable future upon return. The security situation in Afghanistan remains fluid. I am satisfied that there are exceptional circumstances to justify considering this new information as it pertains to the situation for Hazara Shi'a on return to Afghanistan.
8. On 23 February 2017 the IAA invited the applicant to comment on this new information (country information) including on the situations in Kabul and Mazar-e-Sharif, taking into account information on recent attacks, as areas of possible relocation and to provide information relating to reasonableness of relocation within Afghanistan. On 7 March 2017, the applicant's representative provided a submission in response which included argument and some new country information.<sup>2</sup> Given the information in this submission was in response to the invitation to comment and was in regards to events that post-dated or closely pre-dated the decision I am satisfied that the above information could not have been provided prior to the delegate's decision. The above information relates to new developments in Afghanistan relevant to the applicant's claims. I am satisfied that there are exceptional circumstances for considering the new information (including the new country information).

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

---

9. The applicant's claims are contained in the information referred and subsequently given to the IAA. They can be summarised as follows:
  - He is a Hazara Shi'a citizen of Afghanistan born in [village], [District 1], Ghazni Province.

---

1; AAN, "With an Active Cell in Kabul, Islamic State Tries to Bring Sectarianism to the Afghan War", 19 October 2016, CX6A26A6E11358; CX6A26A6E13651; AFP, "At least 14 dead, 24 injured as blast hits Shi'a mosque in Afghanistan", 12 October 2016, CX6A26A6E10840; The Washington Post, "2nd blast targets defiant Shiite worshipers in Afghanistan amid security fears", 12 October 2016, CX6A26A6E10827; Deutsche Welle, "IS claims responsibility for bomb attack that killed 14 in Afghanistan", 12 October 2016; Reuters, "Islamic State claims responsibility for deadly mosque attack in Afghan capital", 12 October 2016 CX6A26A6E10825; DFAT, "DFAT Thematic Report on Afghanistan Security Conditions 1 January to 31 August", 5 September 2016, CIS38A80121778; IHS Jane's Intelligence Review, "Assault on Shi'a shrine in Kabul likely to have been conducted by Islamic State, indicating resilient attack capability", 12 October 2016, CX6A26A6E11042; IHS Jane's Intelligence Review, "Islamic State-aligned militants likely to struggle for operational foothold in Afghanistan despite first successful attack", 25 July 2016, CX6A26A6E7093; Lifos, "Hazaras in Afghanistan", 28 August 2015, CISEC96CF14239; European Asylum Support Office (EASO) "EASO Country of Origin Information Report: Afghanistan – Security Situation", 20 January 2016, CIS38A8012395; EASO, "EASO Country of Origin Information Report Afghanistan Security Situation November 2016", 1 November 2016, CIS38A80122597; UK Home Office, "Country policy and information note - Pakistan: Hazaras", 9 November 2016, OGD7C848D98; UK Home Office, "Country Policy and Information Note - Afghanistan - Fear of anti-government elements", 1 December 2016, OGD7C848D96

<sup>2</sup> United Nations Assistance Mission to Afghanistan (UNAMA), "Afghanistan Annual Report on Protection of Civilians in Armed Conflict: 2016", February 2017; Radio Free Europe/Radio Free Liberty, "Deadly attacks target Shi'a in Afghanistan", 12 October 2016; Jamestown Foundation, Terrorism Monitor "Foreign Fighters and Sectarian Strikes: Islamic State Makes Gains in 'Af-Pak' Region", Volume: 14 Issue: 24, 15 December 2016; Human Rights Watch, "Afghanistan: Shi'a bombing highlights need to protect", 21 November 2016; Germany: Federal Office for Migration and Asylum, "Information Centre Asylum and Migration Briefing Notes", 5 December 2016; UN News Service, "UN mission in Afghanistan condemns deadly attack near German consulate in Mazar, 11 November 2016; Afghanistan Analysts Network, "Taleban in the North: Gaining ground along the Ring Road in Baghlan," 15 August 2016.

- He is married with [children] all under [age] years old, all of whom are still residing in [Country 1].
- Around July 2005, a Hazara Commander (herein referred to as 'the Commander') in the International Security Assistance Force (ISAF) visited his sub-village to recruit able-bodied men into ISAF. It was difficult to earn a living at that time and ISAF offered a better income so he and three others agreed to join.
- The next day, they were collected and driven to [a base] in [a certain] Province. He was interviewed by [soldiers] who gathered information about his family background. He received a uniform and identity card permitting entry to [the base]. He received basic arms training and was placed within a [unit] responsible for [a certain role]. He has photographic evidence of his ISAF employment.
- About three months later, he was visiting his family in his sub-village when a village elder told them he had been approached by two Taliban members who advised they were aware that Hazaras from the area were supporting the foreign forces. They threatened to kill the Hazaras working with ISAF and their families.
- He told his ISAF Commander about the threat and said he would only return to [the base] with a military escort, which they did not send, so he did not return to work.
- About one week later, around late 2005, he fled Afghanistan and illegally entered [Country 2] where he stayed for about three nights before he was caught by [Country 2] authorities. He was deported to [a] Province in Afghanistan.
- About one to two months later, around February 2006 he again entered [Country 2] illegally and stayed for about one month before he was again deported to [that province].
- He returned to his sub-village to obtain a Taskera with the intention of then obtaining a passport. However the Afghan authorities were short on passport booklet supplies and were unable to provide a passport for some time. He decided he could not wait for the passport and [in] March 2006 he again entered [Country 2] illegally where he [worked].
- In 2007 his father died and in 2010 his mother died.
- In 2011 he was again caught and deported to Afghanistan. He stayed in [a city] one night then went to [Country 1] to join his family. Realising that the situation for Hazaras was still very dangerous in [Country 1] he fled [Country 1] to seek protection abroad.
- His brother had come to Australia already and while en route here, the applicant was advised by others to be careful about the information he would provide to Australian authorities so as not to cause issues with his brother's application for protection. As a result, he provided an inaccurate record of his family unit to Australian authorities upon arrival. He told them his parents were alive and that he only had [number] siblings. However his parents were already deceased and he has [number] brothers ([number] in Australia; [number] in Afghanistan; [number] in [Country 2]; [number] in [Country 3]; [number] in [Country 1]; [number] in [Country 4]), [number] siblings ([number] in Afghanistan; [number] in [Country 1]) plus his wife [and children] (all in [Country 1]).
- He fears that if returned to Afghanistan he will be harmed (physically abused, tortured, detained and subjected to cruel, degrading and inhuman treatment or punishment and / or killed) by anti-Shi'a and anti-Hazara groups including the Taliban and Islamic State<sup>3</sup>

---

<sup>3</sup> Also known as IS, ISIS, Daesh, ISIL and Islamic State of Khorasan Province or Islamic State (Islamic State's Afghanistan limb)

because he is a Hazara Shi'a Muslim who would be imputed with an anti-Taliban or pro-Western political opinion and would be returning as a failed asylum seeker.

## **Factual findings**

---

### **Identity**

10. The referred information indicates that the applicant knowingly provided false information to the department regarding his family composition, whether he had family in Australia and whether one of his brothers was missing. It similarly indicates his brothers who were already in Australia had provided false information regarding the applicant.
11. Identity assessments were conducted by a departmental Identity officer and the delegate however neither were satisfied as to the applicant's specific identity. Throughout these processes relevant concerns were discussed with the applicant and in various instances including his SHEV application and interview and his Identity interview, he has sought to provide explanations. He stated that he had not wanted to adversely affect his brothers' protection applications, that people in [Country 3] had advised him not to declare his large family because it would be a 'headache' and that he had wrongly stated his parents were alive because he had intended to later sponsor his wife's parents (as his own) to come to Australia.
12. I have some concerns about the fact that the applicant knowingly provided false information for a specific intention however I nevertheless accept that the applicant is a Hazara Shi'a Muslim and an Afghan citizen, from [District 1], Ghazni Province, Afghanistan and that this is his home region and receiving country. I accept the applicant's updated family composition that he submitted with his SHEV application and that his brother who previously resided in Kabul has since left. I accept he has no family in Afghanistan.
13. While the applicant has lived and worked in [Country 2] and [Country 1], on the evidence I am satisfied that he does not have a right to re-enter or reside in those countries. I accept the applicant entered [Country 2] three times. I accept the first time he was detained overnight and then deported back to Afghanistan and on the second occasion he was detained for two months and was then deported. I accept he returned to his village to obtain a Taskera and intended to obtain a passport but did not obtain one. I accept on the third occasion he was able to stay illegally for around five years until 2011, during which time he worked in [the] construction industry.
14. The applicant has stated that life is not safe for him as a Hazara in [Country 1] and that his [relative] was killed in a bombing. I accept the applicant's fear is genuine. However I am satisfied he does not have a right to re-enter or reside in [Country 1] and I therefore have not considered his claims as they relate to his fear of harm in [Country 1] any further in this assessment.

