



Australian Government
Immigration Assessment Authority

Decision and Reasons

Referred application

AFGHANISTAN

IAA reference: IAA16/01434

Date and time of decision: 31 May 2017 14:47:00

Denny Hughes, 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 citizen of Afghanistan. He applied for a protection visa [in] September 2016. A delegate of the Minister for Immigration and Border Protection (the delegate) refused to grant the visa [in] November 2016.

Information before the IAA

2. I have had regard to the material referred by the Secretary under s.473CB of the *Migration Act 1958* (the Act). No further information or submission was obtained or received.

Applicant's claims for protection

3. The applicant's claims are contained in the information referred to the IAA. They can be summarised as follows:
 - He is a Hazara Shia from Parwan Province. The applicant worked as a driver between his home village in [Village 1] and Kabul.
 - He fears he will be harmed by the Taliban and [Group 1], who are known as government and Taliban associates, who terrorise and kill Hazaras, Shias and others.
 - In May 2013, he was driving a number of passengers to Kabul when a group of armed men signalled for him to pull over. He turned on his indicator to pull over, but his customers insisted he drive on. The armed men fired at his vehicle, but they escaped.
 - When they arrived in Kabul his passenger told him that he was [an employee] at [a government agency] and that the armed men were seeking to target him. The applicant realised that by helping a government worker escape, he himself would become a target.
 - He called his [relative] and wife in his village and told them about the incident. His family then fled to Kabul as they knew the Taliban and [Group 1] would search for him. Shortly thereafter he made arrangements to flee the country.
 - One of [Group 1] called his [relative] and said that the applicant had put their lives in danger by helping the government. They threatened that they would find the applicant and his [children] and teach them a lesson not to betray them.
 - His wife and family now live in constant fear and need to move to different locations in Kabul to hide their whereabouts from Taliban spies.
 - The applicant fears harm from the Taliban, as well as extremist Pashtuns and other extremist groups in Afghanistan such as Islamic State.

Refugee assessment

4. 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

5. 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.
6. The applicant claims to be a Hazara Shia from the [Village 1] area of Parwan Province in Afghanistan.
7. I agree with the delegate that the applicant's explanations for why he no longer holds his passport or other IDs were unsatisfactory. However, he has provided a copy of his Taskera and the applicant spoke freely and in great detail about his home area and his history of living and working between his home area in Parwan and Kabul. On the basis of his oral evidence at the visa interview, I accept he is a national of Afghanistan from a village in [Village 1] in Parwan Province. The applicant spoke Hazaragi during the visa interview with no difficulty, and I can see no reason to depart from the delegate's assessment that the applicant is a Hazara Shia.
8. The applicant was born and raised in a village in [District 1] in [Village 1] in Parwan. He completed a few years at school, after which he helped his [relative] on the family farm. After this, he spent about five years working as [another occupation], travelling between his home area and Bamyan Province.
9. The applicant's claims principally relate to an incident that occurred shortly before he left the country. He had been working as a driver between Parwan and Kabul, transporting customers and [goods] between the two areas. He travelled quite regularly and claims to have witnessed security incidents on the road. He gave one example of a truck that had been set on fire and the driver killed. While there were security incidents on the road, the applicant did not claim to have encountered any difficulties himself in the five years he had driving on the road.
10. In his arrival interview, the applicant was asked how his life was at risk in Afghanistan. He stated that he was a driver in his home area and it was very dangerous there. He was asked whether he was ever harmed or threatened. He stated he had been. He explained that he was passing by in a [vehicle], when gunshots were fired at them. He was asked specifically why he was shot at. He explained that he was driving to Kabul with several passenger. On the way, two motorcycles signalled him to stop. He stated that as he indicated to stop the [vehicle], the passenger in the [vehicle] told him not to stop and that it might be dangerous. He accelerated

and drove off. Then the men on the motorcycles started firing at them. He confirmed the [vehicle] was hit with two bullets. He was asked if there was any other reason he left Afghanistan, he said there was not.

