



**Australian Government**  

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**Immigration Assessment Authority**

**Decision and Reasons**

**Referred application**

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AFGHANISTAN

IAA reference: IAA17/02705

Date and time of decision: 7 December 2017 13:53:00

Scott MacKenzie, Reviewer

**Decision**

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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

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### Visa application

1. The referred applicant (the applicant) claims to be a citizen of Afghanistan. The applicant arrived in Australia [in] April 2013 as an unauthorised maritime arrival. [In] December 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 [in] May 2017. The delegate found that the applicant could reasonably relocate to Kabul where he would not face a real chance of persecution or a real risk of significant harm.

### 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). No further information was received by the IAA.
4. Since the delegate made her decision, the Department of Foreign Affairs and Trade (DFAT) has released two new country information reports on Afghanistan.<sup>1</sup> The delegate has relied largely on the then contemporaneous DFAT reports of September 2015 and February 2016, which the two new reports update. 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.

### Applicant's claims for protection

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5. In support of his SHEV application, the applicant provided a statutory declaration, dated [in] December 2016, where he outlined his claims for protection (SHEV statement). Those claims can be summarised as follows:
  - The applicant is a Shia Hazara from [a village in] Jaghori District, Ghazni Province, Afghanistan;
  - In 2009, the applicant's father travelled to a market in Ghazni Province to buy [goods] for his [shop]. He never returned home and the applicant suspects he was killed by the Taliban;
  - In 2010, there was a heavy exchange of fire between the Afghan National Army, NATO, and the Taliban, in Qarabagh District. Earlier, the Taliban had killed two NGO road workers. The applicant was travelling through this area at the time;
  - In 2011, a roadside bomb exploded [in District 1]. The applicant was [a short distance] away at the time of the explosion;
  - In 2012, the applicant and others were travelling through [District 2] when their vehicle was stopped by armed Pashtuns. Their bags were searched and their valuables were stolen. The applicant believes the armed Pashtuns were members of the Taliban;

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

- The applicant realised that he could not safely travel to the market to buy [goods] for [the] shop, so he decided to flee Afghanistan;
  - If returned to Afghanistan, the applicant fears he will be harmed or mistreated by persons affiliated to, and supporters of, the Taliban and Islamic State on account of:
    - his Hazara ethnicity
    - his Shia Muslim religion
    - his imputed political opinion as being anti-Taliban, anti-Islamic State, and/or pro-western
    - his profile as a failed Afghan asylum seeker.
6. [In] March 2017, the delegate interviewed the applicant (SHEV interview). In the SHEV interview, the applicant provided the following additional information and/or claims:
- When his vehicle was stopped by Pashtuns in 2012, the [applicant was restrained] and he was physically assaulted. He was also interrogated about his knowledge of a local commander from the Afghan National Army;
  - The applicant's return to Afghanistan will be televised and this will elevate his risk of harm.
7. In a post-SHEV interview submission [in] April 2017, the applicant's representative reiterated the applicant's protection claims. He also raised a new claim that the applicant has abandoned his Shia faith, no longer practices Islam, and will face harm or mistreatment for reasons of his lack of religion.

### **Refugee assessment**

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8. 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**