### **ISAF employment**

15. Since his arrival in Australia the applicant has consistently stated he worked with the United States (US) forces under the International Security Assistance Force (ISAF) in [Province 1], Afghanistan. I have had regard to the evidence provided in his Arrival (Biodata) interview, his Entry interview, his Identity interview, his invalid 2013 application, his SHEV application and his SHEV interview. While there has been some variance in the detail of his specific role, the applicant has been broadly consistent in explaining his role [at] the [base] in [Province 1]. I note the delegate's concerns regarding the level of detail the applicant provided in response to

questioning at the SHEV interview and his overall credibility in light of the false information provided by himself and his brothers (discussed above), however I am not satisfied the applicant's credibility in so far as his experiences in Afghanistan and claims for protection are concerned, is compromised. I also note that while the applicant invited the delegate and subsequently the IAA to verify his employment with his former Commander who now resides in Australia, he has not provided any such corroborating evidence himself, beyond a colour-photocopy of a photograph. I have inspected this photocopy which appears to be of a group of men in military uniform sitting around a meal table inside a tent. The applicant pointed to one of the figures in the photograph (purportedly himself) during the SHEV interview. It is difficult to identify the applicant in the photograph however I nevertheless accept he is there, and that the photograph was taken in the mess tent at the [base].

16. I have taken into account that the applicant has been broadly consistent since his arrival, the detail the applicant provided about his role in his Identity interview, his low literacy level and that it was a low-skilled role performed over a three month period in 2005. My view is that the applicant was able to answer questions about his role and notwithstanding my concerns as to his specific identity, I am prepared to accept that the applicant worked for ISAF for around three months in 2005 as claimed.
17. As noted, there is some variance in the detail although I do not consider this resulted from an effort to mis-lead. The applicant's Entry interview record indicates that he participated in armed conflict / fighting when working with the US and Afghan National Police who were fighting the Taliban. However, I am satisfied that his main role was [deleted]. While I accept he received some weapons training [and undertook other duties], from the evidence provided in his SHEV application and interview, I am satisfied he did not go out on field operations where active combat took place and did not engage in any fighting himself. I am satisfied that he did not face the Taliban directly in his role.
18. At times the applicant has stated he quit and left Afghanistan when he was threatened by the Taliban. I accept this, however on the evidence I am satisfied he had no direct contact with the Taliban and was not named by them or singled out by the Taliban when they warned his villager elder that they knew some of the villagers were working for ISAF. I accept this threat was issued but I am satisfied he was not personally or directly threatened or named by the Taliban.
19. The applicant's family remained in his village for around three years after he quit the ISAF role and went to [Country 2]. On the evidence I am satisfied they were not threatened or harmed during this time and nor were they questioned or pressured for information on the applicant's whereabouts.

### **Refugee assessment**

---

20. 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

21. 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.

## Home region

22. The applicant fears being killed by the Taliban, ISIS and other Sunni-extremist groups because he is a Hazara Shi’a. The applicant’s home province of Ghazni contains Hazara majority districts.<sup>4</sup> In 2014 DFAT assessed that while some districts within Ghazni Province were not considered to be safe due to Taliban and other insurgent activity, the threat level and risk of violence in Hazara majority [districts] was low and that the government maintained effective control.<sup>5</sup> In its February 2016 update, DFAT noted there had been a decline in security across Afghanistan including in Hazara majority areas<sup>6</sup> but made no indication of a revised threat or risk. In September 2016 DFAT made no further revisions of this nature but noted that UNAMA had not highlighted the Hazarajat (including Ghazni) as an area of particular concern in relation to conflict-related abductions. Taking into account the applicant’s profile, DFAT and UNAMA reporting and other relevant country information I am not satisfied the applicant faces a real chance of persecution within [District 1] or the other Hazara majority districts in Ghazni Province.

23. However, I have had regard to the commentary regarding whether perpetrators of recent attacks against Hazaras on the roads linking Kabul and the Hazarajat (which includes Hazara majority areas within Ghazni) have been motivated by race, religion or other factors, or is rather a reflection of the high numbers of Hazaras traveling on this route. I have had regard to analysis and relevant reporting on road security in the Hazarajat and in particular, of the varied motivations of insurgent groups who have recently harmed Hazara travellers, the overall statistics of Hazara casualties compared with other groups and the potential alternative road routes in the region.

24. However, the commentary on these issues is mixed and while I acknowledge the varied quality and objectivity in the reporting on relevant incidents, I give weight to DFAT’s assessment that while ethnicity is rarely the primary motivating factor it can be a contributing factor or influence on the choice of target in road incidents.<sup>7</sup> DFAT assesses that Hazaras travelling by road between

---

4 DFAT, “DFAT Thematic Report – Hazaras in Afghanistan”, 8 February 2016, CIS38A8012186, 2.23

5 DFAT, “DFAT Thematic Report: Hazaras in Afghanistan and Pakistan, 26 March 2014, CIS2F827D91264, 4.11 – 4.13

6 DFAT, “DFAT Thematic Report – Hazaras in Afghanistan”, 8 February 2016, CIS38A8012186, 2.23

7 DFAT, “DFAT Thematic Report – Hazaras in Afghanistan”, 8 February 2016, CIS38A8012186, 2.33

Kabul and the Hazarajat do face a risk which is greater than other ethnic groups and that if a bus carrying a mixture of ethnic groups is stopped, Hazaras are more likely to be selected for kidnapping or violence.<sup>8</sup> Additionally, UNHCR and DFAT both advise that Anti-Government Elements (AGEs) systematically target civilians associated with or who are perceived to be supportive of the Afghan government and international community.<sup>9</sup> UNHCR additionally notes that AGEs reportedly target individuals who are perceived to have adopted values and / or appearance associated with western countries due to their imputed support for the Government and the international community.<sup>10</sup> According to DFAT, Hazaras are widely perceived to be affiliated with both the government and international community.<sup>11</sup> While DFAT assesses that low-profile Hazaras who have spent time in western countries face a low risk of violence on the basis of those international links, it expressly exempts Hazaras travelling by road between the Hazarajat and Kabul from this assessment.<sup>12</sup>

25. I accept that Hazaras are distinguished from other ethnic groups in Afghanistan by their Asiatic facial features and that the applicant's appearance identifies him as a Hazara.<sup>13</sup> In consideration of all the evidence I find the applicant faces a real chance of serious harm through being kidnapped, subject to physical ill-treatment and/or killed by insurgents on his return trip to his parents' home district, and therefore his home region in Ghazni due to his Hazara ethnicity and/or Shi'a faith.

