



Australian Government

Immigration Assessment Authority

Decision and Reasons

Referred application

AFGHANISTAN

IAA reference: IAA17/04033

Date and time of decision: 10 September 2018 14:32:00

S MacKenzie, Reviewer

Decision

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

Any references appearing in square brackets indicate that information has been omitted from this decision pursuant to section 473EC(2) of the Migration Act 1958 and replaced with generic information which does not allow the identification of an referred applicant, or their relative or other dependant.

Background to the review

Visa application

1. The referred applicant (the applicant) claims to be a citizen of Afghanistan. The applicant arrived in Australia [in] May 2013 as an unauthorised maritime arrival. On 7 September 2016 he lodged a valid application for a Class XD Subclass 785 Temporary Protection Visa (TPV).
2. A delegate of the Minister for Immigration and Border Protection (the delegate) refused to grant the visa on 4 December 2017, on the basis that the applicant did not face a real chance of serious harm or a real risk of significant harm upon return to Afghanistan. The delegate considered it was reasonable for the applicant to relocate to Kabul.

Information before the IAA

3. I have had regard to the material given by the Secretary under s.473CB of the *Migration Act 1958* (the Act) (the review material).
4. On 29 December 2017, the IAA received a written submission from the applicant's representative (IAA submission). The IAA submission in part comprises argument on issues before the delegate and also refers to claims and evidence that were before the delegate, and are part of the review material. I have had regard to these aspects of the submission.
5. In the IAA submission, the applicant's representative refers to two sources of country information not before the Minister that both pre-date the delegate's decision. The information is provided in the form of a hyperlink and does not comply with the requirements set out in the IAA Practice Direction (provided to the applicant on 12 December 2017) under s473FB that states that if an applicant provides or refers to new information such as country information, reports, or media articles, they must provide a copy of that information or extract part(s) of the information on which they rely and must identify the source of the information. Hyperlinks to publicly available documents are not acceptable. The information is published by <https://medium.com> and <http://precisionrifleblog.com> and is cited as evidence that Toyotas are a primary combat vehicle in the third world, and as evidence of the shooting range of high powered sniper equipment. Having regard to the totality of the applicant's claims, I am of the view that this information provides no assistance in assessing the applicant's claims for protection and for that reason I have decided under s.473FB(5) not to accept it.
6. The applicant's representative has provided photographs as evidence of the applicant's bodily scarring from bullet wounds. The photographs were not before the delegate and are new information. While the photographs themselves were not before the delegate, I am aware that during the protection visa interview on 24 August 2017 (TPV interview) the applicant showed the delegate his scars. The delegate accepted that the applicant has scars from being shot. For the reasons given below, I have also accepted that the applicant has scars as a consequence of being shot, which these photographs seek to evidence. I am satisfied that there are exceptional circumstances to justify consideration of this information.
7. The applicant's representative has provided an undated and unsigned letter from the applicant's previous employer in Afghanistan. The letter confirms the applicant's previous employment [providing a service] to [a government department] of [District 1] and states that the applicant was ambushed and critically injured by anti-government elements (AGEs) as a result of this employment. The letter was not before the delegate and is new information. In

the IAA submission, the representative states that the applicant was unable to previously obtain a letter from his employer, although no reason is provided. The letter is undated and reports on events that purportedly occurred in 2012. In the circumstances, I am not satisfied that this information could not have been provided to the Minister before the delegate made his decision. Turning now to whether I consider this new information is credible, in the sense of capable of being believed, I have considered that the letter is unsigned and undated. Further, having had regard to the applicant's own evidence, I have doubts that the writer is in a position to confirm that the applicant was shot in connection with his employment. The applicant has not satisfied me the letter represents credible personal information. The representative has not pointed to any exceptional circumstances that may justify considering this information, and none are evident to me. For the reasons given below I accept that the applicant was employed to [provide a service] to the [government department] of [District 1] and that he was shot by AGEs in connection with the employment, which this letter seeks to evidence. In the circumstances, I am not satisfied that there are exceptional circumstances to justify consideration of this information.