9. 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.
10. Since his arrival in Australia, the applicant has consistently claimed to be from Jaghori District, Ghazni Province. He provided a certified copy of his Taskera (with accompanying NAATI translation), and on the basis of his evidence, I accept the applicant's identity is as claimed, that he is an Afghani citizen from that part of Afghanistan, and that his receiving country is Afghanistan.
11. I accept the applicant's consistent evidence that his father went missing in 2009. While the applicant suspects that his father may have been killed by the Taliban, his evidence in his SHEV statement and in the SHEV interview is that he is unsure what happened to his father. In his SHEV statement, he stated that his family lost contact with his father while he was travelling between Ghazni Province (which I infer to mean Ghazni District) and Jaghori. A 2009 report from the Finnish Immigration Service indicates that, at the relevant time, the road from Jaghori to Ghazni was unsafe due to 'hostile' Pashtuns and insurgents.<sup>2</sup> While I find the reasons for the applicant's father going missing are unknown to the applicant, I cannot conclude, with any certainty, that he was not killed by the Taliban or other insurgent group in 2009. I therefore am willing to accept this may have the case. The applicant has not claimed, nor is there any evidence before me that indicates, that he is at risk of harm in Afghanistan for reasons related to his father's disappearance (or death) in 2009. I find the applicant does not face a real chance of harm in Afghanistan on this basis.
12. The applicant's claims relating to the roadside security incidents in 2010 and 2011 in the districts of Qarabagh and [District 1] are consistent with country information in the referred materials.<sup>3</sup> I accept the applicant's claims in relation to these events.
13. In his SHEV statement, the applicant claimed that in 2012 he was travelling with others through [District 2] when the vehicle was stopped by persons he suspected of being Taliban. He claimed everyone's bag was searched and their valuables were stolen. I note this was consistent with the applicant's evidence in an earlier interview with the department [in] May 2013 (entry interview). However, in the SHEV interview, he also claimed that during this same incident he and [others] were [restrained] by the Taliban, that he was interrogated about his knowledge of a local army commander, and that he was [physically harmed]. The applicant did not advise the delegate why this additional information had been omitted from his otherwise detailed written claims. Country information indicates that in 2012 there was a significant Taliban and criminal presence on the roads within and around [District 2].<sup>4</sup> I am prepared to accept the applicant's consistent evidence that he had his personal effects stolen by armed criminals during this incident. However, due to the unexplained inconsistency, I do not accept the applicant's claims, first raised in the SHEV interview, that he was [restrained], interrogated, and assaulted during this incident.

### *Religion*

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<sup>2</sup> Finnish Immigration Service, "Situation Report: The Current Situation in the Jaghori District of Ghazni", 1 December 2009, CIS18216

<sup>3</sup> [Source deleted.]

<sup>4</sup> [Source deleted.]

14. In the post-SHEV interview submission, the applicant's representative stated that during the SHEV interview the applicant 'provided evidence that he no longer practises Islam'. The representative also stated that that applicant had 'abandoned the Shia religion' and on return to Afghanistan will be perceived as either an atheist or an apostate.
15. Having listened to the recording of the SHEV interview, I disagree with the applicant's representative's submissions that the applicant provided evidence that he no longer practises Islam. At no time during the interview did the applicant indicate that he was no longer practising Islam. At the beginning of the SHEV interview, the delegate asked the applicant if there was anything he wanted to add or change in relation to his SHEV application. The applicant responded that he had [sisters] that he had previously not declared, and made no mention of a change in his religious beliefs. I note that during the SHEV interview the applicant was specifically asked why he feared returning to Afghanistan, to which he responded 'because I am Hazara and I am Shia'. I also note that in his SHEV statement, signed approximately three months prior to the SHEV interview, the applicant stated that his 'religion is Shia-Muslim' and that the essential and significant reason for his fear of persecution in Afghanistan was, in part, because of his Shia-Muslim religion. He also stated that he feared harm from 'anti-Shia groups'. I further note that the applicant declared his religion as 'Shia-Muslim' on his SHEV application form, and in the entry interview he described his religion as 'Shia'.
16. Aside from the applicant's representative's post-SHEV interview submission, there is no other evidence before me that evidences that the applicant abandoned the Shia religion or that he no longer practises Islam. The claim is inconsistent with the applicant's earlier evidence and the representative provided no explanation in the post-SHEV interview submission as to why the applicant had abandoned his faith or why the claim was not put forward at an earlier time. For these reasons, I do not accept that the applicant has abandoned his faith. I find he is a practising Shia Muslim.

