



Australian Government

Immigration Assessment Authority

Decision and Reasons

Referred application

AFGHANISTAN
IAA reference: IAA17/02346

Date and time of decision: 25 January 2018 15:42:00
Scott MacKenzie, 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. The applicant arrived in Australia on [date] March 2013 as an unauthorised maritime arrival. On [date] April 2016 he lodged a valid application for a Class XE Subclass 790 Safe Haven Enterprise visa (SHEV).
2. A delegate of the Minister for Immigration and Border Protection (the delegate) refused to grant the visa on [date] March 2017, on the basis that the applicant did not face a real chance of serious harm or a real risk of significant harm upon return to Afghanistan.

Information before the IAA

3. I have had regard to the material given by the Secretary under s.473CB of the *Migration Act 1958* (the Act) (the review material).
4. On 26 April 2017, the IAA received a written submission from the applicant's representative (IAA submission). The IAA submission in part comprises argument on issues before the delegate and also refers to claims and evidence that were before the delegate, and are part of the review material.
5. As part of her submission to the IAA, the applicant's representative also refers to information not before the delegate. It is new information. The IAA must not consider any 'new information' – that is, documents or information not before the delegate when the decision was made and that it considers may be relevant - unless satisfied exceptional circumstances justify considering the information and also, if provided by an applicant, the information was not and could not have been provided to the Minister, or is credible personal information which was not previously known and had it been known may have affected the consideration of the applicant's claims.
6. The applicant's representative refers to unreferenced country information, and a number of partially referenced extracts of country information said to have been published by Afghanistan Analysts Network on 2 February 2017 that relate to the targeting of Shia Hazaras, and an unreferenced report of Professor William Maley about a July 2016 attack on a Hazara demonstration in Kabul. The country information not before the delegate was published before the delegate's decision and/or appears to relate to events that pre-date the delegate's decision. The representative has not provided reasons as to why this information could not have been provided to the delegate or why it may be considered credible personal information. In the circumstances, I am not satisfied that this information was not, and could not have been, provided to the Minister before the delegate made his decision. I am also not satisfied that as general country information, it is credible personal information which was not previously known and, had it been known, may have affected the consideration of the applicant's claims. I am also mindful that I have other country information before me that form part of the review material or that I have obtained relating to the July 2016 and other attacks, and regarding the situation for Shia Hazaras in Afghanistan. In these circumstances, I am not satisfied that there are exceptional circumstances to warrant consideration of the new information.

7. The applicant's representative also submitted two photographs said to evidence the applicant's brother's employment with the International Security Assistance Force (ISAF) in Afghanistan. The photographs are of poor quality and are submitted to evidence events that pre-date the delegate's decision. One photograph appears to be an ISAF Access Pass, but the name of the holder is not legible. Another photograph shows a person shaking hands with another person in a military uniform. In that photo, there appears to be a certificate (not legible) superimposed onto the photograph for reasons unknown. The applicant's evidence in his SHEV application is that his brother last worked for ISAF in 2012. The applicant's representative does not explain why this information could not have been provided to the delegate prior to her making the decision and the applicant has not satisfied me that this information could not have been provided before the decision was made. Further, I am not satisfied that the new information is credible personal information. In particular, the quality is such that I find they do not support the applicant's claim that he or his brother worked for ISAF in Afghanistan. Having regard to the circumstances as a whole I am also not satisfied that there are exceptional circumstances to justify considering this new information.
8. Since the delegate made her decision, the Department of Foreign Affairs and Trade (DFAT) released two new country information reports on Afghanistan.¹ The delegate has relied largely on the then contemporaneous DFAT reports of September 2015 and February 2016, which the two new reports update. Given this, I am satisfied there are exceptional circumstances for considering these reports. The applicant has claimed that he fears harm due to his profile as a Shia, a Hazara, and because he will be returning to Afghanistan as a person who claimed asylum abroad. Specifically, from these reports, I have obtained information about Shias and Hazaras, and those who return to Afghanistan after seeking asylum abroad.
9. I have also obtained country information on the recent security situation for Shia Hazaras in Kabul, specifically as it relates to the threat from Islamic State.² This information was not before the delegate and is new information. The information relied upon by the delegate did not refer to the recent attacks against Shias in Kabul in 2017 and is pertinent to the applicant's claims for protection. I am satisfied that there are exceptional circumstances for considering this information.