8. The applicant's representative also provided a letter from the [representative] of [a] Hospital, dated [in] December 2017. The letter confirms the applicant's admission to hospital [in] April 2012 for treatment of gunshot wounds. In the IAA submission, the representative states that the applicant was unable to previously obtain a letter from the hospital, although no reason is provided. The letter post-dates the delegate's decision, and in that sense, did not exist at the time of the delegate's decision. I am mindful that it relates to events that purportedly occurred in 2012, and has now seemingly been obtained at the request of the applicant. The explanation as to its recent availability is superficial and I am not convinced it could not have been sought earlier in support of the visa application by the applicant or his then representative. I note the applicant's evidence in the TPV interview where he claimed that he was treated in a private hospital. However, the letterhead states '[name]' and '[name]', thereby indicating the letter was issued from a public health facility. To that extent, the letter is not corroborative of his claims. I am also mindful of the applicant's evidence in the TPV interview that he still retained documents in Afghanistan in connection with his 2012 hospital admission. It is not clear why these documents were not provided to the delegate or the IAA. The representative has not pointed to any exceptional circumstances that may justify considering this information, and none are evident to me. Furthermore, for reasons set out below, I accept that the applicant was treated for gunshot injuries, which this letter seeks to evidence. In the circumstances, I am not satisfied that there are exceptional circumstances to justify consideration of this information.
9. I have obtained country information about attacks by insurgents on the police and others associated with the Afghan government in Khost Province in 2012, about the current Taliban presence in Khost, and about treatment of returnees to Afghanistan who have spent time in a western country.¹ This information was not before the delegate and is new information. There was no or very limited country information before the delegate in respect of attacks by the Taliban or other insurgents in Khost in around 2012, about the current presence of Taliban in the region, or about the treatment of returnees who have spent time in western countries, which formed part of the applicant's claims. This information is material to my assessment of

¹ United Nations Assistance Mission in Afghanistan co-published with the UN Office of the High Commissioner for Human Rights, "Afghanistan Annual Report 2012, Protection of Civilians in Armed Conflict", 1 February 2013, CIS25055; European Asylum Support Office (EASO), "EASO Country of Origin report Afghanistan: Insurgent strategies - intimidation and targeted violence against Afghans", 01 December 2012, CIS24804; The Afghanistan NGO Safety Office, "The ANSO Report 16-31 March 2012", 1 April 2012, CIS23197; EASO, "Country Guidance: Afghanistan", 27 June 2018, CIS7B839411538; EASO, "Afghanistan: Security Situation December 2017", 1 December 2017; UK Home Office, "Country Policy and Information Note Afghanistan: Afghans perceived as "Westernised", 1 January 2018, OG9EF76792

whether the applicant faces a real chance or real risk of serious or significant harm in Afghanistan in the reasonably foreseeable future. I am satisfied that there are exceptional circumstances for considering this information.

Applicant's claims for protection

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

- The applicant is a Sunni Pashtun male from [District 1], Khost Province;
- In Afghanistan, the applicant's job required him to [drive] his vehicle from [local] Bazaar to the [government department] of [District 1], where police officers and other officials worked;
- In 2012, the applicant was ambushed by unknown men while [driving] towards [District 1]. He was shot in the [body] by persons he suspects are Taliban;
- The applicant was hospitalised for one month. He stayed at home for a further six months to recover;
- One month following his return to work, the Taliban came to the applicant's house while he was not at home. They told his mother that if he did not stop working for the government he will face consequences worse than before;
- With the help of his brother-in-law, the applicant left Afghanistan;
- If returned to Afghanistan, the applicant fears he will be harmed or killed by the Taliban due to:
 - his previous employment in connection with the government
 - the general security situation
 - his time spent in Australia and western country
 - his imputed profile as an infidel and apostate.

Refugee assessment

11. 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

12. Under s.5J of the Act 'well-founded fear of persecution' involves a number of components which include that:

- the person fears persecution and there is a real chance that the person would be persecuted
- the real chance of persecution relates to all areas of the receiving country
- the persecution involves serious harm and systematic and discriminatory conduct

- the essential and significant reason (or reasons) for the persecution is race, religion, nationality, membership of a particular social group or political opinion
- the person does not have a well-founded fear of persecution if effective protection measures are available to the person, and
- the person does not have a well-founded fear of persecution if they could take reasonable steps to modify their behaviour, other than certain types of modification.