11. In the arrival interview he was also asked whether any armed groups were active in his home area – he confirmed that in his home area, a group named [Group 1] was active. When asked what his past involvement with this group was, he said nothing.
12. The delegate put to him that in his arrival interview he did not indicate that his passenger was [an employee] at [a government agency]. In response, the applicant claimed (through his representative) that in the arrival interview he was asked to very briefly mention the reasons he left Afghanistan and they did not ask for details of his claims.
13. The applicant's claims in terms of the attack itself were broadly consistent with his later evidence, albeit he did not indicate the attackers were Taliban in the arrival interview, nor did he make any claim or suggestion that his passenger had a profile with the Afghan Government. I have listened to the recording of that interview. This section of the interview was not rushed, there were a number of pauses where the applicant could have added to his evidence, and the applicant was asked several questions about his claims. After he gave the specifics of his claims, he was also asked if there was any other reason he left the country. He said no. I appreciate that the arrival interview is not the vehicle for a detailed assessment of the applicant's claims, nevertheless I find these omissions to be significant ones given that in his later evidence the profile of his passenger was a major factor in why he considered himself at an ongoing risk. I also find it significant that in his arrival interview he did not mention the Taliban in terms of his own claims, or when asked whether armed, political or religious groups were active in his area.
14. Considering everything before me, I find it credible that the applicant was a driver in Parwan, and that he travelled regularly between his home area and Kabul, as well as other towns along the way. Given country information about security incidents on the roads in Afghanistan, and his consistency in relation to the claims raised in the arrival interview, I am also satisfied that if he was driving for five years, he would have seen a number of security incidents, such as the truck attack, and it is plausible that his own vehicle was shot at by armed men on motorcycles.
15. However, I am not satisfied that his passenger was associated with the Afghan Government or [other agency]. Given the significance he placed on this factor in his later evidence, I find the omission from his earlier evidence to be too significant to overlook. His failure to mention that the attackers were Taliban, equally so.
16. Even if I was to accept the applicant's passenger had some profile, I do not accept that the applicant would have been identified by the attackers or that he would have become a person of such interest to them. In the arrival interview, he stated that people on motorbikes had signalled him to stop and that he was shot at when he accelerated away. In his written statement he claims that when he arrived in [town], he saw a group of armed men with parked motorcycles signalling him to stop. They opened fire as they accelerated away, and he believes they got a look at his face and number plate while he was trying to pull over. In his oral evidence, he stated that two motorbikes followed his [vehicle] and signalled him to stop. I found his explanations about the incident and whether he was seen or identified to be inconsistent and unconvincing. I do not accept his evidence that he was passed by slowly and was observed by these men. While I accept he would have travelled regularly on the road, and that his face, vehicle or number plate could potentially have been known, on his own evidence he had no past interactions with the Taliban, and had never personally faced any issues, other

than witnessing other security incidents. I do not accept his claim that he was identified or that he had any previous profile with the Taliban or any other armed group.

