



**Australian Government**  
**Immigration Assessment Authority**

**Decision and Reasons**

**Referred application**

---

AFGHANISTAN  
IAA reference: IAA17/02770

Date and time of decision: 15 March 2018 15:00:00  
Karen Dix, Reviewer

**Decision**

---

The IAA remits the decision for reconsideration with the direction that:

- there are substantial grounds for believing that, as a necessary and foreseeable consequence of the referred applicant being removed from Australia to a receiving country, there is a real risk that the referred applicant will suffer significant harm.

*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 Shia Hazara from Afghanistan. [In] December 2016 he lodged an application for a safe haven enterprise visa (SHEV) claiming to fear harm from the Taliban, Daesh and other anti-Shia groups and their supporters due to his religion, Hazara ethnicity, his subcontracting work for a company with government contracts, his residence in a western country and as a failed asylum seeker. He also fears harm as he is no longer his religion and due to his inability to access adequate treatment for his mental illness.
2. [In] May 2017 a delegate of the Minister for Immigration and Border Protection (the delegate) refused to grant the visa, finding 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).
4. On 29 June 2017 the IAA received a submission from the applicant's representative which refutes a number of the delegate's findings. These matters may be regarded as argument rather than information. The submission also cited a number of documents which were before the delegate and are not new information.
5. The submission also refers to a number of documents which predate the delegate's decision – a UK Home office report dated December 2016, a January 2017 Tolo News report and 2013 Brown School Faculty report on mental health in Afghanistan, and an undated Healix country brief on Afghanistan during 2016. Although the UK Home Office report and the Brown School Faculty report were not specifically cited by the delegate in the decision they were referred to in the information and resource material of the May 2017 resource guide which was before the delegate. I am satisfied that it is not new information and I have considered it.
6. The Healix report was not before the delegate and is new information. The excerpt from this report refers to the ongoing threat of attack at Kabul airport and on the roads in and around Kabul which the representative claims the applicant may need to use to access work. The report also provides a general country brief for travellers including the security situation and dangers of travel for travellers to Afghanistan. Given that I have other information before me about these matters and the general nature of the content which is aimed at western travellers, I am not satisfied that there are exceptional circumstances for considering it.
7. The Tolo News report on mental health was also not before the delegate and is new information. The excerpt from the report cited by the representative refers to the stigma faced by those with mental health issues and the lack of understanding of these issues. I note that the former representative addressed the applicant's mental health status and the stigma attached to those with such issues in the post interview submission, which cited other sources that were before the delegate and was not prevented from providing this material prior to the delegate's decision. The representative has not satisfied me that the article could not have been provided prior to the delegate's decision or that it is personal credible information which if known may have affected the consideration of the applicant's claims. I am not satisfied that s.473DD(b) is met.

8. The representative also refers to a media article dated 15 June 2017 in regard to an attack on a Shia mosque by Islamic State as evidence of the ongoing risk of harm to Hazaras in Kabul. This document postdates the delegate's decision and is new information which I am satisfied could not have been provided to the delegate prior to the decision. It pertains to an event that occurred after the delegate's decision. The information relied upon by the delegate did not refer to the recent attacks against Shias in 2017 or the situation in relation to Islamic State which I consider is critical to the consideration of the real chance or risk of harm to the applicant in Afghanistan in the reasonably foreseeable future as a Shia Hazara. I am satisfied that the information could not have been provided prior to the decision being made and that there are exceptional circumstances for considering it.
9. On 13 July 2017 the representative forwarded a detailed report dated [in] July 2017 from the applicant's psychologist regarding the applicant's mental health status. The representative submits that although submissions were previously made in regard to the applicant's deteriorating mental health there are exceptional circumstances for considering the document as it was not available before the delegate's decision and the applicant's mental health has a significant bearing on the applicant's ability to reasonably relocate within Afghanistan. The report postdates the delegate's decision and is new information which I am satisfied could not be provided prior to the delegate's decision. The former representative provided two medical reports to the delegate dated March and April 2017 from the applicant's treating doctor and his psychologist briefly advising of the applicant's diagnosis and treatment. The current report provides details regarding the applicant's background and reiterates claims which were before the delegate. It also reiterates the applicant's medical issues, diagnosis, and treatment which were also before the delegate. However it provides further details of the impact of these issues on his life and makes supplementary recommendations in respect to future treatment which were not before the delegate and are new information. The report provides an update on and is corroborative of his current mental health status which is a key factor to the consideration of the reasonableness of the applicant's relocation. I am satisfied that the information could not have been provided prior to a decision and that there are exceptional circumstances for considering it.
10. On 7 October 2017 the representative provided copies of a number of documents submitting that the documents be considered as the security situation in Afghanistan is extremely fluid and country information published months prior may no longer provide an accurate assessment. The representative submits that the information refutes the delegate's findings that it is reasonable for the applicant to relocate to Kabul as there is increased insecurity in Kabul where there have been recent attacks on Shia Hazaras. The documents provided are:
  - The annual 2016 report dated February 2017 from the United Nations Assistance Mission in Afghanistan (UNAMA). This document although not specifically cited by the delegate in the decision was part of the material in the May 2017 resource guide which was before the delegate. I am satisfied that it is not new information and I have considered it.
  - An expert opinion from Professor William Maley dated 1 October 2017 and a September 2017 update by the Blue Mountains Refugee Support Group regarding the dangers for Hazaras in Afghanistan, and two Department of Foreign Affairs and Trade (DFAT) reports issued on 18 September 2017 which the representative submits are related to the applicant's claims as a Shia Hazara, the deteriorating security situation in Afghanistan and relocation to Kabul. The reports and opinion postdate the delegate's decision, and are new information which I am satisfied could not have been provided prior to the delegate's decision. The delegate's decision was heavily reliant on previous

DFAT reports dated September 2015 and February 2016, and the Minister requires departmental decision makers to have regard to those reports in their assessments. Although the IAA is not bound by the Minister's direction, I accept that the updated reports take into account the significant security developments in late 2016 and 2017, particularly in relation to attacks against Shias which postdate the delegate's decision. The expert opinion and the Blue Mountains Refugee Support Group update also discuss the situation for Hazaras in light of the recent attacks on Shia Hazaras during 2017 and the security situation in Kabul and Mazar-e-Sharif which were not before the delegate. I am satisfied there are exceptional circumstances for considering the DFAT reports, the update and the opinion.

- A July 2017 report issued by the Edmund Rice Centre (ERC) on Afghanistan's current situation and on returnees. The report postdates the delegate's decision and is new information which I am satisfied could not have been provided to the delegate prior to a decision. The report although published after the delegate's decision is a summary of research undertaken in 2016 and also relies on sources predating the delegate's decision some of which were before the delegate. The former representative also prepared a post interview submission in April 2017 addressing relocation and the situation for returnees. I am not satisfied that there are exceptional circumstances for considering the report.

11. I have obtained new information, specifically information relevant to assessing the applicant's claims in Logar and the security situation in Logar.<sup>1</sup> The delegate did not consider any country information about Logar which is the applicant's home area or make any specific findings regarding Logar, although the applicant has made specific claims against returning to that area. I am satisfied that there are exceptional circumstances for considering this information.