Identity

13. Since his arrival in Australia, the applicant has consistently claimed to be a Sunni Pashtun who originates from [District 1] in Khost Province. He provided a copy of his Afghan passport and Taskera (with accompanying translation) and, on the basis of his evidence, I accept his identity is as claimed, that he is an Afghani citizen who originates from that part of Afghanistan.

Events in Afghanistan

14. In the TPV interview, the applicant explained to the delegate in some detail the business arrangement he had formed where he would [provide a service] from [a location] to the [government department] of [District 1]. However, the delegate raised a number of concerns with him in respect of his former employment. He told the applicant that he had country information that indicated that the Afghan police in [District 1] have [certain goods] supplied by specific contractors out of fear goods could be contaminated by Taliban sympathisers, and on this basis it seemed unlikely they would have engaged the services of the applicant on a private and non-contractual basis. The delegate also had doubts that the applicant would be paid to [provide a service] from [the] Bazaar where there was a local bazaar in [District 1] that sold the same items. Overall, I am satisfied with the applicant's responses to the concerns raised. He explained to the delegate that the authorities often engaged private persons like him to transport goods as they were less likely to be detected by insurgents. He also explained that he was able to obtain the goods cheaper from Khost due to what he understood to be a pre-negotiated arrangement.
15. Overall, I considered the applicant's oral evidence credible and consistent with information he had earlier provided in his TPV application and at an interview with the Department of Immigration on 1 July 2013 (entry interview). I have noted the other concerns raised by the delegate in his decision that the applicant could not be more specific about the model of pickup he drove (he advised it was a [year] Toyota), that he could not recall the name the supplier of the goods in Khost, and that it seemed unlikely that the police would use private contractors to supply [these items] when they had their own armoured vehicles and weapons. However, having considered the entirety of his evidence, I am satisfied the applicant provided a truthful account in respect of his previous employment and duties. I also consider it plausible that the local authorities would have engaged persons driving private vehicles for the reasons claimed by the applicant. I accept the applicant's credible and consistent evidence that he [provided a service] from [the] Bazaar to the [government department] of [District 1].
16. I have concerns with several aspects of the applicant's claim that he was shot by the Taliban in connection with his employment. Firstly, the applicant's claim that he was ambushed without warning by persons he suspected were Taliban is inconsistent with his earlier evidence in the entry interview that prior to being attacked he was specifically warned by the Taliban to cease his employment. Secondly, the applicant's evidence varied as to what happened following the shooting incident. In his TPV statement, he claimed that as a result of the incident his car 'tipped over', he lost consciousness, and that he was taken to hospital by 'some people'. In the

TPV interview, the applicant claimed that after he was shot he drove the car into a stream, and that the car “flipped on the side”. He initially told the delegate that he did not know who the people were that took him to the hospital, he suspected they may have known him and recognised him. The delegate asked why he had never sought to find out who had saved his life and, in response, the applicant then said that he later found out who the persons were and told the delegate their names. In the IAA submission, in response to the delegate’s findings, the representative states that the applicant ‘never mentioned that his vehicle was flipped or tipped over, but rather that due to fierce shooting and panicking he essentially drove it into a ditch’. However, as noted above, the applicant stated in his written claims and at the TPV interview that his car had overturned.

17. Although I have some concerns, the applicant’s claim that he was targeted in connection with his employment is supported by country information. In 2012, the Taliban and other AGEs in Khost reportedly targeted the police and contractors suspected of working with the Afghan government.² Having regard to all of the evidence, I accept the applicant’s broadly consistent evidence that he was shot by the Taliban in 2012. I am also willing to accept that he was identified by local insurgents, likely the Taliban, as someone who provided support to the Afghan government and it was for this reason he was attacked and hospitalised. I further accept that the Taliban warned the applicant’s mother that he must stop working with the government or face consequences.