17. While the applicant's [vehicle] was shot at, the applicant and his passengers managed to escape. At this point, other than his and his [relative]'s speculation, he had no clear understanding of who the attackers were, whether he or his [vehicle] were identified, or whether he or his family were at any ongoing risk. The applicant contends that it was the Taliban and/or [Group 1], but in the context of the attack, it is not evident how he knew it was persons from either group. Again, country information before me indicates that criminal groups are active on these roads, as are other Anti-Government Elements (AGEs), which I take to include the insurgent groups the applicant refers to in his claims. When asked how he knew they were Taliban he said they had turbans and weapons. When asked again later in the interview, he said there were Taliban flags in the area and the men riding motorbikes held flags. The applicant had not previously given evidence that there was an overt Taliban presence in the area or that the men were wearing turbans or holding Taliban flags – if they had, I find he would have stated from the beginning that the armed men were from the Taliban or [Group 1]. I find that his later evidence was an embellishment and I do not accept there were any flags or other identifiers that indicated the armed men were from the Taliban, or associated with [Group 1].
18. In that context, where the applicant had no clear knowledge of who the attackers were or whether he was identified, I also find it implausible that these events would so immediately precipitate his departure from the country. In his written statement he claimed that his [relative] was threatened by one of [Group 1] because of the claimed incident on the road. That would have been an obvious catalyst for the applicant and his family to realise that they were at risk from specific persons, but it became clear during the visa interview that the claimed threat(s) did not occur until some months after the applicant arrived in Australia. Other than this later contact, there was no direct indication that he, his [relative] or his family were at further risk from the attack. Yet despite this, he claims his [relative] and family immediately fled their farm and home area, where they had lived for decades, and travelled to Kabul. The applicant then fled the country altogether several days later. If there had been no threats, or no contact from the Taliban, [Group 1], or any other AGE or criminal group, I find it difficult to accept that the applicant and his family would take such drastic steps to flee their home and, in terms of the applicant, the country.
19. I also found his evidence about how he came up with the money to travel out of the country to be unconvincing. On his own evidence, he spent upwards of [amount] USD to travel to Australia. The applicant gave evidence that his family was of average means, neither rich nor poor. He claimed that he knew his job was risky and he had no other choice, as he had to work to support his family. When asked in the interview how much he would charge each passenger to travel between his home area and Kabul, he said [amount] Afghani (about [amount] AUD). I accept his evidence that he was of moderate means. When asked how he could afford to travel to Australia, he said that he sold his [vehicle] and his [relative] helped him. While it is plausible that he would be able to gather the funds (including through additional loans), it was a significant outlay over a very short period for a family of his moderate means. Moreover, this outlay occurred while neither the applicant nor his [relative] knew that the threat was ongoing. Given the uncertainty, and the significant costs involved – not only in terms of his travel, but also in abandoning their farm and home area, I find it difficult to accept that they would not instead remain in Kabul until it was determined that the threat was continuing.
20. Individually, these factors are potentially plausible or explainable. I accept people do not always act in ways that are rational or proportional. However, when considered collectively, his

earlier omissions, and the other concerns I have with the plausibility and consistency of his evidence, lead me to conclude that these aspects of his claims are implausible and not credible. Instead, I find it far more plausible the applicant and his passenger were randomly targeted on the road by an AGE or other illegal armed criminal group, which the country information indicates are active in Parwan.¹ I accept the applicant was encouraged by his passenger to accelerate away in order to avoid the danger, and that they were shot at, but escaped. However, beyond that, I do not accept the applicant has any ongoing profile with the attackers, that he was identified, or that he or his family are at risk from these elements. I do not accept that his [relative] and family immediately fled their home area. I do not accept that his [relative] or family were subsequently threatened by the Taliban, [Group 1], or anyone else, or that they remain under threat. I note that he did not claim to have ever had any other interaction with [Group 1], other than knowing of them as thieves. I am satisfied he has no other history or profile with these groups, whether connected to the incident on the road in May 2013 or otherwise.

21. It follows that I do not accept he or any of his family members are on a blacklist. I do not accept that his family is in hiding in Kabul, or that his children are unable to go to school. In this regard, I agree with the delegate's assessment that he has provided contradictory evidence as to whether his family has moved from place to place in Kabul, or stayed in a single premises rented by his [relative]. I find the applicant has embellished these aspects of his evidence to strengthen his protection claims. I find there is no real chance of him being seriously harmed by the Taliban, [Group 1], or any other AGE or criminal group in connection with the incident in May 2013, or on the basis of any other profile.
22. The applicant further claims to fear harm from the Taliban, Islamic State and other extremist groups (AGEs) on the basis of his ethnic and religious background, should he return to his home village in Parwan Province. He also claims to fear harm on the basis of his actual or imputed political opinion as someone strongly opposed to the Taliban.
23. Parwan Province is located north of Kabul. According to EASO, it is one of the more stable provinces, however in recent years, the security situation in Parwan deteriorated steadily due to insurgent activity and clashes between AGEs and the Afghan National Security Forces (ANSF), and also through the presence of illegal armed groups, often thought to be linked with local powerbrokers and criminality. From 1 September 2015 to 31 May 2016, Parwan Province counted 140 security incidents, the vast majority of which were security or conflict related incidents. In the applicant's home area, there were three reported security incidents over the period.²
24. While there is evidence of clashes between AGEs and security forces, and criminality, there is no indication in the country information before me that Hazara Shias are at risk of being harmed for reasons of their religion and ethnicity within Parwan province, or that they are facing other systematic or discriminatory conduct there. In February 2016, DFAT assessed that people from all ethnic groups are at risk of violence from AGEs, but no particular group is systematically targeted solely on the basis of ethnicity or religion. Although ethnicity or religion is sometimes a contributing factor, especially in the kidnappings of civilians travelling by road between Kabul and the Hazarajat, insurgent groups typically target people associated with the government and the international community, or those who appear wealthier than other Afghans, rather than targeting specific groups (such as Hazaras) on the basis of ethnicity.