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

---

12. The applicant's claims can be summarised as follows:

- The applicant is an Afghani national of Hazara ethnicity who was born in [Village 1] in [District 1], Logar province and is a Shia Muslim.
- [A number of his siblings] have been missing since 1997. His father and [Sibling A] are deceased. His [remaining family are] living in [Country 1] and his [another sibling] is residing in [Country 2].
- The applicant lived in [Village 1] in a small Hazara community which is surrounded by Pashtuns until approximately 1997 when the Taliban took control of Logar province. Due to the threat from the Taliban his father sent the applicant's [siblings] to [Country 2]. However after they left nothing further was heard from them and the family do not know what happened to them.
- Also in 1997 the Taliban began forcibly recruiting people from the village. When his father refused to assist them, he was killed by the Taliban. Following his father's death the family sold everything and fled to [Country 2] where they lived illegally.
- Sometime in 2010 the applicant and his family began experiencing problems with the [Country 2] authorities and as the security situation had improved due to the international presence they returned to [Village 1] where they stayed with an old friend

---

<sup>1</sup> EASO, "Afghanistan: Insurgent Strategies – intimidation and targeted violence against Afghans", CIS24804, December 2012; EASO, "Afghanistan: Security Situation December 2017", 1 December 2017, CISED50AD8102

of the applicant's father. The applicant and his [sibling] were experienced [in Occupation 1] and began undertaking subcontracting work in Logar.

- In approximately April 2012 he and his [Sibling A] were subcontracted to undertake a number of jobs for [a company] in Maidan Wardak province which had contracts with the Afghan government and non-government organisations (NGOs). On one occasion the applicant and [Sibling A] were stopped by [a number of] Taliban in their area who questioned them and took them to the house but released them after it was confirmed they lived there.
- [A number of] months later [Sibling A] was stopped at a Taliban checkpoint. The Taliban found his workplace identity card and took him to the house where they searched for and found copies of contracts and other documents. They shot and killed [Sibling A] in front of the family after he resisted arrest. They threatened to return for the applicant who was still in Maidan Wardak.
- The family feared that the applicant would be targeted as his details were on some of the documents they had looked at. They advised him not to return and he fled to Kabul where he made departure arrangements and left in approximately September 2012.
- The applicant fears being mistreated or killed by anti-Shia and anti Hazara groups such as the Taliban and Daesh who are supported by the Pashtun people and some Hazara informants. He fears being harmed due to his imputed pro-western political opinion arising from the changes in his thinking, mannerisms and pro-western ideas and as a failed asylum seeker.
- Since his arrival in Australia he has stopped practising his religion. He fears being harmed due to his lack of religion/non-Muslim beliefs as he will be perceived as either an atheist or apostate.
- The applicant is receiving treatment for major depressive disorder and post-traumatic stress disorder (PTSD). He fears that he will face discrimination as a result of the social stigma attached to mental illness. He also fears he will be denied an adequate level of mental health treatment and be exposed to serious or significant harm.
- The applicant is unable to reasonably relocate as there is high unemployment, no access to services such as clean water and sanitation, and lack of adequate accommodation. He has no family networks and he will be disadvantaged in setting up new social networks as he is no longer practising his religion and due to the stigma arising from his mental illness.

## **Factual findings**

---

### **Identity and receiving country**

13. The applicant has consistently maintained since his arrival that he is an Afghan national who was born in [Village 1], [District 1], in Logar province where he lived until 1997 when the family travelled illegally to [Country 2]. He returned to [Village 1] in 2010 with his family and resided there until September 2012 when he left Afghanistan. At interview he demonstrated a familiarity with the area from which he claims to originate and provided an original taskera with an English translation which states that he was [a particular age in] 2011. I am satisfied that his identity is as claimed and he is an Afghan national whose receiving country is Afghanistan.

## Issues with the Taliban

14. The applicant claims that when he was living in [Country 2] he and [Sibling A] worked in the [a particular field]. After they left [Country 2] in 2010 they returned to their village in [District 1], and the family lived with their father's old friend until they were in a position to afford a place of their own. The village was composed of [a number of] Pashtun households of which approximately only [a small number of] households were Hazara. The applicant and his [Sibling A] began working as [Occupation 1], undertaking [work] in different areas. In approximately April 2012 they were subcontracted to undertake a number of jobs for [a company] in Maidan Wardak province which had building contracts with the Afghan government and non-government organisations (NGOs). The job in Maidan Wardak was [particular work] and he and [Sibling A] were contracted to work on [a particular project] where they both worked for approximately 4-5 months. The applicant provided a copy of his work identity card which was valid from April 2012 until 2013 as evidence of his employment as a subcontractor. I am satisfied that the applicant and [Sibling A] undertook subcontracting [work] and worked on a government project for [a company] which had a number of building contracts with NGOs and the government.
15. The applicant claims that in 2012 when he and [Sibling A] were in [a market] in [District 1] after they had returned from their work in Maidan Wardak, they were stopped by [a number of] Taliban who assumed that they were not from the area as there is only a small Hazara population in Logar. After questioning them the Taliban took the applicant and his brother to their father's friend's house where they were still living. Their father's friend confirmed their identities and stated they and their family members were living with him.
16. According to European Asylum Support Office (EASO) Logar's population is 70% Pashtun and 30% Tajik with a small percentage of Hazaras in Khoshi and Pol-e-Alam districts. [District 1] is [majority] Pashtun and [minority] Tajik.<sup>2</sup> The situation in Logar reportedly began to deteriorate in 2011 with an increase in kidnappings and assassinations as well as an increasing number of civilians being caught up in the fighting between the Afghan National Security Forces and insurgents. [District 1] was reportedly one of the districts worst affected by the insurgency.<sup>3</sup> Given that Pashtuns and Tajiks are the overwhelming majority in [District 1] and the Taliban presence there I accept that the applicant and his brother may have been stopped and questioned by the Taliban on an ad hoc basis as they were viewed with suspicion due to their Hazara ethnicity. I also accept that the Taliban took them back to where they claimed to be living to check their credentials and released them after their father's friend vouched for them.
17. The applicant claims that approximately 2 months after the incident in the bazaar, while the applicant was in Maidan Wardak, [Sibling A] was stopped at a Taliban checkpoint when returning from work in Maidan Wardak. The Taliban found [Sibling A]'s workplace identity card and escorted him to the house where they searched for and found copies of contracts and other documents. They attempted to arrest [Sibling A] but when he resisted they shot and killed him in front of the family. They threatened to return for the applicant.
18. The applicant's claim that [Sibling A] was stopped at a Taliban checkpoint while travelling to his village is supported by country information which indicates that mobile or permanent checkpoints were used by insurgents in areas in which they operate or control, to stop vehicles, interrogate passengers, confiscate property, impose taxes and search for evidence of links with the government or the international forces. EASO and the Danish Immigration

---

<sup>2</sup> [Source deleted].