Return to [District 1]

18. If returned to Afghanistan the applicant fears he will be harmed or killed by the Taliban due to his previous employment. He also fears he will be harmed due to his time spent in Australia/the west, and that he will be imputed as an infidel and apostate.
19. Information before the delegate indicates that the applicant’s home village is located in [an area of District 1]. In June 2018, EASO reported that there was a presence of insurgent groups, especially the Taliban, in most parts of Khost Province.³ EASO earlier reported that parts of Bak and neighbouring Sabari are considered ‘high confidence Taliban support zones’ and insurgency strongholds.⁴
20. I accept that the applicant would be returning following a significant period of residence abroad, including from a western country. The Department of Foreign Affairs and Trade (DFAT) assess that in general returnees from western countries are not specifically targeted on the basis of being failed asylum-seekers; 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.⁵ 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

² United Nations Assistance Mission in Afghanistan co-published with the UN Office of the High Commissioner for Human Rights, "Afghanistan Annual Report 2012, Protection of Civilians in Armed Conflict", 1 February 2013, CIS25055, p.19-20; European Asylum Support Office (EASO), "EASO Country of Origin report Afghanistan: Insurgent strategies - intimidation and targeted violence against Afghans", 01 December 2012, CIS24804, p.61; The Afghanistan NGO Safety Office, "The ANSO Report 16-31 March 2012", 1 April 2012, CIS23197, p.16

³ EASO, "Country Guidance: Afghanistan", 27 June 2018, CIS7B839411538, p.85

⁴ EASO, "Afghanistan: Security Situation December 2017", 1 December 2017, p.170-171.

⁵ DFAT, "DFAT Country Information Report Afghanistan", 18 September 2017, CISED50AD5680, 5.20; United Nations High Commissioner for Refugees (UNHCR), "UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Asylum Seekers from Afghanistan", 19 April 2016, UN6C8EFBB3, p.41

as foreigners or spies and targeted.⁶ A more recent report from the UK Home Office indicates that there are strong differences to how the 'west' is perceived in rural areas, like the applicant's home area, compared to a city like Kabul.⁷

21. The applicant would be returning to Afghanistan after having lived over five years in Australia, a western country which has provided troops to fight the Taliban led insurgency. He would also be returning to an area with a high Taliban presence despite the presence of government forces in the district. As a person who has been in a western country for not an insignificant period it is plausible that the applicant may be suspected and/or identified as having resided in a western country as he would be returning to his village in [the] District after a period of absence. DFAT assesses that individuals working for, supporting or associated with the international community are at high risk of violence perpetrated by AGEs.⁸ Country information before me indicates that the chance of harm faced by a person, if they were identified as having spent time in a western country, depends on a number of factors including the area to which that person is returning and the circumstances to which they return.⁹ In an area like [District 1] in Khost I accept that there is more than a remote possibility that the Taliban would become aware that the applicant (regardless of whatever steps he might take to conceal the fact) had travelled to, and returned from, a western country. Country information before the delegate indicates that the applicant come from a rural area and a small village. I accept in this case, that the fact that he has been living in a western country will quite likely, in the context of his village in an area like [District 1], result in him being perceived as a supporter of the international community and an opponent of the Taliban. Having regard to the applicant's profile, I accept for the purposes of this decision that on return to [District 1] that there is more than a remote chance that the applicant would be targeted for serious harm such as death or significant physical ill treatment by the local Taliban. I am satisfied that his imputed political opinion would be an essential and significant reason for the harm.
22. However, pursuant to s.5J(1)(c) of the Act the real chance of persecution must relate to all areas of the receiving country.
23. I have considered whether the applicant would be at risk of serious harm on the basis of his imputed political opinion, or other relevant characteristic, elsewhere in Afghanistan. For the reasons given below, I am not satisfied that the applicant faces a real chance of persecution in Kabul. Having regard to the applicant's circumstances, I am not satisfied that the threat of harm he may face on return by the Taliban in [District 1] extends beyond his localised region.

Kabul

24. In his TPV application, the applicant stated that he was unable to relocate anywhere in Afghanistan because Taliban influence extends to all areas. He fears that due to the extensive Taliban network he would be found anywhere he lived. In the TPV interview, the applicant reiterated what he had written in his TPV application. He also advised the delegate that he would be identified by the Taliban due to his accent or dialect.