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

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

Generally, sectarian violence in Afghanistan is rare, and outside of road insecurity in the Hazarajat, DFAT indicated it was not aware of any significant violent attacks in recent years against Hazaras on the basis of their religion or ethnicity.³

25. I note that since that report that have been security incidents involving Hazara Shias in Kabul, which I discuss below. However, in terms of Parwan Province, there is no evidence before me that Hazara Shias are being directly targeted for harm. UNHCR assesses that Parwan is a stable province, with no internal displacement in or from the province in the first four months of 2016.⁴ EASO refers to a range of security incidents in the province in its November 2016 report, and while acknowledging some traditional tensions in [District 1] between Sunni Hazaras and Shia Hazaras, no reports of violence targeting Hazara Shia for ethnic and/or religious reasons are mentioned.⁵ UNAMA highlighted two suicide bombings of high profile targets in the province in February and April 2016, but cited no examples of Hazara Shia being targeted in the region in its midyear report.⁶
26. I accept AGEs, including the Taliban and unspecified 'Pashtun extremist groups', are active and have the capability to orchestrate attacks in Parwan Province. However, on the information before me, I am not satisfied those groups are seeking to target Hazara Shias for reasons of their ethnicity and/or religion within the province, and more specifically the applicant's home district. I find there is not a real chance of the applicant being seriously harmed in his home area for reasons of his ethnicity or religion, or his political opinion, by the Taliban or any other AGE or group active in these areas.
27. As I accept the Taliban are active in his home area, I have also considered the applicant's claims to fear harm from the Taliban on the basis of an actual or imputed political opinion against the group. The applicant did not elaborate on these claims in his visa interview in terms of how he would express that opinion, if it all, nor did he provide any other details of these claims in his written statement or elsewhere. On the limited evidence before me, I am not satisfied that he strongly opposes the Taliban, or would otherwise seek or wish to express his political views in relation to the group. In terms of an imputed profile, I have rejected his claims that he fled from the Taliban or otherwise is at risk from the group. In his own evidence, he has not claimed to have had any other interaction with the Taliban. I accept those with certain profiles are targeted by the Taliban for harm, and those who are outspoken against the group would also potentially be at risk. However, I am not satisfied the applicant has an actual or imputed political opinion opposed to the Taliban, whether in fact, in connection with the attack in May 2013 or otherwise, or that he has any other profile that would put him at risk from the Taliban on his return to the country. I find there is no real chance of him being harmed for these reasons.
28. In terms of tensions between Sunni and Shia Hazaras in his home area, I accept there have been historical differences, and that his family experienced hardship during the Taliban reign. However, he made no claim to fear harm on this basis in his written statement or oral evidence, and there was no evidence before me of recent violence or other harm between

³ DFAT, "DFAT Country Information Report – Hazaras in Afghanistan", 8 February 2016, CIS38A8012186.

⁴ EASO, "EASO Country of Origin Information Report Afghanistan Security Situation November 2016", 1 November 2016, CIS38A80122597, citing UNHCR, "Afghanistan: Conflict-Induced Internal Displacement Monthly Update", October 2015 and UNOCHA, "Afghanistan: Conflict Induced Displacements - Snapshot (1 January - 31 April 2016)", 16 May 2016.

⁵ [Information deleted].

⁶ UNAMA, "UNAMA Protection of civilians in armed conflict midyear report 2016", 24 July 2016, CIS38A80121362.

these groups. On the contrary, there were limited reports of security incidents in his home area.⁷ I am satisfied the applicant faces no real chance of harm on this basis.