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

Services stated in 2012 that insurgents attacked civilians who were perceived to be cooperating with the Afghan Government; and regularly travelling into administrative centres, provincial capitals or to Kabul could be a reason for insurgents to become suspicious about collaboration with the government. Contractors working for the government or the international forces were also targeted, including [companies] and workers who were working on projects funded by the government, the international forces or the UN. It was also noted that in August 2012 the Taliban's control of the province of Logar was so complete that their justice system practically completely replaced the state courts: even government officials turned to Taliban courts for dispute settlement.<sup>4</sup>

19. After consideration of the applicant's account and supporting country information I accept that [Sibling A] was stopped at a Taliban checkpoint although it is unclear whether he was specifically targeted by the Taliban or was subject to a random stoppage. I also accept that the Taliban would have been suspicious of [Sibling A] after finding his work identity card, and after discovering incriminating documents at the house killed him. I further accept that the applicant did not return to his village after [Sibling A]'s death due to a fear of being killed by the Taliban. I am also satisfied, given the regularity with which the applicant was traveling between Maidan Wardak and [District 1], the strong Taliban presence in his home area and the documents seen by the Taliban, that the applicant was of adverse interest to the Taliban in his home area at that time due to he and his [Sibling A]'s work on a government project.

### **Refugee assessment**

---

20. Section 5H(1) of the Act provides that a person is a refugee if, in a case where the person has a nationality, he or she is outside the country of his or her nationality and, owing to a well-founded fear of persecution, is unable or unwilling to avail himself or herself of the protection of that country; or in a case where the person does not have a nationality—is outside the country of his or her former habitual residence and owing to a well-founded fear of persecution, is unable or unwilling to return to it.

### **Well-founded fear of persecution**

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

---

<sup>4</sup> EASO, "Afghanistan: Insurgent Strategies – intimidation and targeted violence against Afghans", CIS24804, December 2012, pp.25, 27, 54, 85; Danish Immigration Service, "Country of Origin Information for Use in the Asylum Determination Process: Report from the Danish Immigration Service's Fact Finding Mission to Kabul, Afghanistan", 1 May 2012, CIS23406, p. 19, 23-25

- 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.
22. The applicant fears returning to Logar due to his existing profile with the Taliban arising from his work on a government project. I have accepted that the [Sibling A] was killed by the Taliban in 2012 due to his subcontracting work on a government project. I am also satisfied that the applicant was of adverse interest to the Taliban in [District 1] due to his perceived association with the Afghan government through his employment at the time he fled to Kabul. However I am not satisfied that the applicant would continue to be of interest on return for this reason. Country information indicates that generally there is no evidence of further targeting by the Taliban after someone quit a job or activity; however the individual circumstances of the case determine whether the Taliban would further target or threaten a person after he quit his job or stopped activities. In general, low profiles also face a real risk of being intimidated or targeted in areas which are under insurgents' sustained control or strong influence, but not much risk in the safer areas of Afghanistan which are not under the insurgents' control. If a low-profile person quits his activity, can flee the area and resettle in a safer area, he can normally escape intimidation or targeting by insurgents.<sup>5</sup> UNHCR reported in 2016 that insurgents continue to target those associated with or perceived to support the government and civilians are killed deliberately to punish them for supporting the government with the warnings intended to serve as a warning to others.<sup>6</sup> While I accept [Sibling A] was killed, the applicant ceased his employment over 5 years ago and left the area. Given this and the country information, I am not satisfied the applicant would have an adverse profile arising from his former work on a government project which he left over 5 years ago, or that he would be targeted on return to [District 1] for this reason.
23. The applicant also fears returning to his home area due to his ethnicity and imputed pro-western political opinion arising from his residence in a western country and the adoption of western ideas. Some districts of his home province are under the Taliban's administrative control while others are heavily infiltrated and in order for him to return to his home village he would have to travel through Taliban support zones and Taliban attack zones where he will be at elevated risk due to his Hazara ethnicity. I note that [District 1] is predominantly a Pashtun and Tajik district with Hazaras forming a negligible minority. In the applicant's village there were only [a small number of] Hazara households out of approximately [a larger number of] households and country information indicates that Hazara minorities living in Pashtun-majority areas where the Taliban and other insurgent forces have a significant presence are less safe and face a higher risk of being affected by conflict related violence than Hazaras in Hazarajat or Kabul.<sup>7</sup> I also note that the 2016 and 2017 EASO reports indicate there is a substantial Taliban presence in Logar, with a number of districts being almost entirely under Taliban control and [District 1] is reported to have limited government accessibility due to security issues. The security situation in Logar is reported to have further deteriorated in 2017 and as well as local Taliban, foreign militants had been seen in the area. In the applicant's home district the Taliban made repeated attacks for control of the district and in [2017] attacked the district centre. The Taliban also have established checkpoints on the main highway to Kabul searching people and

---

<sup>5</sup> UK Home Office, "Country Policy and Information Note - Afghanistan - Fear of anti-government elements", 1 December 2016, OGD7C848D96, p.31 (referenced in the Afghanistan Resource Guide 2017, CRF00C22F56)

<sup>6</sup> UNHCR, "Eligibility Guidelines for Assessing the International Protection Needs of Asylum-Seekers from Afghanistan", 19 April 2016, CIS38A8012660, pp. 38-39

<sup>7</sup> DFAT, "DFAT Thematic Report Hazaras in Afghanistan ", 8 February 2016, CIS38A8012186, 2.24, 2.33 and 4.4; DFAT, "Country Information Report Afghanistan", 18 September 2017, CISED50AD5680

vehicles. In 2016 the main road from Kabul to Gardez was controlled by the Afghan security forces three days per week and the rest of the time by the Taliban.<sup>8</sup>

24. The representative cites a section from the 2016 UNHCR guidelines which states that individuals who are perceived to have adopted values and/or appearances associated with Western countries, due to their imputed support for the Government and the international community are reportedly targeted by anti-government elements on the grounds they had become “foreigners” or that they were spies for a Western country. In 2015 DFAT stated that it was aware of occasional reports of returnees from western countries alleging they have been kidnapped or otherwise targeted on the basis of having spent time in a western country but assessed that in general returnees are not targeted on this basis. However it noted that those who are identifiable as being associated with foreign (particularly western) countries may be targeted by insurgent groups such as the Taliban and assessed that returnees from western countries who maintain a low profile including taking measures to conceal their association with the country from which they have returned such as not travelling with documents or symbols that may link them to the Afghan government, the international community based in Afghanistan or western countries did not face a significantly higher risk of violence or discrimination. Both DFAT and UNHCR refer to two reported incidents in 2014 and UNHCR cites a report regarding young failed asylum seekers returned from the UK who had western connections and mannerisms which purportedly put them at risk of being identified as government collaborators. UNHCR also refers to instances of civilians accused of spying for the government being subject to abductions and executions and refers to one of the districts of Logar where this has occurred.<sup>9</sup>
25. Although UNHCR refers to the risks for young returnees who have western connections and mannerisms arising from spending their formative years in a western country, I note that the applicant lived most of his life including his formative years in [District 1] and [Country 2] and has only been in a western country for approximately five years. Nevertheless I accept that the applicant would be returning to a small village and district where Hazaras are the minority and where he no longer has any family support mechanisms after a period of residence in a western country, and that his return to his home area may come to Taliban attention through Taliban sympathisers in the Pashtun community. While the country information before me, including that discussed later in these reasons, does not indicate that Afghans returning after a period of residence in a western country necessarily face a real chance of harm in all areas of Afghanistan, given the applicant would be returning after a significant absence to a conservative rural Pashtun dominated area where there is a strong Taliban presence and few Hazaras, and the strong resurgence in Taliban activity particularly in [District 1] where there is a limited security presence, I accept that despite taking precautions to conceal his association with Australia through his appearance and not carrying documents, the knowledge that the applicant has lived in a western country is likely to become known to local Pashtuns and subsequently come to the adverse attention of the local Taliban through their networks. I am satisfied that there is more than a remote chance he will be imputed with a pro-Western political opinion and targeted for serious harm by the local Taliban if he returned to [District 1]. I am also satisfied that his imputed political opinion would be an essential and significant reason for the harm.