#### *Return to Jaghori District*

17. I have accepted that the applicant originates from Jaghori District, Ghazni Province. I also accept that he resided in Jaghori up until he departed for Australia in 2013. Although administratively part of Ghazni Province, Jaghori District is also a part of the larger Hazara dominated area of central Afghanistan which is known colloquially as the Hazarajat.<sup>5</sup>
18. In his SHEV statement, the applicant stated that on return to Afghanistan he fears he will be harmed or mistreated by anti-Hazara and anti-Shia groups such as the Taliban, Islamic State, and their supporters. He stated he will be harmed because of his religion, his ethnicity, his imputed political opinion as anti-Taliban, anti-Islamic State, and/or 'pro-Western'. He also stated that he will be at risk of harm due to his profile as a failed asylum seeker. The applicant stated that Shia Hazaras had been attacked in Kabul in July, October and November 2016.
19. In March 2014, DFAT assessed that the Afghan government had asserted effective control in the Hazara-majority districts such as Jaghori and reported that the threat level and risk of violence for Hazaras living in these districts is low. DFAT reported that the security environment in these districts meant that government officials and the international community had relative freedom of movement and the population enjoyed relatively good access to services.<sup>6</sup>

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<sup>5</sup> DFAT, "DFAT Thematic Report Hazaras in Afghanistan 2015-16 update", 8 February 2016, CIS38A8012186, 2.4

<sup>6</sup> DFAT, "DFAT Thematic Report Hazaras in Afghanistan and Pakistan 26 March 2014", 26 March 2014, CIS2F827D91264, 4.11-4.13

20. Between 1 January and 31 December 2015, United Nations Assistance Mission in Afghanistan (UNAMA) reported that, across Afghanistan, 146 members of the Hazara community were abducted in 20 separate incidents. 15 Hazaras were reportedly killed or died in captivity. The motives for the abductions included holding hostages for ransom, exchange of detainees, suspicion of the hostages being members of the Afghan national security forces, and non-payment of illegal taxes. All but one incident took place in areas with mixed Hazara and non-Hazara communities, in Ghazni, Balkh, Sari Pul, Faryab, Uruzgan, Baghlan, Wardak, Jawzjan, and Ghor provinces.<sup>7</sup>
21. In its February 2016 update, DFAT noted there had been a decline in security across Afghanistan, including in some of the majority Hazara areas such as Jaghori District.<sup>8</sup> Nevertheless, country information before me indicates that the security situation in the Hazarajat, including Jaghori, remains favourable with few security incidents and little evidence of insurgent activity.<sup>9</sup> DFAT also observed that security in Hazara majority areas tended to be better in part because Hazaras make up the vast majority of the population, which has two effects: because of the ethnic homogeneity, there are fewer opportunities for ethnic tension; and because Hazaras are visually distinct, non-Hazaras can find it difficult to infiltrate these areas without detection. DFAT also reported that sectarian violence in Afghanistan is rare and that targets for insurgent groups like the Taliban were government officials and persons associated with the international community, rather than groups or individuals solely on the basis of their ethnicity or Shia religion.<sup>10</sup>
22. In September 2016, DFAT noted that UNAMA had not highlighted the Hazarajat as an area of particular concern in relation to conflict-related abductions in the first half of 2016. While DFAT noted that the abduction of civilians occurred, most kidnappings targeted those believed to have connections to the government or security forces, or were carried out for financial gain. Consistent with other reporting, DFAT identified that health care personnel, judicial authorities, representatives of humanitarian de-mining organisations, journalists and females were profiles at particular risk, rather than Shia Hazaras.<sup>11</sup>
23. In its October 2016 report, Landinfo noted several security incidents in Afghanistan across 2015 and 2016, including cases of abduction of Hazaras between January and June 2016. In all, 36 Hazaras were reportedly abducted across Afghanistan during this six month period. In one case, a total of 22 Hazaras were abducted outside the Hazarajat in Sari Pul and subsequently released. National and international sources agreed that the abductions and security incidents across 2015 and 2016 that involved Hazaras and non-Hazaras were predominantly motivated by reasons other than ethnic and religious factors, such as local conflicts.<sup>12</sup>
24. Country information also indicates that negotiations have taken place between the Taliban and Hazara groups, and that in Ghazni Province the situation is at a point where the Taliban and Hazaras co-exist peacefully. According to one international organisation, Hazaras in Ghazni Province have signed a 'non-enemy pact' with the Taliban.<sup>13</sup>