29. In relation to Islamic State, it is uncontroversial that the group has moved beyond the nascent stage in Afghanistan over the last few years. There is evidence before me of Islamic State attacks against Hazara Shias in the country including, as noted by the applicant during the interview, recent major attacks in Kabul. The group also has a strong presence in the east of the country, around Nangahar.⁸ However, there is no information before me that indicates Islamic State has been able to undertake operations or attacks in Parwan, or that it has the capabilities to become a credible threat in this area in the foreseeable future, let alone acts that target Hazara Shias.⁹ While I accept the group's impact in other parts of the country is credible, and Hazara Shias have been targeted in serious attacks in Kabul and elsewhere, I am not satisfied there is any real chance of the applicant being seriously harmed by Islamic State in Parwan because of his religion, ethnicity or for any other reason.
30. I have also considered the risk to the applicant through general insecurity and criminality in the province, including on the roads. DFAT assesses that criminals and insurgents on the roads tend to target people who appear wealthy or are associated with the government or the international community in attacks that can include kidnapping for ransom. People from all ethnic groups are vulnerable to these attacks and it can be difficult to ascertain the motivation for attacks, and to separate criminal attacks from insurgent activity.¹⁰ The question of whether his religion or ethnicity would play a factor on the roads is somewhat unclear. DFAT equivocates in its assessment of the risks to Hazara Shia on the roads, but concedes that there have been incidents where Hazara Shias may have been targeted, in part due to their religious or ethnic background, citing serious attacks involving Hazara Shias travelling in Ghazni and Zabul provinces. However, I find it significant that DFAT makes no mention of such attacks in Parwan Province, or on the roads between Kabul and Parwan.¹¹ I rely on the country information cited above which does not indicate that Hazara Shia have recently been targeted on the roads or elsewhere in the province for reasons of their religion or ethnicity.
31. In terms of insecurity more generally, I again note that Parwan is considered to be a relatively stable province. The applicant's home area, [District 1], appears particularly safe, having experienced only three security incidents in the period between 1 September 2015 and 31 May 2016. Over that same period, the province overall reported 140 security incidents, which is higher than neighbouring Bamyan Province in the central highlands (33), but was much lower than other bordering provinces such as Kabul Province¹² (312), Wardak (359) and Baghlan (415). The majority of security incidents in the province related to clashes between AGEs and security forces, but also criminal activity.¹³ Historically, there has only been limited evidence of Taliban or other AGE presence in his home district, and what limited activities did occur related

⁷ EASO, "EASO Country of Origin Information Report Afghanistan Security Situation November 2016", 1 November 2016, CIS38A80122597.

⁸ EASO, "EASO Country of Origin Information Report Afghanistan Security Situation November 2016", 1 November 2016, CIS38A80122597.

⁹ DFAT, "DFAT Country Information Report – Hazaras in Afghanistan", 8 February 2016, CIS38A8012186; EASO, "EASO Country of Origin Information Report Afghanistan Security Situation November 2016", 1 November 2016, CIS38A80122597; UNAMA, "UNAMA Protection of civilians in armed conflict midyear report 2016", 24 July 2016, CIS38A80121362.

¹⁰ DFAT, "DFAT Country Information Report – Hazaras in Afghanistan", 8 February 2016, CIS38A8012186.

¹¹ DFAT, "DFAT Country Information Report – Hazaras in Afghanistan", 8 February 2016, CIS38A8012186.

¹² Including Kabul City.

¹³ EASO, "EASO Country of Origin Information Report Afghanistan Security Situation November 2016", 1 November 2016, CIS38A80122597; UNAMA, "UNAMA Protection of civilians in armed conflict midyear report 2016", 24 July 2016, CIS38A80121362;

more to it being a transit route than an area affected by the insurgency.¹⁴ The evidence before me indicates that security in his home area is comparatively favourable.