⁶ UNHCR, "UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Asylum Seekers from Afghanistan", 19 April 2016, UN6C8EFBB3, p.41

⁷ UK Home Office, "Country Policy and Information Note Afghanistan: Afghans perceived as "Westernised", 1 January 2018, OG9EF76792, p.11-12

⁸ DFAT, "DFAT Country Information Report Afghanistan", 18 September 2017, CISED50AD5680, 3.19

⁹ UK Home Office, "Country Policy and Information Note Afghanistan: Afghans perceived as "Westernised", 1 January 2018, OG9EF76792; UNHCR, "UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Asylum Seekers from Afghanistan", 19 April 2016, UN6C8EFBB3; DFAT, "DFAT Country Information Report Afghanistan", 18 September 2017, CISED50AD5680

25. While I have accepted that the applicant was identified by the Taliban in Khost in 2012 as a person of adverse interest in connection with his employment, I am not satisfied that he was a person of interest outside of his local area at this time. I am also mindful that the applicant ceased [providing services] to the [government department of District 1] in around January 2013. The Taliban do not appear to have pursued the applicant at his home following his departure from Afghanistan. In the circumstances, I consider the chance that the applicant would come to the adverse attention of the Taliban in Kabul in 2018, in connection with his previous employment and the events in Khost in 2012, to be remote.
26. While I accept the applicant may be identified in Kabul as a person who originates from a different region due to his accent or dialect, I am not satisfied it follows that he will be at risk of harm on this basis, or that he would be identified in connection with his previous employment or the events in Khost in 2012. Kabul is Afghanistan's capital and is a large ethnically diverse city with communities of almost all ethnicities, with Pashtuns forming one of the major ethnic groups.¹⁰ The applicant's language, Pashto, is spoken by 35 per cent of the population and is recognised as an official language in Afghanistan.¹¹ I am not satisfied that the dialect spoken by the applicant is not understood in the country's capital or that he faces harm due to his dialect or accent. I find the applicant does not face a real chance of harm in Kabul in connection with the localised events of 2012, his accent or dialect, or a combination of these factors.
27. I have also considered whether the applicant faces harm in Kabul due to his time spent in Australia/the west. Although not specifically raised by the applicant, the delegate considered whether he faced harm on return due to his profile as a failed asylum seeker. As noted above, DFAT assess that in general returnees from western countries are not specifically targeted on the basis of being failed asylum-seekers. 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. However, the reports and incidents cited by the UNHCR and DFAT do not refer to Kabul as an area where returnees are targeted on the basis of being perceived as western. Further, there have been no reports of individual returnees from Australia being targeted since the two incidents in 2014 involving returnees of Hazara ethnicity¹² (both in Ghazni, removed from Kabul).
28. Country information indicates that returnees from western countries are almost exclusively return to Kabul. DFAT and UNHCR assess that those who are identified as having associations with the government or the international community face a high risk of being targeted by AGEs.¹³ Apart from being a returnee from Australia, I am satisfied the applicant does not hold any other such profile affiliated with the government or international community, nor any proximity to persons who are so affiliated and there is no information to indicate he would upon return. I have not accepted that the applicant would be of interest to the Taliban, or any other insurgent group, outside of [District 1]. His previous employment ceased when he

¹⁰ EASO, "Key socio-economic indicators, state protection, and mobility in Kabul City, Mazar-e Sharif, and Herat City", 1 August 2017, CISED50AD5465; DFAT, "DFAT Country Information Report Afghanistan", 18 September 2017, CISED50AD5680; EASO, "EASO Country of Origin Information Report Afghanistan Security Situation November 2016", 1 November 2016, CIS38A80122597

¹¹ DFAT, "DFAT Country Information Report Afghanistan", 18 September 2017, CISED50AD5680, 2.7

¹² UNHCR "UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Asylum Seekers from Afghanistan", 19 April 2016, CIS38A8012660

¹³ DFAT, "DFAT Country Information Report Afghanistan", 18 September 2017, CISED50AD5680, 5.20, 5.22; UNHCR, "UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Asylum Seekers from Afghanistan", 19 April 2016, UN6C8EFBB3

departed Afghanistan in 2013 and I am not satisfied that in 2018, in Kabul, the applicant would be perceived as having links to the international community because of that past employment.