#### All areas of Afghanistan

26. I accepted above that Hazara Shi'as face a real chance of serious harm on roads linking Kabul to the Hazarajat. However s.5J(1)(c) of the Act requires that the real chance of persecution must relate to all areas of a receiving country. In this regard I have identified a place within Afghanistan with a substantial Hazara population where the applicant could reside without a real chance of persecution: Mazar-e-Sharif city, the capital of Balkh province. Being one of the biggest commercial and financial centres in Afghanistan, Mazar-e-Sharif has a large Hazara community among its 402 806 people and is regarded as the "*unofficial capital of Northern Afghanistan*".<sup>14</sup>
27. While there is no specific information on the treatment of Hazara Shi'as within Mazar-e-Sharif, overall in Afghanistan, DFAT assesses that Shi'as' formal legal position and interests are largely respected and that official discrimination on the basis of religion – including between Sunni and Shi'a Muslims – is low.<sup>15</sup> DFAT also has no evidence of any official policy of discrimination pursued by the Government on the basis of ethnicity,<sup>16</sup> nor any information to suggest that Hazaras are significantly less able to avail themselves of state protection than other ethnic groups.<sup>17</sup> Ethnic minorities have their own media outlets, political parties and politically active representatives.

---

8 DFAT, "DFAT Country Information Report - Afghanistan September 2015", 18 September 2015, CISEC96CF13366, 3.15

9 UNHCR "UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Asylum Seekers from Afghanistan", 19 April 2016, CIS38A8012660, p41; DFAT, "DFAT Thematic Report – Hazaras in Afghanistan", 8 February 2016, CIS38A8012186, 3.29

10 UNHCR "UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Asylum Seekers from Afghanistan", 19 April 2016, CIS38A8012660, p41

11 DFAT, "DFAT Thematic Report – Hazaras in Afghanistan", 8 February 2016, CIS38A8012186 at 3.30

12 DFAT, "DFAT Thematic Report – Hazaras in Afghanistan", 8 February 2016, CIS38A8012186 at 3.31

13 DFAT, "DFAT Thematic Report – Hazaras in Afghanistan", 8 February 2016, CIS38A8012186, 2.1

14 EASO, "EASO Country of Origin Information Report: Afghanistan – Security Situation", 20 January 2016, CIS38A8012395, p145; EASO, "EASO Country of Origin Information Report Afghanistan Security Situation November 2016", 1 November 2016, CIS38A80122597p149; Lifos, "Hazaras in Afghanistan", 28 August 2015, CISEC96CF14239

15 DFAT, "DFAT Thematic Report – Hazaras in Afghanistan", 8 February 2016, CIS38A8012186, pp9-10 at 3.4, 3.10

16 DFAT, "DFAT Country Information Report - Afghanistan September 2015", 18 September 2015, CISEC96CF13366, 3.6

17 DFAT, "DFAT Thematic Report – Hazaras in Afghanistan", 8 February 2016, CIS38A8012186, 4.2

While it is acknowledged that Hazaras are underrepresented in senior government positions, Hazaras have become more powerful politically. For example, Hazaras occupy all the lower house seats in Ghazni despite only comprising a large minority in the province.<sup>18</sup> Hazaras are active in the Afghan community, particularly in politics, education and civil society, including by holding protests without government intervention.<sup>19</sup> On the basis of this country information I am satisfied that Hazara Shi'as are free to participate fully in public life and do not face discrimination from the government or authorities. I am also satisfied that state protection would not be withheld on the basis of his being Hazara and /or Shi'a.

28. However societal discrimination (ie. at the community level) still occurs.<sup>20</sup> Ethnic, tribal and familial connections still play an important role in daily life such that discrimination tends to occur in the form of nepotism. According to DFAT, such discrimination generally manifests in the form of giving positive preference in favour of one's own particular ethnic and religious groups, rather than in the form of negative discrimination against others.<sup>21</sup> The applicant has lived outside Afghanistan since 2006 and has never lived in Mazar-e-Sharif. The applicant's representative has submitted that he would face segregation from the Hazara community due to his long absence and that this would him significant hardship affecting his capacity to subsist. I accept that upon meeting him, the applicant would be identifiable as an outsider. DFAT also indicates that the risk of discrimination may be significantly higher for returnees from western countries who do not maintain a low profile such as by taking steps to conceal their association with the country from which they have returned.<sup>22</sup>
29. As a member of the Hazara Shi'a ethnic and religious minority who has lived many years outside Afghanistan and who does not have family or prior residence in Mazar-e-Sharif, I accept the applicant may face societal discrimination and that this risk may be increased as a result of his return from a western country.<sup>23</sup> However country information does not indicate that any such discrimination manifests itself in such a way that would constitute serious harm within the meaning of s.5J of the Act. I am not satisfied the applicant's capacity to subsist would be threatened as a result of societal discrimination or any initial segregation from the Hazara community (which I find would be brief at most). I am therefore, not satisfied that the applicant faces a real chance of experiencing discrimination or segregation amounting to serious harm for reason of being a Hazara and / or Shi'a and a returnee from many years in the west in Mazar-e-Sharif. There are no other indicators before me that the applicant would face a real chance of segregation or discrimination amounting to serious harm in Mazar-e-Sharif for any other reasons.
30. Turning to the security situation and the risks facing Hazara Shi'as from Anti-Government Elements (AGEs), I accept the security situation throughout in Afghanistan is fluid and unpredictable and that it deteriorated throughout 2015 and 2016.<sup>24</sup> I acknowledge the widespread concerns about the Afghan government's capability and effectiveness in ensuring security and stability across Afghanistan.<sup>25</sup> Having regard to Balkh Province in particular, I note that insurgents including ISIS or their Afghanistan based Islamic State group, the Islamic

---

18 DFAT, "DFAT Country Information Report - Afghanistan September 2015", 18 September 2015, CISEC96CF13366, 3.12

19 DFAT, "DFAT Thematic Report – Hazaras in Afghanistan", 8 February 2016, CIS38A8012186, 3.10, 3.28

20 DFAT, "DFAT Country Information Report - Afghanistan September 2015", 18 September 2015, CISEC96CF13366, 3.8

21 DFAT, "DFAT Thematic Report – Hazaras in Afghanistan", 8 February 2016, CIS38A8012186 at 3.9, 311, 3.28;

DFAT, "DFAT Country Information Report - Afghanistan September 2015", 18 September 2015, CISEC96CF13366 at 3.25

22 DFAT, "Country Information Report - Afghanistan September 2015", 18 September 2015, CISEC96CF13366 at 5.21

23 DFAT, "Country Information Report - Afghanistan September 2015", 18 September 2015, CISEC96CF13366 at 5.21

24 DFAT, "DFAT Thematic Report on Security Conditions in Afghanistan: 1 January – 31 August 2016", 5 September 2016, CIS38A80121778

25 UNHCR, "UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Asylum Seekers from Afghanistan", 19 April 2016, UN6C8EFBB3, p15

Movement of Uzbekistan (IMU, who had links to the Taliban and in 2016 pledged their allegiance to ISIS), and the Taliban are active within the province.<sup>26</sup>

31. However, Balkh Province has maintained relative security for several years, attributable to a monopoly on power, even in the province's most remote regions, held by ethnic-Tajik governor and former warlord Atta Mohammed. While this stability depends on continued relations with his traditional rival (another former warlord) Vice President Abdul Rashid Dostum, they agreed in June 2015 to work together to restore security to Northern Afghanistan<sup>27</sup> and there is no evidence before me to suggest this relationship is in decline. In January 2016 EASO reported that Mazar-e-Sharif had been relatively isolated from the conflict in the preceding decade.<sup>28</sup> In 2014 LandInfo described Mazar-e-Sharif as one of the safest cities in Afghanistan, much more so than Kabul<sup>29</sup> and DFAT assessed that the government maintained effective control over the city.<sup>30</sup> Between 2009 and 2015 Mazar-e-Sharif reportedly had one of the lowest counts of civilian victims.<sup>31</sup>
32. Militant attacks have, nonetheless, occurred in Mazar-e-Sharif city. The European Asylum Support Office (EASO) reported that, between 1 November 2014 and 31 August 2015, explosives sporadically went off in the city though while many targeted government forces and institutions, the target and perpetrator was not always clear.<sup>32</sup> Explosions at local markets were carried out in November 2014, October 2015 and August 2016 however the target in these incidents were not clear.<sup>33</sup> In March, April and December 2015 attacks occurred targeting a court complex, family members of government officials and a police vehicle and in incidents in January, February and November 2016 attacks were aimed at the Indian consulate, a busload of Afghan National Army and the German consulate.<sup>34</sup> I accept from this reporting that there have been several incidents in Mazar-e-Sharif since 2014, however I find they have been infrequent and have been aimed at government or international community targets or with no identifiable target. In most cases, the perpetrator was also unclear, although I accept they were AGEs.
33. I have given consideration to the activities of AGEs, particularly the Taliban, ISIS and IMU and whether there is a shift in the overall security situation and / or a rise in sectarianism that would contribute to the risk of harm to the applicant in a major urban centre such as Mazar-e-Sharif.
34. UNAMA's most recent Annual Report released in February 2017 noted a six-fold increase in civilian casualties from attacks targeting places of worship in 2016 (378 casualties including 87