<sup>7</sup> UNAMA, "UNAMA Protection of Civilians Annual Report 2015", 14 February 2016, CIS38A8012245, p.49

<sup>8</sup> DFAT, "DFAT Thematic Report Hazaras in Afghanistan 2015-16 update", 8 February 2016, CIS38A8012186, 2.19-2.22

<sup>9</sup> Landinfo, "Hazaras and Afghan insurgent groups", 3 October 2016, CIS38A80122778, p.18

<sup>10</sup> DFAT, "DFAT Thematic Report Hazaras in Afghanistan 2015-16 update", 8 February 2016, CIS38A8012186

<sup>11</sup> DFAT, "DFAT Thematic Report on Afghanistan Security Conditions 1 January to 31 August 2016", 5 September 2016, CIS38A80121778

<sup>12</sup> Landinfo, "Hazaras and Afghan insurgent groups", 3 October 2016, CIS38A80122778, p.16, 18, 19; US Department of State, "Country Report on Human Rights Practices 2016 – Afghanistan", 3 March 2017, OGD95BE926858

<sup>13</sup> Landinfo, "Hazaras and Afghan insurgent groups", 3 October 2016, CIS38A80122778, p.18-19

25. In its September 2017 update, DFAT reported that international and domestic observers agreed that the security situation for Hazaras living in the Hazarajat was considerably better than in most other parts of Afghanistan. In the same report, DFAT noted a number of attacks against Shias in the second half of 2016 and in 2017. Five attacks took place in Kabul, one in Balkh Province, and four in Herat city.<sup>14</sup>
26. Having regard to the country information before me, I find it does not support that Shia Hazaras are currently being targeted and harmed in ethnic or religious attacks, nor for other reasons, by the Taliban, Islamic State, or other groups, in Jaghori District. Given the lack of Taliban (or other insurgent group) penetration into Jaghori, on the evidence before me, I am not satisfied that there is a real chance that the applicant would face harm from the Taliban, or other insurgent group such as Islamic State, or their supporters, in Jaghori for reason of his ethnicity or his religion, his actual or imputed opposition to insurgent groups, or as a Shia Hazara, or for any other reason.
27. DFAT assess that returnees from western countries are almost exclusively returned to Kabul<sup>15</sup> and on the information before me, I am satisfied that the applicant would return there initially. I accept that in order for the applicant to return to Jaghori District, he would probably be required to travel by road after arriving at Kabul airport. In the SHEV interview, the applicant's representative provided an oral submission where he stated that the roads leading Jaghori are insecure, and that there would be a risk for the applicant if he travelled on the roads between Kabul and Jaghori.
28. Country information before me indicates there are risks to persons who seek to travel on the roads in parts of Afghanistan.<sup>16</sup> In February 2016, DFAT reported that the roads linking the Hazara dominated areas in Ghazni suffered from a high level of insecurity. Criminals and insurgents on 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. Persons of all ethnic groups are vulnerable to these attacks and it can be difficult to ascertain the motivation for attacks. DFAT also reported that there had been incidents where Hazaras may have been targeted on the roads, in part due to their religious or ethnic background, citing serious incidents involving Shia Hazaras travelling in Ghazni Province and neighbouring Zabul Province in 2014 and 2015. DFAT also assessed that Hazaras travelling by road between Kabul and the Hazarajat face a greater risk than other ethnic groups although it is unclear whether this is due to ethnic targeting or is a result of the high numbers of Hazaras travelling on this route.<sup>17</sup> In April 2016, the United Nations High Commissioner for Refugees (UNHCR) cited a number of sources that reported incidents of harassment, intimidation, kidnappings and killings of Hazaras, especially while travelling, at the hands of the Taliban and other anti-government elements (AGEs) in 2014 and 2015.<sup>18</sup>