Applicant's claims for protection

10. In support of his SHEV application, the applicant provided a statutory declaration, dated [April] 2016, where he outlined his claims for protection (SHEV statement). Those claims can be summarised as follows:
 - The applicant is a Shia Hazara male born in [District 1], [Province 1];
 - In 2009, the applicant's father was a political candidate in [a local province]. Due to this, the applicant's family became better known in the community;
 - The applicant's brother ([Mr A]) worked for ISAF in [a certain] department;

¹ DFAT, "DFAT Country Information Report Afghanistan", 18 September 2017, CISED50AD5680; DFAT, "DFAT Thematic Report - Hazaras in Afghanistan", 18 September 2017, CISED50AD5681

² Long War Journal, "Islamic State continues to target Shiite civilians in Kabul", 15 June 2017, CXC9040669201; Sydney Morning Herald, "Four killed in Islamic State attack on mosque in Kabul", 16 June 2017, CXC9040669193; Tolo News, "Hajj Ministry Calls For Tight Security At Mosques", 28 August 2017, CXC90406612800; Aljazeera, "Deadly attacks hit mosques in Kabul and Ghor", 21 October 2017, CXC90406616082; Tolo News, "Calls For Unity Grow As Mosque Attack Victims Buried", 22 October 2017, CXC90406616075; Long War Journal, "Islamic State's Khorasan 'province' claims responsibility for attack on cultural center in Kabul", 28 December 2017, CXC90406620039

- [Mr A] helped the applicant get a job at ISAF and in January 2010 the applicant commenced working for ISAF as a [occupation]. He held this position for over two years;
- In July 2012, it became clear that the applicant and [Mr A] were persons of adverse interest to the Taliban;
- Two of the applicant's [relatives] were mistakenly arrested by the Taliban and forced to provide photographs of the applicant and [Mr A];
- The Taliban attended the applicant's house and delivered a threat letter, dated [July] 2012, to his [home]. The applicant was not at home at the time. The letter was addressed to the applicant and [Mr A] and included the photographs provided by the [relatives];
- Later, a second letter, dated [July] 2012, was dropped into the applicant's car. The letter was again addressed to the applicant and [Mr A]. The letter included a threat to their lives if they did not cease their employment with ISAF;
- Later, the Taliban again attended the applicant's house when he was not at home and handed a third threat letter, dated [June] 2012 [sic]. [This] time the letter was only addressed to the applicant and he was again warned to cease employment with ISAF;
- The Taliban made it very clear that the applicant's information had been shared and that he is known as a highly active person against the Islamic Emirate due to his employment with ISAF and his membership of a family of a person who participated in provincial politics. The Taliban also requested that all security organisations punish him and his brother;
- [Mr A] fled Afghanistan due to these threats and the applicant followed two weeks later. [Mr A] told the applicant that he could not remain in Afghanistan because the Taliban were about to attack due to the increased number of threats received;
- The authorities in Afghanistan allow and often encourage discrimination and other harm against Hazaras;
- If returned to Afghanistan, the applicant fears he will be harmed by the Taliban and organisations such as Islamic State on account of:
 - his Hazara ethnicity
 - his employment with ISAF
 - his membership of his family
 - his 'western links' and travel to Australia.

11. On [date] March 2017, the applicant was interviewed in relation to his claims for protection (SHEV interview). In the SHEV interview, the applicant advised the delegate that around four to five months earlier, his wife received a further threat letter from the Taliban. A copy of the letter and accompanying English translation was submitted.

Refugee assessment

12. 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

13. Under s.5J of the Act 'well-founded fear of persecution' involves a number of components which include that:
- the person fears persecution and there is a real chance that the person would be persecuted
 - the real chance of persecution relates to all areas of the receiving country
 - the persecution involves serious harm and systematic and discriminatory conduct
 - the essential and significant reason (or reasons) for the persecution is race, religion, nationality, membership of a particular social group or political opinion
 - the person does not have a well-founded fear of persecution if effective protection measures are available to the person, and
 - the person does not have a well-founded fear of persecution if they could take reasonable steps to modify their behaviour, other than certain types of modification.

Identity and home area

14. Since his arrival in Australia, the applicant has consistently claimed to be a Shia Hazara who originates from [District 1], [Province 1], Afghanistan. In support of this he provided a translated copy of his 2007 issued Taskera and 2011 issued driver's licence evidencing his place of birth in [Province 1]. On the evidence before me, I accept the applicant's identity is as claimed, that he is a Shia Hazara, an Afghani citizen, and that his receiving country is Afghanistan.
15. The applicant has also consistently claimed to have lived and/or worked in Kabul from around 2003 until he departed Afghanistan in 2012. He provided a copy of his Afghan driver's licence issued in Kabul in [2011]. In his SHEV application dated [April] 2016, the applicant stated that his family resided in Kabul and that he contacted them [a number of times] a week. In the SHEV interview of [March] 2017, he advised the delegate that his wife and children continued to reside in Kabul.
16. I agree with the delegate's assessment and find that the applicant's home area is Kabul. It is also the city in Afghanistan which he has lived the majority of his adult life. Having regard to the evidence discussed above, I am satisfied that if returned to Afghanistan this is the city to which the applicant would return.