---

26 EASO, "Country of Origin Information Report: Afghanistan Security Situation", January 2016, CIS38A8012395; EASO, "Country of Origin Information Report: Afghanistan Security Situation November 2016", 1 November 2016, CIS38A80122597, pp 24, 150, 151

27 EASO, "Country of Origin Information Report: Afghanistan Security Situation", January 2016, CIS38A8012395, p. 145 - 146

28 EASO, "EASO Country of Origin Information Report Afghanistan Security Situation November 2016", 1 November 2016, CIS38A80122597p145; EASO, "EASO COI Afghanistan Security Situation 2016", 20 January 2016, CIS38A8012395, p145

29 EASO, "EASO Country of Origin Information Report: Afghanistan – Security Situation", 20 January 2016, CIS38A8012395, p145; EASO, "EASO Country of Origin Information Report Afghanistan Security Situation November 2016", 1 November 2016, CIS38A80122597p145

30 DFAT, "DFAT Thematic Report Hazaras in Afghanistan and Pakistan 26 March 2014", 26 March 2014, CIS2F827D91264, 5.2

31 EASO, "EASO Country of Origin Information Report: Afghanistan – Security Situation", 20 January 2016, CIS38A8012395, p30

32 EASO, "EASO Country of Origin Information Report: Afghanistan – Security Situation", 20 January 2016, CIS38A8012395, p147

33 EASO, "EASO Country of Origin Information Report: Afghanistan – Security Situation", 20 January 2016, CIS38A8012395, p147; EASO, "EASO Country of Origin Information Report Afghanistan Security Situation November 2016", 1 November 2016, CIS38A80122597 p151

34 United Nations Assistance Mission to Afghanistan (UNAMA), "Afghanistan Annual Report on Protection of Civilians in Armed Conflict: 2016", February 2017 p62

deaths and 291 injured compared with 56 casualties including 42 deaths and 14 injured in 2015).<sup>35</sup> Recent attacks against Shi'as have occurred in Kabul city (October 2015,<sup>36</sup> July 2016,<sup>37</sup> October 2016,<sup>38</sup> November 2016<sup>39</sup>), in Khojagholak in Balkh (October 2016)<sup>40</sup> and in Herat (November 2016, January 2017). Approximately 163 people were killed and 621 injured in these attacks.<sup>41</sup> The July 2016 attack alone killed up to 80 people and wounded 230 other. It has been described as the most deadly incident in Kabul since the Taliban's fall in 2001, the largest single attack on Hazaras since the Ashura procession attack in Kabul in 2011 and the largest attack carried out in Afghanistan by a group linked to ISIS.<sup>42</sup>

35. Of the six attacks in 2015 and 2016 discussed above, Islamic State claimed responsibility for the four attacks in Kabul. Islamic State did not claim responsibility for the attacks in Balkh and Herat although I accept the perpetrators were motivated by anti-Shi'a sentiment. I note that when claiming responsibility for the three Kabul attacks in 2016, Islamic State also released anti-Shi'a / hate messaging or propaganda online and via Twitter describing Shi'as as apostates and accusing them of fighting a war against Sunnis in Syria, siding with the Syrian regime and being slaves to Iran. Islamic State threatened further attacks if they did not stop supporting the Iranian and Syrian regimes.<sup>43</sup>
36. UNAMA has noted grave concerns about what it describes as an emerging pattern of deliberate sectarian attacks against Shi'as, mainly claimed by Islamic State. It described Islamic State as operating with an increased capacity to strike beyond its perceived areas of influence and presence in Eastern Afghanistan which exacerbated the escalation in conflict and deteriorating security environment. It also raised serious concerns about the brutality and scale of civilian casualties caused by Islamic State's targeted attacks on Shi'as and referred to the January 2017 attack in Herat as evidence of the wave of targeted attacks against Shi'as continuing.<sup>44</sup> Human Rights Watch has taken a similar line suggesting that the wave of Shi'a targeted attacks in 2016

---

35 UNAMA, "Afghanistan Annual Report on Protection of Civilians in Armed Conflict: 2016", February 2017 p8

36 EASO, "EASO Country of Origin Information Report Afghanistan Security Situation November 2016", 1 November 2016, CIS38A80122597 at p41

37 DFAT, "DFAT Thematic Report on Security Conditions in Afghanistan: 1 January – 31 August 2016", 5 September 2016, CIS38A80121778

38; AAN, "With an Active Cell in Kabul, Islamic State Tries to Bring Sectarianism to the Afghan War", 19 October 2016, CX6A26A6E11358; Radio Free Europe/Radio Free Liberty, "Deadly attacks target Shi'a in Afghanistan", 12 October 2016; Jamestown Foundation, Terrorism Monitor "Foreign Fighters and Sectarian Strikes: Islamic State Makes Gains in 'Af-Pak' Region", Volume: 14 Issue: 24, 15 December 2016; UNAMA Feb 2017 report

39 Human Rights Watch, "Afghanistan: Shi'a bombing highlights need to protect", 21 November 2016; Jamestown Foundation, Terrorism Monitor "Foreign Fighters and Sectarian Strikes: Islamic State Makes Gains in 'Af-Pak' Region", Volume: 14 Issue: 24, 15 December 2016; UNAMA, "Afghanistan Annual Report on Protection of Civilians in Armed Conflict: 2016", February 2017

40 UNAMA, "Afghanistan Annual Report on Protection of Civilians in Armed Conflict: 2016", February 2017; Radio Free Europe/Radio Free Liberty, "Deadly attacks target Shi'a in Afghanistan", 12 October 2016; Jamestown Foundation, Terrorism Monitor "Foreign Fighters and Sectarian Strikes: Islamic State Makes Gains in 'Af-Pak' Region", Volume: 14 Issue: 24, 15 December 2016;

41 Figures provided in UNAMA, "Afghanistan Annual Report on Protection of Civilians in Armed Conflict: 2016", February 2017; EASO, "EASO Country of Origin Information Report Afghanistan Security Situation November 2016", 1 November 2016, CIS38A80122597

42 DFAT, "DFAT Thematic Report on Security Conditions in Afghanistan: 1 January – 31 August 2016", 5 September 2016, CIS38A80121778 at 2.6 and 2.7

43 Jamestown Foundation, Terrorism Monitor "Foreign Fighters and Sectarian Strikes: Islamic State Makes Gains in 'Af-Pak' Region", Volume: 14 Issue: 24, 15 December 2016; UNAMA "Afghanistan Annual Report on Protection of Civilians in Armed Conflict: 2016", February 2017

44 UNAMA "Afghanistan Annual Report on Protection of Civilians in Armed Conflict: 2016", February 2017 p34, footnote 120

underscores the increasing vulnerability of the Shi'a community beyond active battlefields and in urban areas under government control.<sup>45</sup>