29. Overall, the country information before me does not indicate that in Kabul there is systematic targeting of returnees, including those who return from Australia, or who are failed asylum seekers. Even accepting that the applicant may be identified as a former asylum seeker from Australia, I am not satisfied that the applicant has any identifiable affiliations with international organisations or the Afghan government which would raise his profile and lead to a real chance of him being targeted by the Taliban or other insurgents in Kabul.
30. On the evidence before me, I am not satisfied that returnees like the applicant, who have lived in a western country like Australia for several years and have sought asylum, are targeted by the Taliban, insurgents, or other groups due to an imputed pro-western opinion, or as a returnee asylum seeker, in Kabul. I am not satisfied that the applicant faces a real chance of harm in Kabul due to his asylum application in Australia, due to his background, due to his time spent in Australia, due to any perceived westernisation, or a combination of these factors. I am not otherwise satisfied that, in Kabul, the applicant will be imputed as an infidel or apostate due to his time spent in Australia/the west.
31. In his TPV application, the applicant said that many innocent people get killed by suicide bombs in Afghanistan on a daily basis. In 2017, United Nations Assistance Mission in Afghanistan (UNAMA) reported 1,048 civilian casualties in Kabul Province, mainly from suicide and complex attacks carried out by AGEs, in first half of 2017.¹⁴ The population of Kabul city itself is estimated to be between three and seven million.¹⁵ In respect of the applicant's claim to fear harm based on the general security situation in Afghanistan, country information before me indicates that the population in Afghanistan are exposed to generalised and indiscriminate violence relating to conflict in the country. In terms of the general security situation in Afghanistan, I accept that the government does not exercise uniformly effective control over all parts of the country, particularly in rural areas. Kabul is a large urban centre under effective government control. The evidence before me does not support that the Afghan government or security forces are losing control of Kabul. While civilians have been victims of attacks from time to time, taking into account the general security situation, and the size and diversity of the city, I find the chance that the applicant would be harmed as a bystander, or inadvertently caught up in an attack, or otherwise harmed through generalised violence is remote. I am also satisfied that any harm the applicant may possibly face in relation to generalised violence would not be for the essential and significant reason or reasons of his race, religion, nationality, membership of a particular social group or political opinion, but rather a consequence of any ongoing insurgency or insecurity present in the country overall. Accordingly, s.5J(1)(a) and 5J(4)(a) of the Act would also not be satisfied.
32. The applicant does not have a well-founded fear of persecution within the meaning of s.5J.

Refugee: conclusion

33. 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).

¹⁴ UNAMA, "Afghanistan- Protection of Civilians in Armed Conflict Midyear Report 2017", 1 July 2017, CISED50AD4852

¹⁵ EASO, "Key socio-economic indicators, state protection, and mobility in Kabul City, Mazar-e Sharif, and Herat City", 1 August 2017, CISED50AD5465, p.17

Complementary protection assessment

34. 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

35. 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.
36. I have found above that the applicant would face a real chance of serious harm in returning to his home region of [District 1], Khost Province. Having regard to the same evidence, I am also satisfied that there are substantial grounds for believing that, as a necessary and foreseeable consequence of the applicant's removal to Afghanistan, the applicant will face a real risk of significant harm if he returns to [District 1].
37. However, s.36(2B) of the Act provides that there is taken not to be a real risk that a person will suffer significant harm in a country if it would be reasonable for the person to relocate to an area of the country where there would not be a real risk that the person will suffer significant harm.
38. I have concluded that the applicant does not face a real chance of harm in Kabul in connection with his previous employment or the events of 2012. I have also concluded that the applicant does not face a real chance of harm for any other reason including from generalised violence, the general security situation in Kabul, his accent or dialect, his time spent in Australia, due to an imputed infidel or apostate profile, or due to him being a returning asylum seeker who has resided in a western country. Based on the same information, I find that the applicant does not have a real risk of suffering significant harm in Kabul.
39. Country information before me indicates that the Afghan government does not exercise uniformly effective control over all parts of the country, particularly in rural areas. However, the evidence before me does not support that persons with the applicant's profile are targeted in Kabul, including at the airport in Kabul or in transit from the airport to the city, and I am not satisfied that the applicant faces a real risk of being incidentally harmed. While country information indicates that sporadic insurgent attacks do occur in Kabul, the primary targets for such attacks have been persons and locations associated with the government and the international community. I have found that in Kabul 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 specifically targeted by insurgents. The evidence before me does not support that the Afghan government or security forces are losing control of Kabul. Given the security situation in the city, 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 Kabul. Further, I am not satisfied the applicant would face 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 there a real risk he will be subject to torture, cruel or inhuman treatment or punishment or degrading treatment or punishment intentionally inflicted.