---

<sup>8</sup> EASO, "Afghanistan: Security Situation December 2017", 1 December 2017, CISED50AD8102, p. 191-194; EASO, "Country of Origin Information Report: Afghanistan Security Situation", 1 November 2016, CIS38A80122597, p. 149 (referenced in the Afghanistan Resource Guide 2017, CRF00C22F56)

<sup>9</sup> UNHCR, "Eligibility Guidelines for Assessing the International Protection Needs of Asylum-Seekers from Afghanistan", 19 April 2016, CIS38A8012660, pp. 34, 38-39, 41; Department of Foreign Affairs and Trade (DFAT), "Country Information Report Afghanistan", 18 September 2015, CISEC96CF13366, 5.21-5.22

*Fear of harm in relation to all of Afghanistan*

26. Section 5J(1)(c) of the Act provides that the real chance of persecution must relate to all areas of the receiving country. For the reasons given below, I am not satisfied that the applicant faces a well-founded fear of persecution in Mazar-e-Sharif which the applicant can access by air.
27. The applicant claims he will be targeted by the Taliban due to his existing profile and his ethnicity and the Taliban have the ability to pursue individuals such as the applicant across Afghanistan. Country information indicates that the Taliban have been successful in finding a person who relocates to a different area, particularly when targeting their "well known or well positioned opponents". The Taliban generally has the capability to track individuals, through the use of "formal and informal communication" networks to obtain information about a person's whereabouts, and although it is more difficult to track people who have moved into urban environments, even there the Taliban have spies and members who can gather considerable information.<sup>10</sup> Although the Taliban have the capability to track people of interest in urban centres, the applicant was a low profile person who left his home area over 5 years ago and apart from working on a government project for 4-5 months which has now ceased, the applicant has not held any identifiable affiliations with international organisations or the Afghan government which would raise his profile in Mazar-e-Sharif and lead to him being targeted by insurgents. Unlike his home area in [District 1] which has a small population and where the numbers of Hazaras are minute, he would be returning to Mazar-e-Sharif which is a large urban area with a diverse population and sizeable Hazara community. Given I do not accept the applicant faces a real chance of any harm in [District 1] from the Taliban or other insurgents due to his former employment, I consider it remote that the applicant would be targeted in Mazar-e-Sharif for the same reasons.
28. The applicant claims that he has been receiving treatment in Australia for depression and PTSD since 2016 and is currently on a treatment plan which includes psychological and medical intervention and has enabled him to undertake limited work. He fears that he will be unable to continue his treatment on return to Afghanistan due to a lack of mental health facilities and available medications which will affect his ability to find work. He also fears harm and discrimination due to the social stigma attached to mental illness which will also impact on his ability to obtain employment, establish social networks and subsist.
29. Due to the ongoing conflict and violence in Afghanistan over many years various sources indicate that significant numbers of Afghans suffer from very high stress, anxiety and other psychological issues including some form of PTSD. Although psychologists have been trained to work at clinics across the country, many of whom were funded by foreign donors, there is still a societal stigma in regard to mental health with many Afghans across Afghanistan attributing mental illness to being possessed. The Afghan government has made tackling mental illness a priority and developed a national mental health strategy. All provincial hospitals allegedly now offer counselling, however many counsellors trained by a variety of organisations have left the profession, while existing clinics which provide counselling primarily treat drug addicts. According to the World Health Organisation (WHO), a 'lack of human resources (psychiatrists, psychiatric nurses, psychologists and social workers) is a big challenge for mental health care service delivery in Afghanistan and there are approximately three trained psychiatrists and ten psychologists for a population of more than 30 million people. While basic medical treatment is free, medicines are often expensive and/or out of date and the poor are often unable to

---

<sup>10</sup> UK Home Office, "Country Policy and Information Note - Afghanistan - Fear of anti-government elements", 1 December 2016, OGD7C848D96, pp.11-13 (referenced in the Afghanistan Resource Guide 2017, CRF00C22F56)

afford them even for common illnesses. The Afghan healthcare sector remains heavily dependent on foreign funding.<sup>11</sup>

30. I accept that there is a lack of facilities, qualified staff and medication to deal with issues such as depression and PTSD which are prevalent in Afghanistan. I also accept that the applicant may have difficulty in obtaining treatment and if he were to be unable to obtain employment this may also impact on his ability to buy suitable medication on return. However I do not accept that he would be denied access to basic services such as would amount to serious harm under s.5J(5) or that he would be differentially denied treatment for one of the essential and significant reasons identified under s.5J(1). I accept that there is a social stigma associated with the more severe forms of mental illness. The lack of family support in Mazar-e-Sharif may also impact on the applicant's mental health. However the psychologist's report indicates that the applicant's presenting problems manifest primarily in physiological problems rather than more overt psychological symptoms. I am not satisfied there is a real chance that as a consequence of his health issues he will be subject to discrimination at a level that would threaten his capacity to exist or would otherwise suffer treatment that may be considered serious harm within the meaning of s.5J of the Act.
31. The applicant claims that since his arrival in Australia he has stopped practising his Shia religion as he now has the freedom to practise or not practise his religion. The applicant during the SHEV interview stated that he no longer wanted to follow the rules and regulations or principles which his religion dictates. He stated that his culture and religion are intertwined and if he does not attend religious or traditional events people will know that he is not practising his religion. The applicant's former representative stated that the applicant will be disadvantaged if he does not practise his Shia religion as he will be unable to build social connections through the mosques in a city where he does not know anyone, to enable him to find employment. He will also be disadvantaged because Shias will not treat him as an equal due to the time he has spent in a western country and because he has given up the faith. The representative also claims that because he has moved away from the strict doctrines of Islam he will be perceived as an atheist or apostate; and unless he behaves discreetly he will face serious harm.
32. Islam is the official religion of Afghanistan with approximately 99% of Afghans identifying as Muslim of which around 14% are Shia, and the overwhelming majority of Shias are Hazaras. The Constitution provides that Afghanistan's courts shall apply Shi'a jurisprudence in certain civil cases where all parties are Shi'a. A 2009 Shi'a Personal Status Law recognises different practices on issues such as marriage, divorce and inheritance among the Shi'a community. Prosecutions and convictions for apostasy or blasphemy have been relatively uncommon since 2001. According to the US State Department, there were no prosecutions for apostasy or blasphemy in 2015. However, a newspaper editor/owner was reportedly arrested in October 2014 for blasphemy following publication of an editorial critical of Islam, while at least two reported prosecutions for blasphemy occurred in 2013. Those accused of committing crimes against Sharia law, such as apostasy, and blasphemy, are at risk not only of prosecution, but also of social rejection and violence at the hands of their families, other community members and the Taliban and other insurgents. Country information also indicates that it is possible for someone who is born Muslim and does not practise Islam or who becomes an