37. A report from the Jamestown Foundation submitted by the applicant's representative suggests that Islamic State has consolidated its position in recent months, having carried out the attacks discussed above and assembling foreign fighters. It suggests a strengthened position and that the Islamic State is taking a leadership within the insurgency. In December 2016, Heart of Asia suggested there were nearly 7500 foreign fighters waiting to enter Northern Afghanistan<sup>46</sup> although it did not indicate a location and no further reporting has indicated that any further steps have been taken, nor as to the location of such fighters, or their target.
38. I accept that Islamic State is trying to inject sectarianism into the conflict in Afghanistan, as evidenced through its recent violence against Shi'a's and its online propaganda threatening to continue attacking Shi'as.<sup>47</sup> I accept that there are active Islamic State cells in Kabul, that they have launched attacks in Kabul city, that they have an operational presence beyond the nascent stage and have potential for future recruitment.<sup>48</sup>
39. However, the Afghanistan Analysts Network estimates their current Kabul cell numbers to be in the dozens rather than the hundreds.<sup>49</sup> The AAN states that Islamic State as an organisation has struggled to expand beyond the four districts in Nangahar, remaining so far, a limited threat. It assesses that Islamic State has the capability of carrying out fatal attacks on an occasional basis in the capital, although not yet at a sophisticated level and suggests that it is unlikely that Islamic State can single-handedly drive the conflict in a sectarian direction.<sup>50</sup> The AAN identified 'reassuring' factors working against the rise of sectarianism such as that the attacks have been widely condemned across lines in Afghanistan, including by the Taliban (discussed further below), and that the parties to the main conflict, the Afghan security forces and the Taliban, as well as Shi'a and Sunni religious leaders, and the population of the country more generally, remain opposed to sectarianism.<sup>51</sup> Having regard to the Jamestown Foundation's suggestion that the Islamic State are taking a leadership position above that of the Taliban, while I accept this may be true in some regions, I am not satisfied that its overall influence is such that the Taliban will support its sectarian slant in the reasonably foreseeable future. I am not satisfied that sectarianism is likely to take hold in Afghanistan in the reasonably foreseeable future.
40. Previous DFAT advice has indicated that Islamic State has limited capacity and influence in Afghanistan, and that civilians in Afghanistan faced a low risk of violence from the organisation compared to the risks to high profile groups from other AGEs and the threat of violence generally in that country.<sup>52</sup> While this advice pre-dates the 2015 and 2016 attacks, other sources also indicate that Islamic State is struggling to control territory and its efforts to establish itself in

---

45 Human Rights Watch, "Afghanistan: Shi'a bombing highlights need to protect", 21 November 2016

46 Jamestown Foundation, Terrorism Monitor "Foreign Fighters and Sectarian Strikes: Islamic State Makes Gains in 'Af-Pak' Region", Volume: 14 Issue: 24, 15 December 2016

47 Jamestown Foundation, Terrorism Monitor "Foreign Fighters and Sectarian Strikes: Islamic State Makes Gains in 'Af-Pak' Region", Volume: 14 Issue: 24, 15 December 2016

48 Afghanistan Analysts Network, "With an Active Cell in Kabul, Islamic State Tries to Bring Sectarianism to the Afghan War", 19 October 2016, CX6A26A6E11358

49 Afghanistan Analysts Network, "With an Active Cell in Kabul, Islamic State Tries to Bring Sectarianism to the Afghan War", 19 October 2016, CX6A26A6E11358

50 Afghanistan Analysts Network, "With an Active Cell in Kabul, Islamic State Tries to Bring Sectarianism to the Afghan War", 19 October 2016, CX6A26A6E11358

51 Afghanistan Analysts Network, "With an Active Cell in Kabul, Islamic State Tries to Bring Sectarianism to the Afghan War", 19 October 2016, CX6A26A6E11358; DFAT, "DFAT Thematic Report on Afghanistan Security Conditions 1 January to 31 August", 5 September 2016, CIS38A80121778.

52 DFAT, "DFAT Country Information Report - Afghanistan September 2015", 18 September 2015, CISEC96CF13366, p9

other parts of Afghanistan have in large part failed.<sup>53</sup> Analysts accept that Islamic State will probably continue to conduct attacks in urban areas, but that these will be infrequent, and that the continued efforts of the Afghan government, international community and even the Taliban's efforts to eliminate Islamic State and to counter its influence will likely limit any expansion in the year ahead.<sup>54</sup> Specifically with regard to Balkh Province, there is strong security presence in Mazar-e-Sharif and provincial and national authorities have proactively engaged in fighting insurgents including Islamic State, Taliban and IMU within the province.

41. Islamic State has only limited presence in Afghanistan outside Nangahar. In April 2016 it was said to number only in the dozens and in December last year the UK Home Office indicated its presence was confined to the Afghanistan-Pakistan border area in Nangahar.<sup>55</sup> In light of this recent reporting by other sources I consider DFAT's assessment about Islamic State having limited capacity and influence is still current.
42. While I accept the threatening nature of Islamic State propaganda and attacks, I have not accepted that sectarianism will be a likely driver of the Afghanistan conflict or that any sectarian threat translates to a real chance of harm to the applicant throughout Afghanistan in the reasonably foreseeable future. To date, attacks targeted against Shi'as in Balkh Province have been rare. In 2011 Lashkar-e-Jangvi (LeJ) launched coordinated attacks on Shi'a gatherings in Mazar-e-Sharif, Kabul and Kandahar.<sup>56</sup> In October 2016 an unidentified group attacked a Shi'a mosque in Khojagholak, 20km outside of Mazar-e-Sharif (not in Mazar-e-Sharif itself as some reports on the incident suggested).<sup>57</sup> Of the wide commentary on this attack, while there was suggestion that Islamic State had claimed responsibility, most reported that no group had claimed responsibility. I am not satisfied that Islamic State was responsible for this attack.
43. With regard to the Taliban, UNAMA, DFAT and other authoritative sources indicate that the Taliban's civilian targets have recently been government administrators, judicial officers, been human rights defenders, journalists, community elders and aid workers<sup>58</sup>, none of which are profiles I accept would be bestowed on the applicant. The Taliban is active in Balkh. However the only recent attack claimed by the Taliban in Mazar-e-Sharif was against the German consulate, specifically in revenge for the Germans' alleged role in major air strikes in Kunduz Province<sup>59</sup> and I am satisfied had no sectarian motivation. The Taliban has not claimed responsibility for any of the attacks on Shi'as in Balkh or Kabul. It specifically condemned both the 2011 and 2016 targeted attacks against Shi'as in and near Mazar-e-Sharif and the October 2016 attack in Kabul. According to the Afghanistan Analysts Network (AAN), the Taliban has spoken out convincingly

---

53 IHS Jane's Intelligence Weekly, "Islamic State-aligned militants likely to struggle for operational foothold in Afghanistan despite first successful attack", 25 July 2016, CX6A26A6E7093

54 IHS Jane's Intelligence Review, "Assault on Shi'a shrine in Kabul likely to have been conducted by Islamic State, indicating resilient attack capability", 12 October 2016, CX6A26A6E11042; IHS Jane's Intelligence Review, "Islamic State-aligned militants likely to struggle for operational foothold in Afghanistan despite first successful attack", 25 July 2016, CX6A26A6E7093

55 UK Home Office, "Country Policy and Information Note - Afghanistan - Fear of anti-government elements", 1 December 2016, OGD7C848D96, p24

56 DFAT, "DFAT Thematic Report – Hazaras in Afghanistan", 8 February 2016, CIS38A8012186 at 3.1, 3.6

57 AFP, "At least 14 dead, 24 injured as blast hits Shi'a mosque in Afghanistan", 12 October 2016, CX6A26A6E10840; The Washington Post, "2nd blast targets defiant Shiite worshipers in Afghanistan amid security fears", 12 October 2016, CX6A26A6E10827; Deutsche Welle, "IS claims responsibility for bomb attack that killed 14 in Afghanistan", 12 October 2016; Reuters, "Islamic State claims responsibility for deadly mosque attack in Afghan capital", 12 October 2016 CX6A26A6E10825

58 DFAT, "DFAT Thematic Report on Security Conditions in Afghanistan: 1 January – 31 August 2016", 5 September 2016, CIS38A80121778; UNAMA "Afghanistan Annual Report on Protection of Civilians in Armed Conflict: 2016", February 2017

59 UNAMA "Afghanistan Annual Report on Protection of Civilians in Armed Conflict: 2016", February 2017

against sectarianism.<sup>60</sup> There is no recent evidence of the Taliban targeting Shi'as in or around Mazar-e-Sharif.