40. I am not satisfied that there is a real risk that the applicant will face treatment for any reason in Kabul that would amount to significant harm. I am not satisfied the applicant faces a real risk of significant harm in Kabul.
41. Having regard to the applicant's personal circumstances and the country information before me, I have considered whether it is reasonable for him to relocate to Kabul. In the TPV interview, he said he could not relocate to Kabul because his accent is very distinct from other people and due to this the Taliban may be notified of his presence. He indicated to the delegate that the most significant barrier to him relocating to Kabul was the Taliban. He also said it would be difficult to live in Kabul because he does not speak any other languages other than Pashto, he has no education, and that it would be difficult for him to rent a house to live in. At the end of the TPV interview, the applicant's representative stated that it was not practicable for the applicant to move to other cities because he would have to find shelter, food, and earn a livelihood for his family. His dependents included his wife, his [children], and his mother. It was also submitted that Kabul is overpopulated and persons living there did not have access to adequate medical and other public services.
42. Country information in the review materials indicates that large urban areas in Afghanistan, such as Kabul, offered greater opportunities for employment, access to services and a greater degree of state protection than many other areas. Many residents of Kabul live in informal settlements although it is estimated that some 70 per cent of Kabul's population live 'informally'.¹⁶ Although unemployment is widespread in Kabul, the country information indicates the city offers better employment opportunities for many. I note the applicant's evidence in the entry interview that prior to leaving Afghanistan he maintained continuous employment in a variety of roles including as [different occupations]. I accept that due to Kabul being a major urban area where IDPs and refugee/returnee populations are likely to settle in, there will be pressures in terms of accommodation, employment and basic services. I also accept these factors would make settling in Kabul challenging. However, on the evidence before me and considering the applicant's personal circumstances, although I accept he will face challenges, I am not satisfied he has any vulnerability which would act as a barrier to him obtaining employment to enable him to subsist and live in Kabul. According to DFAT, Sunni Muslims make up around 85 per cent of the population and Pashtuns around 40 per cent.¹⁷ DFAT reports that societal discrimination can manifest itself in the form of nepotism, including in relation to employment, within ethnic and religious communities. DFAT also indicate that it is minority ethnic groups in the area in which they reside who are particularly disadvantaged, which may include the denial of access to employment or housing.¹⁸ However, I am satisfied that Sunni Pashtuns form a significant majority in Kabul and on the evidence before me I am not satisfied that the applicant's religion or ethnicity will act as a barrier to him successfully relocating.

¹⁶ UNHCR, "UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Asylum Seekers from Afghanistan", 19 April 2016, UN6C8EFBB3, p. 29; EASO, "EASO Country of Origin Information Report Afghanistan Security Situation November 2016", 1 November 2016, CIS38A80122597, p. 43

¹⁷ DFAT, "DFAT Country Information Report Afghanistan", 18 September 2017, CISED50AD5680, 2.6, 3.6

¹⁸ DFAT, "DFAT Country Information Report Afghanistan", 18 September 2017, CISED50AD5680, 3.5