---

<sup>11</sup> The San Diego Union Tribune, "After years of war, Afghans wary to talk of mental health", 18 August 2016, CX6A26A6E9115; Rasmussen, S E, "Afghanistan tackles hidden mental health epidemic", The Guardian (Unlimited) (UK), 2 September 2015, CXBD6A0DE18728; COISS, "Research Response Afghanistan: CI160830171916226 – Mental Illness – Mental health services – Women – Women's Shelters – Kabul", 13 September 2016, CROD9DEFA294 (referenced in the Afghanistan Resource Guide 2017, CRF00C22F56); DFAT, "Country Information Report Afghanistan", 18 September 2017, CISED50AD5680

apostate/convert to live in Afghanistan as long as it does not become public knowledge that the person has stopped believing in the tenants of Islam.<sup>12</sup>

33. I note that religion and ethnicity are inextricably linked and although the applicant claims to have stopped practising his religion in Australia he continues to self-identify as a Shia Hazara, has claimed to fear harm due to his religion and there is no indication that he has abandoned Islam or that he has converted to another religion. I am not satisfied on the evidence that the applicant would abstain from practising his religion on return to Afghanistan or that he would be perceived to be an atheist or apostate. The applicant would also be returning to a large city with a diverse population, where there is no evidence of any prosecutions for apostasy and where even if the applicant was not as observant in his religious practice, as a Hazara he would still be perceived to be Shia. I am also satisfied that the applicant would observe some form of religious and traditional practice to enable him to build connections in the community. I do not accept that the applicant will be perceived as an atheist or apostate or that there is a real chance that he will be harmed or subject to discrimination amounting to serious harm for any perceived non-belief or apostasy.
34. Country information indicates that Mazar-e-Sharif is one of the largest commercial and financial centres in Afghanistan and although Tajiks form the majority ethnic group there are significant numbers of Hazaras particularly in Mazar-e-Sharif where approximately one third of the province's population lives.<sup>13</sup> DFAT has advised that in areas under government control there is no evidence of any official policy of discrimination on the basis of ethnicity or religion, with ethnic and religious minorities having their own media outlets, political parties and politically active representatives. Shia Hazaras are active in the Afghan community, particularly in politics, education and civil society but there is evidence of societal discrimination at a community level.<sup>14</sup> UNHCR in 2016 also refers to a Minority Rights Group International report which indicates all ethnic groups are represented at all levels of the central government and each group has a large measure of control over how government programs are implemented in their geographic regions. However members of certain ethnic groups have complained of discrimination by the State, including in the form of unequal access to local government jobs in areas where they were in the minority and although Hazaras are reported to have made significant economic and political advances since the fall of the Taliban, they are reported to face continuing societal discrimination.<sup>15</sup>
35. There is evidence of nepotism within particular ethnic and religious groups which manifests most commonly as favour of ethnic, or tribal or family connections in making employment decisions for both government and private sector positions.<sup>16</sup> The 2017 DFAT report also indicates that as Hazaras have traditionally had a low social status in Afghanistan they are less likely than members of other ethnicities (Pashtuns in particular) to be in positions whereby they are able to positively discriminate in favour of other Hazaras (outside of the Hazarajat). In particular, Hazaras tend to be under-represented in senior civil service positions and are more

---

<sup>12</sup> UNHCR, "Eligibility Guidelines for Assessing the International Protection Needs of Asylum-Seekers from Afghanistan", 19 April 2016, CIS38A8012660, pp. 49-50, 53-54; DFAT, "Country Information Report Afghanistan", 18 September 2017, CISED50AD5680, 3.6-3.13; DFAT, "Thematic Report Hazaras in Afghanistan", 18 September 2017, CISED50AD5681, 3.4; Huffington Post, "Atheists in Afghanistan", 20 May 2014, CX1B9ECAB10377; BBC News, "Controversy of apostasy in Afghanistan", 14 January 2014, CX1B9ECAB10924

<sup>13</sup> EASO, "Country of Origin Information Report: Afghanistan Security Situation", 1 November 2016, CIS38A80122597, p. 149

<sup>14</sup> DFAT, "Thematic Report Hazaras in Afghanistan 2015-16 update", 8 February 2016, CIS38A8012186, 3.1, 3.10-3.11; DFAT, "Country Information Report Afghanistan", 18 September 2017, CISED50AD5680, 3.1-3.3; DFAT, "Thematic Report Hazaras in Afghanistan", 18 September 2017, CISED50AD5681, 3.1-3.3

<sup>15</sup> UNHCR, "UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Asylum Seekers from Afghanistan", 19 April 2016, UN6C8EFBB3, pp. 74-76

<sup>16</sup> DFAT, "Country Information Report Afghanistan", 18 September 2017, CISED50AD5680, 3.3

likely to be excluded from senior civil service positions due to their ethnicity.<sup>17</sup> I am satisfied that there is no official policy of discrimination on the basis of ethnicity or religion and Shia Hazaras are accorded the same rights as other Afghans. There is evidence of discrimination in the form of unequal access to local government jobs in areas where ethnic groups are in the minority; however Hazaras with whom the applicant identifies form a significant minority group in Mazar-e-Sharif. Although the applicant does not have family connections in Mazar-e-Sharif, I am not satisfied there is a real chance that as a consequence of any nepotism he would be denied the capacity to earn a livelihood or that he would be subject to economic hardship such that it would threaten his capacity to exist or would otherwise suffer treatment that may be considered serious harm within the meaning of s.5J of the Act.

36. The applicant fears harm including being kidnapped on the roads as a Shia Hazara and his former representative claims that targeted attacks against Hazaras have escalated in frequency and are systematic and ongoing. Country information indicates that there was an attack on Shia Hazaras on the road in Zari district, a contested district of Balkh in September 2015. However Balkh was not highlighted as an area where Shia Hazaras were attacked on the roads in 2016 or 2017.<sup>18</sup> Additionally Mazar-e-Sharif is a large city where sectarian violence on the basis of religion or ethnicity has been rare and apart from a co-ordinated attack on Shias commemorating Ashura in Mazar-e-Sharif in December 2011 for which Lashkar-e-Jhangvi all-Almi, a splinter group of Lashkar-e-Jhangvi (LeJ), a Pakistan-based militant group claimed responsibility and which was reportedly intended to aggravate sectarian tensions,<sup>19</sup> there is no evidence that ethnic or religious groups have been specifically targeted in Mazar-e-Sharif itself since 2011. The evidence indicates the 2011 attack was an isolated attack by LeJ which did not escalate into sectarian conflict.
37. Beyond Mazar-e Sharif itself, there was also an attack in Balkh province on 12 October 2016 approximately 20 kilometres from Mazar-e-Sharif, when a bomb exploded outside a mosque where Shias were commemorating Ashura. Most reports stated there was no declaration of responsibility by ISKP or any other group in relation to this incident although ISKP declared responsibility for other attacks against Shias in Kabul and Herat. EASO, in early 2016, indicated that the Taliban and Islamic Movement of Uzbekistan (IMU) were active in parts of Balkh province where the IMU has links to the Taliban. EASO in November 2016 stated that an ISKP presence had been reported in the southern districts of Balkh, and the provincial governor stated that his forces repelled the Taliban and loyalists of ISKP during a clearing operation in Zari and Keshنده districts in March 2016. However there is no evidence before me indicating a growing ISKP presence in or near Mazar-e-Sharif. Nor is there any evidence before me of any further attacks on Hazaras in Balkh or in or near Mazar-e-Sharif since the October 2016 attack.<sup>20</sup>