44. I accept insurgents operate in parts of Balkh Province and that clearance operations have been conducted against Islamic State, IMU and the Taliban in Balkh throughout 2016.<sup>61</sup> I note EASO reported in January 2016 that attacks on civilian targets in Mazar-e-Sharif had increased, however I find the incidents have been infrequent and generally targeted against government or international community institutions or without a clear target. I accept that Shi'as in and near Mazar-e-Sharif have been targeted on two occasions since 2011, including recently and that and that Islamic State is attempting to inject a sectarian slant into the conflict and I have had regard to the concerns being raised by UNAMA, Human Rights Watch and others. However, I have found Islamic State's influence in Afghanistan is still limited and I am not satisfied that sectarianism will increase such that violence will extend beyond sporadic attacks. I am not satisfied that the presence and activities of insurgent groups in other parts of the Province are of themselves indicative of a real chance of serious harm for Hazara Shi'as, such as the applicant, living in Mazar-e-Sharif. I am not satisfied that any group has claimed responsibility for the October 2016 incident and there is no other evidence of Islamic State, IMU or Taliban targeting Shi'as in or around Mazar-e-Sharif, or any further targeting of Shi'as in the city by LeJ since 2011. I am not satisfied the October 2016 attack is attributable to any of those groups or that the incident is indicative of the onset of a sectarian campaign in Balkh by them or any other insurgent or terrorist groups.
45. Having considered the applicant's profile and evidence and the country information referred and provided to the IAA as well as information I obtained, I am not satisfied that the applicant faces a real chance of persecution as a Hazara Shi'a upon return to Mazar-e-Sharif in the reasonably foreseeable future.
46. I found the applicant's claims as to his ISAF employment [at the] [base], and past threat from the Taliban to be credible. There are several factors I consider relevant to the applicant's circumstances: Although he worked for ISAF it was for a limited three month period and he did not come into combat or direct contact with the Taliban in his role, nor on the evidence, at any other time; when he left the base he left his identity card there and there is no evidence before me to indicate that his identity or any other record of his ISAF employment have fallen into the hands of the Taliban or other insurgents; he stopped working there soon after hearing the Taliban's threat; his family continued to live in the area without harm or threats in the three years following; after he left Afghanistan in 2005 he only returned to his home region once in 2006 to obtain his Taskera; there has been a significant 12 year passage of time since he worked on the base, and since the Taliban issued their threat; and their threat was indirectly issued through the village elders and on the evidence did not indicate that they knew the applicant was among the employees.
47. Country information indicates that AGEs including the Taliban systematically target civilians associated with the government or international community in Afghanistan.<sup>62</sup> While I accept this, the common targets of the Taliban and other AGEs are government institutions, political figures, security forces, foreign missions and international organisations, although mosques, schools,

---

60 Afghanistan Analysts Network, "With an Active Cell in Kabul, ISKP Tries to Bring Sectarianism to the Afghan War", 19 October 2016, CX6A26A6E11358

61 EASO, "EASO Country of Origin Information Report Afghanistan Security Situation November 2016", 1 November 2016, CIS38A80122597 p151-2

62 UNHCR "UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Asylum Seekers from Afghanistan", 19 April 2016, CIS38A8012660, p41; DFAT, "DFAT Thematic Report – Hazaras in Afghanistan", 8 February 2016, CIS38A8012186, 3.29

hospitals and other civilian targets are also vulnerable. However while country information indicates that the Taliban have the capability to track people to other locations, its targets are of higher profile than the applicant. The information does not support that AGEs seek to track low-profile individuals throughout Afghanistan.

48. Taking into account the applicant's specific circumstances discussed above, I am not satisfied that the Taliban or any other insurgents maintained an interest in him in relation to his ISAF employment, nor that they have developed an interest in him for any other reason subsequent to his 2005 departure. I am not satisfied that the applicant's experiences in 2005 have bestowed on him a profile such that 12 years later, he would be identified as having a personal association with ISAF or the international community in a major urban centre such as Mazar-e-Sharif, or that the Taliban or others would seek to follow or harm him. There is no indication before me that the applicant has ever had any association with ISAF, the Afghan government or international community beyond his three months employment in 2005. On the evidence I am satisfied he has no current association or connection and he has not indicated that he would develop such association or connection upon return. I find there is no real chance that the applicant would be harmed in the reasonably foreseeable future in Mazar-e-Sharif for any actual connection of association to ISAF, the Afghan government or international community on the basis of his ISAF experience or previous threats.
49. It is relevant that the applicant would be returning to Afghanistan as a failed asylum seeker from Australia or a western country. I have had regard to this, and while I found above that the applicant would not face a real chance of persecution for his race or religion in Mazar-e-Sharif I have nonetheless considered whether his Hazara Shi'a identity as well as his status upon return and his links with western countries may lead others to adversely perceive him as a supporter of the Afghan government or international community, or as anti-Taliban / AGE and whether this would contribute to a risk of harm.
50. I have considered that in addition to being a western country, Australia is a predominantly Christian country but the applicant has not claimed and the country information does not support that he would be imputed as having abandoned Islam while residing in Australia. However according to DFAT, Hazaras are widely perceived to be affiliated with both the government and international community<sup>63</sup> and there is country information to support that AGEs target individuals who are perceived to have adopted values and/or appearances associated with western countries, due to their imputed support for the Government and the international community and that young people with western connections and mannerisms are reportedly at risk of being mistaken for collaborators with the government and international community.<sup>64</sup> DFAT notes there are occasional reports (including two from 2014)<sup>65</sup> of returnees from western countries including Australia allegedly being targeted for having spent time in a western country.
51. Despite his previous ISAF employment, I have not accepted the applicant would be identified as having links to the Afghan government or international community in Mazar-e-Sharif or elsewhere in Afghanistan. There have been no reports of individual returnees being targeted since those two sporadic incidents in 2014. DFAT assesses that returnees from western countries are not specifically targeted on the basis of their being failed asylum seekers and that Hazara

---

63 DFAT, "DFAT Thematic Report – Hazaras in Afghanistan", 8 February 2016, CIS38A8012186 at 3.30

64 UNHCR, "UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Asylum Seekers from Afghanistan", 19 April 2016, CIS38A8012660 p41

65 DFAT, "DFAT Country Information Report - Afghanistan September 2015", 18 September 2015, CISEC96CF13366, p24 at 5.22; UNHCR, "UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Asylum Seekers from Afghanistan", 19 April 2016, CIS38A8012660, p 41

returnees who are not directly associated with the government or the international community currently do not face a higher level of risk upon return than returnees from other ethnic groups.<sup>66</sup> Additionally, the UNHCR's, DFAT's and other sources' reporting does not indicate returnees –which I accept includes asylum seekers from western countries and those who were formerly detained in immigration detention - from any country have been targeted by insurgents in or around Mazar-e-Sharif.