Events in Afghanistan

17. I accept the applicant's consistent evidence that his father was a candidate in a provincial council election [in] 2009. The applicant first mentioned his father's involvement in this election in an interview with the Department on [April] 2013, soon after he arrived in Australia (arrival interview). He again mentioned his father's candidacy in a subsequent interview [in] [June] 2013 (entry interview). In the SHEV interview, the applicant expanded on his written claims and he advised the delegate that his father was just a normal village elder who was encouraged by other elders to nominate as a candidate in the council election of 2009. There

was no indication from that applicant that his father had any involvement in politics prior to 2009. Although he contested the 2009 election, he did not win a seat and ceased his political involvement at that time.

18. The applicant also claimed that his father was threatened by the Taliban during the 2009 election. He advised the delegate that the Taliban sent several messages to people saying that they should not be involved in the election. He claimed that his father ignored these threats.
19. The applicant also claimed that he began to receive written threats from the Taliban several years later, in mid-2012, both in relation to his father's brief stint in politics and his own work as a [occupation] for ISAF. Overall I found the applicant's claims surrounding his involvement with ISAF and the associated threats he received from the Taliban unconvincing.
20. Firstly, there were inconsistencies in the applicant's evidence as to when he first obtained a driver's licence and/or when he first started working for ISAF as a [occupation]. In the SHEV interview, the applicant confirmed with the delegate that the driver's licence he obtained in Afghanistan, issued [in] 2011, was not a renewal but the first licence he had ever obtained. He claimed that prior to that date he [worked] without a licence as was common practice in Afghanistan. He also said that after he obtained the [job] with ISAF he decided to obtain the licence. However, according to the applicant's SHEV statement, he commenced [working] for ISAF in January 2010, meaning he did not obtain a [licence] until [a significant number of] months following the time he claimed to have started in that role. Further, according to a transcript of the entry interview, and in contrast to his evidence at the SHEV interview, he earlier advised the Department that he had previously obtained a [licence] in Kabul in 2008.
21. Secondly, the applicant's evidence in respect of the events that transpired up until he received the first Taliban threat letter was vague and inconsistent. In his SHEV statement, the applicant claimed that two of his [relatives] were mistakenly arrested by the Taliban and forced to provide photographs of him and his brother [Mr A]. However, in the SHEV interview, he advised the delegate that one of his [relatives] and three other persons, including a person named [Mr B], were stopped by the Taliban and detained for [a number of] days. He said that it was [Mr B] who obtained the photographs and provided them to the Taliban, not his [relatives] as claimed in his SHEV statement. The applicant's oral evidence as to how [Mr B] obtained the photographs was unclear, as was his evidence as to what [Mr B]'s relationship was to the applicant and his family. The applicant also initially advised the delegate that [Mr B] was one of the persons detained by the Taliban and that after he was released he was forced to take his family to [another country] because he feared the Taliban would come after him again. The applicant also indicated that [Mr B]'s wife knew the applicant's wife. He later claimed that [Mr B] was in fact associated with the Taliban and was the person who later [delivered] the Taliban first threat letter to the applicant's [home] in Kabul. The delegate raised a concern with the applicant regarding his inconsistent oral evidence as to whether [Mr B] was associated with, or detained by, the Taliban. In response, the applicant denied claiming that he had previously stated that [Mr B] was detained by the Taliban. The applicant was unable to satisfactorily explain to the delegate whether [Mr B] was in fact associated to the Taliban or whether he was a person who had come to the Taliban's adverse attention.
22. Thirdly, I have a number of concerns in relation to the documents provided that the applicant claims were given to him by the Taliban. In particular, the first letter, dated [July] 2012, appeared to be an internal document of the Taliban and whilst it referenced the applicant and his family by name, it does not appear to be a letter addressed to the applicant or his family as suggest in his written claims, but rather, a letter about the applicant and his family. When the delegate noted this in the SHEV interview, both the applicant and his representative conceded