32. Despite my concerns with aspects of his evidence, I have accepted the applicant was targeted in the past on the roads while working as a driver. The country information before me indicates the presence of illegal armed gangs in Parwan on the roads, and I have also considered whether the applicant would be at risk of harm if he returned to his home area, including if he resumed his work as a driver on the roads travelling between the province and Kabul. While I accept there are risks, I note the applicant has significant experience working on the roads between Parwan and Kabul. He was able to travel between Parwan and Bamyan for five years when he worked as [another occupation], and other than the one incident in May 2013 and his earlier witnessing of a truck fire, the applicant was able to travel frequently on the roads for five years without incident. I am satisfied he has no association with the security forces or the international community, nor would he on return to the country and there is no risk of him being targeted on the basis of that risk profile. The applicant is not wealthy, but also not poor. I am satisfied that he has no wealth or other profile that would put him at risk on the roads on return to the country. I am further satisfied that he would not face a chance or risk of harm on the basis of his religion or ethnicity on the roads in Parwan Province.
33. Weighing all the information before me, I find there is no real chance of the applicant being seriously harmed on the basis of his religion, ethnicity or any other profile. I accept there is a level of insecurity in Parwan Province, however given the country information before me and his lack of any adverse profile, I am satisfied there is no real chance of him being harmed in generalised or criminally motivated violence in Parwan, particularly within his home area of [District 1]. I accept there are risks on the roads, but weighing all the information before me, again including his experience on the road and lack of any adverse profile, I am satisfied that if he returned to driving, the chance that he would be harmed in generalised or criminally motivated violence on the roads in and out of the province is remote. Accordingly, I am satisfied there is not a real chance of him being seriously harmed for any of these reasons on his return to Afghanistan, whether separately or cumulatively.
34. On a separate and independent basis, I have considered whether the applicant could take reasonable steps to modify his behaviour so as to further avoid the chance of harm in his home area. While I have found the chance of him being harmed on the roads is remote, I accept the May 2013 incident was the catalyst for him deciding to depart the country as he felt it was no longer safe to continue driving for a living. I am satisfied that if he returned to Afghanistan, he would not seek to return to driving due to the risks associated on the roads. The applicant sold his vehicle and did not indicate any intention to return to his previous occupation. On the evidence before me, I consider the applicant would be able to find work in a different occupation, notwithstanding the challenging economic situation in Afghanistan. Having regard to his particular circumstances, I note the applicant previously worked as [another occupation] in Bamyan for five years, and prior to that he worked on his [relative's] farm. I accept that he did not enjoy farm work, but I do not accept this would be a reasonable basis to avoid similar work if it was available. I am satisfied he could find work in a farming or [another] role, whether locally or in Bamyan. In terms of him finding work in Bamyan, I note that it is not far from his home village and it is considered one of the safer areas in Afghanistan, the applicant regularly travelled that route without incident in the past, and there has been no marked change in the security situation in that area. In fact, Bamyan and the central highlands have

¹⁴ Voice of Jihad, "An interview with Mohammad Naseem Mushfiq, the Jihadi in-charge of Parwan province", 24 March 2015. CXBD6A0DE1359; Thomas Ruttig, "Ghorband - A valley once friendly", Afghanistan Analysts Network, 19 July 2011, CX296973, as referenced from the cited Department of Immigration and Border Protection's Country of Origin Information Section (COIS) Report, AFG CI150903101314125.

some of the lowest numbers of security incidents in the country.¹⁵ I am also satisfied he could safely access Bamyan from [District 1], as the overwhelming majority of security incidents in the province are in the north and east of the province (Ghorband, Bagram, Shinwari and Charikar districts), and he would not need to travel through those areas to access Bamyan.¹⁶ Other than the financial motivation, the applicant did not claim that he had any other reason to travel out of his home area to Kabul. In the circumstances, I am satisfied he could take reasonable steps to modify his behaviour to further avoid any chance of persecution he may face if he continued to travel on the roads between Parwan and Kabul regularly.