52. The applicant has spent considerable time in [Country 2] and [Country 1]. It is estimated that from 2002 – 2013, 5.8 million Afghans (25 per cent of the population) returned to Afghanistan from [Country 1] and [Country 2].<sup>67</sup> Country information does not however indicate such returnees are targeted and harmed and I have not accepted the applicant's long absence from Afghanistan or his being identified an outsider would result in segregation or discrimination amounting to serious harm.
53. I accept the applicant's brother no longer resides in Kabul and that he has left Afghanistan. I note applicant's family members have also left Afghanistan. He has [relatives] in Australia, a [sibling] in [Country 3], a [sibling] is in [Country 4] and his wife and children reside in [Country 1]. However no information has been provided to indicate that the applicant fears harm on the basis of his family members' absence from Afghanistan or their respective immigration statuses abroad. In any case, country information does not support that persons with family members overseas (including if they have lived abroad for long periods and in a western country) face harm on this basis.
54. On the evidence before me, I am not satisfied that the applicant faces a real chance of being killed or otherwise harmed in Mazar-e-Sharif on the basis of his previous ISAF [links], for returning from a western country such as Australia where he lived for several years and sought asylum, or because of his Hazara Shi'a identity, his residence in [Country 2], [Country 1] and his family's residence abroad, or any other imputed connection with or support for the Afghan government or international community.
55. I have had regard to the applicant's [age] and male gender and whether this would place him at risk of being forcibly recruited by any groups in Mazar-e-Sharif. UNHCR reports that forced recruitment of young men by AGEs and pro-government armed groups does occur<sup>68</sup> where there is a struggle for control for areas under the effective control of AGEs, or in areas where pro-government forces, AGEs and/or armed groups affiliated to Islamic State are engaged in a struggle for control.<sup>69</sup> While I note there is insurgent activity in Balkh province, Mazar-e-Sharif is under effective government control and I am not satisfied on the evidence that this will change in the reasonably foreseeable future. I am not satisfied that the applicant faces a real chance of being forcibly recruited by AGEs or pro-government groups in Mazar-e-Sharif in the reasonably foreseeable future.
56. Most returnees are returned to Kabul. I am satisfied the applicant would be able to safely access Mazar-e-Sharif by air after being returned to Kabul.<sup>70</sup> I consider that any period of time he would need to spend in Kabul would be brief and I note that there is a strong military presence in Kabul and there is likely to be so for some time. While I accept that security incidents occur in Kabul,

---

66 DFAT, 'DFAT Thematic Report – Hazaras in Afghanistan', 8 February 2016, CIS38A8012186, p15 at 4.12

67 [information deleted].

68 UNHCR, "UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Asylum Seekers from Afghanistan", 19 April 2016, CIS38A8012660, p45-46

69 UNHCR, "UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Asylum Seekers from Afghanistan", 19 April 2016, CIS38A8012660 p46

<sup>70</sup> Zabihullah Ihsas, "Balkh airport terminal inaugurated", Pajhwok Afghan News, 9 June 2013

some of which have been in and around the Kabul airport. However such attacks have been infrequent and the government and security forces maintain effective control in Kabul and I am satisfied that this will not change in the reasonably foreseeable future. The applicant does not have a high profile and I am satisfied he is not of personal interest to any AGEs. When having regard to these factors, and to the size and diversity of the population in Kabul, the significant security and armed presence and government control in the city and airport, and that it would be a transit point only, I do not accept that past attacks preclude the possibility of the applicant being able to safely use the airport to access other parts of Afghanistan such as Mazar-e-Sharif. I find the chance of the applicant being seriously harmed for a reason in s. 5J(1)(a) or being harmed in generalised violence while in transit to Mazar-e-Sharif via Kabul is remote. Accordingly, I am satisfied there is not a real chance of him facing serious harm before accessing Mazar-e-Sharif.

57. Country information does not support that persons with the applicant's profile are targeted in Mazar-e-Sharif, including at the airport or in transit from the airport to the city. However I have also given consideration to whether there is a chance of serious harm due to generalised violence in Mazar-e-Sharif, and on his way to the city from Mazar-e-Sharif's airport. I have noted above that the security situation in Afghanistan remains fluid and I accept it declined nationally in 2015 and 2016. However, while the country information cited above indicates that sporadic insurgent attacks do occur within the city and more broadly within the Balkh Province, there is no indication that the Afghan government or security forces are losing control of Mazar-e-Sharif. Even taking in account the recent security incidents listed above, I am not satisfied that incidents are occurring with such frequency as to indicate that the applicant faces a real risk of getting caught up in attacks or other violence from insurgents/AGEs, or between such groups and Afghan government/international forces in the city or en route to it. I am not satisfied that he faces a real risk of suffering significant harm through generalised violence in Mazar-e-Sharif, at its airport or in transit from the airport to the city.
58. I have had regard to the fact that the applicant is a Hazara Shi'a male [who] was previously threatened by the Taliban after working for ISAF for three months in 2005. I have had regard to the fact that he would be returning having unsuccessfully sought asylum and lived several years outside Afghanistan including in a western country and with family members who have also sought asylum and are still living in western countries. I have also had regard to the fact that he would be returning to Mazar-e-Sharif, a place he has never resided and has no identifiable links and would need to travel to Mazar-e-Sharif from Kabul. I have also considered the risks posed by AGEs including the Taliban, LeJ, IMU and the emergent threat from Islamic State. I have analysed the risk of sectarianism presenting a risk to the applicant, and of the risk to the applicant from generalised violence. However I am not satisfied that these various factors would, individually or cumulatively, lead to a well-founded fear of persecution in Mazar-e-Sharif, or in Kabul to access Mazar-e-Sharif in the reasonably foreseeable future.

#### **Refugee: conclusion**

59. 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**

---

60. 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

61. 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.

62. I found above that the applicant faces a real chance of being kidnapped, subject to significant physical ill-treatment or killed on the roads on his return trip to [District 1] in Ghazni on the basis of his Hazara ethnicity and/or Shi'a faith. I am satisfied that being kidnapped, subject to significant physical ill-treatment and killed amounts to significant harm. As 'real chance' equals 'real risk'<sup>71</sup> I am satisfied that there is a real risk the applicant will face significant harm on his return trip. Although incidents involving such harm are common on these roads, country information confirms that Hazaras face a heightened risk.<sup>72</sup> For these reasons I am satisfied that the risk faced by the applicant is not a risk faced by the general Afghan population generally but is one faced by the applicant personally on account of his Hazara ethnicity and/or Shi'a faith.

63. Having regard to the country information regarding insurgent activity on the roads linking Kabul to the Hazarajat (including Ghazni districts) indicating that the Afghan government does not have effective control over all parts of these roads, I am also not satisfied the applicant could obtain protection from an authority of the country such that there would not be a real risk that he will suffer significant harm on his return to Ghazni.

64. However, s.36(2B) of the Act 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.

65. I have accepted that the applicant may face some initial segregation and may face discrimination in Mazar-e-Sharif on account of being a Hazara, his long absence from Afghanistan and / or Shi'a and his lack of family or other prior networks in the city. I also accepted the risk is greater on account of his returning from a western country. However, country information indicates that discrimination occurs in the context of a positive preference or nepotism and does not support that discrimination manifests in a way that would arbitrarily deprive the applicant of his life or have the death penalty carried out against him. There is also no evidence to indicate that he will be subject to torture, cruel or inhuman treatment or punishment or degrading treatment or punishment intentionally inflicted. I do not therefore accept that he will face discrimination in Mazar-e-Sharif that would amount to significant harm for the purposes of s.36(2A).

---

71 *MIAC v SZQRB* (2013) 210 FCR 505

72 DFAT, "DFAT Country Information Report Afghanistan", 18 September 2015, CISEC96CF13366, p. 11; DFAT, "DFAT Thematic Report Hazaras in Afghanistan 2015-16 update", 8 February 2016, CIS38A8012186, p.8