that the letter appeared to be an internal document of the Taliban. The applicant said he was unsure why this document was delivered to him. The document states that the applicant and his brother are wanted by the Taliban. Two passport style photographs are attached to the document, which the applicant claims are of him and his brother [Mr A]. As noted above, the applicant's evidence was vague as to how [Mr B], or his [relatives], obtained the photographs. The document states that the applicant and his brother must be arrested and if this is not possible must be killed on the spot. Oddly, the document makes reference to the mistaken arrest and release of '[Mr C] and [Mr D]', the two people the applicant named as his [relatives] in his SHEV statement. However, the document makes no reference to the mistaken arrest of a [different relative] or the other persons mentioned by the applicant in the SHEV interview, including [Mr B]. The letter received dated [July] 2012, also seems to be at odds with the internal document of [July] 2012 which ordered the applicant and his brother be arrested or killed. In that letter, the brothers are warned that if they continue to work for one more day in their jobs they will be arrested and killed. The next letter received by the applicant is dated [June] 2012. For reasons unknown it predates the first letter by [a number of] days. It is addressed only to the applicant and again warns that if the applicant continues to [work] for ISAF there will be unspecified consequences. The applicant claimed that this letter was dropped in his car while he was at the shops. In the SHEV interview, the delegate raised a number of concerns with the applicant about the documents submitted that he claimed were threat letters delivered by the Taliban. He advised the applicant that it appeared on the applicant's own evidence that the Taliban knew his car and his location and on that basis, it seemed strange that the Taliban kept delivering letters, instead of arresting or killing him as ordered in the initial correspondence received. His response was that he did not know why the Taliban kept sending the letters and did not take any action against him. However, towards the end of the SHEV interview, following a 'natural justice break', which is an opportunity for the applicant to consult privately with his representative, the applicant stated that under the laws of the Taliban they must give three warnings before they can carry out any action and it was for that reason they did not kill him before he received the third letter. However, I note this appears to contradict the content and intent of what appears to be an internal Taliban document which gives a specific order for the applicant to be arrested or killed.

23. Fourthly, there were inconsistencies in the applicant's evidence as to the impact on him and his family as a result of his work for ISAF. As noted above, the applicant claimed that he and his brother were given several warning letters after some relatives were mistakenly detained and released by the Taliban. However, according to the transcript of the arrival interview, the applicant advised the Department when he first arrived in Australia that his brother went missing due to the applicant's own [work] ISAF. No such claim was advanced in his SHEV application. According information provided by the applicant in his arrival interview, entry interview, SHEV statement, and at the SHEV interview, the applicant has four brothers. His [brother] ([Mr A]) resides in [Country 1] and had also worked for ISAF at the same time as the applicant. His next brother [has] resided in [Country 2] since around 2000. His other two brothers [both] continue to reside in Afghanistan. At no time following the arrival interview did the applicant advance a claim that any of his brothers went missing as a result of his work for ISAF, or for any other reason.
24. At the SHEV interview, the applicant raised a new claim that only four to five months earlier, his wife received a threat letter from the Taliban. According to the undated letter, the Taliban in [Province 1] were aware that [Mr A] and his family had moved abroad. The letter also stated that the Taliban were still seeking to arrest the applicant.
25. As well as the four letters from the Taliban, the applicant also submitted two undated letters from the village elders in [Province 1]. The letters from the elders certify that the applicant was

a [occupation] for ISAF in Kabul, that he received threats of death from the Taliban, that he and his brother were forced to flee Afghanistan, and that his wife received a threat letter on [date] November 2016.

26. When considered cumulatively, I consider the above inconsistencies and other evidence discussed to lead me to conclude that the applicant was not recalling a genuine personal experience in relation to the events that he claims led to his decision to leave Afghanistan. As noted above, there were inconsistencies as to when the applicant first started working for ISAF as a [occupation] and when he first obtained a driver's licence. I also find the applicant's evidence about being able to gain employment as a [occupation] with ISAF without a licence unconvincing. The applicant was also vague and inconsistent in relation to the events that transpired up until he received the first Taliban threat letter. Given the significant role purportedly played by [Mr B], I also would have expected that his involvement be mentioned in the applicant's written claims. Further, I find the applicant's claim after he arrived in Australia that his brother went missing due to his work [for] ISAF not insignificant. Having regard to these matters and the prevalence of document fraud in Afghanistan,³ I have significant concerns about the authenticity of the letters/documents purportedly given to the applicant and/or his wife, by the Taliban and/or the village elders. Having regard to the above, I give these documents no weight as evidence of the events that the applicant claims transpired prior to or since his departure from Afghanistan. Considering the evidence before me, I do not accept that the applicant or his brother were employed by ISAF as claimed. Nor do I accept that the applicant or his brother were personally threatened by the Taliban, or that either hold an adverse profile with the Taliban in Afghanistan. It follows that I reject the applicant's claim that his wife came to the adverse attention of the Taliban in late 2016 as a result of the claimed events up to and including 2012.
27. I have accepted that the applicant's father was a candidate in a provincial council election in [Province 1] in 2009. Country information in the review material supports the applicant's claim that a person with such a profile could have been a person of adverse interest to the Taliban at that time. On this basis, I accept that the applicant's father and other political candidates may have received threats from the Taliban as claimed. However, I note that the applicant's father ceased all political activity following his failure to be elected in 2009 and the applicant has not advanced any claim that his father is of ongoing interest to the Taliban in this regard. In the SHEV interview, the applicant claimed that his father was no longer being targeted because he was old. Having regard to the above, I am not satisfied that the applicant came to the adverse attention of the Taliban for reason of his father's previous involvement in politics in mid-2012, or at any other time. Nor am I satisfied that the applicant's father is of ongoing interest on account of his involvement in the 2009 [Province 1] council election.
28. Towards the end of the SHEV interview, the delegate raised a concern with the applicant in relation to money transfers he had made to various recipients overseas since living in Australia. Although the applicant's explanation for these transfers was vague, he indicated that he had transferred some money to his family and also transferred some money on behalf of other Afghans living in Australia. I note that the delegate made no reference to the money transfers in her decision and the relevance of these transfers to the applicant's claims for protection is not apparent to me. On the evidence before me, I find the money transfers have no bearing on the applicant's claims for protection and I give this information no weight in my assessment.