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<sup>14</sup> DFAT, "DFAT Thematic Report - Hazaras in Afghanistan", 18 September 2017, CISED50AD5681

<sup>15</sup> DFAT, "DFAT Thematic Report Hazaras in Afghanistan 2015-16 update", 8 February 2016, CIS38A8012186

<sup>16</sup> DFAT, "DFAT Thematic Report Hazaras in Afghanistan 2015-16 update", 8 February 2016, CIS38A8012186; DFAT, "DFAT Thematic Report Hazaras in Afghanistan and Pakistan 26 March 2014", 26 March 2014, CIS2F827D91264; UNHCR, "UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Asylum Seekers from Afghanistan", 19 April 2016, UN6C8EFBB3

<sup>17</sup> DFAT, "DFAT Thematic Report Hazaras in Afghanistan 2015-16 update", 8 February 2016, CIS38A8012186, 2.23, 2.27-2.30, 2.33.

<sup>18</sup> UNHCR, "UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Asylum Seekers from Afghanistan", 19 April 2016, UN6C8EFBB3, p. 76

29. In the post-SHEV interview submission, the applicant's representative cited other sources of country information that indicated there was insecurity on the roads leading into Jaghori.<sup>19</sup> However, I am not satisfied that the more recent reporting before me indicates that Hazaras or Shias are being targeted or are otherwise at risk travelling on the roads linking Kabul to Jaghori District.<sup>20</sup> In October 2016, Landinfo assessed that a large number of incidents on the road network are explained by insurgents looking for persons affiliated to the Afghan authorities and security forces.<sup>21</sup> Consistent with its 2016 report, in 2017 DFAT stated that people from all ethnic groups are vulnerable to attacks on the roads and it concurs with the assessment of UNAMA and other international sources that the primary motivations for these abductions include taking hostages for ransom or prisoner exchange, or to target those with connections to the government or international community. DFAT reiterate that ethnicity is rarely the primary motivating factor in these incidents, however it assesses that ethnic targeting can play a role in the selection of victims once an abduction is in progress. DFAT noted a January 2017 incident reported by UNAMA where unidentified anti-government elements (AGEs) stopped a bus carrying mainly Hazara coal mine workers in Baghlan Province (northern Afghanistan). Several of the miners were killed but the motivation for the attack was unclear.<sup>22</sup>
30. Even if it could be said that the applicant faced a real chance of harm on the roads for the reasons claimed, I also note that there is a regular commercial flight connection between Kabul and the Hazara majority province of Bamyan<sup>23</sup>, meaning that the applicant is not restricted to road travel when accessing the Hazarajat. Once he reached Bamyan by air, the applicant would be able to travel by road through the districts of Behsud, Nawur, and onto Jaghori. Like Jaghori, the districts of Behsud and Nawur are majority Hazara and there is little insurgent activity reported in this part of Afghanistan.<sup>24</sup> In the past, the main security issue within Behsud District related to spring Kuchi migrations resulting in violent clashes with Hazara land owners<sup>25</sup> and there is no indication that this issue affects Shia Hazaras transiting the district by road.
31. I accept that the applicant would be required to transit Kabul airport whether he chose to access Jaghori by road or by first flying to Bamyan. I am aware that there have been reports of occasional insurgent attacks near Kabul airport in recent years.<sup>26</sup> However, I am satisfied that the applicant's transit in Kabul would be only for a brief period, either if travelling by road or if awaiting an onward flight to his home area via Bamyan airport. I am not satisfied that the applicant would now, or in the reasonably foreseeable future, face a real chance of harm during the short period he may need to stay in Kabul for this purpose.