---

<sup>17</sup> DFAT, "Thematic Report Hazaras in Afghanistan", 18 September 2017, CISED50AD5681, 3.1-3.3

<sup>18</sup> UNHCR, "UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Asylum Seekers from Afghanistan", 19 April 2016, UN6C8EFBB3, pp. 74-76; DFAT, "Thematic Report Hazaras in Afghanistan", 18 September 2017, CISED50AD5681, 2.29-2.31; Professor William Maley, "On the return of Hazaras to Afghanistan", 1 October 2017; Graeme Swincer, "Update on Hazara asylum seekers from Afghanistan: the increasing dangers they would face if they return", Blue Mountains Refugee Support Group, 26 September 2017

<sup>19</sup> DFAT, "Country Information Report Afghanistan", 18 September 2015, CISEC96CF13366, 3.26

<sup>20</sup> DFAT, "Thematic Report Hazaras in Afghanistan", 18 September 2017, CISED50AD5681, 2.29-2.31; Professor William Maley, "On the return of Hazaras to Afghanistan", 1 October 2017; Graeme Swincer, "Update on Hazara asylum seekers from Afghanistan: the increasing dangers they would face if they return", Blue Mountains Refugee Support Group, 26 September 2017; EASO, "Country of Origin Information Report: Afghanistan Security Situation", January 2016, CIS38A8012395; EASO, "Country of Origin Information Report: Afghanistan Security Situation", 1 November 2016, CIS38A80122597

38. The Blue Mountains Refugee Support group update refers to an attack on a Hazara village in Sar-e-Pul province by the Taliban in August 2017 in an area where neighbouring villages were already under Taliban control as evidence of the continued targeting of Hazaras and a shift towards a sectarian agenda by the Taliban. There have been attacks on Hazaras by the Taliban in some provinces, for which the reasons have not always been apparent. However there is no evidence before me to otherwise indicate that the Taliban are pursuing a sectarian agenda or attempting to incite sectarian violence more broadly in other parts of Afghanistan.<sup>21</sup> I am not satisfied that the evidence indicates that ISKP, IMU, LeJ or the Taliban were involved in the October 2016 attack in Balkh province or that the incident is indicative of the onset of a sectarian campaign in Balkh. Nor am I satisfied that it is indicative of a risk to Shia Hazaras living in Mazar-e-Sharif itself. I am satisfied that the isolated incidents in or near Mazar-e-Sharif in 2011 and 2016 do not indicate that the applicant faces a real chance of persecution as a Shia Hazara upon return to Mazar-e-Sharif in the reasonably foreseeable future.
39. Professor Maley stated that there have been some recent indications that Mazar-e-Sharif may become the focus of expanded militant activity in the north and refers to the Taliban attack on the German Consulate in Mazar-e-Sharif in November 2016 and the Taliban attack on the headquarters of the 209th Corps of the Afghan National Army outside Mazar-e Sharif in April 2017 as indicative of this. There has been increased militant activity and a decline in the security situation in some northern provinces of Afghanistan in recent years. Despite this decline and the ability of insurgents to occasionally undertake attacks in Mazar-e-Sharif, it is still regarded as one of the safest cities in Afghanistan, attributable to a monopoly on power, even in the province's most remote regions, held by ethnic-Tajik governor Atta Mohammed Noor. The decline in insurgent activity in Balkh has also been attributed to the effectiveness of the Afghan National Security Forces (ANSF) and the district police chief.<sup>22</sup> Although there was an attack on the military base outside of Mazar-e-Sharif,<sup>23</sup> Balkh province continues to have a strong military and police presence which has maintained security due to the power base of the Balkh governor. I am satisfied that the government continues to maintain effective control and that significant security force deployments which are maintained in Mazar-e-Sharif ensure the area's ongoing stability and security.
40. EASO also indicates that Mazar-e-Sharif counted the lowest number of civilian victims. There were some sporadic attacks in 2016 which affected some residents. These included attacks on the Indian and German consulates in January and November 2016 by the Taliban and a suicide attack near a market in Mazar-e-Sharif in August 2016.<sup>24</sup> The incidents have been infrequent and were primarily aimed at government or international community targets. I am not satisfied that the applicant faces a real chance of harm in the foreseeable future from the Taliban, Islamic State or other insurgent groups due to the general security situation in Mazar-e-Sharif.
41. The applicant fears that he will be harmed due to his imputed pro-western political opinion arising from changes in his thinking, mannerisms and pro-western ideas and as a failed asylum seeker. DFAT advises that many Afghans travel abroad to seek employment and there have been large scale migration movements in and out of Afghanistan in recent years including to Pakistan, Iran

<sup>21</sup> Afghanistan Analysts Network, "With an active cell in Kabul, ISKP tries to bring sectarianism to the Afghan war", 19 October 2016; EASO, "Country of Origin Information Report: Afghanistan Security Situation", January 2016, CIS38A8012395; EASO, "Country of Origin Information Report: Afghanistan Security Situation", 1 November 2016, CIS38A80122597; DFAT, "Thematic Report Hazaras in Afghanistan", 18 September 2017, CISED50AD5681, 3.6-3.8

<sup>22</sup> EASO, "Country of Origin Information Report: Afghanistan Security Situation", January 2016, CIS38A8012395; EASO, "Country of Origin Information Report: Afghanistan Security Situation", 1 November 2016, CIS38A80122597

<sup>23</sup> Professor William Maley, "On the return of Hazaras to Afghanistan", 1 October 2017; Graeme Swincer, "Update on Hazara asylum seekers from Afghanistan: the increasing dangers they would face if they return", Blue Mountains Refugee Support Group, 26 September 2017

<sup>24</sup> Ibid; EASO, "Country of Origin Information Report: Afghanistan Security Situation", 1 November 2016, CIS38A80122597

and other countries. DFAT also assesses that in general returnees from western countries are not specifically targeted on the basis of being failed asylum-seekers. DFAT in 2017 noted there have been occasional reports alleging returnees from western countries have been kidnapped or otherwise targeted on the basis of having spent time in a western country, but the circumstances or locations of these incidents were not detailed. People who are identified as having international associations face a high risk of being targeted by anti-government elements and this may possibly include returnees from western countries. Most returnees take measures to conceal their association with the country from which they have returned, and keep a low profile on return. DFAT assesses that people in this situation do not face a significantly higher risk of violence or discrimination than other Afghans with a similar ethnic and religious profile.<sup>25</sup> I note the comments of UNHCR regarding the targeting of western returnees by anti-government elements.<sup>26</sup> However the reports and incidents cited by the UNHCR and DFAT refer to individuals who returned from Australia being targeted whilst travelling between Ghazni and Kabul, and do not refer to Mazar-e-Sharif as an area where returnees are targeted on the basis of being perceived as Western or failed asylum seekers.