Return to Kabul

³ DFAT, "Country Information Report Afghanistan", 18 September 2015, CISEC96CF13366, 5.34

29. In his SHEV statement, the applicant stated that Hazara people are oppressed and treated horribly across Afghanistan. He also stated that discrimination against the Hazara community was entrenched in Afghanistan and that he feared he would be harmed or killed because of his ethnicity. Specifically, he fears harm from the Taliban and Islamic State and I have considered these claims below. Although not specifically raised as a claim for protection, I note the delegate also considered whether there was a real chance that the applicant would be persecuted in Afghanistan on account of his religion.
30. There are no recent reports before me of the Taliban carrying out mass casualty attacks against the Hazara and/or Shia population in Kabul, although there have been attacks by other groups in recent years in that city. On 23 July 2016, explosions targeting a demonstration of Hazaras, killed up to 80 people in Kabul. The Taliban denied involvement and condemned the attack. The ISKP (Islamic State) claimed responsibility and identified the intended targets as Shia.⁴ On 11 October 2016 on the day of Ashura, a gunman killed some 19 Shia Muslims at the Kabul's Sakhi Shia shrine. The Islamic State claimed responsibility for the attack.⁵ On 21 November 2016 a bomb attack on a Shia mosque killed around 40 worshippers. Islamic State claimed responsibility.⁶ On 15 June 2017 three civilians were killed when Islamic State insurgents detonated a bomb after being prevented by police from entering a Shia mosque in Kabul.⁷ On 25 August 2017 insurgents killed 30 people after entering a Shia mosque in Kabul. Islamic State claimed responsibility.⁸ On 20 October 2017, Islamic State was reportedly responsible for killing around 39 worshippers at a Shia mosque in the city.⁹ On 28 December 2017, Islamic State claimed responsibility for an attack on a Shia cultural centre in Kabul that killed around 40 people.¹⁰ Country information indicates that other recent attacks carried out by the Taliban and other AGEs in Kabul have been against government and security personnel, media personnel, and the international community.¹¹
31. In its 2017 update, DFAT assessed that the number of attacks in 2016 and 2017 demonstrated that Shias (Hazara and non-Hazara) are at risk of being attacked by Islamic State based on their religion. DFAT assessed that Shias are particularly vulnerable to attacks when assembling in large and identifiable groups, such as during demonstrations or when attending mosques during major Shia festivals.¹² DFAT also assess that the Afghan government lacks the ability to adequately protect vulnerable groups in some areas of the country, particularly outside major urban areas.¹³
32. I accept that the majority of the attacks that targeted the Shia community in Kabul in 2016 and 2017 were carried out by Islamic State and directed at Shias or Hazaras attending political demonstrations, mosques, religious commemorations, or cultural centres. I also accept that

⁴ DFAT, "DFAT Thematic Report on Afghanistan Security Conditions 1 January to 31 August 2016", 5 September 2016, CIS38A80121778, 2.6 - 2.7

⁵ UNAMA, "Afghanistan Annual Report on Protection of Civilians in Armed Conflict: 2016", 6 February 2017, CISED50AD201, p.34

⁶ Ibid, p.35

⁷ Long War Journal, "Islamic State continues to target Shiite civilians in Kabul", 15 June 2017, CXC9040669201; Sydney Morning Herald, "Four killed in Islamic State attack on mosque in Kabul", 16 June 2017, CXC9040669193

⁸ Tolo News, "Hajj Ministry Calls For Tight Security At Mosques", 28 August 2017, CXC90406612800

⁹ Aljazeera, "Deadly attacks hit mosques in Kabul and Ghor", 21 October 2017, CXC90406616082; Tolo News, "Calls For Unity Grow As Mosque Attack Victims Buried ", 22 October 2017, CXC90406616075

¹⁰ Long War Journal, "Islamic State's Khorasan 'province' claims responsibility for attack on cultural center in Kabul", 28 December 2017, CXC90406620039