35. Further, I am not satisfied that in the circumstances of this particular case, that the applicant's past business driving a [vehicle], is an immutable characteristic of the applicant. I am not satisfied on the evidence that he has acquired any attribute or characteristic from this work that cannot be changed or that could be regarded as immutable. I am satisfied his motivation for starting this business was fundamentally a financial one. Accordingly, I find that requiring him to modify his behaviour by not returning to his driving business and working on the roads would not conflict with a characteristic that is fundamental to his identity or conscience, or conceal an innate or immutable characteristic, or otherwise fall within s.5J(3)(c). Having regard to his particular circumstances, I consider that he could take reasonable steps to modify his behaviour by ceasing travel and work on the roads between Parwan and Kabul, and finding work locally (or in Bamyan) to further avoid a chance of persecution. As s.5J(3) applies, the applicant also does not have a well-founded fear of persecution for these reasons.
36. For clarity, I do not accept that reducing or limiting his freedom of movement in and out of his home area would amount to serious or significant harm. I do not accept that his [relative] and wife moved to Kabul, or if they did it was because of fears from the Taliban or [Group 1] in their home area. I am satisfied that the applicant's connections to Kabul related only to his work, and that his family either remains in Parwan, or would return there with the applicant. The applicant has a long history in this area, as well as family connections, and I am satisfied he would be able to live safely in the area. I am also satisfied he would be able to access Bamyan if needed. Having regard to all the information before me, I am satisfied that it would be reasonable for the applicant to reside and stay in his home area in Parwan.
37. In terms of his ability to safely access his home area, while there are risks on the roads, and there have been instances where major roads have been blocked by AGEs such as the Taliban, sometimes for military strategy or to identify government officials or sympathisers, those incidents have been isolated, are often temporary in areas where the Taliban has a limited presence, and reports before me indicate that the ANSF and the Afghan National Army have been active in responding to such security concerns in the province when they occur.¹⁷ In this regard, I also again note that the applicant has no other adverse profile.

¹⁵ EASO, "EASO Country of Origin Information Report Afghanistan Security Situation November 2016", 1 November 2016, CIS38A80122597; UNAMA, "UNAMA Protection of civilians in armed conflict midyear report 2016", 24 July 2016, CIS38A80121362.

¹⁶ EASO, "EASO Country of Origin Information Report Afghanistan Security Situation November 2016", 1 November 2016, CIS38A80122597.

¹⁷ EASO, "EASO Country of Origin Information Report Afghanistan Security Situation November 2016", 1 November 2016, CIS38A80122597; EASO, "EASO Country of Origin report Afghanistan: Insurgent strategies - intimidation and targeted violence against Afghans", 1 December 2012, CIS24804; Tolo News, "ALP Commander Calls For Govt's Support To Clear Ghorband Of Militants", 18 March 2016, CX6A26A6E3358; National Afghanistan TV, "Afghan security forces drive out Taleban from Parwan Province district", 16 February 2016, CX6A26A6E3357; 1TV, "Programme summary of Afghan Channel One (1TV) news 1300 GMT 29 Jan 16", 29 January 2016, CX6A26A6E3361; Bakhtar News Agency, "Military Operations Kills 26 Taliban Militants ", 6 March 2016, CX6A26A6E3364; Arman-e-Melli - Afghanistan, "Afghan paper

38. I accept there have been serious attacks against civilians on the road in other provinces, however reports about attacks in Parwan itself are limited. I accept DFAT advice that criminals and insurgents on the roads tend to target people who appear wealthy or are associated with the government or the international community, and I have found the applicant has no such profile, nor would he face a real chance of being harmed on the basis of any other profile, including his ethnicity and religion. In this regard, I have again given weight to the applicant's own evidence that he was able to travel for five years between Parwan and Kabul without personally facing an attack (prior to May 2013), and prior to that he was able to travel between Parwan and Bamyan for several years without incident. Other recent reports indicate that the road from Kabul through Parwan is longer, but used by travellers to Bamyan as it is considered relatively safer than other routes through Maidan-Wardak.¹⁸ In terms of Kabul, there have been isolated attacks on the airport, where the applicant would arrive, and there is evidence of insecurity on the roads and elsewhere within the city. However, I also note that the Afghan government and armed forces maintain effective control over the city.¹⁹ In any event, the applicant's stay in Kabul would be short term and only to arrange his return to Parwan. I again note he has significant experience travelling between Kabul and Parwan and I find this would aid him in determining the safest route. Thus while I accept there are risks on the road from criminally motivated, insurgent and generalised violence, I consider the chance of the applicant being seriously harmed is remote, and I am satisfied he would be able to safely access his home area on return to the country.
39. Finally, while unnecessary to conclude upon, I note that s.5J(1)(a) requires that the applicant must fear being persecuted for reasons of race, religion, nationality, membership of a particular social group, or political opinion. Subsection 5J(4)(a) requires that these reason(s) must be the essential and significant reason(s) for that persecution. The limited risks faced by the applicant relate not to his individual profile or background, but are due to insecurity and criminality in the province. While I accept that criminality can be a multi-faceted phenomenon, and that self-interested criminality can include other motivations (such as political, religious or ethnic components), I have found the applicant has no profile that would put him at a real chance or risk of harm for these reasons. I do not accept that drivers and other travellers in his home area are targeted on the roads for anything other than criminal opportunism. It follows that while I have found that the chance of him being harmed on the roads would be remote, I am also satisfied it would not be for the essential and significant reasons of his race, religion, nationality, membership of a particular social group or political opinion, and therefore s.5J(1)(a) and 5J(4)(a) would also not be satisfied.