42. I am not satisfied on the evidence that returnees like the applicant who have lived in [Country 2] for a significant period of time and in a western country are targeted in Mazar-e-Sharif by insurgents or that the applicant would be targeted on return as a Shia Hazara returnee with an imputed pro-Western political opinion. Other than his work on a government project for a short period in 2012 the applicant has not held any identifiable affiliations with international organisations or the Afghan government. Additionally the applicant has lived most of his life including his formative years in [District 1] and [Country 2] and has only been in a western country for approximately five years. He speaks Dari which is one of the official languages of Afghanistan as well as Hazaragi and Farsi. He would also be returning to a large urban area where there is a significant population of Shia Hazaras, and which is under government control. I am not satisfied that he would be imputed with a pro-government political opinion by the Taliban or other anti-government elements (AGEs) in Mazar-e-Sharif as a Shia Hazara who resided in [Country 2] and in a western country.
43. I find that there is not a real chance of the applicant being harmed in Mazar-e-Sharif as a Shia Hazara, as a perceived apostate or atheist, due to his former employment on a government project, as a returnee/failed asylum seeker from a western country who has lived for a significant period in [Country 2], due to his mental health issues or due to generalised violence. Considering all the circumstances, I am not satisfied that the applicant faces a real chance of harm in the reasonably foreseeable future in Mazar-e-Sharif, which country information indicates he can safely access by air.

#### **Refugee: conclusion**

44. 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**

---

45. 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

<sup>25</sup> DFAT, "Country Information Report Afghanistan", 18 September 2017, CISED50AD5680, 5.18-5.22;

<sup>26</sup> UNHCR, "Eligibility Guidelines for Assessing the International Protection Needs of Asylum-Seekers from Afghanistan", 19 April 2016, CIS38A8012660, p. 41

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**

46. 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.

47. I have found that there is a real chance the applicant may be killed or physically harmed by the local Taliban if he returns to [District 1]. I am satisfied that this harm amounts to significant harm. For the same reason, I am satisfied that the applicant faces a real risk of significant harm in [District 1].

### **Qualifications to the real risk threshold**

48. Section 36(2B) of the Act provides that there is taken not to be a real risk that a person will suffer significant harm in a country if the real risk is one faced by the population of the country generally and is not faced by the person personally. DFAT assessed that Hazara minorities living in Pashtun-majority areas where the Taliban and other insurgent forces have a significant presence are less safe and face a higher risk of harm than Hazaras in Hazarajat or Kabul. Hazaras travelling by road face significant risks particularly when stopped on the road and are more likely to be selected for abduction or violence if a vehicle carrying a mix of ethnic groups is stopped.<sup>27</sup> EASO in 2017 also reported there were repeated Taliban attacks in [District 1] during 2017 including on the district centre. [District 1] is also predominantly a Pashtun and Tajik area with a negligible Hazara minority. There is also insecurity on the roads, with the Taliban reportedly being in control of the main road and establishing checkpoints on the main highway from Logar to Kabul.<sup>28</sup> I am satisfied that the risk faced by the applicant in [District 1] is not a risk faced by the general Afghan population but is one faced by the applicant personally as a Shia Hazara returnee.

49. I have considered whether the applicant could obtain the protection of the Afghan government in returning to [District 1] and have had particular regard to country information pertaining to Taliban activity on the roads between Kabul and Logar noting that there is a significant Taliban presence in and around [District 1]. EASO indicated that Logar is one of the most volatile and kinetic provinces in the region with [District 1] being described as one of the districts worst hit by the insurgency in Logar. There is a heavy Taliban presence in Logar with some districts being almost entirely under Taliban control. [District 1] has limited government accessibility due to security issues. Although [a number of] Afghan Local Police (ALP) were allocated to the district and other districts in Logar during 2014 suicide attacks have diminished their numbers. In

---

<sup>27</sup> DFAT, "DFAT Thematic Report Hazaras in Afghanistan", 8 February 2016, CIS38A8012186, 2.24, 2.33 and 4.4; DFAT, "Country Information Report Afghanistan", 18 September 2017, CISED50AD5680

<sup>28</sup> EASO, "Country of Origin Information Report: Afghanistan Security Situation", 1 November 2016, CIS38A80122597; EASO, "Afghanistan: Security Situation December 2017", 1 December 2017, CISED50AD8102, p. 191-194

[2015], insurgents launched a coordinated attack on [government holdings] in [District 1], killing [a number of] Afghan policemen. Insecurity in Logar has also restricted freedom of movement and access to education.<sup>29</sup> Given the ongoing insecurity in [District 1], the limited government presence including police and Afghan security forces, the strong Taliban presence, and lack of effective Afghan government control in the district and in other parts of Logar, I am not satisfied that the applicant could obtain protection from an authority of Afghanistan such that there would not be a real risk that he will suffer significant harm on his return to [District 1].

50. Section 36(2B) of the Act also provides that there is taken not to be a real risk that a person will suffer significant harm in a country if it would be reasonable for the person to relocate to an area of the country where there would not be a real risk that the person will suffer significant harm. For the following reasons I am not satisfied that the applicant faces a real risk of significant harm in Mazar-e-Sharif which he can safely access by air.
51. I accept that the applicant has been receiving treatment for depression and PTSD in Australia and may have difficulty in obtaining treatment and appropriate medication on return. I also accept that as a consequence of his mental health issues he may experience a level of discrimination on return. However I am not satisfied that such discrimination or inability to obtain treatment would result in the applicant being arbitrarily deprived of his life, or would constitute the death penalty, or torture. Nor am I satisfied that it amounts to cruel or inhuman treatment or punishment or degrading treatment or punishment. I do not accept that such discrimination or inability to access medical treatment constitutes significant harm as defined in s.36(2A) of the Act.
52. As noted earlier in these reasons, I accept that as a Shia Hazara the applicant may be subject to nepotism on return, particularly as he does not have any family links in Mazar-e-Sharif. However on the evidence I am not satisfied that such discrimination would result in the applicant being arbitrarily deprived of his life, or would constitute the death penalty, or torture. Nor am I satisfied that it amounts to cruel or inhuman treatment or punishment or degrading treatment or punishment. I do not accept that such treatment constitutes significant harm as defined in s.36(2A) of the Act. I have also found that there is not a real chance that he would face other forms of harm in Mazar-e-Sharif as a Shia Hazara and as the 'real risk' test imposes the same standard as the 'real chance' test, I am also not satisfied that there is a real risk of the applicant suffering such harm on the return to Mazar-e-Sharif for this reason.
53. I have otherwise found that there is not a real chance that the applicant will face harm in Mazar-e-Sharif as a returnee/ asylum seeker from the West who lived in [Country 2], due to his former employment on a government contract, as a perceived atheist or apostate, or on the basis of the general security situation or for any other reason. As the 'real risk' test imposes the same standard as the 'real chance' test, for the reasons stated above I am also not satisfied that there is a real risk of the applicant suffering significant harm on the return to Mazar-e-Sharif for those reasons.
54. I am not satisfied that there is a real risk of the applicant suffering significant harm on return to Mazar-e-Sharif but for the following reasons I am satisfied it is not reasonable for him to relocate there.
55. The applicant claims that he is unable to reasonably relocate as there is high unemployment, no access to services such as clean water and sanitation, and lack of adequate accommodation

---

<sup>29</sup> [Source deleted].

with many people being forced to live in slums. He has no family networks and he will be disadvantaged in setting up new social networks as he is no longer practising his religion. He would also not be able to obtain mental health support or medication. His family who are in [Country 1] would not be able to relocate with him due to the poor economic situation as he would be unable to afford a house to cover their basic needs and they would be destitute with him. Nor would he be able to travel back and forth between Afghanistan and [Country 1] due to the dangers on the roads and the cost of air flights. The poor situation for involuntary returnees such as the applicant would be exacerbated by the limited support from the government and other organisations and the government's inability to handle the large numbers of returnees in recent times.