¹¹ DFAT, "DFAT Thematic Report on Afghanistan Security Conditions 1 January to 31 August 2016", 5 September 2016, CIS38A80121778; Radio Free Europe / Radio Liberty (RFE/RL), "Afghanistan Arrests 24 Over Deadly Kabul Hospital Attack", 15 March 2017, CXC9040663881

¹² DFAT, "DFAT Thematic Report - Hazaras in Afghanistan", 18 September 2017, CISED50AD5681, 3.9

¹³ DFAT, "DFAT Thematic Report - Hazaras in Afghanistan", 18 September 2017, CISED50AD5681, 2.23, 4.1

practicing Shia Muslims who attend communal worship and religious festivals in Kabul are vulnerable to attacks by certain groups. However, while I have accepted that the applicant is of the Shia faith, I note that he has not claimed to fear harm in Afghanistan on account of his religion or his religious observance. I also note his claims were articulated in terms of the risks he faced due to his ethnicity, rather than his faith. I further note his evidence in the SHEV interview that he does not practice his faith here in Australia, and nor has he claimed to ever have been politically active. In the SHEV interview, the applicant advised the delegate that when he lived in Afghanistan he prayed daily but never attended a mosque. He further stated that he was of the view that the clergymen in Afghanistan promoted a radical and strict interpretation of the faith and that he did not want to be that strict. Having regard to the above, I consider the applicant is not politically active and a low-level adherent of the Shia faith. Having regard to the information above and considering the frequency of attacks against Shias and Hazaras in Kabul and the location of those attacks, I find the chance that the applicant would be harmed due to his religion including through his attendance at a mosque, his participation at a religious festival, or his participation in a political demonstration, to not rise to a real chance.

33. DFAT assess that official discrimination on the basis of religion is low and that any religious or ethnic discrimination faced by Shias in Afghanistan, including the Hazara community, is more likely to be societal in nature, at the community level, primarily as a result of the important role played by ethnic, tribal and familial networks in Afghan society and the dominance in many areas of the Sunni majority.¹⁴ Societal discrimination generally occurs as a result of a positive preference for members of one's own family/tribal/ethnic/religious group, rather than negative discrimination against a particular group.¹⁵ Hazaras are active in the Afghan community, particularly in politics, education, sport and civil society.¹⁶ I am not satisfied on the information before me that the Afghan government permits or encourages discrimination against Hazaras as claimed in the applicant's SHEV statement. Shias are represented in the government, holding major positions, and are free to participate fully in public life.¹⁷ DFAT assess those ethnic groups who are in the minority in the area in which they reside face a risk of societal discrimination which may include the denial of access to employment or housing.¹⁸ However, Hazaras form the largest ethnic group in Kabul, with an estimated population of 40 to 50 per cent.¹⁹ The applicant has not claimed that he has faced discrimination in the past on account of his ethnicity or for any other reason and on the evidence before me, I am not satisfied that any discrimination he may be subjected to in the future would constitute serious harm. In the SHEV interview, the applicant stated there were criminals in Afghanistan and this may affect him on return because they may try and rob him. While I accept that the security situation in Afghanistan has challenged the government's ability to exercise effective control in parts, particularly outside urban centres,²⁰ there is no information before me to suggest that Hazaras are unable to avail themselves of state protection and I am also satisfied that state protection would not be withheld on the basis of his ethnicity, or for any other reason. Country information before me also indicates that criminals tend to target persons who appear wealthy or who are associated with the government or the international community, and that persons

¹⁴ DFAT, "DFAT Thematic Report Hazaras in Afghanistan 2015-16 update", 8 February 2016, CIS38A8012186, 3.4-3.5, 3.10

¹⁵ DFAT, "DFAT Thematic Report Hazaras in Afghanistan 2015-16 update", 8 February 2016, CIS38A8012186, 3.5; DFAT, "DFAT Thematic Report - Hazaras in Afghanistan", 18 September 2017, CISED50AD5681, 3.2

¹⁶ DFAT, "DFAT Thematic Report - Hazaras in Afghanistan", 18 September 2017, CISED50AD5681, 3.1

¹⁷ UNHCR, "UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Asylum Seekers from Afghanistan", 19 April 2016, UN6C8EFBB3, p.51

¹⁸ DFAT, "DFAT Country Information Report Afghanistan", 18 September 2017, CISED50AD5680, 3.5; DFAT, "DFAT Thematic Report - Hazaras in Afghanistan", 18 September 2017, CISED50AD5681, 3.1

¹⁹ DFAT, "DFAT Thematic Report Hazaras in Afghanistan 2015-16 update", 8 February 2016, CIS38A8012186, 2.7

²⁰ DFAT, "DFAT Thematic Report - Hazaras in Afghanistan", 18 September 2017, CISED50AD5681, 4.1; DFAT, "DFAT Thematic Report Hazaras in Afghanistan 2015-16 update", 8 February 2016, CIS38A8012186, 4.1

from all ethnic groups are vulnerable to such attacks.²¹ I find the applicant's claim that he will be targeted by criminals on return to Afghanistan to be speculative. Given my findings in relation to the applicant's profile, I am not satisfied there is a real chance that he will be targeted and harmed by criminals now, or in the reasonably foreseeable future.