Refugee: conclusion

40. Considering all the information before me, I find there is not a real chance of the applicant being seriously harmed on the basis of his religion, ethnicity, actual or imputed political opinion. I further find there is no real chance of the applicant being harmed by the Taliban, [Group 1], any other AGE or criminal group, in relation to the May 2013 incident, or on the basis of any other past profile. I find there is only a remote chance, and therefore not a real chance, that he could be seriously harmed in generalised or criminally motivated violence in Parwan, including if he returned to driving between Parwan and Kabul. On a separate and independent basis, I am also satisfied the applicant could take reasonable steps to modify his

criticizes government's military failures", 25 July 2015, CXBD6A0DE14285, as referenced from the cited Department of Immigration and Border Protection's Country of Origin Information Section (COIS) Report, AFG CI150903101314125.

¹⁸ Voice of America (VOA), "Intense Fighting in Afghan Provinces Kills Dozens ", 1 July 2016, CX6A26A6E5772.

¹⁹ EASO, "EASO Country of Origin Information Report Afghanistan Security Situation November 2016", 1 November 2016, CIS38A8012259; DFAT, "DFAT Country Information Report – Hazaras in Afghanistan", 8 February 2016, CIS38A8012186.

behaviour to avoid and further reduce any chance of persecution for these reasons. In sum, I find his fears of persecution on return to Afghanistan are not well-founded.

41. 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

42. 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

43. 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.

44. I have found above that there is not a real chance of the applicant being seriously harmed on the basis of his religion, ethnicity, actual or imputed political opinion. I have further found there is no real chance of the applicant being harmed by the Taliban, [Group 1], any other AGE or criminal group, in relation to the May 2013 incident, or on the basis of any other past profile. I have found there is only a remote chance, and therefore not a real chance, that he could be seriously harmed in generalised or criminally motivated violence in Parwan, including if he returned to driving between Parwan and Kabul. For the same reasons, and applying the authority in *MIAC v SZQRB* (2013) 210 FCR 505, I am satisfied there is not a real risk of the applicant facing significant harm for these reasons if he returns to Afghanistan.

45. On a separate and independent basis, I was also satisfied the applicant could take reasonable steps to modify his behaviour to avoid and further reduce any chance of persecution for these reasons. I note that s.5J(3) of the Act does not apply to the assessment under complementary protection. In terms of these claims, I have found the applicant would cease driving in the country and that there would not be a real chance of him being seriously harmed on that basis. I have found the applicant was a driver for purely financial reasons, and that he has no other motivation or reason to continue in this line of work on return to Afghanistan. I have found it would be reasonable for him to stay in his home area and not travel to Kabul. I have also found that he would be able to find alternative work that does not require him to travel regularly on the roads. I accept this would involve a modification of his behaviour, and while not directly material to this assessment, I have found above that it would not conceal any innate or immutable characteristic or conflict with a characteristic that is fundamental to his identity or conscience. As a question of fact, I am satisfied the applicant would not return to driving because of the risks involved. I am further satisfied that ceasing this line of work, and finding a new occupation, would not constitute significant harm.

46. In any event, in terms of generalised and criminally motivated violence in the country, for the reasons given above, I am satisfied these risks are faced by the population of the country generally and are not faced by the applicant personally, and as such under s.36(2B)(c) there would be taken not to be a real risk that the applicant will suffer significant harm in Afghanistan. Accordingly, I am satisfied that there is not a real risk of the applicant facing significant harm as a driver between Kabul and Parwan, in terms of generalised or criminally motivated violence, or otherwise if he returned to Afghanistan.

Complementary protection: conclusion

47. 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.