56. With limited exceptions, in UNHCR's view the reasonableness of relocation is dependent on the effective availability of traditional support mechanisms, provided by members of the applicant's extended family or ethnic group, and advises that the only exceptions for the requirement of external support are single able bodied men and married couples of working age without identified specific vulnerabilities. Such persons may in certain circumstances be able to subsist without family and community support in urban and semi-urban areas that have the necessary infrastructure and livelihood opportunities to meet the basic necessities of life and that are under effective Government control.<sup>30</sup>
57. Country information indicates that Mazar-e-Sharif is under the effective control of the Afghan government. After a period of steady increase of investment and economic opportunities due to the international presence, in 2014, the withdrawal of foreign troops significantly impacted on the economy. In 2016 there was a decrease in foreign aid and investment and an increase in unemployment. Although unemployment is high across Afghanistan large urban areas such as Mazar-e-Sharif which is still reported to be one of the biggest commercial and financial centres of Afghanistan offer relatively greater opportunities for employment and access to services.<sup>31</sup> In assessing the applicant's ability to relocate to Mazar-e-Sharif I have considered that the applicant is a single able bodied male of working age with no education who has extensive experience in [his particular field] in [Country 2] and Afghanistan. Since his relocation to Australia he has presented with mental health issues for which he is receiving support. This support has enabled him to undertake limited work [in a particular occupation].
58. The applicant has demonstrated some resilience in travelling from Afghanistan to Australia and has been able to obtain employment in Australia. He has never lived in Mazar-e-Sharif and although he lived in [Country 2] for [a number of] years as well as [District 1], he lived there with family. [Sibling A] on whom he was heavily reliant is deceased, and his other [family members] who are reliant on him are residing in [Country 1], and he does not have any family members in Mazar-e-Sharif to assist him on return. I note that the applicant has previously demonstrated resilience and the ability to live without family support having lived in Australia for over five years. I accept that life in Mazar-e-Sharif would be considerably different to that in [Country 2] or Australia with living standards being substantially lower, despite Mazar-e-Sharif having a diversity of cultures and religious influences which peacefully co-exist and offering greater opportunities for employment and access to services than rural areas. However I note that UNHCR indicates that relocation may not be reasonable for those who present with significant health problems or other specified vulnerabilities identified by UNHCR as requiring durable support. Although the applicant has demonstrated resilience previously, given the change in the applicant's circumstances with the onset of the applicant's mental health issues,

---

<sup>30</sup> UNHCR, "Eligibility Guidelines for Assessing the International Protection Needs of Asylum-Seekers from Afghanistan", 19 April 2016, CIS38A8012660, p. 86

<sup>31</sup> EASO, "Country of Origin Information Report: Afghanistan Security Situation", 1 November 2016, CIS38A80122597, pp. 30 and 149

I am not satisfied that the applicant would be able to obtain accommodation or employment or has the necessary skills and the capacity to subsist in Mazar-e-Sharif without established networks particularly as he has never lived in Mazar-e-Sharif and his family are located in [Country 1].

59. The representative has provided documentation dated March, April and July 2017, which state that the applicant has been medically diagnosed as suffering from major depression and comorbid post-traumatic stress disorder (PTSD) with severe anxiety and stress, and is currently on a course of anti-depressants and seeing a psychologist, as his symptoms have significantly affected his function and daily activities. Return to Afghanistan would exacerbate his PTSD symptoms, depression and anxiety to a point where he would not be able to work or be productive. The psychologist indicated that in addition to continuing his counselling sessions he be referred to see a psychiatrist for further medical review.
60. Although the applicant would be returning to Mazar-e-Sharif where the security situation is significantly more stable than Kabul, and country information indicates that health care availability in Afghanistan has improved significantly with approximately 85% of the population having access to free basic health services, medicines are often expensive or expired, which can exclude the poor from treatment for common illnesses or provide sub-standard or ineffective treatments. The overall quality of health services remains poor and there is a severe shortage of qualified personnel to provide effective mental health care service delivery.<sup>32</sup> Given that I consider the applicant would not have any financial support and would have difficulty in obtaining work to enable him to subsist I consider that the applicant would only have access to basic health care on return to Afghanistan. I note that the diagnosis of PTSD and the current mental health plan indicate that the applicant is on anti-depressant medication to improve his functioning and reduce his symptoms. I also note that the diagnosis of chronic depression/anxiety and PTSD in 2017 letters was made by a general medical practitioner and a psychologist and refer to the applicant being treated by a psychologist and not by a psychiatrist, although referral to a psychiatrist was recommended by the treating psychologist. Never the less on the information before me the applicant presents as vulnerable and given his inability to access required medication and the availability of only basic treatment in Mazar-e-Sharif and other parts of Afghanistan, I am not satisfied that it would be reasonable for the applicant to relocate to an area where he has no familial or other durable support, and where without such support his mental health may deteriorate further and significantly impede his ability to establish himself.
61. Having regard to the applicant's circumstances, and in particular his mental health issues, lack of family networks to provide durable support, as well as his limited employment skills, lack of education or financial support, I am not satisfied it is reasonable for the applicant to relocate to Mazar-e-Sharif.
62. I have considered whether it is reasonable for the applicant to relocate to other areas of Afghanistan which are under government control including Herat or Kabul where there are significant numbers of Hazara Shias. I am satisfied that the applicant would present with similar vulnerabilities arising from his mental health issues, lack of durable family support and his inability to access appropriate medication and other than basic and ineffective treatment. I am not satisfied that it is reasonable for the applicant to relocate to any other part of Afghanistan.

---

<sup>32</sup> DFAT, "Country Information Report Afghanistan", 18 September 2017, CISED50AD5680; COISS, "Research Response Afghanistan: CI160830171916226 – Mental Illness – Mental health services – Women – Women's Shelters – Kabul", 13 September 2016, CR0D9DEFA294 (referenced in the Afghanistan Resource Guide 2017, CRF00C22F56);

### **Complementary protection: conclusion**

63. There are 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.

### **Decision**

---

The IAA remits the decision for reconsideration with the direction that:

- there are substantial grounds for believing that, as a necessary and foreseeable consequence of the referred applicant being removed from Australia to a receiving country, there is a real risk that the referred applicant will suffer significant harm.

## 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.