43. In respect of the applicant's inability to speak a language other than Pashto, as noted above, Pashto is spoken by 35 per cent of the population and is recognised as an official language. I accept that Afghans relocating from rural areas may initially have communication difficulties due to language or dialect limitations. However, I am not satisfied that the dialect spoken by the applicant is not understood in Kabul or that his dialect or accent will act as a barrier to integration. I accept the applicant's claim that he is uneducated. However, information before me suggests that illiteracy is common in Afghanistan, and I note that DFAT suggest that the majority of the Afghan National Police force is illiterate.¹⁹ There is no independent evidence before me to suggest that Pashtun Afghans are vulnerable or otherwise experience hardship in Kabul because of their regional dialect or due to a lack of education. I am not otherwise satisfied the applicant will come to the adverse attention of the Taliban in Kabul as a result of his accent or dialect.
44. DFAT report that public health care is free.²⁰ In 2017, EASO report that Kabul benefitted from easier access to health facilities than other cities and that a number of specialist clinics and hospitals are situated in Kabul.²¹ The applicant has not indicated that he is suffering from any medical condition or that he has specific needs in respect of his health. On the information before me, I consider that, if required, the applicant would have access to adequate health care in Kabul.
45. 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 exception for the requirement of external support are single able bodied men, such as the applicant, 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.²² The applicant's immediate family reside in Khost and Pashtuns form a significant ethnic group in Kabul. He has demonstrated that he is resourceful and resilient and has successfully lived apart from his family, and settled and worked in unfamiliar places such as Australia where, according to his evidence in the TPV interview, he has also established new networks. I further note that in Australia the applicant has gained new skills, and is now working as [occupation] in [an] industry which is different to his previous employment.
46. The applicant's immediate family reside in [District 1] and I accept that on return to Afghanistan he will be unable to return there to visit them. I also accept this would be difficult for him, but these difficulties would exist regardless of where he lived in Afghanistan. The applicant indicated that his [brother] continues to reside in [District 1] and supports his family. The applicant does not have any family in Kabul and would arrive there as a single man of working age and would therefore only need to find accommodation for himself initially. I acknowledge that a further separation from his family in the short to medium term would be difficult, but I do not accept it would be unreasonable. I also do not consider it unreasonable that once established and settled in Kabul he and his family could discuss the possibility of and/or make arrangements for his family to join him.

¹⁹ DFAT, "DFAT Country Information Report Afghanistan", 18 September 2017, CISED50AD5680, 3.31, 4.5, 5.6

²⁰ DFAT, "DFAT Country Information Report Afghanistan", 18 September 2017, CISED50AD5680, 2.16

²¹ EASO, "Key socio-economic indicators, state protection, and mobility in Kabul City, Mazar-e Sharif, and Herat City", 1 August 2017, CISED50AD5465, p.56-57

²² UNHCR, "UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Asylum Seekers from Afghanistan", 19 April 2016, UN6C8EFBB3, p.86

47. Overall, I accept there are economic and other challenges in relocating to Kabul. However, the applicant is able-bodied, of working age, who does not present with any health problems or other specified vulnerabilities identified by UNHCR as requiring durable support, and I am satisfied he would have some relevant skills and attributes gained through his experience of being gainfully employed in Afghanistan and Australia which would support his ability to find employment, accommodation, and earn a livelihood upon return. I am satisfied the applicant would be able to access the necessary infrastructure and essential services to sustain himself and meet the basic necessities of life.
48. Having considered the applicant's personal circumstances and the country information relating to Kabul, including the social, economic and security situation, I am satisfied it is reasonable for the applicant to relocate to Kabul.

Complementary protection: conclusion

49. There are not substantial grounds for believing that, as a necessary and foreseeable consequence of being returned from Australia to a receiving country, there is a real risk that the applicant will suffer significant harm. The applicant does not meet s.36(2)(aa).

Decision

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

Applicable law

Migration Act 1958

5 (1) Interpretation

...

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

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

...

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

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

but does not include an act or omission:

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

...

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

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

...

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

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

...

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

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

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

...

5H Meaning of refugee

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

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

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

...

5J Meaning of well-founded fear of persecution

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

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

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

5K Membership of a particular social group consisting of family

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

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

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

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

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

5L Membership of a particular social group other than family

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

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

5LA Effective protection measures

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

...

36 Protection visas – criteria provided for by this Act

...

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

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

...

Protection obligations

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

Determining nationality

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