<sup>19</sup> Finnish Immigration Service, "Situation Report: The Current Situation in the Jaghori District of Ghazni", 1 December 2009, CIS18216; DFAT, "CIS Request AFG13987 Security Situation for Hazaras in Afghanistan", 31 October 2012, CX298127; Cable News Network (CNN), "World's 10 dangerous roads", 25 April 2011; Telegraph Group, "Kabul-Kandahar highway is a symbol of what's gone wrong in Afghanistan", 9 September 2012, CX296017; The New York Times, "Afghan Kidnappers Prey on Hazaras", 21 November 2015, CXBD6A0DE16561

<sup>20</sup> DFAT, "DFAT Thematic Report - Hazaras in Afghanistan", 18 September 2017, CISED50AD5681; US Department of State, "Afghanistan 2016 Human Rights Report", 3 March 2017, OGD95BE926858; Landinfo, "Hazaras and Afghan insurgent groups", 3 October 2016, CIS38A80122778; Afghanistan Analysts Network, "With an active cell in Kabul, ISKP tries to bring sectarianism to the Afghan war", 19 October 2016, CX6A26A6E11358

<sup>21</sup> Landinfo, "Hazaras and Afghan insurgent groups", 3 October 2016, CIS38A80122778, p.18

<sup>22</sup> DFAT, "DFAT Thematic Report - Hazaras in Afghanistan", 18 September 2017, CISED50AD5681

<sup>23</sup> DFAT, "DFAT Thematic Report Hazaras in Afghanistan and Pakistan 26 March 2014", 26 March 2014, CIS2F827D91264, 4.31

<sup>24</sup> DFAT, "DFAT Thematic Report Hazaras in Afghanistan 2015-16 update", 8 February 2016, CIS38A8012186; DFAT, "DFAT Thematic Report Hazaras in Afghanistan and Pakistan 26 March 2014", 26 March 2014, CIS2F827D91264; Landinfo, "Hazaras and Afghan insurgent groups", 3 October 2016, CIS38A80122778; UNHCR, "UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Asylum Seekers from Afghanistan", 19 April 2016, UN6C8EFBB3

<sup>25</sup> UNHCR, "UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Asylum Seekers from Afghanistan", 19 April 2016, UN6C8EFBB3, p. 77; Landinfo, "Hazaras and Afghan insurgent groups", 3 October 2016, CIS38A80122778

<sup>26</sup> DFAT, "Country Information Report Afghanistan", 18 September 2015, CISEC96CF13366

32. I accept there have been attacks on the roads and the security situation on the roads in Afghanistan remains an issue; however, there have been no reports of the abduction of Shia Hazaras in the Hazarajat since 2015. Outside of the Hazarajat there has been a reported decline in the number of Hazara civilians abducted in 2016, and in the first six months of 2017<sup>27</sup> only one incident was reported which involved a Hazara and the motivation for that incident remains unclear. On the evidence before me, I am not satisfied that the applicant faces a real chance of harm on the basis of being a Hazara on the roads between Kabul and Jaghori District, between Bamyan and Jaghori, within Jaghori District, or in and around the Hazarajat. While the absence of recent attacks against the Shia Hazara population in Ghazni Province, or on the roads between Kabul/Bamyan and Jaghori District, does not preclude the possibility of future attacks, I consider the chance that the applicant will be involved in an incident or attack on the road, or put at additional risk because of his ethnic or religious profile in such an attack, to be remote. I am satisfied the applicant is able to safely access his home area.
33. In his SHEV statement, the applicant stated that he would be imputed as 'pro-Western' on return to Afghanistan and that he feared harm on this basis. He also stated that he feared harm due to his profile on return as a failed Afghan asylum seeker. In the SHEV interview, the applicant advised the delegate that returnees from Australia to Afghanistan are televised and that this would increase his chance of being harmed. In the post-SHEV interview submission, the applicant's representative stated that the applicant will face 'social ostracisation' on account of his profile as a failed asylum seeker. It was further submitted that on return the applicant would be required to travel by road to regional areas and centres, including Ghazni City and Kabul, for work and for other matters such as to obtain medical treatment and supplies.
34. 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.<sup>28</sup> 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.<sup>29</sup> 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.<sup>30</sup> However, the reports and incidents cited by the UNHCR and DFAT do not refer to the Hazara majority areas districts of Ghanzi Province as an area where returnees are targeted on the basis of being perceived as western. DFAT further 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.<sup>31</sup> 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