66. I found above the applicant would not face a real chance of harm in Mazar-e-Sharif as Hazara/Shi'a, for returning as a failed asylum seeker from a western country such as Australia, because he and his family have lived many years outside Afghanistan, and because some other members of his family have also sought asylum in western countries, or for his previous ISAF employment, links to the international community and threat from the Taliban, nor for a combination of these factors. I found that Islamic State's capacity and influence in Afghanistan remains limited and that the conflict would not take a sectarian nature in the reasonably foreseeable future. I the applicant found he would not face a real chance of harm from AGEs including the Taliban, IMU, LeJ and Islamic State in Mazar-e-Sharif, including through forced recruitment by AGEs, forced-recruitment by pro-government groups, nor generalised violence in Mazar-e-Sharif or in transit thereto. I also found there is not a real chance that the applicant will not receive state protection. I considered all of these factors individually and cumulatively and found the applicant would not face a real chance of serious harm in Mazar-s-Sharif. As 'real chance' equates to 'real risk', for the reasons discussed above I am also not satisfied that the applicant faces a real risk of suffering significant harm in returning to, and residing in Mazar-e-Sharif.
67. Having regard to the applicant's personal circumstances, I have considered whether it is reasonable for the applicant to relocate to Mazar-e-Sharif. The applicant was invited to provide further information about whether it would be reasonable for him to relocate to an area of the country such as Mazar-e-Sharif where there would not be a real risk that he will suffer significant harm.
68. The applicant and his representative have contended that in relation to relocation to Kabul or Mazar-e-Sharif, those areas would not be safe. However I have found that the applicant would not face a real risk of significant harm in this location.
69. The applicant and his representative also contended that relocation would not be reasonable for the applicant because: he no longer has any family connections in Afghanistan and no one from whom he could seek help; he not receive any assistance or support from other Hazaras because they would treat him as an outsider and he would be segregated and not treated as a local; other people would be too afraid of the Taliban to associate with him because he has spent four years in Australia, a western country; he has become accustomed to Australian society and the western way of life; he cannot travel safely on the roads in and out of those locations and would not have freedom of movement; he would struggle to find work having been out of the country for so long; and he would suffer extreme hardship and a threatened capacity to survive. I have had regard to these factors and I also note the applicant is illiterate, that he has never been to Mazar-e-Sharif and that his wife and children reside in [Country 1].
70. UNHCR considers that relocation within Afghanistan is reasonable only where the individual has access to shelter, essential services (sanitation, health care, education) and livelihood opportunities, and a traditional support network of members of his or her (extended) family or members of his or her larger ethnic community.<sup>73</sup> DFAT also notes that in Afghanistan, ethnic, tribal and family affiliations are important factors.<sup>74</sup> Kinship is central to identity and acceptance in the community, including for finding shelter and employment, and therefore Afghans tend to reside in places their ethnic group constitutes the local majority.<sup>75</sup> Traditional extended family

---

73 UNHCR, "UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Asylum Seekers from Afghanistan", 19 April 2016, CIS38A8012660, p8

74 DFAT, "DFAT Thematic Report – Hazaras in Afghanistan", 8 February 2016, CIS38A8012186, p10 at 3.9; DFAT, "Country Information Report – Afghanistan", DFAT, 18 September 2015, CISEC96CF13367 p10 at 3.2

75 DFAT, "DFAT Thematic Report – Hazaras in Afghanistan", 8 February 2016, CIS38A8012186, p10 at 3.9; DFAT, "Country Information Report – Afghanistan", DFAT, 18 September 2015, CISEC96CF13367

and tribal community structures of Afghan society are the main protection and coping mechanisms for people in Afghanistan, who rely on these networks for their safety and economic survival, including access to accommodation and an adequate level of subsistence.<sup>76</sup>

71. DFAT has stated that a lack of financial resources and lack of employment opportunities are the greatest constraints on successful internal relocation<sup>77</sup> and that unemployment and underemployment are high across Afghanistan.<sup>78</sup> However, Mazar-e-Sharif is under the effective control of the Afghan government and country information indicates that although large urban areas offer greater opportunities for employment and access to services.<sup>79</sup> Mazar-e-Sharif is reported as one of the biggest commercial and financial centres of Afghanistan, and its political and economic weight is big and getting bigger.<sup>80</sup>
72. UNHCR advises that there are exceptions to the requirement of external support, being, single able bodied men and married couples of working age without identified specific vulnerabilities. UNHCR considers that such persons may, in certain circumstances, be able to subsist without family and community support in urban and semi-urban areas that have the necessary infrastructure and livelihood opportunities to meet the basic necessities of life and that are under effective Government control.<sup>81</sup> DFAT also assesses internal relocation is generally more successful for single men of working age - provided they are able to make use of family or tribal networks.
73. I accept that the applicant has never been to Mazar and may not know anyone else there, however he has demonstrated that he is resourceful and has successfully lived apart from his family and settled in unfamiliar places.
74. With regards to the applicant's employment prospects, while unemployment is high across Afghanistan, Mazar e Sharif is one of the biggest commercial centres and the more stable security and greater economic opportunities will be conducive to his finding employment. The applicant has varied work experience. When he was younger he assisted on the family farm, he did security work for ISAF, and has extensive experience in [construction] in [Country 2] and in 2016 was working in Australia for a [related] company. Even with the withdrawal of international presence, manufacturing and construction are among the top five sectors of employment in Afghanistan.<sup>82</sup> While I note there are around 2000 IDPs in Balkh, it is assessed as having very few.<sup>83</sup> Given his industry relevant skills, I am not satisfied the presence of IDPs in the area, nor any manifestation of nepotism will hinder the applicant's ability to obtain employment or shelter. He is able-bodied and of working age and is in possession of a Taskera which may be required for employment. He has successfully earned a living and resided in {Country 2} for several years and subsequently in Australia while supporting his dependent family members in Afghanistan and later when they moved to [Country 1].
75. The applicant's wife and children are currently residing in [Country 1]. I have given careful consideration to this as I accept that he would likely need to support them, and because the

---

76 DFAT, "DFAT Country Information Report – Hazaras In Afghanistan", 8 February 2016, CIS38A8012186, p.14

77 DFAT, "DFAT Country Information Report – Hazaras In Afghanistan", 8 February 2016, CIS38A8012186, p.15

78 DFAT, "DFAT Thematic Report Hazaras in Afghanistan 2015-16 update", 8 February 2016, CIS38A8012186, 3.14

79 DFAT, "DFAT Thematic Report Hazaras in Afghanistan 2015-16 update", 8 February 2016, CIS38A8012186, 4.3

80 EASO, "Country of Origin Information Report: Afghanistan Security Situation", January 2016, CIS38A8012395, p. 145

81 UNHCR, "UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Asylum Seekers from Afghanistan", 19 April 2016, CIS38A8012660, p8-9

82 DFAT, "DFAT Country Information Report - Afghanistan September 2015", 18 September 2015, CISEC96CF13366, p7 at 2.19

83 EASO, "EASO Country of Origin Information Report Afghanistan Security Situation November 2016", 1 November 2016, CIS38A80122597

emotional and practical impact of a continued separation would be significant. However, the applicant has already spent many years living apart from them while working in [Country 2] and since coming to Australia. I acknowledge that a further separation from his family in the short to medium term would be difficult, but I do not accept it would be unreasonable. As noted above, the applicant has been able to support his family in the past and I find he could establish himself in Mazar-e-Sharif and that once settled, he could make arrangements for his family to join him. I am satisfied it would be reasonable for the applicant to remain in Mazar-e-Sharif during this time.

76. I note the applicant's comments about having freedom to travel however I am satisfied that in Mazar-e-Sharif he would be able to earn a livelihood and that he would have access to the necessary infrastructure and essential services to sustain himself and meet the basic necessities of life. While he would initially be recognised as an outsider I am satisfied that over time the applicant would find community support among the Hazara population of the city. I do not accept that his association with, or time spent in a western country will make others fearful of engaging with him and I do not accept that the applicant's becoming accustomed to Australian society and western lifestyle render relocation to Mazar-e-Sharif unreasonable in his circumstances. I find it would be reasonable for the applicant to remain in Mazar-e-Sharif.

77. I am satisfied that in the circumstances it is reasonable for the applicant to relocate to Mazar-e-Sharif, an area of the country where there is not a real risk that he will suffer significant harm.

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

78. 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**

...

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

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

...

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

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

but does not include an act or omission:

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

...

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

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

...

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

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

...

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

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

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

...

#### **5H Meaning of refugee**

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

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

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

...

## **5J Meaning of well-founded fear of persecution**

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

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

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

## **5K Membership of a particular social group consisting of family**

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

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

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

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

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

#### **5L Membership of a particular social group other than family**

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

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

#### **5LA Effective protection measures**

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

...

#### **36 Protection visas – criteria provided for by this Act**

...

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

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

...

#### *Protection obligations*

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

#### *Determining nationality*

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

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

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

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

...

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

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

...