34. On the evidence before me, I am not satisfied there are any particular vulnerabilities or barriers that would deny the applicant's capacity to earn a livelihood on return to Kabul, or that he will experience significant economic hardship, or will be denied access to basic services that threatens his capacity to subsist, now or in the foreseeable future. In the SHEV interview, the applicant claimed that while there was high unemployment in Afghanistan, he did not have a problem obtaining employment and did not face any economic problems personally. The applicant's biggest concern on return was being able to move freely for the purposes of employment, although he attributed this to his claimed adverse profile with the Taliban (which I have not accepted). Country information indicates that large urban areas in Afghanistan, such as Kabul, offered greater opportunities for employment and access to services.²² Kabul's economy is based on trade and other service industries and although unemployment is widespread in Kabul, over the last decade, employment growth has been strongest in Kabul's service sectors, including small businesses such as family-owned markets, retail stores, and the construction industry.²³ The applicant has previously worked as a [occupation] in Kabul and since living in Australia has worked as a [occupation] in [a certain profession]. I also note that on return to Kabul the applicant would be returning to a city of which he is familiar and where he has family.
35. In his SHEV statement, the applicant stated that the Taliban target persons who have 'western links' and that because he travelled to Australia his risk of persecution is heightened. In the SHEV interview, the applicant's representative indicated that the applicant may also be at risk due to having family members who reside overseas.
36. DFAT advises that many Afghans travel abroad to Iran, Pakistan, Europe or other western countries to seek employment or educational opportunities, and that between 2002 and 2013 an estimated 5.8 million refugees returned to Afghanistan from Iran, Pakistan, as well as western countries.²⁴ DFAT assess that in general returnees from western countries are not specifically targeted on the basis of being failed asylum-seekers, although there were some reports in 2014 of returnees from western countries alleging they had been kidnapped or otherwise targeted on the basis of having spent time in a western country.²⁵ Some reports indicate that simply being identified as a returnee has put persons at risk as returnees face a general assumption that they have adopted values and/or appearances associated with western countries while abroad and are reportedly at risk of being mistaken for collaborators with the government and the international community. Other reports indicate that returnees from the west may be viewed as foreigners or spies and targeted.²⁶ However, the reports and incidents cited by the United Nations High Commissioner for Refugees (UNHCR) and DFAT do not refer to Kabul as an area where returnees, or Shia Hazaras, are targeted on the basis of

²¹ DFAT, "DFAT Thematic Report Hazaras in Afghanistan 2015-16 update", 8 February 2016, CIS38A8012186, 2.27

²² DFAT, "DFAT Thematic Report Hazaras in Afghanistan 2015-16 update", 8 February 2016, CIS38A8012186, 4.3

²³ DFAT, "DFAT Thematic Report Hazaras in Afghanistan 2015-16 update", 8 February 2016, CIS38A8012186, 3.18; DFAT, "DFAT Thematic Report: Conditions in Kabul", 18 September 2015, CISEC96CF13367, 2.12-2.14

²⁴ DFAT, "DFAT Thematic Report Hazaras in Afghanistan 2015-16 update", 8 February 2016, CIS38A8012186, 3.30; DFAT, "Country Information Report Afghanistan", 18 September 2015, CISEC96CF13366, 5.17

²⁵ DFAT, "DFAT Country Information Report Afghanistan", 18 September 2017, CISED50AD5680, 5.20; UNHCR, "UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Asylum Seekers from Afghanistan", 19 April 2016, UN6C8EFBB3, p.41

²⁶ UNHCR, "UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Asylum Seekers from Afghanistan", 19 April 2016, UN6C8EFBB3, p.41

being perceived as western. Further, there have been no reports of individual returnees from Australia being targeted since the two incidents in 2014 involving returnees of Hazara ethnicity²⁷ (both in Ghazni, removed from Kabul).