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<sup>27</sup> DFAT, "DFAT Thematic Report - Hazaras in Afghanistan", 18 September 2017, CISED50AD5681

<sup>28</sup> 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

<sup>29</sup> UNHCR, "UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Asylum Seekers from Afghanistan", 19 April 2016, UN6C8EFBB3, p. 41

<sup>30</sup> UNHCR, "UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Asylum Seekers from Afghanistan", 19 April 2016, UN6C8EFBB3, p. 41

<sup>31</sup> DFAT, "DFAT Country Information Report Afghanistan", 18 September 2017, CISED50AD5680, 5.22

insurgents for a pro-western political opinion. There is no country information before me that supports the applicant's claim that his return to Afghanistan will be televised. On the evidence before me, I am not satisfied that returnees like the applicant, who have lived in a western country like Australia for a significant period and have sought asylum, are targeted by insurgents or other groups, targeted due to being a Shia Hazara, or as a returnee asylum seeker.

35. On the evidence before me, I am not satisfied there are any significant vulnerabilities or barriers that would deny the applicant's capacity to earn a livelihood on return to Jaghori District, 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 his decision, the delegate considered whether the applicant was at risk of suffering discrimination in Afghanistan, and as noted above, the applicant's representative claimed that the applicant would experience social ostracisation on return. 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.<sup>32</sup> 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.<sup>33</sup> The applicant is able-bodied, of working age, and does not present with any health problems or other vulnerabilities. Prior to coming to Australia, the applicant obtained over 12 years' experience in his home area of Jaghori working as [an occupation]. Although I accept the applicant's evidence in the SHEV interview that the [shop] is no longer operational, I note that since arriving in Australia he has been self-employed working in [a certain field]. I find that in Jaghori District he would return to seek employment in the place from where he originates, in a Hazara majority area, and that he would have the support of his family who remain living there. I am not satisfied the applicant would be required to travel to Kabul or Ghazni City to seek employment to enable him to subsist. Given the applicant will be returning to a Hazara dominated area that he is familiar with, I am not satisfied that any societal discrimination that he may be subjected to will prevent him from obtaining employment or manifest itself in such a way that it would constitute serious harm. While I accept that the applicant has been away from Jaghori for around four years, there is no evidence before me to indicate that he would be ostracised, or otherwise mistreated by other Hazaras in the community if he returned home. I consider the chance that the applicant would suffer discrimination or other forms of mistreatment from other Hazaras, for reasons of his asylum application or time spent in Australia, to be remote. In respect of access to medical services in Jaghori, according to one report there are two major hospitals in Jaghori, and in 2009 it was reported that one was the best in the central highlands and services patients from neighbouring provinces.<sup>34</sup> I also note that basic healthcare and other services and supplies can be accessed in Bamyan.<sup>35</sup>
36. Having regard to the information before me, I consider the prospect of the applicant suffering harm in religious or ethnically motivated violence from Islamic State, the Taliban or any other insurgent group or person to be remote. Nor am I satisfied that the applicant will be perceived as anti-Taliban and anti-Islamic State on account of his profile. Accordingly, I am not satisfied there is a real chance the applicant faces harm in his home area of Jaghori District, or the surrounding area, on the basis of his religious and ethnic profile, his actual or imputed political

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<sup>32</sup> DFAT, "DFAT Thematic Report Hazaras in Afghanistan 2015-16 update", 8 February 2016, CIS38A8012186, 3.4-3.5, 3.10

<sup>33</sup> DFAT, "DFAT Thematic Report Hazaras in Afghanistan 2015-16 update", 8 February 2016, CIS38A8012186, 3.5

<sup>34</sup> Finnish Immigration Service, "Situation Report: The Current Situation in the Jaghori District of Ghazni", 1 December 2009, CIS18216

<sup>35</sup> DFAT, "DFAT Thematic Report Hazaras in Afghanistan 2015-16 update", 8 February 2016, CIS38A8012186

opinion, or as a Shia or Hazara. I also consider the prospect of the applicant suffering harm due to his profile as returnee from the west or on account of his asylum application in Australia to be remote.