37. DFAT assess that returnees who are identified as having associations with the government or the international community face a high risk of being targeted by AGEs.²⁸ Apart from being a Shia Hazara returnee, I am satisfied the applicant does not hold any other such profile affiliated with the government or international community, nor any proximity to persons who are so affiliated and there is no information to indicate he would upon return. For reasons stated above, I am not satisfied the applicant is at risk of harm from the Taliban, or any other group, on account of his father's previous involvement in politics in 2009 now, or in the reasonably foreseeable future.
38. Country information does not indicate that in Kabul there is systematic targeting of returnees, or Hazara returnees in Afghanistan, including those who return from Australia, or who are failed asylum seekers. Kabul is a large urban centre with a diverse ethnic population.²⁹ There have been no reports of people being targeted for returning from a foreign or western country or for being a returnee asylum seeker on that basis in Kabul. Even accepting that the applicant may be identified as a former asylum seeker from Australia, the applicant does not have identifiable affiliations with international organisations or the Afghan government which would raise his profile and lead to him being specifically targeted by insurgents in Kabul for a pro-western political opinion. On the evidence before me, I am not satisfied that returnees like the applicant, who have lived in a western country like Australia for several years and have sought asylum, are targeted by insurgents or other groups, targeted due to being a Shia Hazara, due to a pro-western political opinion, or as a returnee asylum seeker. While I accept the applicant has a brother who now resides in [Country 1] and another brother who has resided in [Country 2] since 2000, I am not satisfied that the applicant faces a real chance of harm on this basis. The applicant has not claimed to have previously faced problems in Afghanistan due to family members living abroad and on the evidence discussed above, I am not satisfied he faces harm on this basis now, or in the reasonably foreseeable future.
39. The delegate considered whether the applicant faced harm in Afghanistan due to generalised violence. Country information before me indicates that the population in Afghanistan, irrespective of their ethnicity and religion, are exposed to generalised and indiscriminate violence relating to conflict in the country. In terms of the general security situation in Afghanistan, I accept that the government does not exercise uniformly effective control over all parts of the country, particularly in rural areas. While I accept there have been challenges, the evidence before me does not support that Afghan government or security forces are losing control of Kabul. While I accept that low profile civilians have been victims of attacks from time to time, taking into account the general security situation, and the size and diversity of the city, I find the chance that the applicant would be harmed as a bystander, or inadvertently caught up in an attack, or otherwise harmed through generalised violence is remote. I am also satisfied that any harm the applicant may possibly face in relation to generalised violence would also not be for the essential and significant reason or reasons of his race, religion, nationality, membership of a particular social group or political opinion, but rather a consequence of any ongoing insurgency or insecurity present in the country overall. Accordingly, s.5J(1)(a) and 5J(4)(a) of the Act would also not be satisfied.

²⁷ DFAT, "DFAT Country Information Report - Afghanistan", 18 September 2015, CISEC96CF13366; UNHCR "UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Asylum Seekers from Afghanistan", 19 April 2016, CIS38A8012660

²⁸ DFAT, "DFAT Country Information Report Afghanistan", 18 September 2017, CISED50AD5680, 5.22

²⁹ DFAT, "DFAT Thematic Report Hazaras in Afghanistan 2015-16 update", 8 February 2016, CIS38A8012186, 2.7

40. I have found there is no real chance of the applicant facing persecution in Kabul on the basis of his religion, his ethnicity, his imputed political opinion, his western links, as a returnee asylum seeker, or for any other reason. I am satisfied that the applicant would be able to subsist if returned to his home area. The threats from AGEs, principally the Taliban, in Afghanistan has been against high profile targets such as persons and locations associated with the government, the military, and the international community. While certain high-profile and other vulnerable groups remain at risk in the country, I am satisfied the applicant has no association or proximity with those other risk profile groups, nor is there any suggestion he would have such an association or proximity when he returns to the country.
41. After having regard to the applicant's claims individually and cumulatively, I find that he does not have a well-founded fear of persecution within the meaning of s.5J.

Refugee: conclusion

42. 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

43. 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

44. 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.
45. While I have accepted that the applicant may be subject to societal discrimination on return, I am not satisfied that this would threaten his capacity to subsist or that any discrimination faced would constitute serious harm. I do not accept it would amount to the death penalty, or result in an arbitrary deprivation of life, or torture. I also do not accept that such discrimination would involve pain or suffering that is cruel or inhuman in nature, or severe pain or suffering or that would cause extreme humiliation, even when considered in a cumulative sense.
46. I have otherwise concluded that the applicant is not a person of interest to the Taliban, Islamic State, or any other group in Afghanistan, on account of his religion, his ethnicity, or his father's previous involvement in politics, and does not face a real chance of harm on this basis. I have also concluded that the applicant does not face a real chance of harm for any other reason including from generalised violence, the general security situation in Kabul, criminality, or due

to him being a returning asylum seeker who has resided in a western country. As the 'real risk' test imposes the same standard as the 'real chance' test applicable to the assessment of 'well-founded fear', for the same reasons set out above, I find that the applicant does not have a real risk of suffering significant harm for those reasons if he returned to his home area of Kabul.

47. After having regard to the applicant's circumstances both individually and cumulatively, I find that he does not face a real risk of suffering significant harm.

Complementary protection: conclusion

48. 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.