37. 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.<sup>36</sup> I accept that there have been security incidents recorded in the Hazarajat in recent years, including incidents near the applicant's home region. However, having regard to the information before me, including the low number of security incidents in and around Jaghori, I am satisfied that there is not more than a remote chance of the applicant being harmed in generalised violence on return to his home area of Jaghori District or in and around the Hazarajat, including during travel from the airport in Bamyan or Kabul. In terms of generalised violence, I accept that low profile civilians have been victims of attacks. However, on the basis of the information before me, I am satisfied that any chance of harm the applicant may face in relation to generalised violence would also not be for the essential and significant 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 district of Jaghori and in and around the Hazarajat, and the country overall. Accordingly, s.5J(1)(a) and 5J(4)(a) of the Act would also not be satisfied.
38. I have found there is no real chance of the applicant facing serious harm in Jaghori District on the basis of his religion, his ethnicity, his actual or imputed political opinion, as a returnee asylum seeker, or for any other reason. 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 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.
39. 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**

40. The applicant does not meet the requirements of the definition of refugee in s.5H(1). The applicant does not meet s.36(2)(a).

#### **Complementary protection assessment**

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41. 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**

42. Under s.36(2A), a person will suffer 'significant harm' if:

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<sup>36</sup> DFAT, "DFAT Thematic Report Hazaras in Afghanistan 2015-16 update", 8 February 2016, CIS38A8012186; DFAT, "DFAT Thematic Report on Afghanistan Security Conditions 1 January to 31 August 2016", 5 September 2016, CIS38A80121778

- 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.

43. I accept that the government does not exercise uniformly effective control over all parts of the country, particularly in rural areas. However, the evidence before me indicates that the government is in control of Jaghori District. The evidence does not support that persons with the applicant's profile are targeted in Jaghori District, including in transit from Kabul or Bamyan airports to Jaghori, and I am not satisfied that the applicant faces a real risk of being harmed on this basis. The evidence before me does not support that Afghan government are losing control of Jaghori District. While country information indicates that sporadic insurgent attacks do occur in the Hazarajat or provinces that border, the primary targets for such attacks have been persons and locations associated with the government and the international community. I have found that the applicant does not have any identifiable affiliations with international organisations or the Afghan government which would raise his profile and lead to him being targeted by insurgents. Given the security situation in and around Jaghori, I find the risk the applicant would be harmed as a bystander, or inadvertently caught up in an attack, or otherwise harmed through generalised violence is remote and I am not satisfied that he faces a real risk of suffering significant harm through generalised violence in Jaghori District. Further, I am not satisfied the applicant would face discrimination or other mistreatment that would manifest in a way that would arbitrarily deprive the applicant of his life or have the death penalty carried out against him. There is also no evidence to indicate that he will be subject to torture, cruel or inhuman treatment or punishment or degrading treatment or punishment intentionally inflicted. I am not satisfied that there is a real risk that the applicant will face discrimination or mistreatment for any reason in Jaghori District that would amount to significant harm.

44. I have otherwise found that the applicant is not a person of interest to the Taliban, Islamic State, or any other group or person in Afghanistan, on account of his religion, his ethnicity, or his actual or imputed political opinion 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 in the process of returning to his home area of Jaghori. I have further concluded that the applicant does not face a real chance of harm for 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, and resided in, Jaghori District.

45. 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**

46. 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**

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

## Applicable law

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### ***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.